

NEIL FRANCIS DELANEY

## TWO CHEERS FOR “CLOSENESS”: TERROR, TARGETING AND DOUBLE EFFECT\*

**ABSTRACT.** Philosophers from Hart to Lewis, Johnston and Bennett have expressed various degrees of reservation concerning the doctrine of double effect. A common concern is that, with regard to many activities that double effect is traditionally thought to prohibit, what might at first look to be a directly intended bad effect is really, on closer examination, a directly intended neutral effect that is closely connected to a foreseen bad effect. This essay examines the extent to which the commonsense concept of intention supports a reasonably consistent and coherent application of double effect. Two important conclusions are these: (1) a number of traditionally proscribed activities involve a kind of “targeting” of innocents that can be taken to exhibit a direct intention to harm them; (2) a direct intention to harm need not involve a desire to harm in any ordinary sense of the latter expression.

**KEY WORDS:** Intention, Targeting, Desire, Double Effect, Bennett, Sellars

### 1. PRELIMINARIES: FORMULATION

The purpose of this essay is to examine some matters concerning ascriptions of intention and the employment of the doctrine of double effect (henceforth DDE). DDE in its modern formulation basically states that it is sometimes morally worse to act with the intention to produce a bad effect as a means to a good end than to act while merely foreseeing that an equally bad effect will come about as a byproduct of one's

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endeavoring.<sup>1</sup> A paradigmatic application of DDE yields different assessments as to moral permissibility for the respective action plans of two wartime pilots, one a strategic bomber (SB) and the other a terror bomber (TB). SB bombs a weapons cache as a means to defeating the enemy while foreseeing that his bombing will bring about a number of civilian deaths. TB bombs the same number of civilians directly as a means to defeating the enemy (he intends to demoralize the enemy). Proponents of DDE regularly distinguish SB from TB by noting that while SB directly intends merely the destruction of a weapons cache, TB directly intends to kill civilians. This taken together with an (absolute) prohibition against acting while directly intending to kill civilians (either as a means to a good end or as an end in itself) renders TB's action plan morally impermissible while leaving open the possibility that SB's action plan may be morally permissible.<sup>2,3</sup> Somewhat abstractly, DDE is one rather venerable way of expressing the insight that the intention/foresight distinction can be morally significant, specifically in that to the extent that the bad is directly intended as means to the good, the action plan (and corresponding behaviors) are straightforwardly impermissible. Finally, it is normally stipulated that the objective probabilities of each pilot killing the civilians provided that each does what he instrumentally intends to do are identical. This stipulation is pretty bizarre on reflection (the "objective probability" of TB killing the civilians provided that TB kills the civilians is a curious notion). In this essay the stipulation is simply that the physical possibility that SB can bomb the munitions cache without killing the civilians is negligible, and SB believes this to be the case.

## 2. INTENTION AND CAUSATION

A standard way of determining whether a component of an action plan is a means to the end is to assess whether or not the component is *causally efficacious* in securing the end in question. It may be causally efficacious as the directly preceding stage in accomplishing the end or it may only be causally

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efficacious in securing some preceding stage of the plan. In SB's case the killing of civilians is NOT causally efficacious in the way this phrase is used in such discussions; the civilian deaths are merely a *side effect*.<sup>4</sup> Destroying the weapons cache depletes the enemy's firepower and provokes a capitulation; the deaths of the civilians are merely foreseen. For SB the civilian deaths are not causally efficacious in producing any stage of his action plan. In TB's case on the other hand, the killing of civilians is causally efficacious; killing the civilians is what produces the demoralization of the enemy that leads to surrender. It is in this important sense, the sense of what is efficacious in producing the stages of the action plan that ultimately yields a good outcome, that SB and TB are to be distinguished.

Now Jonathan Bennett has suggested that in fact this way of looking at TB is all wrong.<sup>5</sup> He claims that what is causally efficacious in producing enemy demoralization is simply that the civilians lie about looking dead. By his lights TB's action plan does not include the killing of civilians as a means to producing the good end; rather, the action plan simply includes a means-stage involving a convincing scene of civilian slaughter. On Bennett's account TB does not make use of the killing of civilians at all. Since the killing of civilians is not required as a means to demoralization and hence ultimately as a means to the good end, TB's action plan and associated behavior should not be discredited as morally impermissible by DDE. With respect to TB there simply is no *means* to the end that is absolutely prohibited. Bennett goes so far as to say that careful analysis "makes a mockery of the whole idea of what is intended as a means."<sup>6</sup>

Bennett's argument that DDE cannot distinguish even standard cases such as SB and TB fails to hold up under scrutiny. All one needs to do is note that while a convincing scene of civilian slaughter is all that is needed to demoralize the enemy, something is needed to bring about that convincing scene. TB eschews alternatives such as holograms, mind-altering drugs, etc., and simply adopts as *means* to producing

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his convincing scene the killing of civilians. Killing civilians is causally efficacious in producing the appearance of civilian death. TB's action plan thus still includes a means-stage, the killing of civilians, the performance of which is (absolutely) prohibited by proponents of DDE. Hence DDE has a way of distinguishing SB from TB; whereas for SB killing civilians is not directly intended as a means to the ultimate end, for TB such killing is. Bennett has failed to make a mockery of DDE by exploiting the notion of what is intended as a means.<sup>7</sup>

### 3. JOHNSTON'S PUZZLE

Enter Mark Johnston. He offers a case that sidesteps the inadequacies of Bennett's recasting of TB and seems to challenge DDE, if by that we mean he provides a case that *ought* to be morally distinguishable from SB but that apparently isn't according to DDE.<sup>8</sup> Johnston asks us to consider an (evil) enemy hidden in an impregnable fortress, an enemy that only has access to war room video screens. These screens enable the enemy to determine simply whether nuclear weapons have been detonated over civilian targets. If the enemy (cognitively) sees that nuclear detonations have occurred by observing the screens, the enemy will surrender. Now suppose that the opposition detonates nuclear weapons over (suitably small) civilian targets so as to provoke enemy surrender; in this case the entire chain of means end reasoning employed by the opposition excludes the killing of civilians. Nevertheless, this looks like a morally impermissible terror bombing that should be discredited by DDE. How might a proponent of DDE who would like to see the doctrine discredit this action plan respond?

One way would be to adopt a principle such as the following:

If an agent intends to do D so as to make it appear that P while foreseeing that doing D will make it the case that P, then for the purposes of employing DDE the agent is to be taken as intending that P.<sup>9</sup>

With this principle in hand one could argue that the opposition does indeed directly intend the deaths of the civilians;

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the opposition wanted to make it appear (to the enemy) that the civilians were dead, and adopted a strategy that the opposition could clearly foresee would make it the case that the civilians were dead.

There are two problems with the adoption of this principle. One is that we have given up on the commonsense notion of intending as a *means* which was taken to be the conceptual basis for DDE. In Johnston's case, unlike Bennett's, killing civilians does not play *any* causal role in bringing about the enemy surrender. That is its beauty, some might suggest. The enemy is provoked to surrender simply by being made to believe civilians are dead based only on what it observes on its war room screens; killing civilians plays no useful role in encouraging this belief. What the opposition needs is a means of encouraging enemy belief formation; what is causally efficacious in our sense is simply detonation of the nuclear weapons themselves, not death.

