

## Refraining, Omitting, and Negative Acts

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Action theory has been primarily concerned with the question of what it is to do something, along with such subsidiary questions as what is to do something intentionally and what it is to do one thing by doing another. It has tended to neglect the question of what it is to fail to do something. As we will see, there are different ways in which one cannot merely not do something, but fail to do it.

Just consider that at any given moment, including this one, there are countless things you are not doing but very few things (if any) you are failing to do. I bet that at this moment you are not standing on your head or playing a clarinet, much less rescuing someone from a burning skyscraper. Obviously, there is not much point in asking what it is not to do any of the countless things that you could conceivably be doing, and not just because you lack the ability or the opportunity to do most of them. You might not have had the ability to play a clarinet or the opportunity to rescue someone from a burning skyscraper right now, but you could have easily scratched your head or wiggled your right index finger just then. Even though you probably didn't do either one, you didn't *fail* to scratch your head or wiggle your finger, certainly not if you didn't even consider doing them. On the other hand, now that I've mentioned them and implicitly raised the possibility of doing them, the situation is rather different. If you don't scratch your head or wiggle your right index finger *now*, you have refrained from doing these things. But change the example. Suppose you intended but have forgotten that you were to call your spouse just about now. Even though you hadn't considered (until I mentioned it) that you were to have made this call, in which case you can't be said to have refrained from making it, still you failed to make it. These examples illustrate that there are different ways of failing to do something.

A little reflection should reveal that there are at least four ways of not only not doing something but of failing to do it: (trying and) *not succeeding*, *refraining*, *omitting*, and (some cases of) *allowing*. I don't know if these exhaust the possibilities, but they seem to comprise the main cases, not that they are mutually exclusive. In the following section we will distinguish them and then, in the next two sections, look further at refraining and omitting. We will consider not only what they involve but also whether there can be *acts* of refraining or omitting. In the final section, we will take up the question of whether in any interesting sense there are negative acts of any sort, that is, *acts* of not doing something, as opposed to failures to do something.

## Ways of Failing to Do Something

Perhaps the most obvious way to fail *to* do something is to fail *at* doing it, to try but not succeed. There are different possible reasons for failing in this way, depending on whether the failure is due to lack of ability, inadequate effort, faulty execution, insufficient information, deficient resources, or lack of cooperation from other people or from nature. Trying and failing is a worthy subject but, except insofar as it can involve refraining or omitting, it falls outside the scope of this article.

To refrain from doing something is, at least at a first approximation, to consider doing it but deciding not to, and thereby not doing it or not even trying to. It seems to follow that refraining must be intentional. Indeed it might seem that all cases of refraining are intentional omissions, but it turns out that only some are.

An omission is a failure to do, or even attempt to do, something that in one way or another one is 'supposed to do,' for instance leaving out a step in a procedure or not fulfilling a responsibility. Omissions can be unintentional, as when one forgets to do something, or intentional. Intentional omissions can be refrainings, but not all are, since one can omit doing something that one *previously* decided against doing. Conversely, not all refrainings are intentional omissions, since one can refrain from doing something that is not something one is supposed to do. In that case there is nothing to omit. And unintentional omissions are not refrainings, for one can fail to do something that one is supposed to do without considering doing it, much less deciding not to do it.

Finally, there is the case of allowing. Ethicists have spilt much ink debating the moral and metaphysical differences between doing and allowing, as in the morbidly popular case of killing vs letting die. Whereas doing in this context means making something happen, allowing is standardly understood as failing to prevent something from happening. I say 'standardly' because some cases of allowing involve removing or disabling an obstacle to the event in question (there is also allowing in the irrelevant sense of granting permission). Contrast, for example, allowing your cat to go outside by opening the back door with allowing her to go outside by not closing the door. The first, allowing by enabling, is an act; the second, allowing by failing to prevent, is not an act. And not just any instance of not preventing an event counts as allowing the event to happen, for then each of us would be allowing all the countless things that are going on right now. There are three ways of allowing an event to occur by failing to prevent it (and not merely by not preventing it): trying but not succeeding at preventing it, refraining from preventing it, and omitting to prevent it. These are cases of the three kinds of failing we have already identified.

