

A Defence of the Doctrine of Double Effect.

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Summary

A Defence of the Doctrine of Double Effect.

The defence of the Doctrine of Double Effect (DDE) that we propose involves accepting the idea that there is a distinction to be drawn between making judgements about the moral worth of a given agent, who either does or does not perform a given act, and making judgement about the moral permissibility or impermissibility of a given act. What we propose is that the DDE is made up of two quite distinct doctrines - each with its own function to fulfil. We refer to these two doctrines as the Intentions Doctrine and the Means Doctrine. It is our claim that it is through the application of the Intentions Doctrine that we can determine the moral worth of a given agent, and it is through the application of the Means Doctrine that we can determine the moral permissibility or impermissibility of a given act. Given that our concern is with how we are to determine the moral permissibility or impermissibility of a given act, the focus of this thesis is directed towards the application of the Means Doctrine.

This proposal stands in opposition to the way the DDE is traditionally presented. Traditionally the DDE has been presented as allowing the moral permissibility of an act that has two effects - one good (proportionately so) and one bad - provided that it is the good effect and not the bad effect that is intended by the agent who performs the act in question. It is our claim that it is the way in which the DDE has been presented that has left it open to the charge of delivering judgements that are either inconsistent with one another or are at odds with the way we intuitively think that a given case should be judged. This explains why the DDE is often regarded as being nothing more than a piece of sophistry. Our proposal is put forward as an alternative to those presented by Philippa Foot, Warren Quinn, Judith Jarvis Thomson and Frances Kamm.

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Introduction

The DDE has traditionally been regarded as being a doctrine that allows for the moral permissibility of an act that has two effects - one good (proportionately so) and one bad - provided that it is the good effect and not the bad effect that is intended by the agent who performs the act in question. Thus, the DDE has come to be regarded as being an intentions based doctrine. Hence, much of the concern about the effectiveness of the DDE to determine the moral permissibility or impermissibility of a given act has centred around the difficulty of determining the intentions of a given agent at a given time. Furthermore, the DDE has also been accused of delivering judgements that are either inconsistent with one another or that are not in accord with the way we intuitively think that those cases should be judged. In fact the DDE has often been regarded as nothing more than a piece of sophistry.

Hence, there have been a number of alternative proposals put forward to explain the moral differences between cases. Some of these proposals involve rejecting the DDE outright in favour of some other doctrine, while others suggests that the DDE needs to be used in association with some other doctrine. Moreover, some of these proposals accept the DDE as it is traditionally presented, others maintain that it needs to be reformulated. And some of the suggested reformulations are radical enough to make us question whether we can still regard them as being the DDE.¹ But all of these alternative proposals are meant to be able to explain the moral differences between cases without falling prey to the criticisms that have been made against the DDE.

As far as this thesis is concerned, we will restrict ourselves to looking at the proposals put forward by Philippa Foot, Warren Quinn, Judith Jarvis Thomson, and Frances Kamm. For each of these proposals in its turn does seem to offer a

¹ See Boyle, J. (1991) p. 483. Boyle claims that Quinn's revisions of the DDE is such that "what he defends is not DDE,...".

credible way of explaining the moral differences between cases. Thus, our aim is to examine each of these proposals in turn and explain why we think that, at some point or other, all of them warrant being rejected for one reason or another. That is, either because they deliver judgements that are not consistent with one another, or because they deliver judgements that are highly counter-intuitive or because they are unduly complicated, unwieldy or under-motivated.

We will begin by examining Foot's proposal that there is a suitable replacement for the DDE to be found in the doctrine that has come to be known as the Doctrine of Doing and Allowing (DDA). However, although at first it seems plausible to think that the distinction between doing and allowing can explain the moral difference between cases, this proposal soon runs into difficulties. For it is not at all clear just how we are meant to determine when a given act counts as *a doing* and when it counts as *an allowing*. The example that highlights this problem with Foot's account is a case that we will refer to as the Beggar example. And the notion that the application of the DDA is problematic is supported by the fact that Foot has come to modify her proposal. For Foot now accepts that a total rejection of the DDE is not possible. This is because she now recognises that the DDA, is at least, to some extent dependent on the distinction that the DDE makes between what is and what is not intended. Foot's modified proposal is very much in keeping with, and possibly triggered by, that of Warren Quinn. Thus, it is to Quinn's account that we turn in Chapters 2 and 3.

In Chapter 2 our concern is with Quinn's approach to the DDA. Quinn points out that the only way we can successfully apply the distinction between doing and allowing is by using the distinction that the DDE makes between what is or is not intended. However, it is important to appreciate that Quinn is not implying that the DDA and the DDE are in fact one doctrine. For, on the contrary, as we shall explain in Chapter 3, Quinn maintains that the DDE is a quite separate doctrine. However, as we shall also see, Quinn does not defend the DDE as it is traditionally presented; rather he defends what he regards to be "a new and better formulation"²

2 Quinn, W. (1993) p.184.

of it. Quinn's new formulation of the DDE is meant to allow us to readily determine when a given bad effect is intended and when it is not. Hence, we will refer to his formulation as the Intentions Formulation of the DDE.

Thus, the adjustments that Quinn makes to both the DDA and the DDE are meant to overcome the problems that are normally associated with them both. Hence, it is his claim that, between them, these doctrines can explain the moral differences between cases. However, it is our claim that his account for the application of these two doctrines falls prey to a problem of its own. For Quinn gives us no clear indication of how we are to know when a given case warrants the application of the DDA and when it warrants the application of the DDE. In support of this claim, we question just why Quinn uses the DDA to give us what seems like an implausible explanation for the moral permissibility of Trolley, when he could give a very plausible explanation for the moral permissibility of that example through the application of the Intentions Formulation of the DDE. But we also challenge the effectiveness of the Intentions Formulation by introducing an example that we call Threat-of-a-Second-Explosion. This example seems to show that the Intentions Formulation is also open to the charge of being inconsistent in its delivery of judgements. So, it is on these grounds that we reject Quinn's proposals for both the DDE and the DDA.

In Chapter 4 we turn to Judith Thomson's attempts to explain the moral differences between cases. Her approach is quite different from both Quinn's and Foot's. For Thomson maintains that the moral difference between cases can be explained through the application of a theory of justice. Hence, Thomson rejects the need to apply either the DDE or the DDA. Thomson offers us three different proposals, in different publications, and we deal with each in turn. However, although Thomson now only holds by her third proposal, we spend a good deal of time considering both her first and second proposal, for there is a certain appeal to them which is missing from her third. However, in the end we come to agree with Thomson that neither of these two proposals can adequately explain the moral difference between cases. But there are two examples that Thomson introduces

with regard to these proposals that we will continue to discuss - namely Fat-Man Bridge and Fat-Man Loop. These examples are important because Thomson's claim is that, whereas Fat-Man Bridge warrants a judgement of moral impermissibility, Fat-Man Loop warrants a judgement of moral permissibility. We, on the other hand, maintain that both of these examples warrant a judgement of moral impermissibility. So, whereas Thomson regards Fat-Man Loop as being structurally akin to Trolley, we regard it as being structurally akin to Transplant and, therefore, to Fat-Man Bridge, too (for explanations of Trolley and Transplant, see below). Furthermore, although Thomson does not relate her third and most recent proposal to Fat-Man Loop, when we attempt to do so it is hard to see how it would deliver a judgement of moral permissibility. But our main reason for dismissing Thomson's third proposal is that it commits us to accepting judgements in some cases that are at odds with the way we intuitively think that those cases should be judged.

In Chapter 5 we turn our attention to the proposal put forward by Kamm. For, although Kamm is sympathetic towards the accounts of both Thomson and Quinn, her proposal is quite different in that it involves the acceptance of what she refers to as the Principle of Permissible Harm (PPH). Kamm maintains that this principle is grounded on the idea, that if a given example is to warrant a judgement of moral permissibility, it has to be the case that it is the greater good that causes the bad effect in question. In order to help us understand this principle, Kamm introduces an example that we shall refer to as Turning Seesaw Device (Bystander). Kamm also uses this example to undermine Thomson's first two proposals. Thus, for both of these reasons and because Kamm has a number of different versions of this example, we spend a good deal of time discussing it, not only in this chapter, but in Chapters 4 and 7 as well. But Kamm also introduces another significant example that we refer to as Fat-Man Trolley. This example is important to Kamm's proposal because she uses it to uphold Thomson's claim that Fat-Man Loop is morally akin to Trolley. Thus, as far as our challenge to Kamm's claims is concerned, it is our aim to show that she, like Thomson, has failed to see that, despite appearances, Fat-Man Loop is structurally akin to Transplant. Hence, it is

our claim that both Thomson and Kamm are mistaken in thinking that Fat-Man Loop warrants a judgement of moral permissibility. Thus, we explain why Kamm is mistaken in thinking that Fat-Man Trolley supports her claim that Fat-Man Loop warrants a judgement of moral permissibility on the grounds that these are both cases, like Trolley, where it is the greater good that causes the bad effect. So, whereas Kamm uses Turning Seesaw Device (Bystander) and Fat-Man Trolley in support of the claims that she is making with regard to the PPH, we use them to show why that principle cannot explain the moral difference between cases without those judgements falling prey to the charge of being inconsistent with one another.

Thus, having rejected the proposals put forward by Foot, Quinn, Thomson, and Kamm, in Chapter 6 we put forward our own account of how to explain and uphold our intuitive judgement that it is morally permissible to save the five in Trolley, but not morally permissible to do so in Transplant. Our proposal involves accepting that the DDE can explain the moral difference between these two cases without those judgements seeming to be inconsistent with one another.

Furthermore, our proposal involves recognising that the DDE is made up of two quite distinct doctrines - each with its own function to fulfil. We will refer to these two doctrines as the Intentions Doctrine and the Means Doctrine. The claim that the DDE is a double doctrine is grounded on the fact that there is a distinction to be drawn between making judgements about the moral worth of a given agent, who either does or does not perform a given act, and making judgements about the moral permissibility or impermissibility of a given act. Thus, our claim is that it is through the application of the Intentions Doctrine that we can determine the moral worth of a given agent, and through the application of the Means Doctrine that we can determine the moral permissibility or impermissibility of a given act.

Furthermore, the idea that the DDE is a double doctrine allows us to claim that all the concerns about the difficulty of determining what the intentions of a given agent are pertain only to the Intentions Doctrine. Thus, when it comes to the application of the Means Doctrine, we are free of such concerns. This claim is

supported by the fact that, as far as the application of the Means Doctrine is concerned, our focus is on the objective pursuit of determining when a given bad effect can or cannot be said to be an effective part of the causal chain that results in the good effect. That is, our focus is on determining whether or not a given bad effect is the means to the good effect in question. With this end in mind, we will introduce what we will call the Omissions Test. It is our claim that it is through the application of the Omissions Test that we can determine when a given bad effect is or is not the means to the good effect in question.

Thus, although our proposal involves accepting that the DDE is a double doctrine, the main thrust of our proposal is directed toward the idea that it is through the application of the Means Doctrine that we can determine the moral permissibility or impermissibility of a given act. Hence, in Chapters 7 and 8, we demonstrate just how the Means Doctrine handles a whole range of examples. Most of these examples are the ones that we have discussed earlier, but some we will be discussing for the first time. By examining each of these examples in turn, it is our aim to demonstrate that the Means Doctrine can accommodate our intuitive judgement of cases without those judgements seeming to be inconsistent with one another. Moreover, it does so in a way that is plausible, coherent, and reasonably simple.

Thus, it is our claim that our discussion of examples in Chapters 7 and 8 shows that we have at least some theoretical motivation for accepting the application of the Means Doctrine specifically, and the DDE in general. However, the level of that motivation comes as the result of what is commonly referred to as *narrow reflective equilibrium*. Hence, in the final chapter, we tentatively sketch out the notion that a higher level of theoretical motivation could be gained if it were possible to establish that the DDE is in keeping with the spirit of the Kantian ideal of human community and interaction. We readily accept that in order to give this claim real substance much more work would be required. But this in no way undermines the claim that the DDE can explain and accommodate our intuitive response to examples like Transplant and Trolley better than the proposals put

forward by Foot, Quinn, Thomson, or Kamm. For it can explain the moral differences between a whole range of examples without leaving itself open to the charge of delivering judgements that are inconsistent with one another.

Furthermore, it does so without the need to think of Trolley as being either a problem or a special case.

There are a few more points that we should like to emphasise before we begin.

Firstly, we want to make it clear that we are not defending the DDE in any absolutist sense. Thus, we are quite prepared to accept that, for example, a principle like self defence could come into play and over-ride a judgement made through the application of the DDE. Secondly, we want to acknowledge that we appreciate that there are those who see no sense in discussing examples that are as schematic as the ones that we will be dealing with, given the fact that these examples are so far removed from real life situations. But the advantage of using this kind of example is that it makes it easier to home in on where the differences or similarities between cases lie. And we need to be able to see these differences and similarities if we are going to explain why a given case warrants being given a judgement of moral permissibility or impermissibility. But that is no easy task. For, as we shall see from what follows, even with examples as schematic as these, the task of determining the kind of structure that they have can prove more difficult than we might have thought possible.

However, we do accept that the bizarre nature of some of these examples and their seemingly endless pertinacity to multiply can at times make us doubt the usefulness of our endeavour. Thus, it is important, while we are discussing these examples, that we keep in the forefront of our minds that what we learn from them is going to help us make judgements with regard to real-life situations.

Furthermore, while we are on the subject of examples, we need to point out that time and again we will be coming back to the two examples that have come to be known as Trolley and Transplant. It is, therefore, important that we know what each of these examples involves. Their description is as follows.

Transplant: There are five seriously ill patients - each of whom requires an organ transplant in order to survive. There is one healthy patient who has come in to the hospital to have some minor complaint dealt with. The organs of this patient are healthy and could be used to save the five. But, if we were to cut up the one and give each of the five one of his organs, although the five will survive, the one will not.

Trolley: An out-of-control trolley is headed towards five people. The track is fork shaped. The five are trapped on the main portion of the track. We can save the five from being hit by the trolley by switching tracks. Unfortunately, there is one person trapped on the spare arm of the track. Thus, if we do switch tracks, although the five will be saved, the trolley will hit and fatally injure the one.³

The reason that these two examples will feature prominently in what follows is because we all seem to have the strong intuitive judgement that it is morally permissible to save the five in Trolley, but not morally permissible to do so in Transplant. Furthermore, the strength and shared nature of this response holds even though it is clear that, in Trolley, just as in Transplant, if we act to save the five the one will die. Thus, we are using these examples as a cornerstone on which to base the claims that we make with regard to all of the other examples with which we will be dealing. This brings us to our final point - that, although our intuitive response to these two examples is strong and shared, it does not follow that we can regard all of our intuitive responses in this way.

3 The original version of this example is attributable to Foot. See Foot, P. (1976) p.297-298.

Chapter 1

Foot's Position.

There was a time when Philippa Foot was convinced by the arguments in favour of the DDE. However, in her article 'The Problem of Abortion and the Doctrine of the Double Effect' she explains why this is no longer the case.¹ Foot claims that her dissent from the DDE rests on the fact that there are cases where the distinction between what is intended and what is merely foreseen runs into difficulties. Foot maintains that these difficulties arise because this distinction sometimes delivers a judgement that does not accord with the way we intuitively think that a given case should be judged. As an example of such a case, Foot draws our attention to an example that we will refer to as Poisonous Fumes. Foot maintains that we intuitively think that Poisonous Fumes warrants a judgement of moral impermissibility and yet it is an example where the DDE will deliver a judgement of moral permissibility. We will see why Foot makes this claim presently. But, for the moment what matters is the fact that Foot uses this example to initiate the claim that we need to reject the distinction that the DDE draws between what is intended and what is merely foreseen and replace it with an alternative distinction. As a suitable candidate for this alternative distinction Foot suggests the one that she maintains can be drawn between doing and allowing. Thus, Foot is advocating what could, appropriately, be called the Doctrine of Doing and Allowing (DDA) as being a suitable replacement for the DDE.²

However, Foot has since moderated her claim, for she now admits that it is not possible to completely reject the DDE. This is because there are some cases, like

1 See Foot, P. (1976) The problem of abortion and the doctrine of the double effect. In S. Gorvitz, R. Macklin, A. L. Jameton, J. M. O'Connor, S. Sherwin (Eds.), *Moral problems in Medicine*. (pp.295-302). (2nd ed.) New Jersey: Prentice-Hall. (Original work published 1967).

2 Warren Quinn refers to the distinction between doing and allowing this way. See Quinn, W. (1989) Actions, intentions and consequences: the doctrine of doing and allowing. *The Philosophical Review*, *XCVIII* (3), 287-312.

the one we shall refer to as the Beggar example, where the DDA itself is required to draw upon the distinction between intending and merely foreseeing in order to deliver a judgement that accords with the way we intuitively judge this example. But, even so, the emphasis of Foot's account remains directed towards the acceptance of the DDA. Thus, let us examine Foot's account in more detail.

Foot's Rejection of the DDE.

Foot bases her rejection of the DDE on the fact that it delivers a judgement of moral permissibility with regard to the Poisonous Fumes example when it is a case where we allegedly intuitively think warrants a judgement of moral impermissibility. Foot describes the example as follows.

Poisonous Fumes: There are five patients in a hospital whose lives could be saved by the manufacture of a certain gas. However, if we do manufacture that gas lethal fumes will be released into the room of another patient whom for some reason we are unable to move.³

Foot's claim that the DDE will deliver a judgement of moral permissibility with regard to this example is based on the fact that this is a case where the death of the one is clearly "of no use to us".⁴ Thus, this is a case where the death of the one is not intended but is rather merely foreseen. The problem is that Foot regards this example as being one where we intuitively think that a judgement of moral impermissibility is warranted. Hence, she thinks we have no alternative but to look for a different distinction. That is, we need to look for a distinction that will uphold our intuitive judgement of this case. Foot claims that the distinction that can be drawn between doing and allowing will do just that.

The Distinction that Foot draws between Doing and Allowing.

Foot maintains that there is a moral distinction to be made based on the difference between doing and allowing. She claims that if we originate or sustain the

³ See Foot, P. (1976) p.301.

⁴ Foot, P. (1976) p.301.

sequence that proves fatal for the lesser number in a given example then our act⁵ counts as *a doing*. Acts of this kind Foot regards as offences against justice. However, if we neither originate nor sustain the sequence that proves fatal for the lesser number, then our act counts as *an allowing*. Acts of this kind Foot regards as offences against charity. The only acts that warrant a judgement of moral permissibility are those acts which count as an offence against charity. That is, only acts that warrant being described as *an allowing* can be given a judgement of moral permissibility.

Foot is not equating the distinction between doing and allowing with the distinction between acts and omissions. Hence, both acts and omissions can warrant being classified as either *a doing* or *an allowing*. However, Foot does equate this distinction with the one that can be drawn between killing and letting die. This means that we could refer to *a doing* as *a killing* and *an allowing* as *a letting die*. However, we shall not do so, rather we shall limit ourselves to using the terms *a doing* and *an allowing*. This is because these terms seem to provide a greater sense of neutrality than do the terms *a killing* and *a letting die*.

Foot's claim that *a doing* counts as an offence against justice and *an allowing* counts as an offence against charity stems from the fact that she maintains that justice "has to do with what men owe each other in the way of non-interference and positive service,"⁶ whereas charity "is the virtue that attaches us to the good of others."⁷ The idea that only acts that are offences against charity can warrant a judgement of moral permissibility is based on the notion that charity can allow only that which justice does not forbid.⁸ This means that the only acts of saving which are morally permissible are those that do not count as an offence against justice. Hence, Foot's claim is that it is morally permissible to save the greater number at the expense of the lesser number only in those cases where an act or an omission counts as an offence against charity, rather than justice. Thus, we need

5 An act on Foot's account can be either an action or an omission.

6 See Foot, P. (1978) p.44.

7 See Foot, P. (1978) p.45.

8 See Foot, P. (1978) p.49.

to be able to determine when a given act counts as an offence against justice and when it counts as an offence against charity. That is, we need to be able to determine when we can say that we have or have not originated or sustained the sequence that results in the death of the lesser number. For only then will we be able to distinguish between those acts that count as *a doing* and those that count as *an allowing*. This, then, gives us some sense of distinction on which the DDA is based. However, let us now determine just how the DDA is meant to be applied. Let us start by applying it to Poisonous Fumes.

The Application of the DDA to the Poisonous Fumes Example.

In order to determine the moral permissibility or impermissibility of the Poisonous Fumes example we need to determine whether the death of the one does or does not count as an offence against justice. That is, we need to determine whether or not we originate or sustain the sequence that proves fatal for the one. We need to do so in order to determine whether this example involves *a doing* or *an allowing*. It certainly looks as though this is a case that involves *a doing*. For, this certainly looks like a case where we originate the sequence that results in the death of the one. This is because the one only comes under threat once we start to manufacture the gas that will save the five. For, before that, he is perfectly safe. The danger to him arises because of the poisonous fumes that are produced as a result of our manufacturing the gas. Thus, we can determine that the act in question counts as *a doing* and, therefore, according to Foot's account this is a case that warrants a judgement of moral impermissibility.

Hence, given that Foot maintains that this is a case where we intuitively think it is not morally permissible to save the five, it looks as though we can credit the DDA with delivering a judgement that is in accord with the way we, intuitively, would judge this case.⁹ However, before we can accept Foot's claim that the DDA is a

⁹ It is not entirely clear that we do all intuitively judge that this is a case that warrants a judgement of moral impermissibility. For it does seem that there are those who do think that this example warrants a judgement of moral permissibility. Furthermore, there are others who do not want to commit themselves to either judgement because they have no strong intuition either way. We shall return to this point as our discussion progresses and again in Chapter 7.

suitable replacement for the DDE we need to be sure that the same can be said with regard to other cases as well. Thus, let us see if it can.

Given what we said in the introduction about the strength and shared response that we have to cases like Transplant and Trolley, it seems reasonable to think that Foot would use these two examples as her gauge for demonstrating when an act counts as *a doing* and when it counts as *an allowing*. However, she does not do this for reasons that will become clear as our discussion progresses, rather she introduces two examples that we shall refer to as Two Disasters and the One-in-the-Road.¹⁰ It is the comparison between these two examples that Foot uses as a kind of blueprint for how the distinction between allowing and doing should be applied. Two Disasters is meant to illustrate when an act counts as *an allowing*, and the One-in-the-Road example when an act counts as *a doing*. Having said that, let us look at each example in turn.

The Two Disasters Example: An Illustration of What Counts as *an Allowing*.

Two Disasters: "...we are hurrying in our jeep to save some people - let there be five of them - who are imminently threatened by the ocean tide. We have not a moment to spare, so when we hear of a single person who also needs rescuing from some other disaster we say regretfully that we cannot rescue him, but must leave him to die."¹¹

Foot maintains that in Two Disasters the act of saving the five counts as *an allowing*. This is because, in this case, the sequence that proves fatal for the one is neither originated nor sustained by the act in question. We can determine that this is the case because the sequence that proves fatal for the one stands, as it were, independently of our action. This is because, in this example, the one would be under threat even if we did not act to save the five. Hence, this is an example of the kind of case where the DDA will deliver a judgement of moral permissibility.

10 Foot calls these examples Rescue I and Rescue II. We have changed the names so that the context of each example is more immediately accessible.

11 See Foot, P. (1984) p.179 This example is akin to the Scarce Drug example. Scarce Drug is the example where we can either save one person by giving him the entire supply of the drug that is in short supply or we can save five people by giving each of them one fifth of that limited supply of drug. Hence, what is said with respect to Two Disasters also applies to Scarce Drug.

For it is a case where our offence is against charity, rather than justice. Thus, Foot claims that, given that this is a case where we intuitively think that it is morally permissible to save the five, we can say that this is a case where the DDA delivers a judgement that accords with the way we intuitively think that this example should be judged. Having said that, let us now consider how we are meant to determine when an act counts as *a doing*. Thus, let us now turn to Foot's second rescue case - namely, the One-in-the-Road example.

The One-in-the-Road Example: An Illustration of What Counts as *a Doing*.

One-in-the-Road: "...we are again hurrying to the place where the tide is coming in in order to rescue the party of people, but this time it is relevant that the road is narrow and rocky. In this version the lone individual is trapped (do not ask me how) on the path. If we are to rescue the five we would have to drive over him."¹²

Foot maintains that the act of saving in this example counts as *a doing*. This is because this is a case where we do originate the sequence that proves fatal for the one. For this is a case where the one is under no threat until, or unless, we run over him. Thus, this is a case where our offence is against justice. Therefore, this is a case that warrants a judgement of moral impermissibility. Furthermore, given that Foot regards this as being a case, like Poisonous Fumes, where we intuitively think that it is not morally permissible to save the five, Foot is able to use this example to support her claim that the DDA delivers judgements that are in accord with the way we intuitively think a case should be judged.¹³

Thus, the comparison that Foot makes between Two Disasters and the One-in-the-Road example is meant to show us that there is a moral distinction to be made

12 See Foot, P. (1984) p.179. Foot makes it clear to us that even though the one, in this example, is trapped on the road he is in no danger. It is just that it is going to take time to get him off the road and we have not got the time to do that if we are going to get to the five in time to save them.

13 Here, too, we may want to question whether we do all intuitively think that the One-in-the-Road example warrants a judgement of moral impermissibility. For it does seem as though, with respect to this example, as with Poisonous Fumes, there are those who do intuitively think that this is a case where it would be morally permissible to save the five. Furthermore, there are those who will not commit themselves to one judgement or the other because they do not seem to have a strong intuition about which judgement is warranted in this case. We will discuss this point in the next section and then again in Chapter 7.

based on the difference between doing and allowing. Furthermore, it is meant to show us that we can use that distinction to uphold our intuitive judgements of these cases. Having said that, let us now consider how successful we think Foot is at establishing that this is the case.

A Discussion of Foot's Comparison Between Two Disasters and the One-in-the-Road Example.

Foot's claims about the moral distinction that can be made, based on the difference between doing and allowing, and her claims about the support that the DDA gives us with regard to our moral judgements of cases, seem to depend on the comparison that she makes between Two Disasters and the One-in-the-Road. We have already alluded to the fact that Foot's case would have been better served if she had used the comparison between Trolley and Transplant. This claim stems from the fact that there seems to be general agreement that we all intuitively think that it is morally permissible to save the five in the Trolley example but not morally permissible to do so in Transplant. Furthermore, our responses to these two examples are both immediate and decisive. We shall, in due course, be explaining just why Foot does not choose these two examples as her blue-print for the distinction between doing and allowing. However, for the moment, we mention it simply to highlight the fact that Foot, more or less, gives the impression that the intuitive judgements that we hold with regard to Two Disasters and the One-in-the-Road are on a par with those of Trolley and Transplant.

It certainly seems to be the case that our intuitive judgement of Two Disasters is on a par with that of Trolley. However, it is not so clear that this is the case when it comes to comparing the intuitive judgement that we have with regard to the One-in-the-Road to Transplant. This is because it does not seem as though there is general agreement that we all intuitively think that it is not morally permissible to save the five in the One-in-the-Road example. For it seems as though there are those who think that it *is* morally permissible to save the five in this example. Furthermore, there are those who will not commit themselves to either judgement

for they say they have no clear intuition about what judgement is warranted with regard to the One-in-the-Road example. If this is the case, then we have cause to think that the One-in-the-Road example does not support Foot's claims to quite the extent that she would have us think.

It also looks as though we have cause to question the effectiveness of Foot's comparison between Two Disasters and the One-in-the-Road example on the grounds that she is not comparing like with like. That is because it is not at all clear that these two examples are structurally equivalent. Although at first glance it might seem as though they are. This is because we can say, with regard to both of them, that the one will die if we act to save the five. But, when we look more closely at these examples we can see that there is a sense in which they are structurally different. This is because in the One-in-the-Road example, unlike Two Disasters, only the five are in need of saving. This means that, if we decide not to act in the One-in-the-Road example, the result will be that five will die. This is not the case with regard to Two Disasters. For, if we decide not to act in that case, the result will be that both the one and the five will die.

Once we see that there is a structural difference between Two Disasters and the One-in-the-Road example, it seems reasonable that we should question whether the comparison between these two examples does establish that we can determine that there is a moral distinction to be made, based on the difference between doing and allowing. For it no longer seems clear that a judgement of moral permissibility is warranted in the Two Disasters example because it involves *an allowing*, rather than *a doing*. This is because it seems just as plausible to say that we deliver a judgement of moral permissibility in this case because it is better to save five than to allow all six to die. If this is the case, then it seems we also have reason to question whether Foot can claim that the One-in-the-Road example warrants a judgement of moral impermissibility on the grounds that it involves *a doing*, rather than *an allowing*.

This idea that we need to question whether Foot can claim that the One-in-the-Road example warrants a judgement of moral impermissibility because it involves *a doing*, rather than *an allowing*, is further supported by the fact that it does not seem as though this example could ever involve *an allowing*. In order to see that this is the case we need to consider Foot's handling of a case that we shall refer to as the Beggar example.

How Foot Handles the Beggar Example.

The Beggar: A beggar is dying from the lack of food. We contemplate giving him the food he needs to survive. Then we remember that the medical research team at the local hospital need more bodies so that they can continue their valuable research into a disease that will otherwise prove fatal for a great number of people. So we decide not to give the beggar any food after all.¹⁴

This example seems to pose a problem for Foot. This is because it looks as though it is an example that involves *an allowing*, rather than *a doing*. For it is a case where we do not originate the sequence that proves fatal for the beggar. But if this is so, then this example will warrant a judgement of moral permissibility. However, this cannot be the case. For this is an example where we intuitively think it is not morally permissible to act. Hence, Foot needs to be able to explain why this case involves *a doing*, rather than *an allowing*.

In order to establish that this example does involve *a doing*, rather than *an allowing*, Foot now accepts that we need to call upon the distinction that the DDE makes between intending and merely foreseeing. Hence, it is this example that eventually makes Foot realise that she was wrong to think that we could completely reject the DDE.¹⁵ Foot now maintains that a judgement of moral impermissibility is warranted in this case because we deliberately sustain the sequence that results in the death of the beggar. We can determine that this is so because, in this example, our act of helping the advance of medical research can only be accomplished if the beggar dies. Foot claims that this means that when we

¹⁴ See Foot, P. (1976) p.300.

¹⁵ See Foot, P. (1985) Morality, action, and outcome. In T. Honderich (Ed.), *Morality and Objectivity*. London: Routledge & Kegan Paul. Footnote #6 p.37.

do not give the beggar food we are deliberately aiming at his death.¹⁶ So, although we are not the originators of the sequence that proves fatal for the beggar, we do sustain the sequence so that it proves fatal for him, by deliberately allowing that sequence to continue. Thus, let us now consider how Foot's handling of the Beggar example relates to the One-in-the-Road example.

How Foot's Handling of the Beggar Example Relates to the One-in-the-Road Example.

Foot's handling of the Beggar example should alert us to the fact that the One-in-the-Road example cannot escape being given a judgement of moral impermissibility. This is because, in the One-in-the-Road example, even if the sequence that results in the death of the one is not originated by us, it is going to be the case that we deliberately allow it to continue. For it is always going to be the case that we cannot get to the five in time to save them unless we run over the one. So, even if we do not run over the one until after he has died from some sequence that we have not originated, it is going to be the case that we deliberately allow a sequence to continue so that we can then run over him. The fact that we aim at his death in order to avoid being the originator of the sequence that results in his death is no defence in this case. For we cannot escape the fact that we deliberately do not save him so that we can save the five instead. Hence, it seems as though the One-in-the-Road example is always going to warrant a judgement of moral impermissibility. But, if this is so, then it seems as though Foot cannot claim that the One-in-the-Road example is morally impermissible because it involves *a doing*, rather than *an allowing*. And yet this is the impression that Foot gives when she claims that it is morally impermissible because it involves *a doing*, whereas Two Disasters is morally permissible because it involves *an allowing*.

16 See Foot, P. (1976) p.300.

How Foot's Handling of the Beggar Example Relates to Two Disasters and Poisonous Fumes.

If we accept Foot's claim that the Beggar example warrants a judgement of moral impermissibility, on the grounds that it involves *an allowing* which is intended, then it seems more accurate to say that Two Disasters warrants a judgement of moral permissibility because it involves an unintended allowing. But, if this is so, and we are, in fact, talking in terms of *an allowing* that is either intended or not intended, then why should we not, also, talk in terms of *a doing* that is either intended or not intended?

The obvious answer to this question would seem to be because, as soon as we introduce the notion of intention on the doing side of the distinction between doing and allowing, we can no longer explain the intuitive judgement that it is not morally permissible to save the five in the Poisonous Fumes example. This is because we would be back to the position of claiming that the Poisonous Fumes example warrants a judgement of moral permissibility, because, although we originate the sequence that results in the death of the one, we do not deliberately aim at his death. We can determine that this is the case in so far as we can demonstrate that this is a case, unlike Beggar and the One-in-the-Road example, where we do not need the one to die in order to do what we do. For, in Poisonous Fumes, we could manufacture the gas that will save the five even if the poisonous fumes were not to seep into the room where the one is trapped. However, this is precisely the explanation of the Poisonous Fumes example that Foot rejects on the grounds that it gives us a judgement that is at odds with the way she maintains that we intuitively judge this case. Hence, Foot has to keep the notion of intention well and truly away from the doing side of the distinction between doing and allowing.

