

DISCUSSION ARTICLE

Revising the Doctrine of Double Effect

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ABSTRACT *The Doctrine of Double Effect has been challenged by the claim that what an agent intends as a means may be limited to those effects that are precisely characterised by the descriptions under which the agent believes that they are minimally causally necessary for the production of other effects that the agent seeks to bring about. If based on so narrow a conception of an intended means, the traditional Doctrine of Double Effect becomes limitlessly permissive. In this paper I examine and criticise Warren Quinn's attempt to reformulate the Doctrine in such a way that it retains its force and plausibility even if we accept the narrow conception of an intended means. Building on Quinn's insights, I conclude by offering a further version of the Doctrine that retains the virtues of Quinn's account but avoids the objections to it.*

I

The key element in the Doctrine of Double Effect (DDE) is the claim that there is a stronger presumption against action that has harm to the innocent as an intended effect than there is against otherwise comparable action that causes the same amount of harm to the innocent as a foreseen but unintended effect. Since it is relatively uncontroversial that, except perhaps in cases involving desert, it is wrong to cause harm as an end in itself, the DDE is normally invoked to distinguish morally between harm that is intended as a means and harm that is considered a merely foreseen side-effect.

It has, however, become increasingly evident that it is difficult to provide criteria that distinguish between intended means and foreseen side-effects in such a way that the resulting notions both conform to our linguistic intuitions and lead to acceptable classifications of cases when the notions are invested with moral significance. This problem can be illustrated by reference to a distinction that for most people is crucial if they are to avoid being committed to pacifism: the distinction between permissible acts of war that have the effect of harming innocent civilians and acts of terrorism. Given the conditions of modern warfare, it is virtually impossible to fight a war without harming innocent civilians. Thus, to avoid pacifism, one must concede the permissibility of harming or killing innocent civilians in war. But terrorism, which virtually everyone condemns, is distinguished by the fact that it harms or kills innocent civilians. Must we choose between embracing pacifism and condoning terrorism?

Common sense morality avoids this dilemma by insisting that the harming or killing of innocents counts as terrorism only if it is intended. Acts of war that have the harming of the innocent as a foreseen but unintended effect are not terroristic and indeed may be

permissible, provided certain other conditions are satisfied (e.g. the harm is minimal, proportionate, and so on). But how does one determine whether harm to the innocent is intended?

Consider:

The Terror Bomber: A pilot drops bombs on an enemy city in order that the enemy government, fearing further slaughter, will be coerced into surrendering.

The Tactical Bomber: A pilot bombs a military facility foreseeing that this will cause some civilian casualties.

Of these two agents, it is standardly held that only the terror bomber intends the killing or harming of the civilians as a means. It may, however, be questioned whether even he necessarily intends that the civilians should be harmed or killed. As Jonathan Bennett has argued, all the terror bomber requires for his purpose, and therefore all he needs to intend, is that the civilians should *appear* to be dead long enough for the government to be intimidated into surrendering [1]. If, unbeknown to the government, the civilians were to escape harm by hiding in deep shelters until after the surrender, this would not frustrate the terror bomber's plans. In general, what an agent intends as a means may be limited to those effects that are precisely characterised by the descriptions under which they function in the agent's deliberation to motivate her to pursue them — and these descriptions may include only what the agent believes is minimally necessary to achieve her end. Call this the *narrow conception of an intended means*.

It might be argued that, in this case at least, making the civilians appear dead and actually killing them are the same effect under different descriptions. Even if this is true, however, it will not suffice to make it the case that the terror bomber intends to kill the civilians, since it is possible to intend an effect under one description while not intending it under another [2]. The terror bomber may, for example, intend to bomb the civilians but not intend to bomb his cousins, who are, though he is unaware of it, among the civilians.

Alternatively, suppose we assume that killing the civilians and making them appear dead are indeed different effects. It might then be argued that the terror bomber must intend to kill the civilians as a means of making them appear dead, in which case the killings turn out to be intended after all. Or, as Philippa Foot has argued, it might be that killing the civilians is sufficiently 'close' (either causally or conceptually) to making them appear dead that one must treat the killing as if it too were strictly intended [3].

One problem with these responses is that they appear to exclude some applications of the DDE that its proponents have wished to defend. For example, in a passage that many have cited as the origin of the DDE, Thomas Aquinas argues that, while it is wrong for one person to *intend* to kill another even in self-defence, killing in self-defence may still be permissible provided that the lethal act of defence is carried out with the intention only to preserve one's own life. Aquinas thus assumes that it is possible for one to foresee with certainty that one's act will kill one's assailant without intending the killing as a means of self-defence [4].

