

## ***The Trolley: a Libertarian Analysis***

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### **ABSTRACT**

In the trolley case, an individual is faced with killing one man in order to save five equally innocent people. This philosophical conundrum pits deontology (do not murder) against utilitarianism (saving lives). Numerous non-libertarian commentators have weighed in on this challenge. The present paper offers a libertarian analysis of this case.

### **KEYWORDS**

Murder, rights, deontology, utilitarianism.

### ***I. Introduction***

Foot (1967, 1) discusses “the driver of a runaway tram which he can only steer from one narrow track on to another; five men are working on one track and one man on the other; anyone on the track he enters is bound to be killed.”

Another classic statement of the trolley challenge reads as follows (Thomson, 1976, 206):

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

If David may not even choose to cut up one where *five* will thereby be saved, surely what people who say “Killing is worse than letting die” mean by it must be right!

On the other hand, there is a lovely, nasty difficulty which confronts us at this point. Philippa Foot says<sup>2</sup> – and seems right to say- that it is permissible for Edward, in the following case, to kill:

(5) Edward is the driver of a trolley, whose brakes have just failed. On the track ahead of him are five people; the banks are so steep that they will not be able to get off the track in time. The track has a spur leading off to the right, and Edward can turn the trolley onto it. Unfortunately there is one person on the right-hand track. Edward can turn the trolley, killing the one; or he can refrain from turning the trolley, killing the five.

If what people who say “Killing is worse than letting die” mean by it is true, how is it that Edward may choose to turn that trolley?

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

The philosophers usually credited with plaguing us with this challenge are Foot, 1967; and Thomson, 1976, 1985. Since then there have been literally hundreds of discussions of this issue. But not a one of them has been written from a libertarian perspective. The contribution of the present paper is to offer a distinctively libertarian analysis of the trolley problem.

We do well, then, to at least briefly discuss this particular political economic philosophy (Rothbard, 1998; Hoppe 1989, 1993; Huebert, 2010; Kinsella, 1992, 1996). Libertarianism is not a theory of law, nor is it an analysis of rights, nor, yet, ethics. Rather, it is an attempt to discern what the proper law should be; an analysis of the just use of violence. As a first approximation, there is the non-aggression principle (NAP). According to this axiom of libertarianism, it should be legal for a person to do whatever he wants to do,<sup>1</sup> provided, only, that he refrain from initiating aggressive violence against anyone else and his legitimately owned property. Libertarianism does not say people *should* adhere to the NAP; that it would be *right* for them to do so. It only maintains that if they do not so restrict themselves, they are in violation of libertarian law. But that is merely a first approximation. At bottom, libertarianism is a theory of what constitutes just punishment<sup>2</sup> for law breakers.

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<sup>1</sup> With his own person and justly owned property, based on homesteading (Block, 1990, 2002A, 2002B; Block and Edelstein, 2012; Block and Yeatts, 1999-2000; Block vs Epstein, 2005; Bylund, 2005, 2012; Grotius, 1625; Hoppe, 1993, 2011; Kinsella, 2003, 2006; Locke, 1948; Paul, 1987; Pufendorf, 1673; Rothbard, 1973, 32; Rozeff, 2005; Watner, 1982) and legitimate title transfer (Nozick, 1974)

<sup>2</sup> In the view of Rothbard (1998, p. 88, ft. 6): “It should be evident that our theory of proportional punishment—that people may be punished by losing their rights to the extent that they have invaded the rights of others—is frankly a *retributive* theory of punishment, a ‘tooth (or two teeth) for a tooth’ theory. Retribution is in bad repute among philosophers, who generally dismiss the concept quickly as ‘primitive’ or ‘barbaric’ and then race on to a

It is only the first approximation of libertarianism to aver: do not violate rights. The more sophisticated version, is that libt is a theory of punishment: if you violate rights, we punish you in thus and such a manner.

