Double-Effect Reasoning in Ethical Theory: Its Adversarial Allies

J. L. A. Garcia

Philosophy Department, Boston College

Department of Linguistics & Philosophy, MIT

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The literature’s most common complaint against double effect has been that double-effect reasoning (hereafter, DER) confuses mental states, which it presupposes are relevant only to the evaluation of agents, which these thinkers relegate to so-called second-order morality, with factors relevant to “first-order morality”’s judgment on actions. Against this, I want to say that intentions can matter to what philosophers, often metaphorically and misleadingly, call ‘permissibility’ and ‘impermissibility’. Nothing is simply, ‘thinly’ morally impermissible (wrong). It is only wrong in one or more particular ways: it is cheating, or revenge, or negligence, or boasting, for example, and is therefore unjust, or malicious, or inconsiderate, or prideful, or some such. Moreover, some philosophers suggest that, in order intelligently to apply moral norms, we need to articulate these reasons for (perhaps better, these modes of) an action’s immorality. I think we do well, when theorizing carefully, to replace artificial talk of what is or is not permissible with the more ordinary, revealing, ‘thicker’ terminology (in Bernard Williams’s term) that includes richer and more detailed description.

Actions matter morally as expressions of agency. (Otherwise, why do we not morally evaluate other harmful or beneficial events?) But they express agency as fulfilling various preferences, embodying choices, conforming to resolutions. It seems absurd to think that these factors, which make some bodily motion to be actions and therein suitable for moral evaluation, moreover, contributing significantly to making them the kinds of actions they are, have no place in determining their moral status—i.e., what they are morally.

Both paths link the evaluation of actions and agency, for they see actions as morally important according to the agency—the choices, preferences, and plans—they reflect. Therein, both lead us to assess actions as virtuous or vicious. However, whether someone acts virtuously
or viciously depends on why she does what she does. So, whether she acts with or without a certain intention, esp., a unjust or malevolent or manipulative one, is just the sort of thing that determines whether and how she acts immorally. I contend that there is nothing further to the notion of the morally permissible.\textsuperscript{iv} Even if the truth were somewhat weaker than that, however, it would remain the case that “a man cannot act rightly without virtue” in at least the minimal sense that someone’s acting viciously precludes her acting permissibly and constitutes moral wrongdoing, violation, in the only sense that has meaning.\textsuperscript{v}

Many of DER’s most vocal critics have, unsurprisingly, been thinkers more or less sympathetic to consequentialist accounts of moral reasoning or justification. I have attempted in other writings to rebut some of their arguments. Here I want to examine some recent criticisms from a different camp: thinkers allied against familiar forms of consequentialist moral theory, especially, some who make theoretical commitments, or have forensic recourse, to moral features, factors, and devices characteristic of Kantian ethics. My discussion here will treat the case against DER recently made in various ways by Judith Thomson, Alison McIntyre, and Frances Kamm.

\textbf{I. Judith Thomson}

Judith Thomson agrees with some of the points I made above, but nonetheless claims to find DER “an absurdity,” “ a muddle,” and continues to insist an agent’s intentions are irrelevant to her action’s moral permissibility.\textsuperscript{vi} She offers a variety of reasons, which I shall briefly summarize and respond to. Having restricted the moral virtues to just two—justice and generosity—and the vices to their contraries—injustice and “stinginess”—and having rightly deemed it morally impermissible to act contrary to the virtues, however, she has some difficulty
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retaining her position that the agent’s intentions (and other mental states) are irrelevant to her action’s permissibility. Her solution is to insist that whether an action is or is not characterized by a moral virtue is itself “objective,” independent of the agent’s mind, rather than “subjective.”ix Call T1 this thesis that an action’s virtue or vice is mind-independent.

In response to T1, we should first note that this mind-independent account of virtue is implausible even with respect to the meager set of virtuous and vicious traits in Thomson’s account. How can someone act generously in doing something, we should inquire, without it being generous of her to do it? Yet it cannot be generous to do something without doing it with certain intentions and from certain preferences, generous ones.

Second, Thomson may be overly impressed, and misled, by the legalistic associations of the moral virtue of justice. She seems to assume that, for example, if I borrow your book, then, in general, I act justly if I return it and unjustly if I do not. This, unfortunately, is simplistic and, as that phrase ‘in general’ indicates, I may fail to return the book without acting unjustly (e.g., when it’s lost or the return is prevented or excessively burdened), as I may return it without acting justly (e.g., by mistake or your tricking me). What matters for justice and injustice is why I do or do not return it.x

Third, even if we view the moral realm as consisting in rules (which, by the way, I think we should not), the permissibility of action needs to be interpreted not as behaving in ways that externally conform to those rules but in obeying them, where, as that term’s etymological origin in ‘ob-audire’ indicates, that is again a matter of the agent’s reasons, the input to her conduct, the considerations that she acts from.

Thomson offers several more specifically moral-theoretic objections to DER, but these turn out, on examination, to be similarly problematic. She suggests that people mistakenly
think that an agent’s intent itself matters morally because of what “[a]n agent’s intentions . . .
show about what he knew at the time of acting.” Unlike intentions, then, knowledge, she seems
to allow, can be of direct relevance to an action’s permissibility. Call T2 the suggestion that
belief that intentions themselves matter to moral viciousness and permissibility arrives from
confusion arising from the moral importance of the related but distinct cognitive state of
knowledge.

In response to T2, we should observe that and how this gets things backwards. My
anticipating my action’s undesirable effects on someone takes on moral significance chiefly (if
not only) as indicating the limits or lack of my caring. I was not trying not to harm her in this
way or at least not trying as hard as I could have. Such failure or paucity of benevolence often
indicates the sort of insufficiency of virtue that can constitute the vicious.

Thomson claims that an agent’s evil intentions can serve to magnify the illegality of
actions, and she appears to think this misleads some to think that the same can occur with respect
to moral permissibility. Call this first proposition T3. Perhaps she would also allow that
intentions could also exacerbate the immorality of actions that are already and otherwise
impermissible, but her irrelevance thesis commits her to denying that they can serve to move an
action into the class of the immoral.

We begin to see a way of responding to T3 when we notice that Thomson owes us a
plausible explanation of how and why intention can intensify an action’s immorality without
ever having the power to make an action immoral in the first place. Moreover, if intentions
help to fix an action’s classification within/among the immoral, making it immoral in this or that
way, then why can they never determine whether the action is immoral at all, i.e., in any way?

Thomson thinks one significant source of the appeal of DER is our confusing the
impermissibility of actions with the badness of persons, which she insists “is not the same.”

Call this claim T4.