However, it is interesting to note that, whereas we said that the One-in-the-Road example will warrant a judgement of moral impermissibility even if it involves a sequence that we have not originated, the same cannot be said for Poisonous Fumes. For it is possible to change the Poisonous Fumes example so that it will warrant a judgement of moral permissibility. To see that this is so, all we need to

do is to make it the case that the one who is trapped in the room is under threat from a sequence that we have not originated. For example, we could say that the ceiling in his room is about to fall down on top of him. We can call this the Ceiling example. So, in the Ceiling example our choice is between manufacturing a gas that will save the lives of the five people or repairing the ceiling in the room where the one is trapped, thereby saving the one from being crushed to death by the falling ceiling. According to Foot's account the act that we perform in the Ceiling example will count as *an allowing*, rather than *a doing*. Thus, on Foot's account Ceiling will warrant a judgement of moral permissibility. Why? Because, it is an example where there would be no question of our deliberately aiming at the death of the one. This is because it is a case where there is no question of our *needing* the one to die in order to be able to manufacture the gas that will save the five. So, if the manufacturing of the gas can count as *an allowing* in the Ceiling example, why should it count as *a doing* in Poisonous Fumes. For, in Poisonous Fumes it also seems to be the case that there is no question of our deliberately aiming at the death of the one. This claim is supported by the fact that we could still manufacture the gas even if the poisonous fumes did not make their way into the room where the one is trapped.

Thus, we might question why Foot does not consider the option of saying that although Poisonous Fumes looks as though it is a case that warrants a judgement of moral impermissibility because we originate the sequence that results in the death of the one - this in fact is not the case because this is a case where the consequences of that doing are unintended. That is, we might question why we cannot think of Poisonous Fumes as *a doing* that is void of intention. For, after all, as we have just established Foot is quite prepared to admit that the Beggar example warrants a judgement of moral impermissibility because it is *an allowing* that involves intention. So, if *an allowing* can either involve or not involve intention, then why does the same not apply with regard to *a doing*?

But, of course, Foot's is not looking to find a way of explaining the moral permissibility of Poisonous Fumes, rather she is looking to find a way of

explaining the moral impermissibility of this case. For according to Foot Poisonous Fumes is a case where we intuitively think that it warrants a judgement of moral impermissibility. However, as we shall see in Chapter 7, there could be other reasons for our giving a morally impermissible response to this example. If this is so, then it could be that we have no need to call upon the distinction between doing and allowing in order to determine the moral permissibility or impermissibility of this case. With this in mind, let us now consider how the DDA explains the moral difference between Transplant and Trolley.

The DDA as Applied to Transplant and Trolley.

We said earlier that we were surprised that Foot did not use the comparison between Trolley and Transplant to illustrate the distinction between doing and allowing. We said then that there was a reason why she chose to use the comparison between Two Disasters and the One-in-the-Road instead. That reason should now become apparent.

It is easy enough to see that Foot would have no trouble using the distinction between doing and allowing to explain our intuitive judgement that it is not morally permissible to save the five in Transplant. This is because it is obvious that in Transplant we do originate the sequence that proves fatal for the one. Hence, it is obvious that it is a case that involves an offence against justice. Thus, it is a case that warrants a judgement of moral impermissibility. We can determine that this is the case in so far as the one, in this example, is under no threat of death until, or unless, we cut him up and remove his organs in order to save the five. So far, so good, you might think. But the problem for Foot arises when we come to explain the moral permissibility of Trolley.

Trolley seems to present a problem for Foot. This is because it looks as though, in Trolley, too, we originate the sequence that proves fatal for the one. For here, too, the one is under no threat until, or unless, we switch tracks. This being the case, it

seems as though the act that we perform in Trolley is every bit as much an offence against justice as it is in Transplant. That is, our act is every bit as much *a doing* as it is in Transplant. So why does Trolley not warrant the same judgement of moral impermissibility as does Transplant? That is, how can Trolley warrant a judgement of moral permissibility when it seems to involve *a doing* rather than *an allowing*? Thus, we could think of Trolley as presenting Foot with the opposite problem to the one she faces with regard to the Beggar example. For, whereas in the Beggar example, Foot needs to explain why our act counts as *a doing*, rather than *an allowing*, in Trolley she needs to explain why our act counts as *an allowing*, rather than *a doing*. She needs to do this because otherwise it looks as though the DDA cannot uphold our intuitive judgement that Trolley warrants a judgement of moral permissibility.

Foot overcomes the difficulty of explaining the moral permissibility of Trolley by claiming that it is a special case. What makes Trolley special is the fact that although we might have thought that the harm that befalls the one occurs as the result of a sequence that we have originated, this is not so. For, according to Foot, when we perform the act of switching tracks, what we are doing is diverting an already existent sequence so that it proves fatal for the one instead of the five. So, instead of allowing a sequence to be fatal for the five, what we do is allow it to be fatal for the one. Hence, Foot claims that the act we perform in Trolley does count as *an allowing*, rather than *a doing*. Thus, the DDA can uphold our intuitive judgement that Trolley warrants a judgement of moral permissibility. To reinforce this idea that a diverted sequence counts as *an allowing*, Foot claims that this is why:

...we could not start a flood to stop a fire, even when the fire would kill more than the flood, but we could divert a flood to an area in which fewer people would be drowned.¹⁷

Thus, Foot wants us to accept that starting a flood counts as *a doing*, whereas diverting a flood counts as *an allowing*. But can we really accept that this is the case? It is not at all obvious that we can. And besides it seems strange, given the

17 Foot, P. (1984) p.183.

strength of our intuitive response to Trolley, that we should need to resort to thinking of it as a special case. Furthermore, why go to the trouble of introducing a distinction like the one between doing and allowing if it cannot explain the moral difference between cases without the need to think of some cases as special. That is, why not just stick with the distinction that the DDE draws between what is, or is not intended, and come up with some reason for why Poisonous Fumes is a special case. For, after all, then we could claim that, although it looks like the DDE will deliver a judgement of moral permissibility with regard to Poisonous Fumes on the grounds that it is a case where the harm that befalls the one is not intended, this is not so, because of some reason or other.¹⁸ Of course, we would have to say what that reason amounted to, but that is no different from having to find a reason why, in Trolley, the switching of tracks counts as *an allowing* even though it looks like it should count as *a doing*. So maybe Foot should not have renounced the DDE.

Entertaining the Idea that Foot should not have Renounced the DDE.

The notion that Foot could have thought of Poisonous Fumes as being a special case, and then she would have had no need to renounce the DDE, is supported by the fact that the distinction between intending and merely foreseeing can be used to explain the moral difference between Trolley and Transplant. For, we could claim that Transplant warrants a judgement of moral impermissibility because it is a case where the death of the one is intended, whereas Trolley warrants a judgement of moral permissibility because the death of the one is merely foreseen.¹⁹ This claim will be discussed more fully in Chapter 6. We mention it here just to demonstrate that it is hard to see why Foot thinks that the DDA can explain our intuitive responses to cases better than can the DDE. This seems

18 Of course, it could be that, although there are those who think that Poisonous Fumes warrants a judgement of moral impermissibility, there are, also, those who think that it warrants a judgement of moral permissibility. Furthermore, there could be those who are unwilling to give a judgement with regard to this case because they are not sure just how it should be judged. We will return to this point in Chapter 7.

19 This claim is based on the way that the DDE is traditionally viewed. In Chapter 6 we will be putting forward an alternative view of the DDE.

especially so, given that Foot now accepts that, when it comes to delivering a judgement of moral impermissibility with regard to a case like the Beggar example, the DDA relies on the very doctrine that it is meant to be replacing. For, it relies on our taking into account the fact that the death of the beggar is intended.

Thus, although Foot initially regarded the DDA as being an outright replacement for the DDE, she now admits that there is a sense in which the DDE never fully becomes redundant. But, nevertheless, the focus of Foot's account remains directed towards the DDA, rather than the DDE. So, on Foot's account, the DDE is still there but it is pushed well into the background. However, no matter how far it is pushed into the background, it is still the case, that if we accept Foot's account, we are committed to the notion that, to some extent or other, both of these doctrines are required if we are to determine the moral permissibility or impermissibility of a wide range of examples. But, why should we accept the notion that we need both of these doctrines when it is not altogether clear that the DDE is as inadequate as Foot would have us believe?

It certainly does not seem as though we should, given that, even if we do accept the need for two doctrines, it still leaves us having to think of a case like Trolley as being special. Thus, it is our suggestion that we should consider whether there is a way in which the DDE can account for the fact that we intuitively think that a case like Poisonous Fumes warrants a judgement of moral impermissibility. However, before we pursue this suggestion, we are going to consider Warren Quinn's proposals, with regard to the acceptance of the DDA and the DDE. For, he, too, advocates the need for the application of both of these doctrines. But, he does so without ever entertaining the idea that the DDA could replace the DDE. Moreover, he maintains that, on his account, there is no need to think of Trolley as being a special case. If this is so, then we might well find that we can accept that both of these doctrines are needed.

A Summary of Foot's Position and Our Concerns with It.

Foot renounces the DDE because she claims it fails to deliver a judgement that is in accord with the way we supposedly intuitively judge Poisonous Fumes. Her claim is based on the fact that the distinction that the DDE uses between intended and merely foreseen would deliver a judgement of moral permissibility with regard to the Poisonous Fumes example, when, according to Foot, this is an example that we intuitively think warrants a judgement of moral impermissibility.

Foot then suggests the DDA as a suitable replacement for the DDE because it can deliver a judgement of moral impermissibility with regard to the Poisonous Fumes example. However, Foot's suggestion depends upon our accepting that there is a moral distinction to be drawn, based on the difference between doing and allowing. To convince us that this is the case, Foot presents us with the, as it were, blue-print comparison between Two Disasters and the One-in-the-Road examples.

We question the effectiveness of this comparison in establishing that there is a moral distinction to be drawn, based on the difference between doing and allowing. Firstly, because it seems the more obvious candidate for that role would have been the comparison between Trolley and Transplant. This is because there seems to be little, if any, doubt that we all hold the intuitive judgement that it is morally permissible to save the five in Trolley but not morally permissible to do so in Transplant. Secondly, because it does not seem absolutely clear that Foot is justified in attributing the judgement of moral permissibility in Two Disasters to the fact that it involves *an allowing*. This is because it is, also, possible to claim that our judgement of this case is based on the fact that, if we were to do nothing, all six would die. And the fact that we save the five, rather than the one, is due to our wanting to save as many of the six as we can. The same explanation does not hold for the One-in-the-Road example because it is not structurally akin to Two Disasters. For, it is a case where, if we do nothing, only the five will die. Hence, our claim is that Foot cannot expect us to accept the conclusion that she draws

from the comparison between these two examples, because she is not comparing like with like.

Furthermore, we have suggested that Foot's claim that there is a moral distinction to be made, based on the difference between doing and allowing, is somewhat undermined by the fact that, on her own admission, it, to some extent at least, is dependent upon the distinction that the DDE makes between intended and merely foreseen. The need for the distinction between intended and merely foreseen is explained through Foot's handling of the Beggar example. Moreover, Foot cannot use the distinction between doing and allowing to explain the moral difference between Transplant and Trolley, without having to declare that Trolley is a special case. Thus, we question whether Foot is right to claim that the DDA is better equipped than the DDE to deliver judgements that accord with the way we intuitively think a case should be judged. Hence, we have speculated that Foot might have been better advised to make out a case for claiming that Poisonous Fumes warrants being thought of as a special case. That way she could have retained her allegiance to the DDE.

Chapter 2

Quinn's Position with Regard to the Doctrine of Doing and Allowing.

Quinn, like Foot, maintains that there is a moral distinction to be drawn based on the difference between doing and allowing.¹ Hence, Quinn, too, advocates the need to use the DDA. However, unlike Foot, Quinn does not support the notion that the distinction used by the DDE (i.e. the distinction between intending and merely foreseeing) warrants being superseded by the distinction between doing and allowing. Rather, Quinn advocates the more or less equal application of both of these doctrines. Quinn presents his view of these doctrines separately. We shall do the same. Hence, in this chapter we shall confine ourselves to considering Quinn's position with regard to the DDA. Thus, we shall not be considering Quinn's position with regard to the DDE until the next chapter.

Quinn's Account of the Distinction Between Doing and Allowing.

Quinn rejects Foot's claim that the distinction between doing and allowing can be drawn by determining whether we do or do not originate or sustain the sequence that proves fatal for the lesser number. He does so because of the difficulty in determining when an act counts as *an allowing* and when it counts as *a sustaining*. Quinn is more inclined to think of the distinction between doing and allowing as being akin to the distinction that can be drawn between action and inaction. However, Quinn admits that the application of this distinction requires a more complex treatment than the distinction between action and inaction suggests. The examples that Quinn counts as needing treatment of this kind are cases that involve

¹ Quinn, W. (1993) *Morality and action*. USA: Cambridge University Press. See Chapter 7 - Actions, intentions and consequences: The Doctrine of Doing and Allowing.

“the harmful *action of objects or forces* over which we have certain powers of control”.²

Hence, Quinn maintains that there are two kinds of examples - the simple and the complex. For simple examples, all we need do is apply the distinction between action and inaction. For complex examples, more is required. Thus, let us start by looking at what Quinn describes as the simple cases. That is, let us start with Foot’s two rescue cases - namely Two Disasters and the One in the Road.³

Quinn’s Application of the DDA to Two Disasters and the One-in-the-Road Example.

Quinn maintains that Two Disasters and the One-in-the-Road example are simple cases because we can deliver a moral judgement with regard to them simply by applying the distinction between action and inaction. Quinn claims that what we are looking to determine in these simple (i.e. ordinary) cases is what most directly contributes to and explains the harm that occurs. Is it the agent’s action or inaction? Hence, Quinn gives us the following definition.

An agent’s *most direct contribution* to a harmful upshot of his agency is the contribution that most directly explains the harm. And one contribution explains harm more directly than another if the explanatory value of the second is exhausted in the way it explains the first.⁴

Thus, Quinn claims that Two Disasters warrants a judgement of moral permissibility because:

“our most direct contribution to the death of the one is our failure to save him. Our going off to save the five contributes less directly. For it explains the death precisely by explaining the failure to save.”⁵

The One-in-the-Road example, on the other hand, warrants a judgement of moral impermissibility because:

2 Quinn, W. (1993) p.160

3 Foot, as we noted earlier, calls these examples Rescue I and Rescue II and Quinn does the same.

4 Quinn, W. (1993) p.163

5 Quinn, W. (1993) p.163

“our most direct contribution to the death of the man trapped on the road is our act of running him over.”⁶

Quinn maintains that in Two Disasters the agency we are dealing with is the kind favoured by the DDA. Quinn refers to this kind of agency as harmful negative agency. It is this kind of agency that Quinn counts as being an offence against charity. In the One-in-the-Road example, on the other hand, we are dealing with the kind of agency that the DDA disfavours. Quinn refers to this kind of agency as harmful positive agency. This is the kind of agency that Quinn counts as being an offence against justice. This, then, is how Quinn views ordinary cases. Thus, let us now consider how he handles the more complex cases.

Quinn’s Handling of Complex Cases.

Quinn maintains that an example will qualify as complex if it involves “the harmful action of objects or forces over which we have certain powers of control.”⁷ In order to illustrate what kind of example can be categorised in this way, Quinn devises two rescue examples of his own. We shall refer to these two examples as Train Brakes and Explosion.⁸ Train Brakes is meant to be the complex equivalent of the One-in-the-Road example and Explosion is meant to be similarly compared with Two Disasters. Thus, let us consider each example in turn.

Quinn’s Handling of Train Brakes.

Train Brakes: We are off by special train to save five people who are in imminent danger of death. Every second counts. We have just taken over from the driver,⁹ who has left the locomotive to attend to something. Since the train is on automatic control we need do nothing to keep it going.

6 Quinn, W. (1993) p.163

7 Quinn, W. (1993) p.160

8 Quinn calls these examples Rescue III and Rescue IV. The change of name is meant to help us focus on the context of each example.

9 Quinn points out that the claims he makes about this example hold no matter whether we are a) the driver of the train, b) assume that role or c) merely have access to its brake. Furthermore, he says it makes no difference whether we are on the train or standing beside the track-side braking device. See Quinn, W. (1993) p.161

But we can stop it by putting on the brakes. We suddenly see someone trapped ahead on the track. Unless we act he will be killed.¹⁰

Quinn maintains that we cannot just simply apply the distinction between action and inaction to Train Brakes. This is because this is a case where we have certain powers of control over the harmful action of the train. So this is a case where a more complex approach is required. Hence, we need to appreciate that, although this looks as though it is an example that warrants a judgement of moral permissibility because it involves inaction, rather than action, this is not the case. For, as Quinn explains, this is a special kind of inaction. It is special in so far as it counts as harmful positive agency in the same way as it would if it were an action.¹¹ In fact, it might help to think of the inaction in this case as counting as a quasi-action. But how do we determine that this is the case?

Quinn claims that we can determine that this is harmful agency of the positive kind by calling upon the distinction that can be drawn between what is intended and what is merely foreseen. However, it is important to realise that Quinn is not aiming the notion of intention in the direction of the one but rather he is aiming it in the direction of the train. Hence, when Quinn introduces the notion of intention, we must not think that he is asking us to determine whether the agent in this example intends or merely foresees the death of the one. For this is not what Quinn is asking us to do. What Quinn wants us to determine is whether the agent does or does not intend the action of the train that causes the death of the one. But how are we meant to do that?

Quinn maintains that we can determine whether the agent does or does not intend the action of the train by determining whether or not the agent intends the train's continued progress forwards. If the agent does intend the train's continued progress forwards, then, by implication, he intends its action. This is so, in so far as it is the train's continued progress forwards which causes the one to be run over. On the other hand, if the agent does not intend the train's continued progress

10 See Quinn, W. (1993) p.160

11 See Quinn, W. (1993) p.162

forwards then he cannot be said to intend the action of the train. Thus, we need to determine whether the agent in Train Brakes does or does not intend the train's continued progress forwards. Hence, we need to know how to do that.

Quinn claims that we can determine that the agent intends the train's continued progress forwards in the Train Brakes case because we know that his aim is to save the five. And, since his aim can only be accomplished if the train does continue its progress forwards, it is easy enough to see that he does intend the train's continued progress forwards. Thus, Quinn concludes that Train Brakes warrants a judgement of moral impermissibility because this is a case where our inaction has both a deliberate and strategic connotation.¹² With this in mind, let us now consider how Quinn handles his second rescue example - namely, Explosion.

Quinn's Handling of Explosion.

Explosion: We are on a train on which there has just been an explosion. We can stop the train, but that is a complicated business that would take time. So we set it on automatic forward and rush back to the five badly wounded passengers. While attending to them, we learn that a man is trapped far ahead on the track. We must decide whether to return to the cabin to save him or stay with the passengers and save them.¹³

Given Quinn's explanation for the moral impermissibility of Train Brakes, it is obvious that when it comes to delivering a moral judgement with regard to Explosion, we cannot simply rely on applying the distinction between action and inaction. For here, too, we are dealing with a case where we have certain powers of control over the harmful action of the train. Thus, this case demands the same kind of complex treatment that was given to Train Brakes. Hence, in this case, too, we need to determine whether or not the agent intends the action of the train. Thus, here, too, we need to determine whether the agent intends the train's continued progress forwards.

12 Quinn's handling of Train Brakes seems to give weight to the claim we made in Chapter 1 that the One-in-the-Road example would warrant a judgement of moral impermissibility even if it involved *an allowing*.

13 See Quinn, W. (1993) p.161

Quinn points out that in Explosion the agent does not intend the train's continued progress forwards. This is because in Explosion the agent's aim of saving the five "would be just as well served if the train's brakes were to accidentally to apply themselves."¹⁴ Thus, in this case, the agent does not intend the action of the train that causes the death of the one. Hence, this is a case that involves harmful negative agency. Therefore, this is a case that warrants a judgement of moral permissibility.

Thus, Quinn combines his claims about the comparison between Train Brakes and Explosion with his claims about the comparison between Two Disasters and the One-in-the-Road in order to produce the following definition.

Harmful positive agency is that in which an agent's most direct contribution to the harm is an action, whether his own or that of some object. Harmful negative agency is that in which the most direct contribution is an inaction, a failure to prevent the harm.¹⁵

With this definition in mind, let us now consider how Quinn handles Trolley.

Quinn's Handling of Trolley.

It is clear from what Quinn has said about Train Brakes and Explosion that he must classify Trolley as being a complex case since it, too, involves a certain power of control over the action of an object (i.e. the trolley). Thus, this is a case where we need to determine whether the agent intends the action of the trolley. What is interesting about Quinn's approach to this example is that he does not ask us to consider whether the agent intends the trolley's action that would result in the running over of the one, rather he asks us to consider whether the agent intends the trolley's action that would result in the running over of the five.

Quinn's approach to this example is interesting in so far as it is hard to see how he could possibly accuse the agent of intending the action of the trolley that results in

14 Quinn, W. (1993) p.162

15 Quinn, W. (1993) p.163

the running over of the five. However, that is precisely what he does do. His explanation for why this is so runs as follows. If the agent does not switch tracks, this must be because he does not want the one to be run over by the trolley. If this is his aim, then he must intend that the train continue its progress along the main track so that it goes beyond the point at which it could be switched onto the spare track. That is, he must intend the trolley's continued progress forwards. But, if this is what he intends, then, by implication, he intends the action of the trolley that results in the running over of the five. So, whereas we might have thought that our choice in this case was between the harmful positive agency of switching tracks or the harmful negative agency of not switching tracks, Quinn claims that it is a choice between the active positive agency of switching tracks and the passive positive agency of not switching tracks. That is, no matter what we do in this case, our agency is going to count as positive. Hence, it is better to choose to do what will result in the death of one rather than the death of five. Thus, this is a case where it is morally permissible to save the five.

Hence, Quinn maintains that Trolley is not a special case because we handle it just as we do Train Brakes. That is, just as we determined that inaction of not applying the brakes counted as a quasi-action in Train Brakes, in Trolley we do the same with regard to the inaction of not switching tracks. Hence, in both of these cases, what we have is a special kind of inaction - the kind that warrants being classified as harmful positive agency. The notion that Quinn can explain the moral permissibility of Trolley without the need to claim that it is a special case may well make us think that Quinn's account of the DDA is better equipped to accommodate our intuitive judgement of cases than Foot's. However, such a claim only seems possible provided we accept Quinn explanation for the moral permissibility of Trolley. But, do we?

Can We Accept Quinn's Explanation for the Moral Permissibility of Trolley?

Quinn claims that, because our choice in Trolley is between two instances of positive agency, this means that it is morally permissible to switch tracks so that

we, as it were, intend the action of the trolley that results in the lesser harm. However, if Quinn is right and our choice is between the positive agency which will result in the death of five and the positive agency which will result in the death of the one, then it looks as though it is more than *just* morally permissible to switch tracks. This is because it looks as though Quinn ought to have said that we have a duty to switch tracks so that the trolley runs over the one instead of the five. Furthermore, we might think that the agent could be forced to switch tracks.¹⁶ Quinn accepts that this is the case but, in his defence, he says it only follows provided that the agent does not blamelessly disagree with his explanation and refuse to switch for that reason. For it is quite possible that this could be the case, given that Trolley is a “hard case”. A much harder case than if we think of a case where the trolley is headed towards the one and someone wants to switch tracks so it hits the five instead. In that kind of case, Quinn claims there would be no question that force could be used to stop the agent from switching tracks. This is because, in a case like that, we have no cause to doubt the claim that it would be wrong to switch tracks.

However, even if we accept Quinn’s response to this challenge, there seems to be no doubt that his explanation of Trolley commits us to accepting a judgement that is stronger than our intuitive judgement that this is a case where it is morally permissible to save the five. If this is so, then, strictly speaking, Quinn’s account does not seem to deliver a judgement that is in accord with the way we intuitively judge this case.

Having said that, let us now question whether Quinn is right, according to his own account, to claim that, if we do not switch tracks, our agency is positive because we are dealing with a special kind of inaction. This challenge is based on the idea that Quinn attributes intention to the agent with regard to the trolley’s continued progress when he has no cause to do so. If you recall, Quinn claims that if we

16 Frances Kamm makes both of these points in her article ‘The doctrine of double effect: Reflections on theoretical and practical issues.’ See Kamm, F. M. (1991) Quinn acknowledges Kamm’s challenge in a lengthy footnote at the end of his article ‘Reply to Boyle’s ‘Who is entitled to double effect?’’ See Quinn, W. (1993) p.197 Footnote #6

want to save the one from being run over by the trolley, we have to intend that the trolley continue its progress along the main track beyond the switch point. He assumes that this means that we intend the action of the trolley that causes the deaths of the five. He does so because it is the trolley's continued progress along the main track that causes the deaths of the five. But can Quinn really make this claim?

If you recall, when Quinn explains the moral permissibility of Explosion, he states that the agent does not intend the continued progress of the train and, therefore, the agent does not intend the action of the train that causes the death of the one. Quinn's explanation for why the agent is exempt from such an intention is based on the fact that, in this case, the agent's goal of saving the five would be just as well served if the train's brakes were to accidentally apply themselves. The implication here is that the agent's goal would be just as well served if the train were to suddenly come to a halt. If we keep this in mind and look again at Trolley, we can see that all we are committed to intending, if our aim is to save the one, is that the trolley not get onto the spare track. That is, we are not committed to intending that it continue its progress forward to where the five are. We can determine that this is the case, in so far as our purpose of saving the five would be just as well served if the trolley were to come to a sudden stop, start running backward down the main track or become derailed. Thus, it looks as though, if Quinn is willing to grant that Explosion is a case that involves harmful negative agency, then he has to grant that the inaction in Trolley counts as that, too. But, if this is so, are we then to think that Trolley does present Quinn with a problem, after all?

The answer to that question seems to be 'yes' and 'no'. It does make Trolley a problem for Quinn, in so far as it demonstrates that his explanation does not hold. Thus, he would then need to come up with an explanation for why Trolley warrants a judgement of moral permissibility, even though our choice is between the harmful negative agency of not switching tracks and the harmful positive agency of switching tracks. But, then again, it looks as though he would have a

way of doing that. For, given that Quinn has argued that we should think of Train Brakes as involving a special kind of inaction that we can think of as being a quasi-action, which warrants the classification of harmful positive agency, it seems open to him to regard the switching of tracks in Trolley as involving a special kind of action that we can think of as being a quasi-inaction, which warrants the classification of harmful negative agency.

The notion that, in Trolley, the act of switching of tracks can count as quasi-inaction seems reasonable considering that Quinn was quite prepared to allow the inaction of not switching tracks to count as a quasi-action. However, if you recall in the last chapter, we noted that although Foot is prepared to allow the notion of intention to be introduced into the allowing side of the distinction between doing and allowing, she is not prepared to do the same with regard to the doing side of the distinction. This is because, if she were to allow the notion of intention to be introduced to the doing side of the distinction she would not be able to claim that the Poisonous Fumes example warrants a judgement of moral impermissibility because it involves *a doing* rather than *an allowing*. Foot would fail in her explanation for the moral impermissibility of Poisonous Fumes because, as soon as we think in terms of intention, it becomes a case of doing without intent and, therefore, warrants a judgement of moral permissibility. So maybe Quinn, too, would have to resist the suggestion that he could claim that Trolley warrants a judgement of moral permissibility because it involves a quasi-inaction, on the grounds that it is a case where we do not intend the trolley's action.

However, it does not seem as though this is the case. This is because Quinn could accept this suggested explanation for the moral permissibility of Trolley without it affecting his ability to deliver a judgement of moral impermissibility with regard to the Poisonous Fumes example. This is because Quinn, unlike Foot, draws a distinction between cases that do and do not involve the action of objects. So this presumably¹⁷ means that Quinn can claim that Poisonous Fumes, like the One-in-the-Road example, is an ordinary case, so, when it comes to determining whether it

¹⁷ Quinn never actually refers to the Poisonous Fumes example.

warrants a judgement of moral permissibility or impermissibility, it is simply a matter of applying the distinction between action and inaction. Thus, Poisonous Fumes warrants a judgement of moral impermissibility because it is the action of manufacturing the gas that most directly contributes to the death of the one. Hence, although we seemed to have successfully dismissed Quinn's explanation for the moral permissibility of Trolley, we have also provided him with an alternative that is in keeping with his account of the DDA. So does this mean that we now find Quinn's account of the DDA credible?

How Credible is Quinn's Account of the DDA?

There are a number of aspects of Quinn's account that might make us doubt its credibility. Our first concern echoes what we noted with regard to Foot's account of the DDA. For it looks as though we could doubt whether Quinn can use the comparison between Two Disasters and the One-in-the-Road example to establish that there is a moral distinction to be made, based on the difference between action and inaction. This is because what we said in relation to Foot's use of that comparison holds every bit as much for Quinn's account. For here, too, it is the case that Quinn is not comparing like with like, in so far as these two examples do not share the same structure. This is because in Two Disasters, but not in the One-in-the-Road example, it is the case that if we do nothing all six will die. This means that in Two Disasters a judgement of moral permissibility could be warranted simply because it is a case where it is better to save some (whether it be one or five), rather than none.

Secondly, we might want to question whether Quinn has any grounds for claiming that we need to divide cases into those that do or do not involve the action of an object. That is, we might want to question whether Quinn is justified in thinking that cases that involve the action of an object warrant a different kind of treatment from those cases that do not involve the action of an object. The notion that we should question Quinn's grounds for such a claim stems from the fact that, without

this two tier classification, he would have difficulty explaining the moral impermissibility of the Poisonous Fumes example. This is because, without the two tier classification of examples, it would be hard to understand why, for instance, examples like Trolley, Train Brakes, and Explosion are subject to the application of the distinction between intended and merely foreseen, whereas examples like the One-in-the-Road and Poisonous Fumes are not.

Thus, it is Quinn's two tier classification of examples that allows him to ensure that the Poisonous Fumes example is immune from the application of the distinction between intended and merely foreseen. Furthermore, it is his two tier classification of examples that allows him to apply the distinction between intended and merely foreseen when it comes to examples that the DDA does not seem equipped to handle. That is, it allows Quinn to use the distinction between intended and merely foreseen to deliver a judgement of moral impermissibility in cases like Train Brakes, and to deliver a judgement of moral permissibility in cases like Trolley. For, if we were to apply the DDA to these two examples without adding to it the distinction between intending and merely foreseeing, it looks as though Trolley would warrant a judgement of moral impermissibility because it involves an action and Train Brakes would warrant a judgement of moral permissibility because it involves an inaction. Hence, Quinn's two tier classification of examples is fundamental to his defence of the DDA.

Having said that, it is worth noting that we are assuming that Quinn would claim that the Poisonous Fumes example warrants being put into the *non-object* tier of the classification, on the basis that this is the tier that he allocates to the One-in-the-Road example. However, we might also want to question whether Quinn is right to do so, given that the One-in-the-Road example involves the action of a car.¹⁸ For, if we could show that Quinn was wrong to classify the One-in-the-Road example in this way, the only example left in that category, besides Poisonous Fumes, would be Two Disasters. However, it could be that we have cause to think

¹⁸ We might have thought that Quinn does not classify the One-in-the-Road example in the *involving object* tier because the agent is the driver of the car, but this cannot be the case because he allows that we could be the driver of the train in Train Brakes.

that Two Disasters does not belong there, simply because it is structurally different from the other examples that we have been discussing. If this is the case, then we might be tempted to think that Quinn's two tier classification is custom made to accommodate our intuitive judgement that Poisonous Fumes warrants a judgement of moral impermissibility. Hence, our concern that Quinn should give us some justification for claiming a different treatment is required with regard to examples that do or do not involve the action of an object. Which in a sense brings us to our third concern.

Our third concern lies in questioning just how Quinn is going to explain the moral impermissibility of the Beggar example. If you recall, this is the example that prompted Foot to admit the need to re-introduce the distinction between intended and merely foreseen. However, according to Quinn's account of the DDA, it looks as though we should be able to determine which moral judgement is warranted in this case, simply by applying the distinction between action and inaction. For this is not a case that involves the action of an object. Hence, on Quinn's account, it looks as though this is the kind of case where we do not need to apply the distinction between intending and merely foreseeing. But if this is so, then it would seem as though, on Quinn's account, the Beggar example warrants a judgement of moral permissibility, on the grounds that it involves an inaction, rather than an action. And yet this cannot be Quinn's view because this is an example where we intuitively think a judgement of moral impermissibility is warranted.

It is hard to say just how Quinn would reply to our concern with regard to the Beggar example. This is because, this is another example that Quinn does not discuss. However, given that it does not seem possible for Quinn to apply the DDA to this example and deliver a judgement that accords with our intuitive judgement of this case, it seems reasonable to suggest that Quinn must think that this example can be dealt with through the application of the DDE. For, of course, this option is open to him since he, unlike Foot, is not advocating that we replace the DDE with the DDA. On the contrary, he accepts the need for the application

of both doctrines. We will be able to determine just how appropriate this suggestion is once we know what Quinn's position is, with regard to the DDE. Hence, we shall deal with this suggestion more fully in the next chapter. However, for the moment, what is important with regard to our concern about how Quinn will handle the Beggar example is the fact that it highlights the need for yet another explanation from Quinn. This is because it now looks as though we need some kind of explanation with regard to which examples are to be dealt with through the application of the DDA and which are to be dealt with through the application of the DDE.

Our fourth concern is directed towards questioning just why Quinn claims the need to, at least partially, incorporate the distinction between intending and merely foreseeing into his account of the DDA. For you might have thought that, since Quinn advocates the application of both the DDA and the DDE, there would be no need for him to do this. That is, you would think that, if the distinction between intending and merely foreseeing is available to him through the application of the DDE, there would be no need for him to incorporate it into the DDA as well.¹⁹ But he does do. Thus, we seem to have the additional problem of determining which examples qualify for the application of the DDA and which for the application of the DDE. Hence, it seems that Quinn needs to explain to us just how we are to determine which doctrine applies with regard to any given case.

So, in a sense, our fourth concern is about questioning whether Quinn could avoid the need to incorporate the distinction between intending and merely foreseeing into the DDA by simply stipulating that, if an example involves the action of an object, it warrants the application of the DDE, rather than the DDA. Now there might be some aspect of Quinn's account of the DDE that rules this suggestion out. But we will not know whether that is the case or not until the next chapter. Thus, for the moment, let us simply consider whether it is possible to explain the moral

19 Foot's need to incorporate the distinction between intended and merely foreseen into the DDA is more understandable, given that she was advocating that we use the DDA as a replacement for the DDE.

permissibility or impermissibility of cases that involve the action of an object, without the need to apply the distinction between action and inaction.

