

Jesse Spafford
Comments on Crummett and Swenson

To begin, it will be helpful to present a *very* brief reconstruction of Crummett and Swenson’s argument. Specifically, I suggest that their argument rests upon what I will call the “beneficence test,” which can be stated as follows:

The Beneficence Test – an action that affects a moral patient passes the beneficence test iff it maximizes her odds of survival.

Crummett and Swenson’s argument holds that if some composite action is composed entirely of sub-actions that pass the beneficence test, then it is permissible, *ceteris paribus*. Thus, in *Six Tracks*, pushing the six suitcases is permissible, as each component push passes the beneficence test. And, because gun control is relevantly similar to a policy of pushing in *Six Tracks*, they conclude that gun control is also permissible.

However, there is a serious objection to this argument—anticipated by Crummett and Swenson—which holds that gun control is *not* relevantly similar to the “push” option in *Six Tracks*. Specifically, unlike the “push” option, the component sub-actions of gun control *do not* each pass the beneficence test, as taking each individual person’s gun does not maximize her chance of survival. Rather, each individual act of gun-taking will actually *lessen* her probability of surviving, as she will no longer be able to defend herself (assuming that possessing a gun even marginally increases one’s odds of surviving an attack). Thus, one of Crummett and Swenson’s premises seems false.

Crummett and Swenson provide two responses to this objection. First, they argue that if one wanted to sustain the analogy with *Six Tracks*, then gun control would have to take the form of stripping everybody *except one person’s* guns. Only a rival policy of this form, they argue, would have component actions that passed the beneficence test, as the person in question would

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still be able to defend herself, plus would face less danger due to others losing their guns.¹

However, they also contend that such a policy would be impermissible on Dworkinian grounds, as a state must show equal concern for all citizens. Thus, given that a gun control policy that sustained the analogy with *Six Tracks* would be impermissible they conclude that a universal gun control policy composed of many individual sub-actions that do not pass the beneficence test is permissible, as a gun control policy whose constitutive actions *do* pass the beneficence test would not be permissible.

However, the fact that a gun control policy analogous to pushing in *Six Tracks* is impermissible does not imply that a gun control policy that *is not* analogous *is* permissible. Or, to put this point somewhat differently, the original argument posited a specific sufficient condition for the permissibility gun control, namely it is permissible if it is relevantly similar to the act of pushing in *Six Tracks*. The objection then noted that this sufficient condition is not met. Given this, the fact that a rival version of gun control happens to be impermissible does not show that the condition is met. Indeed, it might both be the case that the rival policy is impermissible and that the preferred gun control policy fails to meet the sufficient condition of permissibility. Thus, the first reply fails.

The only obvious way that the impermissibility of rival policies would bear upon the permissibility of the preferred gun control policy is if it were invoked as part of an argument by elimination. If Crummett and Swenson were able to present an exhaustive list of policy options

¹ It is actually a bit unclear to me why Crummett and Swenson believe that this rival proposal has sub-actions that pass the beneficence test. After all, even though one person is exempted from having her guns taken, everyone else still has their guns taken, meaning that one might still ask if each of *these* remaining takings pass the beneficence test—with the apparent answer being “no” as each act of taking still renders the affected party less safe. However, I set this worry aside to focus on what I take to be a more serious problem with this reply.

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and show that all rival actions were impermissible, then it might follow that the preferred policy was permissible. However, first note that such an argument would render the appeal to Hare's thought experiments superfluous. More important, Crummett and Swenson merely show that one rival policy is impermissible, meaning that they cannot be understood as providing us with an argument by elimination here—particularly given that Huemer's preferred policy of "no gun control at all" remains a viable, seemingly permissible option.

There is a possible alternative route for Crummett and Swenson. Specifically, they might abandon *Six Tracks* and, instead, argue that the permissibility of a composite action need not rest on all of its sub-actions passing the beneficence test; rather, the action might be permissible if *it* passes the beneficence test such that the entire composite action maximizes each person's chance of survival. To support this more permissive premise, though, it would have to be the case that any composite action that (a) passes the beneficence test but (b) is composed of actions that *do not* pass the beneficence test is, nonetheless, (c) permissible. However, it appears that there are cases where conditions (a) and (b)—but not (c)—are met. for example, consider the following case:

Wolves – A large group of villagers live in a forest where a pack of wolves hunts at night. If people are given the opportunity to defend themselves, they can typically fend off the wolves, but the wolves are persistent, and will typically continue to hunt until they kill two people—one for food and one in retaliation for the villagers' defensive efforts, which the wolves find deeply vexing.

In response to this dire situation, a reformer proposes that, every night, all the villagers should be tied to trees. Being tied up in this way would leave the villagers unable to defend themselves from the wolves, meaning that one person who likely would not have otherwise been eaten will be eaten. However, this would also placate the wolves, leading them to not kill the second person, thereby maximizing everyone's odds of survival. The villagers have mixed views about this reform, but with night approaching, you have the opportunity to unilaterally carry it out and tie them to trees. Can you permissibly tie up the villagers?

