Baier on Killing and Letting Die

8

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Friends of ordinary, common-sense morality believe in the intrinsic moral relevance of the distinction between killing and letting die. They believe, in particular, that killing is worse than letting die. Armed with this claim, those friends of ordinary morality who are "simple-minded" go on to argue for bold and striking prohibitions. They might hold, for example, that active euthanasia is always impermissible, involving, as it does, the killing of an innocent person.

Kurt Baier is a friend of ordinary morality, and so he thinks that common-sense morality is sound as far as the basic principle goes: killing is indeed worse than letting die. But unlike some, Baier is a sophisticated rather than a simple-minded friend. He believes, for example, that in at least some cases active euthanasia is permissible. More generally, he thinks that in any number of controversial cases involving killing and letting die it is not at all a simple or straightforward matter to determine what it is morally correct to do. We cannot, in particular, derive the conclusion that a given act is forbidden from the mere fact that it would involve killing.

I myself am not among the friends of ordinary morality. As a consequentialist, I deny the intrinsic moral relevance of the distinction between killing and letting die. Accordingly, while I applaud Baier's determination to resist drawing simple-minded conclusions from his belief that killing is intrinsically worse than letting die, I think he errs in granting the distinction any intrinsic moral significance at all.

Nonetheless, it must be admitted that the distinction between killing and letting die is one that possesses a considerable significance from the intuitive point of view. As far as our ordinary moral intuitions are concerned, it seems quite plausible to hold that killing is indeed morally worse than letting die. I believe, however, that in this matter (as in many others regarding ordinary morality) our intuitions are not to be trusted. The question rather is whether sound arguments can be offered on behalf of the relevance of the distinction. I think that the answer is no, and I have argued this point elsewhere.[1] But Baier has new arguments, and given the intuitive appeal of the distinction, it behooves us to examine them carefully.[2]

Baier's main argument for the claim that killing is worse than letting die is really quite simple. He believes that a sound morality will include a prima facie duty not to kill, but will contain no similar prima facie duty not to let die. If he is right about this, it does seem reasonable to conclude that killing really is worse per se than letting die. So the question becomes this: why does Baier think that a sound morality will contain the one duty but not the other?

Baier's main argument relies, in effect, on two premises, and he argues at some length for the first of them, that is, the claim that a sound morality will contain a prima facie duty not to kill. His argument for this claim draws on a number of interesting views about the justification of moral guidelines and the concept of a prima facie duty. Unfortunately, these are complex matters, and so I cannot examine the details of Baier's argument here. (*Very* roughly, the idea is that killings tend to be morally objectionable, enough so that it makes sense to introduce a defeasible prohibition against their performance.) Perhaps, however, it will suffice for our limited purposes if we simply grant Baier this first premise: a sound morality will contain a prima facie duty not to kill. This allows us to focus on what I believe is the crucial issue, namely, Baier's assertion that a sound morality will *not* contain a prima facie duty not to let die. Oddly, and unfortunately, Baier has much less to say about the defense of this second premise.

On the face of it, it seems to me, we would expect a sound morality to *include* a prima facie duty not to let die. After all, as Baier himself recognizes, it is not just acts of killing that tend to be morally objectionable; acts of letting die are often morally objectionable as well, enough so that it does make sense to introduce a general moral guideline against letting die. But Baier thinks that in a sound morality this guideline will not take the form of a prima facie *duty*. Rather, it will be at a lesser level of "stringency." Unlike the guideline concerning killing, which will be at the "nonoptional" level of stringency (hence the appropriateness of speaking of a "duty," albeit a prima facie one), the guideline concerning letting die will be at the "optional" level of stringency. Thus, special circumstances aside, there will be no duty not to let die—not even a prima facie one.

But why this difference? Why shouldn't the guideline concerning letting die be at the same "nonoptional" level of stringency as the guideline concerning killing? Why not have a prima facie duty not to let die? Baier raises this question himself, and replies as follows:

> The answer is that there is, as we have seen, adequate reason to make it a general prima facie *duty* not to kill, but there is no such reason for such a duty to save lives. For no conflict would be generated by the belief that all who have an opportunity to kill a certain person, also had and discharged a duty not to kill her, but there may and often would be such a conflict and a lot of waste if all of

> us who have an opportunity to save a person's life, thought they had and attempted to discharge a duty to save it. If she is to survive, *all* of us who have an opportunity to kill her *must not* do so, but there is no comparable necessity for all of us who have this opportunity, to save her. (III, 7–8)[3]

It is not altogether clear to me exactly what Baier has in mind in this passage. I can think of two possible interpretations of his argument. The first emphasizes the difference in necessity identified in the last sentence quoted: The guideline that opposes killing must take the form of a duty—Baier is arguing—since if any given person is to survive it is necessary that *all* of us refrain from killing that person. In contrast, Baier observes, there is no similar necessity that all of us *save* any given person in need (it would suffice, for example, if one person provides the necessary aid). Accordingly, there is no comparable need for a "nonoptional" duty to save lives.

