



Omissions

Question: ‘Are we right to assume that, while we should be held morally responsible for our actions, we have no moral responsibility for our omissions?’

Tutorial

Instructions:

Step 1: Gather the evidence – the typical examples

Try to think of three or four examples of omissions where you could argue that it wouldn't be reasonable to blame anyone for what occurred simply because they omitted to act in one way or another. Take as your guide the following example used in the transcript. We often hear people maintain that you can't be held responsible for the increase in poverty in the country simply because you omitted to vote in the last election, which produced a government committed to reducing welfare payments to the poor.

Once you've got your examples, read through the first section of the transcript. Here you'll see there is a tutor and a student analysing the concept of omissions. Normally there are anything up to ten students involved, but in this case it's a one-to-one session so you can see more clearly what's going on. At the end of each section there is a commentary on what has occurred. The aim of this is to amplify the points made in the tutorial so that you can see more clearly the issues that have been raised and their relevance to the analysis of the concept. Once you've read through this section move on to the next stage below.

Transcript:

Tutor: The first thing we must do is to isolate the important concept in the question. So, Jayne, what do you think it is?

Jayne: Well, I think it's obvious in this question. It's "omissions."

T: Why do you say it's obvious?

J: Well, we all think we know what we're referring to when we use the term, but in fact we might all be thinking of quite different things and different situations.

T: That's good. But if you're right about this, we've got to make sure that we all start at the same point – that we all begin with the same or similar examples – the same body of evidence. To do that it's important to start with one particular way in which the concept is used. In this case the most sensible thing to do is to start with the way it's used in the question. So get a blank sheet of paper in front of you and think of three examples in which it's clear that it wouldn't be right to blame the person for what happened simply because he or she failed to act. Let's spend ten minutes thinking up examples and then let's see what we've got.

Ten minutes later...

T: OK. Have you finished? Let's see what you've got.



J: Well, it's not as easy as it seems.

T: No, that's true, although it gets easier the more times you do it.

J: You can think of plenty of examples. The problems begin when you try to think of just these hard case examples, where the individual couldn't reasonably bear any responsibility.

T: But you see the importance of doing this?

J: Oh, yes. It's like the Semmelweis example – you've got to have as many identical examples as you can, so that you can eliminate all the unnecessary variables – all the accidental characteristics.

T: Yes, that's good. If you go back to our Olic, there we saw the concept appear clearly and almost immediately, because we had abstract figures that you could see were essentially the same, once you'd stripped them of their accidental characteristics. Do you see the similarity between what we did with the Olic and what Semmelweis did?

J: Yes, I think so. Semmelweis wanted the problem as clear as he could get it stripped of all the inessentials.

T: Yes, so how did he do that?

J: Well, he compared the cases in the doctors' division with those in the midwives' division. In this way he could dismiss explanations like the "prevailing miasma" that was settling over the entire hospital, because this would have affected both divisions alike. We did the same with the "Olics" – collected those that seemed similar, comparing them with the others which we dismissed because they were different in their essential characteristics. We did this until we were left with only those examples that were essentially the same.

T: Yes, a good explanation. OK, then, let's look at your examples.

J: The first is that if I fail to contribute to a charity working to save the lives of children starving in the Third World, I can't really be held to blame for the deaths of those children who could have been saved if more funds had been raised. I mean collectively, as a country, we could argue we're indirectly responsible, because we fail to contribute enough as a society and because we consume too much of the world's resources. But it wouldn't make much sense to argue that I am individually responsible. The distance between my failure to make a contribution and the children's deaths is too great, so we can hardly say that I caused the deaths, or even that my single contribution would have averted the famine.

T: OK, and your second?

J: Well, if I fail to rush across a road to help an old lady off the ground after she's just fallen over, it's not my responsibility that she's fallen over.

T: No, but you could have contributed to alleviating the effects of the shock. Say she subsequently has a heart attack, or just fails to recover, and dies, do you accept any responsibility for failing to comfort and help her deal with the effects of the shock? Your contribution could have made the difference.

J: Well, I suppose if it could be shown that it would have made a difference, then I would have to accept my share of the responsibility.



T: OK, and your third?

J: Well, this one I'm not so sure about, particularly now you've shown the inadequacies of my last one. Say I have an acquaintance at college, someone who I only see at lectures, and then I only pass the time of day, nothing more. So we're not really close friends, just acquaintances. But I don't realise, or I don't pick up the signals, that she's really quite lonely and depressed, and eventually she attempts to take her life. Am I responsible for this because I failed to befriend her?

T: Well, what do you think?

J: I don't know. On one level I think I am – I could have made a difference. But that's just hindsight. We can all have 20/20 vision in hindsight. So, although you could say I ought to have picked up the signs, when you've got other things on your mind it's not always easy to. Anyway it's probably unreasonable to expect us all to go about searching for signs so that we can help every individual who might feel a little lonely.

T: It's not such a bad example as you might think. We should no doubt all be more sensitive to the signs that other people give us, particularly when they're cries for help, but you would probably be a little tough on yourself if you were to say you were responsible for her attempt to take her life, because you didn't pick up the signs. We all walk around with a lot on our minds and it's not always easy to be as kind and sensitive as we would like to be. Nevertheless, it would be difficult to argue that you don't shoulder *any* responsibility, particularly when we know that by befriending her you might have made the crucial difference. It's similar to the old lady who falls over in the street, although it was just a lot easier to see that and therefore to respond.

OK, now to mine. Mine don't seem to have the psychological depth of yours, particularly of your last one. My first is the voter who fails to vote along with millions of others, and a government comes into power pledged to cut welfare payments to the poor. It would be unreasonable to argue that this one person carries any meaningful responsibility for this. Do you agree?

J: Yes, I don't see how you could argue that an individual was responsible for this. Collectively, maybe. It's like the Third World example. As a group the non-voters must shoulder almost as much responsibility as those who voted for this government.

T: OK, my second example. Say you live in a small town through which there runs a very fast and dangerous road. Over the years there have been a number of accidents and about ten people have died over the last decade. Local residents believe the only solution is a by-pass, but the council is not likely to approve such an expensive project, unless there is a clear and overwhelming support for it. So the residents set about getting a petition together. One is left at the entrance to the local supermarket that you use. Although you go in and out a number of times each week you're always in a hurry and you never have the time to sign it. After a few weeks the petition is collected together and taken to the local council offices. The councillors take some time to consider the project, but finally refuse to sanction it. They explain they cannot support such an expensive project that will put up local rates, just for a small proportion of the town's population who would benefit and who had signed the petition. Soon after this a child is knocked down and killed as she crossed the road. Do you bear any responsibility for your omission?

J: I suppose yes is the answer, but so do hundreds of others who failed to sign the petition. And the real responsibility lies with the person who was driving the speeding vehicle and with the councillors who decided not to sanction the project. So, like the voter and the non-contributor to the Third



World charity, the responsibility is so diluted as to be almost negligible. I don't want to suggest I don't have any responsibility, I do, but it would be unreasonable to accuse myself of being the cause.

T: OK, try my last example. Say you're out with friends in a local pub. One of your friends is clearly drinking too much, particularly in view of the fact that he has a car outside and plans to drive himself home. Now you could have taken him aside and insisted that he leave his car in the pub car park and take a taxi, but you don't. In the event he drives home and let's say he seriously injures someone who's crossing the road. Now there's no doubt that it's his fault and the result of driving under the influence of alcohol. Because of your omission are you responsible?