But this problem is only part of a larger problem with the proposed supplementary principle. The larger problem has to do with the phrase "for the purposes of employing DDE the agent is to be taken as intending that P." DDE is best understood as a principle for discriminating between morally permissible and morally impermissible action plans (plans that have been practically adopted henceforth) based on the concept of intention, specifically the notion of intention as a means (instrumental intention) versus foreseeability as a side effect (what Jeremy Bentham called indirect or oblique intention if intention at all). This concept has a perfectly secure place not only in philosophical discourse but also in ordinary commonsense, and its place in each is secure *prior* to and *independently of* any encounter with a principle such as DDE. DDE is a *hypothesis about the usefulness of the intention/fore-sight distinction* (or equivalently about the usefulness of the notion of *intention as a means*) as a basis for morally discriminating between some action plans. If DDE fails to secure what some might desire as a moral distinction between a specific set of action plans we should not modify the concept of

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what is intended as a means to make the hypothesis more attractive. Rather, we should either find some other way of looking at the matter that leaves the notion of intention as a means as we found it or, if this fails, simply go back to the essence of the basic modern formulation of DDE: the difference between what is directly intended as a means and what is merely foreseen as a side effect *sometimes* plays a part in distinguishing impermissible actions (firing weapons in such a way as to produce civilian deaths so as to demoralize) from permissible ones (firing weapons in such a way as to produce civilian deaths while endeavoring to destroy a cache).

In an earlier paper on DDE I spotlight what I still take to be the dubious practice of “backsolving.”<sup>10</sup> This sinister-sounding activity simply involves looking at a set of scenarios (action plans), forming a judgment that one may be morally permissible while the others may not be morally permissible, then resolving corresponding effects into the intended and foreseen in such a way as to secure the prior judgment. I claimed that such a practice would render DDE “a suspiciously if not viciously circular evaluative principle.”<sup>11</sup> Alison McIntyre makes a similar point more perspicuously in her outstanding essay on DDE:

In order to apply [D]DE in unclear cases there must be some criterion for distinguishing what is intended from what is merely foreseen. To avoid circularity, the distinction underlying [D]DE must be drawn in a way that does not directly or indirectly reflect judgments of permissibility.<sup>12</sup>

I am sure that some if not many moral theorists are more relaxed about the idea that at least sometimes the ascription of intention itself may be inextricably bound up with moral evaluation, that “N intended to x” sometimes simply *is* and should properly be regarded as a morally “loaded” phrase. (This can be taken ambiguously; I am not here concerned with the practice of putting so-called “thick” concepts in place of “x.” I am rather concerned with interpreting “intention” as a thick concept). While I recognize that some theorists are comfortable with this idea, I am somewhat more sympathetic to DDE when DDE is understood simply as a

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hypothesis about the moral significance of a rather more austere philosophical concept of intention.

#### 4. COMPLEX INTENTIONS, INTENDING-AS END AND “CLOSENESS”

This being said, there is a traditional way of looking at Johnston’s puzzle case that might enable DDE to secure a negative evaluation for the opposition’s action plan. This way traces back to relatively early papers by Philippa Foot and Wilfrid Sellars, and plays on the notion of “felt closeness” between effects in determining what an agent (directly) intends rather than merely foresees.<sup>13</sup> It can be argued that the commonsense concept of intention, and even the philosophical concept which I have argued also stands *prior* to and *independently* of DDE, does not allow a clean separation of components of an action into the directly intended and the merely foreseen when those components are sufficiently close together. It can be argued, for instance, that in some sense an intention to detonate nuclear devices over civilians just *is* an intention to kill the civilians, *prior* to and *independently* of any appeal to DDE. Very strictly speaking, we may want to say that killing civilians forms a *proper part* of the complex intention that the agent has adopted as his means (the agent intends to: [detonate nuclear devices and kill civilians]). In the spirit of Sellars we might call this a *limit complex intention* to underscore the tight linkage between the components (in this case detonating and killing). Alternatively and perhaps better, it can be argued that an intention to detonate nuclear devices over civilians needs to be linked to a (distinct) intention to kill civilians so long as we presume the agent to be rational. On this latter proposal, closeness demands that a rational agent cannot have the former intention without at the same time having the latter. If either of these principles for what may be called *intention consolidation* (there is just one limit complex intention or there are two distinct intentions that are inseparable) is acceptable, then DDE will deem the

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opposition's action plan impermissible, which might be pleasing to some.

By proposing what I am calling a principle of *intention consolidation* I am *not* simply endorsing what Michael Bratman calls the "Package Deal," (PD), according to which an agent directly intends all of the foreseen aspects of a proposed action (plan) whenever the agent has seriously considered these aspects in the course of her deliberation. My rejection of this way of looking at Sellars' theory of action encourages my introduction of the terminology *limit complex intention* to identify cases where the linkage between one perceived effect and another is too tight to allow for any clean separation across the intended/foreseen divide. PD reflects a commitment to a certain model of practical reasoning involving (at least) a broad principle of holistic choice and a broad principle that choice of a scenario entails intention(s) to secure all (significant) aspects of the scenario. Without embarking on a technical excursus, suffice it to say that some if not all of the general principles that taken jointly entail PD strike me as too strong, and Bratman does a nice job of showing that at least one fails to accord both with our commonsense concept of intention and with his admirable theory of rational planning. My principle of intention consolidation is rather a *restricted* principle bound up specifically with the notion of closeness introduced by Foot.<sup>14</sup> One way to countenance limit complex intentions (or tightly linked distinct intentions) without wholeheartedly endorsing PD (and thereby completely obscuring the intuitive moral difference between the basic SB and TB cases that DDE is thought to capture) is to see them as properly ascribed exactly when effects are excessively close in Foot's sense. Which is nothing more nor less than to say that *an intention to A forms part of a limit complex intention C that includes B (or is tightly linked to an intention to B) just when A and B exhibit felt closeness*. We do not want to say simply that any significant and regrettable aspect of a proposed action plan of which the agent is aware should be taken as intended; rather we want to say that some



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significant and regrettable aspects of action plans are too tightly bound to the express means to be excluded from the ambit of intention, either instrumental or final. A difference that makes a big difference.

Take the following as an illustration essentially borrowed from Hart and Foot. A fat man is blocking the airway to a vault containing two trapped safe-crackers. Supposing they form the joint intention to dismember the fat man as a means to getting needed oxygen, we can say sensibly that the safe-crackers jointly intend to kill him (or maybe slightly better: the safe-crackers jointly intend: [to dismember the fat man and to kill the fat man]). Dismembering a man and killing him are too tightly linked together, this despite (we may prefer to say) the fact that killing the fat man itself seems to be no part of the means. Here we have more than a regrettable aspect of a proposed course of action of which the agents are aware; we also have felt closeness between the express means and the regrettable component. Sellars' own view seems to commit us to intending an unreasonably broad range of aspects of proposed action plans. By adding the requirement that the aspect in question be not merely significant, regrettable and available to the agent (in the sense of being something of which the agent is aware) but also tightly bound to the express means employed we properly narrow the scope of intention where intention is being "thinly" construed.

