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Source: *Ethics*, Vol. 111, No. 2 (January 2001), pp. 219-255

Published by: [The University of Chicago Press](#)

Stable URL: <http://www.jstor.org/stable/10.1086/233472>

Accessed: 12/01/2014 12:38

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Doing Away with Double Effect*

Alison McIntyre

Proponents of the Doctrine of Double Effect make two claims: (1) it is sometimes permissible to bring about a harm as a merely foreseen side effect of an action aimed at some good end, even though it would have been impermissible to bring about the same harm as a means to that end, and (2) this is so because of the moral significance of the distinction between intending and foreseeing a harmful consequence of one's own agency. Thus Double Effect (henceforth DE) rests a claim about the conditions of permissible action on a distinction between two different ways of bringing about a harmful event: instrumentally, as a means to a good end, and incidentally, as a side effect of pursuing a good end.

Despite difficulties in formulating and applying DE, many morally reflective people have been persuaded that something along the lines of DE must be correct. No doubt this is because at least some of the examples cited as illustrations of DE have considerable intuitive appeal.

1. The terror bomber aims to bring about civilian deaths in order to weaken the resolve of the enemy: when his bombs kill civilians this is a consequence that he intends. The strategic bomber aims at military targets while foreseeing that bombing such targets will cause civilian deaths. When his bombs kill civilians this is a foreseen but unintended consequence of his actions. Even if it is equally certain that the two bombers will cause the same number of civilian deaths, terror bombing is impermissible, while strategic bombing is permissible.

2. A doctor who intends to hasten the death of a terminally ill patient by injecting a large dose of morphine would act impermissibly because he intends to bring about the patient's death. However, a doctor who intended to relieve the patient's pain with that same dose and merely fore-saw the hastening of the patient's death would act permissibly.

3. A doctor who believes that abortion is wrong, even in order to save the mother's life, might nevertheless consistently believe that it would be permissible to perform a hysterectomy on a pregnant woman

* For comments on earlier versions of this article I would like to thank audiences at Columbia, Harvard, and Brandeis Universities and Ruth Anna Putnam, Ken Winkler, and Adrienne Asch, my colleagues at Wellesley College. Comments and queries from editors and reviewers, and in particular Jeff McMahan, helped improve the final version.

Ethics 111 (January 2001): 219–255

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with cancer. In carrying out the hysterectomy, the doctor would aim to save the woman's life while merely foreseeing the death of the fetus. Performing an abortion, by contrast, would involve intending to kill the fetus as a means to saving the mother.

4. To kill a person whom you know to be plotting to kill you would be impermissible because it would be a case of intentional killing; however, to strike in self-defense against an aggressor is permissible, even if one foresees that the blow by which one defends oneself will be fatal.

5. It would be wrong to throw someone into the path of a runaway trolley in order to stop it and keep it from hitting five people on the track ahead; that would involve intending harm to the one as a means of saving the five. But it would be permissible to divert a runaway trolley onto a track holding one and away from a track holding five: in that case one foresees but does not intend the death of the one as a side effect of saving the five.

Some opponents of DE have objected to the absolute moral prohibitions which the traditional applications of DE illustrate. Since they have argued that what absolutists consider impermissible might in fact be permissible, this has tended to perpetuate the belief that seeing a genuine moral contrast in some of these examples commits one to accepting a secular version of DE which would explain why the prohibited option is impermissible. I will argue that this is a mistake: one can see genuine moral contrasts in some of these examples while rejecting DE's explanation of why they hold. In addition, because some critics have argued that the distinction between intended and merely foreseen consequences has no moral significance, those who think that the distinction between intended and merely foreseen consequences captures something morally important about the structure of practical reasoning have been sympathetic to DE. I will try to show that this also is a mistake. The examples adduced to support DE often do illustrate a moral contrast that can be expressed using the distinction between intention and foresight, but not the particular distinction between intending to bring about harm instrumentally and bringing about harm incidentally as a foreseen side effect that is supposed to serve as the normatively neutral ground of DE. I will conclude that a careful account of the moral contrasts illustrated by these examples will undermine rather than support DE.

If DE could be undermined, it would be possible to correct the distortions that have been produced in accounts of practical reasoning by theorists of two kinds: those who are skeptical of claims about the moral significance of the distinction between intended and merely foreseen consequences (often because they are skeptical about DE) and those who assume that the distinction between intended and merely foreseen consequences must be drawn in a way that would be consistent with DE. The first group will never be able to explain the tremendous intuitive grip of the DE examples; the second will never be able to incorporate

our intuitive judgments about the force of calling a harmful consequence “merely foreseen” into a coherent and suitably complex moral perspective.

To begin, I will introduce six constraints that should guide the formulation and use of DE. One goal in listing them is to engage in dialectical fair play by ruling out criticisms of the doctrine that are directed at misformulations of DE or that result from misapplications of it. Each of these constraints should be acceptable to any proponent of DE. Yet when these constraints on the application of DE are respected, it becomes clear that many of the examples provided as illustrations of DE actually illustrate other, more interesting uses of the contrast between intention and foresight.

SIX CONSTRAINTS ON THE APPLICATION OF DOUBLE EFFECT

The First Constraint: The fact that a harm was brought about as a merely foreseen side effect of pursuing a good end does not, all by itself, show that it was brought about permissibly. Other conditions of permissibility must be applied. A principle of proportionality is often mentioned in this connection, but this must amount to more than the simple requirement to weigh the value of the good end to be achieved against the disvalue of the harmful side effect.

Double Effect is often defended by the use of examples involving contrasting pairs of permissible and impermissible actions. When an author simply describes a harmful side effect brought about permissibly and a very similar result brought about intentionally and impermissibly, then the intuitive confirmation which DE receives from such examples depends on the assumption that the fact that the harm was a merely foreseen side effect in one of the two cases explains the permissibility of bringing it about in that case. Yet even proponents of DE would be wise to resist this natural inference, since DE interpreted in that way would license too much. After all, a doctor who intended to administer a lethal dose of morphine in order to end what was expected to be otherwise unrelievable but temporary suffering (when no terminal illness is present) may not cite the fact that he did not intend to cause death to justify his action! And the strategic bomber cannot defend just any bombing plan that will involve civilian casualties by insisting that the casualties were unintended. What was called a “Baedeker bomber” in World War II, one who targeted sites of cultural value, would act impermissibly though he foresaw but did not intend civilian deaths.

As we have so far formulated it, DE is entirely reticent about what constitutes a sufficient condition of the permissibility of bringing about a harmful but unintended side effect. It declares the existence of a class of exceptions to a prohibition on causing harm without defining the criteria for membership in that class. Discussions of DE often mention a

proportionality condition which must be satisfied if a merely foreseen harm is to be permissibly brought about. However, two quite different relations are cited as the proportionality condition. Some discuss the proportionality of the value of the aim to the disvalue of the harmful side effect. For instance, *The New Catholic Encyclopedia* lists as a condition that “the good effect must be sufficiently desirable to compensate for the allowing of the bad effect.”¹ James Sterba says that it must be the case that “the good consequences are commensurate with the evil consequences.”² Frances Kamm says that according to the traditional understanding of DE, “it is permissible to do what is not in itself bad (or omit an act) though this has a bad side effect, if the good we seek to achieve is greater than that bad. (This weighing of good and bad effects is the principle of proportionality.)”³ Others say that the reasons for pursuing the good end must be proportional to the reasons for avoiding the bad side effect. Tom L. Beauchamp lists both versions of the proportionality condition together: “The good effect must outweigh the bad effect. The bad effect is permissible only if a proportionate reason is present that compensates for permitting the foreseen side effect.”⁴

Elizabeth Anscombe has been especially forthright in emphasizing that “the principle of side effects” is not a package deal, consisting of both a prohibition and a permission, but a prohibition alone. It tells us that “the prohibition on murder does not cover *all* bringing about of deaths which are not intended. Not that such deaths are not often murder.”⁵ And as Anscombe points out, the first version of the proportionality condition, which weighs the disvalue of the harmful side effect against the value of the good end to be achieved, would negate DE’s force by making it a small exception to an otherwise consequentialist view. This version would use consequentialist reasoning to determine when merely foreseen harms may be brought about to further a good

1. F. J. Connell, “Double Effect, Principle of,” *The New Catholic Encyclopedia*, vol. 4 (New York: McGraw-Hill, 1967), pp. 1020–22, p. 1021.

2. James Sterba, “Introduction,” in *The Ethics of War and Nuclear Deterrence* (Belmont, Calif.: Wadsworth, 1985), pp. 2–3.

3. Frances Kamm, “The Doctrine of Double Effect,” *Journal of Medicine and Philosophy* 16 (1991): 571–85, pp. 571–72. It is not surprising, then, that she goes on to object that DE, understood in this way, fails as a sufficient condition of permissibility because it licenses too much (p. 573).

4. Tom L. Beauchamp, *Principles of Biomedical Ethics*, 4th ed. (Oxford: Oxford University Press, 1994), p. 207.

5. Elizabeth Anscombe, “Medallist’s Address: Action, Intention and ‘Double Effect,’” *Proceedings of the American Catholic Philosophical Association* (1982), pp. 12–25, p. 21. In her two-sentence essay, “A Comment on Coughlan’s ‘Using People’” (*Bioethics* 4 [1990]) dismissing Michael J. Coughlan’s discussion of DE (“Using People,” *Bioethics* 4 [1990]: 55–61), Anscombe accuses him of assuming that “‘the principle of double effect’ is supposed to exonerate a causer of any evils so long as they are not intended as means or end.” Her verdict: “Error” (p. 62). Coughlan actually made a different mistake: he assumed that simply weighing the side effect against the good that is aimed at is all that is required.

end. This is especially clear if DE is taken to provide a sufficient rather than a merely necessary condition of the permissibility of bringing about harm as a side effect.⁶

A more adequate formulation of the further condition on permissibility is offered by the second version of the proportionality condition, as stated, for example, by Joseph Boyle: harmful side effects are permissibly brought about only if “there are sufficiently serious moral reasons for doing what brings about such harms.”⁷ But of course its strength lies in its vagueness, as it is unlikely that a clear and unambiguous sufficient condition of the permissibility of causing harm as a side effect could be codified. This is what makes the use of examples so important, dialectically, in discussions of DE. All that the proponent of DE must claim, when presenting a pair of examples, is that some hard-to-describe moral threshold has been reached such that it is permissible to cause a certain kind of harm as a side effect in some specific set of circumstances.⁸ But the examples will illustrate the crossing of this rather inchoate threshold only if they are otherwise similar, differing only in this dimension, and it is DE, and specifically the distinction between instrumental intending and incidental foreseeing, that explains the difference in permissibility.

Once proponents of DE acknowledge that DE must be supplemented by other moral judgments in order to get a complete explanation of the permissibility of a course of action, then they face an important challenge: to show how DE still plays some role when those other moral principles are explicitly formulated. For example, it is not enough that the doctor in the morphine example intends to relieve pain and merely foresees the death; it also must be true, at the very least, that the illness is terminal, that death is imminent, and that the patient or the patient’s family consents. Once all this is spelled out, the skeptic about DE can ask: “Is it really true that under similar circumstances death could not be brought about intentionally in order to cut short the patient’s suffering?” Proponents of DE must be able to show that the justification for causing harm as a side effect would not also apply to causing the same kind of harm, in similar circumstances, as a means to the same good end.⁹

6. As is assumed by, e.g., Robert Hoffman, in “Intention, Double Effect, and Single Result,” *Philosophy and Phenomenological Research* 44 (1984): 389–93, p. 389.