J: This one's more difficult. It's closer. I could have had a more direct influence on his behaviour. It might not have mattered: he might not have listened to me, but at least I could have tried. So, in this one I think I do share some of the responsibility, particularly if I also bought one of his drinks. As an example of an omission for which I cannot be held responsible, I don't think this works as well as the non-voter, the non-contributor and the non-petitioner, even the acquaintance who attempts to take her life.

T: No, I think you're probably right.

Commentary

Already by thinking up these examples and discussing whether or not they work as cases in which there is no responsibility for the omission involved, we have already shaken loose certain characteristics that are essential if they are to work. In the next step we go on to look at the strongest examples of these so that we can analyse what these essential characteristics might be.

Instructions:

Step 2: Analyse the concept

In this step you're simply trying to extend what we've already begun to do: you're trying to shake out those characteristics that appear to be common to each of your strongest examples. In the tutorial it's clear that our strongest examples of blameless omissions are the non-voter, the non-contributor, and the non-petitioner. What we're trying to do is to shake out the core characteristics of these.

So, select your strongest examples. If you want to use any of those mentioned in the tutorial, then do so. Shaking out these characteristics will take a little thought, but if you can remember what you did with the "Olic" you'll know that your mind by now has a fairly clear idea of the concept, all you have to do is to bring it to the front of your mind and begin to analyse it. Don't worry if you only come up with three or four characteristics; it's enough to get started with.

Once you've done this read the next section of the transcript so that you can see the way we've tackled this stage. Although you may have different characteristics, when you compare them with ours you'll probably find they're not very different. If you have fewer characteristics, don't worry – the more you do it the better you'll get. Once you've read this section move on to the next stage below.



Transcript:

T: OK, if we're agreed, then, let's take as our strongest examples of blameless omissions the non-voter, the non-contributor, and the non-petitioner. We seemed to agree that these examples just about worked. Is that right?

J: Yes, I think so. They give us a good basis to work on.

T: OK. What I'm going to ask you next is what the core characteristics are of these. I want you to think carefully and just begin to unwrap the concept a bit at a time, like you did with the "Olic." I'm not asking you to give me the whole picture all in one go. Just start with one characteristic that at the moment seems the most obvious. What do you think that is?

J: Well, I suppose the most obvious characteristic that we've already begun to mention is that in all these cases the individual has only indirect responsibility for what occurred. I mean if I were the non-contributor to the Third World charity, I would argue that I did nothing to harm the children in the Third World, I didn't create the famine, I just didn't stop and put some coins in the collection boxes when I saw them. The same goes for the non-voter: I did nothing to make the poor poorer. I didn't go out and take money from their pockets. I just didn't make sure my vote counted at the polls. And, of course, the same goes for the non-petitioner. I didn't kill the young girl, because I was speeding. And I didn't refuse to support the building of the by-pass. I just didn't have time to sign the petition.

T: Good. So what you're saying is, if we could establish a direct causal connection between your omission and the event, then things would be different? If we can show that your omission caused the event, you would accept responsibility?

J: Yes.

T: OK, so that's one core characteristic we've shaken loose. There is no direct causal connection. Now try another. With the three examples in front of you see if you can see what's common to all of them.

J: Well, the trouble with this one is that it sounds similar to the first one.

T: At this stage don't worry too much about that. When we've discussed it a little more and explored its implications, we may find that it's quite different and it ought to count as one of our core characteristics.

J: OK. The point is in all these cases I can claim I had no personal responsibility. There was only collective responsibility. It was shared by all of us who failed to come out and vote. One extra person coming out to vote is unlikely to have changed anything. But if we had all come out to vote then things would have been different. The same goes for the Third World charity. If everyone were to contribute then this would make a significant difference, but just one person deciding to contribute would make no significant difference at all. The same goes for the petition. If all those of us who failed to sign it had done so, things may have been different. The road might have been built. But my failure to sign it is neither here nor there.

T: Right, so in effect what you're saying is that you simply had no opportunity to influence the situation effectively, and without that you can hardly be held responsible for not acting. Given a situation that you *can* influence effectively and you *can* be held responsible. But without such an



opportunity it's unfair to blame you. As long as there seems no point in acting, you can't be blamed for not acting. Did I make that sound more complicated than it should be?

J: No, no, it's OK, I see the point.

T: OK, we've got these two characteristics, then: causal connection and opportunity. That's good. Do you have any more?

J: Well no, not really.

T: You mean you have an idea there's more there, you just can't get it clear in your mind?

J: Exactly. I feel fairly certain there's another one, but it's just too similar to those we've already discussed. It's as if I'm going over in my head exactly the same arguments and issues that we've already covered.

T: In these sorts of situations it helps to refocus on other related concepts, that we've raised while we've considered omissions. For example, in this case consider the concept of responsibility. Here you ask yourself the question, "When can I be held responsible?" So think of examples again. Let's start with this one. I'm driving along a busy road and the car in front suddenly stops. Although I've left an adequate distance between us, so that I can stop safely, my breaks fail and I go into the back of him. Am I responsible?

J: Well, in so far as you should have got your breaks checked you are, but this could happen to anyone, suddenly and without warning, even after you've had them regularly checked. So if that's what's happened, you can't really be held responsible. It's you or your insurance company that have got to pay for the damage, but beyond that you can't be held responsible.

T: So who *is* responsible?

J: Well, no-one. The most you can say is that the machine is responsible. It breaking down caused the accident.

T: It's like saying that no-one was responsible for the aircraft crashing – it was metal fatigue?

J: Exactly.

T: So in this case the sort of responsibility I have is a legal or bureaucratic responsibility to take care of the other driver's damage? It's a sort of formal responsibility, not moral?

J: Yes, I think so.

T: OK, let's try a borderline case. What if the car was mechanically sound – nothing wrong with it. It was just that I wasn't concentrating. I'd been listening to an interesting programme on the radio, or perhaps I was tired, I hadn't been sleeping too well lately, or perhaps I'd had one too many beers after leaving work that night.

J: Well this is more difficult, because you have more than just a formal responsibility for what's occurred. You're to blame either because you weren't concentrating, or because you should have exercised more self-control and had a soft drink instead of a beer. In fact, I think the sleep deprivation is different, because it probably doesn't involve a decision on your part – there may just be a natural, biological reason why you're not sleeping. You can't be blamed for this, although if you were aware of your condition you could be blamed for deciding to drive. So to that extent you can be blamed in the same way that you could for drinking one too many beers, or for allowing yourself to be distracted by the radio programme.



T: So this sort of responsibility is more than the impersonal formal responsibility? It's personal, having to do with me and my decisions? But it's not exactly moral?

J: No, not really. You can be blamed for being a careless sort of character, who should pay more attention to what he's doing, rather than listening to the radio. You can also be blamed for lacking sufficient self-discipline, for not having the strength of will to decide not to have another beer. I suppose you could say these are moral failings in your character, but it would be odd to say that your actions were moral or immoral, for which you bear moral responsibility. I suppose you do, but in a much weaker, indirect sense.

T: OK, now try a contrasting case. Say I'm driving along the road and I recognise the driver in the car in front. He cut me up a few miles back. Or may be I'm just envious that he drives such a smart car. So, I decide to drive into the back of him, or at least break late and allow my old car to hit the back of him. How is this different from the previous examples?

