Situations in which good can be secured for some people only if others suffer harm are of great significance to moral theory. Consequentialists typically hold that the right thing to do in such cases is to maximize overall welfare. But nonconsequentialists think that many other factors matter. Some, for example, think that in situations of conflict it is often more acceptable to let a certain harm befall someone than actively to bring the harm about. I believe that this view, which I call the Doctrine of Doing and Allowing, is correct, and I defend it elsewhere. But there is a different and even better known anticonsequentialist principle in the Doctrine of Double Effect (for short, the DDE). According to one of the

I am grateful for very helpful suggestions from Rogers Albritton, Philippa Foot, Matthew Hanser, and many others; and for criticism from audiences at New York University, the University of California at Irvine, and Princeton University.

1. Harm is meant in a very broad sense that includes the loss of life, rightful property, privacy, and so on. In my examples, the relevant harm will usually be the loss of life.


3. The doctrine, which is usually traced to Thomas Aquinas, *Summa Theologiae, * II-II, Q. 64, art. 7, is typically put as a set of necessary conditions on morally permissible agency in which a morally questionable bad upshot is foreseen: (a) the intended final end must be good, (b) the intended means to it must be morally acceptable, (c) the foreseen bad upshot must not itself be willed (that is, must not be, in some sense, intended), and (d) the good end must be proportionate to the bad upshot (that is, must be important enough to justify the bad upshot). The principle that follows in the text, which I henceforth treat as if it were itself the doctrine, is really what I find most important and plausible in its first three conditions. I ignore the fourth condition both because it is probably best understood in a way that makes it noncontroversial and because I am concerned here not so much with how choices with a 'second effect' can be justified as with whether, *ceteris paribus, * the structure of intention makes a justificatory difference. That seems to me the fundamental question.
common readings of this principle, the pursuit of a good tends to be less acceptable where a resulting harm is intended as a means than where it is merely foreseen. It is this controversial idea that I wish to examine here.

There are two major problems with the DDE. First, there is a difficulty in formulating it so that it succeeds in discriminating between cases that, intuitively speaking, should be distinguished. In particular, I will need to find a formulation that escapes the disturbing objection that under a strict enough interpretation the doctrine fails to rule against many or most of the choices commonly taken to illustrate its negative force. Second, there is a question of rationale. What, apart from its agreeing with our particular intuitions, can be said in favor of the doctrine? Indeed, why should we accept the intuitions that support it? In answer, I shall suggest a rationale with clear Kantian echoes.

I

Like the Doctrine of Doing and Allowing, the DDE discriminates between two kinds of morally problematic agency. It discriminates against agency in which there is some kind of intending of an objectionable outcome as conducive to the agent’s end, and it discriminates in favor of agency that involves only foreseeing, but not that kind of intending, of an objectionable outcome. That is, it favors and disfavors these forms of agency in allowing that, ceteris paribus, the pursuit of a great enough good might justify one but not the other. The doctrine is meant to capture certain kinds of fairly common moral intuitions about pairs of cases which have the same consequential profile—in which agents bring about the same good result at the same cost in lives lost and harm suffered—but in which the character of the intention differs in the indicated way.

4. The principle is sometimes put in terms of the difference between a harmful result that is “directly” intended and one that is “indirectly” (or “obliquely”) intended. But it also might be put in terms of the difference between a directly and an indirectly intended act of harming. In either variant, the point of calling the merely foreseen result or action “indirectly intended” is to mark a species of linguistic impropriety in an agent’s asserting, with a completely straight face, that a clearly foreseen harm or harming is quite unintended. If I have no desire to wake you but simply do not care that my fiddling will have that effect, I cannot say that your waking or my waking you is purely unintentional. Whether there is any natural sense in which they are intentional is a debated point. In the final analysis, I shall sidestep this controversy, concerning myself with a species of intention that an agent clearly does not have toward a merely foreseen result of his agency—namely, the intention that the result occur, or that he bring it about, as a means of achieving his purpose.
One such pair of contrasting cases is drawn from modern warfare: In the Case of the Strategic Bomber (SB), a pilot bombs an enemy factory in order to destroy its productive capacity. But in doing this he foresees that he will kill innocent civilians who live nearby. Many of us see this kind of military action as much easier to justify than that in the Case of the Terror Bomber (TB), who deliberately kills innocent civilians in order to demoralize the enemy. Another pair of cases involves medicine: In both there is a shortage of resources for the investigation and proper treatment of a new, life-threatening disease. In the first scenario doctors decide to cope by selectively treating only those who can be cured most easily, leaving the more stubborn cases untreated. Call this the Direction of Resources Case (DR). In the contrasting and intuitively more problematic example, doctors decide on a crash experimental program in which they deliberately leave the stubborn cases untreated in order to learn more about the nature of the disease. By this strategy they reasonably expect to do as much long-term medical good as they would in DR. Call this the Guinea Pig Case (GP). In neither case do the nontreated know about or consent to the decision against treating them.