To begin respond to T4, we can concede that she is, of course, correct to hold that an action’s being immoral is one thing and a person’s being immoral is another. This proves too little, however, for the pertinent issue is not whether these two are identical, but whether they are interrelated in such a way that act-permissibility involves bad agency. She has not shown that no such connection holds, and denying it threatens morality with incoherence. Note that we often describe actions as vicious or virtuous in our assessment and deliberation (indeed, this is probably more common and ordinary than the philosophers’s jargon of the permissible and impermissible), and it is odd to think that we can act permissibly but viciously. (If the vicious is morally permitted, then what, one wonders, is forbidden?)

We can augment this initial response to T4. I think Thomson is onto an important truth when she insists that there is no badness simpliciter but only being bad in specific ways. So too, however, should we recognize the related insights both that there is no such thing as being morally bad simpliciter but only being cruel, or dishonest, or inconsiderate, or in some comparable way vicious, and no such thing as simply being morally “impermissible,” but only running counter to this or that moral virtue. Thomson herself suggests that morality requires us to avoid the “contraries of the virtues” in our action. Once we replace her own implausible “objective” account of such virtues as generosity and justice, replacing it with one that treats generosity as benevolence–i.e., as wishing and willing for someone what is good for her–and justice as respecting someone in recognition of her dignity, then we can see that this emphasis on the moral centrality of the virtues and their contrariety lends itself to being interpreted so as to support DER. For while the contradictory of willing another a certain good is merely failing so
to will, its contrary is willing her not to have it. Emphasizing this virtue’s contraries, then, will lead us specially and differentially to condemn and seek to avoid actions done with the intention that someone be deprived of a good (or suffer an evil). And this is just what DER affirms, holding that such acting with such an intention is impermissible even when the only alternative is an action whose undesirable results are predictable but unintended. Likewise, if we follow dictionaries in treating respect, in its most relevant senses, as “a feeling of appreciative, often deferential, regard” and “a willingness to show consideration,” then it is plainly a matter of psychological states and its contrary will be defined in terms of diametrically opposed states of will and intention. Insofar as consideration, e.g., is “thoughtful concern for [to help] others,” then actions done from a deliberate plan to harm them will manifest its contrary, be egregiously unjust.xv

Thomson thinks another important source of the appeal of DER is our (justified) fear of consequentialism. We can consider to be T5. We ought not to allow this however, to drive us into what she regards as the intellectual tangles of DER, in her view. The reason is that such moral factors as moral rights, the need for authorization (e.g., patient’s consent), and others, all serve to block any slide into the kind of moral reasoning that merely totes up benefits and harms. In this spirit, she also complains that, in a credible moral theory, it must be the patient’s consent and wishes that do the crucial work in determine whether and when physician-assisted suicide, e.g., is permissible, not the agent’s intent. All this is to exploit the resources of what we might call a broadly Kantian approach to moral theory against consequentialism rather than turn to the apparatus of DER.

Yet Kant himself can help us devise a response to this critique of DER as an unnecessary and ill-advised defensive tactic. One of his theoretical insights is that the moral rights that give
substance to justice themselves derive from respect, which he describes as a “moral feeling,” for the dignity of persons. This claim naturally lends itself to the view that acts are un/just according to how respectful the agent is in performing them. Yet whether someone acts respectfully, and how respectful she acts, depends in part on the grounds and content of her choices—that is, on her intentions.

Indeed, Thomson’s questions about “what rights we have and how stringent they are,” will often be best answered and justified by appeal to the agent’s intentions. For we can roughly say that S1 is entitled to receive something G from S2 insofar as it would be disrespectful (e.g., contemptuous) of S2 (to S1) not to give G to S1. (Stringency, then, will be a matter of how difficult/easy it is to escape the charge of disrespect by citing other factors in one’s decision.) The point is that dis/respect for another will find expression especially in what someone does or does not intend for her. Likewise, Thomson’s question, “how much morality requires us to do for others” is best reformulated as an inquiry about the point at which my failure to help you manifests not just an acceptable limit on your benevolence, but a viciously callous indifference to your welfare. But this difference between good will and callousness will consist in general commitments (intentions) someone does or does not have and be displayed in the more specific intentions with which she does or does not act.

Something similar is true also of consequentialist approaches. While such theorists today strain to rely only actual or probably results, the natural interpretation of much of the rhetoric of the classical utilitarian thinkers suggests that Regan is correct when he writes that “the Platonist or Moorean” sees the moral law as “‘Seek the Good.’” Plainly, there is no plausible mind-independent account of what someone seeks.

Further formulating a response to Thomson’s T5, we should inquire more deeply
Thomson’s own preferred anti-consequentialist strategies. She seems to ignore the possibility that a patient’s consent matters morally only for what it says about agent’s intentions, e.g., that an agent shows arrogant (and therein vicious) disregard for someone’s preferences about the course of her own life.\textsuperscript{xviii}

We can add that Thomson is correct to hold that actions done with certain intentions will be vicious when they violate the patient’s autonomy. However, consent acts by authorization, transferring or bestowing on another some right that the one bestowing already has. Thomson needs to show that the patient’s autonomy extends from broad and uncontroversial discretion on how to live also to the disputed domain of whether to live at all.

That may not be easy. An agent’s broad but limited discretion over how she lives can be justified as a matter of her licitly assigning temporal or a personal preference ordering in her pursuit of various goods. Discretion over whether to live, in contrast, must extend also to choice of whether not merely to abandon certain human benefits but to seek permanently to destroy the vestiges of a central good. I cannot see other cases where such “turning against” a fundamental good, as Grisez and his school would describe it, is clearly justified, nor what would suffice to justify it.

Thomson’s chief argument against DER, and any intention-sensitive ethics, is that it fails to give adequate practical guidance. Call this charge T6. Suppose, she directs us, that what some call “first order morality” require that someone, e.g., a MD, do V, but that the only one in a position to do V is someone who will do V only with bad intent.\textsuperscript{six} Should we say that, in that case, she ought not to do V? Ought we urge her not do V? (Or, should we at least say it is neither the case that she ought to V nor that we should urge her to V?) Similarly, she imagines a case where the only one who can do V “is incapable of becoming clear enough about her own
intentions to conclude . . . what she intends.” Even if it is allowed that we may urge her to do V, does not DER indicate that we ought to feel ashamed of ourselves for urging her to do V? Here, Thomson worries, DER tells people not to do what they should.

We can respond to T6 in two ways. First, we should point out how puzzling are the conditions of this counterexample. Why concede that someone’s doing V only with evil intent can be inevitable? Why can we not demand that the MD do V, and also that she do V from good (at least, from non-vicious) motives? Thomson owes us some account of how these are plausibly ruled out.

