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The Evil of Refraining to Save: Liu on the Doctrine of Doing and Allowing

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THE EVIL OF REFRAINING TO SAVE: LIU ON THE DOCTRINE OF DOING AND ALLOWING

– Jacob Blair –

Abstract. In a recent article, Xiaofei Liu seeks to defend, from the standpoint of consequentialism, the Doctrine of Doing and Allowing: DDA. While there are various conceptions of DDA, Liu understands it as the view that it is more difficult to justify doing harm than allowing harm. Liu argues that a typical harm doing involves the production of one more evil and one less good than a typical harm allowing. Thus, *prima facie*, it takes a greater amount of good to justify doing a certain harm than it does to justify allowing that same harm. In this reply, I argue that Liu fails to show, from within a consequentialist framework, that there is an asymmetry between the evils produced by doing and allowing harm. I conclude with some brief remarks on what may establish such an asymmetry.

Keywords: intrinsic value, instrumental value, the doctrine of doing and allowing, consequentialism, Xiaofei Liu.

Xiaofei Liu seeks to defend, within a completely consequentialist framework, the Doctrine of Doing and Allowing: DDA.¹ Liu understands DDA as the view that “other things being equal, an act of doing a certain degree of harm to a certain kind of well-being requires a greater moral good to justify it than an act that allows the same degree of harm to the same kind of well-being.”² Liu’s value-based defense begins with the claim that there are two important moral values: autonomy and well-being. The value of autonomy consists in one’s exclusive authority over (or freedom to make choices regarding) one’s own life, body, property – and whatever else “falls naturally within the domain of self-mastery.”³ Autonomy grounds our right of self-mastery, which Liu calls our “authority over our se-

¹ Liu (2012): 63–81.

² *Ibidem*: 64. Liu understands “act” as being an “intentional behavior.” So an intentional failure to do something can count as an act. Furthermore, though Liu at the end of his article defines doing and allowing harm, the bulk of his discussion, which is what I criticize, does not rely on a particular conception of doing and allowing harm. Ordinary examples of doing harm (e.g. killing someone) and allowing harm (failing to rescue a drowning swimmer) are to be kept in mind throughout this reply.

³ *Ibidem*: 67.

lives” or simply our “authority.” The particular things that fall within the domain of self-mastery (e.g. life and body) are what the value of well-being consists in. Both doing and allowing harm negatively affect the values of autonomy and well-being and thus result in moral evil. However, doing harm results in more evil than allowing harm. More specifically, a harm-doing will typically result in at least three distinct moral evils: (1) an unjust interfering with the victim’s authority,⁴ (2) the victim’s loss or impairment of her well-being, and (3) the corresponding loss of the victim’s control over her well-being. To illustrate, say Smith shoots and thereby kills Jones. The act of shooting, by itself, constitutes an unjust infringement on Jones’ authority, this is (1). Smith has attempted to negatively affect that which falls under Jones’ domain of self-mastery. Furthermore, the fact that Jones dies means that Jones not only loses his life, this is (2), but also the corresponding control over it, this is (3). Now, say, Smith tries to shoot Jones but misses, Jones escapes untouched by a bullet. Here only one moral evil is produced – the unjust infringement on Jones’ authority. One might question whether we should view (2) and (3) as distinct evils; Liu himself claims that we should not in some cases. This, however, does not impugn Liu’s defense, for even if we collapse (2) and (3), Liu can claim that doing harm typically results in two evils while allowing harm typically results in only one.

A harm-allowing, on the other hand, typically results in at least two distinct moral evils: (2) and (3) above. If Smith could easily throw Jones a life preserver but intentionally fails to do so thereby allowing him to drown, Jones loses his life and also his corresponding control over it, but Smith does not unjustly interfere with Jones’ authority over himself. A typical harm-doing, then, results in one more evil than a typical harm-allowing. This is why, *prima facie*, it takes the production of a greater amount of good to justify the former than the latter.

