

THREATS, BYSTANDERS AND OBSTRUCTORS

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In this paper I argue that the widespread view that obstructors are a special sort of bystander is mistaken. Obstructors make Victim worse off by their presence, and thus are more properly described as innocent threats. Only those characters who do not make Victim worse off by their presence can be classified as bystanders.

I

Threats, Bystanders and Obstructors. Michael Otsuka suggests that an innocent threat is

... a person 'whose mere movements qua physical object or mere presence constitutes a threat to our life'. Such a person is not responsible for her endangering presence or movements because they are not voluntary, intentional, or welcomed by her, and are the product of circumstances completely beyond her control. (Otsuka 1994, p. 75)

Falling Person in *Ray Gun* is a paradigm of what is usually described as an innocent threat.¹

Ray Gun: Victim is trapped at the bottom of a well. Falling Person has been blown over the edge of the well. Falling Person will land on Victim and crush him to death against the ground unless Victim vaporizes Falling Person.

The defining feature of a bystander seems to be that she is not instrumental in Victim's death in the way that, say, a threat is. Otsuka

¹ See e.g. Nozick (1974, p. 34), Otsuka (1994), McMahan (2002, p. 409), Thomson (1991). I will not debate here whether killing innocent threats is permissible. But the reader should understand my notion of 'threat' to be a sort of *non-normative* notion, such that a person's being a threat does not in itself determine how we can permissibly treat her.

(1994, p. 75) describes a bystander as ‘someone who does not herself endanger your life and who is not responsible for what it is that does endanger your life’. An example of a typical bystander as given in the literature is depicted in *Tracks*:

Tracks: A runaway trolley is heading towards Victim, who is stuck on the trolley tracks. Victim can save his life only by switching the trolley to an alternative track. However, the trolley will then kill Worker, who is lying unconscious on the other track.

Most non-consequentialist moral theories hold that switching the tracks is impermissible. Victim is not permitted to save his own life at the cost of a bystander’s life.

Obstructors, ordinarily conceived, are a special sort of bystander. They are bystanders who do not themselves threaten Victim, but who, for example, block some route of escape that would otherwise be open to Victim. *Bridge* depicts such a person.

Bridge: Attacker is shooting at Victim. Victim’s only route of escape is a narrow bridge that will hold only one person. Pedestrian is innocently standing on this bridge. Pedestrian will be knocked off and killed if Victim runs across the bridge.²

Judith Jarvis Thomson represents the prevalent view when she claims that Victim cannot permissibly save his own life at the cost of Pedestrian’s life. Thomson (1991, p. 290) claims that for Victim to cross the bridge, when doing so will kill Pedestrian, will be for Victim to ‘ride roughshod over a bystander’.

I will argue that neither Worker in *Tracks* nor Pedestrian in *Bridge* is an innocent bystander. Both make Victim worse off by their presence, and thus are more properly described as innocent threats. Only those characters who do not make Victim worse off can be classified as bystanders.

² This example comes from Thomson (1991, p. 290). Thomson labels Pedestrian a bystander, rather than an obstructor, since she does not even distinguish between bystanders and obstructors.

II

What is a Bystander? Given that I have rejected the claim that *Tracks* illustrates a bystander in Worker, I had better explain what I take a bystander to be. Compare the *Tracks* case that we just looked at with *Trolley*.

Tracks: A runaway trolley is heading towards Victim, who is stuck on the trolley tracks. Victim can save his life only by switching the trolley to an alternative track. However, the trolley will then kill Worker, who is lying unconscious on the other track.

Trolley: A runaway trolley is heading towards Victim. Bystander is standing by the side of the tracks. Only by shooting Bystander, causing her to fall in front of the trolley, can Victim save his own life. (Thomson 1991, p. 290)

Thomson says that in both of these cases, Victim's saving of himself would entail impermissible bystander killing. But it seems to me that in *Tracks* Worker is in fact a *threat* to Victim, not a bystander. Worker's presence alters what Victim can do in the name of self-preservation, making Victim worse off. If Worker had been absent, Victim would not have been killed, since he could have redirected the trolley. It seems to me to be wrong, therefore, to argue that Worker does not contribute to Victim's death in *Tracks* in the event that Victim decides against switching the tracks because of Worker's presence. And it is contrary to the definition of a bystander that they be instrumental in Victim's death.