J: Well, in this case you meant to do it. You intended to damage his car, either out of revenge, because he'd cut you up, or out of envy, because his car is newer than yours. In the other cases you had no intention of causing harm, it was either your car that broke down, or it was just the way you are – you're easily distracted, you don't concentrate enough, or you're not sufficiently thoughtful. So you didn't see clearly what the consequences might be if you were to have another beer.

T: So, this is a much stronger, more direct sense of moral responsibility?

J: Well, it's the strongest sense, because you meant to do it. So you are to blame – you do bear the moral responsibility for what happened.

T: Whereas in the other sense of personal responsibility I can be blamed for allowing my character over the years to develop in the way it has – into a careless or thoughtless sort of individual, but I can't be blamed morally for smashing into the car in front, because it was just an accident – I didn't intend it to happen, it just did?

J: Exactly.

T: OK, now let's go back to omissions. If we're right that we can only be held morally responsible for our actions if it was our intention to act in that way, then shouldn't the same apply to omissions?

J: Well, yes, of course. I mean if other people have suffered because I omitted to act in a particular way, I can't be held morally responsible, because it wasn't my intention. Whereas if by not giving to the Third World charity my aim had been to worsen the suffering of those in the Third World, then I'm morally responsible. Although, as we've already argued, you still have to show that my omission was causally connected to the event, and that I had the opportunity as an individual to influence the situation. But if it wasn't my intention to worsen their suffering, I cannot be held responsible.

T: And, of course, the same would apply to the non-voter and the non-petitioner?

J: Yes.

T: OK, we've now got three core characteristics to our concept: causal connection, individual opportunity, and intentions. With these we can now move on to test the concept.

Commentary

At times this seems as if it might be a painstaking, laborious process as we carefully unravel the characteristics and explore their implications. But believe me it's not. On most occasions it's full of



insights that come tumbling out faster than you can record them. You'll see things with the sort of clarity you've rarely experienced before. It's an exciting, vibrant process.

With this concept the first two characteristics came out fairly easily. In fact this is usually the case with all the characteristics of most concepts. But in this case we both felt there was more to it: that we had missed something that lay just beneath the surface. So, we had to approach it from a slightly different direction. When this happens it's worth going back to the question to see if there's a related concept or implication in the question, that you can analyse. This often throws fresh light on the main concept. With omissions, once we had begun to look at the notion of moral responsibility, it gradually became clear what we had been missing.

You may find, of course, that there are other characteristics that we have missed, or that you have the same characteristics but in a slightly different form. You may use different words, but mean much the same. Whatever the case, as you move onto the next step, be prepared to test them rigorously.

You may feel you've got it right, but you won't know that until you've thoroughly tested it.

Instructions:

Step 3: Test it

Now that you've got the core characteristics clear, it's time to test your concept.

3.1 Borderline case

As we explained in Chapter 1, to do this you need to imagine a borderline case, one that doesn't appear to fit within your concept. All the cases we've considered so far have involved situations in which it would be unfair to claim the individual was morally responsible for what occurred. This was largely because what occurred was too distant from the individual for him to have any effective impact on the events. But this is just at one end of the spectrum of responsibility. At the other end, where it's much easier to have an impact on events, it might be more realistic to argue that the individual is responsible for not acting when he could have done. We can all probably think of examples where this appears to be the case. So, start with one of these and put your concept to the test.

As you compare your concept with your example you'll realise either that your example does in fact fit, it's just you haven't seen all its characteristics clearly enough, or that you need to refine your original concept to take account of those cases represented by your example. Other characteristics may appear that are far more important, or you may adjust one or two of those you've listed.

The key to this is not to be too defensive – try not to fall into that frame of mind where you're convinced that now you've spent so much time getting the analysis right, there's nothing more to be said on it. The likelihood is that you've got all the characteristics, it's just that they need adjusting or elaborating. There are aspects of them that you haven't seen yet. By testing them in this way you'll open them up. Remember Semmelweis. His basic explanation was right, but he may have got the details wrong, like the chloride of lime. What's more, the paradigm he established then set the scientific and medical community the task of developing and elaborating it. In time this yielded all the great advances in bacteriology that we now take for granted.



Transcript:

T: All the cases we've considered so far, the non-voter, the non-contributor, and the non-petitioner, were all carefully chosen as examples of omissions for which the individual couldn't be held morally responsible. They're pitched at that end of the spectrum of responsibility, where the causal connection between the omission and the consequences is too distant, and where the individual had no effective opportunity to change things. But now, to test our three characteristics, let's consider an example from the other end of the spectrum. Here things are likely to be quite different: there's very little moral distance – it's relatively easy to help, close at hand and involves little personal sacrifice.

Here's an actual example that occurred in the Netherlands a few years ago. On a bright, sunny day in late August 1993 families gathered around the edge of a popular lake in a park near Rotterdam to enjoy one of the last days of summer. Children swam and played in the water. An inflatable canoe was being gently buffeted by the light breeze. On shore dogs and children chased balls across the grass, while their parents unpacked the picnic. It was the sort of day that most children would remember all their lives, but there was more to remember on this day.

There were about two hundred people around the lake, some playing football or throwing Frisbees, while others tucked into sandwiches as they looked out across the water. Suddenly, the canoe capsized spilling two young girls aged eleven and nine into the water. The nine-year-old, unable to swim, thrashed about in the water, while her friend screamed for help as she tried desperately to keep the drowning girl's head above the water. Those on shore stopped and stared, poised in the middle of their games for just a moment. Others put down their sandwiches and moved to the shore to get a better view. But no one helped.

By the time the police arrived the little girl had drowned. Struggling to conceal his anger and contempt, a Rotterdam policeman said, "...no one...wanted to get wet, they just watched, passively, from the side."¹ Even when the fire brigade arrived nobody was willing to help search for the body. It was found the next day when the water was pumped out.

There are other similar examples we could all conjure up. A child sitting at the dinner table begins to choke on something. If you were to fail to get up and help, and the child were to die, would you be morally responsible for his death? In these cases we're not so sure that omissions don't count. I suspect we all have sympathy for the policeman's anger and contempt for those who stood by and did nothing.

So, if that's the case how do our three characteristics stand up against examples drawn from the other end of the spectrum of responsibility?

J: Well, I suppose the simple answer is not very well. As you say it's difficult not to have a lot of sympathy for the policeman's contempt for those who failed to act.

Clearly they had all the opportunity they needed to make a difference and it didn't depend on group influence as it did in the first three examples. One individual could have made all the difference. He could have saved the little girl's life irrespective of what other people did or didn't do.

¹ The Times, 28 August 1993.



T: I suppose you could argue that if some onlooker wasn't a strong swimmer, you couldn't expect him to risk his life?

J: Yes, but there's bound to be others who were strong swimmers. And anyway the poor swimmer could get a boat, or encourage the others to wade in and save the girl, rather than just stand there looking on as he ate his sandwiches. I doubt whether the water was that deep in a public park where children were free to go out on inflatable canoes. Somebody could have done something. And this still leaves the case of the child choking on something he's eaten. There's no danger there in helping the child.

T: So, you think in terms of our first characteristic, that the individual must have the opportunity to influence events effectively, that this sort of omission at this end of the spectrum does carry moral responsibility?

J: Yes, without doubt.

T: OK, and what about our second characteristic, causal connection?

J: Well, there's no doubt in my mind that these people, by failing to act, were the cause of the girl's death.