Another pair of medical examples is found in most discussions of double effect. In the Craniotomy Case (CC) a woman will die unless the head of the fetus she is trying to deliver is crushed. But the fetus may be safely removed if the mother is allowed to die. In the Hysterectomy Case (HC), a pregnant mother’s uterus is cancerous and must be removed if she is to be saved. This will, given the limits of available medical technology, kill the fetus. But if no operation is performed the mother will eventually die after giving birth to a healthy infant. Many people see less of a moral difference between these two cases than between the other pairs. This might be for a variety of reasons extraneous to the doctrine: because the fetus is not yet a person and therefore not yet within the moral framework, because the craniotomy is seen as a way of defending the mother against the fetus, because the fetus’s position within the mother’s body gives her special rights over it, and so on. But the relative weakness of the intuitive contrast here might also signal something important about the doctrine’s central distinction. I shall say more about this later. But for the present it will be useful to include this pair of cases under the DDE, if only because it naturally illustrates the objection mentioned earlier.

According to that objection, the doctor in CC does not intend, at least
not strictly speaking, that the fetus actually die. On the contrary, we would expect the doctor to be glad if, by some miracle, it survived unharmed. It is not death itself, or even harm itself, that is strictly intended, but rather an immediately physical effect on the fetus that will allow its removal. That effect will of course be fatal to the fetus, but it is not intended as fatal. The intentions in CC are therefore really no different from those in HC.

It might seem that this kind of point cannot be made about the bombing and nontreatment cases. In GP the doctors seem to need the disease to continue so that they can observe its effects. And in TB the pilot seems to need the deaths of the civilians to lower enemy morale. But Jonathan Bennett suggests a way of extending the objection to the bombing case. The terror bomber does not, he argues, need the civilians actually to be dead. He only needs them to be as good as dead and to seem dead until the war ends. If by some miracle they “came back to life” after the war was over, he would not object. And something similar might be said about the doctors in GP. While they need the disease to continue its course, they do not need the victims actually to be harmed by it. If by some miracle the victims developed special ways of withstanding the disease so that they remained comfortable and well-functioning despite its progress, the doctors would be glad.

This line of objection clearly threatens to deprive the doctrine of most


6. If the miracle happened, and after its removal the fetus were quickly restored to its previous healthy condition, we would say that the craniotomy had done no real harm. In the actual case, the harm done to the fetus by the craniotomy consists in the combination of the desired immediate effect on it (which permits its removal) and the further natural effects that flow from that first effect. Since these further effects are not strictly intended, the objection holds that the harm itself is not strictly intended. See Jonathan Bennett, Morality and Consequences, The Tanner Lectures on Human Values II (Salt Lake City: University of Utah Press, 1981), pp. 110–11.

7. Ibid., p. 111.

8. Perhaps then it would not really be, at least in these people, a disease. But then it might be said that the doctors don’t really need it to be a disease in them. It would be good enough if, due to their special powers of compensation, it is for them a harmless condition very much like a disease in others.
of its natural applications. One reply is to say that it surely matters how close the connection is between that which is, strictly speaking, intended and the resulting foreseen harm. If the connection is close enough, then the doctrine should treat the harm as if it were strictly intended. And, the reply might go on, the connection is close enough in the cases I have used to illustrate the doctrine’s negative force. But what does this idea of closeness amount to? H.L.A. Hart suggests a possible answer by way of the example of someone violently striking a glass just in order to hear the sound of the initial impact. In such a case the further outcome, the shattering of the glass, is “so immediately and invariably” connected with the intended impact that the connection seems conceptual rather than contingent. The death of the fetus in CC is, arguably, connected with the intended impact on its skull in just this immediate and invariable way. And the deaths, or at least some harms, in TB and GP seem just as closely connected with what is strictly intended in those cases.