It is very important to recognize what *not* to look for in what has just been suggested. Most importantly, *no* effort is being made to eliminate the roughness of Foot's notion of felt closeness by making appeal to something clear and distinct. What is being offered instead is a rather ordinary way of thinking about intention itself that at once interweaves with the notion of closeness yet can legitimately underwrite the DDE (remember: no "backsolving" allowed). Looking back to McIntyre's sensible constraint quoted above (fn. 12), a principle of intention consolidation (either version) is an attempt to articulate some contours of a suitably austere ("thin," non-morally-evaluative) concept of intention that

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nevertheless recognizes that “the standard for what counts as intended must not be so narrow as to count *any* regrettable aspect of one’s means as a consequence that is merely foreseen.” [emphasis mine]<sup>15</sup> To reiterate: no rabbit, no hat. Admittedly there may be a measure of benign circularity insofar as intentions are to be consolidated just in case (some) effects are “too close,” but there is no hint of viciousness. On the other hand, those theorists who find the notion of felt closeness hopelessly vague (rather than just vague) have no reason to feel any better about the conditions under which intentions are to be consolidated. Aristotle’s dictum about the limits of fruitful analysis may be applicable here. To my knowledge no one has managed to eliminate (or analyze) the notion of felt closeness in favor of (or into) a useful precise standard, though Bennett certainly gave it an impressive go.<sup>16</sup> It is mainly for this reason that I cannot manage three cheers for closeness.

Indeed, Foot goes out of her way to point out that a notion like “closeness” in this context is bound to involve judgment calls and slippery slopes, but she writes this off as a danger of making philosophical distinctions that attempt to reconcile analysis with reflective common sense (at any rate this is how I read Foot).<sup>17</sup> If this is right, then we might be right to say that the opposition has adopted a morally impermissible action plan just insofar as it has adopted killing civilians as (part of) a means to a good end. We would say this just in case there is only one (limit complex) intention with two relevant components (detonating nuclear devices and killing civilians). Alternatively we might be right to say that the opposition has adopted a morally impermissible action plan just insofar as that action plan includes a direct intention to kill civilians, an intention that is tightly linked to the intention to detonate nuclear devices as a means. On the latter account the killing of civilians is not directly intended as a *means* to demoralizing the enemy, but is rather simply directly intended as an *end*. The opposition is forced to adopt killing civilians as an end in virtue of its rational recognition

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that detonating the nuclear devices and killing the civilians are (in a vague and analytically irreducible sense) tightly linked.

The notion of closeness clearly does the work through either of two principles of intention consolidation.<sup>18</sup> One may say either that due to the closeness between detonation and killing an intention to detonate nuclear devices just is part of a limit complex intention to kill civilians and hence the action plan is morally impermissible under DDE, or one may say that due to the closeness between detonation and killing a rational agent cannot but directly intend the deaths of civilians insofar as he pursues an action plan that makes use of nuclear detonations as a means, equally unacceptable according to DDE. Whether or not a philosopher feels inclined to accept either of these approaches depends on the extent to which he or she feels the notion of closeness is doing a disservice to the notion of intending as a means (I believe it does do this), or, under the latter formulation, the concept of direct intention itself (I believe it does not do this). Some may simply be unwilling to concede either way in which the opposition might be said to directly intend the deaths of civilians, as (part of) a means or as an end. This is a tradeoff, but at least this tradeoff applies to the very concept of intention rather than twisting that concept in the context of an application, namely DDE.

Note that if we adopt the notion of limit complex intentions we face a choice as to how to construe DDE. Either DDE simply continues to prohibit actions done employing means such as killing civilians (bad means) and the proper parts of a limit complex intention can be resolved into direct intentions to (say) detonate nuclear devices and kill civilians, thus making Johnston's bomber a bad actor for straightforwardly directly intending the bad, or we can insist instead that acceptable limit complex means to the end not include killing civilians as a proper part. The latter choice forces us to modify the conditions for impermissible action with which we began the essay slightly, but may have an advantage in

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that it does not commit us to the strong principle that intend to: [A and B] involves intending A and intending B simply speaking. I suggest that we adopt the former approach in the interests of preserving whatever intuitive appeal limit complex intentions might have, although ultimately I suspect we will be somewhat better off arguing that in cases of closeness what is really going on is that the bad has been adopted as an end for reasons just adduced.

#### 5. TARGETING

Suppose we roughly follow Foot and adopt the principle of intention consolidation according to which (some) foreseen effects that are sufficiently close to what is intended as a means to a good end are themselves directly intended as ends. I now suggest that whether SB can be morally distinguished from TB depends on the particulars of the specific variation at hand. We have seen how Johnston's case can be classified by DDE as morally impermissible. Now suppose first that the munitions cache is located directly beneath a school, so that the only way to hit the target is to drop the bombs on the school itself. We may go further and stipulate that the pilot actually aims his bombs at the civilians exactly because their movements inform his weapons guidance systems as to the precise location of the cache (in this case the civilians may or may not be located directly above the cache; a rough and ready example is the use of infrared to locate and destroy a small plutonium supply known to be near the civilians). In such cases (most clearly the latter), it can and probably should be argued that there is no morally significant difference between SB and TB.<sup>19</sup> (Call this last pair of modifications TarB). The relation between the civilians and the (primary) target makes it the case that an intention to destroy the munitions cache either just is a proper part of an intention to: [destroy the cache and kill civilians] or (as we are now speaking) carries with it an intention to kill them. Support for this interpretation can be found in cases where enemies use human shields so as to dissuade would-be strategic

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bombers from completing their missions. If a terrorist is holding a hostage in front of his body the DDE will not sanction firing a bullet through the hostage and into the terrorist; this action plan involves a direct intention to kill an innocent, even though the shooter views this aspect of the plan as useless and regrettable. I contend that it is precisely because one needs to form an intention to kill an innocent in the human shield case that soldiers of good will are hamstrung by the situation. The same holds true for TarB.

It is important to recall the stipulation that the physical possibility of SB successfully bombing the munitions cache without killing the civilians is negligible. The modifications that characterize TarB do not alter the physics of the case in any practically significant sense. That many reflective people think there is a moral difference between SB and TB even after the stipulation is emphasized is a curious psychological fact. What I have most recently suggested is that TarB seems much more morally problematic than the basic SB case. My hypothesis is that TarB (and appropriately specified human shield cases) turn innocents into *targets*. While the sense in which innocents are targets in TarB but not basic SB has no effect on the likelihood (physical probability) of their being killed, and it is a weaker sense of being a target than in the basic TB case, I suggest that the weaker sense can be enough to draw the killings into the scope of direct intention. The hypothesis is meant to explain why TarB strikes many as morally impermissible and in particular how DDE might secure this evaluation. The hypothesis also happens to be plausible in many if not all of the cases I discuss in this essay. I am certainly not, however, suggesting that every judgment of excessive closeness trades on identifying the weak sense in which the bad effect involves targeting.