7. Joseph Boyle, “Who Is Entitled to Double Effect?” *Journal of Medicine and Philosophy* 16 (1991): 475–94, p. 476.

8. Warren Quinn, who offered a subtle and plausible defense of a secular, nonabsolutist form of DE, argued that by distinguishing between two kinds of “morally problematic agency,” DE “favors and disfavors these forms of agency in allowing that, *ceteris paribus*, the pursuit of a great enough good might justify one but not the other” (“Actions, Intentions, and Consequences: The Doctrine of Double Effect,” *Philosophy & Public Affairs* 18 [1989]: 334–51, p. 335).

9. Kamm uses this sort of strategy to argue from the permissibility of causing death as a side effect in the morphine example to the permissibility of physician-assisted suicide

The Second Constraint: The agent must be disposed to minimize harms that are brought about as a side effect; if some other equally feasible course of action would realize the good result with less harmful side effects, then that should be pursued instead.

Consider a strategic bomber who plans to bomb a military installation; he foresees that civilian casualties would be a side effect of his action because the military target is near a market. He currently plans to bomb in the morning, but then it is pointed out that if he bombs instead in the late afternoon, there will be fewer civilians in the area because the market will be closed. Does DE have anything to say about the permissibility of bombing in the morning?

It often seems that people who believe that the status of the civilian casualties as merely foreseen side effects explains the permissibility of bringing them about also believe that as long as the bomber has “proportionate” or sufficient reason to aim at a military target despite the presence of civilians, then he is under no special obligation to minimize civilian deaths and therefore under no special obligation to reschedule the raid in light of this news.¹⁰ However, to reason in this way is to exaggerate the scope and force of the permission implicit in DE. Whether the bomber brings about civilian deaths permissibly should depend not only on whether he is pursuing a “proportionately” important end, but also on something that is more contingent and a matter of context: whether there is some other means available of achieving the good end that would involve causing less incidental harm.¹¹

The New Catholic Encyclopedia says of an agent contemplating causing harm as a side effect: “If he could attain the good effect without the bad effect he should do so.”¹² The rationale for this condition, that one

in her “Physician-Assisted Suicide, the Doctrine of Double Effect, and the Ground of Value,” *Ethics* 109 (1999): 586–605. Quinn argues that since this case does not involve the moral claims of different people, DE is misapplied to it. He remarks, “If stopping pain is urgent enough from the patient’s perspective to make death acceptable as a side effect, it ought to make death acceptable as a means” (“Actions, Intentions, and Consequences: The Doctrine of Double Effect,” p. 343, n. 17).

10. See, e.g., Joseph Boyle, “Toward Understanding the Principle of Double Effect,” *Ethics* 90 (1980): 527–38: “It is important to recognize that the PDE does not require that the foreseen consequences of acts be in no way relevant to determining the rightness or wrongness of the agent’s concrete behavior; they are relevant, but only in a subsidiary way. Thus, if the action is itself morally permissible, and if there is a serious reason for undertaking it, then it may be done morally no matter what the foreseen consequences may be” (p. 533).

11. Michael Walzer argues that tactical bombers must minimize civilian deaths even if these efforts involve greater risks or other costs (*Just and Unjust Wars* [New York: Basic, 1977], pp. 151–56); see also Judith Lichtenberg, “War, Innocence, and the Doctrine of Double Effect,” *Philosophical Studies* 74 (1994): 347–68, p. 355.

12. Connell, p. 1021. Suzanne Uniacke comments that “what the second condition clearly forbids is a situation of over-kill, where obliteration bombing is preferred when

should not cause unnecessary harm, would also seem to imply that if agents could attain the good effect while minimizing the severity or extent of the bad effect, they should do so. In some discussions, the proportionality condition, which balances in some way the reasons for promoting the good end against the reasons for avoiding the harm, is taken to include a condition of this kind.¹³ But proponents of DE often omit this sort of constraint.¹⁴

This constraint can be used to show that the morphine example is problematic in another respect as an illustration of DE. Although opioids are still the treatment of choice for pain relief, the delivery systems now available for these drugs have made the scenario in the standard DE illustration quite exceptional. Adequate relief for even very intense pain in terminal patients can be achieved for long periods (using epidural or spinal delivery systems, often controlled by the patients, that allow both basal and bolus doses) without slowing respiration or hastening death.¹⁵ Because of this, doctors who start a morphine drip using what they know to be a lethal dose without exploring the efficacy of these options are not simply choosing pain relief while foreseeing the hastening of death as a side effect. They are choosing pain relief and death when they have an alternative: pain relief without death. Even if it is true that the doctor does not intend to cause death and views death as an incidental consequence of relieving pain, this fact has little significance, and DE does not justify the doctor's choice. To cite DE in such cases is to implicate DE in a sort of in-

genuine military targets could effectively be hit by accurate pinpoint bombing, or where an atomic bomb is used in order to force the capitulation of a country already on the brink of surrender" ("The Doctrine of Double Effect," *Thomist* 48 [1984]: 188–218, pp. 201–2).

13. See, e.g., Germain G. Grisez, "Toward a Consistent Natural-Law Ethics of Killing," *American Journal of Jurisprudence* 15 (1970): 64–96, p. 78: "There must be a proportionately grave reason for doing the act. (One may not use a possibly deadly drug if a safer one is available)"; Jonathan Bennett, *The Act Itself* (New York: Oxford, 1995), p. 197: "The good is good enough, compared with the bad, and there is no better route to the former."

14. Timothy M. Renick argues that "the moral obligation to perform only the most proportionate act—the obligation to minimize evil—consistently present in the pre-1700 virtue literature, has been largely, if at times unconsciously, dismissed" ("Charity Lost: The Secularization of the Principle of Double Effect in the Just-War Tradition," *Thomist* 58 [1994]: 441–62, p. 457); see also Haig Khatchadourian, "Is the Principle of Double Effect Morally Acceptable?" *International Philosophical Quarterly* 28 (1988): 21–30, p. 25. Such a condition is missing or at least, left entirely implicit, in the version of DE formulated by the widely influential nineteenth-century Jesuit theologian J. P. Gury: "It is lawful to actuate a morally good or indifferent cause from which will follow two effects, one good and the other evil, if there is a proportionately serious reason, and the ultimate end of the agent is good, and the evil effect is not the means to the good effect" (cited in Joseph T. Mangan, S.J., "An Historical Analysis of the Principle of Double Effect," *Theological Studies* 10 [1949]: 40–61, p. 60).

15. See, e.g., K. M. Foley, "Misconceptions and Controversies Regarding the Use of Opioids in Cancer Pain," *Anticancer Drugs* 6, suppl. 3 (1995): 4–13; B. M. Onofrio and T. O. Yaksh, "Long-Term Pain Relief Produced by Intrathecal Morphine Infusion in 53 Patients," *Journal of Neurosurgery* 72 (1990): 200–209.

stitutionalized hypocrisy in which the neither-intended-nor-avoided side effect is not acknowledged as a significant cost of the doctor's decision.¹⁶ Without the second constraint on DE's application, the proponent of DE would have no grounds for objecting to that kind of misuse of DE.

Norvin Richards has observed that to say "I didn't intend it" about a harm that one wrongfully and knowingly caused or allowed does not always seem to have exculpating or even mitigating force, even when it is uncontroversial that the statement is true.¹⁷ Does DE imply that it should? Not if these two constraints are adopted. The proponent can reply that someone who says "but I didn't intend it" about a harmful side effect is not saying enough to fill out the kind of justification to which DE allegedly contributes. The agent must say, "I didn't intend it, the goal was an overridingly important one, there was no less harmful alternative, and I tried to minimize the likelihood and the impact of the incidental harm." An agent who doesn't satisfy these conditions is guilty of a fault not very different in gravity from that of the agent who aims at harm as a means, though this agent would be described as callous or reckless, rather than malicious.

The Third Constraint: Double Effect is not concerned with what agents intend to bring about as ends, or with their motives or ultimate aims; it is limited to a contrast between harms intended as means to a good end and harms foreseen as side effects of promoting a good end.

Sometimes DE is formulated in this way: "It may, in special circumstances, be permissible to bring about as a foreseen side effect a harmful result which it would be impermissible to bring about intentionally." Since a result that is brought about intentionally might be intended either as an end or as a means, this formulation is, implicitly, a double-barreled contrast: it contrasts merely foreseen harmful consequences with harmful consequences that are intended as a means while also contrasting merely foreseen harmful consequences with harmful consequences intended as an end.

There is nothing particularly controversial about the claim that it is worse to aim at harm as an end than to bring about harm as a foreseen side effect of promoting a good end, and opponents of DE can readily accept that there is a general moral prohibition on aiming at harm as an end. We ordinarily assume that harms to others should never be desired as an end and if brought about should be regretted and minimized. (An

16. There is no doubt that this actually occurs. See Thomas A. Preston, "Killing Pain, Ending Life," *New York Times* (November 1, 1994): "When physicians secretly and silently adapt a normal medical practice to hasten dying, we are on shaky ground indeed if we say that they may not do so openly and honestly."

17. Norvin Richards makes this point in "Double Effect and Moral Character," *Mind* 93 (1984): 381-97, pp. 392-93.

exception might be cases in which harms are thought to be deserved, as in retributive punishment.) In fact, the claim that it is in some sense worse to intend a harm because one desires it as an end than to foresee a harm as a regretted side effect of pursuing a good end deserves to be classified as a more general principle, perhaps even a platitude, that accompanies DE but neither justifies nor explains it. The conflation of the two different claims can be traced to the absolutist origins of DE. For the absolutist, the existence of an absolute prohibition on intentionally bringing about a certain class of harms underlies both DE and the platitude. Nevertheless, examples which confirm or illustrate the platitude do not illustrate or confirm the controversial claim that intending harm as a means to a good end is, other things equal, worse than foreseeing harm as a side effect of acting to realize the good end.

In giving a rationale for DE, many authors assimilate intending as a means to intending as an end. For example, Thomas Nagel argues that “to aim at evil, even as a means, is to have one’s action guided by evil. . . . But the essence of evil is that it should *repel us*.”¹⁸ If Nagel is simply saying that harm is evil, that is, a kind of natural evil, then it should repel us when we consider a plan that would bring about harm as a side effect as well. If Nagel is claiming that instrumental intending shares all of the objectionable characteristics of aiming at harm as an end, then skeptics about DE may well accuse him of simply begging the question against them. To intend harm only as a means to some good end is compatible with feelings of regret, reluctance, and, in short, a range of attitudes that would also be present in cases in which harmful side effects are present. Opponents of DE typically argue that a properly regretful agent with a clear-sighted grasp of just why she was causing a particular harm as a means to a good end would be able to acquit herself of the particular moral charge of manifesting a bad attitude or, more precisely, a worse attitude than what would be manifested if the harm were brought about as a side effect and so merely foreseen.

