Intractable Difficulties for the Doctrine of Double Effect:
The Problem of Closeness and the Proper Focus of Concern

by

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Abstract

A more recent development within moral philosophy has been authors of a nonconsequentialist stripe forwarding arguments against principles once thought foundational to nonconsequentialist ethics as features that distinguished such an ethics from a consequentialist one. The Doctrine of Double Effect (DDE) is one such principle. It holds that it is impermissible to act with the intention to harm either as a means (even to some good end) or as an end, but it is sometimes permissible to perform the same act when the harm is not intended but merely foreseen as a side-effect. The primary aim of this project is to examine two difficulties facing the DDE, and to see whether these difficulties give us reason to reject the DDE. I argue the first problem, the Problem of Closeness, is intractable if the DDE maintains the intend/foresee distinction. The second problem is a concern that by focusing inward on the agent’s intentions the DDE misses the proper focus of concern in permissibility. Of two possible readings of the concern: i) that a judgment of inferiority is insufficiently strong to support to support the DDE, and ii) that the DDE is inconsistent with certain facts about deliberation, I find that while the defenders of the DDE may provide the resources necessary to respond to the second proper focus concern, they do not offer a satisfactory response to the first.
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Chapter 1

Introduction

Within nonconsequentialist ethics there are distinctions drawn between the types of agency involved in an action. These distinctions are sometimes thought to make a significant moral difference to the permissibility of an agent's action. On many nonconsequentialist accounts, there can be two acts which would cause an identical set of consequential harms, but only one of the two acts is permissible because of the type of agency involved. A commonly identified example is the intention with which an agent acts in bringing about a state of affairs. There is a certain intuitive force to the idea that an agent's intentions are relevant to the moral evaluation of her action, and independently of any consequence that may result. One way of capturing this intuition is to devise moral principles that, other things being equal, prohibit actions performed for certain morally problematic intentions, but do not prohibit against the same action done without the morally problematic intention.

The Doctrine of Double Effect (DDE) is a historically important formulation that aims to capture and explain the normative force behind this intuition. There is not a single universally agreed upon formulation of the DDE, and depending on its defender, or critic, the DDE can vary on both the intention is prohibits and in the strength of its prescriptions. There are at least two common claims that taken together form the core of a 'traditional' DDE: i) there is a moral constraint on acting with the intention to harm, and even if the harm is a means to some impersonally better good, and ii) there is a distinction between intending the consequences of an action, and merely foreseeing the consequences of an action, and the former is of greater moral weight (the intend/foresee distinction). Taken together: it is impermissible to act with the intention to harm either as a means (even to some good end) or as an end, but it is sometimes
permissible to perform the same act when the harm is not intended but merely foreseen as a side-effect.

The support for the DDE is not just that it captures the intuition that intentions are relevant to moral evaluation, but also how it plausibly explains our intuitive judgments of permissibility in a number of paradigmatic pairs of cases. These case-pairs are constructed such the consequences are held constant between the two, and yet intuitively the permissibility of action in each case differs. One commonly cited case-pair concerns wartime bombing:

*Tactical Bomber:* An agent bombs an enemy munitions factory with the aim of destroying their capacity to wage war, however, she foresees as a side effect that a number of noncombatants will be killed in the ensuing destruction.

*Terror Bomber:* An agent bombs the homes of noncombatants with the aim to terrorize the enemy into surrender, however, she foresees as a side effect that a munitions factory will be destroyed.

To many, it is intuitively the case that *Tactical Bomber* could be permissible if the deaths of the noncombatants where proportional to the benefits brought about by ending the war (e.g. future probable deaths and suffering). At the same time, and despite the fact both actions cause equivalent harms, it is decidedly less plausible that *Terror Bomber* is a case of permissible action. The difficulty for those who wish to maintain this intuitive distinction is to provide a principle that explains the permissibility of *Tactical Bomber* without incidentally permitting *Terror Bomber*.

Proponents of the DDE point out that one difference between the cases lies in the structure of the agent's intention in each case. *Tactical Bomber* does not intend the harm to her
victims, whereas *Terror Bomber* does intend the harm as a means to her end. The harm may be a necessary condition of her aims, as if the noncombatants where not present to be harmed, the *Terror Bomber* would have no reason to conduct her bombing raid. The intuitive difference in permissibility between these two cases, and the fact that the two cases can be plausibly differentiated on whether the harm is *intended*, or whether the harm is *merely foreseen*, provides evidence that the DDE correctly identifies a distinction of moral significance.

*Tactical* and *Terror Bomber* are both examples of 'acts' as they are typically viewed in moral philosophy. However, the DDE is not limited to prescribing acts, but has equal application to cases of omission. Consider a pair of cases where there is a shortage of the medical resources needed to treat a number of patients with a life-threatening illness:

*Medical Scarcity*: Doctors have the resources to save either the one acutely ill patient, or save five other patients. The doctors choose to save the five patients, and *foresee* that as side-effect of withholding treatment that the acutely ill patient will die.

*Scarcity/Transplant*: The doctors are capable of saving an acutely ill patient, however, they are aware they have five other patients each in need of a different organ transplant. The doctors withhold treatment *in order* for the acutely ill patient to die, and to make use of his organs to save the five others.

As with *Terror* and *Tactical Bomber* the common reaction is to claim the doctors in *Medical Scarcity* would be acting permissibly in withholding treatment, whereas the doctors in *Scarcity/Transplant* would not. Proponents of the DDE can again point to the differences in the intentional structure of the doctors. The doctors in *Medical Scarcity* do not *intend* to harm the acutely ill patient. His death is an unfortunate consequence of the limited resources available to
the doctors, and if it were possible the doctors would have provided treatment to all six patients. In contrast, the doctors in Scarcity/Transplant intentionally withhold treatment from the acutely ill patient as a means to their end. So, proponents of the DDE contend, the intuitive difference between Terror and Tactical Bomber and between Medical Scarcity and Scarcity/Transplant can be explained by the intend/foresee distinction and a general prescription against intending harm.¹

Here I should make a note about history, as in claiming the DDE is concerned with the distinction between intending harm (as an end or as a means) and merely foreseeing harm, I am isolating a condition of a more general doctrine. As it has been historically presented, the DDE is a set of necessary conditions for a certain type of permissible action.² As such, the claims (i) and (ii) above can be presented as a part of a larger doctrine that may include, for example, (iii) the agent has proportionally strong enough reasons for action to justify the side-effect harm, and (iv) there is no other way to produce the intended benefit except by the side-effect harm.³ I am not

¹ There are at least two other cases-pairs that are frequently cited in support of the DDE that I will not address. First, the case-pair of Craniometry and Hysterectomy. In both, a doctor performs a procedure to save a pregnant woman’s life that results in the death of the fetus. In the former the doctor crushes the fetus’ skull and removes it through the birth canal. In the latter, the doctor removes the woman’s cancerous uterus. According to the DDE the latter may be permissible as the intention was to remove the uterus, and the death of the fetus was an unintended side-effect. Whereas in Craniometry the doctor directly intends the harm to the fetus.

The other case-pair is Voluntary Euthanasia and Terminal Sedation. In the former a doctor, at the patient’s request, painlessly ends the patient’s life. In the latter the doctor, at the patient’s request, administers a large dosage of analgesics that end the patient’s life. However, the doctor intends the analgesics to relieve the patient’s symptoms (the pain) and the patient’s hastened death is unintended side-effect. Warren Quinn argues this example is a misapplication of the DDE as in both Voluntary Euthanasia and Terminal Sedation the patient consents to the doctor’s actions, and there is no conflict of moral claims (see, Warren Quinn, “Actions, Intentions, and Consequences: The Doctrine of Double Effect,” Philosophy and Public Affairs, 18(1989): 343n17).

Both the case-pairs of Craniometry/Hysterectomy and Voluntary Euthanasia/Terminal Sedation depend on controversial claims about the permissibility of certain types of actions. For the former, that we are obligated not to kill (or seriously harm) fetuses. For the latter, that the doctor acts wrongly in Voluntary Euthanasia. If neither Craniometry nor Voluntary Euthanasia are impermissible, then these are not case-pairs where permissibility may differ due to an agent’s intention. In contrast to the Trolley, Bombing and Scarcity case-pairs, neither of these case-pairs is established on a strong intuitive difference, nor is it clear that some substantive moral difference is in want of theoretical explanation. For these reasons I focus the discussion on the three other case-pairs.

² The historical development of the DDE is often identified as beginning with Thomas Aquinas’ account of self-defense. See Summa Theologicae, II-II q.64, a.7

³ For a historical account, and contemporary development of the DDE as a set of necessary conditions for permissible action, see T.A. Cavanaugh, Double Effect Reasoning (Oxford: Oxford University Press,
concerned with (iii) or (iv), or other additional conditions of necessary action. Rather, what I find interesting about the DDE is its claim that a fact about an agent’s intentions, about her mental states, can make a difference to the permissibility of an action. I find this especially interesting in so-called cases of double-effect where an action has multiple distinct consequences that can plausibly be described as relating to the agent's reasons for action in one of two ways, as intended or as merely foreseen. Not the least, as it is generally possible to construct a case otherwise similar to any double-effect case (at least in the nature of the consequences) that differs only in whether the agent intends the harm (e.g. Tactical and Terror Bomber). These cases differ only with respect to the intend/foresee distinction, not with respect to either (iii) or (iv).

Moreover, the DDE prohibits an action precisely because of the agent’s intention, and not because of potential further possible consequences of acting with that intention (predictive significance) or some other external correlate. For example, we may think it a good idea to prevent the Terror Bomber from conducting her raid as she may, while on the mission, spot a target with a larger number of noncombatants who she would then kill to further her end of terrorizing the enemy. The DDE, however, prohibits Terror Bomber whether there is good reason to believe the bomber’s intention may have predictive significance or not. Instead, the DDE identifies the intention on which she acts (the intention to harm) as a wrong-making property of action, and in the double-effect case-pairs so far discussed, it is this fact about the agents that changes an otherwise permissible act to an impermissible one. It is for these reasons I think the interesting claims behind the DDE are (a) the intend/foresee distinction (and more generally the differentiation of cases based on their intentional structure), and (b) the idea that an agent's intention can be a wrong-making property of action.

It is these two claims that will be the primary focus of my discussion. In Chapter 2, I turn to examine Thomson’s infamous Trolley cases, and specifically the well-known Loop variant.
which has been proposed as a counter-example to the DDE. This examination serves two purposes. First, it shows a general weakness of levelling a singular counter-example against the DDE, both because contemporary theorists almost universally argue for a non-absolutist conception of the DDE, and because a singular counter-example is always open for alternative analysis. Second, it introduces a set of resources and argumentative strategies used by defenders of the DDE in discussing the scope of an agent’s intentions. In Chapter 3, these resources are applied to a discussion of the difficulty of distinguishing between intended effects and foreseen but unintended side-effects. I examine the potential for a solution to this Problem of Closeness, but argue the problem is intractable if the DDE maintains the intend/foresee distinction and the associated aiming-at-evil rationale. In closing this chapter, I propose an alternative formulation of the DDE (following Warren Quinn’s work) which discriminates against the intention to use another, and which is not susceptible to the Problem of Closeness.

In Chapter 4, I briefly examine the central features of an intention-independent view. I then offer an argument against either formulation of the DDE. My concern is that by focusing inward on the agent’s mental states the DDE misses the proper focus of concern in determining permissibility. I examine two possible readings of the concern: i) that a judgment of inferiority is insufficiently strong to support and explain the intuitive difference of permissibility between cases like Tactical and Terror Bomber, and ii) that the DDE is inconsistent with certain facts about deliberation and implausibly requires agents to examine their own mental states in deliberating on permissible action. After examining two responses forwarded by defenders of the DDE, I find that while the responses may provide the resources necessary to respond to the second proper focus concern, they do not offer a satisfactory response to the first. Finally, I conclude with a few brief remarks addressing the limits of the conclusions reached in this project for those theorists who believe evaluating the goodness of action takes primacy over permissibility.
Chapter 2

Intending Harm in Trolley Loop

2.1 The Trolley Problem and the Loop Case

In addition to the case-pairs of *Tactical* and *Terror Bomber*, and *Medical Scarcity* and *Scarcity Transplant*, there is another pair for which the DDE provides a justification that tracks the common intuitive judgments of permissible action. This case-pair is the infamous trolley cases, which are largely inherited in their present form from J. J. Thomson. Both cases consist of a runaway trolley barreling down a main track, and at the far end of the track are five people who, if hit by the trolley, would die. Here the cases diverge:

*Trolley:* An agent can pull a switch to redirect the runaway trolley onto a sidetrack where there is only one person. If the trolley is redirected, it will not strike and kill the five, but it will strike the one person and kill him.

*Bridge:* An agent can pull a switch which will cause a man to be pushed from an overhead bridge into the path of the trolley. If the trolley strikes the man it will kill him, but it will not continue onwards to strike and kill to five.

The common intuition is that it would be morally permissible to redirect in *Trolley*, but it would be morally *impermissible* for the agent to push the man into the way of the trolley in *Bridge*.