Explaining the Moral Permissibility or Impermissibility of Cases that Involve the Action of an Object Without the Need to Apply the Distinction Between Action and Inaction.

The suggestion is that Quinn could determine the moral permissibility or impermissibility of cases that involve objects without the need to think in terms of action and inaction. Hence, there is no need to determine whether action does or does not count as a quasi-inaction nor is there any need to determine whether an inaction does or does not count as a quasi-action. Thus, we are suggesting that it is possible to deliver a judgement with regard to cases like Train Brakes, Explosion, and Trolley without the need to determine whether we are dealing with a case where the agent's act counts as if it were an action or as if it were an inaction. This suggestion is dependent on our demonstrating that it is possible to deliver a judgement with regard to these cases without the need to determine whether the agent does or does not intend the action of the object that causes the harm to the one. In order to support the notion that this is possible, let us look at an example that we will call Threat-of-a-Second-Explosion.

Threat-of-a-Second-Explosion: An explosion has just occurred at the rear of the train. We set the train on automatic forward so that we can attend to the five who are badly wounded. While we are attending to them we learn that there is another bomb in the vicinity of the five which is set to go off if the train should come to a stop. Our aim is to prevent them from dying from the wounds that were caused by the first explosion and then move them to the front of the train so that they will no longer be under threat from the second bomb. In order to accomplish our aim we know that we must not apply the brakes. However, we then learn that one person is trapped on the track up ahead.

According to Quinn's account of the DDA, it looks as though Threat-of-a-Second-Explosion warrants a judgement of moral impermissibility. This is because this is a case where the agent does intend the train's continued progress forwards. Thus, this is a case where, by implication, Quinn would claim that the agent intends the action of the train that causes the harm to the one. We can determine that this is so

because this is a case, unlike Explosion, where the agent's purpose of saving the five would not be just as well served if the train's brakes were to accidentally apply themselves. For, if the train's brakes were to accidentally apply themselves in this case, the second explosion would occur, thereby thwarting the agent's goal of saving the five.

Hence, Quinn's account leaves us in the position of having to accept that it is morally permissible to save the five in Explosion but not morally permissible to do so in Threat-of-a-Second-Explosion. And yet it seems as though, intuitively, we think that both of these examples warrant a judgement of moral permissibility. Furthermore, it seems as though we can give support to our intuitive judgement that Threat-of-a-Second-Explosion warrants the same moral judgement as Explosion. But, that support does not come by claiming that the agent's goal of saving the five would be just as well served if the train's brakes were to accidentally apply themselves, rather it comes from claiming that the agent's goal of saving the five would be just as well served if the train were not to run over the one. This is because the latter claim also holds with regard to Explosion. We can see that this is the case because, in Explosion, the notion that the agent's goal would be just as well served if the train's brakes were to accidentally apply themselves holds by virtue of the fact that the agent could save the five without the need for the train to run over the one. Thus, in both of these examples, what we have is a case where the agent's goal of saving the five can be served without the need for the train to run over the one. This is so, despite the fact that these are both cases where the one will be run over if the agent acts to save the five.

In the Train Brakes example things are different. For it is an example where the agent cannot save the five until, or unless, the train does run over the one. Thus, there is a distinction to be drawn between what is the case in Explosion and Threat-of-a-Second-Explosion and what is the case in Train Brakes. The distinction is that in Train Brakes, but not in the other two cases, the agent's goal of saving the five will be thwarted if the train does not run over the one.

Thus, by introducing Threat-of-a-Second-Explosion, we can see that, just because it seemed plausible for Quinn to attribute the moral difference between Explosion and Train Brakes to the distinction that can be drawn between intending or not intending the train's continued progress forwards, this is not necessarily the distinction that accounts for that difference. Hence, the suggestion that it is just as plausible, if not more plausible, to attribute the moral difference between these cases to the distinction that can be drawn between whether an agent could or could not act to save the five, if the harm to the one did not occur. This claim seems to be further supported by the fact that it is possible to use this same distinction to explain the moral permissibility of Trolley.

We can use this same distinction to explain the moral permissibility of Trolley because it, too, is a case where we can determine that the agent could save the five, even if the trolley did not run over the one. We can demonstrate that this is so because it is a case where the safety of the five is secured by our preventing the trolley continuing its progress along the main track, and we do that by switching tracks. Our ability to switch tracks does not require that the one be run over. Thus, this is a case where the agent's goal of saving the five would be just as well served if the one were not run over. However, here again, this is so, despite the fact that if the agent does switch tracks the one will be run over.

Thus, we now have two possible ways of explaining the moral permissibility of Trolley. Our first suggested explanation amounted to claiming that it is morally permissible to save the five in Trolley because it is a case where we do not intend the train's continued progress forwards along the spare track. Hence, it is a case in which we do not intend the action of the trolley that results in the one being run over. This explanation seems to fit in well with Quinn's account of the DDA. In fact, it seems more plausible than Quinn's own explanation for the moral permissibility of Trolley. This is because our explanation gives support to Quinn's claim that there is a moral distinction to be made, based on the difference between action and inaction. Our second explanation for the moral permissibility of Trolley, on the other hand, seems to put paid to that idea. This is because it looks

as though our second explanation for the moral permissibility of Trolley does away with any notion that we need to think of it as an example that involves an action that counts as a quasi-inaction. Hence, it is unlikely that Quinn will want to accept our second explanation for the moral permissibility of Trolley.

However, it could be that he should. This claim seems to be supported by the fact that we can use the same distinction to explain moral impermissibility of both the One-in-the-Road example and the Beggar example. We can see that this is so, with regard to the One-in-the-Road example, because it is a case, just like Train Brakes, where it is possible to determine that the agent cannot save the five until, or unless, the train does run over the one. So, once again, we can deliver a judgement with regard to both of these cases without the need to determine whether we are dealing with a case of action or inaction. In the Beggar example, things are slightly different because we are not talking about running over someone. But, all the same, it is a case where it is possible to determine that the agent's goal will be thwarted unless, or until, the death of the beggar occurs. Thus, this, too, is a case where the agent's goal will not be just as well served if the harm to the one does not occur. Hence, in this case, too, we can determine that a judgement of moral impermissibility is warranted, without the need to determine whether this is a case that involves the agent in action or inaction.

Thus, not only can we use the distinction that we have been making to deliver moral judgements in cases that Quinn classifies as involving the action of an object, but we can, also, use it to deliver moral judgement in cases that Quinn classifies as not involving the action of an object. Furthermore, we can use it to deliver a moral judgement in the case that we thought Quinn could only handle through the application of the DDE. That is, we can use it to deliver a moral judgement in the Beggar case. But, if this is the case, have we not just used the DDE to deliver a moral judgement with regard to all of these cases? It would seem as though we have. For, in each case, our question seems to have been: Does the agent intend the occurrence of the bad effect or does she merely foresee it? But, if this is so, then just how credible is Quinn's position with regard to the DDA?

The Credibility of Quinn's Position with regard to the DDA.

Given that we seem to be able to deliver our moral judgements with regard to all of the cases we have discussed so far, without the need to either determine whether we are dealing with a case that does or does not involve the action of an object, or whether we are dealing with a case that involves an action or an inaction, it does not seem as though we can attach much credibility to Quinn's position with regard to the DDA. However, having said that, there is one example on which we have not delivered a judgement. For we have not delivered a judgement with regard to the Poisonous Fumes example. And if we try to deliver a judgement with regard to that case, now we find, as Foot predicted, the judgement that we get is one of moral permissibility. This is because, if we ask whether the agent could save the five if the one were not harmed by the poisonous fumes, the answer we get is that she could. This is because the saving of the five is dependent upon the agent manufacturing the gas that will cure the five, and the purpose of producing that gas would be just as well served if the one were not to be harmed by the poisonous fumes. Thus, it looks as though the Poisonous Fumes example gives us cause to think that there is a need, after all, for the application of the DDA. Unless, that is, we make the same suggestion here as we did with regard to Foot's account and claim that there might well be some reason to think that Poisonous Fumes warrants being thought of as a special case. For, after all, Foot is quite prepared to think of Trolley as a special case and Quinn is just as prepared to think of all the examples that involve the action of an object as warranting special treatment.

Thus, it does not seem totally unreasonable to suggest that there could be some way of determining that Poisonous Fumes is a special case.²⁰ In fact, this suggestion seems more plausible than the notion that this case, alone, warrants our acceptance of the need to apply the DDA, as well as the DDE. This seems especially so, given the doubts that we expressed about just how much store we can put on the claim that there is a distinction to be made, based on the difference between action and inaction, given that it is based on a comparison between two

20 This is precisely what we plan to do in Chapter 3 and, again, in Chapter 7.

examples that do not share the same structure. That is, given that the claim is based on the comparison between Two Disasters and One in the Road. Thus, let us now turn our attention to Quinn's position with regard to the DDE. For, after all, Quinn views the DDE quite differently from the way it is traditionally viewed. Hence, we might find something in his view that gives us cause to reconsider the credibility of his position with regard to the DDA.

Chapter 3

Quinn's Position with Regard to the Doctrine of Double Effect.

In the previous chapter, we became aware of Quinn's position with regard to the DDA. We also expressed some concern about the credibility of that position. In this chapter we aim to determine just how Quinn views the DDE. During that process we shall be on the lookout for possible solutions or explanations that could help to bring the credibility of Quinn's claims with regard to the DDA more into focus.

Quinn's View of the DDE.

Quinn maintains that the Doctrine of Double Effect, as it is traditionally presented, is hard to defend.¹ He claims there are two reasons for this being so. The first reason arises from the fact that the application of the DDE relies on the distinction that can be drawn between harm that is intended and harm that is merely foreseen. The problem is that this distinction is a difficult one to formulate. This is because the formulation has to explain how the distinction between intending and merely foreseeing can deliver moral judgements that accord with our intuitive judgement of cases, while at the same time avoiding the charge of inconsistency.

The need to avoid the charge of inconsistency should come as no surprise, given that, with regard to Quinn's account of the DDA and Foot's account of that same doctrine, we have been at pains to determine how we can deliver a judgement of moral impermissibility in the Poisonous Fumes example without having to succumb to a charge of inconsistency. We might be inclined to tolerate a degree of

¹ See Quinn, W. (1993) *Morality and action*. USA: Cambridge University Press. See Chapter 8 - Actions, intentions and consequences: The Doctrine of Double Effect. p.175-193

inconsistency if we were faced with a formulation that delivers a judgement of moral impermissibility, despite the fact that it is a case where we intuitively judge it as being morally permissible. However, such a tolerant attitude is not acceptable when it comes to a formulation that delivers a judgement of moral permissibility with regard to a case that we intuitively think warrants a judgement of moral impermissibility. In other words, although we might accept a formulation where the tolerance of error is rooted on the side of strictness, we are going to reject a formulation where such tolerance is rooted on the side of leniency.

However, it is not just the lack of consistency that makes Quinn accept that it is no easy task to produce a defence for the DDE. For, in addition, there is the problem of just how we are meant to motivate the claim that there is a moral distinction to be made based on the difference between what is intended and what is merely foreseen. Thus, Quinn's aim is to provide us with a formulation that can accommodate our intuitive judgement without falling prey to the charge of inconsistency and to offer us a rationale that will support that formulation.

When it comes to providing a rationale for his formulation Quinn echoes the "Kantian ideal of human community and interaction."² So, basically, his claim is that we can find support for his formulation in the Kantian idea that "[e]ach person is to be treated, so far as possible, as existing only for purposes that he can share."³ With this noted, we can now concentrate on determining just how Quinn develops a formulation of the DDE which he regards as being different from, and better than, its traditional counterpart.⁴

Quinn bases the development of his new formulation on the comparison between three pairs of contrasting cases. The first pair of examples deal with modern warfare. We shall refer to the examples that Quinn uses in this pairing as Strategic Bombing and Terror Bombing.⁵ The other two pairings are taken from the field of

2 Quinn, W. (1993) p.192

3 Quinn, W. (1993) p.192

4 Quinn, W. (1993) p.184

5 Quinn refers to these examples as Strategic Bomber and Terror Bomber.

medicine. The examples in the first medical pairing Quinn devised himself. He calls these examples Direction of Resources and Guinea Pig. The final pairing consists of the two examples that appear in most discussion about the DDE - namely the Hysterectomy Case and the Craniotomy Case. Thus, we shall discuss each of these pairings in turn.

Quinn's Handling of Strategic Bombing and Terror Bombing.

Quinn maintains that in both Strategic Bombing and Terror Bombing our aim is to get an aggressor nation to stop its attack on our country. However, in each example, our aim is accomplished in a different way. In Strategic Bombing our aim is accomplished by dropping bombs on the aggressor nation's weapons factory. The idea is that, if we can destroy the weapons factory, the aggressor nation will have no weapons and will, therefore, not be able to continue attacking our country. But the problem is we cannot drop bombs on the weapons factory without causing the deaths of at least some innocent civilians. This is because the weapons factory is situated in a densely populated civilian area. Whereas, in Terror Bombing, we employ a different strategy. In Terror Bombing our strategy has a much more psychological basis. This is because, in this example, our plan is to drop bombs on the citizens of the aggressor nation. In doing so, we aim to demoralise the aggressor nation so that they will stop their attacks upon us.⁶

Traditionally, it is claimed that the DDE delivers a judgement of moral permissibility in Strategic Bombing because it is a case where we do not intend but rather merely foresee the harm that will befall the innocent civilians. Whereas, the DDE delivers a judgement of moral impermissibility in Terror Bombing because it is a case where we do intend the harm that befalls the innocent civilians. In a sense this seems a reasonable enough claim, given that it delivers judgements that are in accord with the way we intuitively think these cases should be judged. But, there again, as Quinn points out, we need some way of explaining why the

⁶ How effective such a strategy would prove to be is somewhat questionable.

dropping of bombs in the Strategic Bombing case warrants being attributed with consequences that are merely foreseen, whereas the dropping of bombs in the Terror Bombing case warrants being attributed with consequences that are intended. In other words, it is not enough simply to stipulate that this distinction applies to these two cases, rather we need to explain why it does.

Quinn maintains that his handling of the distinction that is being made here can best be understood if we think in terms of whether the agent does or does not need the involvement of the innocent civilians in order to accomplish her goal of putting a stop to the attacks that are being made upon us. Thus, Quinn is advocating that we change our perspective of these cases. We are no longer to think in terms of whether the agent does or does not intend the deaths of the civilians in these cases. For there is a sense in which this is so, with regard to both cases. Rather, what Quinn wants us to do is focus on whether the agent's goal will or will not be served by the harm that befalls the civilians.

Quinn directs our focus away from death and onto involvement so that he can provide us with a tangible way of determining that Strategic Bombing involves merely foreseen consequences, whereas Terror Bombing involves intended consequences. His claim is as follows. We can determine that Strategic Bombing involves merely foreseen consequences because it is a case where our purpose of destroying the weapons factory would be just as well served if no civilians were involved in our attack on the factory. In Terror Bombing things are different. In Terror Bombing we can determine that the consequences are intended. This is because it is a case where we require the involvement of the civilians if we are to accomplish our aim of demoralising the aggressor nation. Hence, Quinn makes the following claim.

To put things in the most general way, we should say that [the formulation] distinguishes between agency in which harm comes to some victims, at least in part, from the agent's deliberately involving them in something in order to further his purpose precisely by way of their being so involved (agency in which they figure as *intentional objects*) and harmful agency in which either nothing is in that way intended for the victims or what is so intended does not contribute to their harm.⁷

7 Quinn, W. (1993) p.184-185

Quinn refers to the first kind of harm that is described above as *direct* and the second as *indirect*. Quinn also claims that:

According to this version of the doctrine, we need, *ceteris paribus*, a stronger case to justify harmful direct agency than to justify equally harmful indirect agency.⁸

Thus, Quinn claims that his formulation provides us with a way of showing that there is a genuine difference in the intentional structures of contrasting cases like Strategic Bombing and Terror Bombing. Furthermore, he maintains that in doing so

...it makes no appeal to the problematic notion of “closeness.” For direct agency requires neither that harm itself be useful nor that what is useful be causally connected in some especially close way with the harm it helps bring about.⁹

Quinn sees the fact that no appeal to “closeness” is needed as being advantageous. No doubt this is because an appeal to the notion of “closeness” always seems to cause more problems than it solves when it comes to explaining the moral difference between cases. However, Quinn maintains there is yet another advantage to be gained from his formulation of the DDE. For he states:

With this version of the doctrine, we can sidestep all potentially controversial questions about whether the agents in our various cases kill or harm intentionally. It is enough that we can identify the things they uncontroversially intend as contributing to their goal.¹⁰

Quinn’s formulation of the DDE gives us a way of focusing on and determining the intentional structure of a given case. It, therefore, seems appropriate to refer to this as the Intentions Formulation (IF). Thus, we can now discuss Quinn’s two medical pairings of examples with the benefit of knowing the formulation that Quinn is using. Let us start with the pairing that Quinn devised. That is, let us start with the comparison that he makes between Direction of Resources and Guinea Pig.

8 Quinn, W. (1993) p.185

9 Quinn, W. (1993) p.185 Quinn adds in footnote #19 that neither does the agent need to have “*particular* victims in mind.” For it is enough that the agent intends something for someone or other.

10 Quinn, W. (1993) p.185-186

Quinn's Handling of Direction of Resources and Guinea Pig.

In the Direction of Resources example and in Guinea Pig there is an unspecified number of people suffering from a new life-threatening disease. Our resources are limited. We, therefore, do not have enough money to both treat and research the new disease. In the Direction of Resources example, we decide to use the money that we have available to us to treat the cases we can. This means that we leave the more severe cases untreated. In the Guinea Pig, on the other hand, we use our resources to investigate the nature of the disease. Hence, Quinn maintains that this is a case where we deliberately leave the severe cases untreated so that we can learn more about the disease. The idea, presumably, is that we would use the knowledge gained to produce an effective cure for the disease or determine some way of preventing its occurrence.

Thus, whereas our focus in the comparison between Strategic Bombing and Terror Bombing is on the action of dropping bombs, in this comparison it is on the inaction of not treating the severe cases. Quinn obviously thought it necessary to be able to show us that the IF of the DDE could deliver moral judgements of cases irrespective of whether the agent in question is involved in an action or an inaction. Hence, Quinn's claim that his formulation cuts across the distinction that the DDA makes between harming and allowing harm.¹¹ Having noted that this is the case, let us now see just how Quinn explains the moral difference between the Direction of Resources example and Guinea Pig.

Quinn maintains that, in the Direction of Resources example, the agent's inaction of not treating the severe cases warrants a judgement of moral permissibility, whereas in Guinea Pig that same inaction warrants a judgement of moral impermissibility. This is so because in Guinea Pig, but not in the Direction of Resources example, the agent treats those who are severely effected by the disease as if they were laboratory animals.¹² That is, the agent treats the victims in this

11 See Quinn, W. (1993) p.187

12 See Quinn, W. (1993) p.189

case as if they were there for her purpose of advancing medical research. Thus, according to Quinn's account, Guinea Pig warrants a judgement of moral impermissibility because the agent treats the victims as *intentional objects*.

Quinn's explanation for the moral impermissibility of Guinea Pig seems convincing enough. Thus, it is tempting to think that this second comparison upholds his claims with regard to the IF of the DDE just as effectively as does the military comparison. Our readiness to accept this second comparison is supported by the fact that we seem to intuitively think that the Direction of Resources example warrants a judgement of moral permissibility, but that Guinea Pig does not. However, it seems as though we might have cause to question whether this comparison works as well as Quinn would have us think. For, although it is the case that there is a marked difference between the agent's attitude to the victims in each of these cases, this is not the only way in which the two cases differ.

In order to appreciate that these two cases differ in other ways, we need to direct our focus away from the severe cases. That is, we need to look at the easily treated cases. This is because, unless we do so, we might overlook the fact that, in the Guinea Pig example, our inaction of not treating the severe cases also involves our not treating the easy cases either. This is because, in this example, our limited resources are spent on investigating the nature of the disease, rather than on the treatment of the easy cases. Thus, in Guinea Pig, both the severe cases and the easy cases go untreated. Hence, Quinn is not comparing like with like when he compares the Direction of Resources example with Guinea Pig. This is because, in the former example, our inaction results in the saving of at least some of the people who are currently suffering from the disease, whereas, in Guinea Pig, none of the current sufferers are saved.

But, of course, in Guinea Pig the notion that none of the current sufferers will be saved is offset by the fact that our aim is to be able to prevent there being more deaths from the disease in the future. This, in its turn, highlights another difference between the two cases. That is, it highlights the fact that in each case

the agent's goal is different. In Direction of Resources the agent's goal is to save as many people as is possible, whereas in Guinea Pig the agent's goal is to discover as much about the disease as is possible. Having said that, we might want to question whether Quinn can claim that the agent in Guinea Pig deliberately leaves the severe cases untreated. For to say this is to imply that the agent could have saved the severe cases if she had wanted to. But our choice in these two cases is not between either saving a few of the severe cases or many of the easy cases, it is between saving the easy cases or investigating the disease. The whole point is that we do not know how to save the severe cases because our knowledge of the disease is so limited. If this is so, then it seems as though Quinn should have claimed that Guinea Pig warrants a judgement of moral impermissibility because the agent deliberately leaves the easy cases untreated so that she can spend the resources that she has on investigating the nature of the disease. Thus, it looks as though there is an alternative way to explain the moral difference between these two examples.

It looks as though we could claim that, in the Direction of Resources example, it is morally permissible to save the easy cases on the grounds that to do otherwise would mean that both the severe cases and the easy cases would die from the effects of the disease. This would then allow us to claim that Guinea Pig warrants a judgement of moral impermissibility because it is a case where we have failed to save those that could have been saved. This is so despite the fact that we did so with the good intention of saving more people in the future. It is interesting that this alternative explanation can be made without the need to determine what the agent's attitude is with regard to those who are severely affected by the disease.¹³

However, even if we do not think that Quinn's comparison between Direction of Resources and Guinea Pig demonstrates what he claims it does, we can still appreciate why he makes the following statement.

What seems specifically amiss in relations of direct harmful agency is the particular way in which victims enter into an agent's strategic thinking. An indirect agent may be certain that his pursuit of a

¹³ This does not mean that we can or should ignore the attitude of the agent with regard to the victims of a given case. We shall discuss this point in more detail in Chapter 6.

goal will leave victims in its wake. But this is not because their involvement in what he does or does not do will be useful to his end. The agent of direct harm, on the other hand, has something in mind for his victims - he proposes to involve them in some circumstance that will be useful to him precisely because it involves them. He sees them as material to be strategically shaped or framed by his agency.¹⁴

With the doubts about the effectiveness of the comparison between Direction of Resources and Guinea Pig noted, and with this statement in mind, let us now turn to the final comparison that Quinn uses in support of his claims with regard to the IF. That is, let us consider the comparison that he draws between the Hysterectomy Case and the Craniotomy Case.

Quinn's Handling of the Hysterectomy Case and the Craniotomy Case.

It seems important for Quinn to be able to demonstrate that the IF of the DDE can adequately explain why these two examples warrant different moral judgements. This is because this pairing, more than any other, seems to fuel the claim that the DDE is just so much sophistry. For there are those who find it hard to accept that these two examples do not warrant the same moral judgement. Thus, let us see just how Quinn does explain the moral difference between these two cases.

In both the Hysterectomy Case and the Craniotomy Case we are dealing with a pregnant woman who is in danger of dying. In the Hysterectomy Case the danger to her life exists because she is found to be suffering from cancer of the womb. In the Craniotomy Case her life is under threat because she is trying in vain to deliver her child. Her inability to do so is caused by the fact that the child's head has got stuck in the birth canal. In the first of these cases we can save the woman's life by removing her womb. However, given the limits of medical technology, if the woman's womb is removed the foetus will die. In the Craniotomy Case we can save the woman's life but to do so requires that we crush the child's skull so that it can be removed from the birth canal. By way of an added complication, there are two versions of the Craniotomy Case. In one version, it is the case that the child

14 Quinn, W. (1993) p.190

can survive the woman's death. In the other version, if we do not crush the child's skull both the child and the woman will die.¹⁵

Traditionally, it is claimed that the DDE allows the saving of the woman in the Hysterectomy Case because it is a case where the death of the child is merely foreseen, but does not allow the saving of the woman in the Craniotomy Case because it is a case where the death of the child is intended. However, as we said before, Quinn's focus is not on death but rather it is on involvement. So, you might think that what we need to do here is what we did with regard to the other two pairings and establish whether the involvement of the unborn child in these cases does or does not serve our goal of saving the woman. But this is not what Quinn asks us to do with regard to this pairing. Of course, this could be because in this pairing the relationship between the woman and her unborn child is such, that no matter what, there is going to be involvement. So, instead, Quinn directs our attention to the effect that the doctor's action has on the unborn child. Hence, with respect to this comparison, what we need to ask is whether that effect does or does not serve the purpose of saving the woman. If it does serve that purpose, then we can attribute the doctor with intending that effect. However, if the effect on the foetus does not serve the purpose of saving the woman, then the doctor is exempt from such an intention.

Hence, Quinn is able to claim that the Hysterectomy Case is morally permissible because the effect that the doctor's action has on the unborn child does not serve his purpose. Quinn bases this judgement on the fact that the doctor's medical purpose of removing the woman's womb would be just as well served if the unborn child were not to be so affected. But, in the Craniotomy Case, things are different. For in that case, a judgement of moral impermissibility is warranted because the effect that the doctor's action has on the unborn child does serve his purpose. This is because in the Craniotomy Case the doctor's medical purpose of removing the unborn child from the birth canal is served when its head is crushed.

¹⁵ As we shall see later in Chapter 8 it is important to be clear which version of this example we are using at any given time.

So, in effect, the Craniotomy Case warrants a judgement of moral impermissibility because the doctor *uses* the effect on the unborn child to save the woman. Hence, Quinn views this comparison slightly differently than the other two comparisons.

How Quinn Views the Relationship between the Three Pairings.

Quinn readily admits that the moral asymmetry between the Hysterectomy Case and the Craniotomy Case is less pronounced than it is in the other two pairings. Quinn attributes the weaker asymmetry of this pairing, in part at least, to the fact that, in the Craniotomy Case, the unborn child presents as a difficulty that needs to be removed. Hence, when the agent acts in this case she does so in order to, as it were, eliminate the problem. Thus, Quinn refers to the agency that we are dealing with in the Craniotomy Case as direct and eliminative. This is in contrast to the agency that occurs in both Terror Bombing and Guinea Pig. For Quinn maintains that when it comes to examples like these (i.e. examples where the victims of harm have a role to play), the agency we are dealing with is direct and opportunistic. This is because in both of these cases the agent's goal is advantageously effected because the victims of harm are involved. This is because in both of these examples it is the case that, if the victims of harm were not involved, the agent would not be able to make the proposed saving. That is, in Terror Bombing, the aggressor nation's attacks upon us can only be stopped provided we drop bombs on the afore-mentioned civilians. Likewise, in Guinea Pig, the advanced knowledge of the disease can only be obtained provided there are severe cases that we can observe and monitor.¹⁶ Hence, Quinn claims that in cases like Terror Bombing and Guinea Pig, we are dealing with agency that can be thought of as opportunistic or exploitative. Thus, Quinn refers to the agency in both of these cases as direct and opportunistic.

¹⁶ We can determine that this is the case in the Guinea Pig example without the need to think in terms of what kind of attitude the agent in question does or does not have with regard to the victims of harm.

Quinn uses the difference that exists between eliminative and opportunistic agency to explain the fact that it is easier to see how the IF of the DDE depends on the notion of use of involvement of a victim when we look at cases like Terror Bombing and Guinea Pig. In other words, he uses the difference between these two types of agency to explain why the notion of *use* seems less applicable when it comes to making a comparison between the Craniotomy Case and the Hysterectomy Case. However, even though there is this difficulty, Quinn maintains that the notion of use is there nonetheless. Hence, it is hardly surprising that there are those who find it hard to accept that the Craniotomy Case and the Hysterectomy Case warrant different moral judgements.¹⁷

Thus, Quinn has tried hard to get us to accept that all three of these pairings support the claim that:

Someone who harms by direct agency must therefore take up a distinctive attitude toward his victims. He must treat them as if they were then and there *for* his purposes. But indirect harming is different. Those who simply stand unwillingly to be harmed by a strategy - those who will be incidentally rather than usefully affected - are not viewed strategically at all and therefore not treated as for the agent's purposes rather than their own. They may, it is true, be treated as beings whose harm or death does not much matter - at least not as much as the achievement of the agent's goals. And that presumption is morally questionable. But in a counterpart case of direct agency there is the *additional* presumption that the victim may be cast in some role that serves the agent's goal.¹⁸

If we look at the three examples of the pairings that Quinn regards as morally impermissible we can see that Guinea Pig is the example that best conveys the notion of agency with attitude. But, as we noted above we could determine the moral impermissibility of this example without the need to think in terms of what the agent's attitude is, with regard to the victims of harm. For it is possible to determine that Guinea Pig warrants a judgement of moral impermissibility on the grounds that the agent's purpose is served by the involvement of those who are severely affected by the disease. Thus, what really matters, in this example, is the fact that the agent's purpose is served by the involvement of those on whom the harm will fall. Furthermore, we can determine that this is so because this is a case where we cannot

17 We shall be discussing the comparison between the Hysterectomy Case and the Craniotomy Case in more detail in Chapter 8.

18 Quinn, W. (1993) p.190

say that our purpose would be just as well served if there were no severe cases of the disease.

This notion of the need for involvement is precisely what Quinn wanted us to appreciate with regard to Terror Bombing. Furthermore, it seems to be the very notion that forms the link between these two examples and the Craniotomy Case. For, in the Craniotomy Case, too, our purpose is served precisely because our action involves the unborn child in the way it does. So there does seem to be a sense in which we can accept that Quinn's use of the three pairings supports the claims he makes with regard to the IF of the DDE. If this is the case, then it looks as though it does not matter whether we are faced with a case of action or inaction, we should be able to apply the IF of the DDE to it and determine whether it warrants a judgement of moral permissibility or impermissibility. But if the IF of the DDE can handle all of these cases why should we have any need to apply the DDA?

Does Quinn's Defence of the DDE Rule Out the Need for the DDA?

The fact that Quinn uses the IF of the DDE to explain the moral permissibility and impermissibility of the three pairings that we have just discussed does seem to suggest that there is no need for him to claim that we need the DDA, as well as the DDE, in order to determine the moral permissibility or impermissibility of a given case. For, after all, we can see that if we were to apply the DDA to these cases, we would end up with some judgements that were not in accord with the way we intuitively think that these cases should be judged. This is because, if we were to apply the DDA to these three pairings, we would have to claim that the examples in the first and third pairings warrant a judgement of moral impermissibility, whereas the examples in the middle pairing warrant a judgement of moral permissibility. This is because in Strategic Bombing, Terror Bombing, the Hysterectomy Case and the Craniotomy Case we are dealing with the action of an

agent, whereas in Direction of Resources and Guinea Pig we are dealing with the inaction of an agent.

Thus, in a sense it is the inability of the DDA to handle these examples that makes us turn to the application of the DDE. This is interesting because it is the apparent inability of the DDE to handle the Poisonous Fumes example that makes Foot turn to the application of the DDA. Hence, it could be that Quinn's need to defend the application of the DDA arises because the IF of the DDE also has a problem with delivering a judgement of moral impermissibility with regard to the Poisonous Fumes example.

Applying the IF of the DDE to the Poisonous Fumes Example.

In order to apply the IF of DDE to the Poisonous Fumes example we need to determine whether the agent's goal is served by the fact that the one who is trapped in the room is harmed by the release of poisonous fumes. The answer to that question seems to be that it is not. This is because the agent's goal of saving the five by manufacturing a gas would be just as well served if the one in that room were not affected by the poisonous fumes. Thus, we can see that the circumstances of this case appear to be the same as the those in Strategic Bombing. So it is not as though we cannot apply the DDE to this example and deliver a judgement. It is more that we cannot apply the DDE to this example and deliver a judgement that accords with the way we, apparently, intuitively judge this case.

Thus, we might think that Quinn is using the joint application of the DDE and the DDA to determine the moral permissibility or impermissibility of a given case. If this is the case, then we might think that Quinn, in effect, is applying some sort of meta principle which states that:

an agent's act is impermissible if *either* the DDE or the DDA forbids it and an agent's act is permissible if *both* the DDE and the DDA permit it.

For, if this were the case, then it would make sense to say that the Poisonous Fumes example warrants a judgement of moral impermissibility because it is forbidden according to the DDA on the grounds that it involves an action, rather than an inaction. However, this cannot be Quinn's position because, if it were, he would have to claim that, although the IF of the DDE would permit the agent's action in Strategic Bombing, the DDA rules it out precisely because it is an action and not an inaction.

Thus, although we can see why Quinn still needs the DDA even though he has given the DDE a new formulation, it is hard to see how he can explain which doctrine applies to any given case. This is highlighted by the fact that, as we already pointed out in the last chapter, if we apply the DDA to the Beggar example it will warrant a judgement of moral permissibility because it involves the agent in an inaction, rather than an action. But, here again, Quinn can say that there is no need to subject this example to the application of the DDA. For, if we apply the IF of the DDE to it, we can deliver a judgement of moral impermissibility. This is because it is a case where the agent's goal of advancing medical research would not be just as well served if the agent's inaction did not involve the beggar in the way it does. We can determine that this is so because this is a case where we need the beggar to die if we are to be able to donate his body to medical research.

So, in a sense, Quinn needs both of these doctrines in order to play one against the other. This gives us the notion that what he is doing is applying whichever doctrine is needed in order to deliver a judgement that accords with the way we intuitively think an example should be judged. But this seems less than satisfactory, given that there are examples where we seem unsure what our intuitive judgement of that case is. Furthermore, it seems unsatisfactory in so far as there are cases where our intuitive judgement of a case is different from the judgement of others. But maybe there is some way of determining which doctrine applies to which examples. However, even if this is the case, it still seems strange that Quinn deals with examples like Train Brakes, Explosion and Trolley through the application of the *involving objects* version of the DDA, rather than through

the application of the IF of the DDE. For it looks as though all of those examples could easily be handled through the application of the IF of the DDE.