This is in sharp contrast to the non libertarians who have tried to wrestle with the trolley challenge. For example, states Thomson (1976, 204, emphasis added): “Alfred kills his wife out of a desire for her death. Bert lets his wife die out of a desire for her death. But what Bert does is surely every bit as *bad* as what Alfred does. So killing isn’t *worse* than letting die.” Note that this philosopher is not concerned with proper law, and punishment, use of violence against, criminals. Rather, she, like so many others (Unger, 1992, 1996; Kamm, 1989; Barcalow, 2007; Singer, 2005; Mikhail, 2007; Norcross, 2008; Otsuka, 2008; Hauser, et al, 2007), focuses on the good and the bad, the bad and the worse, what people should do and refrain from doing. It cannot be denied that of course there is a strong overlap between these two different concerns, but it is the divergences that distinguish the libertarian analysis of the trolley case from that of all others.

One more element of libertarianism. In this view, there is no such thing as positive rights. There are only negative rights (Block, 1986; Gordon, 2004; Katz, undated; Long, 1993; Mercer, 2001; Rothbard, 1982; Selick, 2014). A right implies an obligation. If Smith has a (negative) right not to be murdered, raped, robbed, then everyone else has a negative obligation not to murder, rape or rob him. It is incumbent upon all others to refrain from initiating violence against him. If Smith has a (positive) right to food, clothing and shelter, then all other people have a positive obligation to give him these goods. But, if so, then their own negative rights to their private property will have been violated.

We are now in a position to shed some light on the issue of killing an innocent person on the one hand, and letting him die on the other. Under the libertarian code, the former would be considered murder, and punished severely. However, allowing someone to die, standing idly by while another person perishes, would not be considered a crime. Now, it may not be nice to do so, it may not be moral or ethical to fail to come to the aid of a potential victim, but, qua libertarianism, that is not, cannot be, our concern. Rather, we focus, very narrowly, on whether or not an NAP violation, an uninvited (personal) border crossing has taken place, and, if so, what violent repercussion would be justified.

Pinker (2011, 328) states: “Most of us agree that it is ethically permissible to divert a runaway trolley that threatens to kill five people onto a side track where it would kill only one. But suppose it were a hundred million lives one could save

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discussion of the two other major theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as ‘barbaric’ can hardly suffice; after all, it is possible that in this case, the ‘barbarians’ hit on a concept that was superior to the more modern creeds.” See also Block, 1999, 2002-2003, 2003a, 2003b, 2004a, 2004b, 2006, 2009A, 2009B; Block, Barnett and Callahan, 2005; Gregory and Block, 2007; Kinsella, 1996; Morris, 1968; Olson, 1979; Rothbard, 1998, 88; Whitehead and Block, 2003

by diverting the trolley, or a billion, or — projecting into the indefinite future — infinitely many. How many people would it be permissible to sacrifice to attain that infinite good? A few million can seem like a pretty good bargain.”

What is the libertarian analysis of someone who diverts the trolley from its present track where it will kill, say, a billion people, and onto a path where it will murder a single individual? Utilitarians would speak out as one: such an act would be justified, since it would save one billion minus one lives. Most commentators would agree.<sup>3</sup>

But things are different for the libertarian. The diverter of the trolley is a murderer. We must not lose sight of this primordial fact. As such, he must be punished to the full extent of the law. And what, pray tell, is the full extent of the law? His life is forfeit, since he took someone else’s life. However, if the heirs of the victim, all of them, all five billion of them, forgive this murderer his crime, then and only then may he go free. But if even one of these heirs wants to impose the death penalty of our savior of five billion lives, he has the right to insist upon this punishment.<sup>4</sup>