TarB has an interesting everyday (near) parallel. Tuna fishermen regularly fish for schools of tuna by tracking dolphins, which are easily visible and swim right over the tuna. The fishermen cast their nets over the dolphins, often killing them, so as to catch the tuna swimming below. It can be reasonably

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argued that the fishermen directly intend to catch (and kill) dolphins even though they would much prefer not to. If we think of dolphins as innocent victims the near parallel to TarB becomes clear.<sup>20</sup> It strikes me that reasonable theorists can reasonably disagree over the question whether in each of these cases the killing of innocents is directly intended. But as I state elsewhere we really must qualify if not abandon altogether the notion that an intention to *x* *requires* a desire to *x* in any ordinary sense of desire. It is certainly true that an intention to *x* *regularly* involves a desire to *x*; but the commonsense concept of intention is entirely appropriate to some cases in which an agent regretfully “plumps” for an option with unwelcome aspects, at the very least those cases where the unwelcome aspect is tightly linked to the means. (“I intend to *x* but I do not want to *x*” is a perfectly respectable thing to say; at least the plain man says it all the time). Here I register a mild (but predictable) quibble with one of McIntyre’s suggestions as to what a suitable standard for determining intended harm should look like:

At the very minimum, a full account of [D]DE would have to include a way of regimenting ordinary talk about intention and foresight in such a way that regretful, instrumental intending of harm for the sake of a good end (which is, after all, the intended sphere of application for [D]DE), is not ruled out by terminological fiat. When an agent acts for the sake of a good end and does not view the harmfulness of the harmful means as the aspect of it which is useful, that alone should not show that the harm was merely foreseen; otherwise [D]DE would prohibit only the plans of sadists, torturers and psychopaths.<sup>21</sup>

I quibble with the notion that [D]DE demands a regimentation of “ordinary talk about intention.” I am not yet persuaded that [D]DE *demand*s anything; what I have been trying to do is show that our ordinary concept of intention (instrumental and final) plays an illuminating role in distinguishing some morally permissible plans from others that are not morally permissible, and more specifically that [D]DE is a serviceable hypothesis concerning the relationship between intention, foresight and moral permissibility. Sadly, the key notion (closeness) is vague and the salient principle (intention

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consolidation) is a little “hinky,” at least with respect to our ordinary notion of a *means* (this is why I prefer the second formulation of the principle). We either need to broaden our conception of what counts as means to an end so as to draw some unpalatable aspects of the action under the former term, or broaden our conception of what counts as a directly intended end so as to include the same unpalatable aspects as ends in themselves. It seems reasonable to say that sometimes the bad aspect is just too closely linked to the means to fall outside of the ambit of intention altogether, and the *best* way to keep it within this ambit is to designate it as intended as an end in itself. The cases in which we want to say this have to be sufficiently few and far between lest we end up distorting the concept of intention in the service of DDE, something we expressly do not want to do. Two cheers.

By putting Foot’s notion of closeness to work (and rather selectively borrowing from Sellars’ analysis of intention) so as to allow for the moral permissibility of SB but not TarB, I am trying to preserve the integrity of DDE as an evaluative tool without introducing controversial claims about conceptual, logical, or metaphysical closeness (inclusion, connection, identity) between effects. In each of the cases I consider there is, I believe, conceptual, logical and metaphysical space between the effects in question. Here I find myself in nearly complete agreement with (later) Bennett.<sup>22</sup> Nevertheless, it is my contention that if we do not offer some admittedly rough and ready rationale for blocking extremely fine-grained ascriptions of direct intention by using one of the proposed principles of intention consolidation DDE will simply issue absurd pronouncements about the moral permissibility of patently unacceptable courses of conduct. To say this is consistent with my stated disinterest in “regimenting” the ordinary concept of intention with respect to a specific sphere of application (DDE). This is so because some extremely fine-grained ascriptions of intention can (and I believe should) be described as ridiculous distortions of the concept of intention itself.<sup>23</sup>

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We have noted Foot's suggestion that whether or not two effects are too close together to allow that one may be simply foreseen rather than directly intended demands judgment and is open to criticism of the sort typically offered when judgment of this sort is involved. The fact that DDE may or may not make moral distinctions when applied to variations on SB and TB depending on the details of the case at hand is I think hardly lamentable, however. Indeed, looking at DDE in the way I propose helps to shore it up against criticism that it creates an avenue for people to "get away with murder," so to speak. Details specific to the case at hand (e.g., TarB) determine whether or not a bad effect can be classified as merely foreseen and therefore open up the door to properly nuanced applications of DDE.

#### 6. BENNETT AND "PLAIN MAN'S INCONCEIVABILITY"

After an admirably thorough examination of DDE culminating in the identification of what he calls "the tight-binding problem," which is basically just the problem of specifying a criterion or set of criteria for rejecting resolution of some aspects of some action plans into different classes (intended, foreseen),<sup>24</sup> Bennett rather half-heartedly offers a cheer for the following criterion:

The best I can find is rather loose, but it may be the whole truth about our intended/foreseen distinction. Not only is there no chance of turning the ashes back into a building, or the smithereens back into people [TB], or of crushing the baby's head without killing it – these things are what the plain man would call *inconceivable*. We can fairly easily imagine getting technology that would allow bombs to be aimed much more precisely, or would allow a fetus to be brought to term outside the mother's body; whereas the idea of destroying the head but not the baby, or of restoring a person who has been burnt to a cinder, is sheer fantasy. Without denying that it is conceptually possible, something God could do, we have not the faintest idea of what it might be like to have the means to bring it about. That, I suggest, is the 'tight binding' we have been looking for.<sup>25</sup>

Although in fairness Bennett does not address TarB, I do not see how his "plain man's inconceivability" (PMI) test will



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secure the proper outcome in the proper way (I take it as rather obvious that TarB is impermissible, and nearly as obvious that this is so because killing is directly intended, contra DDE). In fact, I find the PMI test rather elusive; I can certainly follow the examples he provides, but I do not have any clear sense of how to “go on,” even to the relatively simple case of TarB. Obviously the PMI test will not permit an agent to kill A while merely foreseeing the death of B where “A” and “B” are (known to the agent to be) co-referential proper names (say “David Banner” and “The Hulk.”)<sup>26</sup> I have no idea whether the PMI test will permit an agent to kill A while merely foreseeing the death of B where “A” and “B” name Siamese twins who share certain vital organs. But I am pretty sure that DDE will not permit this last action. Nothing said so far is knockdown; I am merely registering a reasoned preference for my “loose” approach to the tight-binding problem as opposed to Bennett’s own. Bennett’s PMI test seems to force one more (very difficult!) thought than my approach.

In any event, let me close with two cases that seem to provide some additional support for the idea of making use of the notion of closeness. The first is a classic recounted by Foot herself.<sup>27</sup> A party of cave explorers has through misadventure become trapped in a cave having only one exit. At present a fat member of their party is hopelessly wedged in this exit, and as luck would have it flood waters are rapidly rising in the cave, threatening to drown them all. The explorers decide to strap a stick of dynamite onto their fat companion with the aim of clearing the exit. It can be argued that this plan is permissible under DDE because what the explorers directly intend is to clear the exit with the foreseen but unintended side effect of killing the innocent fat man. But many would find this a foolish evaluation. One way to avoid this result is to say that a direct intention to clear the exit by blowing the fat man to bits carries with it a direct intention to kill the fat man. As before we can use closeness in the context of a principle of intention consolidation in one of two

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ways: either we can say that a direct intention to blow the fat man to bits is bound up with an intention to kill him in the sense that both are parts of a limit complex intention that is strictly the means, or we can say that a direct intention to blow the fat man to bits requires adopting a (distinct) intention to kill him as an unwelcome end in itself. When considering these proposals it is worth keeping in mind that just because in some ordinary sense, perhaps nearly every ordinary sense, an outcome is unwelcome, this does not guarantee that that outcome is unintended. It can be reasonably argued that in this case the explorers have settled on a plan that includes killing the innocent fat man as an intended component. Since the killing is directly intended DDE condemns this plan.