Various recent defenders of the DDE have accepted a view quite similar to Aquinas's. To illustrate their view, consider:

Self-Defence 1: One's only defence against an unjust and potentially lethal attack is to shoot the attacker at close range with a flame-thrower.

The followers of Aquinas would accept that, in Self-Defence 1, it is possible to fire the flame-thrower intending only to incapacitate and not to kill the attacker, while foreseeing

that one's action would in fact kill him in the process of incapacitating him. The killing, or the death of the attacker, could, according to these theorists, be an unintended (though of course not *accidental*) side-effect [5]. This, I believe, is quite plausible.

If, however, one claims that, in Terror Bomber, killing is intended as a means of making the civilians appear to be dead, then one may also be committed to claiming that, in Self-Defence 1, killing is intended as a means of incapacitating the attacker. Or, if one claims that killing the civilians is so close to making them seem to be dead that it must be treated as intended, then one may also be committed to claiming that killing the attacker is sufficiently close to incapacitating him that it too must be treated as intended. But, since it is plausible to suppose that the *killing* of the attacker need *not* be intended as a means of self-defence, it is therefore unlikely that one can show that the terror bomber must intend to kill the civilians by arguing either that the killing is a means of making them appear dead or that killing is too close to the intended effect to be itself unintended.

Since there are cases, such as Self-Defence 1, in which one may intend something very close to killing or harming without actually intending the killing or harming itself, why can we not simply accept that it is possible to intend as one's means to an end only that which is strictly and minimally necessary for the achievement of the end? The problem, as Terror Bomber shows, is that this would drastically narrow the range of application of the DDE, depriving it of much of the force that it has been thought by its defenders to have. Since it is very rare that a person's being killed (or dying or suffering harm) is itself in the strictest sense causally required for any end one might seek to achieve, agents could narrow the scope of their intentions so that very few acts that kill or otherwise cause harm would be condemned by the DDE on the ground that they have killing or harming as an intended effect.

II

It is from this threat of vitiation that Warren Quinn has sought to rescue the DDE. Quinn believes that it is possible to concede the narrow conception of an intended means while preserving the broad range of applications traditionally attributed to the DDE. This can be accomplished by revising the DDE. According to Quinn, the DDE should be interpreted so that it distinguishes 'between agency in which harm comes to some victims, at least in part, from the agent's deliberately involving them in something in order to further his purpose precisely by way of their being so involved (agency in which they figure as *intentional objects*) and harmful agency in which either nothing is in that way intended for the victims or what is intended does not contribute to their harm' [6]. Quinn calls these two forms of agency *direct* and *indirect*, respectively. His version of the DDE then asserts that 'we need, *ceteris paribus*, a stronger case to justify harmful direct agency than to justify equally harmful indirect agency' [7].

According to this view, the harm caused by harmful direct agency need not itself be a strictly intended effect in order for the act to be subject to the special constraint imposed by the DDE. In Terror Bomber, for example, it is enough that the terror bomber clearly intends that the civilians 'be violently impacted by the explosion of his bombs' [8]. Since he therefore intentionally involves them in his plans in a way that is in fact harmful to them, his action is condemned by Quinn's version of the DDE even though their being harmed or killed need not, on the narrow conception of an intended means, be an intended effect of his action.

This is an appealing proposal. It offers a way of reconciling the judgment that the agent in Self-Defence 1 need not intend to kill the person at whom she fires in self-defence with the view that what the terror bomber does is specially objectionable in a way that the action of the tactical bomber is not. In short, it appears to allow us to accept a very fine-grained conception of what counts as an intended means while continuing to draw the moral distinctions that the traditional DDE has been used to draw.

While Quinn's proposal seems to me to be the most promising understanding of the DDE in the literature, it is, as it stands, inadequate. In the following section I will advance certain objections to the theory. Then, in the final section, I will suggest how it might be improved. The paper as a whole should be regarded as a friendly revision of Quinn's proposal.

III

Consider:

Wealthy Uncle 1: As it begins to rain, one asks one's wealthy uncle to run out and roll up the windows of one's car. One foresees that there is about a one-in-a-million chance that, while he is out in the storm, he will be struck by lightning; but one ignores the risk as negligible. As it turns out, however, he is struck by lightning and killed.