Second, and more important, it is not clear that or why we should think things different with other factors, e.g., results or rights. Suppose I can do V only if I therein bring about evil, or violate a right (e.g., from my promise). Or suppose that the agent (or we) are unable to figure out the effects of an agent’s doing V or just how her doing A relates to relevant rights that others have. Would not those facts matter to the initial supposition that I ought to do V? In cases of ignorance (whether in evaluating spectators or deliberating agents) of morally relevant factors–be they overall results or patient’s rights–we simply proceed on the best information we have and the best estimates we can make. But then why is not exactly the same thing true with respect to the agent’s intentions?

Thomson also complains that it is absurd to give the reply, ‘It depends on the intention you would have’ when asked for moral advice on whether to do this or that. We can denominate this point T7. And Thomson is surely correct about something here: it is absurd to offer this as a full response.

It is not difficult, however, to see how to respond to her T7. The case here is exactly parallel to those of results and rights. It is true that what the agent should do, what it would be
minimally virtuous of her to do, depends on her intentions, foreseen results, and others’ rights. The reason ‘It depends . . .’ is an inadequate response is that the person seeking advice often seeks guidance precisely on what choice to make (and thus which intentions to adopt), what results to aim for, and what she needs to do in order to honor the rights in play. Note, however, that to guide her about what results to aim for and what to do in order to achieve something is precisely to advise her on what intentions to adopt.

The reason, then, such ‘It depends . . .’ advice is inadequate is similar to that for which ‘Do what’s best’ or ‘Do the right thing’ are worthless counsel. It is not, pace what Thomson thinks in the case of intention but not those of foreseen results and rights, that the answer is false, that what she ought to do does not so depend. Rather, it’s that this is already known: it’s too obvious to be helpful. We should assume the inquirer already knows that how she ought to act will depend on the action’s foreseen results, other people’s rights, and her own intentions; she presumably wants to know to which intentions to adopt and therein what results to strive after and how to act respectfully.

II. Alison McIntyre

Alison McIntyre’s chief argument against DER is that, in the most important cases from the literature, it is always some other principle or distinction, not those essential to DER, that explains the immorality of those actions against which DER has been invoked. Those she cites include the doing/allowing distinction, the contrast between what someone does malevolently and what she does regretfully, one agent’s lack of responsibility for another’s agency, and the requirement that some agents “screen off” certain effects from their consideration (e.g., as certain officials should ignore their private goals in executing their duties). I will divide my response
into about ten main points of contention.

First response: on Explanation. Suppose that McIntyre is correct that other distinctions do some of the explanatory work claimed for DER. It remains crucial to distinguish different ways in which they might explain: do these distinctions operate (i) instead of DER, or (ii) in collaboration with it, or perhaps (iii) through DER? She seems merely to assume the first, but the second and third possibilities bear examination. When they hold true, then McIntyre’s other distinctions and principles are not genuine—and are therefore not preferable—alternatives to DER.

Second response: on the Causing/Allowing Distinction. McIntyre thinks that sometimes the distinction between causing and allowing is what distinguishes right from wrong action rather than the distinction between what the agent instrumentally intends to do or result and what she merely expects to do or result without intending it. In at least some cases, however, causing an evil is worse than allowing it only or partly because one would intend the evil caused but not intend the evil allowed. So this distinction is not independent of DER, but presupposes and works through its prior apparatus.

Third response: on Noncombatant Immunity. Though McIntyre cites noncombatant immunity in warfare as an alternative explanation that is supposed to be independent of DER, it is difficult to see how either to analyze or defend a stricture against targeting civilians except by recourse to the moral importance of what McIntyre’s calls DER’s distinction between “instrumental” harming (which is intended as a means) and “incidental” harming (which is not intended at all).

Fourth response: on Responsibility For One’s Own But For Not Others’ Actions. McIntyre correctly suggests one reason it may be wrong for you to kill Big John, say, to keep me from killing Little John and Jane, too, is simply that, even though your refusal to kill has worse
results than your homicidal intervention, you are not responsible for what I do. Still, while it is trivially true that the acts of agent A2 are not those of a different agent A1, it still may be that A2 acts as she does because of the way A1 acts, as when, in Williams’s famous example, Pedro kills several innocents because Jim will not kill some targeted one. So, we still need to explain why A1 has less responsibility for the more remote but more numerous deaths. DER does this, saying that Jim must kill the one in his hands with intent, if he kills her at all, while he does not intend that Pedro’s victims die in refusing himself to kill the one. (Only Pedro intends that.)

Fifth response: on “Screening Off.” Suppose my awarding my corporation’s contract to Company C1 instead of C2 is justified by their respective bids but would also harm some enemy of mine, E, who has invested heavily in C2. McIntyre thinks we do not need to appeal to DER here, because the action is wrong not only if done to harm E (while justified if the harm is a mere side effect of accepting the best bid) but also if done to help a friend of mine. She seems to think that what is wrong-making here is not the intent to harm but any action from personal goals or feelings, from which our work in official projects ought to be, as she puts it, “screened off.” However, acting from the personal goal of harming my enemy is additionally wrong-making even if I would also act immorally in acting from a goal of helping a friend.

Sixth response: on Malevolent Action, as contrasted with Reluctant Action. DER works by tying certain instrumental harmings to more familiar forms of malevolence, because both involve willing what is bad (better, what is undesirable) while “incidental” (foreseen but unintended) evils involve no comparable willing of evil. (They involve expecting evil, of course, but that is merely a cognitive matter and therefore of only indirect connection to the moral virtues and status.) Even when one adopts an intention, whether ultimate or instrumental, reluctantly, what chiefly matters are not the accompanying misgivings or regrets but this
orientation of her will in accepting what is to be avoided as something positively sought.\textsuperscript{xxi}

Indeed, McIntyre’s insistence that DER relies on a distinction between instrumental and incidental harming is itself misleading. Rather, DER’s central distinction is between what is and is not intended, and that is because it is assumed that what is intended even instrumentally shares deeply with what is intended ultimately in a way that what is done without intention, but perhaps with expectation, does not.

Each member of McIntyre’s grab-bag of distinctions and principles, even if wholly independent of DER’s distinction between the intended and the unintended, would still stand in need of separate justification and, moreover, poses the danger of conflicting with one or more of the others. It is noteworthy that she indicates no method for resolving such conflicts among justificatory factors.