Applying the IF of the DDE to Train Brakes, Explosion and Trolley.

In Train Brakes we cannot save the five unless, or until, the train runs over the one. Thus, it looks as though it is a case where we would have to say that the involvement of the one serves our purpose. Hence, it seems as though we can use Quinn's IF of the DDE to deliver a judgement of moral impermissibility in this case. In Explosion and Trolley things are different because they are both cases where the running over of the one does not serve our purpose of saving the five. We can determine that this is so because, in both of these cases, our purpose would be just as well served if the one were not run over. Hence, these are cases where the IF will deliver a judgement of moral permissibility. Thus, there seems to be no reason why Quinn has to think that he needs the DDA to explain the moral impermissibility of Train Brakes or the moral permissibility of Explosion and Trolley. Having said that, it is worth considering what would happen if we applied the IF of the DDE to the One-in-the-Road Example.

Applying the IF of the DDE to the One-in-the-Road Example.

Given that we have just applied the IF of the DDE to the Train Brakes example, it seems as though we should not have any trouble doing the same with regard to the One-in-the-Road example. This seems especially so considering Quinn's claim that the IF of the DDE cuts across the distinction that the DDA draws between harm that is done and harm that is allowed. Thus, we can see that the One-in-the-Road example will warrant a judgement of moral impermissibility on the grounds that the involvement of the one serves our purpose. For, in this case, just as in Train Brakes, we cannot save the five unless, or until, the one is run over. Hence, it seems as though we can use the IF of the DDE to explain the moral

permissibility and impermissibility of all the *involving objects* examples and some others as well. For, if we think about it, the IF of the DDE can also be used to explain the moral permissibility of Threat-of-a-Second-Explosion.

Applying the IF of the DDE to Threat-of-a-Second-Explosion.

In the last chapter we claimed that Threat-of-a-Second-Explosion warranted a judgement of moral permissibility, even though it is a case where we intend the train's continued progress forwards. We used it to illustrate that Quinn is wrong to think that a judgement of moral permissibility is warranted in the Explosion example because it is a case where we intend the train's continued progress forwards. We explained that these two cases warrant a judgement of moral permissibility because in neither case is the agent's goal of saving the five served because the one is run over. We were able to determine that this is so by pointing out that, in both cases, the agent could save the five even if the one were not run over. So, in fact, we can use the IF of the DDE to explain the moral permissibility of this example in the same way as we used it to explain the moral permissibility of Explosion. This means that there is only one example from the last chapter, apart, that is, from Poisonous Fumes, which we have not, as yet, explained through the application of the IF of the DDE. That is, we have not, as yet, tried to apply the IF of the DDE to Two Disasters. Thus, let us do that now.

Applying the IF of the DDE to Two Disasters.

We said before that it could be that Two Disasters warrants a judgement of moral permissibility, on the grounds that it is a case where if we do nothing at all, both the one and the five will die.¹⁹ But that was when we were trying to show that this

¹⁹ The same could be said with regard to the Direction of Resources example. This is because it is a case where, if we were to do nothing, all of those who are affected by the disease will die. The only difference being that, in Two Disasters, the one and the five are not necessarily under the same threat.

example did not share the same structure as the One-in-the-Road example. So now it will be interesting to see if we can apply the IF of the DDE to this example and deliver a judgement of moral permissibility. This is especially so, given that we have already used it to deliver a judgement of moral impermissibility in the One-in-the-Road example. Thus, what we need to do is determine whether this is a case where the involvement of the one serves our purpose of saving the five. The answer seems to be that it does not. This is because this is a case where we could save the five, even if the one were not involved in this way. We can determine that this is the case, in so far as we can see that our ability to save the five does not depend on there being one other person in need of saving.²⁰

Thus, it would seem that it is possible to apply the IF of the DDE to all the examples to which Quinn applied the DDA and still deliver judgements that accord with the way we intuitively think that these examples should be judged. This means that the only example that the IF of the DDE, apparently, cannot handle is Poisonous Fumes. This is because, as we have already stated, the IF of the DDE will deliver a judgement of moral permissibility with regard to Poisonous Fumes, on the grounds that this is a case where our purpose of saving the five is not served by the involvement of the one. Hence, it looks as though the Poisonous Fumes example is the only case that demands the need for the application of the DDA. But, if we allow Quinn his claim for the need for the application of both the DDE and the DDA, it seems as though Quinn owes us some explanation for why the DDA applies with regard to Poisonous Fumes but does not apply with regard to Strategic Bombing. Or, to put it another way, Quinn needs to be able to explain why the IF of the DDE applies to Strategic Bombing but does not apply to Poisonous Fumes. Of course, we could say that the allocation of a doctrine is made, based on the idea that we intuitively think that Strategic Bombing warrants a judgement of moral permissibility but Poisonous Fumes does not. But, then it seems as though it is our intuitions, rather than any particular doctrine, that is doing all the work here.

²⁰ Here, too, the same could be said with regard to the Direction of Resources example. This is because in that example we could save the easy cases, even if no one was suffering from the severe effects of the disease.

Thus, again, it seems worth suggesting, as we did at the end of the last chapter, that there could be some reason for thinking that the Poisonous Fumes example warrants being thought of as a special case. For then it would be possible to say that, although it looks as though the Poisonous Fumes example warrants the same moral judgement as Strategic Bomber, we can explain why this is not the case. Thus, let us now explore the possibility that the Poisonous Fumes example is a special case.

Exploring the Idea that Poisonous Fumes is a Special Case.

Given that Foot is willing to accept that Trolley is a special case and Quinn is willing to think of all the *involving object* cases as needing special treatment, it seems as though we are justified in considering whether we might have cause to think of Poisonous Fumes as a special case. The notion that it does warrant being thought of as a special case is grounded on the fact that we intuitively think it warrants a judgement of moral impermissibility, and yet the DDE does not seem to be able to deliver such a judgement. Hence, we need to think of an explanation for why this is so.

We know that it would be possible to claim that it is a case that warrants a judgement of moral impermissibility on the grounds that it is an action, rather than an inaction. However, it would then be hard to see why the same judgement would not hold with regard to a case that we intuitively think does warrant a judgement of moral permissibility. That is, it would then be hard to see why Strategic Bombing does not warrant a judgement of moral impermissibility on the grounds that it, too, involves an action, rather than an inaction. Thus, in effect what we need to do is explain why Strategic Bombing and Poisonous Fumes do not warrant the same moral judgement. That is, we need to determine just how these two examples differ from one another.

There does seem to be one way in which these two examples differ. To see that this is the case, we need to be reminded that in Poisonous Fumes the poisonous fumes seep into the room where the one is trapped while we are manufacturing the gas that will save the five. Thus, it is important to appreciate that it is not the case that the one suffers the effects of the poisonous fumes while we are administering the gas to the five. This is important, in so far as it highlights the fact that in the Poisonous Fumes example it is the case that the harm to the one occurs before we are in a position to be able to save the five. This is because we will not be in a position to save the five until after the gas is manufactured. Thus, it looks as though it is possible that we could find ourselves in a position where the bad effect (i.e. the harm to the one) has occurred but the good effect has not, and will not occur. Say, for example, we find that all five of the patients who are in need of the gas die before the manufacturing process is complete. What then? Of course, as the example stands, this possibility does not exist because the example stipulates that the five will be saved. However, if we were dealing with a real-life situation, rather than an example with an artificially imposed outcome, things would be different. Thus, how we respond to examples like this could well depend on how good we are at accepting what is stipulated, rather than anticipating what might happen, given the circumstances of the case.

In Strategic Bombing things are different. This is because it is a case where the lesser number become involved while we are actually accomplishing the goal of destroying the weapons factory. Thus, in this example it is hardly conceivable that the innocent civilians could be harmed without any damage being done to the weapons factory. Hence, the notion that the weapons factory will be destroyed if we drop bombs on it seems a realistic claim to make. In other words, the certainty of success in this case seems a natural, rather than an imposed outcome. Thus, it could be that we intuitively think that the Poisonous Fumes example warrants a judgement of moral impermissibility because we pick up on the notion that this is a case where it is hard to see how we can be sure that the good effect will follow, once the bad effect has occurred.

Once we notice that Poisonous Fumes differs from Strategic Bombing in this way it allows us to see that we might well have reason to think of this example as being akin to the One-in-the-Road example and to Train Brakes. For they are both cases where the saving of the five cannot occur until after the involvement of the one has occurred. Thus, we might claim that, although it looks like the IF of the DDE will deliver a judgement of moral permissibility with regard to Poisonous Fumes because it is a case where the involvement of the one does not serve our aim of saving the five, this is not so. For, this is a case where a judgement of moral impermissibility is warranted, on the grounds that the involvement of the one occurs before, rather than simultaneously with or after, the saving in question.

Summary of Quinn's Position with regard to the DDE.

We have expressed some doubts about just how adequate Quinn's IF of the DDE is. However, if we accept the claims that he makes for it, then it is hard to see why he does not think that it, alone, could accommodate our intuitive judgements of cases. For the only example it seems to have difficulty with is Poisonous Fumes. And yet, it hardly seems plausible to think that we need to call upon the introduction of a different doctrine (i.e. the DDA) just for the sake of one example. Thus, we have offered what seems to be a reasonable suggestion for why we might consider Poisonous Fumes to be a special case. If this suggestion works, then it seems as though we have cause to think that we should reject Quinn's claims with regard to the need for the application of both the DDE and the DDA. Furthermore, if this is the case, then it looks as though what we need is a defence of the DDE that makes no appeal to the application of the DDA. This is precisely what we shall be doing in Chapter 6. But, before we do that, we are going to consider the work of Judith Jarvis Thomson and Frances Kamm. This is because both Thomson and Kamm think that we can determine the moral permissibility of a given case without the need to apply either the DDE or the DDA. Thomson maintains that this is because our moral judgements can be determined by appealing to a theory

of justice, whereas Kamm suggests the application of what she calls the Doctrine of Permissible Harm. Thus, let us deal with each account in turn.

Chapter 4

Thomson's Position.

Thomson, unlike Foot and Quinn, does not advocate that we need a shared application of the DDE and the DDA in order to explain the moral permissibility or impermissibility of a given case. Instead, Thomson claims that the moral differences between cases like Trolley and Transplant can be explained through the application of a theory of justice. In fact, Thomson has put forward three different proposals for how to explain the moral difference between examples. Each proposal is based on a different distinction. Thomson's first proposal is based on the distinction between doing something to a person and doing something to the threat. Her second proposal is based on the distinction between right infringing and non-right infringing means. Her third and most current proposal is based on the distinction that Thomson maintains can be drawn between a shared or a non-shared increase in the probability of survival.

There is a certain kinship between the first and second proposal but the third is quite different. Thomson, herself, now dismisses her first two proposals and, therefore, only holds by the third. However, her first two proposals are worth noting for two reasons. Firstly, because they set the scene for her third proposal. Secondly, because it is not at all obvious that they do not account for the moral difference between Trolley and Transplant. Thus, let us look at each of Thomson's proposals in turn.

Thomson's First Proposal: The Distinction between Doing Something to a Person and Doing Something to the Threat.

Thomson maintains that we can explain the moral difference between Trolley and Transplant by appealing to the distinction that can be drawn between doing

something to a person and doing something to the threat.¹ Hence, Trolley is morally permissible because it is a case where we save the five by doing something to the threat. That is, it is a case that warrants a judgement of moral permissibility because we save the five by switching tracks and, thereby, turn the trolley away from the five. Transplant, on the other hand, is not morally permissible because it is a case where we save the five by doing something to a person. That is, it is a case that warrants a judgement of moral impermissibility because we save the five by cutting up the one.

Thomson motivates this claim by explaining that, although we have a claim against others doing something to us, we have no such claim against them doing something to an object (i.e. the trolley). Hence, we have cause to complain if they do something to us but we have no room to complain if they do something to the trolley. It is important to appreciate that Thomson makes this claim on the basis that we are talking in terms of the one and the five being on a moral par with one another. That is, such a claim would not hold if we were dealing with a case of Trolley where the five on the track got there because they were engaged in a game of dare. Nor would it hold if we were dealing with a case of Transplant where it is the one who has deliberately inflicted on the five what ails them. For, under these circumstances, we might well think, for example, that in such a case of Trolley, the five would be hard pressed to complain if we were not to save them. And, likewise in such a case of Transplant, the one would have a hard time convincing us that he would have room for complaint if we were to cut him up to save the five. This is, therefore, why Thomson makes a point of stipulating that the five and the one have a shared parity of claim. Thus, she invariably talks in terms of the one and the five as being regular workmen. With this point noted, let us now consider whether Thomson is right to claim that we can account for the moral difference between Trolley and Transplant by appealing to the distinction between doing something to a person and doing something to the threat.

1 Thomson, J. (1976) Killing, letting die, and the trolley problem, *The Monist*, 59(2), p.208

Thomson's claim certainly seems a reasonable one, given that in Trolley we do save the five by doing something to the threat, whereas in Transplant we save them by doing something to a person. Furthermore, Thomson makes her claim seem even more reasonable by introducing an example that we will refer to as Fat-Man Bridge.²

Fat-Man Bridge: We are standing on a footbridge over the trolley tracks. We see that the trolley that is approaching the bridge is out of control. We also know that there are five people trapped on the tracks up ahead. We are aware that we can stop the trolley by dropping something heavy onto the track. But no heavy object is available to us. However, standing beside us on the bridge is a man whose weight is sufficiently heavy to do the job.

Fat-Man Bridge seems to bolster Thomson's claim that if an example involves our doing something to a person, rather than to the threat, then we know we are dealing with an example that warrants a judgement of moral impermissibility. Thus, here we have a case, just like Transplant, where a judgement of moral impermissibility is warranted because here, too, we save the five by doing something to the one. Furthermore, we can determine that this is the case despite the fact that this is an example, like Trolley, where the action we perform makes it the case that the trolley hits the one instead of the five. Thus, this example certainly seems to add support to Thomson's proposal. This is especially so, given that we intuitively regard this as being a case where it would not be morally permissible to save the five. So does this mean that we can accept Thomson's claim?

The answer to that question is no. And, surprisingly enough, the key to why this is so is to be found in the very example that Thomson introduced in support of her proposal. That is, it lies in Fat-Man Bridge. We can see that this is so by thinking about Thomson's claim that when we act in Fat-Man Bridge we make it the case that the one is hit instead of the five. Thus, in a sense our action does do something to the threat. It stops it being fatal for the five. This is because our action stops the trolley getting to the five. But, of course, this does not alter the

² Thomson calls this example Fat-Man. See Thomson, J. (1992) p.288. However, we need to make the name a bit more specific than that because we will eventually be dealing with a number of examples that feature a fat man. See also Thomson, J. (1976) p.207-208 where she refers to the agent in this case as George.

fact that our action amounts to our doing something to a person. That is, it does not alter the fact that we throw the one off the bridge. Hence, it seems more accurate to say that when we act we do something to both a person and the threat. This in turn should alert us to the fact that in Trolley, too, when we act we do something to both the threat and a person. For although there is no doubt that switching tracks amounts to turning the trolley away from the five, it is clear enough that it also amounts to turning the trolley onto the one. And turning a trolley onto someone is certainly doing something to a person. Furthermore, it is something that the one would have grounds to complain about. For, after all, just think what we would say if we had a case where there was no one on the main track but we switched tracks anyway, thereby turning the trolley on the one. It certainly seems as though he would have every right to complain about that action.

Thus, the one *must* have a claim against us turning a trolley onto him. So, how can Thomson possibly expect us to accept that, by putting five people on the main track, the one on the spare track somehow loses his claim against our turning a trolley onto him? It does not seem as though she can. Hence, it is not surprising that Thomson no longer stands by this proposal. Thus, let us now consider Thomson's second proposal.

Thomson's Second Proposal: The Distinction between Right Infringing Means and Non-Right Infringing Means.

Thomson's second proposal is that we can determine the moral difference between Trolley and Transplant by drawing a distinction between acts that count as being a right infringing means and those that count as being a non-right infringing means. In order to understand Thomson's second proposal, there are two points that we need to be clear about. The first point is that Thomson is prepared to accept that to turn a trolley onto someone is to infringe a stringent right that is his. Thus, we cannot claim that the moral difference between Trolley and Transplant lies in the fact that, in the latter but not the former case, the action we perform infringes a stringent right of the one's. Hence, the explanation of the difference between them

must lie elsewhere. The second point is that Thomson rules out the notion that the difference between these two examples can be explained by an appeal to the Kantian idea that a person should be treated “as an end and never as a means only”.³ This is because Thomson maintains that it is not at all obvious what treating someone as *a means only* amounts to. Furthermore, Thomson maintains that this is so, even though it does seem possible to differentiate between these two cases, by claiming that in Transplant we use the one as the means to saving the five, whereas in Trolley we do not. This claim is supported by the fact that in Transplant if the one, as Thomson puts it, were to go wholly out of existence, just as we were about to cut him up, we would be unable to save the five. In Trolley, this is not so. For in Trolley we could save the five even if the one were to go wholly out of existence just as we were about to switch tracks.⁴

The first of these points confirms the fact that we were right to claim that Thomson cannot expect us to accept that the switching of tracks does not count as doing something to a person (i.e. the one). So Thomson’s first point simply confirms the fact that Thomson cannot explain the moral difference between Trolley and Transplant by appealing to the distinction between doing something to the threat and doing something to a person. Hence, it explains the fact that she needs to put forward an alternative proposal. However, it is not obvious why Thomson makes the second point, given that she seems to provide us with a way of determining whether or not the one is being used as *a means only*.⁵ Thomson maintains that her rejection of the idea that we can explain the moral difference between Trolley and Transplant, by determining whether the one is or is not being used as the means to the saving of the five, can be understood by looking at a variant of Trolley. We will refer to this variant of the Trolley as Fat-Man Loop.

Fat-Man Loop: In this example instead of the trolley tracks diverging as they do in Trolley they form a loop. There are five thin people trapped on the straight arm of the loop and one fat person

3 Thomson, J. (1992) p.284. It is worth noting as we pointed out in Chapter 3 that Quinn thinks that his formulation of the DDE fits in well with a Kantian approach. This notion of whether or not a Kantian approach can be used to explain the moral difference between Transplant and Trolley will be considered in more detail in Chapter 9.

4 See Thomson, J. (1992) p.284

5 We shall return to this idea that we can determine when the one is or is not being used as *a means only* again in Chapter 6.

trapped on the curved arm of the loop. If we do not switch tracks the trolley will hit and kill the five. The combined weight of their bodies will stop the trolley so there is no danger of the trolley getting to the one. But, alternatively, if we switch tracks the trolley will kill the one and the weight of his body will prevent the trolley getting to the five.⁶

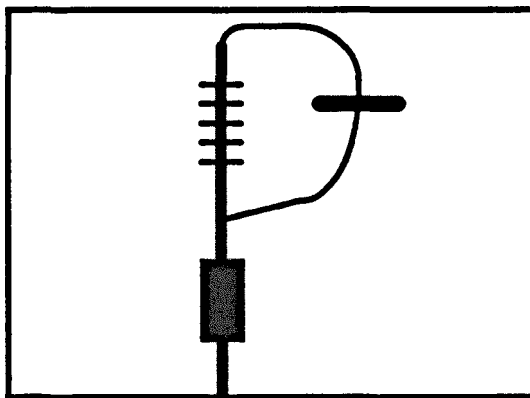


Figure: 1 - Fat-Man Loop

Thomson maintains that here we have a case where the one is used as the means to the saving of the five. This is because this is a case, like Transplant, where we could not save the five if the one were to go wholly out of existence just as we were about to switch tracks. Thus, if we were to accept that it is not morally permissible to use the one as the means to the saving of the five, this example would warrant a judgement of moral impermissibility. However, according to Thomson, this example is too akin to Trolley to warrant anything but a judgement of moral permissibility. Thomson bases this claim on the fact that otherwise are claim would be what differentiates the two cases is the absence or presence of a bit of extra track. We can appreciate Thomson's point by visually comparing the two cases.

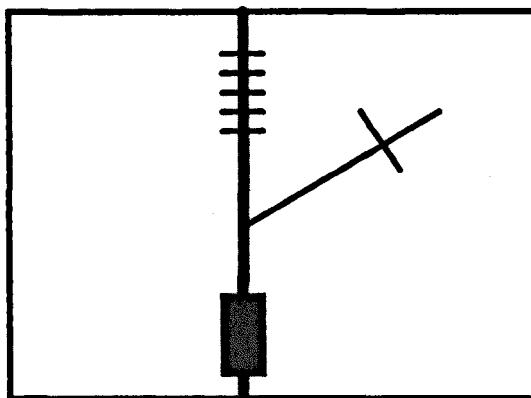


Figure: 2 - Trolley

⁶ See Thomson, J. (1992) p.284.

Thus, Thomson uses Fat-Man Loop to support her claim that it would be a mistake to think that we can explain the moral difference between Trolley and Transplant based on the difference between using or not using the one as the means to the saving of the five. Hence, Thomson also uses Fat-Man Loop to generate the claim that we must look for some other way to explain the moral difference between Trolley and Transplant. However, it is important to note that Thomson makes the claim that Fat-Man Loop warrants a judgement of moral permissibility, despite the fact that she readily admits that some people feel more discomfort at the idea of turning the trolley in Fat-Man Loop than they do in Trolley.

It is important to note this point because, although Thomson reports that some people have a heightened sense of discomfort with regard to Fat-Man Loop, she never questions why this is so. That is, she never questions whether this could be attributable to the fact that there are those who intuitively think that it is not morally permissible to save the five in Fat-Man Loop. However, this is probably because Thomson would find it difficult to accept that anyone would intuitively think that this is a case that warrants a judgement of moral impermissibility, given her claim that this example is on a moral par with Trolley.

Furthermore, she does say that any discomfort about switching tracks is more than likely attributable to the fact that we are aware that we are infringing a right of the one's when we turn a trolley onto him.⁷ However, this would only explain why we might express discomfort about switching tracks. It does not account for why someone would feel more discomfort about switching tracks in Fat-Man Loop than in Trolley.

But why, you might think, are we putting so much store on the question of why some people feel a bit of extra discomfort with regard to Fat-Man Loop? It is because it could be that their discomfort gives us an indication that this could be a case where at least some people intuitively think that this is a case where it is not morally permissible to save the five. For, if we did intuitively think that this is a

7 See Thomson, J. (1992) p.286.

case that warrants a judgement of moral impermissibility, we could just as easily make this out to be a case that supports the claim that we can determine the moral permissibility of a given case by determining whether or not we use the one as the means to the saving of the five. This is because we could say here is an example that, on the face of it, seems to be structurally akin to Trolley, but it is not. We can determine that this is the case because in this example, just as in Transplant, we use the one as the means to the saving of the five. Thus, if Thomson wants to prevent our doing just that, she has to give us an explanation for why our response to Fat-Man Loop should be anything but the same as it is for Trolley.

Hence, the point we are making here is that we cannot use an example as a barometer for the adequacy of the explanation we are putting forward unless we have a clear idea of what our intuitive response to that example actually is. This is where the worth of Transplant and Trolley lies. For we seem to have no doubt that Trolley warrants a judgement of moral permissibility even though Transplant does not. Thus, we need to be wary about how much store we can put on Thomson's claim that Fat-Man Loop supports the idea that we cannot determine the moral permissibility of a given case simply by determining whether we do or do not use the one as the means to the saving of the five. With this in mind, let us now determine just how Thomson does explain both the moral permissibility of Trolley and Fat-Man Loop and the moral impermissibility of Transplant.

The Details of Thomson's Second Proposal.

Thomson's second proposal is based on the notion that, all things being equal, we are not morally required to let a threat descend, out of the blue, on five when we can make it, instead, descend on one.⁸ Thus, Thomson's claim is that we can make what threatens the five descend on the one provided that we can do so by means which do not themselves constitute an infringement of a stringent right of

⁸ See Thomson, J. (1992) p.287-288.

the one's.⁹ Thus, we need to be able to determine when an act does, or does not, count as a means that is, in itself, an infringement of a stringent right of the one's. It is obvious that Trolley is Thomson's model for the kind of case where the act we perform does not count as being, in itself, an infringement of a stringent right of the one's. Furthermore, this is so despite the fact that, in Trolley, a stringent right of the one's will be infringed if we do act. Hence, we can conclude that the switching of tracks counts as a non-right infringing means. Thus, according to Thomson's account it follows that Fat-Man Loop warrants a judgement of moral permissibility because there, too, we use the non-right infringing means of switching tracks to make what threatens the five, instead, threaten the one.

Thomson maintains that because we can explain the moral permissibility of Trolley and Fat-Man Loop in this way it allows us to say that Transplant warrants a judgement of moral impermissibility on two counts. Firstly, because it is not a case where we make what threatens the five threaten the one instead. Secondly, because it is a case where the act that we perform does, in itself, constitute an infringement of a stringent right of the one's. Thus, now that we are clear about how Thomson's second proposal is meant to be applied, let us see how it handles the Fat-Man Bridge example that she used in support of her first proposal.

Thomson's Second Proposal as Applied to Fat-Man Bridge.

Fat-Man Bridge is the example that Thomson introduced in support of her first proposal. It is the example where we can save the five by throwing the one off the bridge. Thomson maintains that this is an example, like Trolley, where we make it the case that the threat descends on the one instead of the five. But, nevertheless, this is a case that we intuitively think warrants a judgement of moral impermissibility. Hence, according to Thomson's second proposal this is because this is a case where the act that we perform does in itself constitute an infringement of a stringent right of the one's. That is, to throw someone off a

9 See Thomson, J. (1992) p.285 & 288.

bridge does in itself constitute an infringement of a stringent right of the one's. Thus, Fat-Man Bridge warrants a judgement of moral impermissibility because it is a case where we make what threatens the five threaten the one instead by an act that counts as being a right infringing means.

Hence, we get the impression that it would be possible to deliver a judgement of moral permissibility in Fat-Man Bridge if it were possible to make what threatens the five threaten the one instead by a means that was non-right infringing. Thus, let us now consider a variant of Fat-Man Bridge where we do not have to throw the one off the bridge. We will refer to this variant of the example as Wobble Handrail.¹⁰

Thomson's Second Proposal as Applied to the Wobble Handrail Example.

The Wobble Handrail example is a variant of Fat-Man Bridge. However, in this example we do not need to throw the one off the bridge in order to get him on the track in front of the trolley. This is because, in this case, we can get him into that position simply by wobbling the handrail. For, in this example, the railing of the bridge is low and the fat man is leaning well over it. Thus, if we wobble the handrail, he will topple off the bridge and land on the track below and be in front of the trolley. Hence, we need to determine whether or not the act of wobbling the handrail counts as a right infringing means. If it does, then this example will warrant the same judgement as Fat-Man Bridge. However, if wobbling the handrail counts as a non-right infringing means, then this example will be on a moral par with Trolley.

Thomson explains that in Wobble Handrail, just as in Fat-Man Bridge, the act we perform counts as being a right infringing means. This is because it is not the wobbling of the handrail that gets the trolley to threaten the one instead of the five,

¹⁰ See Thomson, J. (1992) p.285 and Kamm F. M. (1996) p.165. Kamm refers to this example as Wiggle the Bridge Case I.

rather it is the getting of the one into the trolley's path that does that.¹¹ Thus, wobbling the handrail counts as getting the one onto the trolley's path and it, therefore, is an act that, in itself, constitutes an infringement of a stringent right of the one's. Hence, Wobble Handrail warrants a judgement of moral impermissibility.

However, this means that no matter what action we perform, if it involves getting the one to the trolley, rather than getting the trolley to the one, it is going to count as a right infringing means. But then it looks as though Thomson is claiming that an act will only count as being a non-right infringing means provided it involves doing something to the threat, rather than to a person. Thus, Thomson's second proposal seems to commit us to accepting that the only examples that will warrant a judgement of moral permissibility are those where the act we perform involves doing something to the threat. In support of this claim, let us look at an example that we will call Hydraulic Jack.

Hydraulic Jack: An out-of-control trolley is headed towards five people. There is one person on the bridge that straddles the track. He is on the far side of the bridge but is unaware that the five are in danger of being hit by the trolley. We have no way of warning him of the action that we are about to take to save them. We have at hand a powerful hydraulic jack. Thus, we are going to jack the track up high enough to allow it to rest on the top of the bridge. This will have the effect of preventing the trolley from reaching the five. However, it also means that the one will be hit by the trolley instead.

This is a rather far fetched example but it is meant to demonstrate that, according to Thomson's account, an example will warrant a judgement of moral permissibility provided it involves doing something to the threat. So, this is a case where Thomson's account will deliver a judgement of moral permissibility. And yet it is hard to see why it should be morally permissible to take the trolley to the one, but not morally permissible, as it were, to take the one to the trolley. Thus, we might want to question just why Thomson puts so much store on the notion of doing something to the threat. For does it not seem as though there must be cases where we would want to claim that it is morally permissible to save the five even though the act that we perform does not involve doing something to the threat?

11 See Thomson J. (1992) p.289.

Furthermore, does it not seem as though there must be cases where we would want to claim that it is not morally permissible to save the five even though the act that we perform does involve doing something to the threat? In an attempt to answer these questions, let us consider whether we can provide an example for each of these two categories.

Is there an Example that is Morally Permissible even though it Does Not Involve Doing Something to the Threat?

There certainly seems to be an example that we think is morally permissible even though it is not a case where the act we perform involves doing something to the threat. The example that we have in mind is one that has been devised by Frances Kamm. We will refer to this example as the Turning Seesaw Device (Bystander) example.¹² Or at least we will do so to begin with. Later on we will simply refer to it as Seesaw-Device (Bystander).

Turning Seesaw Device (Bystander):¹³ In this example there are five people in danger of being hit by an out-of-control trolley. However, unlike Trolley, these five people are not in danger because they are trapped on the track, rather they are in danger because they are trapped on a seesaw like device which is positioned on the track. To save the five all we need do is turn the device so that it swings clear of the track. However, there is one person standing near the device and if we swing it he will be fatally injured. We have no way of warning him of this danger. Thus, if we turn the trolley the five will be saved but the one will die.

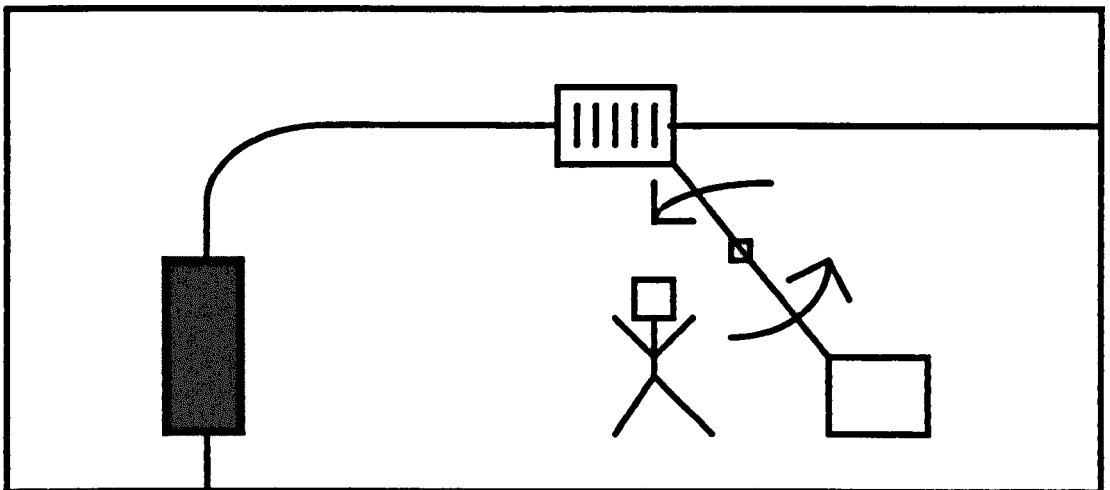


Figure: 3 The Turning-Seesaw-Device (Bystander) Example

¹² See Kamm, F. M. (1996) *Morality, Mortality*. Vol. II New York: Oxford University Press. p.163. Kamm calls this example the Lazy Susan Case.

¹³ Kamm has several versions of this example. But this is her main version.

In this example we make it the case that the one is hit instead of the five. However, this is not a case where we make what threatens the five threaten the one instead. Nor is it a case where we do something to the threat. And yet it does seem to be a case where we intuitively think that it would be morally permissible to save the five by swinging the device. In fact, it is very difficult to see how the swinging of the device could be anything other than a non-right infringing means. Of course, the swinging of the device results in an infringement of a stringent right of the one's. But so does the act of switching tracks. So is the swinging of the device non-right infringing or not? What is interesting about this question is the fact that, in effect, we do not need to answer it. This is because, according to Thomson's account, this example warrants a judgement of moral impermissibility simply because it is a case where we do not make what threatens the five threaten the one instead. But, if Thomson is right and this example does warrant a judgement of moral impermissibility, why do we think of it as being a case where it would be morally permissible to save the five? It seems as though Thomson would have to give us some explanation for why this is the case. But, of course, Thomson might just say there are, also, those who think it is not morally permissible to save the five in this example.¹⁴ So let us look at a variant of this example that might not be so easily dismissed. We will call this version of the example Seesaw-Device (5:1).¹⁵

It can be seen from the figure below that in Seesaw-Device (5:1) the one is on the other end of the device. That is, he is not standing beside the device, rather he is on the opposite end of the device from the five. In this example, if we swing the device it will swing half circle. This means that if we swing the device, the end of the device with the one on it will be over the track instead of the end with the five on it. Thus, in this example, if we swing the device the trolley will hit the one instead of hitting the five. Hence, this is a case where we do make what threatens

14 The implication is that Thomson might not think that this is an example where we can count our intuitive response as being reliably shared. That is, Thomson would be regarding this example in the same way as we have suggested that we should regard cases like Fat-Man Loop and the One-the-Road example.