But what of the contrasting cases? Since hysterectomies are rarely performed on pregnant women, they rarely result in the death of a fetus. So we might say that what is strictly intended in HC (that the uterus be removed) is not, in the relevant sense, closely connected with the fetus’s death. And we might hope to find something similar to say in SB and DR. But in taking this way of preserving the contrasts, we would be making everything depend on which strictly intended outcomes of the various choices we fasten upon.

This leads to a new problem. For certain things that the doctor in CC strictly intends for the fetus lack an invariable fatal upshot. Indeed, if craniotomies are ever performed on fetuses that are already dead, then a craniotomy is already such a thing. Even more obviously, the doctor in HC might strictly intend something that is invariably fatal to a fetus. Suppose, for example, that hysterectomies performed on patients who are in the early months of pregnancy are distinguished by the use of a special anesthetic that is safer for the patient and, in itself, harmless to the fetus. This peculiarity could hardly make the operation in HC more difficult to justify, but it would imply that the strictly intended medical


10. Hart, “Intention and Punishment,” p. 120.
means were immediately and invariably connected with the death of a fetus. Perhaps similar things can be said about the other cases. A strategic bomber might have as his mission the bombing of automotive factories. This would not make him a terror bomber, for he would still not aim at civilian casualties. But, for obvious reasons, no automobile factories have ever existed completely apart from civilian populations. So the kind of thing the bomber strictly intends immediately and invariably results in some innocent deaths.

Two problems have emerged: First, since more than one thing may be strictly intended in a given choice, the pronouncements of the doctrine may depend on how the choice happens to be described. This relativity is embarrassing. We would like the doctrine to speak with one voice in any given case. Second, if we try to get around this problem by saying that the doctrine discriminates against a choice in which anything that is strictly intended is also closely connected with death or harm, the doctrine will make uninviting moral distinctions. As we have seen, it will speak against HC if hysterectomies performed on pregnant patients have some distinguishing surgical feature. Otherwise it will speak in favor. And it will speak against the strategic bomber's attack on an urban factory if he was looking specifically for an automotive plant but not, perhaps, if he was looking for a strategically important productive facility. Another approach clearly seems called for.

Instead of looking for a way to identify intrinsically bad effects that are 'close enough' to what is intended, we might look instead for a way to identify choices that are intended under some intrinsically negative description. We might then find a way to show that the actions in TB and CC, but not in SB or HC, are intentional as killings and that the inaction

11. Of course this special operation could, however inappropriately, be performed on patients who were not pregnant. And this might lead someone to speculate that the doctrine speaks against a strictly intended and invariably harmful kind of action or omission only if the harm is an empirically necessary consequence. But this cannot be right. Suppose there is some good that will arise immediately upon your being injected with a certain fatal poison. The good does not require that you actually die. But that is what will happen, since the very real and naturally abundant antidote that could save you has not been, and in fact never will be, discovered. In such a case, the doctrine should certainly speak against my poisoning you. But the directly and invariably connected harm would not follow of empirical necessity.

12. If the latter intention sometimes gets fulfilled, for example, by bombing electric power facilities built into remote and isolated dams.
in GP, but not in DR, is intentional as a letting die. Elizabeth Anscombe gives us one such criterion. If we ask a man why he is pushing a mower, he will perhaps say “to cut the grass”; if we ask why he is cutting the grass, he may say “to get things spruced up around here,” and so on. The “to . . .” answers, or answers that can be understood in terms of them, give further intentions with which the agent acts. If, his choice being described in a certain way, he accepts the ‘why’ question and replies with a “to . . .” answer, then his choice is intentional under that description. But if he rejects the question in a certain familiar way, his choice is unintentional. If asked why he is cutting the grass he replies, for example, “I don’t care about that, I’m just out to annoy the neighbors” or “Can’t be helped—it goes with this terrific form of exercise,” his cutting the grass is not, as such, intentional.

This seems to give the desired result when applied to our cases. If we ask the doctor in CC why he is killing the fetus, he will naturally say “to save the mother.” If we ask the pilot in TB why he is killing the civilians, he will say “to help with the war.” And if we ask the doctors in GP why they withhold treatment, they will say “to observe the progress of the disease.” And it might be thought that if we ask similar questions in the other cases, the ‘why’ question will be rejected in a way that shows the choices to be unintentional. Thus, if asked why he is killing the fetus, the doctor in HC will avoid a “to . . .” answer, saying instead something like “It can’t be helped if I am to save the mother.”