If this *argument from necessity,* as we might call it, is indeed what Baier has in mind, then it seems to me that he has been misled by his decision to cast the discussion in terms of whether or not there is a prima facie duty to *save* lives. The point at issue, after all, was whether or not a sound morality would contain a prima facie duty not to *let die.* Yet even if we assume that the argument from necessity can successfully establish that there will be no duty to save, nothing in that argument shows that there will *not* be a duty not to let die. For although it is true that there is no need for all of us to *save* any given person in need, it is nonetheless also true that all of us must refrain from *letting the person die.* Just as we don't get the desired outcome (the given person alive) if a single one of us kills her, we similarly don't get the desired outcome if a single one of us lets her die. (I assume here, obviously, that if you let someone die, the upshot is that they end up dead; no death, no letting die.)

Thus, if the necessity of all of us refraining from killing explains why the guideline concerning killing should take the form of a (prima facie) duty not to kill, then similarly, from the necessity of all of us refraining from letting die it seems to follow—for all that Baier has shown—that the guideline concerning letting die should take the form of a (prima facie) duty as well. But this leaves killing and letting die on the same footing—both opposed by prima facie duties. And this in turn completely undermines Baier's main argument for the conclusion that killing is worse than letting die.

(It may seem puzzling how there could be a prima facie duty not to let die in the absence of a prima facie duty to save. But the explanation lies in the very fact to which Baier was drawing our attention. Logically speaking, there is no necessity that all of us take positive, active steps to save any given person in need; if others are already taking adequate steps, this will only result in a waste of effort and resources. All that is required is that one take positive action when others are *not* taking adequate steps. What is required, then, is not a prima facie duty to "save" per se, but rather a prima facie duty to "save when necessary.")

Perhaps, however, I misconstrue Baier's position when I interpret it in terms of the argument from necessity. The passage I have quoted suggests a second possible reading when it warns of the possibility of "conflict" if all who had the opportunity to save a person's life attempted to do so. Similarly, in a later, but related passage, Baier warns of the danger of "confusion and mutual interference" if all those in a position to help tried to do so themselves (III, 8). Perhaps, then, Baier has in mind an argument of this sort: If everyone takes himself to have a duty not to kill, and attempts to fulfill this duty, all is well: there is no danger that the various attempts will interfere with each other, resulting somehow in the unwanted death. In contrast—Baier may be suggesting—if everyone takes himself to have a duty to save, and attempts to fulfill this duty, there is a nonnegligible chance that the various uncoordinated attempts will interfere with each other, and the ultimate result might well be a tragic failure to save the person in question from death. Accordingly, there should not be so much as a prima facie duty to save.

Like the argument from necessity, this new argument mistakenly focuses on the implications of a prima facie duty to save. As we have seen, however, if Baier is to defend the claim that killing is worse than letting die, the relevant question is whether or not a sound morality would contain a prima facie duty not to *let die*—and the absence of a duty to save does not suffice to settle this point. Unlike the argument from necessity, however, this *argument from interference* (as we might dub it) retains a certain amount of plausibility even when we appropriately redirect our attention to the guideline concerning letting die. For Baier might still suggest that if everyone takes himself to have a duty not to let die, and attempts to fulfill this duty, there remains a nonnegligible chance that the various uncoordinated attempts will interfere with each other, sometimes resulting in a failure to save the person in need.

I think it must be admitted that the possibility of such interference cannot be ruled out. (Logically, of course, if everyone *succeeds* in fulfilling a duty not to let die, then the person will be saved. But if we focus instead on the effects of *promulgating* such a guideline, then the most we can be certain of is that people will *attempt* to fulfill the duty, and now the possibility of interference with tragic results cannot be dismissed.) It is, I take it, an empirical question to what extent such deadly interference will arise. (Similarly, it is, strictly, an empirical question whether everyone's attempting to fulfill a duty not to *kill* will result in deadly interference. But this possibility seems sufficiently unlikely to be put aside.)