T: But isn't that just a bit too harsh, after all there are other factors that have contributed to the girl's death: the instability of the boat, the lack of effective parental supervision, and so on.

J: Well, yes, of course, these things contributed to the girl's death, but in so far as you, as a strong swimmer standing on the shore watching the events, could have made a difference directly, not through some other agency or through other factors that would have to be there for you to act effectively, but directly, then you are a major cause of the event and you have a major part of the moral responsibility.

T: I wouldn't disagree with all that, but I think most people would still feel uncomfortable with the idea that the passive bystander is a cause of the child's death.

J: I understand that, but we've only got to look at the situation to see that if the parents were not supervising the children well enough, then the passive bystander has as much responsibility.

T: Are you prepared to say, then, that there would be no difference between a person who kills and another who just lets somebody die? Let's say you had another situation where a person swam out to the girls in the canoe and pulled the girl into the water and held her under until she died. Is there no difference here between this action and the omission of the passive bystander in our example?

J: I don't think there is.

T: But most people would find this difficult to accept. We seem to have a strong intuitive sense that there's a moral difference between an act and an omission. We consider a positive action designed to kill someone to be quite different from merely refraining from doing anything to keep someone alive. In western societies we accept we have a duty not to harm people, which is more stringent than our duty to help them. The law has strong penalties against killing, but it doesn't require us to give charity to help those suffering in the Third World. So, whereas killing is a violation of our duty not to do harm, letting die is merely a failure to give help.



J: But there's still a problem here.

T: Yes, I think there is. Tell me what you think it is.

J: Well, our intuitions and strong feelings are not beyond question. The fact is that they're often wrong – they're often misleading. So to say we just have a strong intuition about it is begging the question. It amounts to just asserting that there's a moral rule against killing human beings and none against allowing them to die. It treats what is a conventionally accepted moral rule as if it's beyond questioning. It doesn't go on to ask whether we *should* have a moral rule against killing, but not against allowing to die. We can still ask why killing is wrong, while letting die is not.

T: Yes, I think you're right, we are begging the question. But why do we have this moral convention?

J: I don't know. It's difficult to say.

T: Well, one reason might be that it just makes life a lot easier. Without it a moral life would be almost impossible: it would place intolerable burdens on us. We would have to carry the whole world on our shoulders. We would have to give a large proportion of our incomes to fight starvation, along with our spare time which would have to be devoted to raising money and persuading governments that they must contribute more. Not to raise money that would save lives would be equivalent to murder.

So to avoid this we accept that blame for an omission must take into account the difficulty, inconvenience and other factors, that contribute to our omission. But in this lies a lot of the force of this distinction, because we tacitly think of omissions in terms of those at the non-responsible end of the spectrum, where the individual's omission is not intentional and only a very distant causal connection can be established between the omission and the consequences. Here our duty to help people is a lot less stringent. In those cases where those that need our help are strangers and where it would be very difficult for us to help them, involving us in substantial sacrifice, any help we give is seen as an act of kindness and generosity. It's not seen as our duty, something that we're required to do.

In contrast, where there's little or no moral distance, where it's easy to help, it's close at hand, and involves little personal sacrifice, our attitude towards moral responsibility is different. So, if we were standing next to a child as it drowned in a bath or choked on food at the dinner table, we would accept that we have a strict moral duty to help. If we refrained from helping, we would be morally responsible for the death of the child. In these cases the difference between an act and an omission vanishes.

J: If that's the case, then we would be justified in evaluating the implications of this convention to see whether on balance it does more harm than good. On the face of it, it seems to cause considerable harm just to make life a little easier.

T: You're probably quite right about that. But before we move on to consider our third characteristic, let's just make clear where we've got to. The first characteristic, the opportunity for the individual to exercise effective influence on the events, we thought was met in this example. So, even though this was an omission, the individual could be held to be morally responsible. Right?

J: Yes, that's about it.



T: The second characteristic, the causal connection, you thought was again met, that the individual's omission was the cause of the death of the girl. But what we've shaken out here is the general moral convention that while it is wrong to kill, it is not wrong to omit to help save a life even if this results in death. Now we think there might be real doubt about this. So we'll have to put this to the test when we come to consider contrasting examples in the next step. In the meantime, let's move on to the last characteristic, intentionality. Is this met in this example? Can we say that those who stood aside and watched harboured the intention of killing the girl, in the same way that I harboured certain intentions when I let my car crash into the back of the other car?

J: I would have to say no. I'm sure none of those on the shore were hoping that the girl would drown, although I suppose in some of those looking on at any human tragedy there is the reassuring consolation that someone else is worse off than you.

T: Yes, that's certainly how it appears in this situation. And unless we can establish that the girl's death was the outcome the onlookers intended by doing nothing, then, as we found out previously, we can't attribute moral blame and responsibility. Nevertheless we still do seem to want to believe that those onlookers who stood and did nothing do have a responsibility for what occurred. The persecution of the Jews in Germany in the 1930s and the eventual Holocaust was at least made possible by those who stood, watched and did nothing. For evil to triumph all that is necessary is for good men to do nothing. So, as with the previous characteristic, there are doubts about this, which we will have to explore in the next step when we subject them to the contrasting examples.

Commentary:

Now that we've subjected the characteristics to the first test, we're clearer about where our doubts lie. We've shown that the first, the opportunity to exert effective personal influence, is not absent in all omissions, that there are those at the responsible end of the spectrum, where individuals have every opportunity to influence events. So, not all omissions have this characteristic and we should not treat them as if they do. In the example of the girl in the lake, the onlookers could have made effective attempts to save her.

But while we are clearer with the first characteristic, the other two leave us with serious doubts. We're not really certain that we can claim that the onlookers were the cause, or even *a* cause, of the girl's death, and it's difficult to argue that their intention in not acting was to bring about the girl's death. So, in the next test we must use examples that will force us to examine both of these problems.

Don't worry if the example you used in the last step didn't lead you to examine the issues with as much complexity as we managed. It's a lot easier with two or more people. But as we've said before, you will get better at it the more you do it. You will be able to play the role of two people, playing devil's advocate with your own views as you put them to fairly harsh tests.

3.2 Contrasting case

Now that we've thrown up these problems and begun to refine the concept, we need to test it again, this time focusing on the problems that have surfaced. Normally one contrasting example will be enough. But in this case you will probably have to conjure up two in order to test the two characteristics that have produced the problems. So, start with the problem and think about an example that should allow you to throw light on it.



This will either lead you to adjust your concept again, or you'll realise that there's more to your example and it does, in fact, fit within your concept after all. Either way, you should be able to resolve the difficulties we've uncovered and you'll no doubt feel that you've mapped out the concept clearly and you've got all the core characteristics sharply in focus.

Transcript:

T: OK, let's take each of the problems we've uncovered in turn. Let's start with an example that appears to strike a contrast with what we've said about the problems. Take the problem we have over intentionality first. The problem here is that we're not convinced that it would be right to argue that the onlookers' intention in not helping the drowning girl was that she should die. So, unlike me allowing my car to crash into the car in front because the driver had cut me up earlier, with the onlookers it's difficult to claim they are morally responsible in the same sense. In a weaker personal sense they may be – we may criticise them for not possessing the strength of character to put their own interests aside and help someone in distress, or for not possessing sufficient compassion to help others. But we couldn't blame them in the same way that you could blame me for driving into the car in front, because they don't seem to have any clear intention to cause death as I had clear the intention to cause damage as an act of vengeance.