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As in the two case-pairs of the introduction, the ostensible consequences of either act is the same. Either pull lever and kill the one, or refrain from pulling the lever and thereby let the five die. The difficulty of the Trolley Problem is to provide a justification that explains the permissibility of Trolley without also permitting Bridge. A standard way of accounting for this difference is by appeal to DDE. If there is a morally relevant distinction between intending harm, and merely foreseeing harm, then the Trolley Problem evidences the intuitive plausibility of the distinction. The agent in Trolley redirects the trolley without the intention of killing the one. Rather, she intends to save the five, and recognizes that as an unfortunate consequence she causes the death of the one. The death of the one is not a necessary for saving the five, as if there was no person on the sidetrack, then agent’s intention would remain the largely the same, and it seems plausible to claim that the death of the one on the sidetrack is an foreseen but unintended side-effect. In contrast, in Bridge there is no recourse to the causal non-necessity harm. The agent acts with the intention of causing the man on the bridge to be struck by the trolley. So if our intuitions are that Trolley is permissible, while Bridge is impermissible, and it is also the case that Trolley and Bridge differ in whether the agent intends harm, then the intend/foresee distinction and the DDE can explain the Trolley Problem.

As I have discussed the DDE so far, I have left ambiguous the strength of its prohibitions. Some authors have taken its prohibition against intending death, or serious enough to be absolute, and admitting few, if any, exceptions. However, an exceptionless prohibition leaves the DDE vulnerable to counterexamples. Perhaps the most well-known of counterexamples is a variation of Trolley presented by Thomson. This Loop case, as in Trolley, has five people trapped on a main track, and a sidetrack with one person on it. The sidetrack, however, does not continue away from the five. Rather, it loops back towards them. If the one was not on the sidetrack, the trolley would

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continue along the loop and strike the five killing them. If it does strike the one, it will stop, and thereby the five would be saved. When answering the question whether it is permissible to redirect the trolley in *Loop*, Thomson says:

> But we cannot really suppose that the presence or absence of that extra bit of track makes a major moral difference as to what an agent may do in these cases, and it really does seem right to think (despite the discomfort) that the agent may proceed.  

Thomson's claim seems plausible, as it is difficult to distinguish how the *Loop* should be different from the *Trolley* especially given the extra bit of track is never actually used. However, unlike *Trolley*, in *Loop* saving the five necessarily requires the involvement of the one. The agent's aim in redirecting (the saving of the five) can only be completed if the one is on the loop track, and without the one, the agent has no reason to redirect. If this is the case, then it seems the agent in *Loop* pulls the lever with the intention of the trolley hitting the one as a means to save the five. However, the intention to harm to bring about some good end (saving the five) is just the sort of act that is generally prohibited by the DDE.

Thomson's intuition on the permissibility of the *Loop* is not anomalous and it appears to be commonly held. If Thomson and the common intuition are correct, then the defenders of the DDE are presented with two substantive difficulties. First, it sheds doubt on the DDE as an appropriate explanation for the moral difference between the *Trolley* and *Bridge*. If *Loop* is permissible, and the agent in *Loop* acts with the intention to harm, then the agent's intention to harm is not relevant to determining permissibility in *Loop*. There must be some other factors independent of an agent's intentions which determine the permissibility of redirecting the trolley. However, if these additional factors, whatever they may be, are sufficient for the permissibility of

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Loop, they should also be sufficient for Trolley. Loop and Trolley only differ objectively in “that extra bit of track” so there is no pressing need to bolster the justification of action in Trolley if Loop is permissible. Second, Loop serves as a positive counterexample to the DDE, and to the more general thesis that intentions are relevant to permissibility. Trolley and Loop are a pair of otherwise identical cases, in the former harm is intended, and in the latter merely foreseen, but both cases remain permissible despite this difference in intentional structure.

2.2 Non-Absolutism and Counterexamples

The two upshots of the Loop Case should be distinguished, as there is at least one response that only directly addresses the latter. Even if one accepts Thomson's claim that redirecting the trolley in the Loop Case is permissible, all this shows is that there is at least one case in which the intent to harm is not of sufficient moral significance to mark the agent's action as impermissible. Contemporary defenders of the DDE need not accept an absolutist DDE in claiming the intend/foresee distinction matters morally. They can consistently maintain that in Loop the agent has a stronger reason not to redirect the trolley than in Trolley, that this stronger reason is not sufficient to make the action impermissible, and that the grounds for this stronger reason are exactly that the agent in Loop intends the harm to her victim. The DDE, its defenders will maintain, claims that there is generally a stronger reason against intending harm than merely foreseeing it, and that in different circumstances the difference in strength of reasons is sufficient to make a difference in permissibility. This is to say, in at least some cases an act that was done with the intention to harm is impermissible while the same act without this intention is

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10 Thomson recognizes, at the very least, that redirecting in Loop is more discomforting than Trolley, even if she holds that it intuitively permissible. See Thomson, “The Trolley Problem,” 1403.
permissible. The previously discussed *Terror Bomber* and *Scarcity/Transplant* cases may be two such examples. If this is true, then *Loop* fails to act as a counterexample to the DDE.

It should be kept in mind that much of the plausibility of the DDE rests on two pillars: i) the intuitive plausibility of the distinction between intending and merely foreseeing harms, and ii) the plausible explanations it provides for case-pairs that differ only with respect to this *intend/foresee* distinction. All three case-pairs, *Tactical* and *Terror Bomber*, *Medical Scarcity* and *Scarcity/Transplant*, and *Trolley* and *Bridge* are identical in consequence yet differ in whether the agents intends the harm, or whether the agent merely foresees harm. If *Loop* is dismissed as a counterexample by referencing the non-absolutism of the DDE, it comes at the price of no longer offering an explanation of the Trolley Problem, and the loss of the evidence this explanation provided in support of the DDE. Moreover, this difference between the cases needs to be explained. Both the sets of *Trolley* and *Bridge*, and of *Tactical* and *Terror Bomber* involve an agents causing death to bring about some good end. If the difference between each pair is accounted for by the agent's intention, then it is odd that this difference in intention should make a difference in the latter pair, and yet make no difference in the former pair.\(^{11}\)

### 2.3 Doctrine of Triple Effect

It remains possible for defender of the DDE to respond to *Loop* without making these concessions. That is, maintain the DDE (perhaps suitably modified) explains the Trolley Problem, and deny that *Loop* is a positive counterexample to either the DDE or the *relevancy* of intentions thesis. First, they could modify the DDE so that it accommodates Thomson's claim that the agent in *Loop* acts permissibly, yet deny that the agent's actions involve the intention of harm, or, at

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\(^{11}\) It should be noted that excepting certain traditions (e.g. Catholic moral theology) that most contemporary moral theorists who defend a version of the DDE defend a non-absolute principle that is defeasible by certain conditions, and primarily, by consequentialist considerations of a great enough magnitude. This latter form of non-absolutism faces a similar explanatory difficulty, however, it is not just a problem for the DDE but for any non-consequentialist moral theory that allows for a *threshold* over which consequentialist considerations outweigh non-consequentialist ones.
least, deny her action involves a narrower sort of intention to harm that the DDE ought to prohibit. Second, they can reject the permissibility of redirecting the trolley in Loop.\textsuperscript{12} If it is \textit{impermissible} for the agent in the \textit{Loop} to redirect the trolley, then there is no difficulty of explaining how a case-pair can differ only on the intention to harm, yet not differ in permissibility. \textit{Loop} would assimilate to the similarly impermissible \textit{Bridge}, as both would be impermissible due to an intention to harm.

Of the former category of responses, Frances Kamm's Doctrine of Triple Effect (DTE) is perhaps the only thoroughly developed example.\textsuperscript{13} Kamm's explanation of the \textit{Loop} is based on the additional distinction between carrying out an action \textit{because} an effect will occur, and \textit{in order} that the effect occurs, that supplements the \textit{intend/foresee} distinction. This is to say, Kamm claims that the potential harms of an act can stand in one of three relations to the agent's reason; an agent can do something: i) \textit{merely foreseeing} the harms that will occur, ii) \textit{in order} to bring about a harm that occurs, or iii) \textit{merely because} an effect will occur. According to Kamm, the traditional DDE fails to distinguish between the categories of (ii) and (iii), lumping both together as “intended” effects of an action. In contrast, Kamm's DTE more strongly condemns acts of the (ii) type, done \textit{in order} to harm, than it does of the (iii) type, done \textit{merely because} of a harm.

In regard to the Trolley Cases, the DTE tracks the original prohibitions of the traditional DDE. \textit{Trolley} is permissible as the harm is a merely foreseen side-effect. \textit{Bridge} is impermissible as the agent pulls the lever \textit{in order} to cause the harm to the one on the bridge. \textit{Loop}, Kamm claims, is permissible as the trolley is \textit{not} redirected \textit{in order} to cause harm. Rather, the primary


\textsuperscript{13} For a full development of the DTE, see Frances Kamm, \textit{Intricate Ethics: Rights, Responsibilities and Permissible Harm} (Oxford: Oxford University Press, 2007), 91-129. Although Kamm herself does not ultimately believe that the DTE is the correct explanation of \textit{Loop}, as an attempt to develop a defensible version of the DDE is it illustrative of attempts that make use of the same resources.
intention of an agent in Loop is the removal of an immediate threat to the five (the trolley). Unfortunately, the process of removing the threat from the main track does not remove the threat in its entirety, as the five are still threatened by the possibility of looping. The agent, however, is aware that in redirecting the trolley the threat of looping is solved by the existence of the one person on the side track. Kamm claims that the agent in Loop can redirect knowing the one is on the loop track, and because the trolley will hit the one on the loop track, but without having the intention that in redirecting she is doing so in order to hit the one.

The intend/foresee distinction is already a narrow one, and in some case-pairs it is already difficult to see whether there is a real moral difference. Kamm's supplementation of the intend/foresee distinction with the doing-because/doing-in-order-to distinction may push our credulity, and it seems plausible to question whether Kamm is picking out anything morally significant.¹⁴ Kamm motivates for the distinction through the analysis of a number of different and particular cases.¹⁵ However, even if we accept an analysis of certain cases that purport to show the moral relevance of the doing-because/doing-in-order-to distinction, it does not necessarily mean that the distinction has a significant moral relevance in Loop. There needs to be additional reason to reject the claims that the agent in Loop redirects with the intention in order for the trolley to hit the one on the sidetrack.

2.4 The Scope of Intention in Trolley Loop

A common sense way to determine between when an agent intends a consequences of their action, and when a consequence was an unintended mere side-effect is by a counterfactual

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¹⁴ Other authors agree with Kamm’s assertion that the doing-because/doing-in-order-to distinction has moral relevance. For example, see Lawrence Masek, “Intentions, Motives, and the Doctrine of Double Effect,” The Philosophical Quarterly 60(2010): 578-581 and Otsuka, “Squaring the Circle in Looping Cases,” 96-97, 100-102.

¹⁵ Perhaps most forcefully by her Party case where an agent decides she is only willing to have a party because she is aware that her friends will aid her in cleaning up the next day. Kamm asserts that the agent throws the party not in order to have her friends clean up (presumably she throws it in order to have fun, or something similar), but does throw the party because her friends will help clean. See Kamm, Intricate Ethics, 95.
test. Suppose an agent would carry out an act if it had a certain set of consequences, then if the
agent would decline acting because the action would not actually bring about a certain effect
effect, the agent intended to bring about that certain effect. If in Loop the one on the side track
extricates himself before the trolley is redirected, then the trolley cannot hit the one to save the
five, and given the five will die very shortly whether the trolley is redirected or not (and likely
just a painfully), it seems the agent has no reason to redirect the trolley and would not do so. Loop
then fails the counterfactual test.

However, Kamm argues that the common sense view purported by the counterfactual test
is inadequate, as it does not properly differentiate effects that are conditions for action from
effects specifically intended. In Kamm’s Party case an agent decides she is only willing to have a
party because she is aware that her friends will aid her in cleaning up the next day. She would
not hold her party if she did not believe her friends would help her clean. However, since she
does not hold the party in order to get her friends to clean up the house, she throws the party with
the intention of having fun. Kamm’s claim is that an agent can decide whether to act or not
because of the effects she believes the action will cause (the friends helping to clean up), without
that being the intended effect of the action (having fun) and if so, then counterfactual test is
inadequate general test for intention.

2.4.1 Bratman’s Conditions for Intention

In developing a defensible account for the DTE, Kamm relies heavily on the work of
Michael Bratman, as he provides a robust account of intention that distinguishes between the
effects a person intends from those she merely expects, and even when the effect was, “one the
agent explicitly saw as importantly relevant to her decision as to what to do, and so explicitly

16 As do many defenders of the DDE, however, this is perhaps for different reasons.
17 Kamm, Intricate Ethics, 95.
considered in her deliberation.” So while Kamm turns to Bratman to flesh out the doing-because/doing-in-order-to distinction, other defenders of the DDE rely equally heavily on his work to sustain the traditional intend/foresee distinction. To explain why his theory of intention can support such distinctions, Bratman identifies three conditions of intention:

1. If an agent intends X, then she engages in means-end reasoning on how to bring about X.
2. If an agent intends X, then she constrains her intentions and future intentional action to remain consistent with X.
3. If an agent intends X, then she acts to bring about X and she is willing to adjust her behavior in order to bring about X in light of new circumstances.

