“Double Effect as Action Theory” (6314 words)

This paper defends, against certain recent objections owing to T.M. Scanlon and Judith Jarvis Thomson, the idea that the intentions of an agent might be relevant to the permissibility of her actions. The argument takes the form of a qualified defense of the Doctrine of Double Effect.

1. The Doctrine of Double Effect has recently come under fire again, this time by T.M. Scanlon in his book Moral Dimensions.1 The objections Scanlon raises there are, I think, interestingly different from certain familiar objections to the Doctrine, and in fact worth addressing even if the Doctrine is indeed doomed on other grounds.2 While Scanlon’s conclusions have been denied in some recent papers3, my own view is that these authors concede too much to Scanlon—the critical point, really. My contention in what follows will be that Scanlon’s objections are in fact fundamentally mistaken—though they raise some very important issues.

I am not sure it is possible to determine how exactly the DDE was initially intended to be understood; I am sure I am not competent myself to determine that.4 My ultimate goal in what follows is in any case not really to vindicate the DDE itself, but rather the general idea—that intentions might be relevant to questions of permissibility. In so doing, however, the DDE will be a useful stalking horse, and so I will be provisionally defending

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1 See Scanlon, Moral Dimensions: Permissibility, Meaning, Blame, especially chapters 1 and 2. In what follows I will be referring to the Doctrine as the ‘DDE’, though some writers (including Scanlon) prefer ‘Principle of Double Effect’, and hence PDE. All references to Scanlon below are to this work.
2 Besides various claims of counterexamples (see e.g. Foot’s counterexample—what might be called the Hospital Fumes case—at the end of her “The Problem of Abortion and the Doctrine of Double Effect,” p. 29), the most famous objection to the DDE is the so-called ‘closeness’ objection, popularized by Bennett in his Morality and Consequences (see pp. 109-11), but noted already in Foot’s “The Problem of Abortion” (at p. 22). The objection in effect notes that, if an agent tailors his intention finely enough, any action at all might come out as permissible. I do not myself find objections of this form persuasive, but there is not room to enter into the matter here. In making his own objections, Scanlon is drawing, as he notes, on Judith Jarvis Thomson’s “Physician-Assisted Suicide: Two Moral Arguments.”
3 See, e.g., Joshua Stuchlik’s “A Critique of Scanlon on Double Effect,” and Jakob Elster’s “Scanlon on Permissibility and Double Effect.”
4 The Doctrine was, familiarly, introduced by Aquinas, in the context of actions taken in self-defense: Summa Theologica II-II, Q. 64, art. 7.
a form of it; whether that entails genuinely recovering the Doctrine, or on the other hand giving a new understanding of it, I am not really sure.

The DDE is of course based upon a distinction between consequences that are *intended*, on the one hand, and those which are *merely foreseen*, on the other. It has received various formulations over the years, but its content can more or less be summarized as follows:

DDE: It is sometimes permissible to perform an action, which has (as one foresees) as its consequence something very bad (or morally undesirable), even though it would not be permissible to intentionally bring about that same consequence.\(^5\)

Some theorists have attempted to beef up the content of the DDE (as stated), so that it supplies full necessary and sufficient conditions for the permissibility of actions in the various controversial cases—they have, that is, attempted to spell out the ‘sometimes’ in the first clause. The usual idea is that, for an action to come out as permissible, it must satisfy something like the following criteria: the good that is aimed at ‘outweighs’ the bad consequence that is (merely) foreseen—or, as it is sometimes put, “there is a proportionately grave reason for permitting the evil effect”; and the action is not in some *other* way wrong.\(^6\) I am not sure myself that these conditions have ever been entirely convincingly spelled out; and if the goal is to turn the Doctrine into a ‘mechanical’ formula—one, that is, which can be employed by someone who lacks any (what is sometimes called) ‘moral judgment’ or ‘moral sensitivity’—if that is the goal, then the project of supplying these conditions seems misguided, since ‘outweighs’ (or

\(^5\) This is very close to the formulation given by Foot; see again her “The Problem of Abortion,” p. 20.

\(^6\) See, e.g., Pruss, “The Accomplishment of Plans: A New Version of the Principle of Double Effect,” from whom these formulations are adopted.
‘proportionate’) would have to spelled out in turn, a task that seems hopeless. In any case, I will omit any mention of these conditions in what follows, since they do not touch the main issue: Scanlon’s objection, if it is sound, undermines the basic formulation of the principle, whatever the riders.