In contrast, DER’s crucial distinction between what is and what is not intended is internally tied to powerful, deep, and commonly invoked matters of moral concern. For an action meant to achieve some significant evil is as such ultimately or instrumentally malevolent, ill-intended, while one done with the mere expectation of such harm opens itself only to the lesser, while still serious, charge (moral objection) that it manifests vicious callousness, cold-heartedness, immoral indifference, a failure or insufficiency of good will. Likewise, we ordinarily seek to exonerate or mitigate actions by saying the agent meant no (or only lesser) harm. Christine Swanton conceives of central virtues as different modes of mental response to various values (I should prefer to say that they are responses to assorted valuable or disvaluable things), and plainly the different types of intending should count among these responses.\textsuperscript{xxii}

McIntyre also claims that intending evil is actually present in what are alleged to be cases of actions justified by DER. Thus, she maintains that in certain situations of Risk (e.g., an MD
who experiments on herself), of Self-sacrifice (e.g., Capt. Oates’s famous walk into certain death in the Antarctic), in Aquinas’ account of Self-defense, and in the situation of a Censor who needs to read prurient material, the acts supposedly justified by DER in fact involve the agent’s intending evils not merely foreseeing them. In her terminology, they are “part of an agent’s [chosen] means.”

Seventh response: on McIntyre’s discussion of Risk. McIntyre thinks DER goes astray in having to condemn morally certain cases where an agent seems intentionally to expose someone to substantial risk of a (serious) evil. In her view, the only alternative for the advocate of DER is to embrace such a loose account of what is intended that many agents whose action DER is standardly thought to condemn will be acquitted of moral wrongdoing. Note that, however, that talk of “instrumental endangerment” is strictly accurate only when it is someone’s being in danger (and not just something that causes it along with other things which latter alone are targeted) that is an agent’s means to her end. Yet in McIntyre’s cases of a physician who experiments on herself (or another), and of a mother who throws her child from the window of a burning building, the increased chance of death is not intended. It is neither something the agent acts in order to achieve nor something from which the agent plans to derive some desideratum.

McIntyre protests that “to throw it [sic, referring to a child] out the window is to endanger it” and “exposing the threatened person to a . . . risk of harm [through dangerous surgery] is not a side effect . . . it is one’s means.” However, that is just what is at issue, and her claims are improbable. Though McIntyre here talks of “risky surgery [a]s one’s means” and says that a “doctor who tests a new vaccine on himself clearly risks harming himself as a means,” this seems confused. What is the planned intermediate step is the surgical procedure, and the increment in danger is a foreseen but unintended additional effect. So too in the case of
the desperate mother throwing her child from the window of the endangered room. What is only expected but not meant to happen is not a chosen means, nor is it part of one.

Eighth response: on McIntyre’s discussion of Capt. Oates’s Self-sacrifice. Capt. Oates, injured, unable to go on, and not wanting further to burden his expedition-mates, walked away from their camp to his own certain death. Yet it is plain here, as in the cases of the physician and mother just discussed, that someone in Oates’s position does nothing in order to die and does not seek her death in order to derive any good from it. Her death itself does not count towards her plan’s success and her survival would not have made her even a partial failure. The intermediate step in the agent’s plan between the act of walking away from camp and the goal of increasing his comrades’ chance of survival by sparing them from bearing his burden is separating himself from their reach. That suffices and there is no reason to think the death is sought even instrumentally, since it is the physical (not the metaphysical) separation that is to yield the desired good. Again, what is only expected but not meant to happen is no part of an intended means.

Ninth response: on McIntyre’s discussion of Self-defense. McIntyre interprets Aquinas as holding that a private person may aim at (intend) the death of an attacker so long as she does so only as needed for defense and not revenge. For this reason, she thinks it incorrect to regard Aquinas as himself endorsing DER, even before its formal elucidation, since he does permit the defender to intend death as a means. I will not here engage the reasonableness either of that construal of Aquinas (about which I have no opinion) or of that view of what is morally required (to which I am more sympathetic). I note only that it remains open for someone who thinks private defenders may not licitly try to kill instead to maintain that licit defense embraces “lethal force” only when the lethality of the force is anticipated but not meant. Once more, what is only
expected but not meant to happen is intended neither as a means nor as part one.

Tenth response: on McIntyre’s discussion of the case of a Censor. McIntyre thinks that DER is incorrectly applied when it is invoked to permit the censor to expose himself or herself possibly lascivious and provocative materials in order to judge their eligibility for censorship. She suggests, in contrast, that the censor needs “the evil [libidinous] thoughts that occur . . . [in order] to inform the censor’s judgments” and therefore “he intends for the evil thoughts to arise [although] only as a means to carrying out his assigned task.” However, all the censor really needs is to see if the relevant audience is likely to respond badly. He or she can use his or her own responses, whatever they might be, to help in reaching this judgment, but this plainly does not require that the censor try (intend) to have immoral thoughts.

Against this, McIntyre worries that such a restricted view of what is intended endangers familiar applications of DER by allowing the abortionist to protest that she intends only the fetus’s removal and not his or her death. I think this a valid concern, but McIntyre does not show that there is no logical room for an account of intention according to which the abortionist does intend to kill the unborn but people like Capt. Oates do not intend to kill themselves and the censor does not intend to become sexually aroused.

More important, Neil Delaney, Jr. has helpfully offered two strategies of response: that the fetus’s removal is so “close” to its death, in some important sense, that an abortionist who intends the fetus’s removal either (a) therein or (b) of necessity also intends his or her death. To these two psychological strategies, I wish tentatively to offer a third, narrowly ethical suggestion: that what the abortionist does intend for the fetus is so closely related to his or her death that, even if the abortionist need not intend the death, what she does intend (e.g., dismembering the body) is comparably morally objectionable, vicious. Such actions, in the
intentions with which they are done, involve similarly disrespectful, malignant, or otherwise
vicious agency. We do well to keep it in mind here that what is important for the application of
DER to these cases is not that the agent must intend death but that she intend some significant
evil (disvaluable feature or situation) and therein act viciously, immorally.

In summary, the agents in some of McIntyre’s cases do nothing in order categorically to
cause the various bad effects (the dental patient’s pain, the research subject’s increased risk, their
own or their attacker’s demise, or the censor’s lustful thoughts). Nor does any good flow from
the effects of the acts of the sacrificer, the defender, or the censor—as distinct from flowing from
the actions that cause them—so that we would be entitled to say that these agents do them in order
to derive targeted goods. They do not count towards these agents and their projects being
successes, nor would the non-occurrence of these effects make them failures. Finally and most
decisively, in these last three cases—those of the sacrificer, the defender, and the censor—the
agents could, in a way rationally consistent with what they do, also simultaneously take steps
meant to prevent the bad effects.

Still, McIntyre may have an important point here. Maybe we should impute to the dentist
and the medical researcher the conditional intention that they do harm if certain conditions are
met. The dentist, while harboring no categorical intention to hurt, does perhaps probe at point P
in order that she cause pain if P is an infected area, and does this in order to get knowledge of the
infection’s location. So too it may be that the researcher while not simply, even instrumentally,
intending to harm herself, does nevertheless will (intend) that she harm herself should the
procedure prove to be of a deleterious sort, doing so in order to find out its general effects. Nor
can these two medical agents consistently take measures categorically to prevent pain, for they
need to cause pain should the unknowns turn out to be a certain way. (The dentist’s probing
would have failed if it did not cause pain at P when she probed there, and so too the researcher’s test would fail in its purpose if the procedure’s or chemical’s harmful effects did not show up on her.) Again, the area of conditional intentions is one to which theorists of DER need to devote further attention.xxix

Though, as I have conceded, the matter gets complicated in some of the cases with possible conditional intentions to harm, this provides inadequate support for McIntyre’s tendentious “redescri[ption]” of these side effects as “aspects,” “features,” or “parts” of the agents’ chosen means. None of the agents in her cases has an unconditional intention to cause harm, even the harm of increased danger.