In this case, harm comes to the victim at least in part from one's having deliberately involved him in the achievement of one of one's purposes. One's action therefore appears to count as harmful direct agency according to Quinn's definition [9]. But that is surely wrong. This is not the sort of act that the DDE should condemn.

The obvious response to this case is to protest that one's agency was not harmful agency; *a fortiori*, it was neither harmful direct agency nor harmful indirect agency. The causal connection between one's action and the death of the victim seems too remote to warrant the description of one's action as harmful. One's action was a *causal condition* of the victim's being killed but it was not the *cause* of his being killed. (To take a more extreme example for purposes of illustration, suppose that someone else invited one's uncle to one's house on the day he was killed and that, had this person not done so, the uncle would not have gone out in the storm. In that case the other person's action was also a causal condition of his being killed; but surely it cannot count as harmful agency.) It might be argued, therefore, that what Quinn's proposal requires is some insistence that there must be a sufficiently tight causal connection between the agent's action and any harm that the victim suffers in order for the action to count as harmful agency, either direct or indirect.

This response is, however, inadequate. To see this, consider:

Wealthy Uncle 2: One is desperately casting about for a prudent means of acquiring the fortune that one's wealthy uncle has left to one in his will. Thinking that anything so safe is worth a try, one sends him out to roll up the windows with the intention of exposing him to the one-in-a-million risk of being struck by lightning, hoping that he will indeed be struck. He is then in fact struck by lightning and killed.

Here it seems plausible to count one's action as an instance of harmful direct agency. This is the sort of action that we expect the DDE to condemn [10]. But the causal connection

between one's action and the victim's being killed is no closer in Wealthy Uncle 2 than in Wealthy Uncle 1. The causal structure is the same in both cases. Thus the difference between them cannot be that one counts as harmful agency while the other does not. Rather, the relevant difference is one of intention and should result in Wealthy Uncle 1 being classified as a case of harmful indirect agency while Wealthy Uncle 2 is classified as harmful direct agency. But Quinn's theory, as it stands, classifies them both as instances of harmful direct agency.

If we assume that the agent's action in Wealthy Uncle 1 does count as harmful agency, then the misclassification of this case by Quinn's theory is just one instance of a more general problem with the theory. For the theory seems excessively restrictive, or prohibitive, across a broad range of cases, condemning acts that intentionally affect or involve a person in the agent's plans in ways that are harmful when those acts are clearly not objectionable in a way that ought to be condemned by the DDE. This is true, for example, in the case of:

Jury Duty: One summons a person for jury duty.

In this case one intentionally affects the person one summons in certain ways and also, by the same act, harms her by restricting her liberty. Thus, even though the restriction of her liberty is not, on the narrow conception, an intended effect, one's act appears to be condemned by Quinn's version of the DDE. But, again, this is not the sort of act that ought to be condemned by the DDE.

Quinn is aware of this problem and himself cites certain competitive or punitive acts as instances of direct agency that are harmful but morally permissible. His solution to the problem is to claim that, for an act that intentionally affects a person in a harmful way to be subject to a constraint that captures the moral relevance of intention, it must be an act that is *opposed by a right* quite independently of the intentions with which it is done. Direct agency, he contends, has 'a kind of negative moral force that is activated only when other rights are present' [11]. The relevance of intention, therefore, consists in this: that the presence of intention strengthens a right not to be treated in a certain way and thus magnifies the wrongness of conduct that has the effect of violating the right. Let us refer to the stipulation that Quinn's version of the DDE applies only to acts that would violate a right even in the absence of intention as *the rights restriction*.

The rights restriction may seem to enhance the plausibility of the theory, since it successfully prevents the theory from condemning the agents' acts in both Jury Duty and Wealthy Uncle 1. In general, summoning someone for jury duty does not violate that person's rights; nor does asking him to go out to roll up one's windows.