So, can you think of an example where someone fails to act, like the onlookers on the shore of the lake, and consequently allows a situation to develop? Now he argues this was not his intention, but we need to think of an example where we can argue he is wrong in thinking this. Perhaps it's his unconscious intention that he's simple unaware of. Of course, if we can't think of an example, then we're just left with the nagging doubt, but no evidence to think otherwise. In these circumstances we would just have to accept that there appears to be nothing wrong with his claim that it wasn't his intention.

J: This one's difficult. So, I'm looking for an example where the intention's unconscious, it's implicit, rather than explicit?

T: Exactly. It's as if he's talking about intentions in a strictly narrow sense, where we might have a much broader definition.

J: No, I just can't off the top of my head.

T: Yes, I know it's difficult if you're just asked to do it without warning. With some of these you need time to think.

J: Hold on perhaps this works. He might say it wasn't his intention to cause the death of the girl by standing around doing nothing, but he has accepted that this is a likely outcome. So, implicitly this is his intention, because if it wasn't he would have done something. Do you see what I mean? In a sort of negative sense he has to accept this as his intention, because he could have produced a different outcome and, unless he's really thick, he would have seen that her death is a likely outcome if he does nothing. He had different outcomes to choose from and he chose the one particular outcome which included the girl's death. So you *can* say this was his intention.

T: Well done. Yes, I think you're right. What you've described is a broader definition of intentions, which includes what you've described as likely outcomes, foreseen consequences. If you're right about this we ought to revise the narrow definition of intentionality and produce a larger concept



that avoids this unconvincing distinction between intentions and foreseen, yet unintended, consequences.

The example I was going to use is this. If I decide, in order to reduce my expenses, that I will only check the oil in my car once a year, it's not my intention to seize up my engine. But, unless I'm incompetent and unaware of the possible consequences, it is my intention to accept this as a likely, a foreseeable, consequence. If my intention was to exclude this as a foreseeable consequence, then obviously I would check it monthly.

So, if we're right about this, what we're both saying is that there's no difference between what's foreseen and what's intended. Is that right?

J: Yes, I think so. Your example makes it even plainer – that an intention not only includes those consequences we directly intend to bring about, but also those we only unconsciously intend or just foresee.

T: And this means, then, that we're responsible not only for those things we do with the direct intention of bringing them about, but for all those consequences that we voluntarily and deliberately bring about. It's not necessary for us to have desired or wanted the consequences, just that we've deliberately chosen this as a likely outcome?

J: Yes, I think that's right.

T: Which brings us back to the people around the lake. We must conclude, as our nagging feelings seemed to suggest, that they are responsible, because it's not just their conscious intentions that count, but the consequences they could foresee if they refrained from acting. If I choose to bring about a situation that I can foresee, either by acting or refraining from acting, then this is intentional and I am responsible. So, it seems, we *can* argue that it was their intention to see the girl drown, because they could foresee this as a likely consequence of not acting and they chose this as the most desirable outcome, otherwise they would have acted to bring about a different outcome.

J: That's right. But doesn't that mean that an individual bears equal responsibility both for his actions and for his omissions, that there's no intrinsic difference between an act and omission?

T: Well, in terms of two of our three characteristics, it does. But it remains to be seen whether we can argue that an omission can be said to be the cause of an event in much the same way as an act. We've still got to establish that there was a direct causal connection – that an individual's action or his omission could have made all the difference.

J: Well, that's not difficult to prove with the onlookers around the lake. Any one of the competent swimmers could have waded out and swam to the girl and made a difference.

T: Yes, that's perfectly true, but we may find this is also the case in a far wider range of examples than we're normally inclined to accept. What those at the shore of the lake no doubt argued was that the girl's death was just an accident – it was just that certain conditions conspired to bring it about. There was no cause, so nobody can be held responsible. In other words, the canoe might have been inherently unstable, the parents failed to exercise sufficient control over them at that particular instant, may be the wind blew up at that moment and caused the boat to tip slightly, and the onlookers failure to do anything is just another one of these conditions. So, without a cause, nobody can be held responsible. And no doubt all of us who argue that our omissions are quite



different from our actions, in that unlike our actions they carry no moral responsibility, argue the same. We're inclined to say that our omission is just one of the many conditions that conspired to bring about the event. If we kill someone we are the cause of his death, but if we merely allow him to die, say of a treatable disease or from drowning, then it's nature that has killed him – in other words it's the background conditions, that are responsible.

Now, if we're going to test this assumption we must think up another contrasting example, one that seems to show that these conditions, that are supposedly non-causal, can in fact be describe as the cause. Can you think of anything?

J: That's difficult. Can I use your example again?

T: What's that?

J: Your car running out of oil?

T: Yes, of course. Try it.

J: Well, if your car seizes up because it's run out of oil, we wouldn't have much doubt that the cause of this is your negligence in not checking it. If you were then to explain that the cause of your car seizing up is just that it ran out of oil, we wouldn't find this very convincing. We would still be left wondering, "...but why did it run out of oil?" Until we've answered this, we can't really be said to have explained it. In other words we'd still be looking around for the cause.

T: Yes, I think that works well. So what do you conclude from that about causes and conditions.

J: Well, it wasn't just that your car ran out of oil that was the cause of your car seizing up, it was that you failed to do something that we would normally expect you to do – in other words, you didn't check the oil regularly enough and top it up. And that's where the cause lies.

T: So, what you're saying then is that when we look for the cause of any event we should be looking for something that has changed in the environment, in the background conditions – something that is not as we normally expect it to be? We should be looking for what's gone wrong with the normal background conditions?

J: Yes. Yes, that's right.

T: This means, then, that conditions include normal expectations and if an act is omitted that can normally be expected to be done, then this disruption of normal functioning is what we would normally describe as the cause. Causes represent deviations from normal expectations, functions and conditions. If this is true, then omissions do have causal consequences, when they represent a deviation from normal expectations. If I fail to put oil in my car and it seizes up, or if I fail to water my plants and they die, the cause is my omission, my departure from normal expectations.

J: Which means that those who just stood and looked from the shore as the girl drowned were the cause of the girl's death, because it's a normal expectation that people will try to help when someone's in trouble, certainly when they're fighting for their lives.

T: Well, yes, I think you're right. But this does highlight the crucial distinction in all this. On the basis of our argument so far there seems to be no distinction between the causal significance of



acts and omissions. Deliberate interventions and deliberate non-interventions both have causal status as long as they disrupt normal expectations. Both indicate that something in the background conditions has changed: these might be natural factors, or they might be deliberate acts or omissions. But there's no reason to believe that all omissions have causal status. And in this they're no different from acts. Not all acts have causal status. Do you understand that?

J: Yes, I think so.

T: Let me explain. The distinction between omissions that have causal status and those that do not, as you've said already, lies in the distinction between abnormal and normal functioning. But this is where those who believe there is a difference between acts and omissions go wrong. They tend to believe that normal functioning is what's natural and abnormal functioning is everything else, including when we try to intervene in the natural working of things.

J: Yes, it's like failing to go to someone's aid when they're having a heart attack. Then they die and we say they died of a heart attack, where in fact it's more accurate to explain the cause of their death as our failure to help them, when our help would have saved their life. And this is the same for the onlookers who failed to help the little girl drowning in the lake. The cause of her death was, of course, drowning, but it might be more accurate to say that this was the consequence of the real cause – the onlookers' failure to help.