Before scouting that objection, it is worth recalling here the DDE’s traditional employment—and why anyone was ever tempted by it in the first place. The range of the Doctrine’s use is perhaps itself somewhat controversial; but one case it has very often been taken to explain is the terror bombing/strategic bombing pair. Thus, while many people would agree that it is wrong—impermissible—to bomb (say) 100 civilians (in wartime) in order to terrorize the population into submission, still, many of the same people would concede that it is at least sometimes permissible to bomb (say) a munitions factory, even where it is clearly foreseen that 100 civilians will die as a result. If these judgments are sound, we must ask: what is the moral difference in what they do?

In fact, although the point is sometimes missed, “philosophers can arrange” that the two scenarios are as alike in detail as you please: perhaps, e.g., the terror bomber realizes that dropping bombs directly over the munitions plant is in fact the best way to maximize civilian death. Indeed, we can imagine that the pilots behave in ways which are physically indistinguishable from each other. In what follows, I will be thinking of a case like this.

Another classic case involves some variation on the following theme: it is possible to ease the terrible suffering of a terminally ill patient by administering a barbiturate drip; but doing so will suppress his breathing, and therefore end his life—as the doctors know. In one case, a

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7 The alternative is that ‘outweighs’ (or ‘proportional’) be understood in such a way as to make the rider effectively empty: the judgment that A outweighs B will simply track our judgment that the action is permissible, and not ground it. Cf. Quinn, “Actions, Intentions, and Consequences: The Doctrine of Double Effect,” p. 334, fn. 3.
8 See Quinn, *ibid.*, for an example of this case. (The original is lost in the sands of time.)
doctor administers the drug in order to ease the patient’s pain; in another, a doctor performs
(what is ostensibly) the same action, in order to (say) revenge herself on the patient for killing
her brother—or to get the inheritance, or whatever. Again, the contemplated actions might be as
similar as you like from the point of view of some observer; but again they seem decisively
different morally.9

In each case the DDE gives the same verdict: the actions of the strategic bomber and of
the good doctor are not wrong, since the bad consequence (in either case, death) is not intended
but merely foreseen by the agent in question; whereas the terror bomber and the malevolent
doctor intend the deaths they cause, and therefore do something wrong.

2. Now Scanlon accepts these verdicts in part: he agrees that the terror bomber and the bad
doctor are morally criticizable in a way that their counterparts are not. But he distinguishes
between moral principles as standards of criticism, on the one hand, and moral principles as
guides to deliberation, on the other. And thus, while he accepts that the (evil) intentions in cases
like these tell us something (bad) about the agents’ reasons for acting (i.e., about their wills), and
therefore about the agents themselves; while he accepts this, he denies that intention can have
any significance for questions of permissibility. In fact, in all the cases just discussed, Scanlon
would, it appears, regard the actions in question as permissible.

Of course, questions of permissibility have their primary significance for agents
themselves, contemplating particular actions. But, as Scanlon stresses10, it is also possible to ask

9 Cf. Stuchlik, ibid., pp. 183-4, from whom the example is taken over. The Doctrine is also often taken, as by Foot
(ibid.) to explain the difference between the Drug Shortage case and (what might be called) the Hospital Sacrifice
case; as well as certain Trolley cases. I am less sure of the applicability of the DDE to those cases; they introduce in
any case all sorts of complications, not least about the concept of ‘saving’. They are not to the point here, anyway,
since there is only a very minimal sense, in such cases, in which the good agent and her unfortunate counterpart can
be said to have ‘done the same thing’.
10 Scanlon, p. 9, et passim.
about permissibility third-personally—both retrospectively and hypothetically. One can ask, e.g., whether it was permissible for Jones to do such-and-such; in evaluating the thought experiments above, we could equally ask whether it would be permissible for a doctor to do this, a bomber to do that. Scanlon’s contention is that, in regards to such questions, the DDE is not required in order to get the right verdicts, and in fact sometimes give the wrong ones.

Scanlon’s argument against the DDE in *Moral Dimensions* consists largely of attempts to explain our permissibility-verdicts about various familiar cases without making any reference to intention—that is, he tries to show that we do not need to appeal to intention to explain why certain actions are permissible, whereas other, very similar actions, are not. The success of these various explanations is, I think, open to question; but for the most part it will not be my concern in what follows. My concern is with what is motivating these attempts.