The second case I wish to consider is somewhat similar. Suppose an FBI agent wants to collapse a building housing a terrorist cell. He notices a hostage wearing a bandolier of explosives standing right beneath the primary support column to the structure. As luck would have it the FBI agent has only a firearm and very little time to act so as to destroy the terrorist cell. So he fires his bullet at the bandolier worn by the hostage, blowing the hostage to smithereens and collapsing the building with the force of the explosion of the bandolier. Now one can make a case that what the FBI agent directly intends is to explode the bandolier as a means to collapsing the building and ultimately destroying the terrorist cell, with the foreseen but unintended side effect of killing the hostage. But once again employing our rough and ready principle of closeness we can just as well and perhaps better say that the FBI agent directly intends to kill the hostage. Killing the hostage can be regarded as one component of the FBI agent's limit complex intention (to: [explode the bandolier and kill the hostage]), or it can be regarded as a distinct directly intended end that is tightly linked to the intention to explode the bandolier which is the FBI agent's means to his (primary) end. If we take either of the last two lines on the FBI agent's plan DDE once again condemns the chosen

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course of action insofar as it involves a direct intention to kill an innocent. I think that in each of the two cases I have just outlined proper application of DDE making use of the notion of closeness and a suitably austere (thin) principle of intention consolidation provides us with the correct moral assessment. Both cases involve a direct intention to kill an innocent and for that reason are to be treated as impermissible at least insofar as one maintains an absolutist stance regarding such killing, as traditional proponents of DDE regularly (but not always) do.

### 7. CONCLUSION: INTENTION, UTILITY AND DESIRE

What I take to be the most disconcerting aspect of the proposed principle of intention consolidation is that in either form it jars ordinary sensibilities about intention. The first formulation challenges a commonsense connection between the notions of *means* and *utility*. We normally think that a means to an end is useful with respect to securing that end. In Johnston's case (for example), killing civilians is useless in any ordinary sense of the word. It is a bit strained to say that nevertheless killing civilians is (part of) the means. The second formulation challenges a commonsense connection between intended ends and desire. We normally think that something that is intended as an end is in some sense desirable for its own sake. In Johnston's case killing civilians is totally undesirable in any recognizable sense of the word. To say that killing civilians is not desirable for its own sake is laughably obvious. Yet while I have a difficult time making sense of the notion of a wholly useless means, I have almost no trouble embracing the notion of intention sans desire, or even intention with disgust at the prospect of the outcome's realization. As hinted above (see fn. 14), sometimes "I intend to x" closely resembles a simple self-prediction, or the acknowledgement of a commitment, but without any trace of endorsement of x-ing itself. If this is indeed idiosyncratic, it is philosophical idiosyncrasy.<sup>28</sup> The plain man can readily grasp

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the notion of intending the undesirable in the relevant (ordinary) senses of the terms.

Finally, let me defuse one possible line of objection to the second, preferred formulation of the intention consolidation principle, one specifically concerning desire. One might argue as follows: SB believes that civilian deaths are an inevitable by-product of what he instrumentally intends (bombing the weapons cache). This is to say bombing and killing are strongly correlated. So ordinarily (at least) the civilian deaths provide evidence that the bombing has been successfully executed. In this sense, the sense in which an agent desires evidence that his instrumental intention has been successfully executed, SB does indeed desire the civilian deaths. Two points: first, this sense in which SB (may) desire civilian deaths is quite different from either instrumental desire or desire for x for its own sake (the latter often attaching to final ends). It is normally not a *motivating* desire at all; it is rather a desire that arises after one has acted, a desire to see that one's intentions have been successfully executed. We can call the latter sort of desire an *evidentiary* desire. Second, to the extent that such a desire takes on any sort of motivational significance, I suggest that our moral evaluation of the action plan may change. In the specific case of SB, the sorts of stipulations that transform an *evidentiary* desire (as we might call it) for civilian deaths into a *motivational* desire for them introduce at least the weak sense of "targeting" that can make the bombing morally impermissible. If the pilot is using the civilians to guide his bombing, either by aiming at them in the first place (much like the tuna fishermen case) or by checking on their deaths to determine whether or not to double back and try bombing again (rather than merely checking so as to make a proper radio report to HQ), then the action plan may well be objectionable. TarB itself admits of degrees.

David Lewis famously remarked that there are very few knockdown arguments in philosophy, offering Godel and Gettier as possible exceptions that prove the rule. At the end of the day I suspect that philosophers will simply divide on

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how best to analyze a number of the cases I have presented. Take the dolphin/tuna case. I have suggested that the sort of “targeting” of dolphins (to be taken as innocents for our purposes) that the tuna fishermen regularly engage in is properly described as directly intending harm to innocents. Describing the action plan this way leads rather straightforwardly via double effect to a determination that this method of tuna fishing is morally impermissible, as we have seen. But to suggest that a plausible alternative account of the case is unavailable would be, I think, disingenuous at best. One might be inclined to say that the fishermen do not directly intend harm to dolphins, rather they simply intend to cast nets over dolphins while foreseeing that harm will most likely most likely come to them. Under specified variations some philosophers will even say that the fishermen intend to do things to the dolphins that will inevitably bring harm or even death to them without directly intending harm or death. It is precisely the availability and (in at least some cases) plausibility of just this sort of assessment that led Quinn to abandon traditional formulations of double effect in terms of directly intended harm to innocents and to develop a new version that prohibited some sorts of harmful “involvement” of innocents in one’s plans. Supposing that for now we suspend assessment of the ultimate success or failure of Quinn’s proposed test for moral permissibility, the question still remains as to whether some instances of targeting are best characterized as directly intending to harm or if directly intending to harm should have a more restrictive application. My own inclinations are by now surely clear and just as surely open to dispute.

#### 8. APPENDIX: THOMSON’S CHALLENGE AND BENNETT’S CHAIRMAN

A recent and provocative paper by J.J. Thomson suggests (in effect) that a natural and very common way of interpreting DDE reveals it to be not merely wrong but absurd.<sup>29</sup> The matter is worth considering in some detail outside the body

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of the main text. Consider two scenarios: in one a doctor administers morphine to a terminally ill patient with the intention of alleviating suffering while foreseeing that the morphine will ultimately induce respiratory failure and death. In the other scenario the doctor supplies exactly the same dosage of morphine but as it happens intends the death of the patient (the doctor perversely enjoys watching people die of respiratory failure). Most people condemn the second doctor. Some people condemn the first doctor. Most people condemn the second doctor much more forcefully than the first. Some reflective people think that the nearly universal difference in reactions is explained by the fact that the second doctor acts with bad intent whereas the first one does not, or at least does not clearly do so. Proponents of DDE often interpret the phenomena as providing evidence for DDE itself.

Thomson's major move is to distinguish morally permissible action from morally respectable actors. In essence, while she agrees that the second doctor is a bad person for having bad intentions, she rejects the notion that the action that the second doctor performs is morally impermissible. More precisely, she contends that the presence or absence of bad intentions on the part of the actor is irrelevant to moral assessment of the action itself. The action is morphine administration (to a terminally ill patient). This action can be done with bad intent or good intent, as we have seen. Whether or not morphine administration (to the terminally ill) is morally permissible may depend on many factors, but one thing that evaluation of the act itself does *not* depend on is the particular intention with which the agent acts. As Thomson puts it, "I suggest that [a given doctor's intention in acting] has no bearing on whether it is morally permissible for her to act."<sup>30</sup>

This is a very interesting challenge to traditional defenders of DDE. It is important to note first off that at least *prima facie* it *is* a challenge. One response in the recent literature essentially concedes that construals of DDE according to which the token intentions of a particular agent affect the moral permissibility of the agent's action(s) are "absurd" as