Directing this theory of intention towards Trolley and Bridge: For (1) in Bridge the agent pulls the lever because she recognizes it as a means towards her proximate end of pushing the man off the bridge, itself a means towards saving the five. In Trolley, the agent does not reason from the harm of the victim through to her end. For (2) in Bridge it would be inconsistent for the agent to consider rescuing her victim from the impact with the trolley, whereas in Trolley the agent could consistently intend to prevent the trolley from hitting the one on the sidetrack. For (3) in Bridge if the lever were to malfunction it would be consistent for the agent to seek an alternative means by which to push the man of the bridge. In Trolley if the man were to extricate himself from the sidetrack before redirection, the agent would have no reason to seek an alternative means to save the five, and would redirect down the now empty track. At first blush, and according to Bratman’s conditions, the agent in Bridge intends to harm to her victim, and the agent in Trolley does not.

2.4.2 Kamm’s Threat Differentiation

19 Ibid, 139.
20 Ibid, 141-142.
21 Bratman himself considers his conditions with respect to Tactical and Terror Bomber and comes to a similar conclusion: Tactical Bomber fails to meet any of the three conditions, and Terror Bomber meets all three conditions.
For *Loop*, Kamm claims that Bratman’s conditions (1) and (3) are not met, as the agent is not simply looking for means to kill the one on the loop track. She is certainly aiming at saving the five on the main track. However, Kamm claims, the agent is not simply aiming at saving the five, rather she is seeking a means to save the five from the initial threat of the trolley on the main track. If the agent does not take care of this 'first threat', the five on the main track will certainly die, and it is only in the elimination of this first threat, and because of it, that a second threat to the five arises (a looping trolley). The claim is then that the agent in the *Loop Case* seeks only to remove the first threat (from the main track) by redirecting, but is aware that the existence of the one on the side track will prevent the good gained in eliminating the first threat from being lost through the fulfillment of the second threat (from the loop), and thus the agent does not seek a way of hitting the one, but merely a way to eliminate the first threat. Moreover, the agent would not seek an alternative method of using the one to prevent the second threat if her victim was to extricate himself from the loop track.

Notice, however, that Kamm’s account is not a simple application of Bratman’s conditions. Instead, Kamm relies on a sophisticated causal account of threat differentiation. She motivates for this causal account with *Wagon* case: a trolley threatening five can be redirected unto a side track, and would continue harmlessly down the side track, but would hit a switch that releases a wagon down another track towards the five. As in *Loop*, a single person is between the wagon and the five such that the wagon will strike the one killing him, and would otherwise strike the five killing them. In an obvious sense, the wagon presents a new threat to the five as it is a new device threatening them. Kamm claims, and I agree, that *Wagon* is morally indistinguishable from *Loop*. However, Kamm believes this similarity establishes that differing threats need not come from differing devices. If *Wagon* presents us with two threats, then it should also be the case that *Loop* can presents us with two threats. However, on the basis of the

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Wagon Case alone, Kamm's claim is too strong. The similarity of Wagon and Loop cuts both ways. It seems equally plausible that a second threatening device need not create a second threat, and we can say: if Loop presents us one threat, then the Wagon Case should be one threat as well. There does not seem to be any close relation between the identity of the threatening device, and the number of threats it poses towards a bystander.

What Kamm claims allows her to differentiate between the trolley hitting the five from the front and hitting the five after redirection onto the loop is that the trolley hitting them from the main track is a threat to them, and “turning it away has a point if we want to save them, even if the point could be defeated by the further effects of turning the trolley.” According to Kamm, the fact that turning the trolley makes no practical significance to the five without the existence of the one does not impact whether we can appropriately distinguish the threats posed to the five. However, it seems an implausible story to tell that the agent in Loop only intends the removal of the threat offered by the initial redirection. The agent has as much reason to prevent the five from being hit either before or after redirection. Kamm's claim that the agent in Loop fails both (1) and (3) of Bratman's conditions requires that it can plausibly be said that the agent only intends the removal of the initial threat (the trolley on the main track). Without providing reason to distinguish the threat posed by the trolley on the main track and the trolley looping around, there is no reason to grant Kamm's claim that the agent in the Loop intends only to eliminate the threat from the main track, and not also the threat from the side track. If the application of the doing-because/doing-in-order-to distinction to Loop depends on this threat differentiation, then the DTE does not offer a promising solution to Loop as a counterexample.

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25 Kamm does not think threat differentiation depends on the direction of the trolley. She suggests a variation of loop where the trolley rejoins the main track just beyond where it was redirected (therefore threatening the five from the same direction on the main track). See, Intricate Ethics, 124n9.
2.5 Lessons from the Trolley Loop

As I have said, there is a third option for defender of the DDE who neither wish to lose the DDE as an explanation of the Trolley Problem, nor agree with Kamm's claims concerning the scope of intention in *Loop*, as they can reject the claim that redirecting in *Loop* is permissible. One strategy would be to show there are better reason to believe *Loop* is morally similar to *Bridge* than to *Trolley*. However, I leave aside any discussion over this question, primarily as my aim in this chapter was to determine whether defenders of the DDE had the resources available to respond to *Loop* as a purported counterexample, and to examine an argument over the scope of intentions following Bratman’s work. I believe non-absolutism showed that it is unlikely the plausibility of the DDE will depend simply on answering the moral question in a single case, and the fact that many authors have developed responses rejecting permissibility in *Loop* (and my lack of a strong intuition on the matter) dissuade me from pursuing this line further. 26 Moreover, I believe the confusion over the structure of intention in double-effect cases that was made apparent in Kamm’s discussion of *Loop* ultimately presents the DDE (or DTE) with the more general concern in distinguishing between intended and merely foreseen effects.

26 For examples of authors who claim *Loop* is impermissible see footnote 12.
Chapter 3

Intentions *Too Close To Harm*

3.1 The Problem of Closeness

A non-absolutist Doctrine of Double Effect (DDE) can be said to *discriminate* against actions that involve the intention to harm. That is, it is more difficult to justify an action if the action involves the intention to harm, or, there is stronger reason against an action if it is the execution of an intention to harm. In our *all-things-considered* moral judgments, we may decide a case of acting with the intention to harm is permissible due to countervailing reasons. Despite this, the defender of the DDE maintains that in at least some double-effect cases the difference in requisite justifications is sufficiently large such that an agent's intention to harm can be a wrong-making property of action (and the action would be permissible without this intention).

If the DDE claims the intention to harm can be wrong-making feature of action, then if there is a set of cases similar in all other relevant respects to the intuitively impermissible cases of double-effect (including their intuitive impermissibility), yet in which the agent lacks the intention to harm, then DDE would have difficulty explaining their impermissibility. Just as with *Loop* this would call into question the DDE’s explanation of impermissibility in the analogous cases where the agent does have an intention to harm. In double-effect cases where harms are *not* the intended end, it is very rarely the case that harms are a necessary component of an agent’s ends. If this is true, then the DDE would not discriminate against cases where harm is close yet not identical with an agent’s end. This *Problem of Closeness*, unlike *Loop*, is not of a singular counterexample. In any case of double-effect where harm is not the intended end, it is in principle...

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29 For the remainder of the discussion references to the DDE, unless otherwise specified, are to a non-absolutist principle of this sort.
possible to construct an otherwise similar case, yet where the agent only intends the end close to harm, and not the harm itself.

Recall Bridge, the agent can cause a man to fall in front of a runaway trolley, killing him, but saving five others. In the last chapter, it was claimed that the DDE discriminated against Bridge as the agent would act with the intention to harm. The reason given was that in Bridge, and unlike in Trolley, the agent’s actions fit Bratman’s conditions for intention; roughly, the harm was a necessary component of her intended ends. However, this is not necessarily the case. The agent could just as accurately be described as intending to stop the trolley with the body of the one, and stopping the trolley with the body of the one is not, strictly speaking, identical with the harm that results from the trolley impacting the body. If the agent's intention is to prevent the trolley from hitting the five, to that end, it makes little difference whether the trolley strikes the one killing him, or miraculously causes no harm at all.

This structure of intention is plausible even when we stipulate that the harm to befall the one is certainly going to befall them if they are struck by the trolley. The certainty in this modified Bridge is no different than if we stipulated that the harm would certainly befall the one in the Trolley. In both cases it can be said the agent intends a state of affairs (to save the five from harm) which is causally sufficient for certain harms (death) to befall another person, yet in neither case does it seem necessary for the agent to intend the resultant harm. An agent in Bridge acting only on this strict intention would not be acting impermissibly according to the DDE, as she intends no harm. However, I do not think our intuitions tracks this change in the agent's intention. If this is the case, then the intuitive difference in permissibility between the Trolley and this modified Bridge counts as much against the DDE as the original case-pair counted in its favor.

This structure of strict intentions is not limited to redirection cases. In any of the paradigmatic case-pairs so far discussed, it does not seem to be the case that harm is actually required for the agents to achieve her goals. In Tactical and Terror Bomber, both agents carry out
a similar bombing mission, which results in a destroyed enemy munitions plant and some number of noncombatant deaths. The DDE prohibited the latter as the agent does not merely foresee the deaths of the civilians, but intends their deaths as the means to her end. Imagine a Sophisticated Terror Bomber who has the same intended goal as Terror Bomber, that is, to win the war through terrorizing the enemy nation.\(^{30}\) She flies the same mission as Terror Bomber, however, this sophisticated variant recognizes that the actual deaths of the noncombatants are immaterial to her goal, as they only need to appear dead to terrorize the enemy nation. She still drops the bombs on the noncombatants, which will certainly cause their deaths, but her aim of ending the war would not be endangered if the victims were to miraculously return to life, as long as there was, “a general belief that they were dead, lasting long enough to shorten the war,” and, “nothing in that scheme requires the dismay ing condition of the bodies being permanent.”\(^{31}\)

Sophisticated Terror Bomber is not, at least intuitively, any less difficult to justify than Terror Bomber, and both do seem significantly more difficult to justify than Tactical Bomber. All the same, the structure of the agent’s intention in Sophisticated Terror Bomber is relevantly similar to that in Tactical Bomber and not Terror Bomber. The agent’s in both Tactical and Sophisticated Terror Bomber intend events that are causally sufficient for the harms that befall their victims, yet neither strictly intends (but do foresee) the harm itself. So Sophisticated Terror Bomber and Tactical Bomber also present a case-pair where there is an intuitive difference in permissibility yet no difference in the structure of intention.\(^ {32}\) Moreover, these cases are not one-offs due to causal structure (as may be the case with Loop), but stem from a fact that harm is rarely strictly necessary for the fulfillment of an agent’s aim.

\(^{30}\) The name is taken from Dana Kay Nelkin and Samuel C. Rickless, “So Close, Yet So Far: Why Solutions to the Closeness Problem for the Doctrine of Double Effect Fall Short,” Nous (Forthcoming): 5.


\(^{32}\) A similar account can be given in the Medical Scarcity cases (and other cases of omissions), and perhaps even more straightforwardly. It certainly does not seem necessary for the doctors in Scarcity/Transplant to intend the harm to the patient they refuse to treat. If the patient was to survive the harvesting of his organs, the doctor’s aim of rescuing the other five patients would not be frustrated.
3.2 The Closeness View

Defenders of the DDE may yet have the resources to respond to the Problem of Closeness. To one degree or another, many defenders of the DDE have charged the strict intentions view as amounting to little more than clever sophistry. The claim is that the agent's intentions in Sophisticated Terror Bomber, or the modified Bridge case, are too close to intending the actual harm that befalls the victims to meaningfully distinguish between prohibiting the one intention and not the other. In attempting to assimilate cases with an intention too close to harm, to cases with the intention to harm, defenders of the DDE, “will, of course, have considerable difficulty in explaining where the line is to be drawn. What is to be the 'criterion of 'closeness' if we say that anything very close to what we are literally aiming at counts as if part of our aim?”33 The challenge posed by the Problem of Closeness to defenders of the DDE is identifying a criterion of closeness that usefully distinguishes between intention and foresight, and in a way that rules out problematic cases (e.g. Sophisticated Terror Bomber), without prohibiting intuitively permissible cases (e.g. Tactical Bomber), nor permitting the intuitively impermissible (e.g. Terror Bomber).

Whatever the criterion of closeness34 on offer, it should be possible to give a formal account of the closeness view without committing to one criterion or another. To that end, those following Foot are proposing something like the following:

The Closeness View35

35 This formalization is derived from Victor Tadros, “Wrongful Intentions Without Closeness,” (Forthcoming): 3.
If an agent acts on an intention to do X, and X is a harm, or X is too close to harm (on a given criterion), then the agent's actions are more difficult to justify than if the agent were to act similarly without the intention to X.

Importantly, on the Closeness View the reason why the action would be more difficult to justify in the case where the intention is merely too close to harm, is precisely the closeness of the intention to the intention to harm and not some external correlate. In the modified Bridge, the agent does not intend to harm the man she pushes in front of the trolley. She does intend the trolley to strike him (and stop moving), and the Closeness View claims this intention is too close to the harm that results from him being struck by the trolley to morally distinguish it from the intention to harm. If any account of closeness can successfully give intuitively correct answers across a wide variety of cases, then that criterion may offer a principled way to distinguish between case-pairs like Sophisticated Terror Bomber and Tactical Bomber without abandoning the moral significance of the intend/foresee distinction.

However, even given a plausible criterion of closeness that appropriately sorts the paradigmatic cases of double-effect, responding to the Problem of Closeness would additionally require explaining why the DDE's prohibition on intending harm extends to intending states of affairs that are too close to harm. Yet, is not also extended to intending states of affairs that are far from harm, and even if both intended states of affairs are sufficient for harm. Sophisticated Terror Bomber and Tactical Bomber both, with certainty, harm their victims and neither seems to intend the harm. If the Closeness View is to discriminate against the former and not the latter, then a full account of closeness needs to provide an explanation of why the structural difference in these bombers' intentions is not morally relevant to permissibility.
3.3 Does the Agent Intend the Harm?