The problem, however, is that the rights restriction allows the theory to assess Wealthy Uncle 1 correctly only at the cost of preventing the theory from correctly assessing Wealthy Uncle 2. Among the effects that the agent intends in this latter case are that the uncle is exposed to a risk of being struck by lightning, that he is struck by lightning, and that he appears to relevant observers to be dead. These are all means to the agent's inheriting the uncle's fortune. (Presumably one can intend these effects even if it is not, strictly speaking, within one's power to bring them all about. For, if the uncle is in fact struck by lightning, it can surely be said that the agent's intention has, improbably, been fulfilled.) To act to fulfil these intentions is, other things being equal, objectionable in a way that ought to be condemned by the DDE. But what the agent *does* to try to realise these intended effects — asking the uncle to go out into the storm to roll up the windows — does not violate the uncle's rights. (If it did, then sending the uncle out in Wealthy Uncle 1, in which one merely

foresees that there is a tiny probability that he will be harmed, would also violate his rights; but that, clearly, is not the case.) Hence Quinn's theory lacks the resources to support the claim that what the agent does in *Wealthy Uncle 2* is worse than what he does in *Wealthy Uncle 1*. Thus it seems that the role that Quinn's version of the DDE assigns to intention does not capture the way that intention is relevant to the morality of action. For the difference in the agent's intentions in *Wealthy Uncle 1* and *Wealthy Uncle 2* seems entirely to transform the morality of the action.

Notice that it is not an option for Quinn to claim that one's action violates one's uncle's rights in *Wealthy Uncle 2* but not in *Wealthy Uncle 1*. For that to be the case, there would have to be a right not to be *intentionally* treated in a certain way but no right not to be foreseeably but unintentionally treated in this same way. But to suppose that there could be a right of the first but not the second sort is to presuppose that intention can make a moral difference on its own, which is exactly what Quinn denies. What Quinn claims is that intention makes a difference only when it is, as it were, added to an act that would violate a right even in its absence [12].

Wealthy Uncle 2 is but one of many counterexamples to Quinn's version of the DDE. Consider, for example:

Accident Victim 1: A passer-by chances upon the scene of an accident and discovers that the victim of the accident will surely die within twenty-four hours unless first aid is administered within the next five minutes. The passer-by, who is capable of administering first aid, knows that doing so would be risky (for there is, say, a one-in-ten-thousand chance of contracting a fatal disease from contaminated blood) but she is undeterred by that. When, however, she notices that the victim is carrying an organ donor's card, she decides not to provide aid. For she has two friends in the hospital, each of whom requires an organ transplant, and she reasons that, if she does not provide first aid but instead goes to call an ambulance, the victim will survive long enough — but only long enough — for his organs to be used for the transplants her friends need.

Let us put aside the question whether the passer-by intentionally allows the accident victim to die — that is, whether his death is an intended effect of her failure to act. (Perhaps one can intend to have a person's organs removed for purposes of transplantation without intending that the person should die.) For, whether or not she intends for the victim to die, the passer-by does intend to use the victim for the furtherance of her purposes in a way that results in his death. Her conduct therefore counts as harmful direct agency on Quinn's view, which concedes that allowing harm to occur can count as an instance of direct agency.

It seems, however, that Quinn's version of the DDE does not hold that there is a special presumption against the passer-by's conduct in this case since it does not appear that the accident victim has a *right* to be saved. To see this, consider:

Accident Victim 2: The same as *Accident Victim 1* except that the passer-by decides not to provide first aid, not because she wants the victim's organs to be available for transplantation, but because she regards the provision of aid as excessively risky to herself.

Clearly, in this version, the passer-by does not violate a right. The best explanation of why this is so is that the victim does not have a *right* to be aided. (Alternatively, of course, it might

be that, while the victim has a right to be aided, the risk to the agent releases her from the duty to do what the right would otherwise require. I will return to this possibility shortly.)

What the passer-by does in Accident Victim 1 is the sort of conduct that the DDE is expected to condemn. Unless, however, the accident victim has a positive right to be saved, Quinn's version of the DDE does not condemn the passer-by's conduct and thus fails to distinguish morally between Accident Victim 1 and 2. For, on Quinn's theory, intention is not an independent source of a constraint; it simply magnifies the wrongness of violating a pre-existing right.

Quinn in fact considers the possibility that a case of this sort might show that intention can make a difference on its own — that the 'DDE might come into play where no independent negative or positive right is present.' But he concludes that it does not. Here is what he says: 'Suppose in an act of pure supererogation, I am about to aid you but am checked by the realisation that your difficulty can be turned either to my advantage or to that of someone I care more for. Does my change of mind, for that reason, violate your rights? I am inclined to think not. It might be bad of me to be checked by such reason, but its appearance cannot create an obligation where none existed before. Rights not to be caught up, to one's disadvantage, in the direct agency of others seem to exist only where some positive or negative right already exists' [13].