Liu notes the following objection. Smith, in allowing Jones to drown, strictly speaking does not interfere with Jones’ authority over himself. But Smith does violate a sort of analogous authority that Jones has over Smith. Jones’ authority over Smith (call this authority*) is that he save him.⁵ And because Smith fails to save

⁴ For Liu, one’s authority is unjustly interfered with just in case one has not forfeited or relinquished this authority. The harm-doing under discussion here necessarily involves unjust encroachment on one’s authority. (Note that sometimes Liu says “autonomy” instead of “authority”). It is assumed that such harming can be justified. For example, it is in principle possible for me to be justified in taking your car *without your permission* so long as enough good is achieved as a result. While I am seemingly justified in harming a malicious attacker (one who has seemingly forfeited his authority), I take it that this sort of harming in self-defense is not under discussion here.

⁵ Jones has not done anything to forfeit or relinquish this authority*. And Smith is capable of saving Jones. So Smith unjustly interferes with this authority*.

him, an evil is produced. So both doing and allowing harm produce three distinct evils. For Liu, however,

[...] unlike the authority over one's self, which we value precisely because we value the control over ourselves, in the case of the authority* over others for their assistance, we value this authority* not because we value the control we have over them (which would be morally perverse). Rather we value this authority* precisely because we value our well-being and the corresponding authority over ourselves – the authority* is nothing but a protection of our well-being and the corresponding authority. Thus, the moral evil in an interfering* with authority* is exhausted by the loss of the relevant well-being and its corresponding authority.⁶

Interfering with one's authority* (that is, the act of failing to save someone), by itself, does not produce a distinct moral evil. This is because authority*, unlike authority, does not have intrinsic value – it is not something we value for its own sake.⁷ Authority*, rather, has purely instrumental value – we value it only because it is a means to the protection of our well-being and corresponding authority or control.⁸ We could say that the value of authority* is entirely derivative or merely reflective of the value of our well-being. So, there is no evil in interfering with one's authority* that is over and above the evil in the loss of one's well-being. And, if by interfering with one's authority*, the value of one's well-being is not negatively affected, then neither is the value of one's authority*.

But, in response, consider the following scenario. Smith knows that all he has to do to save Jones from drowning is to throw him a life preserver. Instead of doing this, however, he just walks on by. Good thing for Jones, though, another passerby sees him and throws him the life preserver. Jones came out okay, he did not suffer evils (2) and (3) above. Yet it still seems that what Smith did was evil, he should have saved Jones. Jones and others would have a rightful complaint against Smith's refraining to save. Smith's act of refraining, by itself, produces a distinct moral evil analogous to evil (1) above. We can call this moral evil, evil (1*). Thus, were the passerby not to come along and save Jones, three distinct evils would have been committed. At first blush, this case reveals that Liu has not shown that allowing harm produces at least two distinct moral evils while doing

⁶ Ibidem: 71.

⁷ Liu has a few different ways of expressing the idea that X has intrinsic value, all of which are seen as equivalent: "X is *valuable* (or good) for its own sake". "X is *valued* for its own sake." And "X is valuable (or good) in and of itself." I will also see these as interchangeable expressions.

⁸ Or just "well-being" for short.

harm produces at least three. It could be objected that Smith's act of refraining, rather than producing a distinct evil, merely reveals Smith's evil character. But it is not clear that Smith's evil character (assuming he has one) is what accounts for the evil in the above case. For even if Smith's character is not bad, say for whatever reason he acted out of character when he failed to save Jones, it would still seem that an evil was produced.

The above case lends support to the idea that authority* has intrinsic value in addition to instrumental value. For Liu, however, if authority* has intrinsic value, then we would perversely view the control we have over others as being good for its own sake. But there seem to be some assumptions made about the meaning of "control" here. "Control over others" in this context simply means something similar to "having a rightful claim over others that they benefit us in certain situations." Given this meaning, it does not seem problematic to view control over others as something good for its own sake.