With the above in mind, there is a straightforward way to interpret the claims of the Closeness View to provide this explanation. Rather than make the moral claim: if the intention to harm is prohibited, then the intention too close to harm is also prohibited, a proponent of the Closeness View could make the following claim about the scope of intention: if an agent intends X, and X is too close to harm, then the agent intends the harm. If the DDE discriminates against actions with the intention to harm, then it also discriminates against action with the intention to X when X is too close to harm. To an extent making a claim about the scope of intentions is not so much offering a solution to the Problem of Closeness but rather arguing that there is no such difficulty for the intend/foresee distinction.

The Closeness View, understood as concerned with the scope of intentions, claims that properly understood Sophisticated Terror Bomber can be distinguished from Tactical Bomber by the fact that former genuinely does involve an intention to harm. Defenders of the DDE who argue this line need to provide an account of intention which distinguishes an effect a person intends, and foreseen side-effects that will certainly occur, and such that intentions that are too close to harm can be viewed as intention of harm. As with Kamm, defenders of this line often, either explicitly or otherwise, borrow a theory of intention from Bratman.36 Looking again at Bratman’s conditions, the defender of the DDE claims the Sophisticated Terror Bomber fails to meet (1) as the intention to harm directs her deliberations in determining her means of causing terror and (2) as she constrains her actions based on this intent. She only chooses to bomb near the munitions plant, “because noncombatants are present,” and, “If some type of bomb were not to kill or maim as well as another, other things being equal, [she] would reject it and use the type that satisfies [her] intent to [harm].”37 Sophisticated Terror Bomber fails to meet (3) as she would

36 Cavanaugh, for example, is explicit is his reference to Bratman. See, Double-Effect Reasoning, 93-101.
37 Cavanaugh, Double-Effect Reasoning, 115.
be willing to change her behavior to ensure the harm comes about. If we imagine that the bomber before beginning her mission were to learn the town she planned to bomb had been evacuated, she would not proceed with her plan to drop the bombs as there would be no one who would be impacted by her bombs.

These defender of the DDE, as Kamm claims in analyzing Loop, take Bratman’s conditions as a set of necessary conditions which allow one to infer when an agent intends harm or whether it is merely foreseen. As has been seen, the difficulty for Kamm’s analysis was that Bratman’s conditions for intention did not alone allow her to determine whether the agent in Loop intended harm. Rather, Kamm had to make additional claims about threat differentiation. Perhaps unsurprisingly, the defender of the DDE falls afoul of a similar difficulty. The strict intention view that lead to the development of the Sophisticated Terror Bomber is not incompatible with Bratman’s conditions, and additional claims would need to be made to establish the Sophisticated Terror Bomber intended harm.

It is true the agent in Sophisticated Terror Bomber is volitionally committed to a plan of action to shorten the war (through terrorizing the enemy), which involves causing her victims to appear dead. The intent to cause the appearance of death leads her to intend to drop the bombs on her victims. The intent to cause the appearance of death solves the deliberation on how to bring about her end. However, her deliberative practice is exactly that, and she need not consider how her actions will also bring about harm if she has established it will cause the noncombatants to appear dead; failing Bratman’s (1) for intention to harm. If circumstances altered and Sophisticated Terror Bomber could terrorize her enemy without actually causing the deaths, then her aims are fulfilled. For example, the defender of the DDE might claim the Sophisticated Terror Bomber fails to meet Bratman’s (3) as she seems willing to change her bombing target to ensure harm is caused. However, if we imagine the enemy government was unaware the town had been evacuated, and if they saw the town bombed would believe the noncombatants were killed
and would thereby be terrorized, then it seems *Sophisticated Terror Bomber* can achieve her aim without committing herself to modify her behavior to ensure harm is brought about. *Sophisticated Terror Bomber* meets Bratman’s (3) condition for *intending the appearance of death* but fails for *intending harm*. Similarly, it would be consistent for her to attempt to bring about this evacuation prior to her bombing (if the enemy government could be kept ignorant) so her actions are not constrained by an *intention to harm*, failing Bratman’s (2) condition. Even in the case where the *Sophisticated Terror Bomber* does drop her bombs on the noncombatants, Bratman’s theory entails nothing more than *Sophisticated Terror Bomber* intends the noncombatants be impacted by the bombs and thereby *appear dead*. In many cases, it may be true that the behavior of a *Sophisticated Terror Bomber* and a *Terror Bomber* track each other (e.g. both selecting new targets when the enemy evacuates a town), but this is because their intended states of affairs happen to be highly correlated, and not because they have the same intentions.38

Bratman’s theory of intentions is one plausible theory of intention that provides conditions to support the *intend/foresee* distinction. As I have argued, alone it does not provide what is needed to solve the *Problem of Closeness*. However, even if it were the case that Bratman’s conditions provided the resources to properly sort between *Sophisticated Terror Bomber* and *Tactical Bomber* (or any similar case-pair), then I think there should be some hesitancy in adopting a principle that only properly functions given a specific view on a larger debate within action theory. As a moral principle the aim of the DDE was to capture and explain certain nonconsequentialist intuitions, intuitions that exist independently of this larger debate. It is

38 Delaney, “Two Cheers for Closeness,” 337-338., Fitzpatrick, “Intend/Foresee Distinction,” 589-591., and Masek, “Intentions, Motives, and the DDE,” 572, all also argue the *Sophisticated Terror Bomber* does not raise a closeness problem. According to Fitzpatrick, at least, there is a confusion between the intention of a proximate cause and an unintended foreseen side-effect. However, I think such a response fails to see the idea that the harm is merely incidental to the bomber's goal. The bombs are dropped, and explode on the victims causing them to have the appearance of being dead (and thereby serving the terror bomber's goals). The fact that the victims appear to be dead *because* they are actually dead is not a proximate cause of the bomber's intended goal.
for this reason I think Quinn was right in saying, “If the DDE is sound, its force ought to be capturable on any plausible theory of the intentional, even one that would revise ordinary ways of speaking.”\textsuperscript{39} Moreover, if defenders of the DDE adopt a theory of intentions \textit{merely} as to align our intuitive judgments of permissibility (on the paradigmatic case-pairs) with the \textit{intend/foresee} distinction, then they risk the decision being \textit{ad hoc}. The explanation of our intuitive judgments provided support for the DDE as the \textit{intend/foresee} distinction could be drawn independently of the case-pairs themselves. If the distinction is defined as the difference between \textit{Terror} and \textit{Tactical Bomber} than the DDE loses this pillar of intuitive support.

If I am correct in asserting that an agent need not intend to harm in the case where they intend \(X\), and \(X\) is \textit{too close} to harm, then it seems the claim: if the agent intends \(X\), and \(X\) is \textit{too close} to harm, then the agent intends the harm, is certainly false.\textsuperscript{40} If the \textit{Closeness View} is not making a claim about the scope of intention, then it is making a substantively moral claim: If an agent intends \(X\), and the agent knows \(X\) is \textit{too close} to harm, then the agent is prohibited from intending \(X\) just as if the person had intended \(X\) to harm. However, this formulation (or any similar that do not claim the agent intends harm) leaves unresolved the question of why the DDE’s prohibition on intending harm should be extended to intending something close to harm. The resolution to this problem might be found in whatever rationale discriminates against the intention to harm in the first place.

\textbf{3.4 Aiming-at-Evil and the Necessity of Intending Harm}

There have been two main approaches to providing a theoretical rationale that explains the relevance of intention in the DDE. The first claims that there is a moral constraint on actions

\begin{itemize}
\item[40] This is, of course, distinct from the claim that most agents in situations like (Sophisticated) Terror Bomber in fact do act with the intention to harm, and the agent would be disingenuous to claim otherwise. For a response to the Problem of Closeness built from a similar point see Hills, “Intentions, Foreseen Consequences,” 263f. Nelkin and Rickless argue Hills solution accommodates neither cases of harm through omission, nor cases where an agent’s intent remains quite ‘thin’ and without reference to harm (see “So Close, Yet So Far,” 18-22).
\end{itemize}
when those actions involve aiming at evil (the *aiming-at-evil* rationale), whereas the second
claims that our actions should be constrained when we cause harm in using others as a means to
our ends (the *self-authority* rationale). To be clear, if either of these rationales is to succeed in
explaining the moral significance of the *intend/foresee* distinction, then they need to explain with
some intuitive plausibility why the intention the agent has in some cases (e.g. *Bridge* or *Terror
Bomber*) is a wrong-making feature of her action, and why it should alter permissibility from
cases where it is absent (e.g. *Trolley* or *Tactical Bomber*).

The *aiming-at-evil* rationale claims that intending harm (whether as a means or as an end)
is wrong. As Nagel explains:

“It means to aim at evil, even as a means, is to have one's action guided by evil. One must
be prepared to adjust it to insure the production of evil.... But the essence of evil is that it
should *repel* us.”

The agent in *Terror Bomber* is distinct from the agent in *Tactical Bomber* as the former must
follow through and be prepared to alter their bombing plans if circumstances change. If it was
discovered prior to the raid that the civilians had been evacuated from nearby the munitions plant,
*Tactical Bomber* has reason to continue the run (and perhaps better reasons given the positive
change in the proportionality of benefits and harms), whereas *Terror Bomber* would need to
modify her plans such that noncombatants are still harmed. The agent in aiming at this bad end,
and in her willingness to alter her actions to ensure that bad end, sets herself, “against the
normative current.”

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This explanation of the moral significance of the intend/foresee distinction (or something exceedingly similar) is accepted by a good many defenders of the DDE. The aiming-at-evil rationale immediately runs into some difficulties. If we interpret the rationale as:

“If something is evil, our actions should be guided... toward its elimination rather than towards its maintenance. That is what evil means... if we aim at evil we make what we do in the first instance a positive rather than a negative function of evil.”

Does this claim amount to more than: it is wrong to aim at evil (intend harm) because it involves aiming at evil (intending harm)? I am not sure that it does, rather the statement seems simply tautological. The idea that it is somehow morally problematic in itself to intend harm to another as an end is not particularly controversial (at least not among non-consequentialists). However, the aiming-at-evil rationale is also supposed to explain why it is morally problematic to intend harm as a means to some good end (and independently of any concerns about the proportionality of harms and benefits).

The aiming-at-evil rationale will have a much greater difficulty to explain this latter claim, and especially if we adopt a non-absolutist DDE. An agent who believes they are justified in causing some harm due to an enormous benefit is not poorly motivated or guided by evil. If she is aiming at some good, and recognizes she must cause some lesser evil to bring it about, then her actions do not seem to be guided by evil any more than a similar agent bringing about the harm by side-effect. So it is unclear whether the aiming-at-evil rationale can sustain the distinction


44 Nagel, The View From Nowhere, 182.
between intending harm as a means and merely foreseeing harm. In the case the agent is unjustified in intending harm as a means, the *aiming-at-evil* rationale is supposed to explain how this intention can make a difference to permissibility, however, it does not seem to offer anything more than a straightforwardly circular explanation.

### 3.4.1 Agential Involvement

Wedgwood argues for an alternative understanding of the *aiming-at-evil* rationale that grounds the moral significance of aiming at evil in an agent's increased involvement in bringing about harms when she aims at these harms (rather than bringing them about by some less intentional agency). The central claim being, “the contribution that the badness of this consequence makes to the badness of the course of action is magnified by the degree of one’s agential involvement in bringing about that consequence.” Intending to bring about a state of affairs involves a greater degree of *agential involvement* than bringing something about merely as a foreseen side-effect (and merely foreseen would have a greater degree of involvement than without any forethought at all). However, the *agential involvement* account has a similar difficulty in maintaining the *intend*/*foresee* distinction.

Consider a modification of *Loop* where there are multiple side tracks which would lead the trolley to loop back around and kill the five. There is one person on one of the side track, but the only way to prevent the trolley from looping is to, “deftly manipulate the trolley though this complex series of junctions in just such a way that it hits the one person.” Wedgwood claims that there is a greater degree of *agential involvement* in this case, and presumably this is

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45 For these reasons and others, some authors have argued that there is no morally significant difference between intending harm as a means to an end, and merely foreseeing harm as a means to an end, yet accept that there is a moral distinction between the former two categories and intending harm as an end in itself. For example, see Alison McIntyre, “Doing Away with Double Effect,” *Ethics* 111(2001): 219-255.


47 Wedgwood raises this case to illustrate the idea of *agential involvement*, see Ibid, 336.

48 Ibid, 336.
supposed to explain the intuition that it would be impermissible for the agent to “deftly manipulate” the trolley in this way (or at least harder to justify than Trolley).49

Contrast this Multiple Tracks case with a Limited Confirmation case. The latter is similar to Trolley, however, due to an obscured vantage point the only confirmation the agent at the switch would have of a successful redirection is the trolley striking the one on the sidetrack. The switch only redirects the trolley from the main track and not back, so the agent, wishing to ensure she saves the five, continually pulls the lever until she sees the trolley strike the one. Limited Confirmation is morally indistinguishable from Trolley, and the agents act on a belief they are justified in redirecting the trolley into the one to save the five. Yet, the agent in Limited Confirmation would welcome the death of the one in the same way the agent in Multiple Tracks would, that is, as confirmation of saving the five. So if Multiple Tracks is made more difficult to justify than Trolley due to this increased agential involvement, then Limited Confirmation should be made more difficult to justify than Trolley in just the same way. However, at least intuitively, the harms in Limited Confirmation are side-effect harms, just as in Trolley. These two features of Limited Confirmation are not unique to redirection cases.50 If this is true, then agential involvement in action cuts across the intuitive intend/foresee distinction.