The claim that intention cannot create an obligation to aid another where none existed previously is correct but beside the point. For the claim that it is specially objectionable intentionally to allow someone to be harmed as a means of benefiting someone else does not imply that there is a special reason *not* to allow the harm — that is, a special reason to aid the potential victim. For example, the claim that the passer-by must not allow the victim to die with the intention of securing his organs for transplantation does not imply that she must instead provide aid. For there are at least two alternatives to failing to provide aid with the intention of securing the victim's organs. One is to save him. Another is to fail to save him but without intending that as a means of saving the lives of others who require transplants. Thus the denial of the permissibility of allowing the victim to die in order to use his organs need not imply the obligatoriness of saving him. Thus far, then, there is no objection to what I take to be our intuitions about Accident Victim 1 and Accident Victim 2 — that is, that, while it would be permissible to allow the victim to die rather than to accept the risk that saving him would involve, it would be specially objectionable to allow him to die in order that his organs would be available for transplantation. In short, there is no objection to the idea that, in these cases, intention alone is the source of a special constraint.

One might seek to defend Quinn's version of the DDE by contending that it has acceptable implications for all actual cases involving a failure to provide aid since, in all such cases in which a person who is innocent in relevant respects requires aid, he in fact will have a positive right to receive it [14]. (The stipulation that the person should be relevantly innocent is intended to exclude such cases as that in which a person deserves the harm with which he is threatened, or that in which his need for aid is the result of his own culpable action, and so on.) If we can accept that, other things being equal, innocent people who require aid have a positive right to receive it, then on Quinn's theory it will be specially objectionable to engage in direct agency that allows a person to die or otherwise be harmed. It does not follow, however, that it will generally be wrong, all things considered, to fail to provide aid whenever aid is needed, for there may be various countervailing considerations that can release or exempt a person from the obligation to provide aid that a positive right would otherwise impose. Thus, while a person's positive right to aid may not be strong

enough to require one to provide that aid when (as in Accident Victim 2) providing it would require a significant personal sacrifice, the right will normally be strong enough to forbid *intentionally* allowing the person to be harmed. For the right is strengthened in its opposition to direct agency.

This defence of Quinn's theory is, however, unacceptable. For the problem that motivated Quinn to introduce the rights restriction into his version of the DDE is that it is not always specially objectionable intentionally to affect a person in a way that is harmful to that person or adversely affects her interests — as, for example, in Jury Duty. Hence the stronger requirement that, for direct agency to be specially objectionable, the act must not just be against the person's interests but must also violate her rights. For this revision to do any work, however, it must be the case that violating a person's rights involves more than merely adversely affecting her interests. But to say that an innocent person has a positive right to aid whenever she requires aid is to collapse this crucial distinction between having an interest and having a right.

The concept of a positive right to aid implies that there is a special reason to provide aid to the right holder other than the reason that is generated, other things being equal, by the person's need alone. There are, for example, cases in which one has a special agent-relative reason to aid some person (for example, a reason to aid a friend, which is a reason that others who are not the person's friend do not share), cases in which one has a voluntarily incurred obligation to bring aid (for example, when one has promised to provide aid, or been paid to provide aid), cases involving a duty of gratitude, cases in which one is oneself culpably responsible for a person's need for aid, and so on. In these cases one's reason to provide aid is based on more than mere considerations of harm and benefit. Thus one may be required to provide aid even when the cost to oneself is greater than the benefit one provides.

There is, however, a further type of case involving a need for aid that is not like this. In cases of this type, a person's need for aid gives rise to a reason that is commensurate in strength with the degree to which it will be worse for him if he does not receive the needed aid. In these cases, in other words, the reason to provide aid derives entirely from considerations of consequences. Thus in these cases one cannot be required to incur costs in providing aid that are greater than the benefit that one bestows.

In these cases there is no positive right to aid. I suggest, moreover, that there are many cases of this sort. For example, Quinn cites a case involving people who have 'a new, life-threatening disease' and claims that they do 'have, presumably, some positive right to medical aid' [15]. But all that we are told about these people is that they have the disease. If there are no other special circumstances, then it seems that their claim to aid can only be commensurate with the degree to which they will be adversely affected if they fail to receive it. If that is the case, then there is no special reason to allocate resources to them if the same resources could do more good if allocated to others. But this would not be true if they had a *right* to be aided.