T: Yes, I think you may be right. What this means then is that normal functioning doesn't imply what's natural. When we believe this we're ready to argue it's right to allow nature to function freely, for nature to take its course. Whereas in fact it's quite likely to comprise of those things we do as a result of habit, custom or convention. In fact, as we know, nature is often harmful, so it's been normal for man to develop techniques, methods and routines to combat nature. When such man-made conditions are established, any deviation from these normal expectations, whether an act or an omission, we would regard as exceptional and the cause of any harm that results.

For example – and this is the example I thought of using in this step of the process – if I were to return home thoroughly soaked, after a day of torrential rain, my wife would probably ask me why I was in such a pitiful condition. If I were to explain that it had been raining, she is sure to look at me rather sardonically, assuming that this was yet another wearisome example of my rather obscure sense of humour. But if I were to explain that I'd forgotten to take my umbrella or my raincoat with me, then she would be satisfied with my explanation, knowing that she'd identified the cause of my wretched condition.

What this shows is that normal functioning under normal conditions involves agents performing certain actions. Failure to perform those actions represents the cause of any harm that results. When we search for causes we seek out and select those actions and omissions that deviate from expected standard behaviour. So, this is why you're probably right about the cause of the girl's death in the lake. Our normal expectation is that an onlooker who's fit and a competent swimmer will try to save the drowning girl. The only reason why we would not hold him responsible for the child's death is if in our community we believe that it is not within normal expectations for a stranger to risk his life to save another person. In our societies most people generally accept that we have a responsibility to save lives, to minimise pain and to help others, whenever we're given the opportunity.



J: So, we've shown then through this that we are responsible for our omissions, if they meet our three characteristics as we've defined them here.

T: Yes, that's right. If we can show that the individual had the opportunity to exert an effective influence, if we can show that it was his intention to bring about a situation or allow it to develop, the consequences of which he could clearly foresee, and if he failed to act in terms of normal expectations in that particular situation, then he is responsible equally for his omissions as he would be for his acts.

Commentary:

We've now pinned down each characteristic of the concept fairly precisely. As we've examined each of them in turn we've revealed problems, which we have then had to deal with by first thinking up borderline examples and then contrasting examples. This has sharpened our understanding of the concept and the way each of the characteristics is applied.

All that remains is to go back to the question and unravel its implications by testing our understanding of the concept and its characteristics, preferably on a real life issue. Choose a social or political issue, where the concept of omissions appears to be used by the protagonists. In this way, by using it on an unsuspecting issue that you haven't carefully chosen, you will, as it were, be testing the concept in the field. You will see how well it works and how it helps you analyse complex issues, that would otherwise have been difficult to unravel.

After this, when you go back to plan and then write your essay, you'll find you have a wealth of evidence – real life as well as those examples you've carefully chosen to throw light on particular issues – that you can use to support and develop your arguments.

3.3 Doubtful cases

As you set about applying the concept to the question, you'll find that you will be able to see the implications of the question with surprising clarity. But to make full use of your understanding of the concept try to imagine real life examples, doubtful cases that will test the consequences of adopting the distinction between an act and an omission. You may apply your understanding of the concept to the policies of governments, or to the common practices in medicine and other areas of life. Wherever possible use practical examples.

You may find this difficult to do initially, so I've given you a case study that you can use instead. Once you've read it through use your concept and its core characteristics to unravel the implications of the issues in the case study. Of course, if you were then going on to write the essay this would provide the sort of evidence you need to support and illustrate your arguments.

Case study: acts and omissions in medical ethics

Over recent years the belief that there's a moral difference between an act and an omission has taken on unparalleled significance in the medical profession, solving for many doctors and nurses the most serious moral problems that challenge both their personal and professional ethical standards. Indeed without it we would be forced to undertake a fundamental re-evaluation of many of our medical practices.



Its importance derives largely from its role in ensuring that our medical practices are consistent with the sanctity of life, a principle that is central to Western ethical beliefs and modern medical practices. Our commitment to the sanctity of life prevents medical staff from ending the life of a dying patient who is suffering unbearable pain, even if the patient requests it.

However, if the doctor can be convinced there is an ethical difference between allowing someone to die and killing, that omitting to treat his dying patient does not carry any moral responsibility, whereas taking steps to end her life does, then he can allow his patient to die, while still preserving the sanctity of life. In effect, he can pursue a policy of killing, as long as it's seen as a policy of omissions.

A positive action designed to kill a patient is quite different, it's argued, from merely refraining from doing anything to keep the patient alive. Withholding medication or other life sustaining therapy, or refusing surgery that would otherwise save the patient's life, merely amounts to letting the patient die "naturally" of whatever afflicts her. On this basis, it's argued, there is a clear difference between killing people and letting them die.

As a result a doctor is free to omit treatment without which he knows his patient will certainly die. The American Medical Association's (AMA) Council on Ethical and Judicial Affairs states, 'A physician may...omit treatment to permit a terminally ill patient to die when death is imminent. However, the physician should not intentionally cause death...'²

Yet, despite this last sentence, in most cases of death through omission there's very little room to argue that the death of the patient is not the doctor's clear intention. Doctors are free to arrange for the deaths of their patients as certainly as they arrange any other medical procedure. This is no accident: nobody is pretending that this is an unfortunate, unexpected and regrettable outcome. It is the desired outcome of careful planning.

Even so, the medical associations in a number of western democracies, backed by their judicial systems, argue that the doctor bears no responsibility for this, because all he did was fail to give treatment he knew would have saved the life of his patient. It was neither his intention, they say, nor even the consequence of his action – all he did was to stand aside and let death through. It was not the doctor who killed the patient, but nature.

Indeed, this applies even to those actions that none of us would have any difficulty at all in describing as an act, and not an omission. The AMA and other similar bodies representing the medical profession have taken elaborate semantic steps to redescribe the acts in question in order to redefine them as omissions, even removing any suggestion that the doctor actually participated in them.

In the case of Nancy Cruzan, a patient who was allowed to die after being removed from life support systems, the AMA's Council on Medical and Judicial Affairs, and the Supreme Court, declared their support for 'passive' euthanasia. This means that *withdrawing* lifesaving techniques, like respirators or feeding tubes, can be defined as 'passive', an omission. The doctor, it's argued, is merely stepping out of the way of death.

² "AMA Council on Ethical and Judicial Affairs" in *Current Opinions*, (Chicago 1989), AMA., p. 13.



Most of us, in our normal use of language, find it strange and unconvincing to describe an action, like the doctor's in 'pulling' a plug on a respirator, as 'passive'. A doctor who 'withdraws' life sustaining technology, or 'pulls' a plug, is performing an action. This appears to be neither passive, nor an omission. If you accidentally disconnect your freezer and the food inside is ruined, you cannot seriously argue that you are not to blame, because this came about through no action of yours. And, come to that, there's no sense in you arguing that it is nature, not you, that bears the responsibility for all the wasted food, because all you did was to 'let nature through'.

One consequence of redefining many medical decisions as omissions has been that governments and hospital staff have legitimised a policy of non-voluntary, and even involuntary, euthanasia – killing without request. In many Western health care systems there are staff who describe this as normal practice, even reaching epidemic proportions.

Equally worrying, the distinction between acts and omissions has allowed medical staff to pursue a policy of allowing patients to die without having to confront the central issue of how we decide who should be allowed to die and who should continue to receive treatment. All attempts at establishing such a criterion of worthwhile life would significantly challenge the principle of the sanctity of life, which maintains that all life is equally valuable.