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Thomson suggests, then goes on to contend that properly understood DDE makes no such claim.<sup>31</sup> More specifically, DDE is recast as follows: “An act of the relevant type (e.g., bombing the munitions plant) is *permissible* just in case there exists a justification for it in terms of a sufficiently worthy end that *can* be pursued through so acting *without* intending anything illicit as a means.”<sup>32</sup> I am uncertain whether this is the “proper” way to understand DDE as the author advertises. Bennett, for one, thinks that DDE forbids a specific sort of intention. Specifically, DDE demands (in part) that “the agent does not intend the bad as a means to the good,” where the ambiguity surrounding “intending the bad” is resolved as follows: “to obey this [command: do not intend the bad as a means to the good] is to avoid acting in a way that one thinks will lead to the [Good-out-of-Bad] causal structure, and being motivated to act by that belief.”<sup>33</sup> Bennett goes on to give an example illustrating what he takes DDE to be (in part) “commanding”: a Chairman promotes x (who is brilliant), intending by this means to make x happier and thus more likely to remain in the department. The Chairman also expects the promotion of x to have the effect of making y (who is competent) so despondent that y will leave the profession, thereby leaving the department, thereby contributing to x’s happiness in a different way. Bennett thinks that the standard interpretation of DDE “says that it may be morally all right for [the Chairman] to promote x knowing that this will contribute to x’s happiness through y’s departure, *but only if what motivates* [the Chairman] *is not that connection but something else.*”<sup>34</sup>

Even if it is not “proper” in the sense of accurately characterizing DDE, the proposed reformulation seems plausible in its own right, which is rather important. Take the act type [inflicting horrible pain on an innocent]. It is not only permissible to do this in the case of dentistry, it is permissible to intend to do this (for diagnostic purposes), and it may even be required in an ordinary sense (professional responsibility demands using the most cost-efficient means of detecting and

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treating gum disease). If dentistry no longer has these features, at least it did in the Middle Ages. The strategy seems to be the following: probe various areas of the patient's mouth, trusting that the patient's pain response will guide the dentist to those areas that require work. So long as the dentist believes that there is damage to be repaired somewhere in the patient's mouth, it seems reasonable to claim that part of the dentist's action plan is to cause pain (maybe even horrible pain if the patient is believed to have an especially high threshold for pain and hence will be especially useless as a "damage-detector") as a means to providing care. The critical questions seem to be (1) whether what is permissible according to the reformulation (e.g., [inflicting horrible pain on an innocent]) is impermissible for a particular dentist if one adds only the detail that the particular dentist in question is a sadist and (2) is DDE supposed to be a moral principle that rules out badly motivated action or merely certain sorts of action types.<sup>35</sup>

I will illustrate the complexity of the last two questions by returning to the notion of terror bombing. Throughout this essay I have taken an apparent moral distinction between strategic bombing and terror bombing, or between two war-time pilots SB and TB suggestively labeled so as to distinguish their respective relations to distinct action *structure* types, to be paradigmatic vis-a-vis DDE. Now is the morally impermissible "thing" we are calling terror bombing identifiable without making any reference to the particular pilot's intentions? This is not an obviously "absurd" question. Suppose, much like Bennett's Chairman case, the following relations hold: bombing the munitions plant will disorganize the enemy and help to end the war, bombing the munitions plant will kill  $n$  civilians, the deaths of the  $n$  civilians will demoralize the enemy and help to end the war, and the pilot knows all of these things. Does it really seem *irrelevant* to the morality of his conduct (not just the quality of his character) whether or not the pilot intends to kill the  $n$  civilians? A different pilot could aim to end the war simply by blowing up the



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munitions plant. Thomson seems to think that our first pilot's "extra" intention is irrelevant to the permissibility of his conduct. The proposed reformulation of DDE makes the possibility of freely substituting a different pilot salient (in effect). Bennett would presumably contend that DDE condemns the first pilot's *conduct* because he happens to have the bad intention; he must think it does this, given that he thinks DDE condemns the *conduct* of a Chairman who merely regards y's predictable departure and the subsequent effect that this departure will have on x's happiness as a (further) reason for acting rather than as a nonconsideration.

As previously stated I am inclined to believe that the proposed reformulation of DDE (or something like it) is at least plausible regardless of whether or not it "properly" articulates the gist of DDE. At present I am unclear as to whether DDE was intended to be agent independent (i.e., unconcerned with particular motivations of agents in relation to act-structures) as the reformulation certainly is, and more importantly whether DDE should be interpreted that way. It is of course possible both that the proposed reformulation is true, that it does not capture the import of DDE, and that DDE puts distinct and proper restrictions on agents and actions. It is also possible that the proposed reformulation is true, that it does not capture the import of DDE, that DDE is best interpreted as Bennett suggests, and DDE is false. So while I demur with respect to Thomson's charge that DDE is "absurdly" concerned with particular motivations/intentions of agents in relation to act-structures in the way she describes, for now I take her challenge as a straight shot across the bow rather than as a "straw man argument" as some would have it.<sup>36</sup>

#### NOTES

<sup>1</sup> For readers unfamiliar with DDE a more precise formulation can be offered: an action may be morally permissible if (1) the end is good (2) the means is at least neutral (3) the foreseen bad effect is not directly intended and (4) the foreseen bad effect is proportional to the good end

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after which the actor strives. The expression “direct intention” traces back to Jeremy Bentham in his *Principles of Morals and Legislation* (New York: Hafner, 1948). Bentham contrasts it with “oblique intention,” which is equivalent to our regular usage of the expression “merely foreseen”. In this essay we use “intention” and “direct intention” (and “intended” and “directly intended”) as freely interchangeable but do not use the expression “oblique intention,” preferring instead variations on “merely foreseen”. In any event the above formulation of DDE is essentially that given by Warren Quinn in his “Actions, Intentions and Consequences: The Doctrine of Double Effect,” *Philosophy and Public Affairs*, 18 (1989), pp. 334–351. This is an interesting paper in that it attempts to avoid the notion of “closeness” between two effects of an agent’s action by introducing the notions of direct and indirect agency. Roughly, direct agency consists in “involving” persons in one’s plans in such a way as to further these plans precisely by way of the persons’ being so involved. While I find the paper provocative, I also feel that Quinn has essentially given up on DDE as it has traditionally been propounded insofar as he recasts the intention/foresight distinction in substantially different terms. For more on this see Jonathan Bennett, *The Act Itself* (New York: Oxford University Press, 1995), pp. 212–213, and Frances Kamm, ‘Non-consequentialism, the Person as an End-in-Itself, and the Significance of Status,’ *Philosophy and Public Affairs*, 21 (1992), pp. 354–389, esp. p. 378. Strictly speaking the formulation can be tightened to state that the good end must be pursued through the LEAST harm-producing means available; putting things this way takes us beyond the more modest claim that the bad effect must be proportional to the good desired. See Robert Nozick, ‘Review of Michael Walzer’s *Just and Unjust Wars*’, reprinted in his *Socratic Puzzles* (Cambridge: Harvard University Press, 1998) for further discussion along these last lines. The last point is rather important to military operations that put soldiers at increased risk through the pursuit of less damaging ways of destroying enemy military targets while foreseeing that one will produce massive civilian casualties. What one seeks is the least damaging way of destroying the military target consistent with both respect for one’s own soldiers’ welfare (including risks they may be asked to take) and respect for enemy non-combatants.

<sup>2</sup> Readers are encouraged to consult the Appendix for an outline and assessment of a distinctively provocative challenge to (standard interpretations of) DDE.

<sup>3</sup> The absolute prohibition against acting while directly intending to kill innocents is sometimes relaxed outside of the traditional (Catholic) literature. For expository purposes I will ignore this.