If it is true that there are numerous cases in which an innocent person may need aid but have no positive right to receive it, then it follows from Quinn's theory that, in these cases, it is no worse intentionally to withhold aid (as in Accident Victim 1) than it would be to allow harm to occur voluntarily but unintentionally (as in Accident Victim 2). Since this conclusion is directly opposed by the intuitions that have led people to embrace the DDE, it follows that Quinn's version of the DDE fails to capture the moral significance of intention.

IV

If the narrow conception of an intended means is correct, then the DDE cannot, at least if it is to capture our intuitions, discriminate simply between intended means and merely foreseen side-effects. If we wish to preserve our intuitions, then something quite like Quinn's distinction between direct and indirect agency seems essential. Yet the unrestricted version of the doctrine based on this distinction is too restrictive, condemning action in *Wealthy Uncle 1* and *Jury Duty* that is in fact permissible. Introducing the rights restriction solves this problem but at the cost of making the doctrine excessively permissive. For, with the rights restriction, the doctrine finds no special objection to the action in *Wealthy Uncle 2* and *Accident Victim 1*; yet these are instances of behaviour that the DDE should condemn.

Recall that the fundamental problem with the DDE as traditionally interpreted, and the problem to which Quinn's proposal is a response, is that there are numerous types of case that have hitherto been assumed to involve intentional harming, and so have been assumed to violate the DDE, but that in fact do not necessarily have harm as an intended effect according to the narrow conception of an intended means. For the narrow conception permits the dissociation of an effect that is intended under one description from the same effect under a different description; and it also permits the dissociation of a strictly intended effect from a closely associated harm. What we therefore need is a way of re-establishing the link between the strictly intended effect and the associated harm so that intending the one is morally tantamount to intending the other. And the linkage should hold whether the harm is the same effect as the intended effect, though differently described, or is a different but closely connected effect.

It may be that part of the point of imposing the rights requirement is to establish the necessary linkage. Rights function to protect people from certain harms. One cannot fully explain the wrongness of violating a right without taking into account the harm that the violation causes to the victim. So perhaps Quinn assumed that the close connection between violating a right and harming the victim makes intentionally violating a right (or intentionally affecting a person in a way that constitutes a violation of his right) morally tantamount to intentionally harming him.

We have seen, however, that the range of the DDE's application extends beyond the set of acts that violate rights. Hence the rights requirement cannot provide the necessary linkage. This linkage can, however, be built directly into a revised understanding of direct agency. This understanding may be defined as follows:

An act is an instance of potentially harmful direct agency if it is intended to affect or involve a person *P* in the agent's plans and if one of the following is among the effects that the act is strictly intended to have:

- [i] an effect on *P* that is itself bad for *P* or constitutes a harm,
- [ii] an effect on *P* that, while not itself a harm given the description under which it is strictly intended, is nevertheless such that the agent believes that there is an alternative description of it under which it is bad for or constitutes a harm to *P*, or
- [iii] an effect on *P* that, while not itself a harm given the description under which it is strictly intended, is nevertheless believed by the agent to be harmful to *P* because it is believed to be causally sufficient, in the

circumstances, either for a significant harm to P or for a high probability of such a harm.

The rationale behind the linkage proposed here is simple. Intending an effect of type [ii] or [iii] is morally tantamount to intending its associated harm because one knows that in intentionally affecting P in the one way one will *necessarily* be affecting him in the other way as well. In the case of an effect of type [ii], the necessity will be logical, whereas in the case of an effect of type [iii], the necessity will be causal.

It will be noted that this is a definition of '*potentially* harmful direct agency' that refers not to an act's actual effects but instead to the effects that it is intended to have. This further deviation from Quinn's definition is meant to allow the DDE to condemn not only direct agency that actually causes harm but also direct agency that attempts to do what causes harm but fails.

We may now advance a new version of the DDE, which may be called *DDE**. The central claim of this version is that there is a stronger moral presumption against potentially harmful direct agency, as defined above, than there is against potentially harmful indirect agency [16]. I believe that *DDE** has intuitively plausible implications for the range of cases to which the DDE is generally assumed to apply. For example, it classifies the action of the terror bomber as direct agency since the bomber believes that the strictly intended effect of having bombs land on the civilians is, in the circumstances, causally sufficient for killing or injuring them. And it condemns the action of the agent in *Wealthy Uncle 2* as direct agency since the strictly intended effect of exposing the uncle to a risk of being killed is itself bad for the uncle. (Here and elsewhere I treat being exposed to a risk of harm as itself bad. Hence my earlier assumption that what is causally sufficient to expose a person to a high probability of a significant harm is necessarily bad for that person.) Moreover, even if the uncle's being struck by lightning (another strictly intended effect) is not necessarily itself a harm, the agent believes that it is, in the circumstances, causally sufficient for the uncle's being seriously harmed. Finally, *DDE** also condemns the passer-by's action in *Accident Victim 1* since she believes that the strictly intended effect of allowing the victim's injuries to go untreated will, in the circumstances, be causally sufficient for the victim's death.