3.4.2 The Problem of Closeness Remains
Even if we accept that agential involvement offers a better understanding of the aiming-at-evil rationale, then the DDE is still left with the Problem of Closeness. The wrongness of aiming at evil may explain why the intention to harm is morally problematic, but it certainly does

49 Kamm discusses this case in, “Responses to Commentators,” 120-123. Although Kamm argues that the agent in Loop does not turn the trolley in order to strike the one. She does believe the agent in this multiple tracks case turns the trolley in order to strike the one, and therefore acts impermissibly by the DTE.
50 For example, Cavanaugh discusses a case where the Tactical Bomber welcomes the death of the non-combatants as a sign the munitions factory is destroyed (which has been obscured in smoke from the explosion). See, Double-Effect Reasoning, 117. See also Quinn, “Doctrine of Double Effect,” 347, and Bennett, The Act Itself, 222.
not address the concern that the *intend/foresee* distinction may not actually distinguish between paradigmatic case-pairs that are supposed to evidence the distinction. So the *aiming-at-evil* rationale requires the adoption of some form of the *Closeness View* to secure answers in accordance with the intuitive judgments of the paradigmatic case-pairs.

Notice, however, that even in adopting both positions, the *Problem of Closeness* is not fully resolved. At the end of the last section the concern became: why should the DDE’s prohibition on intending to harm be expanded to include those intentions *too close* to harm. The *aiming-at-evil* rationale only prohibits actions insofar as they aim at evil (however that is understood). The agent intending something *too close* to harm is not aiming at the evil itself, nor is she setting her will against the, “normative current,” as she is not intending anything that is in itself morally problematic. Consider the agent in *Terror Bomber*, she has greater reason not to carry out their bombing raid than *Tactical Bomber*, as in *Terror Bomber* she intends the harms (and therefore has a greater degree of *agential involvement* in bring it about). However, in *Sophisticated Terror Bomber*, the agent does not have the same degree of *agential involvement* as the agent would in *Terror Bomber*, and if the argument of the previous section is correct, then the *Sophisticated Terror Bomber* has no greater degree of *agential involvement* than *Tactical Bomber*. If the defender of the DDE cannot plausibly claim the agents in intuitively impermissible cases like *Sophisticated Terror Bomber* intend the harm to their victims, then their actions are *not* prohibited by the *aiming-at-evil* rationale.

In adopting the *Closeness View*, defenders of the DDE are either making a claim about the scope of an agent’s intentions: to intend X when X is *too close* harm is just to intend the harm, or a moral claim: to intend X when X is *too close* to harm is impermissible precisely because of the closeness to harm. Against the former I have argued the descriptive theories of intention have not provided a reason against a *strict intentions* view. However, if the defender of the DDE accepts the latter moral claim, and even if the *aiming-at-evil* rationale provides an explanation of
why the intention to harm is relevant to permissibility (which I have given reason to doubt), it is
unable to expand its scope to discriminate against intentions too close to harm. The aiming-at-evil
rationale is left with cases that are intuitively impermissible, yet which only involve an intention
too close to harm. If Sophisticated Terror Bomber is a case of impermissible action, then at the
very least the aiming-at-evil rationale is insufficient to fully explain the DDE.

It remains possible that an aiming-at-evil rationale explains our intuitive moral difficulty
with cases where an agent intends harm as an end. However, to provide a complete explanation of
the DDE (the paradigmatic cases of double-effect) the aiming-at-evil rationale would need to be
supplemented with further principles which explains how the intention to do something too close
to harm can also be a wrong-making property of action. In addition a defender of the aiming-at-
evil rationale would need explain why the difference of permissibility in Terror and Tactical
Bomber has a different theoretical ground than the difference between Sophisticated Terror
Bomber and Tactical Bomber. It stretches credulity that two nearly identical acts with the same
consequences would require entirely different explanations of their impermissibility.

3.5 Intending, Foreseeing and Using as a Means

In the paradigmatic cases-pairs, a person, or persons, suffer some harm to their interests
because of what the agent intends, and this remains true whether the agent strictly intends the
harm itself. In both Trolley and Bridge, a victim is harmed by the actions of the agent. So if not
the intention to harm, what distinguishes the case-pairs of double-effect? As Quinn points out,
even if intuitively impermissible cases do not always involve the intention to harm, there remains
a clear distinction in the intentional structure between each case of the paradigmatic case-pairs.
Bridge and Terror Bomber both require their patients be involved or affected in a way that is part
of producing the agent's intended aim.51 Even in Sophisticated Terror Bomber the bomber could

not achieve her aim if there were not noncombatants who she could cause to appear dead. *Trolley* and *Tactical Bomber*, however, do not require a similar *use* of their victims.

If Quinn is right in claiming this difference in intentional structure tracks our intuitive judgments, then it may provide a way to circumvent the *Problem of Closeness*. However, why acting with this intention, to *use* another in this way, is morally problematic is perhaps less clear. Quinn himself suggests it is because, “each person is to be treated, so far as possible, as existing only for purposes that he can share,”52 and that in cases where a person is used as a means an agent has infringed upon their right to be treated appropriately. This may be a negative duty dependent on other rights of the patients against certain types of treatment, as Quinn argues,53 or some independent right that entitles them, “to determine for themselves which ends to pursue.”54 On either account the moral force of the prescriptions rests on some sort of special authority one has over oneself that is ‘disrespected’ or ‘infringed’ in the impermissible cases of double-effect. Given the intentional structure displayed in *Bridge* and *Terror Bomber* the *self-authority* rationale is meant to support a claim similar to:

**Means Principle (MP):** If an agent executes an intention that involves her victim as a means to her end, and the interests of the victim will be harmed in bringing about the her end, then there is generally a stronger reason against the act than there would be against an otherwise identical act without this intention to use as a means.

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It is not entirely clear when a person is used as a means and not merely harmed as an unfortunate side effect.\textsuperscript{55} However, and unlike in the closeness problem facing the aiming-at-evil rationale, the self-authority rationale still discriminates against cases where an agent fails to properly weigh the interests of her victims relative to the benefits of her actions and discriminates against cases where victims are harmed but not as part of bringing about the agent's intended aim.\textsuperscript{56} In both it can be claimed the agent fails to properly respect her victims special authority over themselves or their ends, but in a different way than expressed in MP.

This MP has two features of that should be made apparent. First, it is a poor fit for the traditional intend/foresee distinction. The distinction of the MP (acting with or without the intention to use as a means) cuts across the intend/foresee distinction in much the same way the distinction between actions and omission does. It is possible to intend to use someone as a means without strictly intending harm. This comes partly as a result of the argumentation in the last section, and it most clearly seen in omissions cases like Scarcity/Transplant. The doctors need not aim to harm the patient they let die (with the aim of using his organs to save five), yet they most certainly involve the patient in a way that causes him harm in the achievement of their end. The opposite case, of the intention to harm but no intention to use as a means, is apparent in any case where an agent acts solely with the intent to harm. It is also not necessarily true that such cases are always impermissible. I think there is good reason to believe it is permissible to intend a person's death if they consent to the harm due to a belief their life is no longer worth living (e.g. some cases of consensual terminal sedation). However, the fact the MP does not match the traditional intend/foresee distinction should not count against it, as it is meant to supplant it.

\textsuperscript{55} Tadros for example, differentiates between cases where the patient is used as if they are a tool in the pursuit of the agent's ends, and cases where the patient is merely affected in the pursuit of the agent's ends. See, “Wrongful Intentions,” 8-9.

\textsuperscript{56} Quinn, “Doctrine of Double Effect” 348.
Rather, the MP is claimed to better capture the same intuitive judgments the intend/foresee distinction was formulated capture.

Second, the justificatory work done by the self-authority rationale concerns the rights that a person has over the ways in which he can be expected to be treated. What is morally problematic in some double-effect cases (when a person is treated as a means) is that the person is treated in a wrongful way. The moral prohibition concerns the interests of the patient of the action; the self-authority rationale is patient-centered, as contrasted with the aiming-at-evil rationale where the wrong making feature is precisely something about the agent. This is not to say that the MP does not claim that certain intentions are a wrong making property, as it does precisely that. However, the reason this type of intention is wrong is because it constitutes a certain type of treatment discriminated against by the principle's grounding rationale. There may be other sorts of agency that the self-authority rationale would also discriminate against that are not constituted by intention. The MP discriminates against one set of cases, i.e. cases of double-effect, where intentions do constitute this type of agency. If it the MP tracks our intuitive judgments in these cases, then it offers a plausible alternative of the traditional DDE.

57 See Kamm, Intricate Ethics, 86-89 where Kamm argues that a self-authority rationale also grounds the Doctrine of Doing and Allowing, which makes no reference to the mental states of agents.

58 As Kamm points out (Intricate Ethics, 83) the MP is a substantial revision from the traditional DDE, and it might be asked whether the MP should rightly be called the DDE at all. The MP does aim to explain the same set of intuitive judgments, and it does so by accommodating the same intuition (of the relevancy thesis). Further, the historical DDE was one of a set of necessary conditions for permissible harmful action, and the MP merely replaces the intend/foresee distinction without altering any additional conditions (e.g. proportionality, or necessity of harm).
Chapter 4

Intentions and the Reasons for Action

4.1 Irrelevance of Intentions Thesis

Despite providing a way to side-step the Problem of Closeness, I believe the Means Principle (MP) is faced with another insurmountable difficulty. So even if Quinn is right to claim that there is a difference in intentional structure between Sophisticated Terror Bomber and Tactical Bomber (such that the former uses her victim, and the latter does not) I think we have good reason to believe that this difference is merely coincidental. Instead, in each case of double-effect there are other intention independent factors that determine permissibility. However, before getting into this argument, I would like to briefly map out some of the key features of an intention-independent view.

The MP (and the traditional DDE) in addition to specific claims about permissibility (or more accurately because of these specific claims) necessarily hold that an agent's intentions are relevant to determining the permissibility of action (relevancy thesis). Defenders of the DDE claim it is precisely because Terror Bomber intends what she does that her actions are morally problematic, while Tactical Bomber acts permissibly as she lacks the problematic intention, and despite the fact she causes identical consequential harms. An opposed, intention-independent view is that an agent's intentions are irrelevant to permissibility, or at the very least, generally play only a derivative, or indirect role in determining permissibility (irrelevancy thesis). Intentions themselves are not the wrong-making property of action, rather an, “intention is wrongful because the act intended is wrongful.” What determines whether an act is permissible are certain facts that provide for morally salient reasons for or against an action. If the weight of

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moral reasons fall against an act, then the act is impermissible, and if the weight fall in favor of the act, then the act is permissible.  

The *intention-independent* view does not claim that intentions are of no moral consideration. Rather, there are cases where intention can play a limited role in determining permissibility. This may be because acting on certain intentions will influence an agent's actions if circumstances change (i.e. predictive significance), or even trivially, because an agent promised another she would act with a certain reason in mind. However, in the latter, the reason the act is impermissible is not strictly because of the intention, but because of some more fundamental reason. For example, it is wrong to break a promise when holding it does no serious harm to anyone's interests. The ground level moral concern is *not* a morally problematic set of reasons for action, but rather the reasonable expectations a person can have in the effects of others actions on them. While it is true that a failure to act for a reason one promised to act for is marked wrong directly by the lack of intention, the reason the action is wrong is not because the agent’s intention is a wrong-making property, but rather because in acting on the intention you would unnecessarily be breaking a promise. There exists an independent principle which prohibits this sort of action that does not generally reference the agent’s intention. That unnecessarily breaking a promise is wrong, and acting on certain intentions constitutes breaking a promise means the intention can play a derivative role in determining permissibility in this case.

It some cases it may be that an agent’s intention can play a limited non-derivative role as well. In dismissing an employee, an agent's reasons may matter even in the case when there are otherwise adequate reasons for doing so. Scanlon argues it would be impermissible to dismiss an incompetent employee because of their race (or any other arbitrary discriminatory reason)

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60 There is some debate over whether these reason should be relative to the 'objective' fact of the matter, or to the evidence available to the agent. For a discussion of the importance of the distinction, see Derek Parfit, *On What Matters* Vol 1 (Oxford: Oxford University Press, 2011), 150-164. On either account, the facts remain independent of the mental states of agents.
because such acts of discrimination can have accumulated effects that would ultimately harm the interests of the group discriminated against.  

Although the act of firing due to incompetency, and firing due to race would otherwise be identical, if the latter is impermissible, then the intention to do so for discriminatory reasons may non-derivatively determine this to be the case.  

Despite this limited role in determining permissibility, intentions do play a fundamental role in determining whether an agent was, or would be, deserving of moral criticism for the reason she acted. It is important to distinguish between questions of the former, and questions of the latter. As, first, the irrelevancy thesis is only committed to the irrelevancy of intentions to permissibility, and second, because it is intuitively the case that ill-intentioned actions are morally objectionable and if the intention-independent view could not accommodate this intuition it would an obvious difficulty. Scanlon argues for distinction of this sort, between the deliberative use of principles relating to permissibility, and a critical use of principles which relates to “meaning”. These latter evaluations are not meant to address the question of whether we ought to do something in a given situation (even hypothetically speaking) but are primarily concerned with what an action implies for the agent's relations with others. More generally, and what all proponents of the irrelevancy thesis accept, the question of whether a person is deserving of moral criticism (e.g. blameworthy, or having acted badly) is an additional question beyond the question of whether an act is permissible, and in determining moral criticism, motivations for action are deeply important.  