Actually, this seems not quite right. If the doctors in DR were asked why they weren’t treating the group in question, they might naturally reply “to save our resources for more easily treated cases.” And this, by Anscombe’s criterion, would seem to make the nontreatment intentional. But waiving this difficulty, there is another worry. What if the agents in the problematic cases (TB, GP, and CC) become philosophically sophisticated? Perhaps they will then come to reject the ‘why’ questions in the manner of their counterparts. The terror bomber, for example, might respond by saying, “The actual deaths can’t be helped if I am to create the realistic appearance of death and destruction.” By giving such answers, he and the others will be opting for a more demanding criterion of the intentional. All aspects of an action or inaction that do not in the strictest sense contribute to an agent’s goal will be trimmed away as unintentional. By this criterion, the action in CC is intentional as a crushing and

that in TB is intentional as an apparent killing. But neither is intentional as a killing. And in GP the inaction is intentional as way of facilitating medical research, but not as a letting die.

Now it would be very natural to object that the ordinary, more relaxed criterion of the intentional is the right one, and that the stricter criterion is specious. But how is this to be made out? We might try to introduce a form of essentialism here, claiming that the surgery in CC and the bombing in TB are essentially killings or harmings, while the surgery in HC and the bombing in SB are not. But surely the ground of this essentialism would be the prior conviction that the killings in CC and TB are intentional while those in HC and SB are not. The issue about intentionality seems to be the basic one. And what would we say about the inaction in GP—that it was essentially a failure to prevent harm? But then this would also seem true of the inaction in DR.

On the one side we have Anscombe's criterion of the intentional, which pretty well maps our ordinary ways of speaking, while on the other we have a criterion that is structurally similar but stricter. The problem here about intention is reminiscent of a problem about causality that arises in connection with the Doctrine of Doing and Allowing. Certain defenses of that doctrine (which discriminates against active harming and in favor of allowing harm) appeal to a familiar conception of causality according to which active harming causes harm while inactively allowing harm does not. But opponents counter that according to other, philosophically superior conceptions of causality, inaction can be every bit as much a cause of harm. Now I have argued that if DDA is sound theory, it ought to have force on any plausible conception of causality.14 And I feel much the same here. 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. So, for purposes of argument, I shall grant opponents of the doctrine the greatest latitude in paring back intentional actions to their indisputably intentional cores.

II

We must therefore find a different reply to the difficulty with which we started. And I think I see a way. For we have been neglecting one strik-

ing respect in which members of our contrasting pairs differ. Take TB and SB. In the former case, but not the latter, the bomber undeniably intends in the strictest sense that the civilians be involved in a certain explosion, which he produces, precisely because their involvement in it serves his goal. He may not, if Bennett is right, intend their deaths. But his purpose requires at least this—that they be violently impacted by the explosion of his bombs. That this undeniably intended effect can be specified in a way that does not strictly entail their deaths is, on the view I am proposing, beside the point. What matters is that the effect serves the agent’s end precisely because it is an effect on civilians. The case with SB is quite different. The bomber in that case intends an explosion, but not in order that any civilians be affected by it. Of course he is well aware that his bombs will kill many of them, and perhaps he cannot honestly say that this effect will be “unintentional” in any standard sense, or that he “does not mean to” kill them. But he can honestly deny that their involvement in the explosion is anything to his purpose.

The same contrast is found in the medical cases. The doctor in CC strictly intends to produce an effect on the fetus so that the mother can be saved by that effect. But the doctor in HC has, as we have seen, no such intention. Even if he cannot deny that, in some ordinary sense, he “intends” the fetus’s death, he can rightly insist that the effects on the fetus of his surgery are nothing toward his medical purpose. Similarly, the doctors in GP intend, as something toward their further goal, that the disease in the untreated patients work its course. And this could be true even if, wishing to investigate only the effects of the disease within cells, they had no interest in the pain and loss of function it also causes. But in DR nothing that happens to the untreated patients serves the doctors’ further goal.15

The important way in which the cases differ should not be obscured by the following complication. We have seen that a doctor in HC might intend to use the special anesthetic “safer for a pregnant patient.” Would it follow from this allusion to the fetus that the doctor does, after all, strictly intend something for it? No. The medical relevance of the

