

NOTE ON THE DOCTRINE OF DOUBLE EFFECT AND THE DOCTRINE OF ACTS AND OMISSIONS
For Philosophy 13 **Fall, 2008**

1. THE DOCTRINE OF DOUBLE EFFECT

The Doctrine of Double Effect (DDE) holds that in some contexts it is morally permissible to bring about as a foreseen but unintended consequence a bad effect that it would be morally wrong to bring about as a strictly intended consequence. The distinction between merely foreseen but unintended versus foreseen and intended consequences can be illustrated with the example of PUNISHING THE INNOCENT. Suppose we know that when we punish convicted criminals, innocent people guilty of no crime are also made to suffer. If we put the guilty offender behind bars, members of the offender's family will be deprived of his love, companionship, financial support, and so on. These consequences can be serious. Perhaps in some cases we ought to forego punishing some guilty person because of the harm that punishing him would visit on innocent persons. Nonetheless such consequences, though foreseen, are unintended. When we punish the guilty we aim at the punishment of the guilty person's family members neither as a means to our ends nor as an end. We might say that punishing the innocent is not part of our plan. The harm that comes to the innocent is a merely foreseen but unintended consequence of what we do. In contrast, suppose that for some reason the guilty offender is beyond our reach and cannot be punished directly. But his family ties are so close that if we deliberately punished his family members and publicized this fact, the guilty person would suffer just as much as if we put him in prison or gave some equivalent direct punishment. But in this variant case punishing the innocent would be not a merely foreseen but an intended consequence of our action. We aim at punishing the innocent as a means to our goal of punishing the guilty offender. Many people would judge that even if the overall consequences turned out to be the same whether we punished the guilty and caused harm to the innocent as an unintended byproduct or punished the innocent and caused harm to the guilty through punishing the innocent, the two acts are not morally on a par. The structure of the agent's intentions makes a difference to moral assessment. This is the intuition that lies behind the DDE. In contrast, according to consequentialist moral theory, the distinction between intended and merely foreseen consequences does not matter for moral assessment except insofar as the distinction happens to distinguish factors that are consequential for the production of better outcomes. In and of itself, the distinction is unimportant for consequentialist assessment.

FORMULATION. The DDE applies when the following conditions hold:

1. The agent chooses an act as a means to achieving a morally permissible goal.
2. Besides the intended good effect of the act, there is another (double) effect. The agent foresees that the act she proposes to do will cause harm.
3. The agent does not intend the bad effect that is foreseen. That is to say, she aims at the bad effect neither as a means to her ends nor as an end.
4. There is due proportion between the good effect the agent's proposed act would achieve and its foreseen unintended consequences. The good that is to be achieved sufficiently outweighs the unintended bad. (In some types of case, due proportion might be satisfied even though the good to be achieved is less than, but not unduly less than, the unintended bad.)

The DDE holds that when these conditions hold, in some contexts it may be permissible to bring about harm as a foreseen but unintended consequence of what one does whereas it would be forbidden to bring about that same amount of harm in otherwise similar circumstances as an intended consequence.

EXAMPLES OF APPLICATION. Consider three pairs of examples (from Warren Quinn essay).

A. TERROR BOMBER AND STRATEGIC BOMBER. The terror bomber deliberately drops bombs on civilians during wartime, in order to terrorize the enemy population and cause the enemy leaders to sue for peace. The strategic bomber does not aim deliberately at civilian

deaths, but in order to secure an important military objective she is willing to drop bombs on a military target in the knowledge that some civilians nearby will be killed. Suppose that the cases are parallel in other respects--the number of civilian deaths brought about and the importance of the military objective one's act will gain are the same. But one case involves deaths brought about as foreseen but unintended whereas the other case involves deaths brought about as strictly intended.