An important role played by this constraint is to combat the intuitive confirmation that DE seems to receive from examples contrasting agents who maliciously intend harm as an end and agents who act benevolently while they regretfully foresee harm as a side effect. If that same side effect could permissibly be brought about as a means, then DE may not be in play at all. To contrast a torturer and a dentist who cause exactly the same amount of pain in the same way with a dental drill and then to say that the dentist acts permissibly because he merely foresees that he will cause pain while the torturer acts impermissibly because he intends to cause pain is true, as far as it goes, but it does not illustrate DE. The dentist acts permissibly because he acts for a good end. After all, for the sake of that

18. Thomas Nagel, *The View from Nowhere* (New York: Oxford University Press, 1986), pp. 181–82.

good end we allow dentists to cause pain intentionally: we cooperate when they probe and apply pressure, saying “tell me where it hurts.” Or, to mention a doctor who “prescribes chemotherapy for cancer, knowing that this treatment also causes hair loss” or a teacher who “fails an essay that does not deserve to pass, knowing that the student will be upset” may help to show the moral importance of paying attention to differences in underlying motivation and favoring actions done for the sake of a good end, but such examples do not illustrate the distinction between incidental and instrumental harming found in DE.¹⁹ The doctor would be allowed to cause hair loss directly as a means to cure cancer, if that were possible, and teachers who play the devil’s advocate may upset students deliberately but permissibly.

If DE is presented as a general prohibition on intending harm, whether as means or end, then DE will approve and condemn the very same actions whenever the acts of incidental harming which DE is used to justify are carried out with secret and malicious intentions. For example, if I swerve the runaway trolley onto the track with one person on it, and away from the track with five people, then I do what DE is frequently said to permit. However, if I swerve the trolley onto the one person because he is my enemy, and I see an opportunity to disguise an act of aggression as an act of emergency aid, then I intend to harm him.²⁰ Here, the proponent of DE would be wise to cite the third constraint and to reply that in such a case, DE does not attempt to explain why it is wrong to intend to perform an otherwise permissible action as a way of carrying out one’s malicious intentions. Instead, because DE is addressed to well-intentioned agents who seek to realize good ends, the prohibition it expresses is something more specific: it singles out instrumental harming in particular and contrasts it only with incidental harming. Double Effect itself does not provide the grounds for condemning someone who acts with malicious aims.²¹

19. Uniacke supplies these examples to demonstrate that the distinction on which DE depends is generally accepted in ordinary thinking in “Double Effect, Principle of,” in *Routledge Encyclopedia of Philosophy*, ed. Edward Craig, version 1.0 (London: Routledge, 1998), CD-ROM 041516916X. Similar examples appear in Richards; A. Van Den Beld, “Killing and the Principle of Double Effect,” *Scottish Journal of Theology* 41 (1987): 93–116; the entry on DE in *Encyclopedia of Bioethics*, ed. Warren T. Reich (New York: Macmillan, 1978), p. 318; and I. A. Macdonald, “The Principle of Double Effect,” *South African Journal of Philosophy* 3 (1984): 1–7.

20. Sanford S. Levy (“The Principle of Double Effect,” *Journal of Value Inquiry* 20 [1986]: 29–40) presents a similar case as a “counterexample” to DE (p. 34). In their fascinating article “Ducking Harm” (*Journal of Philosophy* 85 [1988]: 115–34), Christopher Boorse and Roy Sorensen take DE to rule against an otherwise permissible act if it is done with malevolent motives (p. 130).

21. Sophia Reibetanz points out that “some of the actions which seem to us to be permissible, and whose permissibility the DDE is supposed to explain” can be performed for reasons which share the objectionable features of intending to harm others as a means, namely, seeing those whom one harms simply as tools for the achievement of one’s pur-

Some proponents of DE might insist that the rationale for DE lies in the wrongfulness of viewing other people merely as means to one's ends—as objects to be exploited for one's own purposes—and so might argue that the more general principle that condemns an agent for acting on an evil ulterior motive also underlies DE. Yet this claim, too, would beg the question against the DE skeptic. Presumably, we all condemn those who act with evil motives and aim at harm as an end or as a means to an evil end. But the attitudinal defect that we condemn in such cases need not be present when harm is intended regretfully as a means to a good end. And it is far from clear that the wrongfulness of wrongful instrumental harming always derives from the character of the agent's attitudes toward those who are harmed. Because it distinguishes DE from an uncontroversial moral platitude, the third constraint clarifies just what it is that proponents of DE must supply in providing a rationale for it: a justification for linking the wrongfulness of certain cases of instrumental harming to the wrongfulness of acting on malicious aims.²²

The Fourth Constraint: Cases in which an agent may permissibly allow a harm to occur as a consequence of inaction but could not permissibly intend to bring about the harm as a means to a good end do not confirm DE but, rather, demonstrate the moral significance of the distinction between causing and allowing.

The New Catholic Encyclopedia formulates four conditions for the application of DE:²³

1. The act itself must be morally good or at least indifferent.
2. The agent may not positively will the bad effect but may permit it. If he could attain the good effect without the bad effect he should do so. The bad effect is sometimes said to be indirectly voluntary.
3. The good effect must flow from the action at least as immediately (in the order of causality, though not necessarily in the order of time) as the bad effect. In other words the good effect must be produced directly by the action, not by the bad effect. Otherwise the agent would be using a bad means to a good end, which is never allowed.
4. The good effect must be sufficiently desirable to compensate for the allowing of the bad effect.

By classifying harmful side effects as results that the agent permits (condition 2) or allows (condition 4), this way of formulating DE encourages

poses. She concludes that DE must condemn such actions ("A Problem for the Doctrine of Double Effect," *Proceedings of the Aristotelian Society* 98 [1998]: 217–23).

22. Comments from one of the editors helped me clarify this point.

23. Connell, p. 1021.

readers to infer that side effects of actions are, with respect to moral agency, on a par with events one merely allows by failing to step in and prevent them.²⁴ Although it is a mistake to classify the straightforward causal consequences of a person's actions as results that are merely allowed or permitted rather than brought about, this assimilation of unintended causal consequences of actions to consequences which are merely allowed frequently occurs in defenses of DE and takes at least three different forms.

i) It is quite common for proponents of DE to cite examples in which it would be permissible for an agent to allow some harm by failing to prevent it but impermissible for the agent to cause it, alongside examples in which an agent permissibly causes some harm as a side effect, which it would have been impermissible to cause as a means. Because intentional harming is presumed to be wrong and because both allowing a harm and causing harm as a side effect can be contrasted with intentional harming, it is often assumed that there must be a single explanation of the permissibility of each kind of nonintentional harming that derives from the fact that the harm is not intended.²⁵

An opponent of DE can enthusiastically accept the view that the distinction between causing and allowing can, in some contexts, have moral significance. A defense of DE must provide evidence that the distinction between instrumental and incidental harming which grounds DE plays a similar evaluative role. Philippa Foot and Warren Quinn, two influential proponents of DE, formulate it as a principle that crosscuts the distinction between positive and negative agency. Interpreted in this way, DE asserts not only that it is worse, *ceteris paribus*, to cause a harm as an intended means than to cause the same harm as a merely foreseen side effect; but also that it is worse, *ceteris paribus*, to allow a harm as an

24. Similarly, Paul Ramsey speaks of "a significant moral distinction" between "willfully doing the one and unwillingly permitting the other" in "Incommensurability and Indeterminacy in Moral Choice," in *Doing Evil to Achieve Good*, ed. Richard McCormick, S.J., and Paul Ramsey (Chicago: Loyola University Press, 1978), pp. 69–144, p. 78.

25. For example, Charles Fried argues that the categorical norms of a deontological system will "proscribe intentionally bringing about the forbidden result. If that result occurs inadvertently or as a mere concomitant of one's conduct or *because one failed to seize an opportunity to prevent that result*, then . . . it does not violate the categorical prohibition" (*Right and Wrong* [Cambridge, Mass.: Harvard University Press, 1978], p. 21, my emphasis). In a similar vein, Nagel comments that DE implies that "to violate deontological constraints one must maltreat someone else intentionally. The maltreatment must be something that one does or chooses, either as an end or as a means, rather than something one's actions merely cause or fail to prevent but that one doesn't aim at" (p. 179; my emphasis). R. A. Duff observes that "we draw moral distinctions between what we intentionally do and what our actions foreseeably cause or what we fail to prevent; between the harm we intentionally cause and that which we fail to avert or which occurs as the by-product of some other intentional action" ("Absolute Principles and Double Effect," *Analysis* 36 [1976]: 68–80, p. 74).

intended means than to allow the same harm as a merely foreseen side effect.²⁶

ii) Some defenders of DE have argued that the plausibility of an absolutist moral perspective is tied to DE because it guarantees that when agents face troubling dilemmas, there will be a course of action open to them that will not involve violating an absolute prohibition.²⁷ However, illustrations of this point often involve choices in which a death will occur as a consequence no matter what one does, but as a consequence that one would merely allow in the permissible case, and as a consequence that one would actually bring about in the contrasting impermissible case.²⁸ In these discussions, it is the principle that causing a harm is worse than allowing an even greater one that is doing all the justificatory work. The absolutist has no need for DE to deal in a principled way with cases which involve a choice between omitting to perform some action, foreseeing that harm will occur as a result, and performing an action that would violate an absolute prohibition by intentionally causing harm.

This raises the more general question whether absolutists have a special need for DE to deal with other sorts of cases in which agents may face a dilemma because they will cause harm whatever they do. For example, it might be said by the absolutist that if you refuse to kill one person in order to prevent a terrorist from killing five others, then you can invoke DE to show that though your conduct would have caused the deaths of innocent people either way, the deaths of the five would be a merely foreseen consequence of your choice, while bringing

26. This is Quinn's way of formulating the two distinctions; see his "Actions, Intentions, and Consequences: The Doctrine of Double Effect," and "Actions, Intentions, and Consequences: The Doctrine of Doing and Allowing," *Philosophical Review* 98 (1989): 287–312. Philippa Foot argued that the distinction between positive and negative duties could supplant DE in "The Problem of Abortion and the Doctrine of Double Effect," in *Killing and Letting Die*, ed. Bonnie Steinbock and Alastair Norcross, 2d ed. (New York: Fordham University Press, 1994), pp. 266–79; first published in *Oxford Review* 5 (1967): 5–15. But she accorded the distinction between intending harm as a means and merely foreseeing it some independent moral weight in "Morality, Action, and Outcome," *Morality and Objectivity: A Tribute to J. L. Mackie*, ed. Ted Honderich (London: Routledge & Kegan Paul, 1985), pp. 23–38.

27. Antony Duff, "Intention, Responsibility and Double Effect," *Philosophical Quarterly* 32 (1982): 1–16, p. 8; Boyle, "Who Is Entitled to Double Effect?"; Thomas J. Bole III, "The Theoretical Tenability of the Doctrine of Double Effect?" *Journal of Medicine and Philosophy* 16 (1991): 467–73, p. 467.