15. Not even, I would argue, the fact of their not receiving the treatment. What really furthers the goal is the treatment received by the other, more tractable cases. The nontreatment of the first group contributes, at most, in an odd and secondary sense. This point applies, I think, to a wide range of intentional expressions. Suppose we decide to combat a disease by spending our limited resources on education rather than on inoculation. Education, and not noninoculation, will then be our means of combat; and the way we fight the disease will be by educating, not by not inoculating.
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patient's pregnancy does not mean that any of the surgical effects on the fetus are medically useful. Something similar holds in SB. Suppose the bomber wants, for moral reasons, to target factories in the least populated district of a certain city. If so, the formulation of his strictly intended means contains an indirect reference to the civilians whom he may kill. But this hardly turns him into a terror bomber. The impact of his bombs on those civilians is still nothing to his military purpose.

This clear distinction between the intentional structures of the contrasting cases is the key to a new and better formulation of the doctrine. To put things in the most general way, we should say 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 intention objects)\textsuperscript{16} and harmful agency in which either nothing is in that way intended for the victims or what is so intended does not contribute to their harm.\textsuperscript{17} Let us call the

16. I might instead have said "agency in which harm comes to victims . . . from the agent's deliberately producing some effect on them in order to further his purpose precisely by way of their being so affected." But there is a certain kind of ingenious case, attributed to David Lewis, that such a formulation might seem to miss. Suppose that another terror bomber wishes to demoralize enemy leaders by bombing a major center of population, and suppose he knows that these leaders will be convinced that the city is destroyed by seeing, from afar, the explosion of his bombs over it. The explosion occurs an instant before the fatal effects below. So in this case the bomber does not, strictly speaking, intend to blow up the civilians, or produce any physical effects on them, as a means to his end. Yet the case seems, morally speaking, to be like TB rather than SB. But notice that while such a strategy does not aim at physically affecting its victims, it does strictly aim at exploding bombs in their vicinity. Whether or not this change in their situation could be counted as an effect on them, as I think it could, the bomber strictly intends to involve them in something (to make his bombs explode over them) in order to further his purpose precisely by way of their being involved.

17. This way of drawing the distinction excludes a pair of cases sometimes used to illustrate double effect: in one we give powerful analgesics to lessen the terrible pain of a dying patient, where we foresee that he will die as a side effect. In the other we relieve his suffering by intentionally killing him with the same or other drugs. In both cases we are to suppose that life is no longer a good and that we act with his explicit or correctly presumed consent. So we cannot see ourselves as infringing, justifiably or unjustifiably, any of his moral rights. For this reason I see these cases as really quite different from the others, in which there is conflict between the moral claims of different people. Indeed, I think that the doctrine is misapplied in nonconflict cases. I see, for example, no difference between amputating someone's leg to save him and proceeding with some life-saving treatment that, as a side effect, results in the loss of the limb. And by parity of reasoning it seems to me that if stopping pain is urgent enough from the patient's perspective to make death acceptable as a side effect, it ought to make death acceptable as a means.
first kind of agency in the production of harm \textit{direct} and the second kind \textit{indirect}. According to this version of the doctrine, we need, \textit{ceteris paribus}, a stronger case to justify harmful direct agency than to justify equally harmful indirect agency.\(^{18}\) Put this way, the doctrine solves the original problem of showing a genuine difference in the intentional structures of our contrasting cases, even under a strict interpretation of what is intended. And it makes no appeal to the problematic notion of "closeness." For direct agency requires neither that harm itself be useful nor that what is useful be causally connected in some especially close way with the harm it helps bring about.\(^{19}\) There is another, related advantage. With this version of the doctrine, we can sidestep all potentially controversial questions about whether the agents in our various cases kill or harm intentionally. It is enough that we can identify the things they uncontroversially intend as contributing to their goal.

Our further bit of line-drawing remains. We have not yet defined the difference between the more pronounced moral asymmetry of DR and GP, or SB and TB, and the apparently weaker asymmetry of HC and CC. This difference may partly depend on whether the agent, in his strategy, sees the victim as an advantage or as a difficulty. In CC the doctor wants the fetus removed from the birth canal. Its presence there is the problem. In GP and TB, on the other hand, the availability of potential victims presents an opportunity. By bringing it about that certain things are true of them, the agents positively further their goals. Perhaps it would not be surprising if we regarded fatal or harmful exploitation as more difficult to justify than fatal or harmful elimination. If so, we might say that the doctrine strongly discriminates against direct agency that benefits from the presence of the victim (direct \textit{opportunistic} agency) and more weakly discriminates against direct agency that aims to remove an obstacle or difficulty that the victim presents (direct \textit{eliminative} agency).