GUINEA PIG AND DIRECTION OF RESOURCES. Suppose that a new disease endangers many lives. Doctors have available a limited supply of medicine to cope with the disease. In **GUINEA PIG**, some patients stricken with the disease are deliberately allowed to languish and die without medicine. The doctors observe the progress of the disease and are thus enabled to help future patients more effectively. In a similar case, **DIRECTION OF RESOURCES**, imagine that doctors ration the available medicine, giving it to those who will most benefit from it. Some would-be patients do not receive medicine and they die. Suppose that the numbers of lives saved and lost are the same in the two cases. The difference is that in **GUINEA PIG**, the deaths the doctors allow to happen are intended, whereas in **DIRECTION OF RESOURCES**, the deaths brought about by the doctors' choice of policy are foreseen but not intended.

REMOVAL OF CANCEROUS UTERUS AND CRANIOTOMY. Compare two medical ethics cases. Both involve abortion as interpreted by Roman Catholic moralists deploying the DDE. In **CANCEROUS UTERUS**, a woman who is pregnant develops cancer of the uterus. The procedure that would be recommended for the woman's medical condition, if one sets aside the fact that she is pregnant, is the removal of the uterus. If the doctors operate to remove the uterus to save the mother's life, the death of the fetus is a merely foreseen but not intended consequence of their action. In contrast, sometimes in childbirth the child becomes wedged in the birth canal, and to save the mother's life, the head of the child must be crushed and the child's body removed from the birth canal. In this **CRANIOTOMY** example, according to the Catholic moralists, the death of the fetus is intended as a means to saving the mother's life.

DDE holds that in each of these pairs of cases, whether one brings about a bad effect as merely foreseen or as foreseen and intended can affect the permissibility of what one does. The idea is that "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."

OBJECTION. Consider cases of self-defense. Suppose an aggressor is about to shoot me with a gun as I peacefully read my book. Fortunately, I have my harpoon gun with me, and I can kill him before he injures me. But here isn't the death of the aggressor strictly intended? Won't DDE then condemn lethal self-defense even against an evil aggressor? This case calls our attention to the fact that DDE is not a complete moral doctrine. One response to the example is to say that here self-defense is permissible, because the aggressor in the example has no right that I not use force, even lethal force if need be, to save my life. So even though the death of the aggressor is intended, the act that causes his death may be permissible. The DDE distinction is not involved in the explanation of why self-defense in such cases is morally permissible. In the light of such cases, it has been held that the DDE applies only when the act in question is opposed by a right. Since the aggressor in this example has no right that I not kill him if that is necessary to save myself from the injury he threatens to impose on me, the fact that in using my harpoon gun to save my life I intend his death does not render my act impermissible.

OBJECTION. DDE has been criticized on the ground that it is not clear what should count as intended and unintended consequences in the application of the DDE to cases. More than one thing may be intended by a given choice. It may seem that the results of applying the DDE will vary depending on how a given case happens to be described. But whether my act is right or wrong can hardly turn on how it happens to be described. In one commentator's words, the worry is: "If, as a political protest, I throw a bomb into a football crowd, causing an explosion and killing

several people, are their deaths intended means to my protest or inevitable consequences of it? On what principles do we decide whether the explosion alone is included in the means or whether we must count both explosion and deaths as part of the means?"

Consider the example of CAVE EXPLORERS (discussed by Philippa Foot, who is not a course author). Cave explorers are trapped in a cave, and flood waters are rising. They will drown unless they can escape through a narrow tunnel to the ground level. Unfortunately, the first member of the party to attempt to squeeze through the tunnel becomes hopelessly stuck in the middle. Fortunately, the explorers have a stick of dynamite they can use to blast the large man out of the cave, killing him but allowing the others to escape safely. In this example is the death of the large man intended or merely foreseen? Strictly, what the explorers aim at is achieving the removal of the man's body from the tunnel. Blasting him is the means to this. The explorers do not need the man to die as part of their plan, though they foresee he will certainly die. Strictly, the death here seems foreseen but not intended. Yet this seems a fishy application of DDE. One wants to say that blowing a man to bits is too closely related to killing him for us to say that the former but not the latter effect is intended. But it is not clear what sort of "closeness" this claim is invoking.