For myself, I am inclined to think that it would be a mistake to expect very much by way of deadly interference if people attempted to act on a

prima facie duty not to let die. Once again, the key is to bear in mind that a duty not to let die does not entail a duty to *save* per se. That is, in situations where others are already taking adequate steps to save those in need, there is no requirement to make positive "saving" efforts oneself. So in such cases, at the very least, the danger of interference seems to me to be minimal. And for those cases where more than one individual must be involved if adequate aid is to be provided, I suspect that good will and a modicum of intelligence can generate sufficient coordination to minimize the likelihood of deadly interference between the various attempts to help. (I might also note that in an appallingly callous world such as ours, the tragic fact is that no one at all comes to the aid of most of those in need, so concern about the dangers of interference seems grossly misplaced. But this is perhaps unfair to Baier, who would certainly condemn current practices as well.)

Still, I see no reason to assume that such undesirable interference would disappear altogether. Does this then suffice to show that a sound morality would not contain a prima facie duty not to let die? I don't see why it should. All moral guidelines involve risks—of misinterpretation, misexecution, and other forms of misuse. I see no reason to think that the danger of interference is sufficiently great to rule out a prima facie duty not to let die. Of course, if we could anticipate a significant amount of such deadly interference, that would be another matter. But once we are careful to avoid being confused by the irrelevant implications of a duty to save per se—that is, a duty to save whether one's efforts are needed or not—it seems likely that the interference generated by a prima facie duty not to let die would be insignificant. At any rate, Baier gives us no reason to think otherwise.

So the argument from interference fares no better than the argument from necessity. On neither interpretation has Baier given us adequate reason to believe that a sound morality will *not* contain a prima facie duty not to let die. But this means that Baier has failed to establish the crucial second premise of his main argument. Even if we grant the first premise of that argument—that a sound morality will contain a prima facie duty not to kill—absent a better defense for the claim that such a morality will *lack* a prima facie duty not to let die, Baier has no ground for concluding that killing is worse than letting die.

Now the passage we have been examining represents Baier's chief and most explicit attempt to defend his claim that a sound morality would lack a prima facie duty not to let die. There is, however, a later passage, which seems to me to point in the direction of a further, distinct argument for this claim. So we need to consider that as well.

After having argued (to his own satisfaction) that the *general* guideline concerning letting die will not take the form of a (prima facie) duty, Baier goes on to suggest that there will nonetheless be various *special duties* to save—that is, duties that will apply only to specific classes of people, or only

in certain specific circumstances. Baier reviews several examples of such special duties, including the duty to rescue those in danger, obligations to the incompetent, special role-based obligations, and the like. Finally, after considering the question of how much of our resources we must give to those who lack the necessities of life, Baier concludes that these cases, especially the last, show "beyond reasonable doubt" that

> letting die is not wrong per se but only undesirable, though seriously so. One reason for this is that in these cases, we are even less able to say clearly what a person who is not a member of certain special classes would have to do to discharge a duty not to let die. But since duty (and wrong) imply the highest degree of stringency, namely, non-optionality, which in turn implies the justifiability of coercive social intervention when someone fails to do his duty, we cannot justifiably regard something as a duty concerning which it is seldom or never possible to say whether a person has or has not done it. (III, 10)

Baier's view seems to be that there cannot be a prima facie duty not to let die, for were there such a duty it would often be difficult or impossible to say what constituted fulfilling that duty. (Obviously enough, Baier thinks it unjustified to have a duty where it is difficult or impossible to tell what constitutes discharging it. I propose to grant this principle to Baier, without passing judgment on the adequacy of the particular grounds he offers for it.) But is it really true that we are unable to say clearly what would discharge a duty not to let die?

I am tempted by a trivial answer: what constitutes fully meeting the duty not to let die is not letting anyone die. From the logical point of view, it seems, there is no particular difficulty at all in saying what would discharge a duty not to let die.

Perhaps this is too quick. For the following "logical" difficulty does still remain. Suppose that two people need my aid, but I can only save one—either one. Suppose further that I do save one of them, and the other dies. Did I completely discharge my duty not to let die? Well, did I let the second person die? If we could not answer this question, then I suppose there *would* be a kind of built in vagueness surrounding a duty not to let die. There are, however, at least two possible answers available to us. First, we might say that I have not let the second person die, since "letting die" entails ability to save, and I lack the ability to save the second person if all my resources were used saving the first. I don't myself incline toward this answer (if the cases are completely symmetrical, it still seems true that I might have saved the second, by picking *her,* even though I couldn't save both). But there is a second possible answer: I did let the second person die, but there is a perfectly adequate justification for my doing so, to wit, I was saving someone else, and couldn't save both. (Appeal to this fact would

function something like the way an appeal to self-defense does with regard to the duty not to kill: I do kill the person, but am justified in doing so.) I incline toward the second answer, but whichever one we pick, the fact remains that there is no intrinsic difficulty in saying what constitutes discharging a duty not to let die.