In what follows we will refrain from and omit discussing trying and failing. And, since instances of allowing are, as just observed, cases of one of the other kinds of failing (leaving aside allowing by enabling), we will not take up allowing any further either (it has received plenty of attention in the literature on doing and allowing). Our focus will be on refraining and omitting. One question to ask is whether, despite there being ways of failing to do something, failings are nonetheless actions of a sort. Later we will also touch on the question of whether there are such things as negative acts, that is, on whether any instances of not doing something can themselves be cases of doing something (else).

### **Refraining**

What is it that distinguishes refraining from other ways of failing to do something? For starters, it seems that, unlike trying and not succeeding and unlike (unintentionally) omitting to do something, when one refrains from doing something one *decides* not to do it. It might even seem that *any* case of deciding not to do something counts as refraining from doing it. That can't be right, though, if only because deciding now not to do something later is not refraining, either now or later (one might fail to refrain later, or just change one's mind about not doing it).

Having the ability and the opportunity to do something seems necessary for refraining from doing it. For example, if you enter a room and decide not to turn on the light, you don't refrain from turning it on if you can't reach the light switch or if the light bulb is burned out. That is because the light would not have gone on even if you had tried to turn it on. The most that your decision can explain is that you refrained from *trying* to turn on the light. Is it also necessary, as O. H. Green has suggested (1980: 189), for one to be aware that one has the ability and the opportunity? That seems doubtful, although something weaker might be required, namely for one not to think that one lacks the ability and the opportunity. (The analogous point applies to Patricia Milanich's suggestion (1984: 65) that thinking that one can do something is necessary for refraining from doing it: not thinking that one can't do it seems to suffice.) Actually having the ability and the opportunity is necessary. That's why most of us can't refrain from lifting a grand piano, even if we are under the mistaken impression that we can lift it.

Not only does deciding not to do something while having the ability and the opportunity to do it seem necessary for refraining from doing it, but it seems that, as Robert Moore has suggested, "it is because of this decision" that one does not perform the action (1979: 415) or, we should add, even attempt to do it. That is, one's decision not to do it must have some connection with one's not doing it; the latter must be explained by one's decision rather than by anything else. But just what could that connection amount to? Obviously, it cannot mean (in above example) that your decision not to turn on the light led you to do something more than make the

decision. No action is required. And it can't mean that the decision prevented you from turning on the light, for the decision doesn't deprive you of the ability and opportunity to do it and, indeed, you could have immediately changed your mind and turned on the light after all. Could it mean that the decision caused you not to turn on the light? Matters get delicate here, since it is not clear that not doing something can be caused. After all, there was no event of not turning on the light to be caused – to prevent an event from occurring is not to cause the event of its non-occurrence – and it seems that the absence of an event cannot have a cause (here I am siding with Phil Dowe (2004) in his debate with Jonathan Schaffer (2004) on the case against negative causation)

Moore himself does not explicitly consider and reject these possible readings of his connection condition, and his own is clearly weaker: “the decision not to [turn on the light] is a necessary condition” of your not doing it (1979: 416). He points out why this is not a sufficient condition for refraining. Suppose you are at a concert and, feeling a cough coming on, you stifle it. Although you have resisted the cough, you have not refrained from coughing. That is because the coughing would not have been done intentionally. Rather, you prevented yourself from (unintentionally) coughing. In contrast, if a burglar were about to cough in order to signal his accomplice to follow him but, upon hearing a voice, decided not to (so as not to give himself away), he would have refrained from coughing. In that case, not only would he have coughed had he not decided not to, but he would have done so because of the decision to do so.

This contrast suggests the following necessary condition on refraining: an agent refrains from doing a certain thing only if, had she not decided not to do it, she would have decided to do it and would have done it (or at least tried to do it) because of that decision. This formulation aims to capture the key role of deciding in refraining: in circumstances in which the agent can refrain from performing a certain action, deciding not to perform it is the alternative to deciding to perform it and, therefore, insofar as the agent would have carried out the decision to perform it had he so decided, the decision he actually made explains why he does not perform it.