Liu discusses a second objection to his defense. Before I outline the details of that, however, I will take a brief detour and offer two *possible* explanations for why authority* has intrinsic value; the first incorporates authority*'s instrumental value while the second does not.⁹ Here is the first explanation. Authority* has the intrinsic value it does, at least in part, in virtue of its instrumental value. It seems *possible* that we come to value certain things for their own sake precisely because of their usefulness – the instrumental value they have or had.¹⁰ Consider Shelly Kagan's example of the pen Abraham Lincoln used to sign the Emancipation Proclamation. This had significant instrumental value in that it was a means to the freeing of slaves. It also seems plausible (at the least intelligible) to suppose that this pen also has intrinsic value; the destruction of the pen "would diminish the value of the world as such."¹¹ If it does have intrinsic value, it is at least possible that it has this in virtue of the valuable role that it played. Importantly, if the pen never had instrumental value, it does not seem that we would see it as having intrinsic value. Something similar can be said about possessing certain high level abilities, the ability, for example, to cook a gourmet meal or play a musical instrument at a world-class level.¹² Being skilled at, say, playing the piano is certainly instrumentally valuable in that it is a means to other things of sufficiently high value.

⁹ The two explanations I give are meant to be suggestive. Should they be found wanting it seems my main critique of Liu still stands.

¹⁰ Kagan (1998): 277–297.

¹¹ *Ibidem*: 285.

¹² *Ibidem*: 284–285. This is a variant of one of Kagan's examples.

Having this skill, for example, is a means to the production of beautiful music, which is a means to the experience of aesthetic pleasure. Even if someone never gets to actually exercise her piano skills – she never gets to play in a concert, let us say – it still seems her skill has instrumental value in that it *can* lead to beautiful music, which *can* lead to pleasure. But in addition to its instrumental value, it seems plausible (at least intelligible) to suppose that many of us would *also* value this skill for its own sake. And it could be that at least a part of the reason why we value it for its own sake is because of its just mentioned instrumental value. Importantly, were this skill to lose or see a decrease in its usefulness (say, because pianos went out of existence or we lost our ability to hear, etc.), it seems that we would be less inclined (or maybe not even inclined at all) to view this skill as being good just for itself. It seems an overly restrictive view to insist both that we value this skill only because we value what it can lead to and that it is impossible that its instrumental value at least in part contributes to its intrinsic value. Perhaps in the same way, then, because authority* has instrumental value in that it protects our well-being (or has the potential to do so), we thereby accord to it intrinsic value.¹³

Here is another possible explanation of why authority* has intrinsic value.¹⁴ It could be that authority* is one of several basic rights. Each basic right, in addition to having instrumental value (e.g. they protect our needs and interests), has intrinsic or non-instrumental value that it derives by being a necessary constitutive part of something that has non-instrumental value; namely, a certain universal relationship that “bind[s] all humans together in a fellowship as members of a shared proto-community.”¹⁵ In what follows I first define what is meant by a ‘basic right’ and I suggest that authority* is a plausible candidate for being such a right. I then outline in more detail both the nature of this universal human relationship (or, put differently, this universal community of fellow human beings) and the idea that it is partially constituted by basic rights.

¹³ In summary, following Kagan, I have offered a few examples in the hope of establishing that it is at least possible that in some cases, a thing’s instrumental value is what accounts for (at least in part) its intrinsic value. [I am afraid, however, that the process by which this happens (the ‘how’ and the ‘why’) alludes me]. I then suggested that perhaps authority*’s instrumental value is what explains (at least in part) its intrinsic value. It seems to me that the above case of Smith failing to save Jones shows, *prima facie*, that authority* has intrinsic value. The just mentioned examples are meant to give a possible explanation of *why* it has intrinsic value.

¹⁴ In unpacking this idea, I outline the views of Cruft (2010). Cruft, however, does not discuss authority* *per se*.

¹⁵ *Ibidem*: 451.