Scanlon’s motivation is, in the first place, negative: “no one has come up with a satisfying explanation,” he writes, “of why the fact of intention…should make a moral difference.” My goal below will be to remedy that deficiency. In any case, Scanlon is evidently equally motivated by his sense that, understood as a principle for guiding deliberation, the DDE just gives the wrong verdicts in certain cases—cases very much like those just canvassed. Unlike the usual complaints about Double Effect—sc., that it is too permissive, that it can be used, in effect, as a ‘get out of jail free’ card—Scanlon’s objection is that the doctrine is too restrictive. Thus, considering a prime minister who is asked to approve a bombing raid, he derides as “implausible” the idea that the prime minister must first ask after his air force commander’s intention (in carrying out the sortie) before deciding whether it is permissible to approve it; surely, the permissibility of ordering such a raid will turn on the likely consequences

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11 Scanlon, p. 18. Scanlon has a further argument against intention mattering for permissibility; it is discussed in §6, below.
of it, and the rules concerning what sorts of use of force are permissible in war time—not anyone’s intention or, as Scanlon often glosses it, her “reasons for action.”

Now it is worth putting aside from the outset the question of the prime minister’s proposed action (sc., ordering a raid); the answer to that question involves a complicated interaction between the intentions of the minister and that of his subordinates; in the present context it is merely a distraction. But presumably Scanlon would give the same response to our version of the thought experiment: on the basis of the principle he deploys (in lieu of the DDE) to explain why strategic bombing is indeed sometimes permissible, our terror bomber acts permissibly just in case our strategic bomber does—they are, after all, indistinguishable except in point of intention. In fact, with the details adequately massaged, Scanlon would regard both bombing raids as permissible.

Judith Jarvis Thomson, in her “Physician-Assisted Suicide,” takes the same line. Contemplating an evil General Eisenhower (his chief desire: to get American GIs killed) who is planning the Normandy invasion, Thomson insists that “his intention bears, not on whether he may act [i.e., whether his action is permissible], but only on him.” Likewise, imagining a hospital case like the one above, she reckons “absurd” the idea that “whether it is morally permissible for the doctor to inject the lethal drug depends on whether the doctor would be doing so intending death or only intending relief from pain.” In both cases, it is plain that her

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12 See Scanlon, p. 20; he notes that he is here following Thomson.
13 Elster, too, notes the irrelevance: see p. 81 of his ibid. Nevertheless, I do not think it is an accident that Scanlon puts the case in these terms; I return briefly to the point at the end.
14 For Scanlon’s replacement principle, see page 28ff, of his ibid. He does not explicitly consider here the possibility that the two bombing raids could be (as I have put it) physically indistinguishable.
15 See Thomson, ibid., p. 516, fn. 19. The situation Thomson is imagining is one in which (“per impossible,” she says) we could be persuaded that the predictable consequences would be identical, whether Eisenhower’s intentions were good or bad. It is of course critical that we focus on such cases throughout; it is part of Scanlon’s explanation of the “illusory appeal of double effect” that intentions can be relevant insofar as they enable us to predict certain consequences—what he calls the “predictive significance of intention” (p. 13).
16 Thomson, ibid., p. 515.
judgment is that the actions are, or might be, permissible, whatever the intentions of the agents. And Scanlon would concur.

3. But is there really something absurd about the verdicts rendered here by the DDE? The appearance of absurdity is, I think, generated chiefly by the assumption, common to Scanlon and Thomson, that we have to do in each of these cases with the selfsame action—one which is permissible (by the lights of the DDE) in the one case, but impermissible in the other. But do we?

I think in fact that it would be possible to insist that the action contemplated (e.g.) by the good doctor is in no sense the same action as the one contemplated by the bad one. But it is not necessary to take so strong a position. It would be enough to show that, although there will be one thing that both agents can be said to have done, there is still something that the bad doctor will have done that the good doctor will not—and this precisely because of the difference in their intentions. The point I am making could be summarized as follows: (i) actions are prohibited as falling under certain descriptions; (ii) the intention of the agent determines the nature of the action—that is: what the correct description of the action is; and therefore (iii) the intention is necessarily relevant to the question of permissibility.