28. See, e.g., Duff's argument in "Absolute Principles and Double Effect": "Although a doctor's duty to care for his patients is such that a refusal to do what he knows to be necessary for their survival would in most cases constitute a willful killing, he may not contemplate killing as a means to saving life, and may thus deny responsibility for a death which could only be averted by killing someone else" (p. 72).

about the death of the one would have constituted an intentional act of killing.²⁹

But it is not the fact that you foresee but do not intend the consequences of the terrorist's act that explains your diminished responsibility. The contrast between what you foresee as a result of the agency of others and what you intend as a result of your own agency is doing all of the explanatory work here. The terrorist's action may be described as a foreseen side effect of your refusal to cooperate, but the fact that it can be described as a foreseen side effect does not explain its permissibility. Furthermore, what you foresee in this case is not even the kind of thing that you could be said to intend: even if you wanted a group of terrorists to carry out their threat in response to your refusal to cooperate (let us suppose it is part of a plan for capturing them) and even if you expected them to do so, we would not normally say that you intended for them to do so, nor would we say that you intended the consequences of their action.

In sum, DE is not made more plausible if one accepts the moral significance of the distinction between causing and allowing, as many authors seem to assume: rather, it is made less plausible because one has accepted a competing explanation for the fact that allowing harm as a foreseen side effect may be preferable to intending harm as a means. Similarly, DE is not needed to explain why it might be permissible to refuse to perform an evil act, foreseeing that another person will produce greater harm as a result, and DE is made less rather than more plausible if one accepts the view that one is not typically responsible for the actions of others as an alternative explanation of the contrast.

iii) Finally, there may well be a spillover effect from these first two cases that is manifested in *The New Catholic Encyclopedia's* formulation of DE and that should be guarded against. Proponents of DE should emphasize that it is a misinterpretation of the principle to think of it as classifying unintended harms that are the direct causal consequence of an agent's action as something which the agent didn't really do, or isn't really responsible for, as if the status of being "merely foreseen" caused the gravity of a harm to be massively discounted or the person's agency to be changed from causing to allowing.³⁰ Such claims would leave pro-

29. Examples involving the actions of other agents are discussed as illustrations of DE in Macdonald, p. 2; G. E. M. Anscombe, "War and Murder," in her *Collected Philosophical Papers* (Minneapolis: University of Minnesota Press, 1981), vol. 2, pp. 51–61; Lichtenberg, p. 357.

30. For example, observing that "the responsibility for an action falls on the side of the directly intended effect," William Cooney argues that DE supports affirmative action programs by showing that the bad consequences of the programs—the exclusion of candidates—do not count because they are unintended ("Affirmative Action and the Doctrine of Double Effect," *Journal of Applied Philosophy* 6 [1989]: 201–4, p. 203). This is ably criticized by Jeff Jordan in "The Doctrine of Double Effect and Affirmative Action," *Journal of Applied Philosophy* 7 (1990): 213–15.

ponents of DE open to the devastating objection that DE implies that one may cause harm with relative impunity provided only that one did not expressly aim to do so.³¹

The Fifth Constraint: In order to apply DE in unclear cases there must be some criterion for distinguishing what is intended from what is merely foreseen. To avoid circularity, the distinction underlying DE must be drawn in a way that does not directly or indirectly reflect judgments of permissibility. In addition, the standard for what counts as intended must not be so narrow as to count any regrettable aspect of one's means as a consequence that is merely foreseen.

DE is meant to be a principle that is useful from within the perspective of deliberation: it is addressed to well-intentioned agents who wonder what they may do to further a good end. If it is to help clarify what is at stake in choosing one option over another, it must characterize the options in a way that aids moral evaluation and does not already presuppose a judgment about the permissibility of each option. Yet ordinary usage does not tell us how to distinguish what is part of one's intended means (and is therefore intended) from what is a foreseen side effect of one's intended means. And even the proponents of DE disagree about how to draw the crucial distinction with respect to particular cases.

For example, DE is traditionally applied to show the impermissibility of "direct abortion" to save the life of a mother who will be endangered by the later stages of pregnancy and the permissibility of "indirect abortion" when a hysterectomy is performed to save the life of a woman with cancer who happens to be pregnant. This requires that the death of the child be intended when the procedure is undertaken in order to end the pregnancy and thereby save the mother, but not when the procedure is undertaken in order to remove a tumor.

It is often asked why the death of the child is not a foreseen side effect of the means adopted to save the mother's life in both cases.³² Or,

31. The locus classicus for this complaint is Glanville Williams's observation that if DE "means that the necessity of making a choice of values can be avoided merely by keeping your mind off one of the consequences, it can only encourage a hypocritical attitude towards moral problems" (*The Sanctity of Life and the Criminal Law* [London: Faber & Faber, 1958], p. 286). See also R. G. Frey, "Some Aspects to the Doctrine of Double Effect," *Canadian Journal of Philosophy* 5 (1975): 259–83.

32. See, e.g., H. L. A. Hart, "Intention and Punishment," in his *Punishment and Responsibility* (Oxford: Oxford University Press, 1968), pp. 113–35, p. 123; Nancy Davis, "The Doctrine of Double Effect: Problems of Interpretation," *Pacific Philosophical Quarterly* 65 (1984): 107–23; Jonathan Bennett, "Whatever the Consequences," *Analysis* 26 (1966): 83–102, and "Morality and Consequences," in *The Tanner Lectures on Human Values*, ed. Sterling McMurrin, vol. 2 (Salt Lake City: University of Utah Press, 1981), esp. lecture 3, "Intended as a Means," and *The Act Itself*, chap. 11; Kamm, "The Doctrine of Double Effect: Reflections on Theoretical and Practical Issues"; Shelly Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989), pp. 128–82.

alternatively, it is asked why the death of the child is not so closely connected to the means adopted to save the mother's life in both cases that it should count as intended.³³ Some proponents of DE, recognizing the problem with consistency, reject the traditional application and say that both procedures are permissible because the death of the child is a merely foreseen side effect in both cases.³⁴ This requires a rather strict standard for what counts as an intended consequence of action, perhaps what Suzanne Uniacke has called the test of failure: "Would the agent fail to achieve what he or she intends if, contrary to expectation, the foreseen bad effect does not occur?"³⁵ However, as many critics of DE have pointed out, this kind of standard would drastically limit the prohibitive force of DE. Only harmful actions that were chosen for their harmfulness would be classified as cases of intending harm: if what was the useful aspect of the means could be separated conceptually from the harmful aspect of the means, such that it was not the harmfulness itself that made it useful, then the harm itself would not be intended. If this very narrow standard were used to apply DE, then even the doctor who intends to give a patient a lethal dose of morphine in order to end her pain-ridden existence would not intend to cause death, since the doctor would not have failed to achieve this goal if the patient happened to survive, with her pain relieved by what was expected to be a lethal dose! Removing the child from the mother, in abortion, would not involve intending its death but only its removal.³⁶ Killing or maiming an enemy preemptively would not involve intending the enemy's death, if the agent aimed only to eliminate the threat that the live enemy posed.

What, then, is the appropriate standard for determining when a harm is intended for the purposes of applying DE? There are some conditions that any proposed standard must meet.

1. At the very minimum, a full account of DE would have to include a way of regimenting ordinary talk about intention and foresight in such a way that regretful, instrumental intending of harm for the sake of a good end (which is, after all, the intended sphere of application for DE) is not ruled out by terminological fiat. When an agent acts for the sake of a good end and does not view the harmfulness of the harmful means

33. Those who take the latter approach and classify the child's death as something too closely connected to the means to be unintended need not conclude that DE prohibits the action—provided they are not absolutists. Nonabsolutist versions of DE might find all the necessary conditions for permissible instrumental harming satisfied in such cases.

34. Boyle, "Who Is Entitled to Double Effect?" pp. 479–80. Quinn distinguishes between eliminative and opportunistic forms of direct agency and comments that the abortion/hysterectomy cases have a less pronounced moral asymmetry because they are instances of the former ("Actions, Intentions, and Consequences: The Doctrine of Double Effect," p. 344).

35. Uniacke, "Double Effect, Principle of."

36. Davis observes that this kind of test is so narrow that it fails even to identify what an agent has chosen as a means to her end as a means (pp. 116–17).

as the aspect of it which is useful, that alone should not show that the harm was merely foreseen; otherwise DE would prohibit only the plans of sadists, torturers, and psychopaths.

Quinn's version of DE would meet this standard. He has proposed that DE be formulated as distinguishing between, on the one hand, direct agency "in which harm comes to some victims, at least in part, from the agent's deliberately involving them in something in order to further his purpose precisely by way of their being so involved (agency in which they figure as intentional objects)" and, on the other, indirect agency, "harmful agency in which either nothing is in that way intended for the victims or what is so intended does not contribute to their harm." Direct agency "requires neither that harm itself be useful nor that what is useful be causally connected in some especially close way with the harm it helps bring about."³⁷

2. The term 'side effect' should appear in the contrast as well. Sometimes a feature of one's means may be characterized as merely foreseen when it could not plausibly be described as a merely foreseen side effect. The old practice of vigorously "beating the devil" out of a mischievous child was sometimes understood in the most literal terms. If the person doing the beating believed that the child's body, as the unlucky locus of the devil's actions, had to be made inhospitable to it, then it might be said that the person who aimed to beat the devil out of the child might intend no harm to the child. That may sound acceptable, but to call the harm to the child a side effect is much stranger. The harm to the child's body is, after all, the means adopted.

3. The fact that some action of causing harm is judged to be permissible or impermissible should not play any role in drawing the line between intention and foresight in the unclear cases. Any intuitive confirmation which DE seems to receive from illustrative examples will be spurious if the distinction between what is intended and what is merely foreseen is drawn in these cases in ways that reflect judgments of permissibility. Yet this does seem to be a feature of our ordinary use of the contrast. For example, the fact that a harmful side effect is brought about impermissibly will lead some to say that it was brought about intentionally even if it is not, or at least not clearly, intended as means or end. Three examples will suffice:

a) Does the doctor who administers a lethal dose of morphine in order to relieve pain intend to hasten the death of the patient? The application of DE to the morphine example presupposes that she does not. But what if she knew that she could have used a different pain re-

37. Quinn, "Actions, Intentions, and Consequences: The Doctrine of Double Effect," pp. 343–44. We must assume that Quinn means to include only cases in which harm is foreseen by the agent as a result of the victim's involvement as cases of direct agency. This is pointed out by John Martin Fischer, Mark Ravizza, and David Copp, "Quinn on Double Effect: The Problem of 'Closeness,'" *Ethics* 103 (1993): 707–25, p. 711.

liever, one that did not suppress respiration, in order to avoid this consequence? Or what if she realized that a smaller dose would have sufficed for pain relief? Or what if the patient was suffering from postoperative pain and would not otherwise have died! In such cases, we are more tempted to say that the agent did cause the patient's death intentionally. But this is not because her intention was different: in all these cases she intended to relieve the patient's pain. The problem was that she was insufficiently attentive to her duty to minimize harm.

b) More than twenty years ago, the following problem was set for the readers of the journal *Analysis*: "If Brown in an ordinary game of dice hopes to throw a six and does so, we do not say that he threw the six intentionally. On the other hand if Brown puts one live cartridge into a six-chambered revolver, spins the chamber as he aims at Smith and pulls the trigger hoping to kill Smith, we would say if he succeeded that he had killed Smith intentionally. How can this be so, since in both cases the probability of the desired result is the same?"³⁸

c) Some proponents of DE say that one may swerve a runaway trolley onto a track containing one person and away from a track containing five people because the death of the one is a merely foreseen consequence of saving the five, and not a means of doing so. But suppose that I divert the trolley off a track with a rare wildflower about to bloom on it and onto a track with one track workman on it, because I judge that perpetuating a nearly extinct species is a more important goal. Would we say that the harm to the workman is a merely foreseen side effect of saving the wildflower, something wholly unintended? Or would it seem right to say that I intended that the harm fall on him, because I valued preserving the flower more?