'Basic rights' are rights that have the following three features.¹⁶ First, they are universal in that every person, in virtue of being a person, holds them. Second, while they are not absolute, they are of the utmost moral importance and we should make every effort to avoid violating these rights. Third, they exist independently of being enforced, complied with, recognized, etc. Authority* (properly specified as, say, the right that any person A has over any person B that B save A from imminent death or serious injury just so long as B is both aware of A's plight and faces minimal risk to himself) seems to meet these conditions and thus strikes me as being a plausible candidate for a basic right. I suggest that Jones has authority* just in virtue of being a person, completely independent of Smith or anyone else recognizing or complying with it. And while his right to be saved is not absolute, it strikes me as highly stringent nonetheless. Other possible examples of basic rights are "authority" (the right of self-mastery) the right not be killed, and the right to food and shelter.

To better understand the claim that basic rights in part constitute a certain universal human relationship, consider the friendship relationship and its associated special duties (the duty, for example, to care for my friend when he is in need). Rowan Cruft has claimed that

[...] the duties [of friendship] are a *constitutive part* of friendship: friendship without the relevant duties is an impossibility, not because the duties are necessary to motivate appropriate friendly feelings and actions, but because the duties are simply part of what makes a relationship a friendship.

It does seem difficult to see how I can have a genuine friendship with an individual if I do not have special duties towards him. Likewise, I could not be under any special duties of friendship towards an individual, say towards a stranger sitting next to me in a coffee shop, and yet still undergo friendly acts and have friendly feelings towards this individual. It is implausible to consider this universal community of fellow human beings a friendship. But perhaps basic rights in part constitute this universal community of fellow human beings similar to how the duties of friendship in part constitute a friendship. Each human being has a set of basic rights. Some of these rights entail duties that every other person has to refrain from certain acts (e.g. from killing), while some entail duties that every other person has to provide certain things (e.g. life saving assistance). And these basic rights and duties are a part of *what it is* to be a fellow human person along with

¹⁶ Ibidem: 441–442.

other human persons. It is difficult to see how an entity would be a fellow human being if that entity did not have, say, a right not to be attacked on a whim; or did not have a right to food and shelter.

We can further compare the universal community of fellow human beings with other valuable communities; for example, the community of fellow citizens and the community of fellow employees. Persons who do not share the same set of goals, or do not have mutual friendly-feelings, or who will never interact with one another can still be *fellow* citizens or *fellow* employees of a large company. In a similar way, persons can be *fellow* human beings despite not knowing one another and having next to nothing in common. Furthermore, “people find themselves in many ordinary valuable communities whether they want to or not, and are not allowed to exit these communities (consider certain national or familial communities).”¹⁷ The same can be said of members of the universal human-community. The universal human-community, however, is importantly different from these other communities in that it is universal in nature. All persons, *qua* persons, regardless of culture or country are bound together in this human community or fellowship.

The universal human community is not wholly comprised of basic rights. It is also comprised of

[...] other normative requirements, such as a requirement that each person think of other human beings as fellows who share in their common humanity (where this includes, e.g., recognizing other human beings as beings with their own perspective, with whom one can argue and reason, and who are capable of loving and being loved).¹⁸

There is also a normative requirement for “respectful, sympathetic and polite emotional responses.”¹⁹ To violate these requirements is not to infringe upon another’s basic rights; it is, however, to fail to live appropriately as a member of the universal human community. Furthermore, the universal human community is also in part constituted by the actual friendly feelings and actions that some human beings have towards other human beings. Though certainly not at all times and amongst all people, there is always at some time amongst some people the existence of a sufficient amount of fellow-feelings (e.g. pity and love). If this were not the case, then seemingly there would cease to exist a genuine community of fellow

¹⁷ Ibidem: 457.

¹⁸ Ibidem.