The second premise, although it sounds perhaps like a bit of recherché philosophical theory, is in fact illustrated by some prosaic examples. Thus, consider two agents (Smith and Jones), each of whom can be said to have raised his index finger half an inch; but whereas Smith has turned on the light, Jones has opened the latch. Plausibly, there is some one action each can

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17 I have myself elsewhere advanced a view with this consequence: see XXX
be said to have performed—each can be said to have raised his finger.\footnote{18}{Here, and throughout, I of course mean, “one action type”—obviously Jones’s action and Smith’s are different tokens. Action token identity has received much more explicit attention in the literature than the present topic, action type identity.} But, on the other hand, there is something Smith can be said to have done that Jones hasn’t (and \textit{vice versa}).\footnote{19}{The \textit{locus classicus} of an account of this form is of course Anscombe’s \textit{Intention}; a similar view is advanced in the first five essays of Davidson’s \textit{Essays on Actions and Events}. Scanlon, more than once, records something like (ii)—as an imagined objection—but he makes nothing of it; see, e.g., p. 12; and p. 39 where, noting this fact, Scanlon replies that the type of action the agent performs is not “at issue”; rather, the “question is whether the agent’s intent is crucial to the permissibility of his or her action.” Evidently, then, he rejects our premise (i). A proposal something like the one advanced here is briefly sketched in Warren Quinn’s “Actions, Intentions, and Consequences: The Doctrine of Double Effect” (at p. 340), though he discards it in favor of a more complicated approach, on the grounds that (I) “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” (p. 341), and (II) philosophically sophisticated agents might tailor the statements of their intentions so as to ‘rule in’ their (apparently) inadmissible conduct. The latter is, in effect, a version of the closeness objection; see fn. 2, above.} The first premise is, I think, equally familiar, and it has nothing to do, in and of itself, with \textit{morality}. Thus suppose Robinson tells her charges, Smith and Jones, “You may not open any latches.” (Perhaps she does this for their safety, or perhaps this is one of the rules of a whimsical game she has invented.) It is clearly irrelevant—to the question, Who has done something impermissible?—that Smith and Jones can both be said to have done some one thing (lifting a finger). Only Jones has done something impermissible—for he has done something falling under the description, “opening a latch,” and that because that was the intention under which he acted—or, in the familiar jargon, that was the \textit{further intention} with which he moved his finger.\footnote{20}{Cf. here Anscombe, “Modern Moral Philosophy,” p. 10: “The prohibition of certain things simple in virtue of their descriptions as such-and-such identifiable kinds of action, regardless of any further consequences, is certainly not the whole of the Hebrew-Christian ethic; but it is a noteworthy feature of it.”}

Here it might be protested that, while of course Jones has done something which Smith has not, this is really because the \textit{consequences} of their actions are different—in Smith’s case, the raising of his finger had the consequence that the light went on; in Jones’s, that the latch was opened.
That this cannot be right is shown by the familiar possibility of failed actions. Thus suppose that Smith and Jones each fail to bring about their intended effect—a little hard to envision here, I guess, but perhaps the latch, and the light switch, are ‘stuck’. In that case they bring about exactly the same consequences (sc., nothing)—and yet one of them has acted impermissibly. Jones has ‘tried to open the latch’, as we say, for which he will get some censure (or lose the game, or whatever).

The point is, I think, entirely general, and applies equally to moral proscriptions. Thus suppose Brown and I each fire a gun; I miss my target—a clay pigeon, say—and Brown misses his—a living human being, as it happens. We have each ‘done the same thing’, i.e., done something that is the same—sc., fire a gun (and surely much more besides). But Jones has also done something impermissible; the action he elected was to kill a human being. He has failed, of course, but the wrongness of what he did—try to kill someone, if that is something different—is surely inherited from the wrongness of the action which he chose: to kill someone.

If this reasoning is sound, it follows that intentions not only can, but in fact must be relevant to questions of permissibility. In choosing an action, the agent chooses her intention. The point of saying—as the DDE does—that intentions are relevant to permissibility, is only that action-descriptions are relevant to permissibility—and action descriptions depend on intentions.

In that case, we ought to say, for each of our cases (above), that one agent simply performs an action which the other does not—even though the difference between the two agents lies not in the consequences, nor the circumstances, but only in the intention of the agent. Thus while each bomber performs the action ‘dropping a bomb, in such-and-such a place, with such-and-such likely consequences’, only the terror bomber murders civilians; and while each doctor administers a drug, and even brings it about, as he foresees, his patient dies, only the
bad doctor *murders his patient*. It is open to a defender of the DDE to go on to say that actions falling under the latter descriptions are impermissible as such.