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The suggestion here is that tying up the villagers is impermissible in this case. But, if this right, then it would follow that a composite action passing the beneficence test is not sufficient for establishing its permissibility. Thus, the suggested modification of Crummett and Swenson's first reply still would not succeed.

What about the second reply? Here, Crummett and Swenson argue that each act of gun-taking that compose the composite action of implementing gun control *might*, in fact, pass the beneficence test, as the lowered risk of suicide accompanying each act of gun-taking might exceed the increased risk of death due to loss of self-defense capabilities. Thus, the analogy with *Six Tracks* would be sustained.

Conceding the empirical point, this reply is valid, but there are still grounds on which a principled opponent of gun control—or, someone committed to rights more generally—might reject it. Note that, so far, the beneficence test has been formulated in terms of survival: some action passes the test iff it increases the patient's chance of surviving. However, upon reflection, this test seems far too permissive for it to be acceptable to any person who embraces a rights-based moral framework, let alone their antagonist, Huemer.

To see this, consider a proposed ban on scuba-diving (via the confiscation of all scuba gear). Such a policy would be intolerable to most rights proponents—and, perhaps, to most liberal thinkers who would likely view such a policy as an unacceptable constraint upon liberty. However, the policy would also almost certainly be permissible given Crummett and Swenson's other premises, as each of its component sub-acts of confiscation would pass the beneficence test as it has been formulated thus far. To see this, note that the estimated mortality rate of scuba diving runs as high as 16.4 deaths per 100,000 divers per year (contrast this with the rough

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suicide rate among gun owners of 19.9 deaths per 100,000 gun owners per year).² Given that the government cannot determine who is more at risk of dying while scuba diving, each confiscation of a person's scuba gear would pass the beneficence test, as it would, from the agent's perspective, maximize that person's chance of survival. Thus, the beneficence test proves to be too permissive, as its incorporation into Crummett and Swenson's broader argument would force them to declare an impermissible infringement of rights to be permissible.

However, the beneficence test can be adjusted to avoid this *reductio* by replacing references to survival with references to rights violations. Thus, one might posit something like the following:

The Right-to-Life Test – an action affecting a moral patient passes the right-to-life test iff it maximizes her odds of not having her right to life violated.

A more thorough endorsement of this test would have to specify the conditions under which one's right to life is violated. However, for these purposes, it is sufficient to observe that each patient in *Six Tracks* is seemingly at risk of having her right violated by the trolley drivers—and, thus, each component act of pushing passes the right-to-life test, rendering the composite act of pushing permissible. By contrast, scuba divers are presumably not at risk of having their right to life violated, as one might plausibly hold that they waive said right by voluntarily engaging in an easily-avoidable activity that foreseeably might result in death. Given this, stopping each diver from diving or taking her gear would not pass the right-to-life test, meaning that Crummett and Swenson would not have to declare the composite action that constitutes the scuba ban to be

² The scuba diving figure can be found in: Vann R. D., Lang M. A. eds. (2011). *Recreational Diving Fatalities. Proceedings of the Divers Alert Network*. 2010 April 8-10 Workshop. Durham, N.C.: Divers Alert Network. For an estimate of the number of gun owners in America, see: Kalesan, B., Villarreal, M. D., Keyes, K. M., & Galea, S. (2016). "Gun Ownership and Social Gun culture. *Injury prevention*, 22(3), 216-220. For an estimate of the number of gun suicides (with it here assumed for simplicity that all suicides were committed by gun owners), see: Center for Disease Control and Prevention (2016). "FastStats: Suicide and Self-Inflicted Injury." Accessed 07-05-2018 from <https://www.cdc.gov/nchs/fastats/suicide.htm>.

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permissible. Thus, replacing the beneficence test with the right-to-life test would seem to generate the correct result in both *Six Tracks* and the scuba ban case, making the latter test the one that Crummett and Swenson ought to embrace.

However, if one accepts this replacement, then one must also reject Crummett and Swenson's second reply. For, although each act of gun-taking passed the original beneficence test (because such acts maximize each patient's odds of survival via reducing their odds of committing suicide), such acts do *not* pass the right-to-life test. To see this, note that a person who intentionally commits suicide seemingly waives her right to life—and, thus, her act would not qualify as a violation of said right. Given this, the fact that acts of gun-taking reduce the moral patient's chances of suicide does not imply that they increase her odds of not having her right to life violated. Thus, the component sub-actions of gun control do not pass the right-to-life test, which it has been argued must be an essential premise in the argument for the permissibility for the composite action of gun control. Given this, Crummett and Swenson's second reply also fails to show that gun control is permissible.