4.1.1 Malicious Munitions Bomber  

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64 Thomson, for example, distinguishes between assessments of permissibility, and assessments of character. See “Self-Defense,” 294-296n10. Scanlon argues this is misleading, and thinks the critical assessment of action is narrower than a character assessment.
To provide an example that will distinguish the DDE and the intention-independent view in double-effect cases, consider an agent with the same motivational set as the agent in Terror Bomber but who acts in a way indistinguishable from Tactical Bomber. Terror Bomber and Tactical Bomber, as stipulated, have an identical set of consequences, neither causes more harms than the other. In addition to this fact, this new Malicious Munitions Bomber acts identically in all physical actions to Tactical Bomber, but her reason for action is identical to Terror Bomber (i.e. she intends harm to terrorize as a means to ending the war). According to the DDE the action of the Malicious Munitions Bomber has a wrong making property of action, the morally problematic intention, in that regard is morally indistinguishable from Terror Bomber. In contrast, an intention-independent view is not concerned with why the agent conducts the action they did. If the act instantiated by Tactical Bomber is permissible, than performing the same act in the same context would remain a permissible action even if an agent is acting for bad reasons.

Consider if a pilot before conducting a bombing raid were to ask herself, “is this bombing raid something I can permissibly do?” There are certain considerations that she would need to factor into her deliberations: to weigh the goodness of her ends against the harms she will certainly cause to her victims, and she would need to consider whether this is the best way to achieve her end, or if there is perhaps a way that causes less harms even if the first set of harms are otherwise proportional. This pilot, having examined the situation, has determined the context is relevantly similar to Tactical Bomber. The question at issue is whether she would need to consider what her intention would be in conducting the raid. Regardless of her immediate intention, a number of things are held fixed: her aim is to bring an end to the war, the physical act itself (in all mind-independent ways), the consequences she has reason to believe will result, and all the consequences that will indeed come about.

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What remains unfixe is whether she is bombing the munitions plant *despite* the fact that it will cause some noncombatant deaths, or if she is bombing the munitions plant *because* it will cause some noncombatant deaths. If she is bombing for the former reason, she fits the description of *Tactical Bomber*, whereas if she is bombing for the latter reason she fits the description of *Malicious Munitions Bomber*. For the DDE a difference in permissibility rests on this difference between the two cases. Accordingly, and by the DDE, the pilot, to determine whether her action would be permissible, would need to “look inwards” and examine her reasons for action.

### 4.2 Proper Focus of Concern

It seems very odd for the pilot to say, “whether I should go on this bombing raid will depend on the intention I have in acting,” and the reason I claim that the *intention-independent* view is a more plausible account of double-effect cases is because the DDE requires an agent to concern herself with her own mental states, or to “look inward” in this way. It think it is implausible that the permissibility of action could (in a given instance) solely depend on an agent's mental state when her actions would have harmful consequences for others, and especially in double-effect case-pairs where actions differ only in intention. To require an agent to look inward is to miss the *proper focus* of concern in deliberating whether an act is justified. Instead, and as the *intention-independent* view would suggest, agents in double-effect cases should be focusing on the likely consequences and effects their action would have on others.

There are at least two ways to understand the idea of the *proper focus* concern. The first questions whether in double-effect cases (where consequences are normalized) a difference in intentional structure can bear the moral significance required by the DDE. Between *Tactical Bomber* and *Malicious Munitions Bomber*, the only difference is the agent’s intention in acting. The victims in either scenario will die regardless of the agent's intention, and in either case there
exists a mind-independent justification sufficient for permissible action.\(^6\) Unlike *Tactical Bomber*, *Malicious Munitions Bomber* does not act for a reason consistent with a sufficient justification, rather she acts for reasons that are very much at odds with this justification. However, even though *Malicious Munitions Bomber* acts with a morally problematic intent, it remains true that the facts that make *Tactical Bomber* permissible are still true of the action in *Malicious Munitions Bomber*.\(^5\) Adopting a morally problematic intention does not thereby remove the properties which made the action permissible in the first place.

If it is already the case that the action has strong independent justification (which they agent may or may not be following), can it really be said that it makes a difference to the victims whether they are being harmed by an agent with a morally problematic intention, rather than an agent with an intention consistent with an appropriate justification? As the *self-authority* rationale has it, the normative force of a prohibition on action does not stem from something inherently illegitimate about the agent herself, rather it is due to the effect the act will have on her victims (e.g. an infringement of a right). So if it is the case that there is no difference to the victims between *Tactical* and *Malicious Munitions Bombers*, it cannot be the case that the *MP* supports a difference in permissibility, and by extension, between *Tactical* and *Terror Bomber* as on the *MP* the latter is morally indistinguishable from the *Malicious Munitions Bomber*.

I think this is a strong criticism, however, the defender of the DDE may yet have the resources to formulate a response. On the *self-authority* rationale certain intentions are morally problematic because of how they improperly value the authority a person ought to have over


\(^{67}\) To be clear, this is only true if the difference between *Malicious Munitions Bomber* and *Tactical Bomber* is just the intention of the agent. If the potential future actions of *Malicious Munitions Bomber* are influenced by the adoption of the morally problematic intention, then this becomes an issue of *predictive significance*, and the risk that *Malicious Munitions Bomber* will no longer align with the sufficient mind-independent justification.
themselves. An action that requires a judgment of this sort may on its own be objectionable, and independently of any harm it is causally related to. A person may have rights that sensitive to facts about the mental states of other agents, and as McMahan claims, “morality has agent-centered dimensions that are inseparable from some of its victim-centered elements.” What the MP claims is objectionable was the use of another towards one’s own ends without their consent. This judged that another as not worthy of certain considerations, that they are nothing more than a tool for the agent’s end. The defender of the DDE can claim that the victims have a right against being judged inferior in this way, and the intention to do so can be a wrong-making property of action as it constitutes an infringement of this right.

I think it is an open question whether any such right exists, but even granted a right against treatment constituted by certain intentions, I do not think the wrong of infringing such a right can do the load bearing work necessary to distinguish between Tactical Bomber and Terror Bomber. First, a more general point, when preventing the unnecessary harms of an action (whether the action is justified or not), I think we have far stronger reasons to prevent the associated harms than we do to prevent the wrongdoing itself. Additionally, I think the earlier considerations give good patient-centered reasons that justify believing this point. A victim has a far stronger complaint against an action that will cause him to suffer some harms than he does against an action that will merely wrong him but cause no additional harm.

In the bombing cases this means there is comparatively little reason to merely prevent the wrongdoing (by ensuring the pilot shares the motivations of the Tactical Bomber and not the Terror Bomber), than there is rescue the victims of either case from harm. Similarly, even when

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68 McMahan, “Intentions, Permissibility, Terrorism and War,” 348.
70 This point is forwarded by many defenders of the DDE to argue that one can permissibly encourage the impermissible if in doing so one is preventing more serious harms. See McMahan, “Intentions, Permissibility, Terrorism, and War,” 356-358, and Tadros, Ends of Harm, 160-162.
an agent lacks any morally problematic intentions (e.g. Tactical Bomber), the action requires a comparatively strong justification because it necessarily causes some number of deaths in the pursuit of its good end. In contrast, if it is necessary in the pursuit of some good to merely infringe on a right against being used as a means, and in a way that the victim’s own interests are not harmed, then such an action would not require as comparatively a strong justification. If this is the case, it is because the patient only has reason to object to a certain judgment about his worth and has no objection based on a harm to his interests.

I do not mean to suggest that there are no instances where such a judgment of inferiority could make a difference to permissibility, as I said earlier I remain agnostic on that issue, nor do I mean to suggest that there is no special harms beyond one’s material interests. Compare the situations of the victims in Malicious Munitions Bomber and Tactical Bomber. In both scenarios the victims are necessarily non-consensually harmed for some end. If there is some additional wrong in harming non-consensually rather than consensually, then Tactical Bomber would already need consider this fact in determining the proportionality of her actions. Rather, the difference the MP identifies between cases like Tactical Bomber and Malicious Munitions Bomber is that in the latter the victims are non-consensually harmed for the purpose of the agent’s end. The claim is then this: the difference between the two cases is slight, and the difference in the strength of complaint between the victims of Malicious Munitions Bomber and Tactical Bomber is comparatively small when set against the complaint that could be raised against their non-consensual deaths. As such, the justification required for Malicious Munitions Bomber would only be slightly more demanding than for Tactical Bomber.

I may be the case that is an impersonally worse state of affairs for the Malicious Munitions Bomber to conduct the raid rather than the Tactical Bomber. It is true that the former would include a moral stain on the agent, and an additional rights infringement, neither of which occur in Tactical Bomber. However, the DDE is purported to explain the intuitive difference in
permissibility between Tactical and Terror Bomber, and the intuitive difference between these cases is not slight (nor is it slight between Trolley and Bridge). According to the DDE the morally relevant difference between the Tactical and Terror Bomber is the difference in the agent’s intention. This is the same difference between Tactical Bomber and Malicious Munitions Bomber, and therefore, according to the DDE Malicious Munitions Bomber is morally indistinguishable from Terror Bomber. However, if this is the case, the victim’s complaint that differentiates the justification required for Malicious Munitions Bomber and Tactical Bomber is also what differentiates the required justification in Terror Bomber.

This does not accord with the intuitions that motivated the DDE in the first place. Intuitively there is a large moral difference between Tactical and Terror Bomber, and the comparatively minor complaint on offer does not explain why it ought to be much more difficult to justify Terror Bomber. If the DDE focuses on wholly agent centered considerations, then it misses the proper focus of concern in determining whether an action is permissible. However, if the DDE does focus on patient-centered considerations to determine permissibility, then those concerns that plausibly depend on intention are not of sufficient strength to explain the strong intuitive difference between the double-effect cases that motivated the development of a principle like the DDE in the first place.

**4.2.1 Phenomenology of Deliberation**

As I mentioned, there is a second way of understanding the proper focus concern, which is concerned not with rights against certain agent-centered features of action, but rather with the phenomenology of deliberation. The claim is that in our deliberations over permissible courses of action, it would generally be absurd for an agent to “turn inwards” and examine her own mental states. Matthew Hanser helpfully formalizes this reading of the argument:
i. It would generally be absurd for a deliberating agent, concerned to act permissibly, to reflect, as part of his decision-making process, upon the intentions with which he would be acting.

ii. Therefore, whether an agent acts permissibly cannot generally depend upon the intentions with which he acts. 71

The grounds of the first premise is an intuition. To determine whether she acts as a *Malicious Munitions Bomber* or a *Tactical Bomber* an agent needs to examine her own mental states. However, it seems absurd to say the permissibility of the action depends on what she finds there (given everything else is identical between the cases. An adequate justifications exists for both of their acts that is independent of either of their states of mind (*Tactical Bomber* avails herself of this justification; *Malicious Munitions Bomber* does not). This structure of intention, and relation to a sufficient justification for action is true of any double-effect case-pair which *only* differs in intentional structure.

The question an agent is considering in her deliberative process is whether there is an adequate justification for the action under consideration. If she can identify an adequate justification, then she has good reason to believe the act can be permissibly conducted. It seems odd for the agent to stop at this point in the deliberative process and ask, “But am I intending to *merely* use my victims in bombing?” Odd because the question of a proper justification for the act is already sorted, and so the answer to this further question seems irrelevant. 72 If the answer to the

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71 Hanser, “Permissibility and Practical Inference,” 458. Though Hanser himself holds a position similar to the Abstract Intentions view I critique later in 4.3.

72 On the case where the agent can find no adequate justification for action, then intentions are clearly irrelevant (in that case). A disproportionate and unnecessary harm is not ameliorated to permissibility simply because the agent had a praiseworthy motivation. This fact about their agent may of course change our critical evaluation of them *ex post.*
question is irrelevant, then it cannot be the case that whether a bomber acts permissibly depends on her intention in acting.

It should be made clear, these two different *Proper focus* concerns are compatible with one another, and, in fact, the latter is made markedly stronger by the former. If a judgment of inferiority lacks the requisite normative weight to sustain a difference between *Tactical Bomber* and *Terror Bomber*, then this would provide a theoretical explanation of the intuitive absurdity of an agent examining her own mental states in practical deliberation. However, it remains the case that this phenomenological point has an independent intuitive plausibility in double-effect cases.