Notice that the three pairs of cases described above could be redescribed on the model of CAVE EXPLORERS, so that in TERROR BOMBER, GUINEA PIG, and CRANIOTOMY, what is strictly intended is not the death that ensues. But then virtually none of the traditional examples of the application of DDE could be sustained. The distinction of DDE would divide hardly any actual cases. Understood this way, the DDE would be virtually inert in moral argument. Its force against act-consequentialism would be almost nil.

RESPONSE: Warren Quinn has proposed a way to revive DDE. His suggestion is that DDE should be restated in this way: "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 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."

The idea is that the suggested reformulation of DDE will produce the result that in the TERROR BOMBER, GUINEA PIG, and CRANIOTOMY examples, the agency involved is the less acceptable kind, whereas in STRATEGIC BOMBER, DIVERSION OF RESOURCES, and CANCEROUS UTERUS, the agency involved is the more acceptable kind. This would correspond to the traditional understanding of the application of the doctrine. (Objection: Suppose that in the service of an uncontroversially good cause we want to terrorize the residents of Tokyo, which we can do efficiently by exploding an atomic bomb over Mexico City. We take pictures of the bomb exploding over the city and send the frightening pictures (or TV film) to Japan. Of course, large numbers of people in Mexico City are incinerated by this bomb. But strictly we don't intend to involve the people of Mexico City; their involvement does not further our purpose, which could be achieved just as well if all residents of that city had been away on holiday when the bomb exploded, and if their homes had been secretly bomb-proofed. The Quinn reformulation of DDE counts our act as indirect agency, and the killings of the residents of Mexico City as akin to a merely foreseen consequence. This intuitively seems wrong, or at least very strange. Perhaps one could tinker with the proposed revision of traditional DDE to avoid this implication.)

RATIONALE OF DDE.

The DDE might be defended on the ground that it helps organize our intuitions on cases in a way that seems most acceptable after reflection. Another way to defend DDE is to note its connection to a moral inhibition against using people in ways that are harmful to them. When we involve people in our plans, intending to do something to them that causes them harm, our act is presumptively unacceptable--or at least less acceptable than acts that do not involve people in

our plans in this way, even though as a side effect of our action, harm would come to them. The DDE figures as an element in moral theories that set limits to the extent to which people can be used as cannon fodder even for good causes. Here again the important contrasting viewpoint is consequentialism. Act-consequentialism is the doctrine that one morally ought always to do an act, among the alternatives available for choice, that would produce an outcome that would be overall no worse than the outcome of anything else one might have done instead. In other words, one should do the act such that doing it rather than any other alternative would result in the best overall state of the world.

WHICH DEONTOLOGICAL DISTINCTION MATTERS MORE? The question arises whether both the Doctrine of Double Effect and the Doctrine of Acts and Omissions (Quinn calls this the "Doctrine of Doing and Allowing") are important for deontology or just one of these distinctions. If only one of the proposed deontological distinctions is significant in the sense of making an important difference in determining what it is morally permissible and impermissible to do, which one is it? Some philosophers have championed DDE; others emphasize DAO and downgrade DDE. In his essay "Autonomy and Deontology" Thomas Nagel (not a course author) suggests that the core idea in deontology is DDE, and that the central idea is that one ought not in one's actions to aim at evil and in this way be guided by evil. (This thought has been challenged on the ground that it is permissible to destroy great art in order to save more great art even though we are then aiming at the evil of destroying some great art, as a means to greater good.) In a broader perspective, Kant's categorical imperative test is put forward as a test for proposed maxims. A maxim is a statement of what an agent proposes to do that includes her intention, what she seeks in doing the action. Kant in effect holds that the relevant unit of assessment is the bare act" plus one's reasons for doing it. Kant's test might appear to distinguish between doing an act that aims at something evil, either as one's goal or a means to one's goal, and an act that brings about evil that is not intended in this sense and thus does not go in the description of one's maxim.