But is this condition really necessary? It says that in order for deciding not to do something to count as refraining from doing it, the agent would have decided to do it, had he not decided not to. To be sure, under the circumstances his options were to do it or not to do it, but this does not mean that he had to make a decision one way or the other. Had he not decided not to do it, perhaps he would not have made up his mind before the opportunity to do it had passed. Although not making up his mind was not one of his *options*, still it was a possible alternative to his deciding either way. But if he could have failed to make up his mind instead of deciding to perform the action, it would not be the case that if he had not decided not to perform it, he would have decided to perform it. This suggests that Moore's original condition, that deciding not to

perform the action is necessary for his not performing it, is too strong. However, one might reply that, if the agent does not perform the action because he has not decided one way or the other, he has not *refrained* from doing it but has merely missed the opportunity to do it – he has *omitted* doing it by failing to decide to do it when the opportunity was there.

Is there any special motivational condition on refraining? In particular, does refraining from doing something require that one should have at least some inclination to do it? That may be necessary for *forbearing*, but it seems too strong a requirement on refraining in general – unless the mere fact that one considers performing the action counts as a minimal inclination to do it. But that trivializes the suggestion. Clearly one can decline an unwelcome invitation or refuse to obey an unreasonable order without having any inclination to perform the act in question. However, there are a couple of special cases in which, as with forbearing, the agent does have an inclination, indeed a strong one. These involve repeated or protracted refraining, as in *abstaining* from an action that one has the nasty habit of repeatedly engaging in or in *forswearing* some tempting activity.

Beyond deciding not to do something, is refraining itself an action? Refraining from doing one thing can involve doing something else, but Myles Brand has maintained that “refraining is itself a kind of action” (1971: 46). He bases this on the claim that refraining from doing one thing requires doing something else to prevent it (*ibid.*, p. 49), but even that is not true. To be sure, in cases where the temptation to do something is very strong, it may take more than a decision to keep oneself from yielding. For example, if you discover a pint of irresistible marble fudge ice cream in the freezer, in order to keep from eating it you might have to throw it out. However, once you throw it out you are no longer in a position to eat it – the opportunity is gone along with the ice cream. So you can no longer refrain from eating it. But, before you threw it out, your decision, not some action, was what kept you from eating it. Throwing it out was the means by which you ensured that your decision would not be reversed, but it was not itself an act of refraining.

### **Omitting**

Omitting to do something is not simply not doing it. If it were, then we would each be omitting to do innumerable things at every moment. That is absurd. What, then, is required for not doing something to count as an omission?

As the ordinary use of the term implies, omitting is leaving something out, and in this sense we commonly speak of omitting something or someone. But we also speak of omitting to do something, and that is our concern here. There are different reasons why not doing something can count as an omission, but they all seem to be cases of failing to do something that one is, in a

conveniently broad and vague sense, 'supposed to do.' One obvious case is neglecting to execute a step in a procedure, for instance not cleaning a surface before painting it or not adding baking soda to a batch of batter. Equally obvious is the case of not fulfilling a duty or responsibility, for example not showing up for work or not scrubbing before performing surgery. But even the case of not fulfilling a mere expectation can count as omitting, as when one doesn't greet a neighbor walking by. It could be an intentional omission, a snubbing, or just a case of being preoccupied. Finally, there is the case of failing to carry out a prior intention. If you plan to call someone when you get home and then forget, that's an omission.

So there are various kinds of reasons for which one can be 'supposed to do' something. Since they are all normative in one way or another, what counts as an omission is itself partly a normative matter. That is, there is no norm-independent fact of the matter as to whether someone has omitted doing something rather than has merely not done it. If it is unclear whether someone was supposed to do something that they didn't do, then it is unclear whether or not they omitted doing it, especially if it didn't even occur to them to do it.

Omissions can be intentional or unintentional or, as Patricia Smith (1990) puts it, 'conscious' or 'unconscious.' She reminds us of the familiar legal doctrine that omissions can be negligent even without being conscious. One can omit doing something intentionally or out of ignorance, forgetting, distraction, or carelessness. Take the case of not discharging a duty. A lifeguard is responsible for rescuing swimmers in jeopardy. Failing to rescue a swimmer could be intentional, say if the lifeguard sees the struggling swimmer but would rather not miss the rest of the music he is listening to. Or he could fail to rescue the swimmer because, having become engaged in a conversation, he gets distracted. Or, due to the heat, he could carelessly allow himself to nod off, not waking up until it's too late. Notice that an omission can be culpable even if it is not intentional.