This brings us to the libertarian concentration camp guard (Block, 2009). Here is the situation. All such criminals must murder 100 innocent Jews, gypsies, blacks, gays, other non Aryans, per day. However, we posit that a libertarian guard can get away with murdering only 90 victims daily. If he goes below this figure, say, to a mere 89 or fewer murders, he will be found out, and himself summarily executed. Of course, our libertarian hero engages in this dangerous pursuit not to murder 90 people daily, but rather to save 10, who, we posit, would perish were it not for his admirable<sup>5</sup> and courageous acts. A week goes by, the war is over, and our libertarian murderer is in the dock at the Nuremberg trial. He has murdered 630 people, but saved 70. Should he be put to death for his evil deeds? Yes, unless *all* of the heirs of the 630 victims agree to forgive him his trespasses. Our hero may plead with these people: “I wish I could have saved your parent, your child, your spouse, but I could not. I could only save 10 people per day. That is why I embarked upon this dangerous acts of mine. If I had saved even as few as one more person daily, I would have been discovered, and prevented from saving

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<sup>3</sup> Thomson (1976, 206) states: “Edward may turn that trolley to save his five (people, at the cost of one life).” If so, she would certainly favor saving a billion people even though one innocent man must be murdered.

<sup>4</sup> However, some of us will hold a ticker tape parade in honor of this murderer, and pin a big medal on this chest before the execution. After all, he is a hero. He lives, we may suppose, in a libertarian society and full well knows the penalty for murder: execution. Yet, he engaged in this heroic murder in order to save the lives of five billion people. We cannot do this qua libertarian, since this very narrow philosophy admits of no such actions. But, we can do this as decent human beings.

<sup>5</sup> We say this not qua libertarian, which, we insist, is a very narrow philosophy, concerned only with justified punishment for criminal behavior. See Block 2001B, 2002, 2003B, 2004, 2006

any more victims of Nazi oppression.” Whether or not he prevails, he deserves, once again, a medal, a parade in his honor, and the thanks of all civilized people.

In order to further highlight the differences on the Trolley question between a libertarian and members of other philosophical traditions, I offer my responses to a popular query on this subject (<http://www.philosophyexperiments.com/fatman/>). My responses are in *italics*.

## II. *Should You Kill the Fat Man? Preliminary Questions*

This activity is a treatment of some of the issues thrown up by a thought experiment called ‘The Trolley Problem’, which was first outlined by the philosopher Philippa Foot, and then developed by Judith Jarvis Thomson and others. But before we start properly, we need to ask you four preliminary questions so we get a sense of the way that you think about morality. There are no right or wrong answers. Just select the option that most corresponds to your view.

Question 1: Torture, as a matter of principle, is always morally wrong.

I answered no. As a libertarian, I have no views on this. No, I go further. Qua libertarian, I am precluded from having an opinion on this vital issue. Because it asks about morality, and libertarianism, in sharp contrast, deals only with what the law should be. So, I can only answer as a citizen, as a moralist. I can think of cases where it would be justified. For example, if the criminal tortured a victim, it would be just, under the libertarian code, to torture him back.

Question 2: The morality of an action is determined by whether, compared to the other available options, it maximises the sum total of happiness of all the people affected by it.

I responded in the negative to this one, too. Not because I have strong views about morality; I don’t. I answered in this way because utilitarianism turns me off, and this sounded pretty utilitarian to me.

Question 3: It is always, and everywhere, wrong to cause another person’s death - assuming they wish to stay alive - if this outcome is avoidable.

This one, too, got a thumbs down from me. Again, as a libertarian, I know of nothing “wrong” except that which violates the NAP. But, surely, given that the death penalty is justified, and as a libertarian I maintain it is (Block, 2006), it would be justified to execute a murderer, even assuming he wished to stay alive.

Question 4: If you can save the lives of innocent people without reducing the sum total of human happiness, and without putting your own life at risk, you are morally obliged to do so.

I responded positively to this question, since in my own vision of morality, it would be immoral not to save someone's life if I could do so with trivial cost to myself. However, speaking as a libertarian, I would oppose laws requiring that we give aid to each other, as this would be a positive obligation, and libertarians support only negative rights.

Next question:

*Should You Kill the Fat Man? - The Scenarios*

You will now be presented with four different scenarios to test your moral intuitions against the answers you gave to the first four questions.