One last case: Outrunning. McIntyre offers an additional case where she thinks it permissible to act intending some innocent person’s harm, adapting from the literature the case of someone who can survive only by outrunning a trolley (or, alternatively, a bear) bearing down on her in a case where the best hope for survival is to divert the threat onto a companion (getting the trolley to run him down and grind to a halt or the bear to maul him instead of oneself). Even McIntyre allows that it would be wrong to throw one’s companion in front of the trolley (or bear) or to toss a rock down to trip her. So, there is little reason to think a decent person could or would seek to divert the threat onto him rather than simply trying to outrun it.

Note that, contrary to a view popular among theorists, someone can act with this intention even if one thinks it highly unlikely. For instance, the runner is in a long tunnel with no realistic prospect of outrunning a rushing trolley or charging bear. Still, one runs desperately, hoping against hope that it will somehow help her survive, just as she would if she had no companion heavy enough to slow a trolley to a stop or chewy enough to satisfy a hungry bear.

A Concluding Observation and Concession on McIntyre’s Critique of DER’s Adequacy.
I do think there may be cases—not so much that of the dentist, but cases of amputation or transplantation or of using someone’s body as a shield, for instance—the best analysis of which indicates that it is only certain evils, and perhaps not every evil, that may never be intended. In some of them, what is crucial is not just the agent’s intention but also securing the patient’s permission. If that is correct, then it may be that some traditional articulations of DER needs to be revised.

III. Frances Kamm

Much of Frances Kamm’s theoretical critique of DER is concerned with complicating the question and determination of what an agent intends as a means. Kamm skillfully undermines familiar versions of the so-called Counterfactual Test, which tells us an agent intends just those effects that she would have again acted to secure if they had not resulted from her action, and less successfully attacks the Rescue Test, which holds that I attend any result that I cannot consistently act to thwart, as I cannot intend my action to kill if I could consistently try to rescue its victim from death. Kamm offers several imaginary (but imaginative) counterexamples designed to subvert our commonsense idea that an agent intends a result when she acts because (she thinks) it will come about. She wishes to show that an agent “need not intend everything it is necessary for him to do so that the goal [for which he acts] comes about, so long as he believes he will do everything he must do, even if he does not intend some of the things needed. . . . He may intend x, know that his bringing z about is necessary for x to come about, but not intend z.”

The threat to DER in Kamm’s discussion is that it will so narrow what is taken to be intended as a means that it loses relevant moral application. Kamm says, “when I speak of a
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‘means’, I shall be referring to one of the things necessary for an end rather than one of alternative possible ways of achieving an end” and goes on to claim that an agent “must intend what he believes are the means to his end if he believes intending them is necessary to bring about his end, but not otherwise.” So, the agent “need not intend all or even any of the required means to his end unless this [his intending them] is necessary to bring about the end.”xxxiv Call these contentions K1. I will attempt to counter Kamm’s arguments in seven parts.

First response: Kamm’s K1. Let me note, in passing, that I have elsewhere sketched out my own Success and Failure Test, and In-Order-To Tests as generally reliable indicators of an intention’s content. Kamm’s view of means is multiply problematic. How could someone intend a goal G (i.e., any non-immediate goal) without intending anything as a means to it? By what does she intend to achieve G? Nothing? How can I intend only means M1 and M2 to achieve G when I know that they operate with and through M3 to secure G? Moreover, some means adopted to achieve a goal are not necessary to its attainment but only chosen from alternative routes from intending the goal to attaining it. Finally, some “things necessary for an end” are not any agent’s means to it but merely background conditions.xxxv

I will not here treat in detail most of the intricate–indeed, dizzying–cases that Kamm offers in her discussion. Instead, I restrict my focus below to a few issues chiefly medical ethics. In various variations of a case called “Loop,” first devised by Thomson and adapted from Foot, an agent diverts a trolley from a track where it will kill a large number of persons to one where it will fewer, acting to save the larger group. In this variant, the diversion will spare this group only because the trolley crashes into some bystander, thus stopping it, before it loops back toward them. Kamm, like Thomson, thinks the diversion permitted, but it has been assumed that DER has to condemn it on the grounds that the agent must intend the diverted train to hit the
bystander. Kamm now doubts this psychological claim, though she warms none the more to DER for now perhaps permitting what she thinks justified.

Second response: Kamm’s Loop Case. I think it correct to say that the agent intends “the hit” as Kamm puts it, and also correct to say that this correctly accounts for the immorality of so diverting the train. For the agent must intend her pulling the track switch to spare the group in some way (i.e., along some planned causal path) and, since she knows that simply putting the trolley onto a loop that will bring it back to bear down on them, cannot suffice, it seems to me that she must mean the trolley to hit the bystander in such a way as to stop it. So, she switches its track in order to get the trolley to hit the bystander, and she gets the trolley to hit the bystander in order to stop it and thereby spare the big group on the first track. Moreover, in intending these means to her end, she holds intentions diametrically, and viciously, opposed to the benevolent concern that constitutes moral virtue. Therein, she manifests such a lack of respect for the bystander’s inherent dignity that she violates that person’s right to the kind and level of good will that each of us owes the rest of us. Thus, we sketch the interdependence of justice and benevolence. In just the same way, the mercy-killer and the physician who purposely aids in physician-assisted suicide, but not the physician who administers MPR or terminal sedation, intends the patient’s death as the means from her orientation to the goal (e.g., cessation of the patient’s pain, her freedom from what is deemed an undignified existence of dependence, lessened financial or psychological burden on loved ones). So too must the abortionist viciously intend the mutilation of the fetal victim’s body, while the physician performing a hysterectomy on a pregnant woman need not intend any harm to the fetus.