This point—that these agents do different things—is somewhat obscured in each of these cases by a kind of ambiguity in the English language. Thus while there are some descriptions of human doings which can be done either intentionally or unintentionally—*spill the coffee*, for sure, or *ring the doorbell*, and, arguably, *kill a man*—nevertheless there are others which can only be done intentionally—*lie*, e.g., but also actions described by such non-moralized verbs as ‘hire’, ‘greet’, or ‘send for’. It is interesting that verbs belonging to the latter category describe doings that cannot even be done as a foreseen side effect.²¹ Thus it would be very doubtful to describe an agent, who had brought it about, as a foreseen but unintended side-effect of her action, that someone else came to believe something that the agent herself believed to be false—it would be very doubtful to describe such an agent as *lying*. This is even more obvious in the case of ‘hire’, ‘greet’, and ‘send for’.

On the other hand, as I say, there are some ‘doing’ descriptions—‘kill’, maybe, but ‘bring it about that someone dies’, and ‘ring the doorbell’, for certain—that describe doings that can be done either intentionally or unintentionally. Thus while someone might ring the doorbell in order to get into the house, he might also ‘ring the doorbell’ by leaning on the hidden buzzer. This was of course Donald Davidson’s point, when he noted that some individual could genuinely be described as having “spilled her coffee” equally when she was bumped on the arm, as when she pours it out in disgust.²²

The possibility of employing a description of the latter class to describe, indifferently, the good doctor and the bad one, is perhaps part of what enables us to see them as ‘doing the same

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²¹ These verbs, and the distinction itself, are taken from Anscombe’s *Intention*, §47.
²² See Davidson’s “Agency,” p. 45.
thing’—that is, it is part of what enables us to ask, what I have argued is a misleading question, how one and the same action can be permissible for one agent and impermissible for another. For, it might be argued, not only does each doctor *administer a drug*; more to the point, each *kills a man*; and it might be thought that the latter description exhausts the description of what the doctors do. (Things are parallel for the bombers.)

If what I have argued above is correct, however, then that last conclusion cannot be right: there are certain descriptions which attach only to the malevolent agents in each case—“massacring the civilians” in the case of the terror bombing, “murdering the patient,” in the case of the bad doctor. And in each case it is precisely the intention of the actor that makes the critical difference—by way of fixing the, or anyway a, description under which each agent acts.

Is it a problem that we have resorted here to ‘moralized’ terms to describe the (ostensibly) bad actors in our two cases? I am half inclined to say that, so far from being a problem, it is just what we should expect: if what (e.g.) the bad doctor does is indeed wrong, and wrong in virtue of satisfying a certain action description, then of course we should expect that that will be an action description, part of the content of which, is that the agent acted impermissibly.

On the other hand, since the point I am making is essentially action-theoretic, and hence one which should be represtentable even to someone who did not share our own moral outlook, it should be possible to find some description, even if only an artificial one, which is non-moralized and yet distinguishes the bad doctor from the good one. One method for deriving such

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23 Thomson (inadvertently) draws attention to another case which must, I think, attract the same judgment: she imagines a Rival who slips into the room of his terminally-ill nemesis (who indeed wants to be removed from life support) and ‘unplugs’ her. On the present analysis, it seems quite clear that what the Rival has done is murdered the patient, and that he is distinguished from a doctor, who might do just the same thing, by his intention. See “Physician-Assisted Suicide,” p. 502-3.
descriptions might go as follows. Recalling the distinction, above, between the two classes of ‘doing description’ (*lie*, *greet*, and *hire*, on the one hand; *ring the bell*, *spill the coffee*, *kill a man*, on the other), we could, I suppose, invent new action-descriptions of the first class simply by appending a ‘*’ to various descriptions of the second class. Thus we would have ‘*kill a man*’, which would describe something that might be done intentionally or unintentionally, but also ‘*kill a man*’, which, like ‘*lie*’, would describe only genuine intentional actions—indeed, only actions done under that description: we would no more describe an agent, who brought it about as a foreseen side-effect that someone died, as having ‘*killed someone*’, than we would describe someone as having lied, if he brought it about, as a mere foreseen side-effect, that someone was deceived. Armed with this apparatus, we could say that, although the strategic bomber and the good doctor might *kill*, neither could properly be said to *kill*—though this is just what should be said about the terror bomber and the bad doctor.