Are omissions actions? We do sometimes speak of acts of omission. Unintentional omissions certainly don't seem to be actions. To be sure, we sometimes speak of them as being causes. We might say, for example, that Jack's inadvertent failure to turn off his cell phone caused the concert to be disturbed, but it seems more accurate to say that the phone's ringing is what caused the disturbance. John's omission is part of the full causal explanation of the disturbance, but it is not itself a cause. But what if John had intentionally failed to turn off his cell phone, precisely in order to disturb the concert? He would certainly be causally responsible for the disturbance, insofar as his omission is part of its causal explanation, and there is a kind of counterfactual dependence between the disturbance and the omission. But all this doesn't make the omission itself a cause. To be sure, some have argued that omissions can be causes (see

Thomson 2003 and McGrath 2005), but even if they can be, it doesn't follow that they are actions (this is evident from the causal asymmetry that Carolina Sartorio (2005) has identified between actions and omissions).

### **Negative Acts: Inaction as Action?**

We have not found reason to suppose that refrainings or omissions are actions. Of course, they can 'occur' during in the course of performing an action. For example, in deliberately driving through a red light, a reckless driver refrains from stopping; a careless driver, not seeing the light until it is too late, neglects to stop. But this does not mean that driving through the red light is itself an act of refraining from stopping or of omitting to stop. But perhaps there are other cases of not doing something that are more plausible candidates for being actions. In addressing this issue, we need to make sure we don't trivialize it. Any action is, after all, a case of not doing something else, but that doesn't make it an *act* of not doing something else. For example, if I select one in an assortment of *hors d'oeuvres*, I have thereby not taken any of the others. My taking a bacon-wrapped scallop rather than a crabmeat-stuffed mushroom is a case of not taking the mushroom, but that doesn't make it an *act* of not taking the mushroom. Saying that it is would trivialize the claim that some cases of not doing something are acts.

Bruce Vermazen (1985) thinks that there are genuinely negative acts. Using the device of a hyphen to contrast, for example, 'not-moving' with merely not moving, he offers the example of resisting being pushed. By staying put, one can correctly be described as performing an act of not-moving. So-called human statues have turned not-moving into an art form of sorts. In maintaining a particular pose for many minutes, they perform the negative act of not-budging. But what does this show? Keeping oneself from moving is not merely refraining from moving, but actively preventing oneself from moving. So it is a positive action. It just goes to show that physical action does not always involve motion (see Brand 1971: 50).

Vermazen gives the example of refraining from taking an *hors d'oeuvre*. He has in mind not merely resisting the temptation to take one by exercising will power, as we colloquially say. He imagines keeping oneself from taking one by twiddling the buttons on one's shirt. The twiddling, he suggests, is also the negative act of not taking an *hors d'oeuvre*. He argues for this on the grounds that the twiddling is the means of not-taking – one not-takes by twiddling. Moreover, there aren't two acts, the act of twiddling and the act of not-taking. However, it doesn't follow that there is only one act, the twiddling, that is also an act of not-taking. Twiddling the buttons keeps one from taking an *hors d'oeuvre*, but it is not itself also an act of not-taking. If anything is identical with the not-taking, it is the refraining; but that is not an act. However, doing something as a *means to* not doing something else is not itself a *way of* not-doing that other thing.

A different kind of case to consider is that of resisting a physical urge, such as the urge to cough or laugh (I don't mean the case of refraining from voluntarily coughing or laughing). Resisting the urge just seems to be a case of preventing the cough or laugh from occurring. This, like any act of prevention, is a positive action, even though the result is negative.

We have not found convincing examples of negative acts in any interesting sense. Some acts are acts of standing fast, which Vermazen would describe as not-moving; but physical action does not require movement. Standing fast is keeping one's body from moving, and that is a positive action, like preventing an outcome of any other sort, be it the release of a physical urge or the dropping of a heavy object. And an act performed in order not to do something else is not itself the act of not-doing that other thing, and is certainly not itself the act of refraining from doing that other thing. If anything is equivalent to not-doing the other thing, it is the refraining; but refrainings aren't acts. And neither are omissions.

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