15 Kamm has two versions of the Seesaw example where she, too, puts the one on the opposite end of the device from the five. However, Kamm describes her two versions of the example slightly differently from the way we are describing this version of the example. Thus, we shall refer to Kamm's versions as Seesaw-Wall (5:1) and Seesaw-Push (5:1). We will be discussing both of these examples in the next chapter.

the five threaten the one instead. So in this case we do need to determine whether or not the act of swinging the device is right infringing. That is, we need to determine whether the act of swinging the device is akin to wobbling the handrail or switching tracks. In order to be akin to wobbling the handrail it would have to be the case that we need to get the one on the track in front of the trolley. However, although it is the case that our action will put the one on the track, we certainly have no need for him to be there, unlike Fat-Man Bridge. This is because, in this example, just as in Trolley, our saving the five is not dependent on the trolley hitting the one. For, in both of these cases, as soon as we do what we do the five are saved.

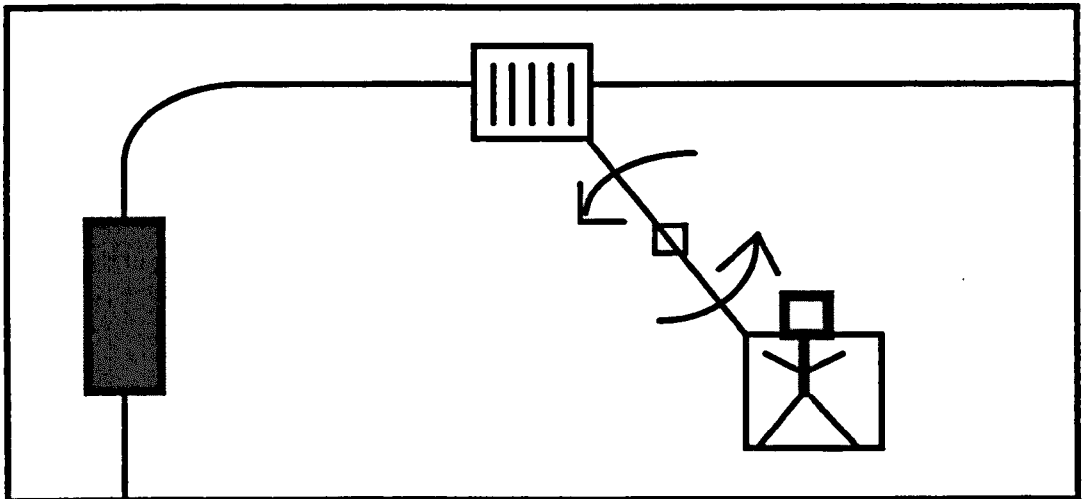


Figure: 4 Seesaw-Device (5:1)

Hence, Seesaw-Device (5:1) is a case where we make what threatens the five threaten the one by a means which, in itself, does not infringe a stringent right of the one's. Thus, we would suggest that this is a case that Thomson would have to agree warrants a judgement of moral permissibility, even though it is not a case where the act that we perform involves doing something to the threat. This example, then, seems to undermine Thomson's second proposal. So we could dismiss Thomson's proposal on these grounds alone. However, we still want to consider whether there is a case where we think a judgement of moral impermissibility is warranted even though the act that we perform does involve

doing something to the threat. Thus, let us consider whether we can think of such an example.

Is there an Example that is Not Morally Permissible Even Though it Does Involve Doing Something to the Threat?

In support of the claim that there is an example that is not morally permissible even though it does involve doing something to the threat let us look at an example that we will call Hands-On.

Hands-On: There are five people suffering from a fatal illness. There is no cure for the illness. However, we know that we could free them of their illness by a laying on of hands. Provided, that is, we can, as it were, deposit their illness into the body of one healthy person. And as it so happens, one healthy person has just walked into the ward where the five are.

Admittedly this is another rather far fetched example. However, we have introduced it because it demonstrates that, on Thomson's account, how we judge this case is dependent on whether or not the laying on of hands in itself constitutes an infringement of a stringent right of the one's. That is, it depends on whether we judge the laying on of hands to be akin to the act of switching tracks or wobbling the handrail. But how are we to determine to which act it is akin? We know that, in order to be akin to the wobbling of the handrail, it has to be the case that the act we perform gets the one, as it were, in the path of that which ails the five.

However, we also know from what Thomson has said, with regard to Fat-Man Loop, that we can use the one as the means to the saving of the five, provided the act that we perform does not in itself constitute an infringement of a stringent right of his. So is the laying on of hands such an act or not? It seems as though it must be because although we need him to be there, the same holds with regard to the one in Fat-Man Loop. Furthermore, unlike Fat-Man Bridge, we do not have to get him there. For in Hands-On it just so happens that he is there. Thus, given that Thomson claims that Fat-Man Loop warrants a judgement of moral permissibility, it is hard to see how she can avoid attributing the same judgement to this example. So does the Hands-On example, like Seesaw-Device (5:1) give us reason to reject Thomson's second proposal?

The answer to that question depends on what our intuitive response to this example is. That is, it depends on whether we intuitively judge Hands-On as being morally akin to Transplant or Trolley. If we intuitively judge it to be akin to Trolley then we might think that it does not give us reason to reject Thomson's second proposal. However, it would still highlight the difficulty that lies in the notion of determining when a given act does or does not, in itself, constitute an infringement of a stringent right of the one's. If we intuitively judge Hands-On to be morally akin to Transplant then it would undermine Thomson's proposal. Unless, that is, she can give us some indication, like she does with regard to Fat-Man Loop, of why our intuitive judgement of this example is contrary to what can be shown through her account to be the case.

In fact we have a strong intuitive judgement that Hands-On is on a moral par with Transplant. Thus, Thomson would be hard pressed to get us to accept, as she tries to in Fat-Man Loop, that this is a case that warrants a judgement of moral permissibility. Hence, this example may well make us question just how much store we can put on Thomson's claim that the act of switching tracks in Fat-Man Loop does not, in itself, constitute an infringement of a stringent right of the one's. That is, it might well make us question, whether when we switch tracks in Fat-Man Loop, we are doing the same thing that we do in Trolley. With this question in mind, let us once again compare the two examples.

A Comparison Between Trolley and Fat-Man Loop.

What is noteworthy about Thomson's comparison between Trolley and Fat-Man Loop is that she directs our focus to how the act we perform relates to the one. This is because, according to Thomson, we need to ascertain whether the harm that will befall the one is the same harm that would otherwise have befallen the five. Furthermore, we need to determine whether or not the act we perform in itself constitutes an infringement of a stringent right of the one's. But what about the relationship between the act that we perform and the five? Do we not also need to

determine what that relationship amounts to? It would seem odd if we did not need to. So what does the relationship between switching tracks and the five amount to in both of these cases? Let us take each example in turn.

Let us start with Trolley. How does the switching of tracks relate to the five in this example? The five are in danger of being hit by the trolley until we switch tracks. Once we switch tracks the five are no longer in danger. What is interesting to note at this point is the fact that this claim holds no matter what the trolley ends up doing. That is, the trolley could stop, roll backwards, or continue its progress forwards along the spare track because none of these things will change the fact that the five are safe. They are safe because, once the tracks are switched, there is no way that the trolley can get to them. Thus, we can conclude that the switching of the tracks saves the five. Furthermore, it does this without the need for any further event to occur. Hence, we can claim that, in Trolley, the act of switching tracks, in itself, constitutes the saving of the five. And this is so, irrespective of whether or not the trolley hits the one. Thus, we might think that Thomson's claim is that the act of switching tracks counts as a non-right infringing means simply because it saves the five without the requirement that the one be hit. But can the same be said with regard to Fat-Man Loop?

The answer to this question depends on whether the relationship between the act of switching tracks and the five is the same in Fat-Man Loop as it is in Trolley. So is it the same? Thomson more or less takes it for granted that it is. But it can only be the same if the act of switching tracks does, in itself, constitute the saving of the five. That is, the act of switching tracks in Fat-Man Loop will equate with that same act in Trolley only if it is the case that the five are safe without the need for the occurrence of any further event. Once we appreciate that this is what is required in order to put both acts on a par with one another, it becomes clear that in Fat-Man Loop the relationship between the act of switching tracks and the five is not akin to that in Trolley. This is because, in Fat-Man Loop, it is not the switching of the tracks that saves the five from being hit by the trolley, rather it is the hitting of the fat man that does that.

To demonstrate that this is so, think what we would say with regard to switching tracks if there were no one on the loop of the track. We can think of this as being the No-Man Loop case. Would we think, even for a moment, that we could save the five by switching tracks? It seems unlikely. This is because if we switch tracks under these circumstances the only difference is going to be that the trolley hits the five by coming at them from the loop side of the track as opposed to the straight side of the track. Of course, we might think that in No-Man Loop it is worth switching tracks just on the off chance that this might give the five a bit more time to try and get off the track. But to switch tracks under these circumstances would be to hope that the switching of tracks will save the five, which is not the same as saying that the switching of tracks will, in itself, save the five.

This point becomes even more evident if we think of a case where there is one person on the loop but he is thin, rather than fat. Let us call this example Thin-Man Loop. Would we claim that in Thin-Man Loop, just as in Fat-Man Loop, the switching of tracks makes what threatens the five threaten the one instead? We would not. Why? Because, if we switch tracks in Thin-Man Loop, we do not make what threatens the five instead threaten the one, rather we make it the case that what threatens the five threatens the one *as well*. Hence, we would not even contemplate switching tracks in Thin-Man Loop. For if we did, both the one and the five would be hit by the trolley.

So what makes it possible for Thomson to claim that it is morally permissible to switch tracks in Fat-Man Loop? Is it the presence of a bit of extra *fat*? It looks as though it might be. For this is the only thing that differentiates Fat-Man Loop from Thin-Man Loop. But, then, would Thomson not have to claim that what makes the moral difference between these two cases is the absence or presence of an extra bit of *fat*? It looks that way. However, she is hardly going to do that when she was so keen to point out the absurdity of thinking that the absence or presence of an extra bit of *track* could make the moral difference between Fat-Man Loop and Trolley. But, if this is the case, then maybe Thomson will have to concede that Fat-Man

Loop, just like Fat-Man Bridge and Transplant, warrants a judgement of moral impermissibility because it is a case where the act we perform does not, in itself, save the five. For these are all cases where the harm to the one has to occur before the saving of the five can occur.

Thomson has failed to see that it is one thing to act to make it the case that the five are saved without the need for harm to befall the one and quite another to act to make it the case that the five are saved with the need for harm to befall the one. Furthermore, her failure to see that this is the case means that she mistakenly claims that Fat-Man Loop is akin to Trolley. Thus, we reject Thomson's second proposal and her claim that Fat-Man Loop warrants a judgement of moral permissibility.

The fact that we reject Thomson's second proposal is hardly surprising, given that we began this chapter by acknowledging that Thomson, herself, no longer holds by either this or her first proposal. However, the fact that we have spent so much time explaining why we reject it seems to afford it more worth than we might have thought possible, given that Thomson has abandoned it in favour of her third and most current proposal. But this was because we were concerned to undermine Thomson's claim about the moral permissibility of Fat-Man Loop. For we do not share Thomson's intuitive judgement that this is a case where it is morally permissible to save the five. However, there are those who do. Thus, we will focus on Fat-Man Loop again in Chapter 5. For there we shall be discussing the work of Frances Kamm and she is one of those who shares Thomson's judgement that it is morally permissible to save the five in Fat-Man Loop. But, for the moment, we need to turn our attention to Thomson's third proposal.

Thomson's Third Proposal: The Distinction Between a Shared or a Non-Shared Increase in the Probability of Survival.

Thomson presents her third and most recent proposal for how we can explain the moral difference between Trolley and Transplant in her book, *The Realm of Rights*.¹⁶ This is also where Thomson acknowledges that she was wrong to think that either her first or second proposal could account for the fact that Transplant warrants a judgement of moral impermissibility but Trolley does not.

We said earlier, that when Thomson talks about Trolley, she takes it to be the case that all six on the track are regular workman. She stipulates that this is the case in order to establish parity between the five and the one. This is because Thomson has never claimed that “just *any* possible instance of Trolley”¹⁷ warrants a judgement of moral permissibility. However, if this is the case, then Thomson admits that although it leaves open the notion that deflection of a threat is relevant to the moral difference between Trolley and Transplant, there has to be more to it than that. Hence, Thomson maintains that, if we are to find that missing something, we need to look more closely at Trolley. Thomson claims that what we need to know is how the six men came to be where they are.

It is hard to see how this additional piece of information is going to help us to explain what differentiates the morally permissible cases of Trolley from Transplant. Thus, it might be helpful to explain right away that this additional information is needed so that we can determine whether or not the one and the five have had a shared chance of working on either track. For, according to Thomson, if all six have had such a shared chance of working position then none of them can be said to have been excluded from the chance of working on the main track. That is, none of them can claim that they, alone have been excluded from working on the main track. But why should we be the least bit interested in how any given workman is allocated to his position on the tracks?

16 Thomson, J. (1990a) *The realm of rights*. Cambridge Mass.: Harvard University Press.

17 Thomson, J. (1990a) p.180.

In order to appreciate the importance of the notion of a shared chance of positioning we need to understand that, if we work on the assumption that the tracks will be switched if an out-of-control trolley appears on the main track, then we can see that it will be the one and not the five who will occupy the disadvantaged position. Thus, too, we can see that under these circumstances it will be the five who occupy the position of advantage. For it is the five and not the one who will survive. Hence, if all six share the same chance of occupying any one of the positions on the track then each of them has more chance of being one of the five on the main track than they have of being the one on the spare track. That is, each of them has more chance of being in one of the advantaged positions and less chance of being in the disadvantaged position. Thus, if we combine the notion of a shared chance of positioning with that of a shared advantage of survival we can understand that there is an increased probability of survival to be had if it is the one and not the five who shoulder the burden of disadvantage.

Thus, Thomson claims that she can explain the moral permissibility of Trolley on the grounds that it is an example where all six have shared in an increase in the probability of survival. Is this a reasonable proposal? It is hard to give an answer without first of all determining how Thomson's proposal applies to Transplant. Hence, before we attempt to evaluate Thomson's claim, let us consider just how Thomson handles Transplant.

Thomson's Third Proposal as Applied to Transplant

Thomson maintains that it is possible to determine that, in Transplant, there is no shared increase in the probability of survival between the five and the one because it is a case where there is no shared chance of positioning. Thomson supports this claim by pointing out that, in a world such as ours, the attribution of health and illness is not a matter of chance alone. This is because, as we are all aware, the kind of life-style we adopt also has a part to play when it comes to determining the probability of being healthy or ill. Thus, if an example like Transplant were allowed, the people in need of new organs are going to be the those who succumb

to what Thomson describes as the pleasures of an unhealthy life-style.¹⁸ That is, the need for new organs is going to fall on those who do not bother to look after their health. Furthermore, they will then be put into the advantaged position of being saved, whereas those who have denied themselves such pleasures will be put in the disadvantaged position of being the ones who are cut up to provide the necessary organs. Hence, we would find ourselves in a situation where the burden of disadvantage is always going to fall on those who look after their health. Under these circumstances there is a definite demarcation line between those who adopt a healthy life-style and those who do not. Hence, we do not all have a shared chance of being either healthy or unhealthy. Thus, we cannot all share in an increased probability of survival.

However, Thomson acknowledges and accepts that if we were in a world very different from ours (i.e. in a world where health and illness did befall us by chance alone) then this would not be the case. This is because in a world such as that we would all have a shared chance of being either healthy or unhealthy. Thus, Transplant would afford us all a shared increase in the probability of survival. For we would all have more chance of being one of the five who are in need of a transplant than we would of being the one who is cut up.

Thus, if we accept that our world is one where the possibility of a shared increase in the probability of survival is ruled out by the fact that the divide between health and illness is governed by more than chance alone, we admit the possibility of things being otherwise. That is, we admit the possibility that our world could be different or that we could be in a different kind of world - namely the kind of world where the divide between health and illness is dependent on chance alone. Now we might think that the chances of our world being like that, or our chances of being in that kind of world, are slim enough to allow us to be unconcerned by the notion that such a change would facilitate crediting Transplant with a judgement of moral permissibility.

18 See Thomson, J. (1990a) p.184.

However, if we take the view that Transplant warrants a judgement of moral impermissibility regardless of what kind of world we find ourselves in, then we are unlikely to entertain Thomson's qualified explanation for the moral impermissibility of Transplant. Or, if we had been hard pressed up until now to explain the moral impermissibility of Transplant, then we might be tempted to shrug our shoulders and say Thomson's explanation is better than nothing. But we have never had that kind of difficulty. Our difficulty has always been how to explain the moral permissibility of Trolley. So why accept an explanation that seems to undermine the strength and applicability of our intuitive judgement that in Transplant it is not morally permissible to save the five by cutting up the one?

Maybe there is no harm in accepting Thomson's explanation, given that it does establish the moral impermissibility of Transplant in the kind of world that we do live in. And yet we might want to question whether Thomson can be said to have established that this is the case. That is, we might want to consider whether Thomson's account gives us grounds for thinking that, even without the need for our world to change drastically, there are circumstances within it that would warrant that we grant Transplant a judgement of moral permissibility. Say, for example, we restricted ourselves to thinking just in terms of accidental injury. Would it then be possible to claim a shared chance of positioning? If so, then it follows that a shared increase in the probability of survival could be gained in Transplant type cases. In support of this claim, let us look at an example that we will call Car Crash.

Car Crash: Two cars have collided with one another. No blame can be attributed to either driver. This is because the collision was caused by a freak gust of wind. The driver and the two passengers in each car have been injured. Both drivers and three of the passengers have suffered severe damage to one of their vital organs and will, therefore, die unless we can replace it with a healthy one. One of the passengers has had both of his legs badly crushed but all of his organs are perfectly healthy. Furthermore, it just so happens that he would be a suitable donor for the five.

This example is meant to illustrate the fact that, in our world, too, chance could, on occasions, have the upper-hand on life-style. And therefore, there are at least some circumstances under which a shared increase in the probability of survival is possible even though, in general terms, it is life-style and not chance that dictates

the divide between health and illness. But even so, it is hard to see how this would prompt us to accept that in Car Crash it is morally permissible to cut up the one with leg injuries in order to save the other five. For it seems clear that our intuitive response to this case is that it warrants the same judgement of moral impermissibility as does Transplant.

Thus, if we were to accept Thomson's third proposal, we would be committing ourselves to the moral permissibility of cases that we intuitively do not think warrant such a judgement. Furthermore, this claim holds without the need to look to worlds other than our own. For Car Crash is set in our world. Having said that, let us think again about how adequately we believe Thomson's proposal explains the moral permissibility of Trolley.

Thomson's Third Proposal as Applied to Trolley.

Thomson maintains that Trolley warrants a judgement of moral permissibility on the grounds that each of the six has had more chance of being one of the five than they have had of being the one. Therefore, each of them has shared in the increased probability of survival that comes from switching the burden of disadvantage away from the five and onto the one instead. Thomson has to do a fair bit of work in order for us to see that this is the case. For this is not something that is readily obvious. However, once we appreciate the need for each of the six to have had a shared chance of being one of the five, rather than the one, things should be different. That is, it should be easier to spot the instances of Trolley that will not warrant a judgement of moral impermissibility. This is because we now know that, if there is no shared chance of positioning, the example in question should warrant a judgement of moral impermissibility. With this claim in mind let us look at an example that we will call Divided Town.

Divided Town: Imagine a small town where all the inhabitants are trolley workmen. Half of the population works on the Great Northern line. These workers have been recruited from towns in the north. The other half of the population works on the Great Eastern line. These workers have been recruited from towns in the east. These workers are totally committed to the company that they work for. No worker has ever gone to work for the rival company. The Great Northern Company

send their workers to the track in groups of five. The Great Eastern Company, on the other hand, always have their workers working on their own. All the trolleys that come to the town do so via the Great Southern line. This means that if a trolley is bound for the north it simply passes through the town on the main track. However, if a trolley is bound for the east the tracks have to be switched so that the trolley is diverted onto the right-hand fork of the track.¹⁹ The track switching mechanism is under the automatic control of the Great Southern line. However, there is a manual switch that can be used in emergencies. We are standing beside that switch when we see that an out-of-control trolley is headed towards the five workmen on the Great Northern line. We could, therefore, switch tracks and divert the trolley onto the Great Eastern line where there is only one man working.

In this example it is absolutely clear that the one has had no chance of being one of the five. Hence, according to Thomson's account it should be obvious to us that this is a case where the one has had no share in an increased probability of survival. Thus, we should readily accept that this is a case that warrants a judgement of moral impermissibility. But do we? It does not seem as though we do. This is because, in this case, like Trolley, we intuitively think that it is morally permissible to save the five. If this is so then it is hard to see how we can accept Thomson's claim that Trolley warrants a judgement of moral permissibility because it is a case where all six have shared in an increase in the probability of survival. Thus, it looks as though we could reject Thomson's proposal on the grounds that there are cases where it delivers judgements which are not in accord with the way we intuitively think that these cases should be judged. In support of this claim, let us now consider how Thomson applies her third proposal to Fat-Man Bridge.

Thomson's Third Proposal as Applied to Fat-Man Bridge.

In Fat-Man Bridge it is clear that there can be no question of the one on the bridge having had a chance of being in one of the positions occupied by the five. This is because, in this example, the one on the bridge is simply a bystander while the five are all workmen. Hence, there seems to be no problem in accepting that the moral impermissibility of this example could be attributable to the fact that this is not a case where the one has had a shared increase in the probability of survival.

¹⁹ In case you are wondering what happens to west bound trains - they branch off at the town beyond this one.

However, once again, we may want to consider whether we should accept that this is so. This is because here, as with Transplant, we might be accepting more than we realise. In support of this claim, let us look at an example that we will call Heavy Painter.

Heavy Painter: We are standing on a bridge that spans the trolley track. We are leaning over the handrail and absently gazing at the track below. Along comes a rather heavy-set workman with a pot of paint. The workman starts explaining to us that when he and his five (equally heavy-set) work mates reported for duty this morning they were told that one of them would need to paint the bridge. So they drew lots and he got the job. This is why he is on the bridge instead of being down on the track. It is at this point that we notice that there is an out-of-control trolley headed towards the five workman. We are aware that we could save the five by throwing something heavy onto the track. However, there are no heavy objects at hand. But we know that the workman that is standing beside us is heavy enough to stop the trolley. We also know that it would be easy enough to topple him off the bridge because he is already leaning well over the handrail in an attempt to paint it.

Heavy Painter is a case where the one has had a chance of being one of the five on the track. Thus, the one in this example has had a shared increase in the probability of survival. Hence, according to Thomson's account, this example warrants a judgement of moral permissibility. But do we really think that this is so?²⁰ Once again it does not seem as though we do. Hence, we have reason to think that Thomson is wrong to think that we can base the moral difference between these various examples on the absence or presence of a shared increase in the probability of survival. Furthermore, it is worth noting that, in this example, the notion of a shared chance of positioning between the advantage of being one of the five and the disadvantage of being the one is attributable not just to the fact that we are dealing with workmen who are allocated to their work place by chance. For there is another factor that comes into play in this example. To see that this is the case, we need to realise that the position on the bridge will only gain its disadvantaged status provided the one on the bridge is heavy enough to stop the trolley.

Thus, if the other workmen are all thin, then the burden of disadvantage can only ever fall on the shoulders of the one who is heavy. So the heavy workman can

20 Kamm certainly does not think so. For she expresses concern about the idea that Thomson's proposal would commit us to accepting the moral permissibility of throwing the one off the bridge if we could establish that the one has shared in an increased probability of survival. See Kamm, F. M. (1996) p.167.

never share in an increased probability of survival, despite the fact that he undoubtedly does have a shared chance of positioning.²¹ This is because it is only he who can turn the advantaged position of the one into the disadvantaged position. Keeping this in mind let us now look at Fat-Man Loop.

Thomson's Third Proposal as Applied to Fat-Man Loop

Thomson never discusses Fat-Man Loop in relation to her third proposal. However, given Thomson's claim that Fat-Man Loop is morally akin to Trolley, we can assume that it, too, must be a case where all six have had a shared increase in the probability of survival. But can this really be so, given what we have said with regard to Heavy Painter? It would seem not. This is because in Fat-Man Loop, Thomson stipulates that the five on the straight part of the track are all thin. She has to do this in order to make it clear that if the trolley continues its progress along the straight portion of the track it will run over all five of them. However, at the same time she needs to point out to us that their combined weight will stop the trolley. This is so that we do not think that the trolley is going to keep going and hit the one as well. But, if the five are thin and the one is fat, she automatically rules out any shared increase in the probability of survival. This is because the loop side of the track will only be the position of disadvantage provided the one who is on it is fat. For, if the one on the loop is thin, as he is in Thin-Man Loop, then the loop side of the track becomes the advantaged position. This is because, as we explained earlier, there is no question of our switching tracks in Thin-Man Loop. For, if we do, all six will be hit by the trolley.

Hence, all the burden of disadvantage in Fat-Man Loop falls on the shoulders of the one, regardless of the fact that chance alone is responsible for him being on the loop side, rather than the straight side of the track. Thus, Thomson will need to accept that Fat-Man Loop is not morally akin to Trolley if she wants to continue to

²¹ Kamm does not pick up on this point. Hence, she does not consider the implications that this has with regard to Fat-Man Loop.

claim that we can explain the moral difference between Transplant and Trolley by appeal to the distinction between a shared or a non-shared increase in the probability of survival. Furthermore, she is going to have to ground that distinction on something more reliable than a shared chance of positioning.

However, although we welcome the support that Thomson's third proposal gives our claim that Fat-Man Loop warrants a judgement of moral impermissibility, we are not prepared to accept her proposal. This is because, even if it can be used to explain the moral difference between Transplant and Trolley, it does so in a way that is unacceptable. This is because it commits us to judgements about cases that are at odds with the way we intuitively think that those cases should be judged. That is, it commits us to accepting that some of the cases that we intuitively judge to be morally impermissible are, in fact, morally permissible and it commits us to accepting that some of the cases that we intuitively judge to be morally permissible are, in fact, morally impermissible.

So, we are still unable to adequately explain the moral difference between Trolley and Transplant. Thus, let us now consider Frances Kamm's proposal that we can explain the moral difference between these two cases by applying what she call the Principle of Permissible Harm.

Chapter 5

Kamm's Position.

Kamm, too, thinks that neither Foot, Quinn nor Thomson's proposals can adequately explain the moral difference between Trolley and Transplant. Hence, she offers us her own proposal which involves our accepting what she refers to as the Principle of Permissible Harm (PPH).¹ Kamm maintains that the best way to understand the PPH is through its application to cases. Thus, we shall once again have to systematically work our way through a range of examples. Some of the examples that we shall be dealing with will be familiar to us because we have dealt with them before but others will be unfamiliar. This is because Kamm introduces a number of her own examples in order to explain just how the PPH is meant to be applied. We, in turn, introduce a couple of examples of our own as a way of challenging whether Kamm is justified in making the claims that she does with regard to the PPH. Thus, before we direct our attention towards those examples, let us first of all get some sense of the claims that Kamm wants us to accept with regard to the PPH.

First of all, Kamm wants us to accept the idea "that it is permissible for greater good to produce lesser evil."² For this is the idea on which the PPH is based. A simple enough idea. But can we accept it? That is a good question and one worth considering. And yet Kamm never seems to consider that we might not accept it. But should we not question where this idea has come from and what makes it the case that we should accept it? It certainly seems like we should. For it is almost as though Kamm has come up with this idea by taking one of the claims that is

1 See Kamm, F. M. (1996) *Morality, Mortality*. Vol. II. New York: Oxford University Press.

2 Kamm, F. M. (1996) p.172 See also the lengthy endnote associated with this quotation (i.e. Endnote #1 pp.201-202). For Kamm stipulates that the proposal that she is making "is different from, though related to" the one that she presented previously [in 'Harming Some to Save Others,' in *Philosophical Studies* 57(3) (November, 1989): 227-260.]

associated with the DDE and stood it on its head. That is, it is as though she has taken the claim that the bad must not be the means to the good and turned it around so that it reads as: The good must be the means to the bad. But these are two quite different claims and, therefore, Kamm cannot just expect us to accept this idea without questioning where its theoretical support is meant to be. But, there again, maybe Kamm is working on the assumption that if it works, then that gives us good reason to accept it. Thus, we can see that it is crucial on Kamm's account that we accept that her claims with regard to the PPH do allow us to determine the moral differences between cases without our judgements seeming to be inconsistent. Hence, let us now turn our attention to the claims that Kamm makes with regard to the idea on which the PPH is grounded.

Kamm maintains that, in order to be able to claim that we are dealing with an example that warrants a judgement of moral permissibility, we have to be able to conceive of the act that we perform as being the greater good or that which is structurally equivalent to it.³ That is, we have to be able to claim that the act in question just *is* the greater good or that which is structurally equivalent to it in order to think of it as being a good in itself.⁴ Kamm maintains that an act will be a good in itself provided that it is intimately and noncausally related to the good.⁵

Kamm explains this notion of an act being intimately and noncausally related to the good by getting us to think in terms of the one being the flip side of the other. Thus, what we have is one event, not two. Hence, Kamm gets us to think of such an event like we would a coin. However, with regard to some examples, Kamm claims the relationship between the act and the good is even more closely related than this.⁶ In cases such as these, Kamm describes the good as being an aspect of the act in question. But, either way, these are cases where the act that we perform

3 To say that a good is structurally equivalent to the greater good is to say that if it can be maintained it will become the greater good.

4 To claim that an act is a good in itself means that it just is the greater good or that which is structurally equivalent to it.

5 We use good here to mean the greater good or that which is structurally equivalent to it and we shall do so from here on.

6 Personal communication.

can be regarded as being a good in itself. Thus, we can see how important it is to Kamm's account that we are able to determine just when an act is intimately and noncausally related to the good in question. Which brings us up against another of Kamm's claims.

Kamm maintains that we have to be very precise about what good is associated with the act in question. Thus, Kamm claims that we have to realise that it is one thing to be threatened by something coming at us in one direction and quite another to be threatened by that same something coming at us from a different direction or even from the same direction but not head on. We will see exactly what Kamm means by this statement once we start relating it to examples. But, for the moment, all we need to appreciate is that when it comes to determining the moral permissibility of a given case we have to be clear that what seems like one and the same threat could in fact count as two quite different threats. This is an important aspect of Kamm's proposal because it allows for the claim that if an example does involve the same threat in two quite different ways then as far as the act we perform is concerned it could be intimately and noncausally related to one of these threats but not so with regard to the other.

We might question just how feasible this claim of Kamm's is. However, Kamm maintains that it is easy enough to accept, once we realise that at the point at which we have to decide whether or not to act there is only the one threat. So what Kamm is claiming is that the second threat only appears if we do perform the act in question. Thus, the act that we perform on the one hand frees the five of what threatens them, but, on the other, it causes them to come under threat again. Hence, the act in question can, therefore, be considered as being noncausally related to the first threat, but causally related to the second.

This allows Kamm to, in turn, claim that if the five are under threat and we turn that threat away from them, the act of doing so can be conceived of as a good in itself provided it can be maintained. Thus, according to Kamm's account it is the in-itself-good act that can cause both the five to be put under a second threat and

the harm that befalls the one. But then what if the good that we accomplish is maintained precisely because of the harm that befalls the one? As far as Kamm's account is concerned, this, too, is attributable to the in-itself-good act. Thus, as far as the act that we perform is concerned, the harm that befalls the one is simply that which maintains the good that will become the greater good. But, then, should we not take into account the fact that when we act we are aware that the five will again be under threat and indeed that it will be the harm that befalls the one that will save them from that second threat? Kamm thinks not, because she maintains that there is a distinction to be drawn between performing an act *because* something will happen and performing an act *in order* that something will happen.⁷ What precisely Kamm means by this last claim should become clear once we relate it to a specific example.

Thus, now that we are aware of the claims that Kamm wants us to accept with regard to the PPH, let us consider just how these claims relate to the various kinds of cases that we have been dealing with. Let us use Trolley as our starting point.

The PPH as Applied to Trolley.

Kamm maintains that in Trolley we can conceive of the act of switching tracks as being a good in itself.⁸ This is because, in this example, the switching of the tracks just *is* the good of saving the five. So, here we have a case where the act of switching tracks and the saving of the five count as one, rather than two events. Hence, this is a case where Kamm makes use of the coin analogy and claims that the switching of tracks is the *flip side* of the greater good. Thus, this is a case where the switching of tracks is intimately and noncausally related to the saving of the five. Furthermore, given that the switching of tracks is what then causes the one to be hit by the trolley, this is a case where it is appropriate to claim that the

⁷ See Kamm, F. M. (1996) pp.176-180, and Kamm, F. M. (2000) p.22.

⁸ Kamm actually uses the phrase 'turning the trolley'. However, we shall continue to using the phrase 'switching tracks' since that is the phrase we started with.

bad is caused by that which is the greater good. Hence, the PPH delivers a judgement of moral permissibility with regard to Trolley on the grounds that the greater good produces the bad of the one being hit.

Thus, we can regard Trolley as our base-line example. But which example should we deal with next? It might seem that we should deal with Fat-Man Loop next, given that we spent a good deal of time in the previous chapter challenging Thomson's claim that it is morally akin to Trolley. This seems especially so, given that Kamm agrees with Thomson that Fat-Man Loop warrants a judgement of moral permissibility. However, although Kamm explains how her proposal upholds a judgement of moral permissibility with regard to Fat-Man Loop, she does not actually use it to introduce us to the claims that she is making with regard to the PPH, rather she uses an example that she herself has devised. It seems strange that she goes to the trouble of introducing another example when she had Fat-Man Loop at her disposal, but none the less that is what she does. So we might as well do the same. We will refer to this example of Kamm's as Fat-Man Trolley.⁹

Fat-Man Trolley: An out-of-control trolley is about to reach a section of track that is forked. Five people are trapped on the main track and one person is trapped on the spare track. The trolley is headed for the five. It is possible to switch tracks. However, under normal circumstances this would not save the five. This is because this particular section of spare track is built on an incline. An incline that is so steep that the trolley would simply not be able to progress up it. Hence, if we do switch tracks the trolley will roll back down the incline with the result that the five will still be hit. Albeit by the back of the trolley, rather than the front. However, on this particular occasion there is one person trapped on the spare track and we know that when the trolley hits him his crushed body will prevent its backward slide. Thus, in this instance the five can be saved by switching tracks.