One caveat, *proper focus* concerns has traditionally been forwarded in support of a strong *irrelevancy* thesis, that intentions are never a wrong-making feature of action except in specifically circumscribed set of cases, and even in then, only in a limited or derivative way. I only aim to make the more modest claim that in double-effect cases, intention is not a wrong-making property of action (in the way the DDE claims). There certainly do seem to be other cases where neither concern provides the same motivating force towards an *intention-independent* view, yet if intentions are relevant in these cases it is *not* because they substantiate a principle like the DDE. Take for example the act of discriminatory firing discussed earlier. The employer has grounds to dismiss the employee for incompetency, however, the employer is bigoted and come to the decision to fire the employee because of her race. If we accept that it is impermissible to act on reasons that arbitrarily discriminate against certain groups, then it would be impermissible for the employer to fire her employee for this reason. Her judgment of inferiority matters to permissibility and furthermore, it does not seem odd for her to ask in her deliberations, “am I

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73 This is how Thomson intends the argument as she presents it. See, “Self-defense,” 293-296. An older but similar argument differentiating between first and second order morality (of which intention is only relevant to the latter) can be found in Bennett, *The Act Itself*, 194-196., and more recently, David McCarthy, “Intending Harm, Foreseeing Harm, and Failures of the Will,” *Nous* 36(2002): 622-642.
firing this employee because they are incompetent, or because of their race?” 75 There may be other cases like racial discrimination where a proper focus concerns fails, either as a claim about the normative strength of inferiority judgments, or as a consideration about the phenomenology of deliberation. It is enough for my purposes that proper focus concerns have their normative force in double-effect cases.

4.3 Actual Intentions and Abstract Intentions

Defenders of the DDE have responded to the proper focus concerns in one of two ways. First, with an Abstract Intention view that accepts some of the intuitive force of the proper focus concerns, and with it ejects actual intentions of particular agents from determinations of permissibility. Second, an Actual Intentions view that maintain the actual intentions of particular agents are relevant to permissibility, but argue the proper focus concerns misconstrues how the actual intentions of particular agents are relevant to permissibility. The idea being that the complaint is narrower than it is has otherwise been articulated, and does not actually pose a problem for the role of intentions required for DDE.

An Abstract Intention position would need to modify the MP from its current form to remove the direct reference to intention. Offering something like the following:

No Direct Intentions MP: If an agent involves her victim precisely as a means to her end, and the interests of the victim will be harmed in bringing about the agent's end, and there is no other justification on which the agent could act, then there is generally a stronger reason against the act than there would be against an otherwise identical act without the intention to use as a means. 76

76 Fitzpatrick defends a similar position in, “Intention, Permissibility, and Double Effect,” 102-105.
The important additional clause here is emphasized. As it may seem that the principle as explicated makes no reference to intentions, and rather than having avoided an implausible reference to an agent's mental state in cases of double-effect, the *No Direct Intentions MP* sets a condition of permissibility that is consistent with the *irrelevancy* thesis.

It certainly seems to be the case that the *No Direct Intentions MP* could be derived from some set of principles which make no reference to an agent’s intention. For example, Kamm offers this sort of derivation in arguing for an account of permissible harm based on the causal relation between a harm, and the intended good that is brought about as a result.\(^{77}\) Rather than place moral significance on the difference in the intentional structure between cases like *Trolley* and *Bridge*, Kamm argues the moral significance should be on the causal structure between resulting effects (harmful and beneficial) and places no further importance (for permissibility) on whether the relation was itself intended. If both a view similar to Kamm’s, and the *Abstract Intention* view can derive a principle like the *No Direct Intentions MP*, then the two views are not distinguished by whether they hold that an agent’s intention is wrong-making property of action (neither do), or whether the discriminate different cases in different ways (they could in principle agree on the permissible action in paradigmatic cases). Instead, what distinguishes an *Abstract Intention* view from an *intention-independent* view is the grounds they believe can justify an act.

To fill out an account of justification, the *Abstract Intention* view re-emphasizes the intuitive connection between acting badly and the intentions with which a person acts. Roughly, the development from this point is as follows. It takes for granted that a feature of permissible action is that a well-informed agent who lacks morally problematic intentions could perform the permissible action without thereby having acted badly. If it is the case that such an agent would have acted badly, then it seems her reasons for actions were inadequate to justify the

\(^{77}\) See Kamm, *Intricate Ethics*, ch 5.
permissibility of her action. The claim so far is intended to be neutral with respect to the nature of justification, whether moral justification of permissible action is constituted purely by mind-independent facts or not, an agent performing a permissible action for precisely the reasons that make it permissible is certainly justified in acting and cannot be said to be morally at fault.

The Abstract Intention view then adds a second premise, one that critics of the DDE are typically willing to grant in most contexts. As argued in the last section, granting the irrelevancy thesis does not thereby make an agent’s intentions morally neutral. There are other facets of morality in which they may play a fundamental role. Whether an agent in open to moral criticism (e.g. blameworthy), and perhaps more generally, whether an agent acted well or acted badly in performing a particular action. The claim is that certain intentions are morally problematic, for the DDE either the intentions to harm or intentions to use as a means, and therefore to act on a morally problematic intention is to act in a morally faulty way.

From these two premises it follows that if there is an adequate justification for the permissibility of an act, then it cannot be the case that the only way to perform the action is with morally problematic intentions. This is also to say, if there is an adequate justification for an act, then it must be the case that an agent could perform the action for the reasons given by the adequate justification, and without a morally problematic intention. If they had the morally problematic intention when acting on the adequate justification, then they would be acting badly, which it was claimed was impossible when acting on reasons that give an adequate justification for permissible action. The argument formalized:

i. If an agent acts for reasons that are an adequate justification for permissible action, then the agent cannot be acting badly.

ii. If an agent acts on certain types of intentions (e.g. to use as a means), then in normal circumstances they are acting badly.
iii. Therefore, it is not possible for there to be adequate justifications of an action if the action can only be performed with these morally problematic intentions (barring exceptional circumstances).

From (iii) can follow the No Direct Intentions MP, as if the morally problematic intention is the intention identified by the original MP, and there are cases where the only possible justification for the action includes the morally problematic intention, then it generally must be the case that the action is impermissible.

What does the Abstract Intention view have to say about the paradigmatic case-pairs? The first thing to note, even if we remove the actual intentions of particular agents as a wrong-making property of action, it remains the case that grounding the DDE on the intention to harm, and the intend/foresee distinction is problematic. The Abstract Intention view claims that permissibility requires that it is possible for an agent to perform an action for the reasons given in a justification without being guided by the bad intention. However, as has been seen in the cases like the Sophisticated Terror Bomber, neither the intention to harm nor the actual harm are necessary for the agent's ends. Since the Sophisticated Terror Bomber acts without the intention to harm, she does not fail the permissibility condition that would be derived from (iii) in the case where the morally problematic intention is the intention to harm.

The Abstract Intention view must still discriminate against the intention to use as a means. That said, if Quinn was right in claiming that the difference in the structure of intentions picked out by the MP holds in the paradigmatic cases of double-effect, then the Abstract Intention view will sort them intuitively correctly. Sophisticated and non-sophisticated Terror Bombers aim at making use of their victims to further their own ends, and cause their victims non-consensual harm. Tactical Bomber has no such problematic intention. The Abstract Intention view in in accordance with common intuitions on the ill-intentioned version as well. Malicious Munitions
Bomber acts identically to Tactical Bomber, but she does not act for reasons that provide an adequate justification for what she does. However, there are such reasons available, namely those for which Tactical Bomber acts. Since there is an adequate justification which does not require the bomber act with a morally problematic intention, it is permissible to act. So, the claim goes, the Abstract Intention view does not require an agent to implausibly introspect her own internal mental states, and her deliberation is properly focused outward on the reasons that justify action.

The difficulty for this view, and this may be apparent from the formalization provided above, is that it lacks normative content. Even if granted the premises (i), (ii), (iii), it can still be the case that the conditions of permissibility depend in no fundamental way upon the intentions of an agent, or the intentions with which an agent could act (abstract intentions). What the Abstract Intention view does do, if we accept its claims, is describe the possible mental states of a certain subset of actors in a certain moral context. It is not possible for any given agent who is properly informed about the situation described in Terror Bomber to act as the terror bomber does without having acted with the morally problematic intention of Terror Bomber (or at least of the sophisticated variant). Similarly, it is not possible for the agent in Bridge, or in Transplant/Scarcity to act the way they do without a problematic intention.

Additionally, it claims that in all cases of permissibility it is necessarily the case that the agent could be well-motivated (or at least lack problematic intentions). However, the constant correlation between cases where it is not necessary to act with a problematic intention, and cases where an agent acts permissibly, does not mean the cases are permissible because of the possibility of acting without the problematic intention. The feature of an action that determines permissibility could just as easily be, as Kamm claims, the causal structure that holds between the intended good, and the necessary harm. The Abstract Intentions view needs to provide the additional claim:

Fitzpatrick at least recognizes this, yet fails to see the difficulty it poses for his account. See, “Intentions,
iv. An action is permissible precisely because it is the case that the action could be done by an agent without a morally problematic intention (or conversely, an action is impermissible precisely because it can only be done with morally problematic intentions).

However, to take (iv) for granted begs the question on the irrelevancy thesis in the first place. It would be to declare by fiat that abstract intentions of this sort are fundamentally relevant to determining permissibility. However, (iv) does distinguish the Abstract Intention view from an intention-independent view. On either view, a difference in permissibility depends on a difference in the available justifications for an action that are independent of the mental states of actual agents. The Abstract Intention view makes an additional claim that the justification required for an act varies with the possible motivations an agent could have in acting. If an agent can conduct an act with a morally problematic intention, then this increases the justification for permissible action accordingly, and this difference, it is claimed, is enough to alter permissibility in at least some cases. In essence, the Abstract Intentions view moves the debate up a level. The question becomes not whether the actual intention of a particular agent can serve as a wrong-making property, but whether the possibility (or not) of an actual agent acting with a particular intention is a wrong-making property of action.

Even if the Abstract Intentions view is correct to shift the focus of the debate, it is intended also to escape concerns about the phenomenology of deliberation, and at first glance, it is not obvious this is the case. If a wrong-making feature of action is whether it is possible to act without morally problematic intentions, then the deliberative practice to choose permissible action will be to determine whether it is possible to act a certain way without a morally

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problematic intention. So rather than require an agent ask herself whether she would be acting with a morally problematic intention, the Abstract Intention view would require that she ask herself whether she could act without a morally problematic intention. I do not think this would be any less odd than the “looking inward” of the original DDE.

On further inspection, this may not be a problem for the Abstract Intention view, as even if it is true that abstract intentions play a fundamental role in determining permissibility, it need not be the case that an agent is required to consider abstract intentions in her deliberations. The earlier concern I raised against the Abstract Intention view was that it was only descriptive, and merely identified a state of affairs described in (iii), which correlates with instances of permissible action. Without something like (iv), the Abstract Intention view is not explanatory. However, this correlation cuts both ways. If an agent is able to determine an adequate justification for an action then it is also true that the action could be performed without a morally problematic intention. So in her deliberations, a Tactical or Terror Bomber might consider whether her actions would fall afoul of No Direct Intentions MP. If it does she can recognize that she lacks a sufficient justification for action. If it is true that this deliberation can proceed without reference to either the bomber’s own mental states, or the possible intentions one could have, then the Abstract Intention view offers a way around proper focus concerns about deliberation.

4.3.1 Thick and Thin Act-types

An alternative response developed by a number of defenders of the DDE turns on the idea that a description of action can be given at a greater or lesser degree of specificity. The Tactical Bomber only conducts one act-token (the given act she does conduct under the conditions and context she conducts it), but the type of action she does can be described with more or less detail. In the act of bombing she flies from the airfield to the city with the munitions plant. In fact all three bombers (Terror, Malicious Munitions, and Tactical Bombers) instantiate this more general act-type in their bombing raids. We might then separate out the Terror Bomber
by specify that the other two fly from the airfield to drop bombs on the munitions plant (whereas, the *Terror Bomber* drops bombs on the noncombatants). The defender of the DDE points out that we can specify act-types in more ways than just physical differences between acts, we can specify them by the intentions with which the action would be carried out. This allows a distinction to be drawn between the act-type of *Tactical Bomber* and that of *Malicious Munitions Bomber*. The *Tactical Bomber* drops bombs *in order to* destroy the munitions plant, whereas the *Malicious Munitions Bomber* drops the bombs *in order* to cause the death of the noncombatants. These latter *thick act-types* embed the execution of a specific reason for action, whereas the earlier *thin act-types* are mere physical descriptions of the action.\(^80\)

The *Actual Intention* view claims that the focus of the DDE is on *thick act-types*, and it is primarily concerned with answering questions like: is it permissible to bomb the munitions plant with the intention of killing the nearby civilians?\(^81\) The answer to this question, on their account, is no. An agent when deliberating about how to act should ask themselves whether there is sufficient justification to instantiate the *thick act-type* in question, and not the *merely* the *thin act-type* of which it is a subset. If it is true, as claimed by the *MP*, that there are generally *stronger* reasons against acts that are the execution of an intention to *use* another, then it would be more difficult to justify performing the *thick act-type* with this intention, but less difficult to perform the *thick act-type* with some other intention. The deliberating agent, it is claimed, need not focus inward but rather should focus outward to see if there are morally decisive reasons that adequately justify her *thick act-type*. So, it is claimed, the deliberative process in is not different

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\(^{80}\) It may be that the *thick/thin act-type* distinction can serve on either the *Abstract or Actual Intentions* views, but I will discuss the distinction in reference to the *Actual Intention* view to an extent because its defenders have largely held to an *Actual Intention* view.

when comparing two thick act-types, then it would be in comparing two thin act-types that differ on some other ground.\textsuperscript{82}

Even if the Actual Intention position is granted the claim that an agent should primarily focused on thick act-types in deliberating in cases of double-effect then what does this position have to say when addressing the permissibility of thin act-types? Whether or not one subscribes to an action theory that places primary importance on thick act-types or on thin act-types, the substantive moral question remains a plausible question with respect to either kind. Is it permissible to bomb the munitions plant? Is it permissible to bomb the munitions plant in order to harm noncombatants (for some good end)? Both questions can be sensibly asked within the framework of the Actual Intention or intentions-independent views, and it should be possible to answer in the affirmative or negative without recourse to a larger debate within action theory. Moreover, it should be possible to ask whether a possible act-token would be permissible; would this agent in these circumstances with this intention be acting permissibly.\textsuperscript{83} In answering this question, it should be apparent whether the answer need reference the agent's intentions or not.