Redefining killings as omissions that are outside the doctor's control, carrying no moral responsibility, has become an effective way of side-stepping this issue. The argument goes that it is not the doctor that decides, it's nature. Nevertheless, patients are still chosen for omissions on the basis of some criterion.

Not surprisingly, this has produced considerable confusion and contradiction. In the case of Tony Bland, a victim of an accident that occurred in 1988 at a football match, which left him comatose in a persistent vegetative state, the British courts decided that non-voluntary euthanasia was the best course of action. The doctors were told that they were free to withdraw feeding and hydration and allow him to die.

However, the British government's official solicitor, in arguing against this decision, identified one of the many contradictions that this, and cases like it, throw up. He argued that there was a very strong presumption in favour of life and this could only be overridden when the suffering of the patient was so severe that further prolongation of life would not be in his best interests. However, a person in a persistent vegetative state, he argued, is incapable of suffering and, therefore, should be entitled to basic nursing care.

When this case is compared with that of Lillian Boyes the contradictions are even more bewildering. Suffering unbearably from the pain of severe rheumatoid arthritis, which left her unable even to bear being touched, she pleaded to be allowed to die with dignity. Her family also pleaded with her physician, Dr. Nigel Cox, to spare her more pain and bring her life to an end. Estimating that she only had a few days to live he agreed, injecting her with a lethal dose of potassium chloride.

As a result Dr. Cox was convicted of attempted murder. At his trial the prosecution said that the doctor had a duty to ensure that his patient died with dignity and with as little suffering as possible, but the deliberate killing of a helpless person, whatever the wishes of the person may be, is neither the right nor the duty of the doctor. Tony Bland, of course, was equally helpless, but the British courts gave official approval to the actions of his doctors in withdrawing treatment. The fact that



both decisions came from the same system of justice within a matter of months of each other only adds to the confusion.

Equally worrying, many of those who, on the basis of the distinction between an act and an omission, accept non-voluntary and involuntary euthanasia as normal practice, condemn voluntary euthanasia, which avoids the serious ethical problems associated with a policy of death without request.

In the US judges allowed David Rivlin's doctors to remove him from the hospital, respirator and all, to the house of a friend, where he was sedated, disconnected from the respirator and allowed to die through asphyxiation. Turning off a respirator was defined as passive euthanasia, an omission, rather than an act. However, while the judges were allowing Rivlin's doctors to arrange for his death, they were prosecuting Dr. Kevorkian for his part in allowing Janet Adkins to take her own life

Using the evidence contained in this case study, examine the arguments surrounding these issues by applying your analysis of the concept of omissions to them. Then read the last section of the transcript.

Transcript:

T: There are a number of different real life examples you could use to test your concept. I suppose the most obvious is when a government minister decides not to increase the spending on health, or on welfare, when he knows that a large number of people will suffer as a result. The question you've got to ask yourself is whether he can be held responsible for his omission. And to do this you must apply our three core characteristics.

But for this exercise let's use the case study on modern medical practices. Starting with the first characteristic, whether an individual has the opportunity to exert effective influence over the situation, do you think a doctor can escape responsibility if he omits to give treatment and his patient dies?

J: I don't see that there's any real room for doubt on this. A doctor has the opportunity to intervene directly and have an immediate impact on whether a person lives or dies. They're not at the less responsible end of the spectrum, like the non-contributor, whose failure to contribute to a charity makes very little difference. When I go to a doctor I know that I'm talking to someone whose decisions are going to make a difference to my health.

T: So, if he failed to do something it wouldn't be difficult to see the effects of his omission?

J: Yes, that's right.

T: Can you give me an example?

J: Well, say someone was admitted to hospital and the medical staff omitted to make the necessary tests to see whether she was allergic to a particular drug and she died when the drug was administered. I don't think anyone would find it difficult to identify the consequences of this omission, and what was responsible for her death.

T: OK, let me give you a real life example of the sort of cases we might be talking about and see what your reactions are. In many cases if an elderly patient dying from a terminal illness contracts pneumonia, the doctor may decide not to treat the pneumonia with antibiotics, and let it take its course so that the patient dies sooner, rather than later



J: Well, in that case I probably have a lot of sympathy for what the doctor did in trying to reduce the suffering of his patient, but he's still responsible for his death.

T: Why?

J: Well, because he had the opportunity, the expertise, and the responsibility to intervene to save his life. I'm not saying he shouldn't have done what he did. I'm just saying he can't avoid the responsibility by claiming that this was just an omission. It's at that end of the spectrum where he had every opportunity to make a difference.

T: So, what you're saying is the doctor's not at that end of the spectrum where he can have little influence and therefore there's no moral distance that will release him from moral responsibility? He has the opportunity to directly avert death, his omission has a direct causal impact on the situation, and, as a competent doctor, he's fully aware of the consequences if he fails to act. What's more, he can help without any risk, unlike those around the lake, who would have had to wade through the water to help.

J: Yes, exactly. Then you can also add that he has his professional duty to help. Given that, whether he acts or chooses not to act, either way he's responsible.

T: OK, that's the first characteristic. What about the second, intentionality? Can he claim he's not responsible because it wasn't his intention to bring about the death of his patient? Remember the problem here – the narrow and broad definitions of intentions, and whether intentions should include foreseen consequences. When I decide not to change my oil regularly I'm choosing from a number of different outcomes, which includes certain foreseen consequences, like seizing up my engine, that I do not necessarily desire.

J: Well, I don't think he has any basis to argue that the death of his patient wasn't his intention, particularly in view of his professional knowledge. He knows the consequence of his omission will be the death of his patient, so common sense says this was his intention. If he wants to claim it wasn't his intention, his only defence is that he was incompetent and, therefore, he wasn't aware of the likely consequences. Otherwise, if he is a competent doctor he'll be able to see the likely consequences, and take these into account. He accepts the whole package of likely effects. So, it is his intention to accept that the death of his patient is a likely consequence. If he didn't accept this, if it really was his intention to exclude this, he would have chosen a different alternative.

T: Yes. Just to illustrate the point you've just made, many analgesics, in addition to giving relief from pain, also shorten the lives of patients, when they're prescribed in large enough doses. If the doctor chooses this as the only way of managing his patient's pain, he's responsible for all the effects, not just the one that's desired. He calculates that the complete package of effects, including the side effects like shortening a patient's life, is preferable to prolonged pain.

J: Yes, that's exactly my point.

T: So, let's be clear, you're arguing that it's not relevant to talk about intentions in the narrow sense, when any competent doctor can foresee what will happen if he omits to treat his patient? So, it's disingenuous for any medical association to invite us to think otherwise?

J: Well, I think it is disingenuous of them, because it doesn't make much sense to talk about intentions in the narrow sense, when any competent doctor can foresee what will happen anyway.



As I said before, we've either got to assume that the doctor is incompetent and didn't foresee the consequences, or he was competent and did intend death as one of the consequences of his treatment. But, as we said when we were analysing the concept, for anyone to bring about a consequence intentionally, it's not necessary for them to have desired or wanted it. All that's needed is that they've made a deliberate and voluntary choice between different strategies, each with their different packages of likely effects including the unwanted side effects.