<sup>4</sup> Strictly speaking matters may be a bit more complex regarding causal efficacy. See my presentation of Bennett’s Chairman case in the Appendix to this essay.

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<sup>5</sup> Jonathan Bennett, 'Morality and Consequences', *Tanner Lectures on Human Values*, ed. S. McMurrin (Salt Lake City: University of Utah Press, 1980), esp. pp. 109–111. There is some reason to believe that Bennett's claim was intended to be dialectical.

<sup>6</sup> Here see Bennett: "I said that the intention was to kill [the civilians] so as to lower morale. But now that turns out to be too crude an account of the matter. All that was intended was that the people's bodies should be inoperative for long enough to cause a general belief that they were dead, this belief lasting long enough to speed the end of the war; there is nothing which requires, *through a causally downstream inference* [emphasis mine] that the inoperativeness be permanent; and so there is nothing requiring that the people actually become dead. Of course [TB] knew that the people would become not merely inoperative for a while but downright dead – he had no hope of achieving the lesser thing without achieving the greater. *But the greater thing is complex, and only one constituent of it was intended as a means.* Jonathan Bennett, 'Morality and Consequences', *Tanner Lectures on Human Values*, ed. S. McMurrin (Salt Lake City: University of Utah Press, 1980), p. 111. But see Bennett's later work *The Act Itself* for what may amount to a mild recantation (or at least recharacterization) of his treatment of TB. Although his best efforts to analyze the notion fail to eliminate vagueness, I suspect that he might offer at least one cheer for closeness at the end of the day. Bennett, *The Act Itself* (Oxford: Oxford University Press, 1995), esp. pp. 208–213.

<sup>7</sup> John Martin Fischer, Mark Ravizza and David Copp are wrong in suggesting that Bennett's treatment of TB is parallel to both craniotomy (skull crushing of a fetus to save a mother's life) and the case of the trapped cave explorers (I discuss this case later). TB straightforwardly adopts killing civilians as a *means* to making them look dead in his action plan. Philippa Foot's discussion of "closeness" between the directly intended and the foreseen has nothing to do with the matter at hand. See Fischer, Ravizza and Copp, "Quinn on Double Effect: The Problem of 'Closeness'," reprinted in P.A. Woodward, *The Doctrine of Double Effect* (Notre Dame: Notre Dame University Press, 2001), pp. 190–191.

<sup>8</sup> Johnston's puzzle case comes from his comments on my dissertation, *Essays on Ethics and Action* (Princeton University, November 1997). I have been reliably informed that this case very much resembles one proposed by David Lewis. Presumably the reference is to a case attributed to Lewis and discussed by Warren Quinn in his "Actions, Intentions and Consequences: The Doctrine of Double Effect." The curious reader can compare. Both cases strike me as characteristically crafty ways of salvaging the thrust of Bennett's attack on DDE in "Morality and Consequences."

<sup>9</sup> This principle was proposed to me by Gilbert Harman in direct response to Mark Johnston's puzzle case (personal communication). I have no reason to believe that Harman actually endorses it.

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<sup>10</sup> Neil Delaney, "To Double Business Bound: Reflections on the Doctrine of Double Effect," *American Catholic Philosophical Quarterly* 75(4) (2001), pp. 561–583.

<sup>11</sup> *Ibid.*, esp. p. 563.

<sup>12</sup> Alison McIntyre, 'Doing Away with Double Effect', *Ethics* 111 (January 2001): pp. 219–255, at p. 233. This essay is surely one of the most subtle and sophisticated that has been written on DDE. I hope that in what follows I can do some modest justice to the desideratum she cites immediately following the above remark: "In addition, the standard for what counts as intended must not be so narrow as to count any regrettable aspect of one's means as a consequence that is merely foreseen."

<sup>13</sup> Philippa Foot, 'The Problem of Abortion and the Doctrine of the Double Effect', *Oxford Review* 5 (1967), pp. 5–15. Along the broad outlines of what I shortly call "intention consolidation" see Wilfrid Sellars, 'Thought and Action,' in Keith Lehrer (ed.), *Freedom and Determinism* (New York: Random House, 1966), pp. 105–139. I should note that while Foot finds the notion of "felt closeness" appealing in that it blocks seemingly absurd applications of DDE, ultimately she is somewhat unsympathetic to the doctrine in this essay. Foot later comes to have a better appreciation for DDE in her "Morality, Action and Outcome," reprinted in Foot, *Moral Dilemmas and Other Topics in Moral Philosophy* (Oxford: Oxford University Press, 2003). See also G.E.M. Anscombe, 'Medalist's Address: Action, Intention, and 'Double Effect'', reprinted in P.A. Woodward (ed.), *The Doctrine of Double Effect* (Notre Dame: Notre Dame University Press, 2001), pp. 62–64 for a cautious endorsement of closeness.

<sup>14</sup> See Michael Bratman, *Intention, Plans, and Practical Reason* (Stanford: CSLI Publications, 1999), esp. pp. 139–164. As indicated above, a philosopher who would almost certainly endorse the first version of my proposed principle of intention consolidation according to which in certain cases the agent's intention is a (limit) complex one involving a regrettable component is Wilfrid Sellars. See his "Thought and Action," esp. pp. 131–136. If I take Sellars rightly, however, he may well endorse the idea that a marathon runner who realizes he is wearing a brand new pair of running shoes, does not want to wear them down, yet opts to run the Boston Marathon anyway directly intends to wear down his running shoes. This basically sounds like PD, and as I have suggested reflects too strong a commitment to viewing intentions as complexes which include undesirable components. But Sellars is not entirely clear on the matter; hence I introduce the notion of a Limit complex intention as a way of commonsensically weaving together Sellars' account of practical reasoning and Foot's appeal to closeness. Gilbert Harman (and probably Michael Bratman) would likely have us say that the runner *intentionally* wears down his running shoes without directly intending to do so. See Harman, *Change in View* (Cambridge: MIT Press, 1986), ch. 10 for the case of the

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sniper who (it is claimed) intentionally alerts the enemy as to his whereabouts by directly intending to fire his weapon. The ways that these accounts of what the marathon runner directly intends with regard to his running shoes (or what the sniper who alerts the enemy directly intends) repudiate G.E.M. Anscombe's thesis that an agent who intentionally *x*'s invariably directly intends to *x*, a thesis that Bratman has called "the Simple View," strike me as highly controversial. See Anscombe, *Intention* (Cambridge: Harvard University Press, 2001). I think that the best way of describing the marathon runner's case is to say that he *knowingly* (and *reluctantly*) wears down his running shoes. Similarly the sniper knowingly (and reluctantly) alerts the enemy. In neither case does the agent perform the act in question intentionally, and certainly does not directly intend to perform that act. If this is indeed the best way of putting matters, then Anscombe's thesis is left untouched. But maybe not for long; see Bratman, 'Two Faces of Intention,' in Bratman, *Intention, Plans and Practical Reason*. Discussion of this last attempt to undermine "the Simple View" is too complex and tangential to matters at hand. For present purposes it is enough to bear firmly in mind that what DDE disallows according to our formulation is directly intended bad action, not so obviously bad action that is done (merely) intentionally, knowingly, willingly, reluctantly, or what have you. It will, however, turn out to be an important contention of this essay that A intended to *x* does not preclude A *x*'d reluctantly. See also J.L. Austin, 'Three Ways of Spilling Ink', in Austin (ed.), *Philosophical Papers* (Oxford: Oxford University Press, 1990) for sensitive treatment of various adverbial modifications.