After wrestling with such puzzles, some are tempted to say that in general, everything foreseen is intended.³⁹ A mixed strategy is adopted by those who propose that we split the difference and use the narrower standard for what is intended and a broader standard for what is done

38. Ronald J. Butler, "Report on *Analysis* 'Problem' No. 16," *Analysis* 38 (1978): 113–14. In his report on the problem, Butler commends the author of the winning essay for seeing that morality was irrelevant: he remarks that "far too many entrants argued that aiming a six-chambered gun at somebody raises questions of moral responsibility, and that this accounts for the disparity" (p. 113).

39. See, e.g., Henry Sidgwick: "For purposes of exact moral or jural discussion, it is best to include under the term 'intentional' all the consequences of an act that are foreseen as certain or probable; since it will be admitted that we cannot evade responsibility for any foreseen bad consequence of our acts by the plea that we felt no desire for them, either for their own sake or as means to ulterior ends" (*The Methods of Ethics*, 7th ed. [Indianapolis: Hackett, 1981], p. 202); Beauchamp: "If we use a model of intentionality based on what is *willed* rather than what is *wanted*, intentional actions and intentional effects include any action and any effect willed in accordance with a plan, including tolerated as well as wanted effects. . . . Thus a person who knowingly and voluntarily acts to bring about an effect brings about that effect intentionally" (p. 209).

intentionally.⁴⁰ This strikes me as an unstable and unhelpful compromise, unhelpful because it accommodates the influence of moral judgments without explicitly acknowledging that this is the case, unstable because it does not explain why we often insist that a harmful side effect was not brought about intentionally even if it was foreseen and was thought to be of some significance. The next constraint will examine one such case.

The Sixth Constraint: If some foreseen consequence which is neither end nor means is one that an agent need not attend to, because it is not his responsibility, or should not attend to, because the agent has some reason to set it aside when deliberating in a particular context, then it may be important to point out that the consequence was merely foreseen and that the agent did not aim to bring it about. But in such cases, DE does not apply to explain the permissibility of bringing it about.

Many discussions of DE mention an example along these lines: a professor wants a certain student to be discouraged because she dislikes him. She plans to give the student a grade of D on a recent exam and foresees that this will discourage the student but does not give the student the D in order to discourage him. The student's work simply deserves a D and any fair grader would act in the same way. Because the professor merely foresees that giving the grade of D will discourage the student, she acts permissibly. If she had intended to discourage him, however, her action would not have been permissible.⁴¹

Authors who have cited this example in discussions of DE have used it to show the importance of the distinction between intended and merely foreseen consequences for judgments of moral responsibility. The point is an important one, I believe, but it is yet another instance in which DE's use of the distinction between intention and foresight has been confused with a quite different one. The professor is obliged not to attend to such considerations as reasons for assigning grades according to generally accepted conventions governing grading, so we might want to emphasize that the student's being discouraged is a consequence that was merely foreseen. Similarly, we might say, someone caring for an aged, wealthy relative should not think about how much he stands to inherit in making day-to-day financial decisions concerning the cost of the elderly individual's care. If he economizes in some reasonable way that will preserve

40. Michael Bratman, "Two Faces of Intention," *Philosophical Review* 93 (1984): 375–405, p. 395; Gilbert Harman, "Practical Reasoning," *Review of Metaphysics* 29 (1976): 431–63, p. 445, n. 7; Duff, "Intention, Responsibility, and Double Effect," pp. 5–6.

41. Richards, p. 382; R. A. Duff, *Intention, Agency and Criminal Liability: Philosophy of Action and the Criminal Law* (Oxford: Blackwell, 1990), p. 57, and "Intention, Responsibility and Double Effect," p. 11; Van Den Beld; Uniacke, "Principle of Double Effect"; and Mark P. Aulisio, "On the Importance of the Intention/Foresight Distinction," *American Catholic Philosophical Quarterly* 70 (1996): 189–205, p. 192.

his relative's estate, we may want to emphasize that he merely foresees that he will thereby enhance the future value of his inheritance in order to mark the fact that he did not see it as providing a reason for his decision. In the same way, suppose that the administrator of a hospital wished that more transplantable organs were available, while also believing that this gives her no reason to advocate a higher speed limit in her state, despite the fact that a higher fatality rate on local highways would yield more transplant donors. If she advocates a higher speed limit on entirely independent grounds, then here also we might want to emphasize that the increase in the supply of donated organs is something that she merely foresees.

When an agent has a reason not to take the prospect of some kind of consequence into account as a reason for or against a course of action, then I will say that the agent has a reason to "screen off" this consideration. An agent is expected not to be responsive to legitimately screened-off considerations in deliberating in a particular context.

Cases of screened-off consequences show that the scope of moral (and rational) evaluation covers, even from a first-person perspective, not only what one should do but also which kinds of things should count as reasons for action. This dimension to deliberation is not easily captured by any account that characterizes morally conscientious deliberation as simple calculation about the subjective value of outcomes. We do not aim to choose the option that maximizes the satisfaction of our desires. We do not even aim to choose the permissible option that maximizes the satisfaction of our desires. Perhaps we aim to choose the permissible option that satisfies the desires we think we can permissibly aim to satisfy in the circumstances. But even that formula leaves something to be desired, since what we deplore is not only aiming to satisfy some unworthy desire, it is also what gives rise to this aim or intention: seeing the desire as one that provides a reason to act on this occasion.

It would be a grave mistake to suppose that agents are generally entitled to screen off from deliberation all considerations about side effects. The first, second, and fourth constraints make it clear that DE applies only to harmful side effects that count as considerations against the act in question: agents must be concerned with weighing and minimizing these incidental harms, and these are not harms which are to be described as merely allowed or permitted, as if the agent was not responsible for causing them. Yet, the fact that these constraints are often ignored may in fact be evidence that there is some temptation to misinterpret DE as a principle which accords to all side effects the special status of side effects which may be screened off.

Michael Bratman discusses a modified version of the Strategic Bomber example which at first might seem to be just like the grading example. The Strategic Bomber (SB) foresees that his plan to hit a military target will have as a side effect the killing of some children in a

nearby school. He eschews terror bombing, but “suppose he is told that once he kills the children there will in fact be a terrorizing effect on the enemy populace, and so that by killing the children he will be weakening the Enemy.”⁴² It is one of the SB’s goals to weaken the enemy, yet even when he realizes that his strategic bombing raid will weaken the enemy in an additional way, by killing children, he does not intend to weaken the enemy in this way, he merely foresees that his action will have this effect.

This shows that the SB really is a principled strategic bomber, one who would not privately embrace terror bombing under the cover of having a legitimate strategic rationale for his act. Does this also show that the SB is entitled to screen off the consideration that his bombing will cause civilian deaths? No. It shows only that having a reason not to count a foreseen consequence as a reason for action does not automatically provide a reason not to count it as a reason against action. Although the SB has a reason not to count the killing of the children as a reason for the bombing raid, it still might count as a reason against it. The SB has no license to screen off entirely considerations about civilian casualties: he must have proportionate reason to justify causing them and must be disposed to choose means to his strategic ends that will minimize them.

Now we can see that the bomber examples create a kind of illusion which serious defenders of DE should rush to dispel. This is the illusion that because the SB merely foresees the deaths of civilians and does not intend them, he operates with a kind of license regarding them: that he may bring them about without moral criticism provided that he never aims at them or tries in any way to maximize them. In short, that he is entitled to screen them off just as the fair grader is entitled to screen off thoughts about the likely emotional consequences of the grades she assigns.

Moreover, if someone finds, on reflection, that she believes that the strategic bomber need not be constrained by worries about proportionality or the minimizing of harm to civilians, then this shows that she holds a substantive view about the moral limits (or lack of them) on warfare: the view that an especially evil enemy justifies a total war, one unconstrained by the distinction between civilians and combatants, or the view that wars waged by guerilla forces or by enemies who use civilians as shields must involve quite different conventions than those which distinguish combatants from noncombatants and limit military aggression toward noncombatants.⁴³ This sort of view does not show that the usual

42. Michael Bratman, *Intention, Plans, and Practical Reason* (Cambridge, Mass.: Harvard University Press, 1987), p. 156.

43. The recollections of General Leslie Groves, the head of the Manhattan Project, about his reasons for favoring Kyoto as a target for one of the first atomic bombs in the summer of 1945 show that he did not take this extreme view: “Any city of that size in Japan must be involved in a tremendous amount of war work, even if there were but a few large

constraints on applying DE are incorrect. Instead, it shows that it is not the fact that the civilian casualties were side effects that made them permissible in the first place. If there is some independent ground for allowing the bomber to screen off thoughts about civilian casualties, then there is no work left for DE to do.⁴⁴

Anscombe cites DE to explain why a person is not responsible for allowing a harm if the only way that he could have prevented it would be to do something absolutely prohibited. "If I am answerable for the foreseen consequences of an action or refusal, as much as for the action itself," she argues, then "if someone innocent will die unless I do a wicked thing, then on this view I am his murderer in refusing. . . . Here the theologian steps in with the Doctrine of Double Effect and says: 'No, you are no murderer, if the man's death was neither your aim nor your chosen means, and if you had to act in the way that led to it or else do something absolutely forbidden.'" ⁴⁵ Here it is the screening-off phenomenon, not DE, which explains why the merely foreseen consequence is something for which the agent is not responsible. For a genuine moral absolutist, considerations that support doing something that is absolutely forbidden would certainly fall into the category of considerations to which one must not be responsive, and so these may be screened off in deliberation. Such cases would not fall within the purview of DE: it is the reason for screening them off that provides the justification for ignoring the consequences, not the fact that the consequences are merely foreseen.

The Constraints Combined

I conclude that the presupposition of uniqueness in talk about the moral significance of the distinction between intended and foreseen consequences fails. This distinction (henceforth "the I/F distinction") can be used to express a variety of contrasts thought to have moral significance, and only one of these, the distinction between instrumental and incidental harming, is the ground of DE. We can now set alongside it the contrast between malevolently intending harm as an end and regretfully foreseeing harm (as an end or means), which the third constraint rules out as

factories." However, though Graves felt the need to show that the area was a strategic target, he did not feel constrained by any duty to choose means that furthered only strategic goals. He also said of Kyoto: "It was large enough in area for us to gain complete knowledge of the effects of the bomb. Hiroshima was not nearly so satisfactory in this respect" (quoted in Murray Sayle, "Did the Bomb End the War?" *New Yorker* [July 31, 1995], pp. 40–64, p. 54).

44. If we reject DE are we saddled with the view that there is no difference between the Terror Bomber and the Strategic Bomber? Not at all. If we adhere to the substantive view concerning the conduct of war that aggression against noncombatants is prohibited and that harm to them is to be minimized, then we can condemn terror bombers for violating that principle and perhaps some strategic bombers as well.