Presumably none of this will satisfy Baier. I imagine that Baier will readily concede the trivial point that one discharges the duty not to let die by not letting anyone die. But what then is the difficulty? I take it that it is something like this. Baier thinks we would face special *epistemic* difficulties, that is, difficulties in *telling* whether a given act meets the duty, or whether a given person has fully met the duty. It would be "seldom or never possible" to *know* whether a person had discharged the duty not to let die. That, I take it, is Baier's claim. But why does he think it's true?

Recall that Baier makes this claim after having discussed several kinds of cases involving special duties to save. These cases, he suggests, are what establish the point that letting die is not wrong per se—"the last case even more than the first three." The obvious suggestion, therefore, is that some of the "difficult moral questions" raised in that earlier discussion, especially the questions raised regarding the last type of case, will point to and establish the particular epistemic difficulties that Baier has in mind.

Now, as I have noted, the last of the four types of case that Baier discusses involves saving the lives of those who are dying for lack of the necessities of life. Baier believes that those of us with a more adequate supply of resources do sometimes have a prima facie duty to share them. But he thinks that there is a limit to this duty—a limit to the amount that we must sacrifice. How much, then, must we give? This, Baier apparently believes, is a difficult and obscure matter; and he goes on to raise a number of questions related to it.

All of this suggests the following picture. Baier believes that we have a morally justified *option* to do less than all the good that we are capable of doing; we need not make sacrifices when the cost to ourselves would be too great.[4] But how much, exactly, do we have to do? This is—Baier is suggesting—an inherently obscure matter. Yet any duty not to let die would necessarily inherit this obscurity: if we cannot say exactly how much we have to do, then often we would be unable to tell whether or not we had adequately fulfilled a duty not to let die. So if—as we are assuming—a moral guideline cannot take the form of a duty if it would be difficult or impossible to tell whether that duty had been discharged, there can be no duty not to let die.

If this is indeed the argument that Baier has in mind, then it seems to me that three replies are called for. First, why should we assume that a sound morality will contain options at all? It should be noted that, even if Baier is right and there is an intrinsic moral difference between killing and letting die, it still might be the case that a sound morality would grant no options whatsoever. (That is to say, we might be morally required to do all the good that we can—*within* the limits imposed by our various duties not to kill, not to lie, and so forth.) But if there are no options, then the source of the epistemic difficulty supposedly facing the duty not to let die is eliminated, and Baier's argument fails. So why think that there *are* options?

Unfortunately, this is not a claim that Baier ever tries to defend. Rather, he pretty much seems to assume, without argument, that options will indeed be generated by his general approach. I must say, however, that I find it far from obvious that he is right about this. In point of fact, I am inclined to think that given Baier's general views about the justification of moral guidelines, a more plausible conclusion would be that a sound morality would *lack* options. But to pursue this point would take us rather far afield, and so I think I had better let it go.

Suppose we assume then, with Baier, that options will be included in any sound morality. We will still need to know—and this is my second point—whether these options merely cover cases of letting die (as Baier clearly assumes) or will, instead, extend to cases of killing as well. That is, if there are options, why not an option to *kill,* when the cost of not killing is too high? But if there were options of this second sort as well, then the duty not to kill would face the same epistemic difficulties as face the duty not to let die. Perhaps then there can be neither a duty not to kill nor a duty not to let die. Or perhaps the epistemic difficulties can be somehow overcome in both cases, permitting both kinds of prima facie duties. Either way, however, symmetry would be retained with regard to the guidelines concerning killing and letting die, and so Baier's main argument would be undermined.

Once more, I can only remark that I see nothing in Baier's general approach to support the assumption, implicit in his discussion, that a sound morality would contain options with regard to letting die, but none with regard to killing. But here too, establishing this claim would take us rather far afield, and so I do not intend to press the point further.

Accordingly, let us assume with Baier that a sound morality would contain options, and that these options would apply only to cases of letting die (or, more generally, only to cases of allowing harm). It is still important to note—and this is my final point—that a prima facie duty not to let die would face epistemic difficulties only if we assume that it is obscure just *how much* a person has to do, by way of aiding others. Baier fears that were there a duty not to let die it would inherit obscurity from the intrinsic vagueness surrounding the relevant options. But why believe that the relevant options *would* be obscure in this way?