Third response: two Terror Bombers. These considerations can also illuminate our reflection on newly revised versions of the familiar Terror Bomber case. In them, the pilot
still drops her bombs on the civilians to terrorize and demoralize their soldiering countrymen (and, perhaps, countrywomen). However, the pilot now intends the terror to result from the soldiers getting evidence that the bombs have detonated over the city and (correctly) inferring that their loved ones are dead, rather than from the deaths themselves. Should we say, in the spirit of Kamm’s narrow account of intending as a means, that the pilot does not here intend the civilians’ deaths? Here is where we can apply what we said in discussing McIntyre’s treatment of intended risk. Even if the new, trickier Terror Bomber does not intend the civilians’ deaths, she must intend severely to endanger them, greatly to increase the likelihood of their dying. For it is through this risk that the pilot’s planned path is routed from her intention to drop the bomb over the city to demoralization of the soldiers that she desires. And because the agent thus intends this means, we can reasonably classify the action as vicious, immoral as such. Admittedly, it would be good to have an account of just which undesirable situations it is always vicious to will for another, and why willing these is immoral, if not all willing of undesirable situations is. However, it is extravagant and unjustified to deny that any such assignments can be made until such an account (and a workable criterion of inclusion in this special class of goods) is available.

Kamm builds on her view that there are cases where an agent acts because she will have a result but without intending that result as a means to formulate, but not endorse, what she calls the Doctrine of Triple Effect (DTE).

The idea is that there can be situations where an agent (a) is interested in acting to secure some desirable goal G1, (b) recognizes that pursuing this goal by doing something A is unjustified in light of the fact that her doing A will also result in some evil E, but (c) also sees that her doing A will cause some additional and unintended good G2. Kamm suggests that a
principle might be formulated in which this third effect, G2, which she allows the agent might
not intend but is nevertheless something because of which she acts, could justify her action.

Fourth response: Kamm’s Doctrine of Triple Effect. I think this DTE incoherent. That is
because I cannot see how the mere occurrence of good effect G2 can serve to “justify” my action
when, being outside the scope of my intention, it does nothing to render it more benevolent,
responsible, better meant. I cannot see how morality—and therefore, in my view, virtue—can
“permit” this harmful action, when, in performing it, the agent remains indifferent to the more
significant good, G2. Kamm says a principle permitting the action because of G2, though it is
not done in pursuit of G2, would permit “us to act because we believe we would bring about the
greater good [though we do not act] in order to bring [it] about.”xxxix Yet I cannot see how a
mere belief can here work to justify when, as we saw in discussing Thomson above, such
cognitive attitudes matter morally only insofar as they reveal the content and status of the agent’s
will; that is, what matters is whether she is or is not acting with some intention it is vicious of her
to have or without some intention it is vicious of her not to have.

Kamm finds it “surprising” that sometimes an agent’s behavior may violate DER because
she does “not intend the greater good . . . that justifies the bad side effect” and complains that, in
discussions of DER, “no attention has been paid to whether the greater good [that could justify
the action] is intended or [instead, is merely] foreseen.” In her view, “[e]ven if intending a bad
effect were impermissible, acting because of it [but without intending it] might not be.”xl

Fifth RESPONSE: on Acting Because of an Unintended Effect. There are several
problems in what Kamm says here. First, what needs justification is not the side effect itself, but
the action that leads to it. Second, if the agent does not intend the good and the action violates
the standards of DER, then although justifiable, it is not in fact “justifie[d].” Third, whatever
may be the case in recent secular versions of DER, in the traditional expositions, it was simply presupposed that the subject was the generally virtuous agent, who was assumed to intend the relevant goods so that attention could focus on whether she could also, consistent with her virtue, intend any evils. Thus, good effects justified actions only because and insofar as the agent acted virtuously in pursuing them. Thus, I find the concept of justification, within her DTE, by what Kamm calls “Unintended Good [G2]” incoherent.

If goal G2 is to justify the agent’s actions, then, it must attest to their virtue and she must therefore seek it in acting as she does. So, even if Kamm is correct to affirm some distinction between results that I intend my action to secure (as means or ends) and those “because of” which I perform it, the latter could not suffice to justify an action that leads to some undesirable results. But, of course, every action will lead to some undesirable results, have some bad effects, if we interpret these notions with relevant breadth. So, Kamm’s imagined DTE has neither plausibility nor application.

Kamm offers an illustrative case, which she calls “Massacre.” In it, a “strategic bomber” targets a minor military target [call this G1], but foresees that her bombs will also both kill “ten innocent civilians [call this E] and stop a massacre of twenty more different civilians [call this G2] because the killers are distracted by” the explosions. By hypothesis, she explains, the intended goal G1 is not weighty enough to justify the bombing in light of E, but G2, the unintended good, is. While DER condemns this bomb-run, Kamm’s hypothetical DTE permits it.

Sixth RESPONSE: on Kamm’s Massacre case. Setting aside Kamm’s dubious distinctions, we can say that here the agent may likely act non-viciously in dropping her bombs if and because she does so in order to secure both G1 and G2 despite E. Kamm classifies G2 as an
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Unintended Good “because its occurrence is not necessary to the war effort,” but this is surely insufficient reason. Even saving the twenty civilians is not “necessary” to the war’s aims, it could nevertheless be adopted as a helpful means or, more important, as an additional end. (Or part of the war’s own end.) Why cannot the pilot drop her bombs in order, among other things, to distract the (would-be) killers?

Seventh RESPONSE: on Kamm’s Screaming Victims Case. Finally, consider a variant on Kamm’s Massacre case. In it, things are as they are in Massacre, except that what distracts the would-be killers is not the sound of the bombs exploding at the small military target, but the screams (or blood, etc.) of the ten killed in E. Here, the second good effect, the averting in G2 of the twenty’s massacre, is to be secured through the butchery of the ten innocents in E. In this case, DER teaches that E is part of the pilot’s means to G2. Her planned path from her intention to drop the bombs to the securing of G2 is routed through this attack. It is because the ten will suffer from her bombs that they scream (shed blood, etc.) in such a way as to secure the pilot’s goal in G2 (though not that in G1). Since the evil is sought in order to secure the good, it is intended as a means and is vicious (or, as we might somewhat misleadingly say, is impermissible).

IV. Conclusion

In this essay, I have tried to rebut some arguments against DER made by thinkers who reject familiar forms of consequentialism and could be classified in what is sometimes called the ‘deontological’ camp among ethical theorists. I am well aware that more than such piecemeal defense against specific criticisms would be needed genuinely to justify DER. That larger-scale defense is beyond my scope here, but I will close by broadly indicating three appealing
theoretical options from which such a defense might draw underpinning.

First, whatever the metaphysics, we face the question of the location and nature of what we might call our moral identity. DER enables us to acknowledge our bodily involvement in causing undesirable effects (especially physical ones), while making the moral substance of that causing hang on how the mind (the patient’s and, because of that, the agent’s) stands to them.