45. Anscombe, "War and Murder," p. 58.

an illustration of DE; the contrast between foreseen consequences which are allowed, because the agent does not act to prevent them, and consequences which an agent causes intentionally, which the fourth constraint rules out as illustrations of DE; and what could be called “the conclusory use” of the distinction in cases in which our moral judgments incline us to call wrongfully brought-about harms intentional and permissibly brought-about harms merely foreseen—this is ruled out by the fifth constraint. In addition, there is the phenomenon of screening off. When a foreseen consequence that has been determined, on independent grounds, not to be the agent’s responsibility is judged to be permissibly brought about, DE plays no role in explaining that judgment. This is what the sixth constraint points out. In each of these four cases, there is an additional factor that explains why a foreseen consequence is brought about permissibly. It would clearly be a mistake to generalize from these cases and suppose that any of these factors must be present whenever harmful consequences are merely foreseen. Yet it may be that the use of examples to support DE has encouraged this kind of over-generalizing and has led proponents of DE to exaggerate the force of the permission that DE allegedly involves.

The variety of uses of the I/F distinction also might explain why there could not be a single solution to the problem of defining a standard for drawing the line between harms intended as part of one’s means and harms foreseen as side effects of one’s means in unclear cases. How the line should be drawn depends on what the I/F distinction is being used to convey. When an agent’s motives and his reasons for action are being discussed, then a standard as narrow and fine-grained as the test of failure may be appropriate. About the dentist who probes in your mouth saying “tell me where it hurts,” one could remark that he does not really intend to cause pain, only to make contact with the sensitive area in such a way as to enlist your aid in identifying it. If light pressure on the affected spot, preliminary to the dentist’s probing, were to be sufficient to cause an uncomfortable sensation that would help you identify the spot, then the dentist would not fail to reach his end. But this narrow standard for what counts as intended, if it were used in applying DE, would deprive DE of any force whatsoever as a prohibition. Moreover, even in this case, we might also want to claim that the dentist needs to have a justification for intending to cause you pain before he begins—it must be true, for example, that there is no other way to find the sensitive area. When we make this assertion we implicitly broaden the standard that is applicable and assume that the dentist does intend to cause pain as a means to his diagnostic end.⁴⁶ Only this second way of talking about

46. See David Lewis’s discussion of rules of accommodation for standards of precision in “Scorekeeping in a Language Game,” in his *Philosophical Papers* (New York: Oxford University Press, 1983), vol. 1, pp. 233–49, p. 245.

what the dentist intends uses the standard that is appropriate for applying DE.

So far, I have argued that many examples and considerations that have been taken to illustrate and support DE actually illustrate other uses of the I/F distinction. Proponents of the doctrine could concede much of this while also claiming that the special force of DE is to set limits on the absolute prohibition on intentional harming. Therefore, the proponent might argue, even though DE might need to be supplemented with other principles or claims to explain the permissibility of some cases of incidental harming, that does not show it to be otiose. These harmful consequences could not be brought about permissibly if they were brought about intentionally, and the special contribution made by DE is to show why that is true.

One response to this defense of DE can be given immediately. If the I/F distinction can be used to express a variety of morally significant contrasts, then one must ask how much coherence absolute prohibitions on intentionally causing certain grave harms, such as the death of an innocent human being, would actually have. To defend DE as we have interpreted it here, subject to the six constraints, proponents must show that the absolute prohibitions in question use the term "intentionally" in the broad sense appropriate to DE and in such a way as to rule out instrumentally intended grave harms.

In the next section I will show that this is often not the case. With amazing frequency, absolutist and nonabsolutist defenders of DE provide examples which involve instrumental harming in which the harm is so closely related to the means that it could not be called a merely foreseen side effect for the purposes of applying DE, yet they cite the permissibility of these actions as confirmations or illustrations of DE. These examples show that absolutists have not consistently interpreted DE as a prohibition on instrumental harming in those cases in which it is taken to condemn intentional harming. And insofar as these examples have persuaded nonabsolutists that there is something to the use of the I/F distinction in DE that is correct, they show that some examples cited as confirming illustrations of DE actually undermine it.

THE CONSTRAINTS VIOLATED IN APPLICATIONS OF DE

The examples to be discussed below have four elements in common:

- i) There is a harm which is said to be brought about permissibly because it is an unintended, merely foreseen side effect.
- ii) The harm in question could be described as one that is not intended only if a very narrow standard for carving out what is intended is used. If one were to apply a broader standard that is appropriate for DE, such as Quinn's account of direct agency as agency in which harm comes to some victims as a result of the agent's deliberately involving them in

order to further his purpose, these would all count as cases of intentional harming.

iii) The harm is aimed at not for its own sake but only instrumentally as a means to a good end, and this is part of the explanation of the permissibility of causing it. The agent's motives in producing the harm are what the I/F distinction is being used to highlight.

iv) The rejected alternative is inaction, not action. These are cases in which one might cause a harm as a means to a good end, even when the alternative is merely allowing a harm (though a greater one) to occur.

Risking Harm

"In paradigm acts of double effect the agent foresees both the good and bad effects as certain or highly probable," Uniacke observes, but she points out that "the distinction between intended and foreseen effects is also applicable to acts of justifiable risk taking, in which the good and bad effects are incompatible possible outcomes; in such cases the bad effect can even be the more likely to occur. For example, a surgeon might justifiably operate in a desperate attempt to save someone's life, foreseeing that surgery or its effects may well kill the patient; a parent might justifiably throw a child out of a burning building as the child's only hope of rescue, realizing that the fall may well kill it."⁴⁷

If the moral significance of the distinction between intended and merely foreseen consequences of action explains the permissibility of acting in such cases, then it is clear that it is not being confused with the distinction between causing and allowing harm: here it is invoked to override the usual view that causing a harm is worse than allowing that harm (or an even greater one) to occur. The doctor and the parent would not harm the patient and the child if they did not act.

There is some sleight of hand that occurs in producing the impression that these are cases of incidental rather than instrumental harming or, more accurately, incidental rather than instrumental exposure to a grave risk of harm. If death occurs as a result of the attempt to save the person (the surgery is unsuccessful, the child is killed by the fall from the window), then it is correct to say that the death was not intended because the aim was the opposite of what occurred: to save the person's life. So, it is argued, this is a case in which death or injury, if it occurs, is an unintended and merely foreseen side effect: because the agent expressly intended to prevent this result, it could hardly be called intended.

But it is not that simple. It is correct to say that death or injury, if it

47. Uniacke, "Double Effect, Principle of." Dangerous surgery undertaken to save life is mentioned as an illustration of DE also by Anscombe, "Medallist's Address: Action, Intention, and Double Effect," p. 21; Stephen Theron, "Two Criticisms of Double Effect," *New Scholasticism* 58 (1984): 67–83, p. 74; and Boyle, "Who Is Entitled to Double Effect?" pp. 491–92.

occurs, is an unintended side effect of the protective effort, and one could truly say, "I didn't intend to kill her, but only to save her from the fire," if the child thrown out the window perishes from the fall. But it does not follow that what the agent chooses as her means, which involves exposing a person to a risk of harm from another source in an effort to protect that person, is itself unintended. One could not plausibly say, "I did not intend to endanger the child, I only meant to throw it out the window." To throw it out the window is to endanger it; justifiably in this case, but it is endangerment nonetheless. One's ultimate goal is not endangerment of course, it is rescue, but one's only available means in these desperate cases involves endangerment. Similarly, to choose to undertake very risky surgery is to expose one's patient to a very high risk of death. One cannot say, "I didn't intend to endanger your life in any way, but only to see if your condition could be cured." If risky surgery is one's means, then whether the rescue attempt is successful or not, the agent has risked harm to the threatened person as part of an effort to save the patient from a greater risk of harm. Exposing the threatened person to a lesser risk of harm is not a side effect of what one does, it is one's means. If the agent's means of preventing a harm is to expose the person to the risk of a lesser or less probable harm, then this is a special case of instrumental harming: instrumental exposure to the risk of harm.

These examples do not illustrate the claim that only incidental harming is permissible. They illustrate the claim that in desperate circumstances, risky actions which would normally be impermissible can be justified because the person being exposed to the risk of harm is being saved from a more likely threat of harm. It is because they are cases of instrumental endangerment in which the person endangered is thereby made somewhat better off that they are permissible. And it is because we judge that it is better to act in such cases than to allow death when it might have been prevented that they are permissible. As such, they are striking exceptions to the usual principle that allowing a harm is preferable to causing a lesser harm.

Proponents have also cited DE to explain the permissibility of risky actions in which agents endanger themselves. *The New Catholic Encyclopedia* mentions "the aviator who tests planes in order to improve aeronautic equipment, the doctor who treats patients affected with contagious diseases, the policeman who attempts to capture an armed criminal—all these are lawfully using the principle of double effect, the bad effects being the hazards they are incurring to their own life or health, the good effect being the benefits they are conferring on society."⁴⁸ In this context, one in which an absolute prohibition on intentional self-destruction is assumed to hold, DE is invoked to explain why accepting such risks of self-destruction might be permissible while aiming at self-

48. Connell, p. 1021.

destruction as an end would always be forbidden. But it is not clear that those who take this view would rule out similar risks of self-destruction even if they were adopted as a means. A doctor who tests a new vaccine on himself clearly risks harming himself as a means to proving the vaccine's efficacy, yet if it is thought to be permissible because he doesn't seek this risk as an end, recklessly as it were, then the rationale must be that it is permissible because this is aimed at as a means and not as an end. In such cases, DE—which expresses a prohibition on harm intended as a means to a good end—simply does not apply. These cases would have to be classified as exceptions to such a prohibition.

Heroic Self-Sacrifice

In two discussions of the role of DE in an absolutist morality, R. A. Duff mentions the case of heroic Captain Oates, who, weakened by scurvy and frostbite and incapable of going on, walked away from R. F. Scott's party in Antarctica in order to ensure that the others would continue on without him.⁴⁹ Scott said of Oates in his posthumously recovered diary, "He said 'I am just going outside and may be some time.' He went out into the blizzard and we have not seen him since. Though we tried to dissuade him, we knew it was the act of a brave man and an English gentleman."⁵⁰ Duff comments: "An Absolutist Oates might believe that he must enable his friends to go on, but that he may not commit suicide (intend his own death) as a means to that end. He would be a suicide if he shot himself or walked out so that they would go on because they knew he was dead: but he may walk out, knowing he will die, if he intends simply to leave his friends and that they should respect his decision and go on without him."⁵¹ Oates's act is, I suspect, more commonly understood to be a decision heroic for its tact and delicacy in the face of the other explorers' unwillingness to leave him behind. (Oates had asked to be left behind in his sleeping bag the previous day; the four other members of the party had refused to do so though this decision made it less likely that they would reach the next supply depot before their food and fuel ran out.)⁵² Because they would not unburden themselves of him, Oates saw that he must bring this about himself in a way that did not oblige them to tend to him as he died, thereby reducing their own (at that point very small) chance of survival.