Now I certainly agree that it is obscure under common-sense moral views just how much is enough. The extent of our options under ordinary morality is a disconcertingly vague matter. But so what? We could easily invent options that draw the relevant lines more sharply. By Baier's own lights, it seems to me, this is presumably exactly what we should do. The

relevant question, after all, concerns the nature of the guidelines to be included within a *sound* morality—and even if we assume, with Baier, that a sound morality would include options, it is difficult to believe that a sound morality would include options whose extent is epistemically vague and obscure. But if the appropriate options were to draw the relevant lines sharply, then it would no longer be unclear just how much one would have to do to meet a duty not to let die. In short, once we free the options of their unwarranted obscurity, we similarly rescue the duty not to let die from its alleged epistemic difficulties. And this means, of course, that Baier remains without adequate ground for his claim that a sound morality would lack a prima facie duty not to let die.

I conclude, therefore, that Baier's main argument fails. He has given us no good reason to believe that a sound morality would contain a prima facie duty not to kill, but lack a similar duty not to let die. Accordingly, he has given us no good reason to believe that killing is intrinsically worse than letting die.

This is, of course, disappointing news for the friends of ordinary morality, who must, it seems, look elsewhere if they are to find an adequate defense for the principle that killing is worse than letting die. On the other hand, for me and my fellow consequentialists this negative result is a reassuring one. For as I have said, I believe that the distinction between killing and letting die lacks any intrinsic moral significance.

Suppose, however, that Baier were right, and a sound morality would indeed include a duty not to kill, but lack a duty not to let die. This would, I have conceded, establish one sort of per se difference between killing and letting die, and it would seem reasonable to mark this difference by saying—as Baier wants to say—that killing is per se worse than letting die. Still, caution would be appropriate when drawing inferences from this principle.

This is, in fact, a point which Baier himself is at pains to establish. As Baier notes, the fact—let us suppose him to have shown it to be a fact—that killing is worse than letting die "is not as morally decisive as is generally thought" (III, 11). (It is the recognition of this that marks Baier as a sophisticated rather than a simple-minded friend of ordinary morality.) Basically, Baier's point is this: at best, all that has been shown is that there is a difference between killing and letting die at the level of prima facie duties. But the move from prima facie duties to duties *all things considered* is not necessarily simple or straightforward. What it is right or wrong to do in a determinate case will depend on a number of facts about that case, and the mere fact that one alternative is a killing and the other a letting die does not suffice to show that the first alternative is forbidden all things considered.

Baier illustrates this point with a discussion of euthanasia. In at least some cases, Baier thinks, if a person's life is no longer worth living, and if, recognizing this, she asks to be killed, it is permissible to kill her—despite the prima facie duty not to kill.

Of course in some ways cases of voluntary euthanasia are unusually easy (not that this in any way threatens Baier's point): the choice that we face is between killing a person and letting that very same person die, and—what's more—even the person to be killed is requesting that we kill her. What about cases where we must choose between killing one person and letting someone *else* die, where the person to be killed does not want to be killed? Here too Baier thinks that in at least some such cases it is permissible to kill, for example, when we kill an aggressor, so as to save his victim's life.

Thus, as a sophisticated friend of ordinary morality, Baier recognizes a number of cases in which it is permissible to kill, even though the alternative merely involves letting die. Nonetheless, there are cases at which Baier would draw the line—cases where, he thinks, we must let die rather than kill—and he discusses one of them in some detail. By drawing the line in this way, Baier reveals the extent to which he remains a *friend* of ordinary morality. Yet it seems to me that Baier's conclusions here are problematic, and do not follow from the substantive position for which he has argued.

Baier imagines a case in which Anne will die within a few days unless she gets a heart transplant, and Bill will die within a few *months* unless he gets a kidney transplant. Suppose the only relevant alternatives are these: the doctor can kill Bill, and then transplant his heart into Anne, or he can let Anne die, and then transplant her kidneys into Bill. (Let us imagine as well that either operation will be successful, and that there are no other relevant consequences of either choice.) Baier affirms—and here, I think, he speaks on behalf of all friends of ordinary morality—that the doctor must let Anne die, rather than kill Bill.

Why is this? Why isn't it permissible to kill Bill instead? (Suppose we flip a coin, and Bill loses.) Here is Baier's initial explanation:

> Is it because killing is worse than letting die? Surely not. The reason is, rather, that a physician may not discharge his duty to save one of his patient's life if it involves violating the general duty not to kill anyone and the special physician's duty not to kill one of his patients. (III, 14)

Obviously enough, one of the things Baier does in this passage is to bring in consideration of the physician's various special duties to his different patients. Yet, although they are not exactly irrelevant, I think it something of a distraction for Baier to do this. For Baier would presumably think it forbidden to kill Bill even in the absence of such special duties. Indeed, in the very next sentence, Baier asserts that "No one, especially no physician, has the right to terminate . . . one person's desirable life simply in order to lengthen another's," and I take this to mean that it would be forbidden for *anyone* to kill Bill in this case. So suppose we put aside whatever special duties the physician may have; what exactly explains why it is forbidden for anyone at all to kill Bill? As far as I can see, all that's left

of Baier's initial account is this: killing Bill violates the general duty not to kill.