It is only *Trolley*, then, that is an instance of genuine bystander killing. In *Trolley*, Victim is not worse off for Bystander's presence than he would have been in Bystander's absence. It is only *because* of Bystander's presence that Victim has a possible escape route at all, albeit one that he is not permitted to take. Thus, Bystander in *Trolley* meets the criterion that I have suggested of not making Victim worse off by her presence.

III

Culpability and Threats. We can find strong support for my claim that obstructors are threats by thinking about culpability. It is often thought to be a tautology to describe a person as an *innocent* bystander. Innocence, we think, is captured by the term ‘bystander’: there is no sense in which one can be a *culpable* bystander.³

What happens if we consider the cases I have discussed in a different light? Consider:

Deliberate Tracks: Worker sees a trolley approaching Victim. Worker knows that Trolley Driver will not switch the tracks if Worker is on the alternative track. Worker could easily move, but she intentionally remains on the alternative track. Trolley Driver does not switch the tracks.

Worker’s position in *Deliberate Tracks* is the same as in *Tracks*. We were supposed to think that in *Tracks* Worker was a mere bystander: that by being on the other track she played no part in the threat to Victim’s life. Now that she *intends* to be on the tracks, however, Worker not only seems like a threat, but a culpable threat whom Victim would be permitted to kill, if he were able. But the fact that Worker *intends* to make Victim worse off cannot be *what makes* Victim worse off. Her role in Victim’s death is the same in both cases: it is only her culpability in playing that role that changes. It looks very much as if Worker was a threat all along.

As I have defined ‘bystander’, there is just no sense in which one could be a bystander culpably. It makes no sense to think of Bystander in *Trolley* playing her role culpably. There is nothing that it would look like for Bystander to be culpably ‘not making Victim worse off by her presence’. Thus, my account offers a definition of a bystander that is more restrictive than the traditional view, but more consistent with our notions of culpability and innocence.

³ We should distinguish here between culpability and responsibility. A bystander can be responsible for their position (in that they acquired their position through a voluntary exercise of their agency) without being *culpable* for their position. Culpability implies that a person is blameworthy for their position: that they have acted wrongly and without excuse. I do not think that we can make sense of a *culpable* bystander.

IV

The Normative Barrier Objection. What I want to do now is defend my position against the best objection to it that I have come across. The Normative Barrier objection holds that we can distinguish between threats and obstructors because threats present a *causal* barrier to Victim's survival. Obstructors, in contrast, pose only a *normative* barrier to Victim's survival: they threaten Victim only because Victim takes it to be wrong to kill obstructors. Obstructors make Victim worse off because of some *belief* that Victim has about the impermissibility of killing obstructors. So, the objection goes, the distinction between threats and obstructing bystanders holds.⁴

Compare *Ray Gun* with *Tracks*. The idea behind the Normative Barrier Objection is that in *Ray Gun* Falling Person poses a threat to Victim irrespective of Victim's beliefs. We think that Falling Person threatens Victim, even though Victim can escape this threat by killing Falling Person. She is, after all, about to crush Victim to death.

We also want to say of *Ray Gun* that if Victim does nothing, Falling Person kills Victim. But if Victim does not redirect the trolley in *Tracks*, we want to say that it is the *trolley* that kills Victim. We don't want to say that *Worker* kills Victim. And we might think that this is why Falling Person is said to threaten Victim even if Victim can and does kill Falling Person before that threat eventuates in harm.

In contrast, *Worker* threatens Victim only because Victim believes that he cannot permissibly kill *Worker*. A defender of the Normative Barrier Objection might support this view by hypothesizing Less Moral World, in which nobody has any qualms about killing obstructors. In *this* world, Victim is happy to switch the tracks, killing *Worker*. It doesn't seem as if *Worker* has made Victim worse off in this case. Once we absent the belief, *Worker* poses no threat to Victim.

