

# Closeness, conscience, and best interests

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# The 'closeness' problem

- Arises in discussion of normative significance of intended vs foreseen harm. (DDE etc.)
- The footbridge case (Thomson, 1985):
  - A can save five *Ps*, iff push Q off footbridge, stopping train.
  - *P* (almost) certain to die.
- Standardly thought that A must intend *P*'s death.
- But another intention possible (Wedgwood, 2011):

[I]f you push the man off the bridge, you could legitimately claim not to intend the man's death. You only intend that he should collide with the trolley... If by some miracle he survived the collision, your intentions would not require your doing anything else to ensure that he dies.

# The ‘closeness’ problem

- Response: redescription in virtue of ‘closeness’:

- Wedgwood, 2011:

[Some DDE proponents suggest that] the man’s collision with the trolley is sufficiently ‘close’ to the man’s death that we can legitimately ‘redescribe’ your intending the collision as tantamount to your intending his death.

- McIntyre, 2001 assumes that proponents of DDE commit to redescription:

The harm in question could be described as one that is not intended only if a very narrow standard for carving out what is intended is used...

- Hart, 1968: ‘conceptual connection’ between what A intends and outcome permits redescription.

# The ‘closeness’ problem

- Redescription is problematic (Wedgwood, 2011):  
a fatal move for proponents of the DDE to make. If the content of the intentions with which an agent is acting is not an objective psychological truth about the agent, then it is radically unclear how intentions could have the ethical significance that the DDE takes them to have. But if it is an objective psychological truth what the contents of your intentions are, then we cannot simply ‘redescribe’ your intentions in whatever way seems convenient...

# The 'closeness' problem

- Unpacking Wedgwood's significance thesis:
  - Intention: mental state that guides or regulates A's voluntary behaviour.
  - Performance of intentional actions amounts to the exercise of agency.
  - Agency makes A answerable, morally responsible etc.
  - If intention is not a feature of A, but externally ascribable to A (on the basis of redescription), the connection to A's agency seems weakened (or lost).
  - The redescribed intention is not for A, assuming credibility, the explanation for her behaviour.
  - If intention morally significant, we ought to resist redescription.

# Closeness, conscience, and best interests

- Conscience in a cloak of best interests (and vice versa?):
  - *Montgomery v Lanarkshire Health Board* [2015] UKSC 11 [114] (Baroness Hale):

“it may not be in the mother's best interest” and later expressed the view that “it's not in the maternal interests for women to have caesarean sections.”

    - ‘It's not good for *P* to have C-section, given risk profile’.
    - ‘I'm not willing to offer C-section, b/c “natural” birth is morally preferable’.
  - *Ms B v An NHS Hospital Trust* [2002] EWHC 429 (Fam) (Butler-Sloss LJ):

[96] [Ms B's] request was seen by some as killing the patient or assisting the patient to die and ethically unacceptable.

    - ‘it can never be in someone's best interests to have a shorter life’.
    - ‘I don't want to be complicit in life-shortening conduct’.

# Closeness, conscience, and best interests

- Smith (2015) 291 on *Aintree University Hospitals NHS Foundation Trust v James* [2013] EWCA Civ 65:

The focus on the pain, distress, and discomfort that the doctors would be causing David should they use these treatments, along with the claim that it would be inappropriate to offer them irrespective of David's views, seem to shift the case towards a focus on what the doctors were prepared to offer as opposed to what he might have wanted to receive.

- A claim about what is in *P*'s BI? (*P*'s preferences do not determine BI.)
- A claim that it would be morally wrong to inflict *T* on *P*?

# Closeness, conscience, and best interests

- 1) Appeals to *P*'s best interests may be (re)describable as appeals to *A*'s conscience.
- 2) Appeals to *A*'s conscience may be (re)describable as appeals to best interests.



# Closeness, conscience, and best interests

- It may be tempting to engage in redescription.
- But redescription carries normative risks.
  - Re 1), (part of) the reason we ought to respect judgements of conscience is that to compel otherwise poses a threat to an agent's moral integrity. Integrity seems (for some) to attach to moral agency. Redescription risks weakening (losing) the link between A and conscience.
  - Re 2), if some BI judgements can be recast as conscience judgements, this potentially destabilises professional discretion.

# Conclusion

- Conscience judgements and BI judgements may seem 'close' so as to permit description of former in terms of latter, and vice versa.
- We ought to be wary (once A's convictions re nature of judgment are clear) of redescription.
- Caveat: Assumption that conscience and BI judgements are indeed conceptually distinct may not be true.

# Thank you!