How should the Actual Intentions version rule in the case of the Malicious Munitions Bomber? When McMahan says, “The proponents then conclude that he ought not to act for that reason — that it would be impermissible for him to act on the intention to kill children as a means of terrorizing the enemy,”\textsuperscript{84} it suggests he would claim the agent acts impermissibly in

\textsuperscript{82} Compare going to the store \textit{by} walking through your neighbor’s flowerbed, and going to the store \textit{by} walking on the sidewalk. The defender of DDE claims that the deliberative process in determining whether there is an adequate justification is no different in deciding between these two thin act-types than between Terror and Tactical Bomber. See Tadros, \textit{Ends of Harm}, 157 for the origins of this example.

\textsuperscript{83} Hanser's defense of the relevance of intentions to permissibility relies on a distinction between adjectival permissibility (is it permissible to do X?) and adverbial permissibility (does the agent act permissibly in Xing?). Hanser's distinction is subtle, and his overall argument depends on a claim that adverbial permissibility has priority over adjectival, and I do not think this is obviously true. In any case, Hanser claims the DDE is about what sorts of reasons justify harming. This is to say, on Hanser's account of the DDE an agent's intention do not serve as a wrong-making property. Since his account lacks the feature on which I focus my criticisms, I have left his account largely unaddressed. See Hanser, \textit{“Permissibility and Practical Inference,”} 443-454.

\textsuperscript{84} McMahan, \textit{“Intentions, Permissibility, Terrorism, and War,”} 348.
instantiating the \textit{thick act-type}. However, does this extend to prohibiting the \textit{Malicious Munitions Bomber} from bombing at all? If she is going to bomb the munitions plant the \textit{Malicious Munitions Bomber} will bomb it with her problematic intention. Should the defender of the DDE say that she should not carry out the \textit{thin act-type} (bombing the munitions plant) because she will only do so by enacting an impermissible \textit{thick act-type} (bombing in order to terrorize)?

The \textit{Actual Intention} view claims it is permissible for the \textit{Tactical Bomber} to bomb the munitions plant. Presumably since she acts permissibly in instantiating her \textit{thick act-type}, she acts permissibly in instantiating the \textit{thin act-type}. It would be natural to follow a similar line of reasoning for the \textit{Malicious Munitions Bomber}. If she does bomb the plant, she bombs it for the wrong reason, and therefore it is impermissible for her to bomb the munitions plant. This would be to say, a \textit{thin act-type} is necessarily impermissible if an agent would only instantiate that \textit{thin act-type} by instantiating an impermissible \textit{thick act-type}.

However, I think adopting such a view does not allow the \textit{Actual Intention} view to escape concerns about the phenomenology of deliberation. When an agent is deliberating whether there is adequate justification to perform a \textit{thin act-type} (e.g. bombing the munitions plant), and the \textit{thin act-type} has at least two \textit{thick act-types} (e.g. \textit{Malicious Munitions Bomber} and \textit{Tactical Bomber}), and these two \textit{thick act-types} differ in their permissibility, and the permissibility of the \textit{thin act-type} is determined by whether they agent \textit{would} instantiate one or the other \textit{thick act-type} when instantiating the \textit{thin act-type}, then it seems it would be necessary for an agent to reflect on their own intentions to determine whether the act would be permissible.

Alternatively the \textit{Actual Intention} view can adopt the opposite position: it is not necessary for a \textit{thin act-type} to be impermissible if an agent would only instantiate that \textit{thin act-type} by instantiating an impermissible \textit{thick act-type}. Accordingly, \textit{Malicious Munitions Bomber} my permissibly bomb the munitions plant, but cannot permissibly bomb the munitions plant \textit{in order} to kill the noncombatants. If this is true of the \textit{Actual Intention} view, then it needs to be so
because the instantiation of the thick act-type would include the morally problematic intention, and because the thin act-type is not a sufficient condition for the instantiation of the prohibited thick act-type. It is permissible for the Malicious Munitions Bomber to bomb the munitions plant because she could bomb it with a non-problematic intention, and she ought not to have the morally problematic intention in the first place.

The Actual Intention view essentially forwards the following claim about permissible action: a thin act-type is permissible just in the case an agent without morally problematic intentions could permissibly act.\(^{85}\) Or, a thin act-type is permissible just in the case that there exists some thick act-type which is a specification of the thin act-type and this thick act-type is permissible. Similarly, a thin act-type is impermissible just in the case that there exists no thick act-type which is a specification of the thin act-type and is permissible.\(^{86}\) In adopting the thin/thick act-type distinction, the Actual Intention view of permissible thin act-types is remarkably similar to the Abstract Intention view of permissibility in general.\(^{87}\)

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\(^{86}\) There is a troubling consequence of the view that an agent’s action on a certain specification can differ in permissibility from the same action with greater or less specification. For example, we can say of Malicious Munition Bomber, it was permissible for her to bomb the munitions plant, but she acted impermissibly in bombing the munitions plant (because she acted for the wrong reasons). Such a sentence is quite odd, however, it is a natural result if conditions of permissibility differ for a person’s act-token as a thin act-type and as a thick act-type. Moreover, the second evaluation seems to be one of whether an agent has acted well or acted badly in performing the permissible thin act-type, and I think this idea is, at least intuitively, better captured by the language of critical evaluation.

The distinction between permissibility and critical evaluation from the intention-independent view is an alternative way to understand the evaluations of action in double-effect cases. The Actual Intention view claims Tactical Bomber acts permissibly while performing a permissible act, Malicious Munitions Bomber acts impermissibly well performing the same permissible act, and an agent with the same intention, Terror Bomber, acts impermissibly in performing an impermissible act. Whereas, the intention-independent view can claim Tactical Bomber acted well when acting permissibly, the Malicious Munitions Bomber acted badly when acting permissibly, and the Terror Bomber acted badly when acting impermissibly. In my understanding of the claims being made against each agent, the latter description better captures the nature of the evaluations at issue.

\(^{87}\) The views would of course differ on the act-token of the Malicious Munitions Bomber. As the agent would ultimately act with a morally problematic intention, the Actual Intention view would prohibit their action, whereas, since there is an adequate independent justification (that of the Tactical Bomber) the Abstract Intention view would rule the action permissible.
Despite this similarity, as a solution to concerns about deliberation, the *Actual Intention* view is quite different from the *Abstract Intention* view. If an agent is deliberating over whether it is permissible to bomb a munitions plant, she can look outward, weigh the potential benefits and harms of her action and come to decide whether it is justified or not. That is, in examining the *thin act-type* her deliberations aim to determine under what conditions it can permissibly be instantiated. The agent can determine without examining her own mental states that the deaths of some numbers of civilians are proportional to the benefit the destruction of the munitions plant would bring in ending the war (a *thick act-type*). If she can then choose to act for this reason, she acts as *Tactical Bomber* does: permissibly without problematic intention.\(^{88}\) If an agent can, after determining there is sufficient justification for a *thick act-type* choose to act for that reason, then the *Actual Intention* gives us good reason to believe it can respond to the *proper focus* concern about the phenomenology of deliberation.

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\(^{88}\) There is an assumption within the *Actual Intention* view that an agent is able to choose their reason for action. If the agent were not able to choose between instantiating either of two *thick act-types* (one permissible, and one not) that are specifications of a *thin act-type*, then it is not clear how it could be said the *thin act-type* would be permissible. Saying the agent could instantiate the permissible *thick act-type* would be simply false, and it would seem odd to say the agent *ought* to act without the morally problematic intention as this is something beyond the purview of their control.

However, this claim is not an uncontroversial one, and in *Moral Dimensions* Scanlon not only claims it is false, but argues from this point for a general *Irrelevancy of Intentions* thesis (58-62). Scanlon claims permissibility is importantly related to choice, as the question of which action an agent can permissibly perform is restricted to only those actions an agent in actuality can perform. Accordingly, if in deliberating between courses of action an agent is only able to choose between *thin act-types* (and not *thick act-types*), then the question of permissibility belongs only in the former.

So it should be clear that both the responses of both the *Abstract Intention* view and the *Actual Intention* view importantly depend on certain truths concerning choice in intentional action. This is, however, as far as I will take this argument. First, because I am myself unsure of its strength; Scanlon’s point depends on a claim that seeing something as a reason for action lacks the “free play” necessary to be a matter of choice, and in my mind this claim is not obviously true. Second, I believe that even if a defender of the DDE can respond to this second *proper focus* concern about deliberation, there still remains the first *proper focus* concern which is sufficient to motivate for an *intention-independent* view with respect to the DDE.
Conclusions: Permissibility, Acting Well and Acting Badly

Both the Abstract Intention view, and the thick/thin act-type distinction of the Actual Intention view are forwarded to escape the intuitive implausibility of an agent having to “look inward” in deliberating which course of action they ought to take. If successful in showing that even if intentions are morally relevant to permissibility it is not necessary for an agent to examine her own mental states to determine what she ought to do, then defenders of the DDE have the resources to respond to a proper focus about the phenomenology of deliberation. However, the conclusion of the first proper focus concern was that there are no patient-centered considerations directly related to an agent’s intentions that are strong enough to ground a difference in permissibility between Tactical and Terror Bomber. This proper focus concern does not depend on certain facts about deliberation, and motivates against having “look inward” in the sense that considerations beyond patient-centered concerns are not the proper focus of concern to determine permissibility in cases of double-effect.

So while the Abstract and Actual Intention view may provide a response to a proper focus concern about the nature of practical deliberation, they fail to respond to a concern that the DDE does not have the grounds to support the apparent intuitive difference between Tactical and Terror Bomber. The DDE as I criticized it in section 4.2 was the MP, a principle discriminating against harming another when non-consensually using them for one’s own purposes. The MP is already a principle grounded in a patient-centered concern, and as such, my focus in 4.2 was on whether the defender of the DDE had a strong enough patient-centered concern to match the intuitive difference between Tactical and Terror Bomber. My criticism focused on the MP and the self-authority rationale as I argued they are a more defensible version of the DDE than the more traditional formulation of the intend/foresee distinction grounded in an aiming-at-evil rationale. This argument presented in Chapter 3 claimed that the traditional DDE is unable to
resolve the *Problem of Closeness* as it is unable to offer an explanation of why it would be impermissible to act with an intention that was *too close* to harm.

This said, some defenders of the DDE believe there may be certain other wholly agent-centered considerations that can account for the intuitive difference between *Tactical* and *Terror Bomber*. The criticisms of Chapter 3 are only relevant if an agent centered rationale is used to support the *intend/foresee distinction*, and therefore vulnerable to the *Problem of Closeness*. In adopting a *self-authority* rationale similar to that proposed by Warren Quinn, the primary concern of the DDE is the objectionable content of the agent’s judgments about her victims, and not something about the agent herself. If there is some wrong in the sort of intention discriminated against by the *MP* because of what it says about the agent, then in rejecting the agent centered *aiming-at-evil* rationale, I may have been too hasty in moving to a patient-centered *self-authority* rationale.

In section 4.3 in explaining the *Abstract Intention* view I examined (ii): if an agent acts on certain types of intentions then in normal circumstances they are acting badly. As I said there, this is a claim accepted both by defenders of the DDE and by those holding to an *intention-independent* view. Imagine again the scenario of the *Malicious Munitions Bomber*. Her action is in all mind-independent respects identical to the *Tactical Bomber*, and therefore she has available a sufficient justification for action, however, she will act for a morally problematic intention. Suppose additionally, that this agent is not the only pilot available to conduct the bombing mission, and in fact there is another pilot available who would act with the same motivational set as *Tactical Bomber*. A defender of the DDE might claim that if this agent was to fly the mission she would be acting badly (due to her morally problematic intention), and therefore, she ought to request the alternate pilot conduct the raid instead.89 Any agent has reason to avoid acting badly,

89 Fitzpatrick, “Intention, Permissibility, and Double Effect,” 112.
and given the ease of switching pilots, the defender of the DDE might claim it is *impermissible* to conduct the raid as it would constitute needlessly acting badly.

The claim that permissibility of an action could depend on whether an agent is needlessly acting badly finds its home in moral theory that takes the goodness of action (or the excellence of character) as the primary category of moral criticism. However, I do not think this points to a failure of the proper focus concern, rather it may point to a deeper disagreement about the primary moral categories of evaluation.\(^\text{90}\) As I have said, the focus of 4.2 was on the DDE construed as a patient centered principle, but the intuitive point presented remains equally in force against the possibility of any wholly agent centered condition of permissibility. The question of permissibility is the question of whether there are decisive moral reasons against an action, and it seems odd to say that the answer to this question could depend on intentions, that is, if all intentions are taken to say is whether the agent acted well or acted badly, and not speak directly about the nature of the act itself, or the effect it would have on other moral agents. I admit, however, the success of either proper focus concern depends on the reader’s acceptance of the intuitive point behind each, and those defenders of the DDE concerned first and foremost with the assessment of good action simply may not accept the force of the idea that wholly agent centered considerations miss the proper focus of assessing permissible action.

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