T: Yes. OK, so what you've put forward here is the case for the broader sense of intentions. If I know that in doing X I will almost certainly, or inevitably, bring about Y as well as X, and if I could have refrained from doing as I had intended, then I have intentionally brought about X and Y, because I have deliberately and voluntarily chosen to do what I could have refrained from doing.

For example, if we go back to analgesics again, most drugs have unwanted side effects. Many analgesics, in addition to giving relief from pain, also cause drowsiness. But I would be just as responsible for both effects, if I were to prescribe it. I would calculate that the complete package of effects, including side effects, was preferable to prolonged pain. In fact, as we've already said, it's sometimes only possible to control pain, particularly in cases of terminal illnesses, if the analgesic is given in such quantities that this will have the effect of shortening the life of the patient. It may not be the intention of the doctor to shorten his patient's life. But if he knows the effect if he administers the analgesic in these quantities and he still goes ahead and voluntarily and deliberately administers it in these quantities, then he does, in fact, intend to foreshorten his patient's life. He takes this effect, albeit undesirable, as part of the complete package.

OK, that's our second core characteristic. What about the third – causal connection? For this to work we must be able to show that the doctor's omission is the cause and not just a background condition. Start with the argument described in the case study that draws the distinction between what's artificial and what's natural. Can you explain this to me?

J: Well, in the case study medical bodies, like the AMA, argued that certain natural forces, if left without artificial interference from the doctor in the form of life support and other treatment, would take their natural course, ending in the death of the patient. In these circumstances nobody can be held responsible, because the patient simply died from natural causes. What's their description of it? That the doctor simply stepped aside to let death come through. So, allowing death to come through by removing artificial feeding tubes and other forms of life support, is the cause of his death, not his non-treatment. I suppose they would argue that in cases of omission no human agent causes the patient's death, directly or indirectly. The disease is the sole cause of death.

T: When we analysed the characteristics of the concept we suspected that it wasn't quite as simple as this. Remember, we thought that when we look for the cause of an event we look for something that has changed in the environment, something that has departed from normal expectations. Can you explain this in the context of a doctor's omission? How does it apply to this case?

J: Well, when we looked at this in the previous step in the process, we agreed that if an act is omitted that we would normally expect to be done, this disruption of normal functioning is what we would describe as the cause. So, our omissions do have causal consequences when they represent a deviation from normal expectations. So, if you apply this to a doctor's omission, when his omission results in the death of his patient, it's this, rather than nature, that's the cause of death, because he's departed from normal behaviour, which would otherwise have saved his patient.



T: Good. So you think that our analysis that we did in the previous stage clearly does apply in this case?

J: Yes, I do. I think it's obvious.

T: OK. Let's consider a real life example. Take the cases of some infants born with Down's syndrome. A number of well known cases over the last 25 years have led some people to suggest this is a common practice in many hospitals. We can't be sure how prevalent this is or was, or whether it's still occurring on the same scale. But when an infant was born with Down's syndrome and it was unwanted by its parents, doctors would often just allow them to die, if they developed pneumonia or were born with conditions that would threaten their lives if left untreated.

For example, although reportedly not so common today, Down's syndrome infants born with duodenal atresia, an intestinal blockage that prevents food from passing through, would be left to die untreated. The point is duodenal atresia and pneumonia are both easily treated. Indeed, in the case of any normal child it would be treated as a matter of routine. But in cases of unwanted Down syndrome children doctors would allow them to go untreated until death occurs.

Now the question is, why do you believe that the doctor's omission in a case of this kind is the cause of the death of the infant, after all the official cause of death might be pneumonia?

J: Well, the official cause of death *might* be pneumonia, but if you look at our analysis of this in the previous stage it's clear that from the causal background what made the difference could not be the pneumonia. When we did this we found that it was the disruption in normal functioning that was the cause, in this case that's the doctor's failure to treat the child. This is the cause, not the pneumonia. Normal expectations are that the pneumonia would be treated as a matter of routine. As you've said, in all cases of normal children this would have been the case. Indeed, if a non-handicapped infant had died, the parents and the health authority would no doubt have been asking serious questions. And we would've had no hesitation in identifying the doctor's decision not to treat the child as the cause of its death.

The fact that the infant would've survived, if he hadn't refrained from treating it, is sufficient indication of the causal significance of deviating from accepted practices. So, in these sorts of cases I think it's absurd to claim that it was nature, not the doctor, that was responsible for the death of the child. The cause of death lies in the doctor's decision to depart from normal expectations.

T: So, your conclusion here is that omissions do have causal consequences, when they represent a deviation from normal expectations? If an elderly patient dying from a terminal disease contracts pneumonia, and the doctors decide not to treat this, a condition that would otherwise receive treatment, your conclusion is that the cause of death lies in the departure from normal expectations.

J: Exactly.

T: OK, you've argued this well and I think you've applied our analysis to the case study very convincingly. But just one final thing before we finish. Although, like you, I think we have to conclude that there's no conceptual difference between acts and omissions in these types of cases, there is still a significant difference between being directly responsible for pulling the switch or injecting the lethal dose, and just allowing nature to take its course. A doctor could quite reasonably argue that at least he was not the cause of anyone's death, couldn't he?



J: Yes I think that's true. At least a doctor can say I took no part in actually taking a life, all I did was just walk away and let nature take its course. Allowing a patient to die is impersonal – a doctor's not involved, as in a lethal injection. It is the disease that kills. This is obviously where the force of the argument for omissions lies. They can go on to claim that the doctor can feel no guilt or responsibility.

T: Yes, but what we've got to consider in this is whether this is just a psychological problem, the way we feel about it, which might not indicate any moral distinction between an act and an omission. The fact that we feel guilty may not be evidence that we are in fact guilty, or that we've acted wrongly. Feelings of guilt are very often irrational. We may feel guilty when we've done nothing wrong. So, we must first decide whether or not we were wrong on the objective basis of reasons, before we can judge whether our feelings of guilt are, in fact, justified. If we're not wrong, then our guilt feelings are unjustified.

J: But I can see that the feelings of guilt are very strong. It's difficult for most of us to deny them.

T: Yes, I think you're right. And in this lies the reason why the issues are so fiercely argued by either side. In normal circumstances the last thing we want to do is to bring about the death of someone, because we generally consider death to be a great evil. But when death is no greater evil than the unbearable pain and indignity a patient is suffering from a terminal illness, you might be right in arguing this no longer applies. If a patient has only a few days of life remaining full of unbearable pain, you can certainly sympathise with them, their family and the doctor who agrees to help bring about the death of his patient. In these cases feelings of guilt might be quite unreliable.

J: So the key to this debate might just be that we are just confusing our moral beliefs with our psychological reactions?

T: In the case of the omissions of doctors, there is probably more to it, but nevertheless that still might be the case. For our purposes we've shown through our analysis of the concept of omissions that on the basis of our three core characteristics there is no distinction between acts and omissions in terms of their moral implications.

Conclusion

At times in this tutorial you may have found the discussion to be quite detailed and even confusing. It's in the nature of discussions that unless you're taking part in them yourself they can be quite confusing, because you have no way of directing them in the way you want to, and of slowing them down to check that you've understood them well enough. More than likely you've got to the analysis of the issues on your own a lot faster and more directly than we have in this discussion.

Nevertheless I hope you've been able to see the steps clearly and what we've done to clarify the issues at each stage. If there are passages that are confusing, take time to go over them with your tutor. But remember this is only an example of the method. Get this clear in your mind, practise it, and before long you'll be surprised at just how skilful you've become in using it.