III

The DDE, of course, has only prima facie moral force. Special rights may allow us to harm someone's interests by way of direct (and even direct

\(^{18}\) A terminological point: Something counts as 'harmful direct agency' only \textit{insofar as} harm comes to the very people who are deliberately affected by the agency. Insofar as harm comes to others, the agency also counts as 'indirectly harmful'. A single act or omission can thus be both directly and indirectly harmful.

\(^{19}\) Nor, of course, does it require that the agent have \textit{particular} victims in mind. It is
opportunistic) agency. Various rights of competition and the right to punish seem to be examples. Certain other cases may prompt qualifications or special interpretations of the doctrine. Suppose that the doctor in HC needs to alter, harmlessly, the position of the fetus before the womb can be safely removed. Whether the overall surgical procedure would still count as indirect harming seems a matter of interpretation. If we saw the manipulation of the fetus as a partial cause of its later removal, we would presumably count the harming as direct. If we saw the manipulation as a precondition, but not a partial cause, of the removal, we would count the harming as indirect.

Another problematic kind of case involves innocent hostages or other persons who physically get in the way of our otherwise legitimate targets or projects. Does our shooting through or running over them involve a direct intention to affect them? I think not. It is to our purpose, in the kind of case I am imagining, that a bullet or car move through a certain space, but it is not to our purpose that it in fact move through or over someone occupying that space. The victims in such cases are of no use to us and do not constitute empirical obstacles (since they will not deflect the missile or vehicle in question). If we act despite their presence, we act exactly as we would if they were not there. If, on the other hand, we needed to aim at someone in order to hit a target, that person would clearly figure as an intentional object. Another tricky case is one in which we could, and would if we had to, accomplish our end by harmful indirect agency; but it is better, perhaps safer for those to be benefited, to pursue the end by harmful agency that is direct. It seems clear why we might wish to make this kind of case an exception.

Before we turn to the defense of the doctrine, we should briefly consider the way in which it interacts with the distinction, mentioned in connection with the Doctrine of Doing and Allowing, between what is actively brought about and what is merely allowed to happen. I have claimed that DDE, with the exceptions noted, discriminates against harmful direct agency. But, as we have seen, people may figure as intentional objects not only of a choice to act but also of a choice not to act. DDE therefore cuts across the distinction between harming and allowing harm. Sometimes, as in TB and CC, it discriminates against direct enough, as in the case of a terrorist’s car bomb, that he intends something for someone or other.
agency in which harm is done. And sometimes, as in GP, it discriminates against direct agency in which harm is allowed.

In all of these cases we seem to find an original negative or positive right that, while opposed by other rights, seems to be strengthened by the fact that harm will come via direct agency. Civilians in wartime have negative rights not to be killed. But if their government is waging an unjust war, these rights may conflict with strong rights of self-defense. A sufficiently developed fetus in utero might also have some negative right not to be killed. But this right may not prevail, either because the fetus is not yet fully one of us or because its mother has strong rights over her body. In TB and CC, the directness of the threatening agency apparently serves to strengthen these negative rights, perhaps giving them a power to stand against moral forces to which they would otherwise give way. Something similar happens in GP. The untreated people have, presumably, some positive right to medical aid. This right might not be binding if doctors could cure more people by directing aid elsewhere. But it stands against any attempt to maximize medical benefit by deliberately letting the people deteriorate. Again, the directness of the intention strengthens the force of the opposing right or claim.

It is interesting to consider whether DDE might also come into play where no independent negative or positive right is present. Suppose, in an act of pure supererogation, I am about to aid you but am checked by the realization 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 any of your rights? I am inclined to think not. It might be bad of me to be checked by such a 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 applies. Their effect always seems to be that of strengthening some other right.