None of this is to say that the verdicts given by (the usual understanding of) the DDE are correct. After all, it would be open to some hard-liner to say, e.g., that it is never permissible even to bring about the death of someone—just as, I suppose, it would be possible to insist, with Scanlon and Thomson, that one should just reckon up the consequences, and do what will bring about the best, so long as one doesn’t infringe on anyone’s rights, or on other rules about the use of force in wartime, or whatever. I mean: there is no way that these considerations, basically deriving from action theory, could by themselves vindicate the moral verdicts of the Doctrine of Double Effect. The point is only that they provide a theoretical justification for such verdicts.24

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24 The point of the preceding section could perhaps be made another way by noting, following Davidson, that action-descriptions generate (what he called) a ‘quasi-intensional’ context. (See “Actions, Reasons, and Causes,” p.5). For this reason, even if ‘*doing A*’ and ‘*doing B*’ must be said to be (e.g., by Davidson’s own criterion) the ‘same event’, still, “It is permissible to do A” and “It is permissible to do B” do not necessarily have the same truth value.
4. Nevertheless, it is now open to the defender of Double Effect to insist that, though there could be a rule against bringing it about that a man dies, there isn’t; but that there is a rule (e.g.) against murdering one’s patient (or however one wants to put it), just as there is against murdering civilians.

And yet Scanlon and Thomson find these verdicts “implausible” and “absurd.” Why? I think that part of the apparent absurdity is removed, as I have said, once we get clear on the fact that the malefactor in each of these cases will simply have done something different from his innocent counterpart—even if the one will also have done something that the other will also have done. But I think that what is also generating resistance to these verdicts is the sense, shared by many, that administering the drug, ordering the invasion of Normandy, and so on, are in some sense the thing to be done—and so cannot be impermissible.

I think this intuition can be justified and at once accommodated by the present account, if we simply admit the language of ‘a good/bad thing’. For then we can say that it was a good thing that Eisenhower ordered the invasion, even if he did something impermissible (like trying to get a lot of his own soldiers killed). It might be felt that there is something paradoxical about such a judgment; but on the other hand it is not unfamiliar. Thus if someone (ignorant of the future) had murdered Hitler in his cradle, that would certainly have been wrong or impermissible; but it might for all that have been a good thing. In any case, to insist that, if some circumstance, C, is a good thing, then it must be permissible to bring about C; to insist on that would be, in the present context, to beg the question in favor of consequentialism—whose proponents of course will want nothing to do with Double Effect in the first place.\(^\text{25}\)

\(^{25}\) Or anyway, a kind of consequentialism-lite: the demand is, in effect, for something like Samuel Scheffler’s “agent-centered permissions,” rather than the more demandingly consequentialist “agent-centered restrictions”: see The Rejection of Consequentialism.
This explains, too, I think, our intuitions about the case of the prime minister, who is wondering whether to order the raid (and perhaps too why Scanlon puts the case in these terms). For all that has been said here, it may be that the thing for the minister to do really is to order the raid, whatever the intentions of the would-be bomber; it is not obvious to me that we are generally prohibited from (in effect) exploiting the evil intentions of some agent in order to bring about a good end. Such a policy can no doubt be sordid; but it may nevertheless sometimes be the thing to do.

Something like this can also be said, I think, in the case of an agent who inadvertently brings about a great evil—say, a doctor who gives her patient what turns out to be a fatal treatment. Some theorists have felt obliged to conclude that such a doctor must do something that it is impermissible. But barring cases in which the actor has failed to do her due diligence, it seems quite wrong to say that such a person has done anything impermissible. (Nor, for reasons parallel to the main argument of this essay, are we compelled to say this: what is the impermissible thing she is supposed to have done?) On the other hand, we can agree that what she has done is a bad thing—it would have been better, for everyone, if she had not done it.

5. Two further objections must now be discussed. The first is Scanlon’s argument that intention can not be relevant to permissibility, since intentions cannot be chosen, and “the question of permissibility…applies only to alternatives between which a competent agent can choose.”

Scanlon’s argument is actually couched in terms of ‘reasons’. To ask an agent for (what I have been calling) her further intention, or her aim, is, intuitively, to ask after her reason for

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26 E.g., Thomson, in The Realm of Rights, where she defends an ‘objective ought’. Thomson’s solution to the difficulties generated by this approach is to detach permissibility from blame.