Duff's line of argument seems to imply that in other circumstances in which such discretion is not possible, in situations in which one would have to kill oneself directly to spare others, say by shooting oneself point-

49. Duff, "Absolute Principles and Double Effect," pp. 78–79, and "Intention, Responsibility and Double Effect."

50. Cited in Reginald Pound, *Scott of the Antarctic* (New York: Coward-McCann, 1967), p. 299.

51. Duff, "Intention, Responsibility and Double Effect," p. 9.

52. Pound, p. 298.

blank, self-sacrifice would not be permissible. And that is Duff's position in the passage just cited.⁵³ But many other writers who cite examples of heroic self-sacrifice as illustrations of DE seem to think that even such direct methods—as when a soldier falls on a live grenade in order to smother its blast and protect his comrades—would not involve intending to cause one's own death.⁵⁴

In all of these cases, the agent can be said to intend to bring about his own death if a standard for what counts as intended that is appropriate for DE is used. Any account of intending that makes regretful, reluctant, instrumental intending a form of intending will call this a case of intending to die or at the very least to risk one's life with no reasonable prospect of survival in order to promote a good end. For Duff and these other writers, the point of calling the agent's death a consequence that is merely foreseen is to underline a claim about the agent's motives for acting. Duff remarks that for an absolutist Oates: "His own survival is usually relevant, as a reason against any action which threatens it: but in the context created by his duty to his friends and by the lack of any safer option the fact that he will die is no longer a reason against walking out which is outweighed by stronger reasons in its favour; it simply ceases to be relevant."⁵⁵ Duff acknowledges that Oates knew that he would certainly die, "but this is now a consequence, not a part, of his intentional action. It is separable from it. . . . This separation . . . shows that his intentions, and attention, need in no way be directed towards his death."⁵⁶

As Duff imagines Oates's deliberations, Duff screens off this foreseen consequence. At first, this may seem hard to imagine, and it is at first difficult to see what justificatory role this attitude is supposed to have. After all, if Scott had made the decision to leave Captain Oates behind, it certainly would not help to justify his decision for him to claim that "Oates's survival is usually relevant, as a reason against any action which threatens it: but in the context created by my duty to the other members of the party and by the lack of any safer option, the fact that he

53. But not the position of the historical Oates. Five months earlier he was reported to have said that a revolver should be available on the expedition "so that if anyone broke down, he should have the privilege of using it" (Pound, p. 267).

54. Grisez maintains that "a good effect which in the order of nature is preceded in the performance by an evil effect need not be regarded as a good end achieved by an evil means, provided that the act is a unity and only the good is within the scope of intention" (pp. 89–90). He points out that this implies that "a soldier on a battlefield can shoot straight at an enemy soldier, intending to lessen the enemy force by one gun, while not intending to kill" (p. 91). He also argues that it is not suicide if a mother saves her child "by purposely interposing her body as a shield against an attacking animal" (p. 90). See also Theron, p. 75; Boyle, "Further Thoughts on Double Effect: Some Preliminary Responses," *Journal of Medicine and Philosophy* 16 (1991): 565–70, p. 570, n. 3.

55. Duff, "Intention, Responsibility and Double Effect," p. 10.

56. Duff, "Absolute Principles and Double Effect," pp. 78–79.

will die is no longer a reason against leaving him behind, which is outweighed by stronger reasons in its favour; it simply ceases to be relevant.”

Someone who believes that suicide is wrong might declare that Oates did not intend to cause his own death. This claim is untrue if we interpret it using the broad criterion of what is intended that is appropriate to applications of DE. However, this might be said to express the idea that although Oates may have been in agony and suffering from despair and although he may have realized that he could escape from his present misery into a state of hypothermia-induced oblivion, that need not have been even part of his reason for walking out.⁵⁷ Screening off all considerations that supported walking out in order to end his own suffering, Oates may have decided to end his life only as a means to sparing the others. If Oates’s motives make this kind of action permissible, then this is an exception to the prohibition on intending to cause one’s own death.

Self-Defense

It is sometimes said that DE justifies killing in self-defense provided that one does not intend to kill the aggressor, even if one is virtually certain that one will in fact do so.⁵⁸ In fact, the phrase “Double Effect” is derived from Aquinas’s discussion of the permissibility of killing in self-defense. This is often read not only as an illustration of DE but as the origin of the doctrine. Aquinas begins with what seems to be a familiar distinction: “Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now, moral acts take their species according to what is intended and not according to what is beside the intention, since that is accidental, as explained above. Accordingly, the act of self-defense may have two effects: one, the saving of one’s life; the other, the slaying of the aggressor.”⁵⁹ Aquinas does not assume that the fact that one does not intend to slay one’s aggressor provides a complete explanation of why the act is permissible. He goes on to provide a further justification: “Therefore, this act, since one’s intention is to save one’s own life, is not unlawful, seeing that it is natural to every-

57. Something like this may have been true of the historical Oates. Five or six days earlier, Scott had asked the expedition doctor to issue thirty tablets of opium to each of the men in the group, and Oates, though he had hoped to die that last night in the tent, had left his opium untouched. Scott wrote, “Oates’ last thoughts were of his Mother, but immediately before he took pride in thinking that his regiment would be pleased with the bold way in which he met his death.” Elspeth Huxley, *Scott of the Antarctic* (Lincoln: University of Nebraska Press, 1977), p. 254.

58. Grisez, p. 79.

59. Saint Thomas Aquinas, *Summa Theologica* II–II, question 64, article 7, “Of Killing,” in his *On Law, Morality, and Politics*, ed. William P. Baumgarth and Richard J. Regan, S.J. (Indianapolis: Hackett, 1988), p. 226.

thing to keep itself in being as far as possible.” He observes that to say that one must avoid killing the aggressor is tantamount to saying that one must sacrifice oneself for the sake of the aggressor: “Nor is it necessary for salvation that a man omit an act of moderate self-defense in order to avoid killing the other man, since one is bound to take more care of one’s own life than of another’s.”⁶⁰

There are many reasons why a person acting in self-defense need not intend to cause his attacker’s death: there may be effective and non-lethal means available, or the agent might not have realized that the means available would prove to be fatal to the attacker. Is Aquinas saying that even if the means available are known to be lethal, one may make use of them without intending to cause the attacker’s death? If he is saying this, then we cannot consistently take it to be an illustration of DE. The standard for determining what is intended that is appropriate for applying DE must be capable of counting the death of the fetus as something that is intended when a doctor performs an abortion in order to save the life of the mother. And it must count the patient’s death as something that is intended if a doctor should decide that ending the patient’s life with a lethal dose of morphine would be the only way to end the patient’s pain. While DE is committed to a use of the I/F distinction which concerns the contrast between instrumental and incidental harm, Aquinas’s point is a quite different one: lethal force may be used provided that the attacker’s death, if it is aimed at, is aimed at only instrumentally as a means to self-defense.

Aquinas uses the distinction between what is and is not intended to lay down a further condition on the permission he enunciated when he justified killing in self-defense. He had argued that since one is not required to die in order to ensure the safety of one’s attacker, one may defend oneself against him even if the effort involves lethal force. The talk about intention is part of a proviso on this permission. One may use lethal force but may not adopt the goal of executing one’s attacker, as it were, and may not guide one’s actions with that aim. Aquinas comments: “And yet, though proceeding from a good intention, an act may be rendered unlawful if it be out of proportion to the end. Wherefore, if a man in self-defense uses more than necessary violence, it will be unlawful, whereas, if he repel force with moderation, his defense will be lawful, because according to the jurists, ‘It is lawful to repel force by force, provided one does not exceed the limits of a blameless defense.’”⁶¹ To aim to kill the attacker as an act of retaliation or punishment would be wrong because that would be a form of private vengeance. Aquinas develops this point by contrasting the private citizen who may not intend to bring

60. *Ibid.*

61. *Ibid.*

about the death of another as a goal over and above the goal of defending himself with those who have public authority and may do so. “But as it is unlawful to take a man’s life, except by public authority acting for the common good, as stated above, it is not lawful for a man to intend killing a man in self-defense, except by such as have public authority, who, while intending to kill a man in self-defense, refer this to the public good, as in the case of a soldier fighting against the foe or a judge’s servant struggling with robbers, although even these sin if they be moved by private animosity.”⁶² Private animosity (which might motivate even the official executioner should he discover that the man before him to be executed is a personal enemy) would make the act of self-defense sinful just because the agent would aim at the other’s death for some reason other than self-defense. Aquinas’s point here is that one may kill the attacker provided that one does not view that killing as an end to pursue for reasons unrelated to its instrumental value in self-defense, for this would show one to be acting out of anger or a desire to punish.⁶³ In response to an objection which cites Rom. 12:19 (“Do not defend yourselves, my dearly beloved”), Aquinas comments, “The defense forbidden in this passage is that which is maliciously vengeful.”⁶⁴

Aquinas is saying that someone who acts properly in self-defense does not intend to kill the attacker, even if he knows that he is acting with lethal force. But the standard for drawing the distinction between what is intended and what is foreseen that is in play here is the narrow one that is appropriate to discussions of an agent’s underlying motives. One could also point out that a doctor who removes a fetus in order to save the mother’s life does not intend to kill the fetus but aims only to save the mother. But if the broader standard that is appropriate for DE is applied, one can attribute to Aquinas the view that a man may intend to use lethal force against his attacker, thereby intending to kill him, if he intends to do this only for self-defense. But if the agent may instrumentally intend to kill his attacker, then DE could not possibly explain why it is permissible. Double Effect, as a prohibition on instrumental harming, must rule against it. Therefore, the consistent absolutist should be saying that the permissibility of killing in self-defense is

62. *Ibid.*, pp. 226–27.

63. This is in substantial agreement with interpretations of Aquinas’s position offered by Daniel F. Montaldi, “A Defense of St. Thomas and the Principle of Double Effect,” *Journal of Religious Ethics* 14 (1986): 296–332; Anscombe, “Medalist’s Address: Action, Intention and ‘Double Effect’,” pp. 24–25; and the interpretation of DE offered by Levy. Bennett observes that “Catholic scholars tend to agree these days that Thomas did not commit himself to the means principle” [that is, the prohibition on instrumentally intended harming] (*The Act Itself*, p. 200). It also shows that those who believe that self-defense may be justified intentional killing need not see this as an objection to Aquinas’s position (Mangan, p. 45).

64. Aquinas, pp. 226–27.

an exception to the prohibition on intentional killing. He might want to say as well that the prohibition on intentional killings applies only to the killing of innocent human beings.⁶⁵

Although it is an intuitively appealing and natural use of the I/F distinction to argue that the person who defends himself does not intend to kill because his guiding aim is self-defense, this is not enough to show why the act is permissible. Aquinas's appeal to what the agent intends makes sense only because it is a condition on a permission: a proviso which limits the exception to the prohibition on killing to those cases in which killing is aimed at only as a proportionate means of self-defense. Perhaps what has happened in the DE tradition is that the further conditions on the permission for using lethal force in self-defense have been treated as if they were themselves the grounds of the permission. Thus, proportionality and attention to the character of the agent's aims and motives have come to be seen, in the DE tradition, as features that explain the permissibility of killing in self-defense.