Second, several recent thinkers have urged moral philosophers to forgo the narrow focus of much 20th century ethical theory on the so-called ‘thin’ moral vocabulary of right and wrong, the permitted and forbidden, what ought and ought not to be done, and so on, in favor of a more richly descriptive set of moral concepts. Indeed, formulations of moral norms themselves need specification and justification in terms of more substantive descriptions that explain the ways in which a course of action is objectionable and the reasons for which it is required or forbidden. The virtues and vices may provide the best elaborated and most familiar of such vocabularies. However, again, this virtues-basing turns the theorist’s attention what an agent does or does not intend, for it is by answering such a question that we determine whether her behavior is kind or cruel, negligent or considerate, respectful or contemptuous, honest or deceitful, cooperative or manipulative, and much else.
Third, we are inclined to think that different stances of mind are virtuous or vicious according to the ways in which we are connected one to another, in the roles we fill in people lives. Adherents of a distinction between first-order and second-order morality, sometimes claim that it is our external actions that affect how well off we are. What matters morally, however, is how we stand one to another, and that is largely a matter of what we want, and hope, and choose, and seek for them. People have expectations and preferences of those who occupy certain role-relationships and they are adversely affected, severally and collectively, insofar as these role-expectations and preferences are left unsatisfied and even countered. DER, however, can draw on such a conception of moral life, both centered on certain role-relationships and focused on the needs and interest of the patients to whom the agent is therein related, to explain the central moral importance it assigns what someone does or not intend for another.

I hope to have helped clear the way for such investigation into the deeper project of justifying DER by here working to remove some preliminary obstacles.
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1. “[F]irst order morality is an account of which behavior is permissible or impermissible. What makes a particular account of first order morality correct is that it is the set of propositions about . . . [such] permissibility which, if generally followed or recognized, would result in things that are good or bad for people meeting some appropriate distributive criterion. [The author seems to mean that the “things” have to meet the distributive criterion to be good or bad.] Something like this is accepted by writers in both the utilitarian and contractualist traditions. . . . [A]n agent’s reasons for action [and thus her intentions] are not relevant in any interesting way to . . . [such] permissibility . . . [for] it is what people do that affects us for better for worse, not what they are thinking when they do it.” (McCarthy, 2002, p.
McCarthy substitutes for DER a “mismatch principle,” according to which divergence between a agent’s reasons for acting and the reasons that make her action permissible or required count against positively evaluating her within “second-order morality.”

This complaint against what I have elsewhere called “intention-sensitive ethics” has become so common that even some who fancy themselves allies of DER defend it by insisting that DER does treat the agent’s actual intentions as irrelevant to is licitness, making the latter depend on whether an imaginary agent could have acted in a certain way without intending the relevant undesirable result. (See Fitzpatrick, 2003.)

ii. See, especially, Richardson, 2000.

iii. Note that nothing counts as her cheating, torture, negligence, or boasting unless the agent has (or, in the case of negligence, does not have) certain intentions.

iv. This is clearest within secular aspects (and, what is different, secular conceptions) of morality, but is true also within divine command ethics. There, immorality is properly seen not as a matter of an action’s effects or its physical structure, but whether, in light of the agent’s mind, it constitutes an act of disobedience. In my view, actions against persons are immoral both insofar as their mental inputs include attitudes distant from the forms of interpersonal stance that constitute interpersonal moral virtues and also insofar a because their mental inputs mark them as disobedient and therein viciously unloving in the agent’s relation to God.

v. Aquinas, On the Virtues in General, art. 6, obj 2.

vi. Thomson, 1999, pp. ??? (pp. 9, 12)

Thus, having anticipated Searle in showing that intra-institutional obligations breach the supposed “gap” between factual and normative judgments, Anscombe recognized that to secure moral norms she needed to connect such rules to the moral virtues. Hence her chief treatment was titled “On Promising and its Justice [etc., emphasis added]” when the article was first published. It is unfortunate that this was shortened when the piece was reprinted in her collected essays. (Anscombe, “On Promising,” and “On Brute Facts” and “Modern Moral Philosophy,” all in Anscombe ??? Also see Searle, ???)

x. Thomson, 1999, sec. IV.

xi. Thomson 1999, pp. 12-13. Thomson owes us some account of how is it that evil intentions add to the immorality of some actions (some of those already immoral), but not others (those not otherwise immoral)? Presumably, they cannot act in the most obvious way, that is, by themselves adding the sort of quantum of immorality (“wrong-making force,” as some say) that could also serve to make wrong an otherwise licit action. How then do intentions act on the moral status of actions?

xii. Think of immorality as indicated on a linear scale. If the agent’s evil intentions can move an action already past the line of immortality deeper into that territory, then we need some explanation why they cannot, by moving another action the same distance in the same direction, serve to move it over the line into the range of the immoral. Alternatively, an irenic Thomson could concede that an agent’s evil intentions magnifies an action’s immorality not by making it more impermissible–impermissibility probably does not admit of degrees–but by adding more but different kinds of immorality, compounding impermissibility with viciousness. However, this would presuppose a claim that I have suggested is incorrect, that impermissibility is a distinct and radically different kind of immorality from vice.
xiv. Thomson, 1997, p. ???. This claim is in the spirit of Aquinas’s assertion that “the more one turns away from virtue, so much the greater is his sin.” (On the Virtues in General, art. 6, Obj. 3. I am grateful to Michael Formichelli for this reference.) I take him to mean that increased gravity of sin consists in more radically or decisively turning away, distancing oneself, from virtue. Aquinas elsewhere claims that “Justice alone of all the virtues implies the notion of duty.” (S.T., I-II, q. 99, art. 5, ad 1) However, here I do not think that he means that justice is the only virtue that provides a criterion of obligation, the only one against which someone can so offend as to warrant classifying her behavior as forbidden or impermissible, but rather that justice is the only virtue that presupposes a prior and independent concept of what is due someone.


xviii. An intention-sensitive account can be still patient-focused if it is the patients’s welfare, interests, and needs (though not always her wishes) that largely determine which intentions are virtuous or vicious in the agent.


xx. The distinction between causing and allowing after all, seems to have no inherent moral significance. It is not the case that starving someone is less bad than strangling her, whether both are done incidentally, instrumentally, or for their own sakes.
I think this the chief insight and advantage in Nagel’s insight that the agent who intends evil even instrumentally gives herself over to following, pursuing, and being “guided” by what is, as undesirable, something to be fled and eliminated. See Nagel ???.

Swanton, ???.


McIntyre, 2001, p. 244.

McIntyre, 2001, p. 245.

McIntyre, 2001, p. 250.