<sup>15</sup> But see below for a quibble. It is important to note that while McIntyre and I more or less agree on *how* to look at DDE, McIntyre has a rather different assessment of its usefulness as a hypothesis in moral philosophy. The title of her essay should be a giveaway (no cheers).

<sup>16</sup> Bennett, *The Act Itself*, op. cit.

<sup>17</sup> The case Foot has in mind is a classic one according to which DDE distinguishes craniotomies from therapeutic hysterectomies as a means to saving a pregnant mother's life. In craniotomy the skull of the fetus is crushed, whereas in therapeutic hysterectomy the cancerous uterus is removed. DDE traditionally allows the latter procedure while disallowing the former. The idea is that in the latter procedure the means, removal of the uterus, is neutral while skull crushing is not, being too intimately connected to killing. Hart countered by suggesting that the proper way to regard craniotomy is to view it as a neutral skull modification with the foreseen but unintended effect of bringing about the fetus' death. See H.L.A. Hart, *Punishment and Responsibility* (Oxford: Oxford University Press, 1968), p. 123. He did this because he, like Bennett, is critical of the idea of using what is intended as a means as an evaluative tool, and in particular is critical of DDE. Foot introduced closeness between effects

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precisely in an attempt to discount Hart's suggested reinterpretation of craniotomy.

<sup>18</sup> I suspect that Foot would favor the first of the two proposed principles of intention consolidation if either. I favor the second. The second requires a slight modification of DDE as it is standardly presented (e.g., the jointly sufficient clauses listed in fn1). The following additional condition should suffice: the means cannot be tightly linked to the bad effect.

<sup>19</sup> It is not uncommon for rogue states to try to hide weapons in the midst of civilians precisely so as to discourage civilized warriors from using advanced capabilities to destroy them. Saddam Hussein did precisely this during the Gulf Wars.

<sup>20</sup> Although it involves a departure from reality, we can modify the example as follows: suppose the tuna, still undetectable from the surface, are known to swim directly over schools of luminous tortoises. Fishermen who adopt the strategy of casting nets over the area indicated by the easily visible tortoises so as to catch the tuna strike me as being in exactly the same boat as their counterparts, which is to say that their targeting of "innocents" that they know they will catch and kill seems morally questionable.

<sup>21</sup> McIntyre, "Doing Away with Double Effect," op. cit., pp. 234–235.

<sup>22</sup> Bennett, *The Act Itself*, p. 209. Yet I maintain that despite the difficulties he sees with what he calls the "tight-binding problem," in the end at least one cheer is tossed up for closeness in the form of a claim that some comings-apart of effects across the intended/foreseen line are simply *inconceivable*, where I take him to be using this term in a rough and ready sort of way that would appeal to the plain man. See *Ibid.*, p. 213. Bennett and I differ somewhat in that I find solace simply in particulars of a case where he finds it in the plain man's capacities to conceive of alternative arrangements. This is not a terribly significant bone of contention, but I do suggest below that his approach may involve an additional level of remove. Finally, see *Ibid.*, pp. 224–225 for Bennett's minimal concession that in cases where the foreseen harm is not inevitable but only rather likely there may be space to give SB a minor moral advantage over TB insofar as SB can try to miss the civilians while bombing the munitions cache. Once again, one cheer. De gustibus. Hope springs eternal so far as concerns the project of providing greater precision to the rough notion of closeness, however. One way one might try to do this metaphysically would be to introduce a distinction between (merely) causal relations between states of affairs and constitutive relations between them. (Bennett investigates both causal and logical relations between states of affairs and rather convincingly demonstrates that neither of these relations is a good candidate, the former being too inclusive and the latter too exclusive. See *The Act Itself*, pp. 208–212). With this distinction drawn one could argue that what is intended cannot be distinguished from what is foreseen when

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the relevant states of affairs are related logically or constitutively. For example, the state of affairs that includes the explosion of the fat man in the cave may be deemed constitutively related (rather than merely causally related) to one including the death of the fat man. Talk of constitutive relations between states of affairs presumably derives from mereology (specifically the relation of part-whole). In any event, the main problem with this approach is that metaphysicians (including Bennett; see his *Events and their Names*) have a rather notoriously difficult time identifying necessary and sufficient conditions for one state of affairs to be constitutively related to another. For a nice overview see Thomas Wetzell, "States of Affairs," *The Stanford Encyclopedia of Philosophy* (Fall 2003 Edition), Edward N. Zalta (ed.). Whether one wants to say that the state of affairs that includes explosion (or skull-crushing, or what have you) is causally or constitutively related to one including death is by my lights merely a matter of stipulation. Accordingly, what looks like movement in the right direction so far as concerns the proper analysis of the rough notion of closeness really reduces to translation of a loose (but arguably common-sensical) way of talking into a meaningless but fashionable (?) idiom.

<sup>23</sup> I suspect that these distortions of the ordinary concept of intention flow from the entrenchment of the so-called "desire-belief model of intention" popularized by Donald Davidson. The plain man would probably say that the desire to *x* that this model demands of any intention to *x* is a desire in name only. Perhaps it would have been better to call the necessary pro-attitude something consistent with thoroughly despising the prospect of *x*-ing in the ordinary sense.

<sup>24</sup> Bennett poses the problem this way: "We need a principled basis for distinguishing units that are invincibly 'tightly bound' together, or pairs of items that are 'too close' for the expect/intend line to fall between them." Bennett, *The Act Itself*, p. 205.

<sup>25</sup> *Ibid.*, p. 213.

<sup>26</sup> I take it that "The Hulk" is a rigid designator masquerading as an ordinary definite description. I am actually more confident about this than about anything else in this essay. In any case I assume the standard distinction between epistemic possibility and metaphysical possibility inherited from Kripke, take the former to properly include the latter, take the former to correspond to our ordinary notion of conceivability, and take the latter to (properly) include all states of affairs relevant to the PMI test.

<sup>27</sup> Foot, *ibid.* Foot uses this example together with her notion of closeness between effects to draw a parallel with the case of craniotomy. Also see Anscombe, *ibid.*, pp. 61–64.

<sup>28</sup> See footnote 21 for tentative diagnosis. Note that the relationship between intention and belief seems more intimate. "I intend to *x* but I believe that I will not *x*" strikes me as a good bit stranger (if not

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nonsensical) than “I intend to x but I do not want to x.” Most action theorists agree that an intention to x precludes a belief that one will not x. Beyond this opinions vary.

<sup>29</sup> J.J. Thomson, “Physician-assisted Suicide: Two Moral Arguments,” *Ethics* 109, pp. 497–518.

<sup>30</sup> *Ibid.*, pp. 515–516.

<sup>31</sup> William J. Fitzpatrick, “Acts, intentions and moral permissibility: in defence of the doctrine of double effect,” *Analysis* 63(4) (2003), pp. 317–321.

<sup>32</sup> *Ibid.*, p. 320.

<sup>33</sup> Bennett, *The Act Itself*, p. 199.

<sup>34</sup> *Ibid.*

<sup>35</sup> McIntyre trenchantly investigates the relationship between [D]DE and malevolence (see esp. pp. 226–229). For a defense of the claim that DDE prohibits (otherwise permissible) acts if they are done with malevolent motives see Christopher Boorse and Roy Sorensen, ‘Ducking Harm’, *Journal of Philosophy* 85, (1988), pp. 115–134.

<sup>36</sup> Fitzpatrick, *op. cit.*, p. 317.

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