*The Runaway Train (Scenario 1 of 4)*

The brakes of the train that Casey Jones is driving have just failed. There are five people on the track ahead of the train. There is no way that they can get off the track before the train hits them. The track has a siding leading off to the right, and Casey can hit a button to direct the train onto it. Unfortunately, there is one person stuck on the siding. Casey can turn the train, killing one person; or he can allow the train to continue onwards, killing five people.

Should he turn the train (1 dead); or should he allow it to keep going (5 dead)?

- Turn the Train
- Allow the Train to Keep Going

I do not know what Jones "should" do. I do know that if he turns the train he is a murderer, if he allows it to keep going he is not. Based on the analysis offered above, if he turns the train to save four lives, he fits the bill of "heroic murderer. I had to answer, otherwise I couldn't finish the quiz, so I filled in "turn the train," making him into a heroic murderer.

I was then presented with the following:

Interesting. you do not believe there is any general moral requirement to maximise the happiness of the greatest number of people, yet you think that Casey Jones ought to divert the train. There's no contradiction here, but it would be interesting to know what thoughts motivated your decision. For now, though, let's see what you make of the scenario below.

*The Fat Man on the Bridge (Scenario 2 of 4)*

Marty Bakerman is on a footbridge above the train tracks. He can see that the train approaching the bridge is out of control, and that it is going to hit five people who are stuck on the track just past the bridge. The only way to stop the train is to drop a heavy weight into its path. The only available heavy enough

weight is a (very) fat man, who is also watching the train from the footbridge. Marty can push the fat man onto the track into the path of the train, which will kill him but save the five people already on the track; or he can allow the train to continue on its way, which will mean that the five will die.

Should he push the fat man onto the track (1 dead); or allow the train to continue (5 dead)?

- Push the fat man onto the track
- Allow the train to continue Please make a choice!

I voted for pushing the fat man onto the track, so as to make Bakerman, also, into a heroic murderer. I might as well be consistent, I thought. But, I could as easily have gone the other way, if I wanted to reduce the incidence of murder.

Next, I was presented with the following:

That's an interesting response. Previous research has indicated that most people disagree with you that it would be right to push the fat man off the bridge into the path of the train. However, your response is certainly consistent with your claim that Casey Jones should divert the runaway train so that it only kills one person rather than five. However, as before, there is a puzzle in that you do not think there is any general moral requirement to maximise happiness, which makes the reason why you think it is justified to kill the fat man to save five people unclear. Perhaps your response to the scenario below will help to clarify your thinking here.

#### *The Saboteur (Scenario 3 of 4)*

Okay so this scenario is identical to the preceding scenario but with one crucial difference. This time Marty Bakerman knows with absolute certainty that the fat man on the bridge is responsible for the failure the train's brakes: upset by train fare increases, he sabotaged the brakes with the intention of causing an accident. As before, the only way to stop the train and save the lives of the five people already on the track is to push the fat saboteur off the bridge into the path of the train.

Should Marty push the fat saboteur onto the track (1 dead); or allow the train to continue (5 dead)?

- Push the fat saboteur onto the track
- Allow the train to continue Please make a choice!

I elected to shove fatty onto the track; he richly deserved to die, as he was a murderer. And, if this could save five innocent people, that is even better.

Whereupon, I was presented with this material:

Your belief that the right thing to do is to throw the saboteur off the bridge is not surprising given your previous response that it would be right to throw an ‘innocent’ (fat) man off the bridge if it had the effect of saving five people. We noted a tension in your earlier response in that it wasn’t clear why you thought it justified to kill the innocent man given that you do not think there is any general moral requirement to maximise happiness. However, this tension is less pronounced this time around, since presumably thoughts to do with culpability are part of the moral calculus in deciding whether it is justified to throw the saboteur off the bridge. It is possible that similar thoughts about culpability will be a part of how you think about the scenario below.