The most uncompromising rejection of the importance of DDE from a deontological perspective asserts the principle that motive and intention are always and everywhere strictly irrelevant to the moral permissibility and impermissibility of acts (though highly relevant to moral assessment of the agent who does the acting). The idea is that people have rights which should not be violated, and rights consist in ways that people should not be treated. These "ways people should not be treated" refer to kinds of treatment, not kinds of motive or intention with which someone might be treated. Example: If I give my wife a pill which I think is poison, because I intend to murder her, but the pill in fact is the one thing that will save her life from an undiagnosed disease from which she is suffering, I am doing the right act (saving her life) even though what I think I am doing (murdering her) is wrong and a reasonable observer would judge me to be a horrible person (because of the intention and motive of my act).

A puzzle for the principle of the irrelevance of motive and intention to the permissibility of actions: Suppose person A begins to attempt to kill (as he thinks) innocent person B, just as B begins to attempt to kill (as he thinks) innocent person C, just as C begins to attempt to kill (as he thinks) innocent person A. All three act as evil aggressors toward one of the others. Suppose it is impermissible to kill a nonthreatening person and that if someone is attempting to kill a nonthreatening person, he qualifies as as threatening, and it is permissible to kill that threatening person if need be to prevent the killing that is being attempted. A nonthreatening person is one who is not attempting to kill (or seriously injure, leave this complication aside) any person except to prevent wrongful killing. Question: in the case as described, whose attempt to kill is impermissible and whose is permissible? If we say A's attempting to kill B is impermissible, then and that B's attempting to kill C is impermissible, but then it seems that A's attempting to kill B is after all permissible, because this killing would prevent B from wrongfully killing C. So is A's attempted killing permissible or impermissible? A stable answer does not seem available.

2. THE DOCTRINE OF ACTS AND OMISSIONS

Suppose something happens that it was within your power to prevent. The Doctrine of Acts and Omissions (DAO) holds that sometimes it is morally worse to do an act that brings about a bad event than it would be merely to allow the event to take place by not doing anything to prevent its occurrence. A closely related formulation holds that in some contexts we bear greater moral responsibility for what comes about as a result of our doing something than for what comes about as a result of our allowing it to happen. For example, an advocate of DAO would hold that in some contexts killing is morally worse than letting die. Failing to give aid to prevent starvation in Africa is no doubt bad, but surely not as bad as sending poisoned apples to people in Africa.

DAO is opposed to any form of act-consequentialism, the view that one should always act so as to produce the best consequences. According to act-consequentialism, doing nothing or refraining from acting is simply one among the available actions from which an agent makes a choice. Doing nothing or refraining is to be evaluated by its consequences in the same way as any other action one might choose. Recall the story of Jim, who stumbled onto a plaza in a small South American village just as an execution of innocent Indians is about to take place. The commander of the militia honors the presence of a North American in the village by offering Jim this choice: If you shoot one Indian, the other nineteen who are awaiting execution will be freed. If Jim refuses to shoot, all twenty Indians will be executed. The DAO holds that one may be morally responsible to a greater degree for what one does than for what one allows to happen. Act-consequentialism is associated with a doctrine of *negative responsibility*: one is morally just as much responsible for outcomes one could have prevented, but chooses not to prevent, as for outcomes that one brings about oneself by action.

Another example that illustrates the conflict between DAO and act-consequentialism is SURGEON. Imagine that a surgeon finds herself faced with this choice: If she kills one of her healthy patients and uses his body parts efficiently, she can save the lives of five patients who would die in the absence of this intervention. If she refrains from killing the healthy patient, the five patients will die. In this example the consequences of acting (one dead) are worse than the consequences of not acting (five dead). But many people would hold that the negative duty not to inflict harm is stronger than the positive duty to give aid, so that one must not kill the one even to save the five. This appeal to the greater weight of negative than of positive duties on decisionmaking reflects adherence to DAO. On this view, in this sort of example one is morally responsible for deaths due to one's attempts at killing to a greater extent than one is responsible for deaths one lets happen. Philippa Foot introduces another example, HOSPITAL GAS, that is supposed further to illustrate the power of the DAO to organize our judgments about cases. In this example, we could save five patients in a hospital by turning on a machine that produces a certain gas but doing so inevitably causes lethal fumes to leak into the room of another patient who cannot be moved, so this patient, who would live if this intervention does not occur, then dies. Here the killing of the patient who cannot be moved is done not allowed, but the death is merely foreseen and not intended. Foot asserts, "My conclusion is that the distinction between direct and indirect intention (the DDE) plays only a quite subsidiary role in deciding what we say in these cases, while the distinction between avoiding injury and bringing aid (the DAO) is very important indeed."