The effect of the doctrine is therefore to raise rather than to lower moral barriers. So we should not expect a proponent of DDE to be more tolerant of harmful indirect agency than those who reject the doctrine but share the rest of his moral outlook. We should rather expect him to be less tolerant of harmful direct agency. This point is important. For casual critics of the doctrine sometimes seem to suppose that its defend-

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20. Positive rights are rights to aid while negative rights are rights to noninterference. While borrowed originally from the law, these terms are here used in a moral sense.
ers must be ready to allow killings or harmings simply on the ground that the agency is indirect. But nothing could be further from the truth. The doctrine in no way lessens the constraining force of any independent moral right or duty.

IV

We must now turn to the question of rationale. At first glance, harmful direct agency might seem harder to justify because it requires that the agent welcome something bad for the victim. The terror bomber, for example, must welcome the news that the innocent civilians are blown up, even if he is not glad that they won't be miraculously resurrected after the war. The trouble is that it also seems the strategic bomber must, in some sense, welcome the same news, since if the civilians had been unharmed the factory would not in fact have been destroyed.  

Of course the news is good for different reasons. It is good news for the terror bomber because it announces the very thing that he intended, while it is good news for the strategic bomber because it announces the thing that he foresaw would be evidence of what he intended. But this difference does little more than register what we already knew—that the terror bomber strictly intended the deaths while the strategic bomber merely foresaw them as necessary costs. So it is hard to see how it could be used to explain the moral difference between direct and indirect agency.

Nor is it the case that harms of direct agency need be worse than those of indirect agency. If someone threatened by a terror bomber and someone equally threatened by a strategic bomber both needed rescuing, the former would not seem to have the stronger claim to help. Indeed, there would seem to be no reason to rescue either in preference to someone threatened by purely natural causes.  

And if we sometimes think that the first rescue must have priority, it seems to be only because we are tempted to regard the violation of a special right against harmful direct agency as a distinctive and additional kind of moral evil. But then it would be circular simply to appeal to the evil in order to explain the existence or force of the right.

Perhaps the following rationale is more promising. Someone who un-

willingly suffers because of what we intend for him as a way of getting our larger goal seems to fall under our power and control in a distinctive way. And there may be something morally problematic in this special relation—something over and above what is morally objectionable in the simpler relation of bringing about or not preventing harm. If this is right, then harmful direct agency must have two things against it, while equally harmful indirect agency need have only one. This additional negative element can be seen most clearly in the contrast between the doctors’ attitudes in GP and DR. In the former, but not the latter, they show a shocking failure of respect for the persons who are harmed; they treat their victims as they would treat laboratory animals. DDE might therefore seem to rest on special duties of respect for persons, duties over and above any duty not to harm or to prevent harm.

While this is surely on the right track, we must proceed with caution. For there is also a kind of disrespect in typical cases of wrongful indirect agency. A strategic bomber who ought to have refrained from destroying a rather unimportant target because of likely civilian casualties has failed to treat his victims with the consideration that they and their interests deserve. So we must look for a kind of disrespect that is peculiar to wrongful direct agency—a kind different from that shown in wrongly giving a victim’s interests too little weight.

What seems specifically amiss in relations of direct harmful agency is the particular way in which victims enter into an agent’s strategic thinking. An indirect agent may be certain that his pursuit of a goal will leave victims in its wake. But this is not because their involvement in what he does or does not do will be useful to his end. The agent of direct harm, on the other hand, has something in mind for his victims—he proposes to involve them in some circumstance that will be useful to him precisely because it involves them. He sees them as material to be strategically shaped or framed by his agency.

Someone who harms by direct agency must therefore take up a distinctive attitude toward his victims. He must treat them as if they were then and there for his purposes. But indirect harming is different. Those who simply stand unwillingly to be harmed by a strategy—those who will be incidentally rather than usefully affected—are not viewed strategically at all and therefore not treated as for the agent’s purposes rather than their own. They may, it is true, be treated as beings whose harm or death does not much matter—at least not as much as the achievement
of the agent's goals. And that presumption is morally questionable. But in a counterpart case of direct agency there is the additional presumption that the victim may be cast in some role that serves the agent's goal.

The civilians in TB serve the bomber's goal by becoming casualties, and the infected people in GP serve the doctors' goal by becoming guinea pigs. If things were different, the victims might become these things only voluntarily. Suppose, for example, the civilians had effective bomb shelters and the sick people medicines of their own. Then the bomber or doctors could succeed only with the cooperation of the victims. The service exacted would then be voluntary. But in cases of indirect agency the victims make no contribution. If the civilians in SB had shelters and if the sick people in DR had medicines, the bomber and the doctors would see no point in their refusing to use them.