27 Scanlon, p. 58.
performing some action. And, Scanlon argues, it is not possible to choose the “ultimate” reasons for which one acts.²⁸

Scanlon is here thinking of cases involving a deeply malevolent agent—an intransigent terror bomber, perhaps—for whom (apparently) the only choices genuinely available are to perform some action for the wrong reasons, or to fail to do the action at all—where the (intuitively) right thing to do is that very action, but for the right reasons. Scanlon’s thought is, in effect, that the pilot, having elected to drop his bombs, cannot now decide to do it for the right reasons (sc., to destroy the munitions factory).

But is that correct? Surely it makes all the difference in the world whether the bomber, having accomplished the destruction of the factory, but, by some miracle or other having failed to kill anyone, now decides to swing around and finish off the civilians—or whether, on the other hand, he simply flies back to base.²⁹ The genuine possibility of choosing the “ultimate” reasons for which one acts is shown clearly in the cases in which things don’t turn out as expected; but if it is possible here, it is surely also possible in the cases where events go just as expected. Our judgments about an agent’s intentions—or the reasons for which she acts—are manifested in our counterfactual judgments about what she would do (or would have done) if…. And the epistemic point—that it is not always easy, indeed sometimes impossible, to tell an agent’s intentions after the fact—that point should not be taken to threaten the metaphysical point that there is some fact about what those intentions were.³⁰ To deny that an agent can choose her reasons, here, would

²⁸ See Scanlon, pp. 10 and 59ff.
²⁹ This is a point Scanlon himself recognizes in a different context: see e.g. p. 68.
³⁰ Scanlon comes perilously close to endorsing that inference, e.g., at pp. 56 and 64.
entail denying that she can choose what to do (i.e., what to do if…); there are arguments for that view, but they have nothing to do with the present topic.31

A second objection accepts this point, but insists nevertheless that it is the expected consequences of one’s actions that determine their permissibility, and not the intention with which they are done. I think this objection can be dealt with summarily. If I decide to exceed the speed limit, generating a 1% chance that I will kill my passenger, I have arguably not done anything impermissible. But if a would-be assassin decides to kill the mayor, knowing all the while that he has only a 1% chance of success, he is surely doing something wrong. The difference in permissibility lies in the intention of the agent (by way of the action-description properly attaching to her).32

6. If something like the foregoing is correct, then there are good reasons to think that the intention of an agent has implications for questions of permissibility after all. In fact it might further be argued that this is the genuine content of the Doctrine of Double Effect—as we might put it: what defenders of the Doctrine were getting at all along.33 In this connection it is noteworthy that critics and defenders of the Doctrine alike have sometimes construed it as

31 Scanlon misses this point for the same reason he misses the possibility that intention might be relevant to permissibility: in all cases he treats the two agents, good and bad, as contemplating the same action—e.g., “dropping some bombs over there.” He concludes that one cannot choose for what reasons to drop the bombs—one either sees, say, killing some civilians, as a reason to drop some bombs or one doesn’t; and if one does, and one drops the bombs, then that will be her reason for dropping them. This strikes me as no less fatuous than the conclusion that, if Jones sees making an omelette as a reason for buying some eggs, and Jones buys the eggs, then Jones is simply doomed to have omelettes for breakfast—after all, you can’t change your “ultimate reasons”! See again Scanlon p.59ff.
32 Scanlon’s own view is that, in many cases, it is the consequences that are reasonable to expect that determine whether an action is permissible; my objection applies equally to it. Cf. also Scanlon, pp. 41-3, where he considers the objection that an agent’s “larger intentions” might render an action impermissible. His reply there is that actions of this kind are “wrong not because of the reason for which they are done [i.e., the intention], but because the agent’s larger intentions changes their likely consequences.”
33 Cf. again Aquinas, ibid.: “Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental.”
including or somehow entailing certain absolute prohibitions, even though, on the canonical account, it mentions none.\textsuperscript{34} On the present account, the core claim of the DDE has no distinctively moral content at all; it is an action-theoretic doctrine which generates moral verdicts only in conjunction with certain prohibitions—sc., prohibitions of actions as falling under certain descriptions.\textsuperscript{35} It is in any case only that much of the Doctrine which I have tried to defend.


\textsuperscript{35} They need not be \textit{absolute} prohibitions; a prohibition might take the form, “It is impermissible to do A, \textit{unless}…”
Bibliography