But I don't think this objection is going to work. If we're happy to label Falling Person a threat to Victim even in the event that Victim kills Falling Person, why can't we say that *Worker* threatens Victim even if ultimately she doesn't make Victim worse off because Victim kills her? Victim's belief that it is permissible to kill Falling Person in *Ray Gun* does not show that Falling Person is not a threat to Victim. So why should Victim's belief that it is permissible to kill *Worker* in Less Moral World be taken to show that *Worker* is not a threat to Victim?

⁴ See Lang (2007, §IV) and Rodin (2002, p. 82) for discussions of this objection.

We can properly call Falling Person a threat even if Victim can eliminate her: an escapable threat is still a threat. But Falling Person doesn't really seem to make Victim any worse off in the event that Victim kills Falling Person. What leads us to label Falling Person a threat is the fact that she *will make* Victim worse off if Victim is killed. But this could be equally true of Worker. If Victim doesn't switch the tracks, he *will be* made worse off, since he will be killed.

The obvious reply is to this is that Victim will indeed be made worse off, but not by Worker. Victim will be made worse off by the trolley. In *Ray Gun*, however, it is clearly Falling Person who makes Victim worse off, since it is Falling Person who kills Victim. The difference between threats and obstructors is preserved. But this reply is undermined when we think about the circumstances under which Victim could be made worse off in this way: how it could come about that Victim does nothing in *Ray Gun* or *Tracks*.

If Victim does nothing in *Ray Gun*, it must be for one of two possible reasons. The first is that Victim *believes that it would be wrong* to kill Falling Person. The second is that Victim is *unable* to kill Falling Person. If, on the one hand, Victim does nothing because he believes that it is wrong to kill Falling Person, it starts to look as if Falling Person's presence is a normative barrier to Victim's survival. It is, ultimately, because of his *belief* that killing Falling Person is wrong that Victim is killed, just as he is killed because of his belief if he decides not to kill Worker in *Tracks*. Here, the distinction between threats and obstructors disappears. Both pose normative barriers to Victim's survival.

But what if, on the other hand, Victim does nothing because he is *unable* to kill Falling Person? Consider *Helpless Ray Gun*, in which Victim has no ray gun and is unable to prevent Falling Person's landing on him. When Victim *cannot* prevent Falling Person's landing on him, we are happy to say that Falling Person kills Victim. But if Victim is unable to switch the tracks in *Helpless Tracks*, we are *not* happy to say that Worker killed Victim. The trolley kills Victim. So, for a moment, it looks as if the distinction between threats and obstructors reappears.

But this, of course, is mere illusion. If Victim is unable to switch the tracks, he has no possible escape route that he would take in the absence of Worker.⁵ In this case, Worker does not make Victim

⁵ Note that this case differs from *Deliberate Tracks*, in which Victim did have a possible escape route, namely that Trolley Driver redirect the trolley.

worse off by her presence. And so, on my account, Worker in *Helpless Tracks* is not an obstructing threat. Worker presents *no* sort of barrier to Victim's survival: she obstructs nothing. So we cannot establish a distinction between threats and obstructors by showing a distinction between *Helpless Ray Gun* and *Helpless Tracks*, because there *are* no obstructors in *Helpless Tracks*. And thus, the Normative Barrier Objection fails.

V

Conclusion. I have argued that it is a mistake to think that obstructors are a sort of bystander. If we conceive of a threat as someone who makes Victim worse off by her presence, we can see that obstructors are a type of threat. By considering culpability, I suggested that the criterion of 'making Victim worse off' coheres well with our intuitions regarding the possible role of a bystander. I rejected the Normative Barrier Objection to classifying obstructors as threats. A threat can make Victim worse off either because Victim believes it impermissible to kill the person posing the threat, or because Victim is unable to kill the person posing the threat. The belief-mediated option fails to distinguish threats from obstructors. And in cases where Victim is unable to escape some threat, questions of obstructors do not arise.

I should say briefly that I am not arguing here for equal permissions of defence against Falling Person and obstructing innocent threats like Worker. There are morally relevant distinctions between these characters. But what is clear, I think, is that the threat-bystander distinction is not among them.⁶

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