“Since DE[R] is supposed to prohibit certain kinds of instrumental harming, DE[R] cannot provide a general license for redescribing a [does she mean, any?] regretfully but instrumentally intended harm as one that is not intended because it is intended only as a means!” (McIntyre, 2004, p. ???. sec. “An exemption . . .”–printout, p. 11. Also see McIntyre, 2001, p. 249.) That is surely true. But McIntyre needs better to explain why she thinks that saying that the DDS who probes for pain does not intend to cause it involves some such fishy “redescri[ption],” when she herself says its captures “our ordinary talk [to] . . . say that the dentist didn’t intend to hurt you.” She thinks we can do this because ordinary discourse permits us to describe “an unattractive feature of one’s means as merely foreseen if this feature is not needed for one’s means to be effective, and if the agent’s reasons for adopting the means involved regret about using it.” However, this tendentious “explanation” simply presupposes what is at issue: that is, whether what McIntyre calls the “unattractive feature” or “unfortunate aspect of one’s means” in each of her cases is something more than simply an additional and unintended consequence of the agent’s planned actions. I do not think we should agree, for reasons I offer in the

xxix. Perhaps those sympathetic to DER should allow that there is a threshold of harms beneath which intending to cause them, at least conditionally, may sometimes be justified. I should note that some discussions of nuclear deterrence did take this turn, but there treatment of conditional intentions was greatly complicated by the odd fact that the bad result (the enemy nation’s destruction) that was intended on condition (that they destroy ours) was supposed to be rendered unlikely precisely by the adoption of the conditional intention (to attack them if they attack us).

xxx. Indeed, more specifically, it needs to be refined in the direction of Quinn’s distinctions between eliminative and opportunistic agency and his and McMahan’s strictures against someone’s involving another in her plans to the latter’s detriment. (See Quinn, 1989 and McMahan, 1994.)

xxxi. Much earlier, Thomas Sullivan and Joseph Boyle offered this sort of test in Sullivan and Boyle, ???, where they show that a stutterer only expects but does not mean to stammer since, without inconsistency, he does (or can) take measures to avoid stuttering. Following them (in Garcia, “Anti-Consequentialist Moral Theory,” 1993), I went further, to argue that this serves not only to help identify the content of an agent’s intention, but also to explain why acting with the intention that a bad result ensue is morally worse than acting with a mere expectation of the same result. For the fact that I can consistently act with both the expectation of an undesirable effect E and also the goal of preventing E (i.e, with the intention that E not occur), but cannot consistently act with the (even instrumental) intention that E occur and also the goal of preventing E, shows that the intention of evil is further removed from the virtuous opposition to evil (here, from the intention that E not occur) than is acting with the mere expectation of the undesirable consequence. In that respect, it is more (or more nearly)
vicious, and harder, even impossible, to justify.

xxxii. In the cases she calls “Store,” someone wants to buy shoes, but not unless she also gets a free gift or reimbursement for her travel expenses. In one called “Party,” someone wants to throw her friends a party, but not unless they help her clean up afterwards. In all these, Kamm thinks, the agent acts only because she expect to get some benefit (a free gift, reimbursement, clean-up assistance, the trolley’s getting slowed to a stop by hitting the bystander and sparing the big group), but does nothing in order to get them and therefore does not act with the intention of attaining them. (Moreover, she may think each agent could even consistently act in order to block the benefit. However, this does not seem to run counter to the Rescue Test.)

For what it’s worth, Knobe 2004 may offer some empirical support for parts of my view of the limits of intent. Surveying people on whether an imagined executive intends the environmental harm or benefit he anticipates from a policy adopted strictly for profits, most participants said he intended neither. (More, however, thought he intended the harm than thought he intended the benefit. See also Knobe, 2003.) In Garcia, 1991, I argued that someone intentionally does only (some of) what she intends to do. Knobe’s articles indicate his survey participants tie intent to intentional action much more loosely. For example, eighty-seven percent of them think the imaginary executive intentionally harms the environment while only 29% think he intends to, and 20% think he intentionally benefits the environment while none thinks he intends to. (I cite these data “for what [they’re] worth” because I doubt the scientific merit of his various samples of 78, 42, 77, and 63 subjects, all described as “people spending time in a Manhattan public park.” I’m no social scientist but, having grown up a block and a half from Central Park, I doubt such groups are likely to be representative of anything properly taken as normal.)


xxxv. Kamm complains that if all means are intended then the familiar claim that an agent who intends an end must also intend means would be “redundant.” (Kamm, 2000, p. 33) We do sometimes talk of means that are not intended, as when discussing natural mechanisms, though it is not clear to me how literally we mean this. However, the point of uttering this truism, redundant or not, is to help us remember that no one can intend any (non-immediate) goal alone, intending no means to its achievement. To adopt such a goal is always to undertake a larger, more complex commitment.

xxxvi. And her getting the trolley to hit the bystander makes her a partial success and her not achieving the hit would count toward her and her project’s being failures.

xxxvii. In the various versions of Kamm’s Store and Party cases, I am inclined to think the agents do intend to attain the benefits (the free gift, the reimbursement, the clean-up help). I think they mean to get them because they and their projects and plan would be partial failures if they do not, and partial successes insofar as they do. Is Kamm right that the agents do nothing in order to get these benefits, since it would be absurd, for example, to go to the store to get a reimbursement for expenses one would not have incurred if she had not gone, or to throw a party in order to get help in cleaning up after it? That does not follow, for there may still be other things the agents can do in order to advance these purposes. Perhaps the shopper goes to this store (rather than that one) in order to get the gift or reimbursement, or ends the party early rather than later (or throws it on one night rather than another) precisely in order to probabilize assistance in cleaning up at its end. But what if no such alternatives were available, and there is therefore literally nothing the agents can do to get the benefits they want and anticipate? Still, it seems that they seek these benefits in order to advance more inclusive ones (having more clothing or cash, less work and fatigue). Perhaps, at most, we might need to modify the In-Order-
To Test so that intention requires not that there be something the agent actually does in order to get an intended result, but only that she commit herself to standing ready to do something in order to attain it should relevant alternatives emerge. (More work may be needed here on intention and DER.)

xxxviii. See, esp., Delaney, forthcoming.


xli. Schopenhauer famously complained that Kant’s appeal to the survival of death and a divine judge among his postulates of practical reason showed that within his moral system the agent was still fundamentally self-interested. This is unfair, and we might express the relevant distinction by saying that even if Kant held that a rational agent would not act morally unless assured that her action might not destroy her happiness that does not commit him to saying that she acts in order to—still less that she acts only in order to—prevent her own unhappiness. (For more on this, see Garcia, 1986.) Should we say, à la Kamm, that such an agent does not act with the intention of preventing her unhappiness but, nonetheless, does act because she will do so? Perhaps we can say that, but here the “because” indicates a background assumption on whose informational basis the agent acts, not an ultimate or intermediate goal to secure which she acts. In contrast, in most of the cases Kamm offers to illustrate such a distinction, the agent does seem to me to have the intention of getting of getting these desiderata (the hat, the reimbursement, the cleaning assistance, the trolley’s striking the smaller number) as separate and perhaps secondary but, for all that, additional goals.