The Censor

Structurally similar to these cases is a subtle example from *The New Catholic Encyclopedia*, which notes a conceptual tie between DE and questions about an agent's motivation: "Thus, a censor of books, who is allowed to read obscene literature, may not take deliberate pleasure in the evil thoughts arising in consequence, though he necessarily permits them to enter his mind."⁶⁶ Presumably, the evil thoughts that occur are needed to inform the censor's judgments, and that is why he "necessarily permits" them to enter his mind. This suggests that if the censor screens off considerations of pleasure and does not see them as providing a reason to act, he may read the obscene texts intending for the evil thoughts to arise and enter his mind and merely foreseeing that they might be pleasurable. This is permissible because he intends for the evil thoughts to arise only as a means to carrying out his assigned task. Should he be motivated by the prospect of pleasure or take "deliberate pleasure" in the evil thoughts, then he would be aiming for the evil thoughts to arise for the sake of other illicit ends as well, and he would act impermissibly.

This is offered as a demonstration that what does not violate DE might nevertheless violate the general prohibition on intending harms because they are desired as ends and, thus, as an illustration of what is labeled as a general rule of morality: one may not "positively will an evil effect of an action, even though the act would otherwise be lawful." But since there is a presumption against the lawfulness of such an act, as there is against exposing someone to a risk of grave harm, killing in self-

65. This view of the justification of self-defense is contrasted with what Jeff McMahan takes to be Aquinas's DE-based justification in "Revising the Doctrine of Double Effect," *Journal of Applied Philosophy* 11 (1994): 201–12, p. 211.

66. This quotation and those immediately following appear in Connell, p. 1021.

defense, and self-destruction, it seems to illustrate as well the converse: that in certain special circumstances one may perform an action that would otherwise be unlawful, provided that one does not positively will an evil effect of it, and that one intends to produce it only instrumentally as a means to some legitimate end. Here again, Aquinas's proviso, the further condition of permissibility which Aquinas formulated for such an instrumental intention would apply: the censor should entertain the evil thoughts only insofar as it is necessary to carry out his interpretive task; he may not be an opportunist and act on impure motives using his role as censor as a kind of moral cover.

* * *

In these examples, something that is not normally permitted is permitted in special circumstances in which it is a means to an end of significant value. That an ordinarily wrong action is pursued as a means to a legitimate end is part of the justification for it, but if one said only this, one would omit the special proviso that these things may be pursued as means provided that they are pursued only as a means to the legitimate end and are aimed at only for that reason and not for some other reason as well. A version of Aquinas's proviso can be formulated for each case. Risky surgery may permissibly be undertaken as a last resort, even if it is unlikely to succeed, but not by a surgeon who is merely seizing the opportunity to practice a new technique. To claim that Oates did not intend to cause his own death can be a way of emphasizing that he did not act on his desire to bring his terrible suffering to an end but only on his desire to make the others go on without him. The claim that the person who kills in self-defense does not intend to kill his attacker can be a way of specifying that he does not act with the aim of punishing his attacker with death. The claim that the censor does not intend to entertain evil thoughts is a way of specifying that the censor does not act to gratify a desire for erotic pleasure in choosing to bring about the evil thoughts. These examples cannot be illustrations of DE as we have formulated it here. They violate three constraints: the I/F distinction is being used to describe an agent's motives, a harmful result too closely connected to the agent's means not to count as intended for the purposes of applying DE is described as merely foreseen, and a consequence that is labeled as merely foreseen in order to describe a case of screening off is mistaken for an application of DE.

I suspect that a similar mixture of confusions is responsible for explaining what intuitive force DE is thought to have when applied to other examples. The permitted actions in the hysterectomy/abortion and the morphine examples share nearly all of the features of the examples just discussed. The doctor who performs a hysterectomy on a pregnant woman intends to cause the death of the fetus according to the standard for what counts as intended that is appropriate to DE. But at

the same time, his guiding aim is not to end the woman's pregnancy, it is to treat her cancer. He intends to cause the death of the child only as part of his means to this goal. An absolutist may still consistently say that other goals to which an abortion may be chosen as a means would not provide adequate moral justification, since the way in which the exemption to a general prohibition has been formulated limits the scope of the permission to the case at hand. This is specifically because it does not say that the harm is permissibly brought about provided that the agent does not intend it. Instead it says that the act is permissible because of the specific way in which the agent does intend it—as a means to a specific end and only as a means to that end. (This leaves it entirely open whether a similar exception should be made in the other member of the pair, the case in which abortion is chosen to save the mother's life.)

This sort of reinterpretation would also explain why the morphine example has seemed puzzling. As many have argued, it is hard to see any real difference between the doctor who intends to end pain by ending life and the doctor who intends to end pain with a lethal dose of morphine. But one can intelligibly distinguish between hastening death whenever a patient's prospects are hopeless and hastening death only when there is pain that could not otherwise be relieved and the patient's prospects are hopeless. The doctor who causes death with the minimally effective yet lethal dose of morphine may intend to cause death (in the DE sense) but may intend to do so only out of compassion, as a means of avoiding intractable pain. Permitting this would not commit one to permitting the hastening of death, in general, whenever a patient's prospects are hopeless.

This is a somewhat sympathetic reconstruction of the use of the I/F distinction by absolutists, but that should not obscure the fact that it is meant to be a devastating objection to DE and to the use of DE by absolutists. Double Effect, understood as a prohibition on instrumental harming, is undermined, not supported, by these examples; they show the permissibility, in special circumstances, of instrumentally intended harm. To show how the illusion that DE plays some special explanatory role can persist, even when one has reason to believe that DE should rule out a course of action or simply does not apply, I consider a final example.

A Trolley Problem for Participants

You and I are on a track; we notice a runaway trolley bearing down on us. The usual strictures of the trolley problem genre obtain: we cannot jump aside because we are in a tunnel just wide enough to hold the track (or in a canyon with narrow sides), the brakes have failed, the driver has disappeared, and there is no safe way to stop the trolley. We both start running away from the trolley. You doubt that either of us can outrun the trolley but believe that it would be permissible to try to do so, even if

that means pulling ahead of me. Then you realize that all that is really necessary is for you to outrun me: if the trolley hits either one of us the impact would be sufficient to stop it. You reject as impermissible the option of tripping me, since that would involve intentionally causing harm to me, so you start running, pacing yourself by glancing frequently over your shoulder at me.⁶⁷

Proponents of DE who are inclined to say that it is permissible for you to try to outrun me might say that DE explains why this is so. But this is an illusion. This example has many elements that could be marked using the I/F distinction, but we are now in a good position to recognize that none of these uses of the distinction are illustrations of DE:

1. Is it really true that the harm to me that you foresee is not intended as a means? If you believed that you could drop the large suitcase you were carrying to stop the trolley and you did not, thinking that you were sure to outrun me and need not sacrifice your suitcase for me, then we would say that you preferred for the harm to befall me rather than your suitcase and intended to allow the state of affairs that you preferred. So, equally, isn't it true that you intend to allow the harm to befall me and not you, but that in this case we believe it is justified? You would violate the fifth constraint if you used your belief that it was permissible to aim to outrun me as a reason for saying that you did not thereby intend that the trolley would hit me first.

2. If it does not seem right to say that you intend for the harm to befall me, isn't that only because you really intend to allow the train to hit me: you intend not to stop the train yourself, for you are not obliged to risk your own life to ensure my safety. Now of course you do not intend to cause the train to hit me (as would be the case if you tripped me); you intend to allow it to hit me by not preventing this from occurring. A full explanation of why it is permissible to run would describe running as a case of negative agency: not shielding me from the trolley.

You are not required to cooperate should I attempt to trip you; this is because you are not required to allow yourself to be placed by me as a shield against the trolley. And you certainly are not required to volunteer to place yourself as a shield on my behalf. This is why you may run and need not prevent the trolley from hitting me. (And since our situations are symmetrical, this is why I also may run in an attempt to avoid becoming the shield for you.)

This is a case of negative agency, a case of allowing harm, and it is allowable because the cost of preventing it—self-sacrifice—would be too

67. This is similar to an example in Boorse and Sorensen that involves two campers outrunning a bear. The underlying structure is similar to that of the loop variant of the trolley problem discussed by Judith Jarvis Thomson in "The Trolley Problem," in *Rights, Restitution, and Risk*, ed. William Parent (Cambridge, Mass.: Harvard University Press, 1986), pp. 101–3.

high. Causing me to be the one who is hit is one thing; not protecting me from being hit at the cost of your life is quite another. To use DE to explain why negative harmful agency is permissible, when positive harmful agency is not, violates the fourth constraint.

3. Your running is shown to be permissible in part because it is a case of negative agency, but it is realized or constituted by a genuine action.⁶⁸ And your action is one that is guided by an intention. It might be said that DE explains why it is that you may run, and run fast, provided that you run only with the simple intention of staying out of the way of the trolley, without any further strategic calculations about what is likely to develop for me, and provided that you are not guiding your action with the goal of bringing it about that when the trolley overtakes one of us, you will still be just ahead of me.

If DE applies and explains the permissibility of running ahead, then it describes this as a case of permissibly foreseeing harm as a side effect of one's action. But if you have not made any strategic calculations about what is likely to develop for me and aim only to run as fast as you can, then you have not foreseen the harm that will ensue for me. And if you have not foreseen the harm that will ensue for me, your act cannot be justified as a case of allowing a merely foreseen harm. So DE couldn't explain the permissibility of simply running to save yourself. Nor could it, for similar reasons, explain why a slow-witted person who simply did not grasp the complexity of the situation might permissibly try to outrun the trolley.

4. If you intend to try to outrun me then you intend to bring it about that the trolley will hit me first. So the harm to me that will occur if you outrun me is viewed as a means to your survival. Since DE prohibits bringing about harm as a means, DE could not explain why it is permissible to try to outrun me.

But it is not that your action is wrong because the harm that you foresee for me is a means to your survival. The opposite is true. An important part of the justification for aiming to outrun me is that the harm you intend for me is intended only instrumentally, as a means to saving yourself; you want it only insofar as you grasp that it is a condition of your own survival. We could even say that it is a condition on the permissibility of trying to outrun me that your motives in doing it do not go beyond your desire to save yourself; you are not motivated by any animosity toward me and would not aim to bring about harm to me by any other means. Yet again, it is Aquinas's proviso on the permissibility of instrumental harming that the I/F distinction is being used to express.

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68. I argue that cases of negative agency need not be constituted by positive actions but may coincide with them ("Compatibilists Could Have Done Otherwise: Responsibility and Negative Agency," *Philosophical Review* 103 [1994]: 453–88, pp. 464–65, 478–81).

It might be claimed, I suppose, that the interesting and compelling point that these final examples illustrate is all that people had ever meant to express when citing DE. And it certainly may have provided a kind of theoretical undertow that led proponents to believe that DE was centrally concerned with an agent's underlying motives. But this claim is destined to fail as an alternative interpretation of DE. All of the theorizing that has appeared in defense of DE could not possibly be construed as discussion of a single moral principle. What have generally been taken to be illustrations of DE compose instead a gallery of miscellaneous objections to simple forms of direct consequentialism that can be expressed, with more or less strain, using the distinction between intended and merely foreseen consequences. They are tied together by nothing more penetrating than the claim that the distinction between what an agent foresees and what an agent intends sometimes matters, and matters a great deal, to moral evaluation. The assumption that there is just one way in which it matters has led to such confusion that many have started to doubt that the distinction could be of any real utility. That is one great irony. Another is that the desire to do justice to the various intuitions that have led people to accept DE should lead one in the end to favor doing away with it.