Since *DDE** implies that there is a special objection to the agent's action in *Wealthy Uncle 2* and in *Accident Victim 1*, whereas Quinn's version of the DDE does not, *DDE** appears to mark a significant advance. The other problem that Quinn's version faced was that it classifies the action in *Wealthy Uncle 1* and that in *Jury Duty* as instances of direct agency and thus threatens to condemn these acts as specially objectionable. Quinn sought to avoid this problem by imposing the rights restriction but we now see that this response is inadequate. Let us consider what *DDE** implies about *Wealthy Uncle 1*, which intuitively seems to be a case of indirect agency. In this case, all that the agent strictly intends for the uncle is that the uncle should go outside and roll up the windows. This is not in itself bad for the uncle; nor does the agent believe that it is causally sufficient, in the circumstances, for the uncle's being struck by lightning or for his being killed. There is, however, a problem. For the agent does believe that the uncle's going outside is causally sufficient for his being exposed to a one-in-a-million risk of being struck by lightning and, as I have noted, I am assuming that being exposed to risk is itself bad. So the strictly intended effect is believed by the agent to be sufficient for a further effect that is itself bad. Does this mean that *DDE** classifies *Wealthy Uncle 1* as an instance of direct agency?

Since most human activities involve some risk of harm, it is very often the case that what

we intend for a person is causally sufficient for a slight risk of significant harm. Yet surely the acts that involve such an intention are not specially morally objectionable for that reason and do not merit condemnation by the DDE. If, however, the risk of significant harm is high, then the act may indeed be specially objectionable in a way that ought to be condemned by the DDE. It is for this reason that clause [iii] in the definition of direct agency refers to 'significant harm' or 'a high probability of such a harm.' Since the risk in *Wealthy Uncle 1* is not high, the agent's action does not qualify as direct agency and thus is not condemned by DDE*.

Consider now the action in *Jury Duty*. This, I believe, must be classified as harmful direct agency. Yet it is clearly not specially objectionable. This case, therefore, requires a modification of DDE* analogous to Quinn's introduction of the rights requirement. But, whereas Quinn's modification stipulated that intention requires the presence of an *activator* (a right) in order to have a moral effect, I suggest that what happens in *Jury Duty* is that the presence of a different sort of factor functions to deprive intention of its normal moral significance. Let us call such a factor, that cancels the normal significance of intention, a *nullifier*. In *Jury Duty*, the relevant nullifier is that what is intended for the person is the person's moral duty. There is no objection to intending for a person what is in fact that person's duty, even if it is harmful.

There are, of course, other types of nullifier. One is consent. It may be permissible to engage in harmful direct agency if the victim of one's action has consented to it. (This may explain the permissibility of certain forms of harmful direct agency in games and market relations, which are conventional arrangements that presuppose an implied consent among the participants that certain forms of harmful direct agency are to be permitted.) But the most obvious nullifier is moral non-innocence. Thus it is the non-innocence of the victim that explains the permissibility of intentionally harming a person in cases of deserved punishment, certain cases of self-defence, and so on [17]. Consider for example:

Self-Defence 2: The same as *Self-Defence 1* except that the attack is the latest in a series of attacks by the same person; hence, in firing the flame-thrower, one intends to *kill* the attacker as a means of defending oneself against the present attack and of preventing further attacks in the future.

In *Self-Defence 2*, most of us believe that it is permissible for the innocent victim intentionally to kill the culpable attacker.

Interestingly, the followers of Aquinas, who believe that all intentional killing of human beings by private persons is wrong, do not accept that the attacker's guilt in *Self-Defence 2* serves to nullify the normal significance of intention. Neither, therefore, can they accept that the attacker's guilt functions as a nullifier in *Self-Defence 1*, making it permissible for the agent to fire the flame-thrower. Yet, according to DDE*, it must be the presence of a nullifier that makes self-defensive action permissible in this case. For, in *Self-Defence 1*, the agent believes that incapacitating the attacker is, in the circumstances, causally sufficient for killing him; he therefore engages in harmful direct agency, just as the agent in *Self-Defence 2* does. DDE*, in short, fails to distinguish morally between *Self-Defence 1* and *Self-Defence 2*. For most of us, this is plausible.