Notice that DAO can be applied to the case in which one has initiated a murderous act in the past, and the only way now to prevent this act from issuing in two wrongful deaths (murders) is to murder one person now. (An example that illustrates this possibility: I have put poison in the canteens of two hikers with the intent of murdering them. They set off on their hike with the poisoned water. Later in the day I have a change of heart, but the only way now that I can prevent this past act of mine from murdering two hikers is to murder another innocent person now. If I shoot to kill this person who is close to the menaced hikers, they will abort their hike, drop their canteens, and either flee or chase after me. Either way, they live. I suppose a nonconsequentialist ethics, a constraint-based deontology, would hold that I may not now kill one innocent person even if that would minimize the total number of murders or total number of

persons murdered by me.) The same point would apply to an example in which the only way I can stop myself from doing two wrongful acts in the future is by committing one comparable wrongful misdeed now. Constrain-based deontology generates reasons that are relative to the agent and also relative to the time of choice. (On agent relativity as distinguished from agent neutrality, see the Thomas Nagel essay, "Autonomy and Deontology.")

DAO, NEGATIVE RESPONSIBILITY, AND ABSOLUTISM. Suppose one wishes to hold that there are some moral rules (other than act-consequentialism) that should absolutely never be violated. Call this view *absolutism*. One might believe, for instance, that one should never under any circumstances commit murder. Anyone who takes this position would have to reject the negative responsibility norm. To see this, consider that decision problems can arise in which either you commit one murder or you let more than one murder occur. (A man who wishes the mayor to be dead but cannot get close enough to murder him kidnaps your daughters and makes this proposal: "Either you, the mayor's assistant, kill the mayor, or I will kill your two daughters." There is no way to foil the man's plot; you must take one of the alternatives he offers.) If doing and allowing are morally equivalent, then however bad murder is, two murders are worse than one, so if forced to choose, you ought to commit one murder rather than let two murders take place. DAO and the rejection of negative responsibility are consistent with absolutism. It is possible to obey an absolute "Never murder!" rule, because even if one's refusal to murder results in murders committed by others, one is not responsible for letting murders happen by refraining from murder oneself.

Of course one might reject absolutism without embracing consequentialism. This position might be called "moderate deontology." The moderate deontologist holds that there are acts one morally should not do even on an occasion when doing an act of the forbidden type would produce best consequences. The moderate deontologist also holds that all prohibitions of types of acts (such as killing innocent nonthreatening persons or telling lies) are overridable in extreme circumstances, if the consequences of refraining from the normally prohibited act would be sufficiently horrible. The absolutist says "people are inviolable"; the moderate deontologist says "people are inviolable, up to a point." The absolutist agrees with the saying, "Let justice be done even though the heavens should fall. The moderate deontologist says, "If the heavens are really going to fall—if some disaster looms if justice is done, then one should do injustice, as little as possible consistent with keeping the heavens intact (preventing disaster from occurring).

Moderate deontology covers a range of views, that give different weight to the moral imperative to respect moral constraints. For example, suppose people have moral rights, which should be understood at least to some extent in an agent-relative way, as side constraints to be honored rather than as goals to be promoted. The moral rule against lying is "Don't tell lies!" not "Minimize the amount of lying (weighted by the seriousness of the lies)!" and the moral rule against murder is "Don't commit murder!" not "Act so as to minimize the number of murders (weighted by their seriousness)!" One might understand the stringency of rights in terms the ratio of the harm to the rightholder if the right is violated to the net harm to nonrightholders if the right is not violated. (This applies only to cases where both the numerator and the denominator are greater than zero. If there is no harm to the rightholder, or the rightholder is benefited not harmed by rights violation, on the proposal under review, violating the right is always permissible provided there is some net benefit to nonrightholders.) The greater the ratio must be to bring it about that it is permissible to violate the right, the more stringent the right. One might think stringency varies by types of right or that there is one stringency ratio that sets the line for permissible violation of rights across the board.