*The Fat Man and the Ticking Bomb (Scenario 4 of 4)*

The fat man, having avoided being thrown in front of the runaway train, has been arrested, and is now in police custody. He states that he has hidden a nuclear device in a major urban centre, which has been primed to explode in 24 hours time. The following things are true:

1. The bomb will explode in 24 hours time.
2. It will kill a million people if it explodes.
3. If bomb disposal experts get to the bomb before it explodes, there’s a chance it could be defused.
4. The fat man cannot be tricked into revealing the location of the bomb, nor is it possible to appeal to his better nature, nor is it possible to persuade him that he was wrong to plant the bomb in the first place.
5. If the fat man is tortured, then it is estimated there is a 75% chance that he will give up the bomb’s location.
6. If the fat man does not reveal the location, the bomb will explode, and a million people will die: there is no other way of finding out where the bomb is located.

Should the fat man be tortured in the hope that he will reveal the location of the nuclear device?



- Yes, the fat man should be tortured
- No, the fat man should not be tortured Please make a choice!

I opined that yes, the fat man should be tortured.

The reaction to my answers to this quiz was as follows:

*Should You Kill the Fat Man? - Analysis 1*  
*A Matter of Consistency*

The first thing to note is that your consistency score is 100%. This is higher than the average score for this test (where higher is better), which is 78%.

It is often thought to be a good thing if one's moral choices are governed by a small number of consistently applied moral principles. If this is not the case, then there is the worry that moral choices are essentially arbitrary - just a matter of intuition or making it up as you go along. Suppose, for example, you think it is justified to divert the train in the first scenario simply because it is the best way to maximise human happiness, but you do not think this justification applies in the case of the fat man on the bridge. The problem here is that unless you're able to identify morally relevant differences between the two scenarios, then it isn't clear what role the justification plays in the first case. Put simply, it seems that the justification is neither necessary nor sufficient for the moral judgement that it is right to divert the train.

You've done better than average in this test, but now is not the time to rest on your laurels, because let's face it, most people don't think very clearly about morality. However, before you embark on any further study(!) we suggest you check out the next page of analysis.

My reaction. Whoa, I am not sure that I like this even one tiny bit. If a non libertarian thinks I am logically consistent, perhaps I have erred somewhere along the line, for, as I say, there is a gigantic chasm between the thinking of those who favor, and oppose, the freedom philosophy.

The next response of the quizmaster is this:

*The Trolley Problem - Analysis 2*

The scenarios featured in this activity have been constructed to elicit contrasting intuitions about whether it is justified to end the life of one person in order to save the lives of some other greater number of people.

Part of what is interesting here is what this tell us about consequentialist approaches to moral thinking. For example, straightforward utilitarianism, which holds that an act is morally right to the extent that it maximises the sum total of happiness of all the people affected by it (when compared to the other available

options), would seem to require an affirmative response to *all* the questions below. However, we know from previous research that such a consensus is unlikely. In particular, very few people tend to think that the fat man should be pushed off the bridge in order to save the lives of the five people stuck on the track. The fact that this option is so counterintuitive to so many people represents a significant challenge to straightforward utilitarian thinking.

I am not sure of what to make of all of this, but I report it, just to be thorough.

I opted to torture this fat pig of a man. This seems like a no brainer to me. Such an ogre deserves the most heinous punishment imaginable, and torture would appear to fit the bill. I resist the notion, however, that there is any “tension” in my answers. Yes, this is a reasonable position for a non-libertarian to take of an adherent of this position, but this is a two way street. I, too, see a “tension” in the mainstream view, not to say an utter contradiction, with the NAP.

The point of this exercise is not to cast aspersions on the quiz. It is well thought out, and interesting. Rather, my goal here is to establish that there is rather a large chasm between the thinking of non libertarian philosophers, who, I assume, concocted this quiz, and libertarians such as myself, who fit into this model as do round pegs into square holes or vice versa.

When asked about morality, I chose to call the heroic murderer “moral.” I could have easily gone the other way around, since I have no strong views on ethics or morals. (I only have an established perspective on what the law should be: to punish murderers, heroic or not, unless forgiven for their crimes). If I had indicated this, I suspect, my opinion would not have been characterized as 100% consistent by the non-libertarian creator of this quiz.

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