For the followers of Aquinas, however, the action in *Self-Defence 1* is permissible while that in *Self-Defence 2* is not. Since they reject the idea that the attacker's guilt functions as a nullifier, they attempt to explain the permissibility of the action in *Self-Defence 1* by appealing to the fact that only incapacitation and not killing is intended — in short, by

appealing to the narrow conception of an intended means. They are therefore left with the problem that motivated Quinn's original version: that basing the DDE on the distinction between intended means and foreseen side-effects while embracing the narrow conception of an intended means results in an unacceptably permissive doctrine. DDE*, by contrast, avoids both this problem and the counter-examples that beset Quinn's version. [18]

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NOTES

- [1] J. BENNETT (1981), *Morality and Consequences*, in S. MCMURRIN (ed.), *The Tanner Lectures on Human Values*, Vol. II (Salt Lake City, Utah, University of Utah Press), pp. 110–11.
- [2] Here I follow BENNETT, *Morality and Consequences*, pp. 108–9.
- [3] P. FOOT (1978) *The Problem of Abortion and the Doctrine of Double Effect*, in her *Virtues and Vices* (Oxford, Basil Blackwell), pp. 21–22. Foot's proposal is reviewed and rejected in W. QUINN, *Actions, intentions, and consequences: the doctrine of double effect*, *Philosophy and Public Affairs*, 18 (1989), pp. 338–39.
- [4] T. AQUINAS, *Summa Theologiae*, II, ii, q. 64, a. 7.
- [5] See, for example, G. E. M. ANSCOMBE (1975) *War and Murder*, in J. RACHELS (ed.), *Moral Problems* (New York, Harper & Row), pp. 288–9; R. L. PHILLIPS, *War and Justice* (1984) (Norman, Oklahoma, University of Oklahoma Press), pp. 44–6; and J. FINNIS, J. BOYLE, and G. GRISEZ (1987) *Nuclear Deterrence, Morality, and Realism* (Oxford, Oxford University Press), pp. 310–18.
- [6] QUINN, *Actions, Intentions, and Consequences*, p. 343. Emphasis in the original.
- [7] *Ibid.*, p. 344.
- [8] *Ibid.*, p. 342.
- [9] A similar case is advanced as a counterexample to Quinn's proposal in J. M. FISCHER, M. RAVIZZA, and D. COPP, *Quinn on Double Effect: The Problem of 'Closeness'*, *Ethics*, 103 (1993), pp. 711–12.
- [10] This is not to say that the DDE should imply that the agent in *Wealthy Uncle 2* is guilty of *murder*. It is only to say that the DDE should imply that there is a special objection to what the agent does in *Wealthy Uncle 2* that does not apply to the action in *Wealthy Uncle 1*.
- [11] QUINN, *Actions, Intentions, and Consequences*, p. 350, n. 24.
- [12] This claim appears to preclude the existence of a commonly recognised type of right — namely, a right that can be violated only by an act that is intentional under a certain description (for example, the right not to be lied to, a right that holds against intentional deception only).
- [13] *Ibid.*, p. 346.
- [14] Michael Tooley has, for example, argued that individuals have a *prima facie* right to what they desire. See M. TOOLEY, 'Abortion and Infanticide', *Philosophy and Public Affairs*, 2 (1971), p. 44. Of course, given Quinn's abstract characterisation of the case in which the provision of aid is supererogatory, it may be difficult for him consistently to embrace the view that a relevantly innocent person has a positive right to any aid that she requires.
- [15] QUINN, *Actions, Intention, and Consequences*, pp. 336 and 346.
- [16] There are cases that suggest that harmful direct agency with an effect of type [i] is worse, other things being equal, than a comparable instance of harmful direct agency with an equally harmful associated effect of type [ii] or [iii]. I will not explore this further complication here.
- [17] The permissibility of killing a morally innocent attacker in self-defence is puzzling precisely because of our uncertainty about what factor functions to nullify the normal significance of intentional killing.
- [18] I am very grateful to Michael Gorr and Peter Unger for comments on an earlier draft and to the United States Institute of Peace and the John D. and Catherine T. MacArthur Foundation for financial support for my work.