In visual terms it is hard to see how this example differs from Trolley.¹⁰ Of course, there is one obvious difference and that is that in Fat-Man Trolley the one who is trapped on the track is fat. But what is not obvious from the comparison between the two figures of these examples is that in Fat-Man Trolley the spare track is on a steep incline. It is important to keep in mind that the visual

9 Kamm calls this example Prevented Return. We have changed the name in an attempt to show that some features of this example make it akin to Fat-Man Loop and others make it akin to Trolley.

10 Compare Figure 6 below with Figure 2 in Chapter 4.

comparison between these two examples *could* lead us to think in terms of these two cases as being more akin to one another than they actually are. Thus, we need to stay aware of the fact that in Fat-Man Trolley the spare track in on a steep incline. This is so for two reasons. Firstly, because it is obviously in Kamm's interest to make these examples appear as much alike as possible, given that she wants us to see that they both warrant the same moral judgement. And secondly, because, as far as our challenge to that claim is concerned, it is in our interest to keep pointing out how one example differs from another. This is because it is our claim that Fat-Man Trolley is not structurally akin to Trolley. Hence, we have no reason to think that just because Trolley warrants a judgement of moral permissibility Fat-Man Trolley does so as well. Furthermore, this is the case even though these two examples have a high degree of sameness. With these points in mind, let us now consider just how Kamm does explain the moral permissibility of Fat-Man Trolley.

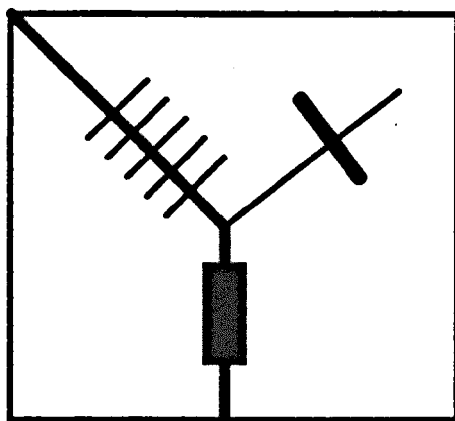


Figure 6: Fat-Man Trolley¹¹

The PPH as Applied to Fat-Man Trolley.

In Fat-Man Trolley, if we are to save the five, three things need to happen. The tracks need to be switched, the trolley needs to hit the one and the trolley needs to be stopped from rolling backwards. Thus, according to Kamm's account, what we

¹¹ Note that in this figure the main track goes off to the side and not straight on as in Trolley. We have drawn it this way so as to help it seem more likely that the trolley could indeed roll back onto the five.

have here is a case that involves the same threat in two quite different ways. Hence, this is a case where we have to believe that it is one thing for the five to be under threat from the trolley coming at them head-on along the main track and quite another for the five to be under threat from the trolley rolling back on them. Furthermore, we need to accept that, at the time when we have to decide whether or not to switch tracks, the only threat that faces the five is the one where the trolley will hit them head-on. Once we accept both of these claims then we can see two things. Firstly, that the act of switching tracks frees the five from the only thing that threatens them at that point in time. Secondly, that the switching of the tracks actually causes them to then be under threat from the trolley rolling back on them.

As far as the first point is concerned this allows Kamm to claim that the switching of tracks just *is* the good of freeing the five from what threatens them at the time. Furthermore, it is a good that will become the greater good provided it can be maintained. Thus, this is a good that can be regarded as a structurally equivalent component of the greater good. Hence, we can conceive of the switching of tracks as being a good in itself. And, as far as the second point is concerned, Kamm is able to claim that it is the in-itself-good of switching tracks that causes the five to then be under threat from the trolley rolling back on them. Furthermore, it is the same in-itself-good act that causes the one to be hit by the trolley. Thus, Kamm is able to claim that, in this case, just as in Trolley, it is the good that produces the bad of the one being hit. So, in this case, too, the PPH will deliver a judgement of moral permissibility.

But, then, what about the fact that the trolley is prevented from rolling back on the five because the weight of the one stops it from doing so? In a sense what Kamm is saying is that this is not our concern. For our concern is with the freeing of the five from what threatened them at the time that we switched tracks. That is, our concern is with removing the threat of the trolley coming at the five head-on along the main track. So, as far as the act that we perform is concerned, the weight of the fat man stopping the backward roll of the trolley is just that which maintains

the good of freeing the five from what threatened them at the time. Thus, this is where Kamm's claim about there being a distinction between performing an act *because* something will happen and performing an act *in order* that something will happen comes into play. Kamm's claim is that this is a case where we act *because* of what will happen. That is, this is not a case where we act *in order* that it will happen. Thus, now that we know that this is how Kamm uses the PPH to explain the moral kinship between this case and Trolley, let us see how this explanation works with regard to Fat-Man Loop.

The PPH as Applied to Fat-Man Loop.

If you recall, Fat-Man Loop is the example where we can save the five only if we are prepared to switch tracks so that the trolley hits the fat man on the spare track and stops.¹² Given the claims that Kamm makes with regard to Fat-Man Trolley, we can see that, if this example is to warrant a judgement of moral permissibility, we need to be able to conceive of the switching of tracks as being a good in itself. In order to be able to conceive of the switching of tracks in this way it has to be the case that this act just *is* the freeing of the five of what threatens them at the time. Thus, here again, we need to accept that it is one thing for the five to be under threat from a trolley coming at them head-on from one direction and quite another to be under threat from that same trolley coming at them head-on from a different direction. For only then can we believe that what we are dealing with here are two threats, rather than one.

Once we accept that Fat-Man Loop involves two threats, rather than just one, then two things should become clear to us. Firstly, that the act of switching tracks just *is* the freeing of the five from what threatens them, and secondly it is what causes the five to come under threat from that same trolley coming at them from a different direction. Thus, here, too, we can think of the switching of tracks as

¹² See Chapter 4 - Figure 1.

being a good in itself. That is, a good which will become the greater good provided that it can be maintained. So, again, what we have is a good which is a structurally equivalent component of the greater good. This is so because this is a case where the good that is related to the switching of tracks can be maintained. Thus, Kamm is able to claim that, as far as the act of switching tracks is concerned, the hitting of the one is what maintains the good that it accomplishes. Hence, this is a case where the in-itself-good of the act that we perform causes the bad of the hitting of the one. Furthermore, Kamm is then able to claim that it is this same in-itself-good act that causes the bad of the one being hit, which brings about the saving of the five from the subsequent threat of their being hit by the same trolley coming at them from a different direction. Thus, in this case, just as in Fat-Man Trolley, Kamm wants us to accept that we act *because*, rather than *in order* that, the one be hit and so used. But can we really accept that this is the case?

A Challenge to Kamm's Claims With Regard to Fat-Man Loop and Fat-Man Trolley.

Kamm's strategy of using Fat-Man Trolley to introduce her claims with regard to the PPH is a good one.¹³ This is because, as we mentioned earlier, visually, it is hard to see that there is any difference between Fat-Man Trolley and Trolley. Hence, we seem to have no reason to question Kamm's claim that the act of switching tracks in Fat-Man Trolley just *is* the freeing of the five from what threatens them at the time. For it is all too easy for us to think of them as being free from what threatens them because we can visualise the trolley headed along the spare track away from the five, just as is the case in Trolley. Thus, it is all too easy to lose sight of the fact that this is only a temporary reprieve, given that the trolley will roll back on them unless it is stopped from doing so. Hence, what we are claiming is that, because the track in this case is forked, just as it is in Trolley,

13 It is interesting to note that Peter Unger maintains that our intuitive responses to examples can be influenced by the order in which examples are presented to us. See Unger, P. (1996) p.92. It is also interesting to note that Kamm maintains that her intuitive responses to examples are unaffected by Unger's attempts to manipulate them. See Kamm, F. M. (1996) Footnote #1 p.13.

we are easily misled into thinking that the five are free of what threatens them. But, if we keep it in mind that the spare track is on a steep incline, we realise that at no point are the five actually free of what threatens them because it is always the case that the trolley is going to roll back on them. Hence, if we do come to accept that the five are free of what threatens them in Fat-Man Trolley, it then becomes harder to see why the same claim should not hold with regard to Fat-Man Loop.

Thus, what we are claiming is that Kamm's task of introducing us to the PPH would have proven much more difficult if she had tried to use Fat-Man Loop as her model case, rather than Fat-Man Trolley. This is because when the track in question is in the shape of a loop it is much harder to see the point at which we might think of the five as being free from what threatens them. For, at no point, do the five ever seem to be free of what threatens them. Granted, the direction of the threat changes but the threat is the same. That is, when the track is looped, rather than forked, we lose the notion that the switching of tracks removes the threat from the five. This is because when the track is in the shape of a loop it seems much more appropriate to think that all the switching of tracks does is change the direction of the threat. Thus, in Kamm's terms, it seems as though we could claim that the switching of tracks just *is* the putting of the five under threat from the trolley coming at them from a different direction. It is hard to see why we should not be able to think of the switching of tracks in this way, given Kamm's notion that the switching of tracks just *is* the removing of the threat of the trolley coming at the five from one direction. But, if the switching of the tracks just *is* both of these things, then should we not regard that act as being both a good and a bad in itself?

To answer this question let us think how we would judge the act of switching tracks in a case where there was no one trapped on the loop portion of the track. That is, let us think, as we did with regard to Thomson's claims, of a No-Man Loop case.¹⁴ Would we have any cause to think of the switching of tracks in No-Man Loop as being either a good or a bad in itself? It does not seem as though we

14 See Chapter 4 - A Comparison between Trolley and Fat-Man Loop.

would. For the switching of tracks in this example would neither add to nor subtract from the amount of bad that would otherwise occur. Thus, we might be inclined to think of the act of switching tracks, in this example, as being a neutral event. But what if we think about this example as Kamm does Fat-Man Loop? That is, what if we think of this as a case where the same threat can become a quite different threat if its direction is altered? Would we then think of the switching of tracks as being a good in itself because it frees the five from what threatens them at the time? It seems as though we could. But, then, what about the notion that our act would also cause them to come under threat again from that same threat? Would we not think that, given that the switching of the tracks just *is* the freeing of the five from what threatens them, it just *is* what puts them under threat again? It certainly seems as though we would. But, then, would we not also think that here we have a case where the good and the bad cancel each other out and, therefore, we can think of the switching of tracks as being a neutral event in this case? It seems that we might well look at it like this.

But, there again, if we thought, for example, that the switching of tracks might allow the five more time to try and get off the track or if we thought it might give someone else time to get to the five and save them, then we might well view this act as being a good in itself. Furthermore, this claim would hold even if it turned out that neither of these things did occur and the five were run over by the trolley. This is so because the act in question affords the possibility that the situation could be made better than it otherwise would be the case, without affording the possibility of it being made worse. But what happens if we put, say, a thin man on the loop portion of the track?

If you recall, when it comes to the Thin-Man Loop case, if we switch tracks what will happen is that the trolley will hit the thin man, and then keep going and hit the five as well. So how do we think of the switching tracks in this case? It certainly does not seem as though we would think of it as a good; but we would think of it as a bad because it puts the one under threat as well as the five. But then we would not say that the switching of tracks just *is* the hitting of the one. However,

we would say the switching of tracks just *is* the putting of the one under threat when he would otherwise not be under threat. And is that not enough of a bad to count as a bad in itself, given that, if the trolley does hit the one, he will die? Of course, we can avoid the need to question how we will regard the switching of tracks in this case. This is because, according to Kamm's account, the switching of tracks in this example is morally impermissible because this is not a case where we could maintain the good of freeing the five of the threat that faces them at the point when we have to decide whether or not to switch tracks. Thus, again, Kamm can avoid the need to question whether the act of switching the tracks could be conceived as a bad in itself. But that does not mean that we should.

Thus, even if we could consider the switching of tracks in this case to be a good because it removes the threat, albeit only temporarily, from the five, it seems more reasonable to think that we would regard it as a bad in itself. This is because balanced against that good is the bad of both the one and the five being put under threat from being hit by the trolley. Hence, our claim against Kamm's proposals is that she cannot expect us to accept that an act counts as a good in itself because it just *is* something good, without explaining to us why that same act should not count as a bad in itself, when it just *is* something bad as well. So, what we maintain is that, even if we accept Kamm's idea that the act of switching tracks in Fat-Man Loop and Fat-Man Trolley warrants being thought of as a good in itself, this does not stop us from conceiving of that same act as being a bad in itself. In support of this claim, let us now look at an example that we will call Fat-Man Spindle.

Fat-Man Spindle: In this example the track is spindle shaped. An out-of-control trolley is headed towards the five who are trapped on the track up ahead. The track is set so that the trolley will travel along the left-hand branch of the spindle. However, it is possible to switch tracks so that the trolley will travel along the right-hand branch of the spindle instead. However, there is one person trapped on the right-hand branch of the spindle. Furthermore, that person is heavy enough to bring the trolley to a stop.

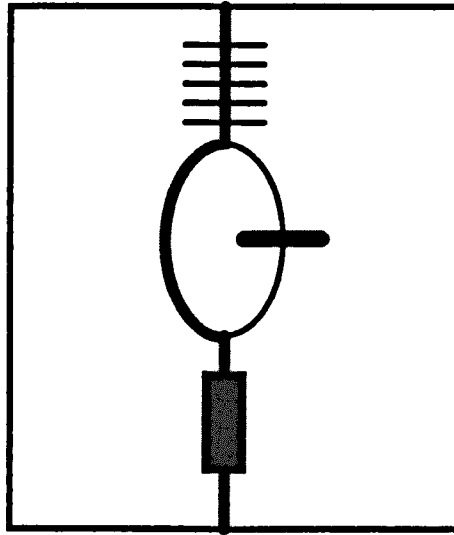


Figure 5: Fat-Man Spindle

In Fat-Man Spindle, rather than having a loop of track, what we have is a spindle-shaped portion of track. If we do not switch tracks the trolley will travel along the main track which is on the left-hand side of the spindle. However, if we do switch tracks then the trolley will travel along the spare track which is on the right-hand side of the spindle. At least, it will up until the point where it hits the one. This is because the hitting of the one will bring the trolley to a stop. Furthermore, it is worth pointing out that, whereas in Fat-Man Loop, we had to stipulate that the weight of the five would stop the trolley, in this case there is no need to do so. This is because, whereas in Fat-Man Loop we had to put paid to any notion that the trolley might hit the five and then carry on and hit the one as well, in this example there is no question that the trolley could hit the one if we did not switch tracks. It is the positioning of the five just beyond the point where the left-hand side of the spindle rejoins the main track that makes this the case. Thus, as far as this example is concerned, it is clear that the one will only come under threat from the trolley if we do switch tracks. With all of this in mind, let us now consider just how the PPH will handle Fat-Man Spindle.

The PPH as Applied to Fat-Man Spindle.

There is no doubt that Kamm has to accept the moral permissibility of Fat-Man Spindle, given that she argues for the moral permissibility of both Fat-Man Trolley and Fat-Man Loop. Thus, we can see that the claims that Kamm makes with regard to both of those cases have to hold with regard to this case as well. And this is precisely where we think Kamm's explanation runs into difficulty. This is because it is the symmetry of this example that makes it difficult to see just how Kamm could claim that the switching of tracks could be conceived of as a good in itself, given that the five are never free of the threat of the trolley coming at them head-on down the main track, irrespective of whether the trolley reaches them via the left-hand or the right-hand side of the spindle. But, let us say, we grant Kamm the claim that the switching of tracks is a good in itself because it just *is* the freeing of the five from the threat of the trolley coming at them from the left-hand side of the spindle. What grounds would Kamm then have to refuse our claim that the switching of tracks is also conceivable as a bad in itself, given that the switching of tracks just *is* the putting of the five back under threat from the trolley coming at them again and just *is* the putting of the one under threat when he would otherwise not have been? It seems as though Kamm would have to accept our claim or come up with some explanation for why her claim holds while ours does not.

So, if we are right and the switching of tracks does count as both a good and a bad in itself with regard to Fat-Man Spindle, then why is the same not the case in Fat-Man Loop and Fat-Man Trolley? It is our suggestion that it holds every bit as much for both of these cases. And, once we appreciate that this is the case, we should become alert to the fact that, when we accepted Kamm's claim with regard to Trolley that the switching of tracks just *is* the saving of the five, we failed to appreciate that it is, also, the case that it just *is* the putting of the one under threat when he otherwise would not have been. Thus, our challenge against Kamm's handling of Fat-Man Loop and Fat-Man Trolley highlights the fact that in Trolley, too, we can conceive of the act of switching tracks as being both a good and a bad

in itself. But, if this is the case, then how can we possibly claim that it is the in-itself-good of switching tracks that causes the bad of the trolley hitting the one? It does not seem as though we can. Which kind of brings us back to the question of why should we think that it has to be the good that causes the bad? For our intuitive response to Trolley is strong enough to make us not want to give up on the notion that this is a case where a judgement of moral permissibility is warranted.

Thus, it looks as though we need to look for some other way of explaining why Trolley does warrant this judgement. However, before we do that, let us test the strength of our challenge to Kamm's account by having a look at the set of cases that we referred to in the last chapter as the Turning-Seesaw-Device examples.

The PPH as Applied to the Turning-Seesaw-Device Examples.

Kamm has a number of versions of this example - namely Seesaw-Device (Bystander), Wall (5:1), Push (5:1) and Fat-Man Seesaw-Device (Bystander).¹⁵ We are already familiar with Seesaw-Device (Bystander) because we discussed it in the last chapter when we were challenging Thomson's second proposal.¹⁶ If you recall, we have, also, discussed another version of this example - namely Seesaw-Device (5:1).¹⁷ We introduced this version of the example because we felt it was structurally more akin to Trolley than Seesaw-Device (Bystander). And now we want to discuss each of these examples in relation to Kamm's claims with regard to the PPH. Thus, let us begin by applying the PPH to what Kamm regards as her main example. That is, let us start by looking at Seesaw-Device (Bystander).

15 These examples are all versions of what Kamm calls the Lazy Susan Case.

16 See Chapter 4 - Figure 3.

17 See Chapter 4 - Figure 4.

Seesaw-Device (Bystander)

If you recall, this is the example that Kamm devised to show that a judgement of moral permissibility can be warranted even if the case in question does not involve the diverting of a pre-existing threat. For, in Seesaw-Device (Bystander), we can save the five by turning the device so that they are moved clear of the tracks. However, if we do this, the device will hit and fatally injure the one person who is standing near it. Kamm maintains that this is an example where we intuitively think that is morally permissible to save the five. Furthermore, she maintains that the PPH can explain why we are right in making such a judgement.

Kamm maintains that the act of swinging the device in this example is akin to the act of switching tracks in Trolley. For, whereas in Trolley the act of switching tracks just *is* the good of removing the threat from the five, in this example the swinging of the device just *is* the good of removing the five from the threat. Thus, Kamm claims that here, too, we can conceive of the act in question as being a good in itself. However, whereas in Trolley Kamm talks in terms of the switching of tracks as being the flip side of the removal of the threat, in this example she refers to the swinging of the device as being an aspect of the removal of the five from the threat. Thus, as we indicated earlier, this means that Kamm regards the relationship between the act and the good as being even more intimately related in this case than she does in Trolley. Hence, we can see why Kamm thinks that this is a case where it is the good that causes the bad of the one being hit by the device. Thus, we can also see why Kamm claims that this example also warrants a judgement of moral permissibility.

However, as far as our challenge to Kamm's account is concerned, it should be obvious that what we want to point out is the fact that we could also claim that the swinging of the device is a bad in itself. This is because it just *is* the putting of the one under threat when he would otherwise be under no threat. So how *could* we possibly claim that here we have a case where it is the good that causes the bad of the one being hit by the device. Thus, here, too, it does not seem as though Kamm

can explain the alleged moral permissibility of this example by appeal to the idea that this is a case where it is the good that causes the bad. Keeping this in mind, let us now turn our attention to the version of the Seesaw example that is obviously meant to be akin to Fat-Man Loop and Fat-Man Trolley. That is, let us now apply the PPH to Kamm's Fat-Man Seesaw-Device (Bystander) example.

Fat-Man Seesaw-Device (Bystander) Example.

We have not discussed this example before and, in fact, Kamm only mentions it in passing.¹⁸ It seems rather odd that Kamm does not make more of this example given that it looks as though she could use it to support the claims that she makes with regard to Fat-Man Trolley and Fat-Man Loop. For this example is obviously related to Seesaw-Device (Bystander) in the same way as Kamm would have us accept that Fat-Man Loop and Fat-Man Trolley are related to Trolley. And if we compare the figure below with that of Seesaw-Device (Bystander)¹⁹ we can see why. For, from a visual perspective, all that differentiates Fat-Man Seesaw-Device (Bystander) from Seesaw-Device (Bystander) is the weight of the one standing beside the device.

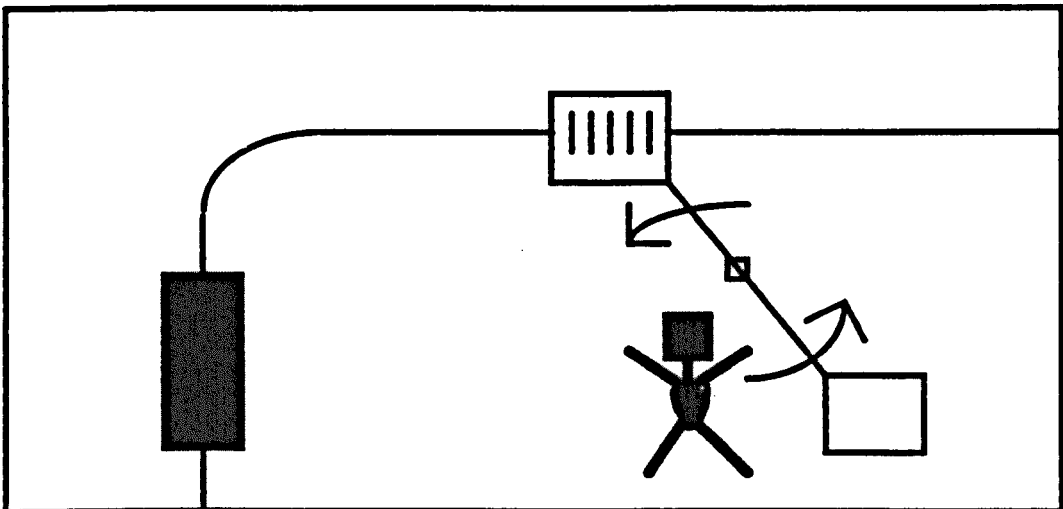


Figure: 7 Fat-Man Seesaw-Device (Bystander)

18 Kamm refers to this example as a Lazy Susan-type case. See Kamm, F. M. (1996) p.179.

19 See Chapter 4 - Figure 3.

But if you recall, when it came to comparing Fat-Man Trolley to Trolley, we said that a visual comparison is deceptive because it does not make it obvious that the spare track in Fat-Man Trolley is on a steep incline. Thus, it seems appropriate that we should question whether there is any aspect of the comparison between Fat-Man Seesaw-Device (Bystander) and Seesaw-Device (Bystander) that would not be obvious when it comes to making a visual comparison between the two figures associated with these examples. It is hard to see how we might be deceived by the comparison between these two figures. For, after all, Kamm is simply trying to show that in Fat-Man Seesaw-Device (Bystander), as in Fat-Man Loop and Fat-Man Trolley, it is morally permissible to hit the fat man even though his being hit is the means to the saving of the five from a threat other than the one that our act is directed towards. But, let us pause right there for a moment. Exactly what threat is the hitting of the one saving the five from in Fat-Man Seesaw-Device (Bystander)? As yet we have not said. When Kamm mentions this example she claims that the hitting of the one saves the five from being pushed into the trolley from a different direction.

It is as though Kamm anticipates that, if there were no fat man standing beside the device and the device were to swing right round, the trolley would be at the spot where the five had been. So, instead of the trolley hitting the five, it would be a case of the five hitting the trolley. However, it is not at all clear why Kamm should think the direction of the hit would be different, given that the same side of the end of the device will hit the trolley as would have been the case had the trolley hit the device. But, it seems enough that we have some idea of why Kamm might see this as a quite different threat to the five than the one that faced them at the point at which we had to decide whether or not to swing the device. For, of course, Kamm needs there to be two different threats in order to be able to claim that our act is directed at the first threat and not the second. Thus, in this case, just as in Fat-Man Trolley and Fat-Man Loop, Kamm can claim that we act not *in order* that the one be hit, but rather *because* he will be hit. So, as far as the saving with which we are concerned, the hitting of the one is just what maintains it so that it

becomes the greater good. But now let us relate this to Seesaw-Device (Bystander).

When Kamm presents Seesaw-Device (Bystander) she represents the swinging of the device as being that which frees the five from what threatens them. She does so by linking the image of the swinging of the device to the switching of tracks. Thus, it is all too easy for us to accept her claim. Just as it was all too easy for us to do the same with regard to Fat-Man Trolley. So, here again, it looks as though we should question whether or not the five are free of what threatens them when we swing the device. For, after all, how do we know that device is not going to hit the one standing nearby and then keep turning until it puts the five right back where they started? That is, right back in the path of an oncoming trolley. Furthermore, how do we know that it is not the hitting of the one standing nearby that stops the device from doing precisely that? Moreover, what is to say that the hitting of a thin bystander will not be enough to stop the device? Hence, although Kamm would like us to simply accept her claim with regard to Seesaw-Device (Bystander), she has to see that we cannot do so when she leaves the details of the example as vague as she does.

But then we have to ask why Kamm leaves this example so open. Our suggestion is that she does so for the same reason she introduces Fat-Man Trolley. That is, so that we get much more of a sense that the act in question does free the five from what threatens them. So, just as it is much easier to think that the five are free of threat when we see the trolley headed off down the spare track in Fat-Man Trolley, so, too, is it much easier to think of them as free of threat in Seesaw-Device (Bystander) if we do not think of the device as capable of making full circle turns. Thus, our claim is that Kamm's examples give us the illusion that the act in question frees the five from what threatens them at the time. Furthermore, because Kamm puts so much stress on the relationship between the act in question and its alleged good, we miss the fact that the same act puts the one (be he fat or thin) under threat when he would, otherwise, be under no threat.

Hence, what Kamm wants us to accept is that Seesaw-Device (Bystander) is structurally akin to Fat-Man Seesaw-Device (Bystander) and Trolley, whereas it is our claim that Seesaw-Device (Bystander) could be akin to one or other of these examples depending on how it is presented. Thus, it is our claim that we cannot deliver a judgement with regard to Seesaw-Device (Bystander) until we know to which of these examples it is akin. Furthermore, whereas Kamm wants us to accept that Fat-Man Trolley and Fat-Man Loop are structurally akin to Trolley, it is our claim that they are structurally akin to Fat-Man Seesaw-Device (Bystander) and Fat-Man Bridge. Our claim is based on the fact that, in all of these cases, the bad effect of the one being hit is causally required to bring about the occurrence of the good effect of the five being saved.²⁰ And it is this claim that we shall explore more fully in the next chapter. However, for the moment, our concern is simply to show that Kamm wants to get us to accept that the five are free of threat when we swing the device and she, therefore, does not want us to think in terms of this being a device that could deposit the five right back where they started from. In support of this claim, let us now turn our attention to Kamm's two remaining versions of Seesaw - namely Wall (5:1) and Push (5:1).

The PPH as Applied to Seesaw-Device Wall (5:1) and Push (5:1).

In relation to our challenge against Kamm, what is interesting about both Wall (5:1) and Push (5:1) is that, just like Fat-Man Seesaw-Device (Bystander), Kamm only mentions them in passing. And, given that we think that putting the one on the other end of the device makes this example seem more akin to Trolley than when the one is at the side of the device, this seems rather surprising. Thus, we might want to question just why Kamm does not make more of these examples. But, for the moment, let us just concentrate on what is involved with regard to each example.

²⁰ We shall explain this claim more fully in Chapter 6 and in Chapter 7 we shall relate that explanation to each example in turn.

Seesaw-Device Wall (5:1).

Kamm describes Wall (5:1) as being a case where, if we swing the device and remove the five from their position on the tracks, the one who is on the other end of the device will be pushed into a brick wall and die.²¹ Notice that in this example there is no question of the device swinging round so that the one is on the track instead of the five. For there is obviously a wall situated on one side of the device that stops it from making a full half-turn. So here we have a case where it is obvious that the swinging of the device will save the five. Hence, on Kamm's account this is a case where we can conceive of the swinging of the device as being a good in itself because it just *is* the saving of the five. Thus, Kamm is able to claim that it is the in-itself-good of swinging the device that causes the bad of the one being pushed into a wall. But here again we want to question whether Kamm can make such a claim. For again we want to say that we can also conceive of the act of swinging the device as a bad in itself because it just *is* the putting of the one under threat when he would otherwise not be under threat. So although we agree with Kamm that this example does warrant a judgement of moral permissibility we do not think that this is because we have a case where the good causes the bad. Thus, let us turn our attention to Push (5:1).

Seesaw-Device Push (5:1).

Kamm describes Push (5:1) as being akin to Wall (5:1). The only difference being that, in this version of the example, the one is pushed into the trolley and dies "of the same threat that the five were threatened with".²² Thus, again, Kamm's claim is that here we have a case where we can conceive of the act of swinging the device as being a good in itself because it just *is* the removing of the five from what threatens them. But, again, *can* we not just as readily claim that this is a case where the act of swinging the device also is conceivable as a bad in itself? For,

²¹ Kamm calls this example Lazy Susan II. See Kamm, F. M. (1996) p.163.

²² Kamm, F. M. (1996) p.163.

after all, *can* we not again claim that the swinging of the device just *is* the putting of the one under threat? It certainly seems as though we can.²³ Keeping this in mind, let us now turn to the one version of this example that is not Kamm's. That is, let us now consider how the PPH will deal with our version of this example.

The PPH as Applied to Seesaw-Device (5:1).

Seesaw-Device (5:1) is the example where, if we swing the device, the five will be moved off the track and the one who is on the other end of the device will be swung onto the track where the five had been.²⁴ In this version of the example we get much more of a sense that the one takes the place of the five than we do with Kamm's Push (5:1) version of this example. For in that version of the example, as we have just seen, Kamm talks in terms of the one hitting the trolley, rather than the trolley hitting the one. Similarly, with Kamm's Wall (5:1) version of the example, we get a clear sense that the harm that befalls the one is quite different from the harm that would have befallen the five. For the one is pushed into a wall, rather than into the trolley. Thus, our version of this example seems more in keeping with Trolley than Kamm's two versions do. For, in our version of the example, the one is hit by the trolley just as the five would have been, had we not swung the device.

Thus, with regard to Kamm's account, it seems rather surprising that she does not consider this particular version of the example. But, of course, she may well think that she does not need yet another version of this example, given that she already has two versions of it where the one is on the opposite end of the device from the five. However, could it be that Kamm avoids this version of the example because when we swing the device in this case it is all too obvious that it simultaneously brings about both the good and the bad? That is, could it be that this version of the

23 It is worth noting that Kamm claims, with regard to Wall (5:1) and Push (5:1), that we are to notice that "we move a person into a threat rather than a threat into a person, but it makes no moral difference." Kamm, F. M. (1996) p.163.

24 See Chapter 4 - Figure 4.

example makes it too easy to see that when we swing the device it both moves the five away from the threat of the trolley and it moves the one so that he is under threat from the trolley instead? In other words, this version of the example makes it much easier to see why we might want to claim that the swinging of the device just *is* both a good and a bad in itself.

Hence, we might well understand why Kamm would want to avoid presenting this version of the example to us. So, as far as our challenge to Kamm's proposal is concerned, this version of the example, like Fat-Man Spindle, seems to confirm that, even if we can conceive of our act as being a good in itself, this does not stop us from conceiving of it as a bad in itself as well. And, if this is so, then again we have reason to think that the same holds for the act of switching tracks in Trolley. This is because, in Trolley, the switching of tracks also just *is* both the good of moving the threat away from the five and the bad of moving the threat onto the one.

Thus, our claim is that because Kamm, like Thomson, puts all her focus on the good-side of the act in question she avoids seeing that there is a bad-side as well. This claim is supported by the fact that Kamm never mentions what would warrant our thinking of an act as being a bad in itself. However, she does explain to us when an act is to be regarded as a neutral event. Thus, we shall now look at a couple of the examples that Kamm uses for this purpose - namely Shake-the-Bridge and Grenade.

The PPH as Applied to the Shake-the-Bridge Example.

Kamm uses this example in much the same way as Foot uses her Poisonous Fumes example. That is, she uses it to show the inadequacy of the DDE to deliver judgements that are in accord with the way we intuitively think that a case should

be judged.²⁵ Kamm's claim is based on the assumption that this is a case where we intuitively think that it would not be morally permissible to save the five, and yet this is a case where the DDE will deliver a judgement of moral permissibility on the grounds that the bad, in this case, is foreseen, rather than intended. But we might well want to question whether Kamm is right to assume that this is how we *do* intuitively think that this case should be judged. For this seems to be a case where we might well be hard pressed to say exactly what judgement is warranted with regard to it. Keeping this in mind, let us look at the example in more detail.