Now were Baier a simple-minded friend of ordinary morality, he might have thought this an adequate explanation. But Baier is not among the simple-minded. Indeed, in the very passage quoted, Baier himself insists that the explanation of the impermissibility of killing Bill does not lie in the mere fact that killing is worse than letting die. And yet it seems to me that what remains of Baier's initial account—the observation that killing Bill violates the duty not to kill—only serves to recycle this admittedly inadequate explanation. It is, after all, only a *prima facie* duty not to kill that has been established. For all that has been shown so far, it might be permissible to "violate" this prima facie duty, if this is the only way to avoid letting someone else die. And this means that, for all that has been shown so far, it may be permissible to kill Bill so as to save Anne.

Baier seems to sense that his initial account is inadequate, for in the next paragraph he goes on to articulate his reasons further. Why, he asks, can we let Anne die? Now strictly, I think this is the wrong question to ask. After all, according to Baier, it is not merely *permissible* to let Anne die (for that would be compatible with also believing it permissible to kill Bill instead), rather, it is *required*. Still, Baier's answer is instructive.

> The answer is that he lets her die, but not *in order* to save Bill's life, but because he cannot save her life in a morally permissible way, that is, without violating Bill's or someone else's right to life. (III.14)

I think we can separate out three distinct answers suggested by this reply. First, Baier is clearly suggesting that it is permissible to let Anne die, since the only way to save her life is by impermissible means. (He goes on to emphasize the point that were there a morally acceptable way of saving Anne's life—were there a heart available, say, through the recent death of some third party—then we would certainly be morally obligated to help her. This further claim raises a number of interesting issues, one of which I'll touch upon below, but it isn't central to our present concerns.) Now this first suggestion is certainly relevant to the question Baier officially asks. Why is it permissible to let Anne die? Because the only available method of saving her is impermissible. But for *our* purposes, at any rate, it is pretty clearly of no use. For what we want to know is whether the available method of saving Anne—killing Bill, and transplanting his heart—is indeed impermissible. Obviously, nothing in this first strand of Baier's remark helps in this matter. It *presupposes* that it is forbidden to kill Bill, rather than explaining why this should be so.

But Baier is also clearly suggesting, second, that the reason why it is impermissible to kill Bill is that this violates Bill's right to life. This is, perhaps, only implied in the sentence I have quoted, but later in the same paragraph Baier is more explicit: The physician "cannot save Anne's life without violating Bill's right to life, but he can let Anne die without violating her right to life" (III, 15).

Now the obvious question to ask about this last claim is what reason we have to believe it true. Why think that killing Bill violates his right to life, while letting Anne die does not violate *her* right to life? Unfortunately, Baier says nothing directly in defense of this claim. But some earlier remarks about the concept of a right (II, 12) suggest the following. For the most part, talk of a "right to life" is simply another way of talking about the duty not to kill. Since agents have a general duty not to kill anyone, each of us has a *right* not to be killed, that is, a right "to life." (Baier also thinks that rights-talk introduces the notion of a right holder being able to waive the protection afforded by the right; but this complication is unimportant for our purposes.) Similarly, were there a duty not to let die, no doubt it would be plausible to include this as well under the rubric of a "right to life." But we are assuming that there is no such duty not to let die. Accordingly, on this basic approach, once we have decided that there is a duty not to kill, but no similar duty not to let die, we can say that killing Bill would violate his right to life, but letting Anne die would not constitute a violation of *her* right.

But even if we do now grant this claim to Baier, it still won't follow—as Baier clearly seems to think it should—that killing Bill is impermissible. For if the right to life is simply a correlate of the duty not to kill, then given that the duty not to kill is only a prima facie duty, the right to life will itself only be what we might call a *prima facie* right. If so, then it might be permissible *all things considered* to "violate" someone's right to life, if this were the only way to save someone else. And so it might be permissible to kill Bill to save Anne.