The DDE rests on the strong moral presumption that those who can be usefully involved in the promotion of a goal only at the cost of something protected by their independent moral rights (such as their life, their bodily integrity, or their freedom) ought, prima facie, to serve the goal only voluntarily. The chief exceptions to this strong presumption are cases in which people have or would have strong moral obligations to give themselves to the service of a goal even at such personal costs—especially cases in which it would be indecent of them to refuse. But surely there is not, or may not be, any such obligation in the cases we have been considering: noncombatants (even those on the wrong side) are not morally obligated to serve the right side by accepting the role of demoralizing civilian casualties, victims of dangerous diseases are not typically obligated to become guinea pigs for the sake of others, and I suppose it is at least open to question whether the fetus in CC, if it could grasp its predicament, would have to accept, for the sake of its mother, the sacrifice of its life.

In these cases, but not in their indirect counterparts, the victims are made to play a role in the service of the agent's goal that is not (or may not be) morally required of them. And this aspect of direct agency adds its own negative moral force—a force over and above that provided by

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23. I am deliberately not considering cases where the sacrifice is financial. What to think in such cases partly depends on the sorts of moral rights people really have to keep money or property that is legally or conventionally theirs when others have more pressing material needs. It is quite consistent with everything I say here to deny that the doctrine speaks against liberal schemes of redistributing wealth.
the fact of harming or failing to prevent harm. This additional force seems intuitively clearest in direct opportunistic agency, such as TB and GP, where unwilling victims are not only harmed but, in some sense, used. And this must be why the doctrine seems most plausible when it discriminates against opportunistic direct agency. It must also help explain why some of the most perverse forms of opportunistic agency, like torture, can seem absolutely unjustifiable.

It is less plausible, on the other hand, to think of the victims of direct eliminative agency as used. This may be why the doctrine seems to discriminate against eliminative agency less forcefully. And it may therefore help explain why some people feel that the direct agency of CC is not much harder to justify than the indirect agency of HC. But something of the questionable character of direct opportunistic agency also seems present in direct eliminative agency. Someone who gets in your way presents a strategic problem—a causal obstacle whose removal will be a service to your goals. And this is quite unlike what we find in harmful indirect agency, where victims can be obstacles only in a moral sense.

In discriminating to some extent against both forms of direct agency, the doctrine reflects a Kantian ideal of human community and interaction. Each person is to be treated, so far as possible, as existing only for purposes that he can share. This ideal is given one natural expression in the language of rights. People have a strong prima facie right not to be sacrificed in strategic roles over which they have no say. They have a

24. Although it is, as we have seen, a kind of negative moral force that is activated only when other rights are present.

25. But there is a way in which the rationale I have provided is not Kantian. For it draws a sharp moral line between adversely affecting someone in the pursuit of an end that he does not share (not treating him as an end in itself) and adversely affecting someone because his being so affected is strategically important to achieving an end that he does not share (very roughly, treating him as a means). Neither the terror nor the strategic bomber treats his victims as ends in themselves, but only the former treats them as something like means. And I have argued that this difference is significant—that morality erects an extra barrier against the strategic posture of harmful direct agency. Kant might disagree, focused as he is on the alleged status of people as ends in themselves. But I have difficulty attaching any sense to that idea except via intuitions that certain forms of treatment are unacceptably disrespectful of rational beings. And the intuition that it is more disrespectful, all other things being equal, to treat someone as if he existed for purposes he does not share than simply not to be constrained by his purposes, seems to me plausible enough to be worth incorporating in a proper idea of what it means for persons to be ends in themselves. On this conception, one aspect of being an end in itself would be to have, ceteris paribus, a stronger right against directly harmful agency than against indirectly harmful agency.
right not to be pressed, in apparent violation of their prior rights, into the service of other people's purposes. Sometimes these additional rights may be justifiably infringed, especially when the prior right is not terribly important and the harm is limited, but in all cases they add their own burden to the opposing moral argument.

The Doctrine of Double Effect thus gives each person some veto power over a certain kind of attempt to make the world a better place at his expense. This would be absurd if the entire point of morality were to maximize overall happiness or welfare. But that is not its entire point. An equally urgent basic task is to define the forms of respect that we owe to one another, and the resulting limits that we may not presume to exceed. The doctrine embodies our sense that certain forms of forced strategic subordination are especially inappropriate among free and equal agents.