Shake-the-Bridge: There is an out-of-control trolley headed towards five people who are trapped on the track. There is a bridge that crosses over the track. The five are a bit beyond the bridge. There is one man standing on the far side of the bridge. For some bizarre reason (don't ask how) we know that it is possible to stop the trolley simply by giving the bridge a good shake. However, we also know that if we shake the bridge the one will fall off the bridge and land on the concrete area on the far side of the track. The one would not survive such a fall.²⁶

Kamm maintains that, in this example, we cannot conceive of the shaking of the bridge as being a good in itself. This is because this is not a case where the shaking of the bridge just *is* the good of saving the five. So this is not a case where the shaking of the bridge is intimately and noncausally related to the freeing of the five from what threatens them. Thus, what we have here is a case where the shaking of the bridge is non-intimately and causally related to the good that occurs. Kamm's reasoning here seems to be that the five are saved from what threatens them, not because we shake the bridge, but rather because the shaking of the

25 We have chosen to use this example with regard to Kamm's claims about acts that warrant being called neutral, rather than Poisonous Fumes, because Kamm attributes a slightly different version of Poisonous Fumes to Foot than the one we used in Chapter 1. Kamm's version of Poisonous Fumes involves poisonous fumes seeping into the room of the one while the special gas is being administered to the five, whereas, in the version we attributed to Foot, the poisonous fumes seep into the room of the one at the time that the gas is being produced. See Kamm, F. M. (1996) pp.151-152. There is also the added complication that Kamm introduces her own version of this example. She refers to the version that she attributes to Foot as the Operation Case and her own version as Operation II. With regard to our presentation of Foot's example, see Foot, P. (1976) p.301. Kamm's presentation of Foot's example seems to be structurally akin to the Shake-the-Bridge example, whereas our presentation of it seems structurally akin to the One-in-the-Road example. This is because in Kamm's presentation of the example, the good and the bad occur simultaneously, whereas, in our presentation of it, the bad occurs before the good. The significance of this difference will be made clear in Chapters 6 and 7.

26 Kamm calls this example the Bridge Case II (See p.175) but she sometimes refers to it as Wiggle-the-Bridge II (See p.165). Note also that Kamm refers to Fat-Man Bridge simply as the Bridge Case (See p.164), and she calls the Wobble Handrail example Wiggle-the-Bridge I (See p.165). Thus, the name Bridge Case I could apply to either Fat-Man Bridge or Wobble Handrail.

bridge stops the trolley. Thus, Kamm regards the act as warranting the classification 'neutral'. [Recall that earlier we mentioned that in No-Man Loop we might think of the act of switching tracks as being a neutral event.] Kamm goes on to claim the neutral act of shaking the bridge both causes the good of the five being saved and the bad of the one falling off the bridge. Thus, in this case, we have no grounds for claiming that the bad is produced by the good. Hence, this is a case where the PPH will deliver a judgement of moral impermissibility.

However, although it seems reasonable enough for Kamm to claim that this is not a case where the act we perform can be conceived of as a good in itself, why does this mean that the shaking of the bridge warrants being thought of as a neutral act? That is, what is to prevent us from thinking of the act of shaking the bridge as a bad in itself. For, after all, it seems as though that act just *is* the putting of the one under threat when he would otherwise be under no threat. In other words, why not think of this as being a case that warrants a judgement of moral impermissibility on the grounds that it is the in-itself-bad act of shaking the bridge that causes the good of the five being saved? Could it be that it is hard to conceive of the act of shaking a bridge as being a bad in itself, even though we can see that this is what puts the one under threat? It could be. But it could, also, be that the putting of the one under threat in this example seems no different than the putting of the one under threat in Trolley. That is, it could be that the putting of the one under threat in this example does not seem as great a bad as it does in the Fat-Man cases because, just as in Trolley, there is no question of the harm that befalls the one being used as the means to the saving of the five. If this is so, then we could have cause to think that Shake-the-Bridge is structurally more akin to Trolley than we might otherwise have thought. Keeping this idea in mind let us look at a variant of this example that we will call Shake-the-Bridge (Turning).

The PPH as Applied to the Shake-the-Bridge (Turning) Example.

Shake-the-Bridge (Turning): There is an out-of-control trolley headed towards five people who are trapped on the track. There is a bridge that crosses over the track. The five are a bit beyond the bridge. There is one man standing on the far side of the bridge.²⁷ For some bizarre reason (don't ask how) we know that if we give the bridge a really good shake we will be able to derail the trolley and it will go careering down the embankment, well away from the five. However, if we do that, the one will fall off the bridge and be fatally injured.

In this example, the shaking of the bridge turns the threat away from the five. So, here, there is no question of the trolley having to be stopped in order for the five to be saved. Thus, this is a case, where we *can* claim that the shaking of the bridge just *is* the moving of the threat away from the five. Hence, in this version of Shake-the-Bridge, we can conceive of the act we perform as being a good in itself. But, then, it looks as though the PPH will deliver a judgement of moral permissibility with regard to this case on the grounds that it is the in-itself-good act of shaking the bridge that causes the bad of the one falling off the bridge.

However, if this is the judgement that the PPH will deliver with regard to Shake-the-Bridge (Turning), is Kamm not leaving her account open to the charge of inconsistency, given (as we have just seen) that the PPH delivers a judgement of moral impermissibility with regard to Shake-the-Bridge? It certainly seems as though she is. In support of this claim, let us now turn our attention to another example that Kamm uses to establish when an act counts as being neutral. That is, let us now turn our attention to the Grenade example.

The PPH as Applied to Grenade.

Kamm actually has two versions of this example. We shall refer to the first of these as Grenade (Stop) and the second as Grenade (Lift-Up). Kamm regards Grenade (Stop) as being analogous with the Shake-the-Bridge example. We shall look at each version of the example in turn.

²⁷ The assumption here is that we have no way of warning the one of what will happen if we shake the bridge.

Grenade (Stop): We can stop an out-of-control trolley from hitting the five by throwing²⁸ a grenade at it. However, if we do that, the shrapnel from the grenade will hit and fatally injure a bystander.²⁹

In this example, just as in Shake-the-Bridge, Kamm regards the act we perform as warranting the classification neutral. This is because this is not a case where the throwing of the grenade just *is* the freeing of the five from what threatens them. For here, too, the trolley must stop in order for the five to be saved. Thus, this is not a case where the throwing of the grenade can be conceived of as a good in itself. So this is not a case where we can claim that it is the good that causes the bad of the one being blasted with shrapnel. Hence, this is a case where the PPH will deliver a judgement of moral impermissibility.

Again, this is a case where Kamm maintains that we intuitively think it warrants a judgement of moral impermissibility. Furthermore, she claims that, with regard to this case, the DDE would deliver a judgement of moral permissibility on the grounds that the harm to the one is foreseen, rather than intended. As far as our challenge to Kamm's claims is concerned, once more we question whether Kamm is right to claim that this is how we *do* intuitively respond to this case.

Furthermore, we claim that in this case, too, we *can* conceive of the act of throwing a grenade as being a bad in itself because it just *is* the putting of the one under threat. And, somehow in this example, it seems much easier to think of the throwing of a grenade as being a bad in itself than it was to think of the shaking of the bridge that way. Thus, it seems especially odd that Kamm does not deliver a judgement of moral impermissibility in this case, on the grounds that it is the in-itself-bad of throwing a grenade that causes the good of saving the five. We might be able to understand why Kamm does not do so if we now take a look at her second version of Grenade.

Grenade (Lift-Up): There is an out-of-control trolley headed towards five people. If we throw a grenade the five will be lifted up into the air just long enough to allow the trolley to safely pass

28 Kamm actually talks in terms of exploding or setting the grenade and yet it seems more appropriate to think of it as being thrown.

29 Kamm refers to this example as the Grenade Case. See Kamm, F. M. (1996) p.151 and pp.173-174. See also Kamm, F. M. (1989) p.236.

beneath them. However, if we do that the shrapnel from the grenade will hit and fatally injure a bystander.³⁰

The PPH as Applied to Grenade (Lift-Up).

Kamm maintains that, in this example, the throwing of the grenade just *is* the saving of the five. Thus, in this example, the relationship between the act and the saving is intimate and noncausal and we can, therefore, conceive of it as a good in itself. So, it looks as though we were right to think that Kamm would regard the shaking of the bridge in Shake-the-Bridge (Turning) as being a good in itself. Hence, the PPH will deliver a judgement of moral permissibility with regard to Grenade (Lift-Up), even though it delivers a judgement of moral impermissibility with regard to Grenade (Stop).

So, if Kamm had claimed, as we suggested that she could, that Grenade (Stop) warrants a judgement of moral impermissibility because the act of throwing the grenade is a bad in itself, then we might well have questioned whether she could then expect us to accept that same act as being a good in itself when it comes to Grenade (Lift-Up). That is, we probably would have been more inclined to think of it as being both a bad and a good in itself, given that it just *is* both the putting of the one under threat and the lifting of the five out of danger. Thus, Kamm has good reason not to let us think that the judgement of moral impermissibility in Grenade (Stop) is related in any way to the notion that the act of throwing a grenade could be considered as a bad in itself. It is much better from Kamm's point of view that she oscillate between acts that are good and acts that are neutral. But does doing so not present Kamm with a problem? We think it does.

30 Kamm calls this example Grenade II. See Kamm, F. M. (1996) p.174 and Kamm, F. M. (1989) p.236.

The Problem that Faces Kamm With Regard to the Comparison Between the Two Versions of Shake-the-Bridge and Grenade.

It is as though Kamm has it fixed in her mind that an example will warrant a judgement of moral permissibility provided the act in question either moves the threat away from the five or the five away from the threat. And this is why she is obliged to credit Shake-the-Bridge (Turning) and Grenade (Lift-Up) with a judgement of moral permissibility, even though she is adamant that Shake-the-Bridge and Grenade (Stop) warrant a judgement of moral impermissibility. Her reasons for doing so seem to stem from the fact that in Trolley the switching of tracks moves the threat away from the five and in the Seesaw-Device examples the swinging of the device moves the five away from the threat. But what is to prevent us from claiming that what actually happens in these examples is that the act we perform stops the trolley being a threat to the five? For, after all, in Trolley we could say that what saves the five is the fact that we switch tracks and stop the trolley from reaching the five. Moreover, in the Seesaw-Device examples we could say that the swinging of the device stops the trolley from hitting the five. Hence, our claim is that it seems strange that Kamm excludes conceiving of the shaking of the bridge and the throwing of the grenade as being a good in itself when these acts involve bringing the threat to a stop.

Furthermore, given that Kamm makes so much of the notion of how we are to determine when an act warrants being thought of as a good in itself, it seems remiss of her not to even entertain the idea that cases like Shake-the-Bridge and Grenade (Stop) warrant a judgement of moral impermissibility because they are cases where the act in question can be conceived of as a bad in itself. That is, it seems odd that Kamm should start talking in terms of neutral acts with regard to these cases when she never considers the possibility that an act like switching tracks or swinging a device could be thought of in this way. Kamm goes to so much trouble to explain to us just why all the Seesaw Device examples are akin to one another and, therefore, warrant the same judgement and why the same holds with regard to Fat-Man Trolley, Fat-Man Loop and Trolley. And yet, she is quite

prepared to accept that the same act in the two versions of Shake-the-Bridge and Grenade can warrant different moral judgements. Kamm gets into this position because she mistakenly thinks that, if a given act can be seen to be akin to the one in Trolley, then it will warrant a judgement of moral permissibility.

So, although Kamm can make it seem as though the judgements that the PPH delivers with regard to the Seesaw examples and examples like Fat-Man Trolley and Fat-Man Loop are consistent with one another, this notion is lost again when it comes to comparing the two versions of Shake-the-Bridge and Grenade. Thus, what Kamm fails to understand is that what is important about Trolley is its structure. Hence, if we can establish that any given example has the same structure as Trolley, then that example will warrant a judgement of moral permissibility, regardless of what the given act may be. Likewise, if we can establish that any given example has the same structure as Transplant, then that example will warrant a judgement of moral impermissibility, regardless of what the given act may be.

Conclusion

We reject Kamm's claim with regard to the PPH for a number of reasons. Firstly, because it is not at all clear why a judgement of moral permissibility is warranted only in those cases where it is the greater good that produces the lesser harm, or what theoretical rationale this claim might have. Secondly, because, whenever Kamm presents us with a case where the act in question is conceivable as a good in itself, it seems that the same act can be conceived as a bad in itself as well. Thirdly, because it does not seem as though Kamm's account of the PPH can adequately explain the moral difference between Transplant and Trolley. And, if it cannot do this, then how can it be used to explain the moral difference between other cases?

Hence, once again, we have failed to find a suitable replacement for the DDE. Thus, in the next chapter, we will explain why it is a mistake to think that we need to find a replacement for the DDE. That is, we will explain how the DDE can adequately explain the moral difference between Trolley and Transplant and, therefore, can be used to determine that moral permissibility or impermissibility of a given case.

Chapter 6

The Doctrine of Double Effect: A Double Doctrine.

In the preceding chapters we have focused on the work of Foot, Quinn, Thomson, and Kamm in order to determine whether, according to their accounts, it is possible to give an explanation for the moral permissibility of cases like Trolley and the moral impermissibility of cases like Transplant without leaving ourselves open to the charge that we are making judgements that are inconsistent with one another. However, given that we have found cause to reject each of their proposals in turn, it seems only appropriate that we should now present a proposal of our own.

The proposal that we shall present involves rejecting the notion that we have to look for some doctrine other than the DDE in order to be able to determine the moral permissibility or impermissibility of a given example. Thus, it is our claim that the DDE can adequately explain the moral difference between examples like Trolley and Transplant without our judgement of those cases seeming to be inconsistent with one another. This claim arises for two quite separate reasons. Firstly, because we think that the DDE has mistakenly been taken to be nothing more than an intentions based doctrine. And secondly, because we do not think that we can expect every example that we are presented with to evoke a commonly shared reliable response. That is, we think that there are some examples where we are unlikely to all respond in the same way. For, although, when it comes to examples like Trolley and Transplant, we do seem to have a reliably shared response, there are some examples where this is not the case. This is because there are some examples where although some people give one response, there are others who give the opposite response, and yet others who are not sure just what response to give. These, then, are examples that do not generate a reliably shared response. We shall point out the kinds of cases that we believe fall into this

category, once we start to apply our proposal to a variety of examples. That we will do in the next chapter.

Thus, with regard to this chapter, we shall confine ourselves to the task of explaining why we do not think that the DDE should be accepted as being an intentions based doctrine. In doing so, we shall consider how we have mistakenly come to think of it in this way. This will involve a brief discussion of how the DDE is traditionally presented. Once we have covered both of these points, we shall then be in a position to present our alternative proposal for the presentation of the DDE. Thus, we begin by explaining how the DDE is traditionally viewed.

The Traditional View of the DDE.

Traditionally, it has been said that the DDE allows the performance of an act that has two effects - one good (proportionately so) and one bad - provided that the bad effect that accompanies the good effect is merely foreseen, rather than intended. Thus, we have come to accept that, if a bad effect is intended, the DDE will deliver a judgement of moral impermissibility. The DDE is so presented because it is said to be derived from the following three clauses.

- 1) The bad effect may not be aimed at or intended - only the good result may be the intended goal of the act.
- 2) The bad effect must not be used as a means of achieving the good result.
- 3) The amount of good accomplished in the good result must be great enough to outweigh the evil of the bad effect.¹

What is obvious from the presentation of these three clauses is just how distinct each is from the other. For each clause has a different focus. The first is

¹ See Kenny, A. (1995) 'Philippa Foot on Double Effect'. In R. Hursthouse, G. Lawrence, & W. Quinn (Eds.). *Virtues and Reasons*. Oxford: Clarendon Press. p.77 and J. Rachels, (1986) *The End of Life*. UK: Oxford University Press p.16.

N.B. When the DDE is employed as part of Catholic moral teaching a fourth clause is included which states that the act itself, considered apart from its consequences, must be of a type that is permitted. However, since we are not working within an absolutist framework, it seems appropriate to omit this clause.

concerned with intentions, the second with means, and the third with proportionality. It, therefore, seems appropriate to refer to them respectively as: the Intentions Clause, the Means Clause, and the Proportionality Clause. Hence, from here on, that is precisely how we shall refer to them.

However, we shall not have much cause to refer to the Proportionality Clause. For, all we need do with regard to it is to acknowledge that the good in the cases we are dealing with has to be proportionately greater than the bad that accompanies it. But, given that most of the examples we are dealing with have a ratio of five to one, we can take it that the terms of this clause are met. Thus, our concern will be directed towards the Intentions Clause and the Means Clause. This is because we shall use the terms of each of these clauses to support the claim that the DDE warrants being thought of as two doctrines, rather than one. However, before we proceed with this claim, let us first of all try and explain why the DDE has come to be thought of as an intentions based doctrine.

Why we have come to regard the DDE as an Intentions Based Doctrine.

The brief description we gave of the DDE stipulates that a case will only warrant a judgement of moral permissibility if the bad effect in question is not intended. The first clause from which the DDE is derived maintains that the bad effect may not be intended. Thus, it is hardly surprising that we do think of the DDE as being an intentions based doctrine. However, if we look at the Means Clause, we can see that it is, also, the case that the bad effect must not be the means to the good effect and yet we do not regard the DDE as being a means based doctrine. Thus, we need to explain just why the DDE is seen as an intentions based doctrine when it clearly is means based as well. In other words, we need to determine why the intentions aspect of the doctrine has come to overshadow the means aspect of it.

It is not at all obvious why this should be, but the answer seems to lie with thinking that claiming that a bad effect is merely foreseen is the same as claiming that it is

not intended. That is, the answer lies in appreciating that these two claims are not the same, or, at least, it lies in determining that there is a sense in which they are not the same. This in turn means appreciating in what sense they are the same. Thus, let us try and see if we can explain why, in one sense, they are the same and yet, in another sense, they are different. To see the sense in which they are the same we need to look at what it means to say that a bad effect is merely foreseen. And, in order to do that, we need to explain what it means to say that a bad effect is not merely foreseen. For, this is where we think the key to the problem lies.

To say that a bad effect is not merely foreseen is to claim that it *is* the means to the good effect. Thus, to say that a bad effect is merely foreseen equates with saying that it is not the means to the good effect. But, then, why have we come to accept the claim that a bad effect that is merely foreseen is one that is not intended?

Again, the answer lies in what is the case with regard to the bad effect that is the means to the good effect. For, it is said that if we aim to bring about a particular effect, we are committed to intending all the effects that are the means to it. Thus, the implication is that, if the bad effect in question is the means to the good effect, we are automatically attributed with intending it when we perform the act that produces it. However, if the bad effect in question is merely foreseen (i.e. is not the means to the good effect) then no such automatic attribution of intention is warranted. Hence, a merely foreseen bad effect can be said to be not intended in this general automatic sense. But, we do not normally think of intentions as being general or automatic. We normally think of them as being generated by, and specific to, the agent who performs the act in question.

Thus, it looks as though our mistake has been not to see that there are two different ways in which we can talk about intentions. That is, we can talk about them in both a general sense and in a particular or personal sense. We might want to think of this general sense of intention as being the Natural Law sense of intentions since their attribution is attributable to us on the grounds of what effects are needed to produce other effects. But, when it comes to the particular or personal sense of intentions, we might be more inclined to think of them as being the Psychological

sense of intentions, given that their attribution to an agent is dependent on the kind of psychological state that agent is in when the act in question is performed.

This idea that there are two ways of thinking about intentions is helpful in two respects. Firstly, because it explains why the term *merely foreseen* has come to be so closely associated with the term *not intended* as to make it seem that it does not matter which term is used when referring to a bad effect in cases that warrant a judgement of moral permissibility. Secondly, because it highlights the fact that the automatic association of the presence or absence of intention in the Natural Law sense is something that does equate with the means/not means distinction that can be drawn between bad effects. Hence, when we are talking in terms of the means/not means distinction, there is no need to make reference to what is or is not intended in the Natural Law sense because it is a given. In fact, it is better not to do so. For, then, it becomes clear that when we refer to intentions we are doing so in the Psychological sense. That is, in the sense in which it pertains to a particular agent in a given situation.

Thus, we should now be able to see that, with regard to the bad effect there, are two things that we have to determine. We have to determine whether or not it is intended by the agent in a Psychological sense and we need to determine whether or not it is the means to the good effect. That this is so is borne out by the stipulations set out in the Intentions Clause and the Means Clause. Thus, it is important that we appreciate, that in the Psychological sense of intention, we *can* indeed intend bad effects that warrant the classification *merely foreseen*. This is because to say that the bad effect is *merely foreseen* is simply to claim that it is not the means to the good effect. In other words, the classification of *merely foreseen* tells us something about the relationship between the act we perform and the bad effect that it produces, rather than anything about the presence or absence of an agent's intention, with regard to the occurrence of that bad effect in a given situation.

Thus, it is our claim that we have mistakenly come to regard the Intentions Clause and the Means Clause as being conjoined when, in fact, they are two quite separate clauses - each with its own function to fulfil. Thus, it is our proposal that the DDE involves two doctrines, rather than one. And it is to that proposal that we now turn.

The Proposed Division of the DDE into Two Distinct Doctrines.

Our proposal involves dividing the DDE into two distinct doctrines - namely, the Intentions Doctrine and the Means Doctrine. This proposal is grounded on the clear divide that we think exists between the Intentions Clause and the Means Clause. It is also grounded on the fact that there is a distinction to be drawn between making moral judgements about the agents who perform acts and making moral judgements with regard to the acts themselves. Thus, we propose that the Intentions Doctrine, through the application of the Intentions Clause, is the doctrine that can be used to determine the moral worth of a given agent, whereas the Means Doctrine through, the application of the Means Clause, is the doctrine that can be used to determine the moral permissibility or impermissibility of a given act.

Hence, we might want to think of the Intentions Doctrine as being a backwards looking doctrine because it involves determining what the agent's intentions were, in a given situation, and then attributing what moral judgements are or are not warranted. Likewise, we might want to think of the Means Doctrine as being a forwards looking doctrine because it involves determining just what acts would or would not warrant a judgement of moral permissibility. The advantage of such a divide in doctrines is that it allows us to appreciate that we can consider the moral permissibility or impermissibility of an act without that judgement committing us to any specific judgement with regard to the agent who subsequently (or previously) does or does not perform that act. With this in mind, let us now take a closer look at each of these proposed doctrines in turn.

The Intentions Doctrine.

It is the Intentions Doctrine that we are claiming is concerned with the making of judgements with regard to the moral worth of a given agent. Our attention is directed towards this doctrine only in so far as we want to establish it as being a separate doctrine from the Means Doctrine. This is because, with regard to what has gone before and what is to follow, our focus has been and will continue to be on the moral judgement of acts, rather than agents. Thus, the attention that we will give to this doctrine will be limited.

The Intentions Doctrine involves the application of the Intentions Clause which, as we saw above, stipulates that:

The bad effect may not be aimed at or intended - only the good result may be the intended goal of the act.

Thus, we can see that, when it comes to determining whether an agent warrants either moral praise or moral blame, we need to establish just what the agent's intentions, are in the Psychological sense, with regard to both the good effect and the bad effect in question. For, even if we deem that the act that the agent performs is a morally permissible one, we are not going to credit that agent with moral praise if we find that she acted without any intention of bringing about that good effect. It could be that the agent performs the act in question and is oblivious to the fact that it will produce a good effect. Or, it could be that the agent does know that the good effect will occur but is indifferent to that fact. For, it could be that the agent in question acts with the focus of her intention directed solely on the occurrence of the bad effect. Thus, the kind of judgements that we make with regard to an agent depends on just what their intentions are, with regard to both the good and the bad effect. Hence, making moral judgements about agents involves doing more than just determining whether the act that they perform is morally permissible or not. This claim is supported by the fact that we also need to consider whether the mental or physical condition of a given agent has any bearing on what moral judgement is warranted with regard to their moral worth. Thus,

there may well be circumstances where neither moral blame nor moral praise will be deemed to be appropriate. Hence, the point that we are making is that moral praise, just as much as moral blame, has to be warranted before it can be attributed to the agent in question.

Of course, the mere fact that we are suggesting that the Intentions Doctrine stands separate from the Means Doctrine in no way solves the problem of just how we are to determine what the intentions of a given agent are. But, what our suggestion does do is limit the difficulty of the attribution of intentions to the application of the Intentions Doctrine. Hence, when it comes to considering how the Means Doctrine is to be applied, we have no need to be concerned with such difficulties. Thus, when it comes to the application of the Means Doctrine, we avoid what, in the past, has counted as one of the main objections to the acceptance of the DDE. So, right from the start, we have cause to think that there are advantages to be gained from regarding the DDE as being two quite separate doctrines - each with its own function to fulfil. Keeping this in mind, let us now turn our attention to the application of the Means Doctrine.

The Means Doctrine.

It is the Means Doctrine that we are claiming is concerned with making judgements about the moral permissibility or impermissibility of a given act. This, then, is the doctrine on which our main focus lies. For, our concern is to explain that we can claim that we are making judgements that are consistent with one another when we deem that it is morally permissible to save the five in examples like Trolley, but not so in examples like Transplant.

The Means Doctrine determines the moral permissibility or impermissibility of an example through the application of the Means Clause which, as we saw above, stipulates that:

The bad effect must not be used as a means of achieving the good result.

Thus, when it comes to making moral judgements about acts that result in a bad effect and a proportionately greater good effect, we need to determine whether or not the bad effect in question is the means to the given good effect. But, how are we meant to do this? You might think that this ought to be an easy enough question to answer. But, given that what we are talking about here is a matter of causation, maybe it is understandable that this question is not as easy to answer as we might have thought. For, what we are really asking is whether or not the bad effect in question is an effective part of the causal chain that results in the good effect. Thus, given the amount of debate that surrounds the topic of causation and the number of different views that are put forward with regard to its analysis, it is hardly surprising to find this is no easy task. But here again, this does not mean that it cannot be done.

However, it certainly is not our intention to get involved in any analysis or debate about causation. Our concern is simply to demonstrate that there is a distinction to be drawn between bad effects that are or are not an effective part of the causal chain that results in a given good effect. Thus, there has to be a way of determining which of the bad effects with which we are dealing warrant being classified as the means to the good effect and which do not. Hence, it is important to see that our concern with the notion of causation is limited to within the parameters of a given example. Thus, our focus is on the bad effect, as it is given, in relation to the act and the good effect, as it is given. Hence, we are making judgements within the confines of a given example. Keeping this in mind, let us now consider just how we are to determine which bad effects count as being the means to the good effect and which do not.

Determining When the Bad Effect is or is not the Means to the Good Effect.

As far as determining that the bad effect is not the means to the good effect is concerned, there is at least one clear way of doing this. This is because, provided we do not hold any bizarre notion about the possibility of backwards causation, we

can claim that, if the bad effect in question occurs after the good effect, then we have the grounds that we need for claiming that it is not the means to the good effect. This is because it is obvious that, in order for an effect to be the means to another effect, it has to occur either before, or simultaneously with, the effect to which it is the means. Hence, the claim we are making is that if the bad effect occurs either before, or simultaneously with, the good effect then it is not obvious what classification it warrants. For, it could warrant either a *means* or a *not means* classification. So, the only bad effects that can be readily identified as not being the means to the good effect are those that occur after the good effect. Thus, as far as all other bad effects are concerned, we need to determine whether they are or are not the means to the good effect. That is, we cannot just assume that because a bad effect occurs before or simultaneously with the good effect it is the means to that good effect. This brings us to the question of just how *do* we determine when a bad effect that occupies either of these two temporal positions is or is not the means to the good effect. It is our suggestion that we can do so through the application of what we will call the Omissions Test. Thus, let us now turn our attention to that test.

The Omissions Test.

The purpose of the Omissions Test is to determine what classification a given bad effect warrants. That is, the purpose of this test is to determine whether or not a given bad effect is the means to the good effect in question. The test works on the assumption that if the presence of the one, on whom the bad effect will fall, is not needed in order for the act in question to result in the occurrence of the good effect, then the bad effect is not the means to that good effect. Hence, the implication is that if the presence of the one, on whom the bad effect will fall, is needed in order for the act in question to result in the occurrence of the good effect, then we have good reason to think that we are dealing with a bad effect that is the means to that good effect. Thus, the first thing that we need to do when we are applying the Omissions Test is omit the presence of the one and determine

whether or not the act in question will still result in the occurrence of the good effect.

In order to see just how the test is meant to work, it might be helpful to start by applying it to an example that has no moral content. Thus, let us consider an example that involves driving to work. We will call this the Going-to-Work example. In this example, there is only one possible route that we can drive along to get to work. Furthermore, taking this route involves crossing an extremely long bridge and going along what is a very busy road. In fact, the road is so busy that the council is contemplating whether or not to put in a series of traffic lights. Hence, just this week the council has put a car-counting machine at the side of the road. This means that there is now a piece of rubber tubing stretched across the road at the spot where the machine is positioned. Thus, now, in order to get to work we need to drive over the bridge and over the rubber tubing. But, does this mean that both of these events are an effective part of the causal chain that allows us to get to work? To answer this question we need to apply the Omissions Test.

In order to apply the Omissions Test we need to take it in turns to omit the presence of the bridge and the rubber tubing. Let us start by omitting the rubber tubing. Once we omit the presence of the rubber tubing, we then need to determine whether or not we could still drive to work. The answer is that we could. This answer is supported by the fact that we were able to drive to work before the council put the tubing down and the same will hold once the council removes the tubing next month. Thus, we can determine that our driving over the tubing is not the means to our getting to work, because it is not an effective part of the causal chain that results in our getting there - even though, in order to get to work, we have to drive over the rubber tubing. So, now, let us omit the presence of the bridge. Once we omit the presence of the bridge, we then need to determine whether or not we could still drive to work. Here, we find that the answer is that we could not. Thus, we can determine that driving over the bridge is the means to our getting to work because it is an effective part of the causal chain that results in our getting there. Hence, we can apply the Omissions Test to the Going-to-Work

example and determine which events are the means to our getting to work and which are not.

However, it is important to point out that it did so by questioning whether or not we could still drive to work if the presence of the bridge or the tubing were omitted. That is, we did not ask whether we could drive to work without driving over the bridge and the tubing. For, if we had done so, then our reply would be that we could not drive to work without driving over both the bridge and the tubing. But, what the Omissions Test shows us is that it does not follow from this that both of these events can be regarded as an effective part of the causal chain that results in our getting to work. It does so by demonstrating to us that it is only our driving over the bridge that can be regarded in this way. The full significance of this point will become clear once we start to apply the Omissions Test to examples with a moral content.

So, as far as the Going-to-Work example is concerned, what we need to keep in mind is that it is the absence of the need for the presence of the tubing on the road that determines that our driving over it does not count as being the means to our getting to work. In contrast, it is the need for the presence of the bridge that determines that our driving over it does count as being the means to our getting to work. So, as far as examples without moral content are concerned, the Omissions Test seems to provide a straightforward way of determining whether or not a given event is the means to the end in question. Thus, let us now consider whether it can do the same with regard to examples with a moral content.

It is our claim that the Omissions Test works just as well for examples with moral content as it does for examples without moral content. However, when it comes to examples with moral content, we are, of course, no longer talking in terms of need or lack of need for the presence of such things as bridges or lengths of rubber tubing, rather we are talking in terms of the need or lack of need of the presence of a person or persons. The number of people involved will depend on the case as given. But, since almost all of the cases with which we will be dealing count the

lesser number as being one, we will continue to refer to the number involved as being one. However, we also need to remember that we are talking about the presence of the one because it is upon the one that the bad effect will fall. Thus, the question that we are really concerned with is whether or not the bad effect that will befall the one is the means to the good effect. But, in order to be able to answer this question, we need to first of all, determine whether or not a given act will result in the occurrence of the good effect if the presence of the one were omitted.

If we ask this question and find that the answer is that a given act will produce a given good effect, even in the absence of the one, then we can determine that we are dealing with a case where the bad effect is not the means to that good effect. However, if we ask this question and find that the answer is that a given act will not produce the good effect in the absence of the one, then we have good reason to think that the bad effect in question is the means to that good effect. But, we cannot just assume that this is the case. This is because there is always the possibility that we could be dealing with a case where the presence of the one counts as the means to the good effect but the harm that befalls the one does not. For, remember, our real concern is with determining whether or not the bad effect is the means to the good effect. Thus, once we determine that the act in question will not result in the good effect without the presence of the one, we then need to determine whether or not the bad effect that befalls the one is the means to the good effect. To see why we cannot just assume that the bad effect in these kinds of cases are the means to the good effect, let us look at an example that we will call Trolley-Sensor Loop.

Trolley-Sensor Loop: The track in this example is loop shaped. There are five thin people trapped on the straight arm of the loop and there is one thin person trapped on the curved portion of the loop.² There is an out-of-control trolley headed towards the five. Thus, on the face of it, this example is akin to Thin-Man Loop. However, there is one aspect of this example that sets it apart from all the other Loop examples. This is because, in this example, the trolley is fitted with a highly sensitive sensor which can detect the presence of anyone on the track. If the sensor detects that someone is on the track it automatically activates a mechanism that causes a metal barrier to flip up

² In this example, as in Fat-Man Loop, the combined weight of the five will prevent the trolley continuing its progress around the loop. Thus, there is no danger of both the five and the one being hit if we do not switch tracks.

from the track. This metal barrier is strong enough to bring the trolley to a stop when the trolley hits it. However, unfortunately, in this case that barrier is not positioned on the straight portion of the track, rather it is positioned half way along the curved portion of the track. This means that, if we are going to save the five, we have to switch tracks. This is because, if we switch tracks, the sensor on the trolley will detect the presence of the one on the curved portion of track and the metal barrier will come up and stop the trolley from reaching the five. There are two versions of this example.

Version I: The one who is trapped on the curved portion of the track is positioned just before the spot where the metal barrier will come up. This means that, in this version of the example, if we switch tracks the sensor will detect the presence of the one, the metal barrier will come up from the track, and the five will be saved. However, given that the one is on the trolley side of the barrier, if we switch tracks, the trolley will hit and fatally injure him before it is brought to a stop by the barrier.

Version II: The one who is trapped on the curved portion of the track is positioned just beyond the spot where the metal barrier will come up. This means that, in this version of the example, if we switch tracks, the sensor will detect the presence of the one, the metal barrier will come up from the track, and the trolley will be prevented from hitting both the one and the five.