AN ARGUMENT AGAINST DAO. We can construct pairs of cases that are similar except that in one case a death comes about via a killing and in the other case a death comes about via a letting die, but the cases elicit similar moral responses. In these cases killing and letting die seem morally on a par. For example, suppose I enter my grandson's bathroom with the intent to

murder him. In CASE 1, he is bathing in the tub, and I deliberately hold him under the water so that he drowns. In CASE 2, he hits his head accidentally against the side of the tub as I enter, and his head sinks under the water. I watch delighted, doing nothing, while he drowns, though I could prevent his death just by pulling his head just above the water level for a few moments. It has been argued that here killing and letting die are morally equivalent. The killing is no more evil than the letting die. It is then suggested that if there is a morally important difference between action and omission, the difference should appear in all cases. Since the difference between killing and letting die seems morally insignificant in this case, the suggested inference is that the distinction between action and inaction, doing and allowing per se is not morally significant.

RESPONSE. Maybe the doing and allowing distinction is morally significant, but overshadowed in this case by the evil intent of the person who is intent on bringing about the death of the grandson by any means necessary. Analogy: You cannot prove that two different wines taste the same by showing that when each wine is mixed half and half with strong lemon juice, the taste of the two mixtures is indistinguishable. Perhaps the lemon juice blots out the difference, which would show up in other drinking contexts. And perhaps the evil intent of the agent in Case 1 and Case 2 blots out the moral effect of the fact that one case is a doing and the other an allowing. But this distinction might be morally significant in other contexts. Another way to put the point is to note that the distinction between doing and allowing might be morally significant in some contexts, but not all contexts. Perhaps the doing/allowing distinction interacts with some other factors that may be present, but are not always present. The distinction might then be expected to be morally significant sometimes but not always. So from the fact that the distinction does not matter in one type of case, it would not follow that it never matters. The argument in the previous paragraph presupposes that if the doing/allowing distinction is ever morally significant, it is always morally significant, but this presupposition might be wrong.

THE VAGUENESS OF THE DISTINCTION. It is not always easy to say whether a person's causal contribution to an outcome should be described as a doing or as an allowing. If I disconnect a person from a life support system in a hospital, and the person then dies, is this a killing or a letting die? You could think of the life support system as supplying aid, and pulling out the plug on the system as withdrawing aid--a refraining from further aiding rather than a doing. Or you could think of the system as in place and running unless you intervene by action to block it. Looked at this way, the death that results seems to come about as a result of an action not an omission.

Shelly Kagan has pointed out that we tend to describe the person's contribution as a killing or as an allowing to die in cases of this sort depending on our moral assessment of the person's behavior. If an enemy of the person on the life support system sneaks into the hospital and pulls the plug, that is a killing. But if the patient's doctor discontinues life support after proper consultation with the her relatives, we tend to describe this as a letting die. The suspicion arises that the distinction itself does not do moral work, provide reasons for judging cases one way rather than another. Once we have decided whether the person's behavior is morally justified or not on other grounds, we then invoke the language of the distinction to express our verdict. If this is right, then the distinction by itself is not morally significant.

One can respond in different ways to this worry that the distinction is too vague to divide all the cases to which it might be applied. A consequentialist might take the vagueness of the distinction as evidence that it does not supply strong reasons in any case for judging matters one way rather than another. Under examination the distinction looks less impressive, less useful in explaining our moral reactions than it seemed at first. Another possible response is to say that a distinction can be vague in the sense of not providing clear judgments for all cases, without this fact impugning the importance of the distinction where it does divide cases cleanly. --All sides of this dispute would agree that it would be nice to have a theory that would explain or explain away the distinction--explain why the distinction seems to matter to moral judgment in some cases and why

exactly the distinction seems less significant or insignificant in other cases. (See "THREE RESPONSES TO PROBLEMS IN FORMULATING DEONTOLOGY" at the end of these notes.)