It is possible, of course, that when Baier claims that Bill's right to life would be violated were we to kill him to save Anne, Baier intends a "stronger" notion of right than the merely prima facie notion that we have just identified, so that to violate a right of this stronger kind trivially entails that one has acted impermissibly all things considered. But if this is what Baier intends, then we can only note that nothing at all in Baier's argument would justify the assumption that Bill *has* a right to life of this sort, or that killing Bill to save Anne violates it. (Alternatively, it might be that Baier is happy to conceive of rights as prima facie rights, but wants to reserve talk of *violating* duties or rights for situations where one acts impermissibly all things considered. But on this construal, it would beg the question for

Baier to assume that killing Bill so as to save Anne's life does indeed *violate* Bill's right to life. For all that Baier has shown, it might rather be a case of permissible "infringement" of that right.)

There still remains a third possible line of argument that is suggested by Baier's remarks. Baier seems to be saying that part of the reason why it is permissible to let Anne die is that we do not let her die "*in order* to save Bill's life." He clearly thinks this point an important one—the italics are his—although he nowhere explains its significance. But there is, at any rate, an implicit contrast being drawn here with what would be the case were we to kill Bill. For only a few sentences earlier, in a passage already partially quoted, Baier asserts that "no one . . . has the right to terminate . . . one person's desirable life simply in order to lengthen another's. Hence this doctor may not kill Bill and then save Anne's life with Bill's kidneys" (III, 14).

All of this suggests that the distinction Baier has in mind is this. If we kill Bill, we presumably kill him *as a means* of saving Anne. (We kill him "in order to" save Anne, by transplanting his kidneys; were there no possibility of saving Anne in this way, there would be no reason to kill Bill.) In contrast, if we let Anne die, then even though it is true that we will eventually be able to use her heart to save Bill, nonetheless we do not let her die as a *means* of saving Bill. (We do not let her die "in order to" save Bill; even if there were no possibility of saving Bill in this way we would still let her die, since the only way to save her involves intending the death of another as a means.) Suppose then that there were a duty not to intend death as a means (or more generally, a duty not to intend harm as a means). Apparently, killing Bill (in order to save Anne's life) would violate this duty; but letting Anne die would not. And this might then explain why it is forbidden to kill Bill in order to save Anne.

There is some further textual evidence in support of this interpretation. As I have already noted parenthetically, Baier goes on to claim that were there a heart available due to the recent death of some third party, we *would be* obligated to save Anne, even though the result, of course, is that it would no longer be possible to save Bill. (If Anne is thus saved, her kidneys won't become available for transplant into Bill.) But why, exactly, would we now be obligated to save Anne? Whatever the explanation, as Baier himself notes, it presumably has nothing to do with the relative significance of killing versus letting die, since if we refuse to save Anne, despite the available heart, we are only letting her die. But if Baier is implicitly assuming that there is a general duty not to intend death as a means, then it is easier to see why he makes the judgments that he does. For if a heart is already available, then the only reason for refusing to save Anne is that we want to let her die as a *means* of saving Bill. Thus in the revised example, unlike the original, we would be letting Anne die "in order to" save another. So if there is a duty not to intend death as a means, then—just as Baier claims—in the revised example, but not the original, letting Anne die involves violating a duty.

What's more, if there is a duty not to intend death as a means, then we can also make sense of Baier's insistence that the impermissibility of killing Bill (in the original example) has nothing to do with the distinction between killing and letting die. What would be crucial would be the fact that killing Bill involves intending his death as a means, not the fact that it involves a killing. (After all, as Baier argues, it would be equally wrong to *let* Anne die—in the revised example—as a means of saving Bill.)

It seems likely, then, that Baier *is* assuming that there is a general duty not to intend death as a means, and that he believes that appeal to this duty can justify his claim that it is impermissible to kill Bill, even though this is the only way to save Anne. Unfortunately, it seems to me that this final strand of Baier's position is no more successful than the earlier ones. To begin with, it is obvious that this entire line of thought presupposes that there is a morally relevant distinction between intending death as a means, and merely permitting avoidable—but "unintended"—deaths. Yet Baier offers nothing by way of argument for the relevance of this distinction.

One imagines—though this is only conjecture—that were Baier to try to argue for this claim, he would adopt a strategy parallel to that adopted in arguing for the relevance of the distinction between killing and letting die. That is, I presume that Baier would first argue for the claim that a sound morality would contain a prima facie duty against intending death as a means, and that he would then argue for the claim that there would be no similar prima facie duty against permitting avoidable but unintended deaths. As before, the crucial step would be the second, and I doubt that Baier could succeed in defending it adequately. (Absent specific arguments, there is not much more that can be said on this point; but to the extent that these arguments would be similar to Baier's attempts to argue against the duty not to let die, I think they would be subject to corresponding objections.)