¹⁹ Ibidem.

human beings.²⁰ Importantly, these fellow-feelings and the other just mentioned normative requirements that involve recognizing other people as fellow human beings intuitively have non-instrumental value. And because these in part comprise the universal human community, the latter thereby has non-instrumental value.²¹

I now turn to Liu's discussion of a second objection to his defense. A gunman is about to shoot Jones. Smith could, at little risk to himself, apprehend the gunman and thereby save Jones, but he chooses not to. Jones is shot dead. The result of Smith's refraining to save Jones results in three distinct evils: (1) – (3) above. (The unjust interfering with Jones' authority is the gunman's doing, but it is still a result of Smith's failure to act). Now say Smith shoots Jones himself. This too would result in evils (1) – (3) above. This case counter-intuitively shows that Smith's refraining to save Jones and Smith's killing of Jones are on a moral par: both acts are equally bad when intuitively the act of Smith killing Jones is worse. In response Liu claims,

[...] despite the moral evil...[Smith's] allowing brings about (the unjust interfering with victim's autonomy plus the loss of her well-being and authority), [Smith] [...] enjoy[s] a moral good, namely, the freedom to choose what to do (which is, of course, a part of [his] authority over [himself]).²²

For Liu, Smith's refraining does result in three distinct evils, not two. But his refraining also results in a moral good. This moral good consists in Smith exercising his autonomy, that is, Smith freely choosing to not save Jones. So Smith's acts are not on a moral par after all. Presumably, the good of Smith's free choice renders his killing of Jones worse than his letting Jones die. We could perhaps view the situation like this: the three evils that result from the refraining, that is, evils (1) – (3) are each a negative value. The moral good of Smith's free choice in refraining is a positive value. This positive value when combined with the three negative values is equal to two negative values. So Smith's act of killing Jones results in three negative values (or a value of -3) but his act of letting Jones die has a net result of only two negative values (or a value of -2).

But if this is the case, and if the act of refraining to save, by itself, produces an evil [evil (1*) above], then it seems that there is a moral equality between Smith's two acts after all. If the good of freely choosing to refrain to save tips the scales

²⁰ Ibidem.

²¹ Ibidem: 455–459.

²² Liu (2012): 72.

in favor of Smith's killing being worse than Smith's letting die, then the evil produced by refraining to save, that is, evil (1*), would perhaps tip the scales back such that Smith's two acts are equally bad. This objection assumes that the relevant good and evil here are of basically equal weight or importance. I will say more about this below.

What also needs to be considered is whether there is a parallel moral good in Smith freely choosing to kill Smith. Liu does not think that there is. Acts that unjustly encroach on *another's* authority do not make up the domain of *self-mastery*. Thus freely choosing such acts are not a part of the value of autonomy; likewise, such acts are not a part of the value of well-being. But it is here where Liu appears to run into the same basic problem. It seems that, just as acts that unjustly encroach on another's authority do not make up the domain of self-mastery, acts that unjustly interfere with another's authority* do not make up the domain of self-mastery either. Thus, freely choosing such acts is not a part of the value of autonomy; and hence there is no good that consists in freely choosing to refrain from saving others. In response, Liu says,

The control over others is not, in and of itself, a moral good. So, the authority* does not work in a way that completely *annihilates* the moral value of the authority over oneself [i.e. one's autonomy]; rather it simply *overrides* the latter. This is implicit in the widely shared view that the duty to assist arises only when the good to be preserved is considerably greater than the cost... So there is good reason to think that freedom to allow harm is indeed a moral good which simply gets overridden by the need to protect other people's well-being in certain circumstances; whereas freedom to interfere unjustly with others' autonomy is not.²³

It is difficult to determine what is going on in this passage. At the least, perhaps the idea is that because authority* is not in itself a moral good, an act of violating one's authority*, an act of refraining to save, does not by itself produce a moral evil. Presumably, any free choice is a moral good just in case what is chosen does not by itself produce a moral evil. So freely choosing to refrain from saving is a moral good. Again, though, I have argued that an act of refusing to save does, by itself, produce a moral evil. If I am right about this, then it seems that if freely choosing to do harm is not a moral good, then Liu has not shown that freely choosing to allow harm is a moral good. Where does this leave us? It would appear that Smith's act of killing Jones produces three distinct evils [evils (1) - (3)]

²³ Ibidem: 73.

with no accompanying moral good while Smith's act of letting Jones die would produce four distinct evils [evils (1) – (3) *plus* the evil resulting from refusing to save, evil (1*)] with no accompanying moral good. And this would problematically seem to make Smith's act of letting Jones die worse than his act of killing Jones. Now, say, we insist that any free choice is a moral good regardless of what is chosen. Smith's killing of Jones would result in three evils and one moral good (the good of Smith freely choosing to kill). But Smith's act of letting Jones die would result in four evils and two moral goods (one of the moral goods would be the other shooter freely choosing to kill). This would appear to leave us with Smith's two acts problematically being on a moral par: each act basically having a net result of two negative values (or a net value of -2).