THE TROLLEY PROBLEM. One can be confronted with cases in which many of us would be inclined to say the distinction between doing and allowing makes a difference to what it is morally permissible to do. For example, recall SURGEON. But there are cases that look strictly parallel to surgeon but which elicit a very different response in many of us. Judith Thomson calls the puzzle of how to explain our responses to these cases "The Trolley Problem." The name derives from the character of the examples she used to illustrate the difficulty. Consider this series of cases:

TROLLEY 1. A runaway trolley is hurtling down a track. Ahead stand five persons on the tracks, looking the other way, oblivious of danger. The driver of the trolley can avoid hitting and killing the five if she turns the trolley onto a side track, where one person is standing unaware of danger. Here there is a choice between killing one and killing five. Since one must harm someone, it is better to harm fewer rather than more persons. It is better to kill one than to kill five, so it is better to turn the trolley. No problem so far.

TROLLEY 2. But consider a slight variant on this example. Suppose the trolley driver faints from fright. The trolley is hurtling down the track driverless. You are a passenger on the trolley. If you do nothing, you allow five to die. If you turn the trolley, you kill the one. Many people would hold that it is at least morally permissible and maybe morally mandatory for you to turn the trolley. But how is TROLLEY 2 different from SURGEON? If we are morally more responsible for what we do than for what we allow to happen, so that the negative duty not to kill one person outweighs the positive duty to save five lives in SURGEON, why isn't the same true in TROLLEY 2? Yet many of us who feel strongly that killing one to save five in SURGEON also feel that turning the trolley in TROLLEY 2 is at least morally permissible. Why?

TROLLEY 3. Consider another variant of TROLLEY. Suppose the trolley hurtling down the tracks toward the five who are about to be killed is unoccupied. Fred and you are standing on a bridge over the trolley tracks. Sizing up the situation, you realize that if you pushed Fred, who is large, onto the track, the trolley would slow down as it ground Fred's body under its wheels and would come to a stop without injuring the five. But many would hold that it would be wrong to kill Fred by pushing him onto the trolley track in order to save the five. TROLLEY 3 is on all fours with SURGEON. One may not violate the negative duty not to harm by killing the one even in order to satisfy the positive duty to give aid by saving five lives. But if not, why not?

One possible way to distinguish TROLLEY 3 and SURGEON on the one hand from TROLLEY 2 on the other hand is to note that in the former cases one brings about death by doing not allowing, AND the deaths one brings about by doing are foreseen and intended consequences of one's acts, whereas in the latter case, one brings about death by doing not allowing, but the death one brings about is a merely foreseen and not intended consequence of one's act. In other words, in TROLLEY 3 and SURGEON the DAO and the DDE work together in tandem, reinforcing each other. In TROLLEY 2 only the DAO is in play, so the moral inhibition against the action that saves more lives overall is less.

But consider two further cases:

TROLLEY 4. Here the trolley is about to go to the right along a circular track. If the trolley goes right, it will kill five persons standing on the track. If the trolley is turned to go left, it will kill one person on the track. Whether the trolley goes to the right or the left, it will not go all the way around the circle and kill everyone on the track, because there is a barricade on the track at the far end of the circle that prevents the trolley from completing a circuit. If you, a passenger on the

runaway trolley, do nothing, five will die. If you turn the trolley, you will kill one. This case is similar in relevant respects to Trolley 2.

TROLLEY 5. This case is just like TROLLEY 4 except that there is no barricade at the end of the circular track. Now if the trolley is not turned and goes right, smashing over the bodies of the five persons on the track will slow the trolley down. The trolley will gradually slow to a stop before it reaches the one at the far end of the circular track. If you, a passenger on the runaway trolley, turn it to the left, it will run over the one, killing him, and smashing this body will slow the trolley down, so that the trolley gradually stops before it runs all the way around the circle to the bodies of the five. So again there is a choice between doing nothing, in which case five will die, or turning the trolley, in which case one kills the one but saves the five. But in TROLLEY 5 it seems that running over the body of the one is not just a foreseen but an intended consequence. It has to be part of your plan that the train should run over the one. This is the means to slowing down the train so that it does not run over the five persons at the other end of the circular track. If you think it is permissible to turn the trolley in this example, the puzzle is then to distinguish TROLLEY 3 and TROLLEY 5. In both cases the do/allow distinction and the distinction between intended consequences and merely foreseen but not intended consequences are pulling in tandem. If it is impermissible to push Fred onto the track in Trolley 3, why is it permissible to turn the trolley onto the one in TROLLEY 5?