But even if Baier were successful in establishing that a sound morality would contain a duty not to intend death as a means, while lacking any corresponding duty regarding "unintended" deaths, this would still leave Baier far from his desired conclusion that it is impermissible to kill Bill. For presumably the duty not to intend death as a means would only be a *prima facie* duty. Thus, in certain situations, despite this prima facie duty, intending death as a means would still be permissible *all things considered*. Indeed, since Baier is committed to the permissibility of active euthanasia, and killing in self-defense, it seems clear that he will have to insist on this point himself. But this means that even if there is a prima facie duty not to intend

death as a means, and even though in killing Bill to save Anne we "violate" this duty, it still might be the case—for all that would have been shown—that killing Bill is permissible all things considered. And so Baier's argument would still be inadequate. In short, appeal to a prima facie duty not to intend death as a means would not be sufficient for Baier's purposes. Establishing Baier's claim—that killing Bill is impermissible all things considered—would require further argument, argument that goes well beyond anything Baier himself offers, or even hints at. For myself, I see no reason to believe that any such further arguments would be successful.

I conclude therefore that Baier's attempt to "draw the line" is unsuccessful. As we have seen, as a sophisticated friend of ordinary morality Baier believes that at times it is permissible to kill. But like all true friends of ordinary morality, he also believes it *impermissible* to kill an innocent person so as to use his organs to save the life of another. I have argued, however, that Baier is unable to *defend* this judgment. It simply does not follow—not even if we grant Baier his initial claim that killing is worse than letting die.

Of course, I have also argued that Baier is unsuccessful in his attempt to defend that basic principle as well. Thus I think Baier is in error when he claims that his general approach to the foundations of ethics is able to yield normative results congenial to ordinary morality. At any rate, this doesn't seem to be true with regard to some central judgments concerning killing and letting die. (Somewhat more cautiously, perhaps I should say that Baier's attempts to show how his general approach yields the normative judgments of ordinary morality in this area are unsuccessful, and that I don't see any promising suggestions that he overlooks.)

Assuming my arguments are correct, Baier's general approach fails to support the normative judgments concerning killing and letting die that Baier wants to endorse. As a friend of ordinary morality, this conclusion will of course disappoint Baier. But Baier had also hoped to provide "indirect support" (II, 13) for his general approach itself—by demonstrating how it generated the normative judgments that he took to be independently plausible. Baier's failure may thus go deeper than meets the eye. If—as I have argued—his general approach is incapable of supporting the normative judgments of ordinary morality, this may argue against the adequacy of that general approach. Or rather, this may be the conclusion that some of the friends of ordinary morality will feel compelled to draw.

On the other hand, for those of us who reject the intrinsic moral significance of the distinction between killing and letting die, and who want to allow for the permissibility of killing in a range of cases where this is ruled out by common-sense morality, Baier's failure is doubly welcome. Had Baier's general approach actually generated the normative results he claimed it would, I—and all those who reject those normative judgments—would have had to conclude that Baier's general approach was itself flawed. As it is, however, the possibility remains that although some of Baier's specific normative conclusions are unsound, his overall approach to the foundations of ethics is valid. But whether this is indeed so—that is, whether Baier's *foundational* views are correct—is a discussion that I must leave for another day.

Returning to the normative claims themselves, what are we to conclude? As I have already indicated, I believe we should conclude that the distinction between killing and letting die is simply without intrinsic moral significance. (Recognizing this, I think, would also go some way toward freeing us of the thought that there is some morally significant asymmetry in the case of Bill and Anne.) Of course, Baier's inability to establish the relevance of the distinction does not by itself show that the distinction truly lacks moral significance. But his failure is instructive. For unlike many who simply assume the relevance of the distinction uncritically (or who apply it uncritically) Baier is a sophisticate. He sees the need for argument here, and he tries to offer it. This makes his ultimate failure more significant. Perhaps, as I think, the reason why people like Baier and other friends of ordinary morality regularly fail to justify the intrinsic moral relevance of the distinction between killing and letting die is that this distinction simply has no intrinsic moral significance. Becoming a sophisticated friend of ordinary morality is not enough. In this area, and in this regard (at the very least) we must cease to be friends of ordinary morality altogether.

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Notes

1. In Kagan 1989, chap. 3.

2. In writing this paper, I follow the argument of Baier's 1990 Carus Lectures, "Three Linked Tasks for Ethics," which—unfortunately—have not been published. Baier's *The Rational and the Moral Order* covers the same material, in considerably greater detail; but the relevant portions of that work (mostly in book two) were not yet available when this paper was being written.

3. When referring to Baier's manuscript, I first give the lecture number, and then the page number within that lecture. This quotation is thus taken from the third lecture, pages 7 and 8.

4. The concept of an option is examined at length in Kagan 1989.