I have attempted to show that Liu has not answered the following objection: *both* doing and allowing harm typically produce at least three distinct evils. And because Liu has not met this objection, he has not yet met a second objection: Smith's act of failing to save Jones from a shooter and Smith's act of shooting Jones are on a moral par. But even if what I have argued for is correct, there could still be an asymmetry between the evils produced by doing and allowing harm. The proponent of Liu's value-based defense could establish such an asymmetry by showing that the evil of unjustly interfering with authority, that is, evil (1), which is what doing harm produces, is *worse* than the evil of unjustly interfering with authority*, that is, evil (1*), which is what allowing harm produces. Or, put differently, that the value of autonomy is more important than the value of well-being. It is not obvious that this is the case. But if it can be shown that it is, then perhaps Liu's account can be made plausible. For example, assume that both doing and allowing harm typically produce at least three distinct evils. If the magnitude of evil (1) is greater than the magnitude of evil (1*), then the amount or degree of evil produced by a typical harm-doing would be greater than the amount produced by a typical harm-allowing.²⁴ Thus, it can still be maintained that, *prima facie*, it takes the production of a greater amount of good to justify the former than the latter. Now recall Liu's initial response to the second objection which said that Smith's act of killing Jones and Smith's act of refusing to save Jones from a shooter are on a moral par. That response basically said that Smith's act of killing Jones results in three negative values (or a value of -3) but his act of refusing to save Jones has a net result of only two negative values (or a value of -2). So Smith's act of refusing to save Jones is less evil than, and thus not on a moral par with, Smith's act of

²⁴ Assuming the magnitude of evils (2) and (3) are equal regardless of whether they result from a doing or an allowing.

killing Jones. Now even if, as was suggested above, Smith's act of refusing to save Jones, by itself, produces an additional evil, that being evil (1*), Liu can still maintain that Smith's act of refusing to save Jones is less evil than Smith's act of killing Jones. Liu can maintain this if the magnitude of evil (1) is greater than the magnitude of evil (1*). Say, the magnitude of the latter is only -0.5 and the magnitude of the former is -1 . Here Smith's act of killing Jones still results in three negative values (or a value of -3) but his act of refusing to save Jones has a net result of only two and one-half negative values (or a value of -2.5). Finally, if the magnitude of evil (1*) is sufficiently low in comparison to the magnitude of evil (1), then perhaps a case can be made for why freely choosing an act that produces evil (1*) is a good while freely choosing an act that produces evil (1) is not; or at least not a good of the same magnitude. I conclude that, as it stands, Liu's value-based defense of DDA is insufficiently supported. However, it can perhaps be rendered plausible if it can be shown that the value of autonomy is more important than the value of well-being such that the evil of unjustly interfering with authority is *worse* or *greater* than the evil of unjustly interfering with authority*. One question that arises, however, is just how consequentialist this new degree-conscious strategy would be. Can it be established on purely consequentialist grounds, for example, that autonomy is more important than well-being? To generalize a bit, any consequentialist defense of DDA, on the face of it, cannot rely on a simple counting of good and bad consequences of acts. If this is the case, it would seem that an assessment of the degree of the various good and bad consequences of acts is in order. But then it is not clear whether consequentialism can establish this. So, more needs to be said regarding the prospects of a purely consequentialist account of DDA.²⁵

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²⁵ Thanks to Dylan Dodd and an anonymous referee for several helpful suggestions on how to improve this paper.