THREE RESPONSES TO PROBLEMS IN FORMULATING DEONTOLOGY. The deontologist holds that one or both of the distinctions between (a) doing and allowing and (b) intended and merely foreseen effects significantly affect what morality approves and condemns. On this view, it matters morally not only what outcomes we bring about or fail to bring about, but the structure of our agency in this regard. The deontologist disagrees with the act-consequentialist, who holds that one morally ought to do an act that leads to an outcome no worse overall than the outcomes that would be reached by any other act one might instead choose. For the act-consequentialist, doing nothing or refraining from action has no special status. It is merely sometimes one of the alternative acts among which one might choose.

One can describe some examples where the deontological distinctions seem to yield clear answers, but in other cases, the applications of the distinctions seems to be unclear or to point to answers intuitively discordant from the answers that emerge in the clear cases. What do we make of this? The *hopeful* response is that we need a consistent set of principles from which intuitively plausible answers can be derived for any case, and even if we do not have such a theory in hand, we may find one by further work, and need one to secure deontology as a genuine rival to consequentialist theories. The *already satisfied* response is that the deontological distinctions are coarse-grained and none the worse for that. The attempt to refine them into ever more fine-grained distinctions just leads to inconsistency, but the attempt should not be made. The *skeptical* response doubts that we can discover a coherent and plausible set of principles that incorporates the deontological distinctions and insists that we need such a theory if deontology is to be a viable rival to consequentialist ethics. Another issue is DDE versus DAO: Will some fancy version of DAO obviate the need for any state of mind principle such as DDE or fancy refinements of DDE?

Further suggestion: Maybe the relevant difference between TROLLEY 2 and TROLLEY 3 is that in 2 the one who turns the trolley is doing something to a threat, to render it less harmful than it would otherwise be. In 3 one is doing something to an uninvolved bystander, harming him, in order to do something to a threat, to render it less harmful than it would otherwise be. Following up on this suggestion, one might identify doing, in these contexts, with initiating or sustaining a harmful causal sequence, and allowing with either (1) allowing or enabling a harmful causal sequence to run its course or (2) diverting a harmful causal sequence. On this view, turning the trolley in TROLLEY 2 is diverting, hence an instance of merely allowing agency, whereas pushing the bystander into the path of the trolley in TROLLEY 3 is initiating a harmful causal sequence,

hence an instance of doing agency. The DAO distinguishes the two types of agency and holds that it is sometimes permissible to allow evil to occur that it would be impermissible to do oneself (bring about by doing agency). Another example that this way of marking the distinction handles intuitively: Suppose one is in a MOVIE LINE, a queue to purchase movie tickets. Your enemy Smith wrongfully shoots a slow but poisonous and deadly arrow at you. You duck, in order to avoid being hit by the arrow. You foresee that Jones, the person standing just in front of you in the line, will be shot and killed by the arrow if you successfully duck. However, ducking here seems to be an instance of allowing evil to Jones rather than doing evil, according to the present proposal for drawing the do/allow distinction.

Problem for further suggestion: Consider the LAZY SUSAN CASE: A runaway trolley is hurtling down its tracks and at the bottom of the hill it is on will run over five people on the tracks and kill them. You see that the five are on a giant Lazy Susan turntable, which you can turn so that the trolley misses the five. Unfortunately, if you do this, you thereby move one other person, who is also on the Lazy Susan turntable, into the path of the trolley, where he will be killed. It may be unclear whether this should count as initiating a new harmful sequence against the one or diverting a causal sequence, but it is arguably an initiation, yet clearly permissible.

The structure of nonconsequentialist moral principles looks to be unsettled in the present state of argument and discussion.