It is the comparison between these two versions of this example that allows us to explain just why the need arises to apply the Omissions Test a second time, with regard to those cases where we have determined that the presence of the one is needed if the act in question is going to produce a given good effect. That is, it allows us to explain that to claim that the presence of the one is needed, in order for the act in question to produce a given good effect, is not the same as claiming that the bad effect, in a given case, is the means to the good effect in question. Moreover, this is so, despite the fact that, in the vast majority of cases, the second application of the test will show that the bad effect is the means to the good effect. Keeping this claim in mind, let us explain how Version I of Trolley-Sensor Loop differs from Version II.

If we apply the Omissions Test to Trolley-Sensor Loop we find that, in both versions of the example, if the presence of the one were omitted, the act of switching tracks would not result in the saving of the five. This is because, in both versions of this example, it is the presence of the one that activates the sensor that triggers the mechanism that will lift the metal barrier into its upright position so that it stops the trolley from reaching the five. But, then, you might think that, even if the one were not on the curved portion of the track, the sensor will still be activated as the trolley rounds the curved portion of track and picks up the

presence of the five. Of course, this is the case, but, by the time the trolley gets to that part of the track, it will have already passed over the spot where the barrier is positioned. So, although the barrier will come up, it is not going to stop the trolley from hitting the five. Thus, no advantage is to be gained by switching tracks if there is no one on the curved portion of the track. For, the act of switching tracks will only result in the saving of the five if there is someone on the curved portion of track. But, remember, our concern is with whether the harm that befalls the one is the means to the good effect. Hence, once we establish that the presence of the one is needed, we then need to determine whether or not the bad effect that will befall the one is needed.

Thus, what we need to ask, with regard to this example, is whether the act of switching tracks will result in the occurrence of the good effect if the bad effect of the one being hit were omitted. And, given that in Version II of this example the bad effect is omitted and yet the good effect still occurs, it seems clear that, in Version I, the act of switching tracks will result in the occurrence of the good effect, even if the one somehow managed to get free of the track or be freed from the track before the trolley reached him. Thus, here we have a case where the hitting of the one is not an effective part of the causal chain that results in the occurrence of the good effect. Hence, according to the Means Doctrine, Version I of this example warrants a judgement of moral permissibility. Furthermore, it does so, despite the fact that the presence of the one is needed in order for the good effect to occur, and despite the fact that, as the example stands, if we do switch tracks, in Version I, the one will be hit by the trolley.

As far as Version II of this example is concerned, we can see that it, too, warrants a judgement of moral permissibility because it is a case where there is no question of a bad effect befalling the one. For, in this version of the example, if we switch tracks, the barrier will come up into position and stop the trolley from hitting both the one and the five. Thus, it is the comparison between these two versions of this example that allows us to see that, with regard to some cases at least, it is one thing to claim that someone's presence is the means to a good effect and quite

another to claim that the harm that will befall that person is the means to the good effect. In order to emphasise the distinction that is being drawn here, let us now compare Trolley-Sensor Loop with Fat-Man Loop.

We already know that both Thomson and Kamm regard Fat-Man Loop as being a case that warrants a judgement of moral permissibility. Thus, there is no reason to suppose that either of them would challenge our claim that this same judgement holds with regard to Trolley-Sensor Loop. However, given that we have been at pains to challenge the notion that Fat-Man Loop warrants a judgement of moral permissibility, it may seem strange that we have just made the claim that a judgement of moral permissibility is warranted with regard to Trolley-Sensor Loop. But, any sense of strangeness should vanish once we appreciate how these two examples differ from one another. And it is through the application of the Omissions Test that we can see how they do differ. Thus, let us now apply that test to Fat-Man Loop.

We know, from our earlier discussion of Fat-Man Loop, that it is the weight of the one that stops the trolley from continuing its progress around the loop of the track.³ Thus, if we apply the Omissions Test to this example and ask whether the act of switching tracks would result in the occurrence of the good effect if the presence of the one were omitted, the answer is that it would not. So, this is a case where we have to reapply the Omissions test and ask whether the act in question would result in the occurrence of the good effect if the bad effect of the one being hit were omitted. And, in this example, unlike Sensor-Trolley Loop, the answer is that it would not. This is because, in Fat-Man Loop, the five will not be saved unless the trolley does hit the fat man. Hence, if the fat man were to get free of the track or be freed from the track, the act of switching tracks would not result in the five being saved. Thus, it is through the second application of the Omissions Test that we can determine that, in Fat-Man Loop, the bad effect of the one being hit is the means to the good effect of the five being saved. So, this is a case where the Means Doctrine will deliver a judgement of moral impermissibility.

3 See Fat-Man Loop - Figure 1 - Chapter 4.

We will be looking at Fat-Man Loop in more detail in the next chapter, but we mention it here just so that we can see how the Omissions Test is meant to be used. Thus, what we are claiming is that, if we apply the Omissions Test and find that the act in question will result in the good effect even if the one is not present, then we know that we are dealing with a case where the bad effect that will befall the one is not an effective part of the causal chain that results in the good effect. That is, we are dealing with a case where the bad effect is not the means to the good effect. However, if we find that the presence of the one is needed in order for the act in question to produce the good effect, then we know we need to reapply the test to determine whether or not the bad effect is the means to the good effect. For, it could be that it is the presence of the one, and not the bad effect that befalls him, that is the means to the good effect. Thus, before we can deliver a judgement of moral impermissibility, with regard to a given example, we need to make sure that we are not dealing with a case with the same structure as Version II of Sensor-Trolley Loop. Or, to put it another way, before we can deliver a judgement of moral impermissibility with regard to a given example, we need to make sure that we are dealing with a case with the same structure as Fat-Man Loop. For, if a case has the same structure as Fat-Man Loop, then it has the same structure as Transplant. We can determine that this is so because, in both of these cases, the bad effect is the means to the good effect.

Thus, it should now be clear that the Means Doctrine can deliver a judgement of moral permissibility with regard to Sensor-Trolley Loop, without that judgement appearing to be inconsistent with the judgement that Fat-Man Loop warrants a judgement of moral impermissibility. Hence, we should now be able to see how the Omissions Test is meant to help in the application of the Means Doctrine. But, before we start applying the Omissions Test to a wide range of cases, there are a few points that we would like to make concerning what holds, with regard to a given example.

Setting the Parameters of an Example.

It is important to realise that all of the examples that we are dealing with stipulate that if we perform the act in question, both the good effect and the bad effect will occur. Thus, we must appreciate that, no matter whether we are dealing with an example where the bad effect is the means to the good effect, or with an example where the bad effect is not the means to the good effect, what holds, in both cases, is the fact that, if we perform the act in question, the one will be fatally injured and the five will be saved. So, with regard to every case there is an artificially imposed certainty that both the good effect and the bad effect will occur. Hence, we need to be aware that, when it comes to relating our judgements of these examples to real-life situations, we are going to have to calculate just how certain we can be that the given bad and good effect will occur if we perform the act in question. The full significance of this point will become clear, in the next chapter, when we start to apply the Means Doctrine to a wide range of examples.

Furthermore, it is obvious that, in these examples, we are taking the good effect to be the saving of the greater number. But, it may not be as obvious what we are taking the bad effect to be. Thus, it is important to understand that we are regarding the bad effect as being the injury to, and the death of, the one. Hence, there is no question of our trying to think of the death of the one as being a separate event from his being injured. So, we are regarding the injury that befalls the one as being his death. To see why we are regarding the bad effect in this way, let us look at another example that has no moral content. We will call this the Sand Castle example.

In this example, we have just finished building a sand castle on the beach when we find that a huge wave, with froth on its leading edge, is about to crash over the sand castle and wash it away. Now, we might think that we could claim that it is the wave, rather than the froth on its leading edge, that is the means to the sand castle being washed away. For, it is obvious that the froth on its own could not wash away the sand castle. However, given that the laws of nature are such that, if

there is a wave that will wash the sand castle away there is going to be froth there, too, it would be pointless to try and claim that it is the wave, rather than the froth, that is the effective part of the causal chain that results in the sand castle being washed away.

Thus, our claim is that, given the laws of nature and given the circumstances of the cases that we are dealing with, it would be pointless to try and claim that it is not the death of the one, but rather his being hit that is the effective part of the causal chain that results in the five being saved. For, given the fragility of the human body and the speed and size of an out-of-control trolley, we can take it to be the case that the hitting of the one and his death are one and the same event. Thus, to say that if we perform the act in question the bad effect will occur equates with saying that the death of the one will occur. So, no matter whether we are dealing with an example where the bad effect is, or is not, the means to the good effect, either way, we will be dealing with a case where the one will die if we perform the act in question.

Thus, we might question why it should make any difference whether the bad effect is, or is not, the means to the good effect. But, our concern, with regard to this point, should be eliminated once we see there is a crucial difference between these two kinds of cases. That difference lies in the fact that, in those cases where the bad effect is not the means to good effect, in principle, the possibility exists that the one could somehow get free or be freed from what threatens him and yet the act we perform would still result in the good effect. No such possibility exists with regard to those cases where the bad effect is the means to the good effect. For, in those cases, if the one were to get free or be freed from what threatens him, the act that we perform would not result in the good effect. The full significance of this distinction will become clear once we start to apply the Means Doctrine to a variety of cases. We will also discuss the implications of this distinction in Chapter 9 when we put forward the suggestion that the means/not means distinction fits in well with the Kantian idea that we are all ends in themselves and should be treated as such.

The final point that we want to raise, with regard to setting the parameters of an example, concerns the act that we need to perform in any given case. Think back, if you will, to the Going-to-Work example that we discussed earlier. It is important to note that we stipulated, in that example, that we were talking in terms of driving to work. Furthermore, we stipulated that there was only one route that we could go along to get to work. Thus, we ruled out such things as walking to work, or getting there by boat or helicopter. We also ruled out the notion that there could be more than one route that we could take to get there. The point is that we have to make these specifications in order to be able to apply the Omissions Test. That is, these specifications need to be made in order to allow us to determine whether or not driving over the bridge and driving over the rubber tubing count as being an effective part of the causal chain that results in our getting to work. Thus, we need to keep in mind that the act, the good effect, and the bad effect, are all a stipulated given in the examples that we will be dealing with.

In Summary.

It is our claim that the DDE has mistakenly come to be regarded as an intentions based doctrine. For, it is clear, from the clauses from which it is derived, that it is concerned with the notion of means as well as with intentions. Hence, it is our suggestion that the DDE should be thought of as involving two quite distinct doctrines - each with its own function to fulfil. Thus, it is our claim that the DDE is made up of an Intentions Doctrine and a Means Doctrine. The Intentions Doctrine involves the application of the Intentions Clause and is concerned with delivering judgements about the moral worth of a given agent. The Means Doctrine involves the application of the Means Clause and is concerned with delivering judgements about the moral permissibility or impermissibility of a given act.

To view the DDE in this way is to restrict all the problems about the attribution of intentions to the Intentions Doctrine. This is because, when it comes to the

application of the Means Doctrine, our judgements are made in accord with the laws of nature. For, what concerns us is whether or not a given bad effect is an effective part of the causal chain that results in the good effect that is produced by a given act. Thus, we have introduced what we have called the Omissions Test as a way of distinguishing between the bad effect that is, or is not, the means to a given good effect. To apply the Omissions Test involves asking whether the act in question will produce a given good effect if the presence of the one were omitted. If the answer to this question is that it will, then the bad effect in question is not the means to that good effect. However, if we find that the act in question will not produce the given good effect, if the presence of the one were omitted, then what we have is a strong indication that we are dealing with a case where the bad effect is the means to the good effect. Although, to be sure that this is the case, we need to apply the Omissions Test a second time. To do so involves asking whether or not the act in question will produce the good effect if the harm that befalls the one were omitted. If the answer to this question is that it will, as it is with regard to the Trolley-Sensor Loop, then we know we are dealing with a case where the bad effect is not the means to the good effect. However, if the answer is that the act in question will not produce the good effect, if the harm that befalls the one were omitted, as it is with regard to Fat-Man Loop, then we know that we are dealing with a case where the bad effect is the means to the good effect. That is, we know that we are dealing with a case where the bad effect is an effective part of the causal chain that results in the good effect. With this in mind, let us now apply the Means Doctrine to a variety of examples and see whether it can deliver judgements that are consistent with one another.

Chapter 7

The Application of the Means Doctrine.

The Means Doctrine, as we suggested in the last chapter, allows us to determine whether or not it is morally permissible to perform an act that has two effects - one good (proportionately so) and one bad. It does so by stipulating that the only acts of this kind that will warrant a judgement of moral permissibility are those where the bad effect is not the means to the good effect. That is, such an act will be morally permissible, provided the bad effect is not an effective part of the causal chain that results in the good effect. In order to be able to determine whether or not a given bad effect is the means to the good effect, we suggested the application of what we called the Omissions Test. If, through the application of this test, we determine that the act in question will result in the good effect if the presence of the one is omitted, then we know that we are dealing with a case where the bad effect is not the means to the good effect. However, if we determine that the act in question will not result in the good effect if the presence of the one is omitted, then we know that we have good reason to think that we are dealing with a case where the bad effect is the means to the good effect. But, before we can be sure that this is the case we need to reapply the Omissions Test and determine whether or not the act in question will result in the good effect if the harm that befalls the one were omitted. If we find, as we did in the last chapter, with regard to Fat-Man Loop, that the act in question will not result in the good effect if the bad effect were omitted then we know for sure that we are dealing with a case where the bad effect is the means to the good effect. However, if we find, as we did with regard to Trolley-Sensor Loop Version I, that the act in question will result in the good effect if the bad effect were omitted then we know that the bad effect is not the means to the good effect.

Thus, it is our claim that the Means Doctrine, through the application of the Omissions Test, can explain the moral differences between cases without leaving

us open to the charge that we are making judgements which are not consistent with one another. Hence, our aim in this chapter and the next chapter, too, is to give support to this claim by demonstrating just how the Means Doctrine can be used to determine the moral permissibility of impermissibility of a whole range of cases. So, let us begin by demonstrating that the Means Doctrine can easily accommodate the fact that, we intuitively think that it is morally impermissible to save the five in Transplant, but morally permissible to do so in Trolley.

The Means Doctrine as Applied to Transplant.

If you recall Thomson rejected the notion that we could explain the moral impermissibility of Transplant by pointing to the fact that, if the one were to go wholly out of existence prior to being cut up, we would not be able to save the five.¹ Of course, Thomson did so because she knew that this explanation would not accommodate the claim that Fat-Man Loop warrants a judgement of moral permissibility. For, if we apply this explanation to Fat-Man Loop we find that it, too, warrants a judgement of moral impermissibility. For, if the one in Fat-Man Loop were to go wholly out of existence prior to him being hit the act of switching tracks would not result in the five being saved. This is because, as we have already established, the only way the switching of tracks can save the five is if the trolley hits the one who is fat enough to stop the trolley from continuing its progress around the track. But, then we have never thought that Fat-Man Loop does warrant a judgement of moral permissibility.

Thus, it should be clear that what we said in Chapter 6 with regard to the application of the Means Doctrine to Fat-Man Loop holds for Transplant too. Hence, when it comes to applying the Omissions Test to Transplant what we have to do first of all is ask whether the act we perform will result in the good effect if the presence of the one were omitted. And, as soon as we ask that question we can see that the answer is that it will not. In fact, we see that if the presence of the one

¹ See Chapter 4 - Thomson's Second Proposal.

were omitted we would not be able to perform the act in question. For it is obvious that we need the presence of one healthy person if we are to take out five of his organs and give one to them to each of the five. It is also obvious, given the laws of nature that if we remove five of his vital organs he is going to die. Thus, we can see that this is not a case, like Trolley-Sensor Loop, where it is just the presence of the one that is needed in order for the act in question to result in the good effect. Hence, we can see that this is a case, like Fat-Man Loop, where if the presence of the one were omitted the saving of the five will not occur. So, through the application of the Omissions Test we can determine that in Transplant the bad effect is the means to the good effect. This then is a case where the Means Doctrine will deliver a judgement of moral impermissibility. Having established that this is so, let us now turn our attention to Trolley.

The Means Doctrine as Applied to Trolley.

Given that, in the last chapter, we said that if we are dealing with a cases where the bad effect occurs after the good effect then there is no question of that bad effect being the means to the good effect, we can see that in Trolley the bad effect is not the means to the good effect. For, in Trolley, it is the case, that the bad effect occurs after the good effect. This is so because, in Trolley, when we switch tracks we make it the case that the trolley cannot reach the five (so the five are saved as soon as the tracks are switched) and the one is not hit until after the tracks have been switched. So, in Trolley, we have no difficulty in determining that the bad effect is not the means to the good effect. However, rather than making this judgement on the grounds that the bad effect occurs after the good effect, we are better to do so through the application of the Omissions Test. This is so, because we do not want to fall into the trap of thinking that the only bad effects that warrant the *not means* classification are those that occur after the bad effect. Thus, let us now apply the Omissions Test to Trolley.

To apply the Omissions Test to Trolley what need to do is determine whether or not the act of switching tracks will result in the good of the five being saved if the presence of the one were omitted. The answer is that it would. For, there is no sense in which we need the presence of the one on the track in order to be able to switch tracks. Thus, in Trolley, we can determine that the harm that befalls the one is not the means to the good effect. Moreover, this will be the case no matter which temporal position the bad effect occupies. That is, not only does it hold for the version we are dealing with where the bad effect occurs after the good effect, but it will also hold for versions where the bad effect either occurs before or simultaneously with the good effect. In support of this claim we could introduce versions of Trolley where it is the case that the bad effect occurs either before or simultaneously with the good effect. But, given the number of examples we already have it seems more prudent not to introduce any more unless they are absolutely necessary. And given that we already have examples where the bad effect occurs either before or simultaneously with the good effect there seems to be no reason why we cannot use them in support of this claim. We will note which examples serve this purpose when and as we get to them. But right now we want to see how the Means Doctrine handles Thomson's Fat-Man Bridge example.

The Means Doctrine as Applied to Fat-Man Bridge.

Fat-Man Bridge is an example, like Transplant, where we have a shared intuitive response that it is not morally permissible to save the five from being hit by the trolley. If you recall, this is the example where we can save the five only if we are prepared to throw the one off the bridge and onto the track below. For it is the weight of the one that will stop the trolley from reaching the five. Thus, when it comes to applying the Omissions Test to this example what we need to do is determine whether or not the act in question will result in the good effect if the presence of the one were omitted. The answer is that it would not. For, it is obvious that we are not going to be able to throw someone off the bridge onto the track if there is no one on the bridge. And, if we cannot throw anyone off the

bridge we are not going to be able to stop the trolley from hitting the five. So, this is a case where we can determine that it is not just the presence of the one, but the harm that befalls him as well that is an effective part of the causal chain that results in the good effect. Hence, this is a case, where we can determine that the bad effect is the means to the good effect. So, in this case, just as in Transplant, the Means Doctrine delivers a judgement of moral impermissibility. Moreover, this judgement holds despite the fact that in Fat-Man Bridge, as in Trolley, the harm that would befall the one is the same harm that would otherwise have befallen the five.

Furthermore, if we think of the variant of this example that we discussed earlier which we called Wobble Handrail we can see that it, too, will warrant a judgement of moral impermissibility. For it is also a case where if the presence of the one were omitted the act of wobbling the handrail would not result in the saving of the five. This is because, without the presence of the one wobbling the handrail would not result in the toppling of the one off the bridge into the path of the trolley. So there would be no one on the track to stop the trolley from hitting the five. And the same holds for Heavy Painter, too.

Thus, the Means Doctrine has no difficulty in explaining why these examples warrant a judgement of moral impermissibility, even though they appear, on the face of it, to be more closely related to Trolley than to Transplant. This is because, when we apply the Omissions Test to these examples, we can see that despite appearances they have the same structure as Transplant. Keeping this in mind, let us look more closely at how the Means Doctrine handles Fat-Man Loop.

The Means Doctrine as Applied to Fat-Man Loop.

We already know from our discussion in Chapter 6 that the Means Doctrine delivers a judgement of moral impermissibility with regard to Fat-Man Loop on the grounds that it is case where the bad effect is the means to the good effect.

Moreover, we know that both Thomson and Kamm accept that the hitting of the one in this example is the means to the saving of the five. And yet they both regard this as being an example that warrants a judgement of moral permissibility. They have two reasons for doing so. Firstly, because Fat-Man Loop and Trolley are too similar to one another to afford their being given different judgements. Secondly, because they regard Fat-Man Loop as being an example that we intuitively think warrants a judgement of moral permissibility. Thomson tries to support the view that Fat-Man Loop is akin to Trolley by showing us how different it is from Fat-Man Bridge. Kamm, on the other hand, does so by showing us how similar it is to Fat-Man Trolley.

But, given that we have already put forward a strong case for showing that Fat-Man Loop is structurally akin to Transplant despite its apparent similarity to Trolley, our concern is with whether this is case where we have the shared response that it warrants a judgement of moral permissibility. Of course, there is no doubt that some people do respond to this case in that way. For, it is obvious that this is how both Kamm and Thomson respond to it. However, it does seem as though there are those who do not respond to this case in that way. For if you recall Thomson readily admits that there are those who feel more discomfort at the thought of switching tracks in Fat-Man Loop than they do in Trolley.² But, if Fat-Man Loop is as akin to Trolley as we have been encourage to think it is, why should those people respond differently to Fat-Man Loop? Thus, given that there are those who seem to be concerned about whether or not it is morally permissible to save the five in Fat-Man Loop, it might be more accurate to claim that this is a case where our intuitive responses are not as reliably shared as they are in cases like Transplant and Trolley. To think of this example in this way would be to think of it much in the same way as we suggested we should think of Foot's One-in-the-Road example.

In support of this claim we point to the fact that how we respond to examples like Fat-Man Loop and the One-in-the-Road could depend on where are focus is

2 See Chapter 4 - Fat-Man Loop.

directed. For, as far as Fat-Man Loop is concerned, Thomson and Kamm were both at pains to keep our focus on the fact that the five will be saved, whereas with regard to the One-in-the-Road example, Foot certainly kept our focus on the fact that the one would be harmed. But then as we have already said we need to be aware that in all of these cases both the bad and the good effect are a stipulated given. So, this means that in all of these cases if we perform the act in question both the good and the bad effect will occur. But it could be that we do not always keep this in mind when we are thinking about these examples. Thus, for example in the One-in-the-Road example we might start wondering whether we will be able to save the five after the one is run over. For, if you recall, the example gives us no real sense of precisely how the five are going to be saved. So, it makes sense that our focus is directed towards the bad and not the good in this example. Thus, what we are claiming is that there are many factors with regard to these examples that could be influencing how we respond to them. Hence, we need to be aware that this is the case and make our judgement of a case according to its structure, rather than to its appearance. In support of this claim, let us now look at an example that we will call Strong-Tree-Trunk Loop.

Strong-Tree-Trunk Loop: There is an out-of-control trolley headed towards five people who are trapped on the straight side of a looped piece of track. There is one person trapped on the loop side of that track. Normally the trolley would travel up the straight side of the track and then come back down the loop side. However, it just so happens that a huge tree has recently fallen onto the loop portion of the track above where the one is trapped. It is possible to switch tracks so that the trolley will go along the loop side of the track, rather than the straight side. Thus, if we switch tracks the trolley will hit the one instead of hitting the five.

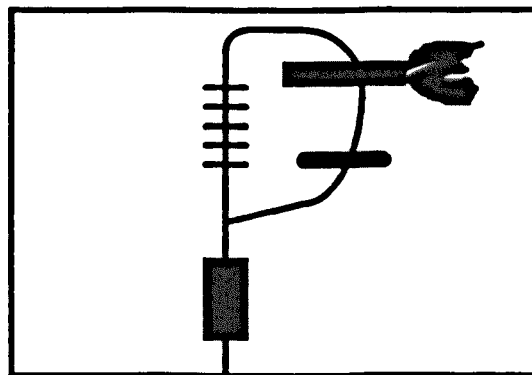


Figure: 8 - Strong-Tree-Trunk Loop

Notice that, in this example, just as in Trolley, we have not stipulated the weight of the one. However, if you compare the line that represents the one in the figure above with that same line in the figure of Fat-Man Loop,³ you will see that, in both cases, the one is indeed fat enough to stop the trolley. So does this mean that this example will warrant the same judgement as Fat-Man Loop? To determine the answer to this question we need to apply the Omissions Test. Thus, let us do that now.

The Means Doctrine as Applied to Strong-Tree-Trunk Loop.

We need to be careful here that we see Strong-Tree-Trunk Loop as an example in its own right. That is, we need to be careful that we actually think about this example, rather than just jumping to the conclusion that its similarity to Fat-Man Loop warrants that it, too, be given a judgement of moral impermissibility. For, remember what happened when we let the similarity between Fat-Man Trolley and Trolley mislead us into thinking that they were morally akin to one another. Thus, for a moment at least, let us put aside the notion that the one is fat enough to stop the trolley and concentrate instead on determining whether or not the presence of the one is needed in order for the act that we perform to result in the saving of the five.

Hence, let us omit the presence of the one and determine whether or not we can still save the five. As soon as we *do* omit the presence of the one we can see that his absence does not prevent us from saving the five. This is because the presence of the strong tree trunk on the track ensures that the switching of tracks will save the five. For, in effect, the strong tree trunk divides the track in two so there is no question of the Trolley being able to get back onto the main track once it is on the loop portion of the track. Hence, in this case, just as in Trolley, as soon as we switch tracks the trolley is no longer a threat to the five. In support of this claim, let us consider what would be the case if the one on the loop of the track in this

3 See Chapter 4 - Figure 1.

example were thin, rather than fat. Let us call this the Thin-Man version of Strong-Tree-Trunk Loop.

If we omit the presence of the thin man in this example it, also, becomes clear that the switching of tracks will still save the five. And, again, this is because the presence of the strong tree trunk ensures that, as soon as the tracks are switched, the trolley is no longer a threat to the five and their safety is, therefore, secured. Thus, no matter whether the one in this example is thin or fat, the Means Doctrine will deliver a judgement of moral permissibility. What is interesting about the comparison between these two versions of this example is that it helps us to see that, in the original Trolley example, it is, also, the case that it makes no difference whether the one is fat or thin. For, no matter what weight the one is in Trolley, his presence is not needed in order for the act of switching tracks to result in the saving of the five.

Thus, the Means Doctrine will deliver a judgement of moral permissibility with regard to Strong-Tree-Trunk Loop no matter whether the one is fat or thin. It does so on the grounds that it is a case where if the presence of the one were omitted the act of switching tracks will still result in the good effect of the five being saved. For this is a case where we know that the trolley cannot reach the five once the tracks are switched. We know that this is the case because we know that the tree trunk is strong enough to prevent the trolley from reaching them. In order to emphasise this point, let us consider how we would view this example if the tree trunk were weak, rather than strong. Let us call this the Weak-Tree-Trunk Loop example.

As soon as we weaken the strength of the tree trunk on the track we can see that it then matters whether the one is fat or thin. This is because, if the one is thin and we switch tracks what will happen is that both the one and the five will be hit by the trolley. For neither the weight of the one nor the weight of the tree trunk will prevent the trolley reaching the five. In effect, the Thin-Man version of this example equates with Thin-Man Loop. So, when it comes to the Fat-Man version

of Weak-Tree-Trunk Loop what we have is a case, like Fat-Man Loop, where if the presence of the one were omitted, the act of switching tracks would not result in the saving of the five. For, in this case, too, it is the hitting of the one that saves the five. Thus, the Means Doctrine will deliver a judgement of moral impermissibility with regard to this example, even though it delivers a judgement of moral permissibility with regard to Strong-Tree-Trunk Loop.

A Discussion About the Comparison Between the Weak and Strong-Tree-Trunk Examples.

So, the Tree-Trunk Loop examples are important in three respects. Firstly, because the comparison between the Strong and Weak versions of the example emphasises the point that moral kinship between one example and another does not follow just because two examples share a high degree of sameness. Secondly, because it highlights the fact that certainty about the occurrence of the good effect has a role to play with regard to our judgement of these cases. That is, it brings our attention to the fact that there has to be some degree of certainty⁴ that the five can be saved if the act in question is performed. For, otherwise, we could find ourselves in the position of increasing, rather than decreasing, the amount of bad that will occur. This is because, if the good effect fails to occur after we have performed the act in question, what we will have is a case where all six die. Thirdly, it helps us focus on the fact that the parameters of the example have to be set before it is possible to determine whether or not a given bad effect is the means to the good effect.⁵

We have already mentioned that with regard to all of the examples that we are dealing with both the bad and the good effect are a stipulated given. Moreover, this is the case no matter whether we are talking about cases where the bad effect

⁴ Just how high the degree of certainty needs to be is something that warrants more consideration than is possible with regard to the remit of this thesis. However, it is important to note that factors such as time, numbers involved, and the reliability of procedures would need to be considered when it comes to making such a calculation.

⁵ We will discuss this third point more fully once we turn our attention on Kamm's Seesaw Device (Bystander) example.

is the means to the good effect or if we are talking about cases where the bad effect is not the means to the good effect. Thus, either way, as far as these examples are concerned, if we perform the act in question the five will be saved and the one will die.

Hence, we might begin to wonder why the moral permissibility or impermissibility of an example should hinge so dramatically on whether or not the bad effect is the means to the good effect. For, after all, from the point of view of the one, what comfort can possibly be gained from the fact that we can assure him that his being run over is not the means to the saving of the five? Indeed, we might even consider whether, from his point of view, more comfort would be afforded to him if he were able to think that his being run over is the means to their being saved. However, if we think about what is the case in Fat-Man Loop and compare that to what is the case in Strong-Tree-Trunk Loop and then relate that comparison to Trolley and Transplant, an answer to this question emerges. The answer is that, in cases where the bad effect is the means to the good effect, it is the case that the bad effect is an inescapable given, whereas in cases where the bad effect is not the means to the good effect this is not so. This is because, with regard to these examples, in principle it is the case that the one could get free of what threatens him or be freed from what threatens him and yet the act that we perform will still result in the saving of the five.

Thus, what differentiates the morally permissible cases from the morally impermissible cases is the fact that in the former, but not in the latter cases, in principle the act that we perform could result in the occurrence of the good effect, even if the bad effect were not to befall the one. So, this means that as far as those cases where the bad effect is the means to the good effect are concerned, we have to accept that the bad effect is an inescapable given if the act that we perform is going to result in the occurrence of the good effect.⁶ With this in mind, let us continue applying the Means Doctrine to examples. But, now, let us turn our attention to the Turning-Seesaw-Device examples.

⁶ We will return to consider the theoretical motivation for the DDE in the final chapter.

The Means Doctrine as Applied to the Turning-Seesaw-Device Examples.

As you will recall, from our discussion of Kamm's position, there are a number of different versions of this example. This means that, once again, we are going to have to systematically work our way through them. However, this time, instead of starting with Kamm's Bystander version of the example, let us start with the version of the example that we introduced - namely Seesaw-Device (5:1).

The Means Doctrine as Applied to Seesaw-Device (5:1).

Seesaw-Device (5:1) is the example that we introduced when we were discussing Thomson's second proposal.⁷ We also discussed it with regard to Kamm's account of the PPH.⁸ It is the example where an out-of-control trolley is headed towards the five who are on one end of a turning seesaw device. On the other end of the same device there is one person. We devised this example so as to give us a Seesaw-Device example that is as structurally akin to Trolley as it possibly could be. Thus, in this example, if we swing the device, the five are swung away from the track and the one is swung onto it. Hence, what we have here is a case where the device makes half-circle turns. We know that this is the case because if it were a case where the device made full circle turns there would be no question that we could save the five by turning the device. For, all that turning the device would do is put the five right back on the track where they started from.⁹ We also know that it cannot be that the device can turn in anything less than a half-circle turn because, if it did, we would be able to swing the device and save the five without having to put the one in danger. Hence, we can see that to stipulate that this is a case where the device makes half-circle turns equates with saying that, in Strong-Tree-Trunk Loop, the trolley will stop once it gets to the tree trunk. Now that we

⁷ See Chapter 4 - Figure 4.

⁸ See Chapter 5 - The PPH as Applied to Seesaw-Device (5:1).

⁹ Just as in the Loop case, switching tracks will not save the five from being hit by the trolley, unless there is a fat man on the loop portion of the track to stop it getting to them.

are clear where the parameters of this example lie we are in a position to apply the Omissions Test.

Thus, what we need to do is determine whether we could still save the five by swinging the device if there were no one trapped on the opposite end of the device. And, of course, it is obvious that we could. Hence, this is a case where the bad effect is not the means to the saving of the five. So, this is a case where the Means Doctrine will deliver a judgement of moral permissibility. But, will the Means Doctrine deliver this same judgement with regard to Kamm's versions of this example? To answer this question we will need to look at each example in turn. Let us start with the two versions where Kamm puts the one on the opposite end of the device from the five. That is let us start by looking at Seesaw-Device Wall (5:1) and Seesaw-Device Push (5:1).

The Means Doctrine as Applied to Wall (5:1) and Push (5:1).

If you recall, from our earlier discussion of these examples what differentiates them is the fact that in Wall (5:1) the one is pushed into a wall, whereas in Push (5:1) he is pushed into the trolley that would have hit the five if we had not swung the device. Thus, in both of these examples, just as in Seesaw-Device (5:1), there seems to be no notion that the device could turn full circle. Hence, it seems reasonable to assume that here, too, the device makes half circle-turns. Thus, if we omit the presence of the one in these examples, we can see that we *can* still save the five by swinging the device. For the only difference that having no one on the other end of the device makes is that an empty end of the device will be pushed into either the wall or the trolley. So, once we apply the Omissions Test to these examples, we find that the bad effect is not the means to the saving of the five. Hence, with regard to both of these examples, the Means Doctrine will deliver a judgement of moral permissibility, just as it does for Seesaw-Device (5:1). And, given that Kamm's claim is that both of these examples warrant a judgement of moral permissibility we can assume Kamm would agree with the judgement that

Seesaw-Device (5:1) warrants a judgement of moral permissibility. But, then, Kamm only mentions these two examples in passing. Furthermore, Kamm has another version of this example that she only mentions in passing - namely Fat-Man Seesaw-Device (Bystander). Thus, it is to that example that we now turn.

The Means Doctrine as Applied to Fat-Man Seesaw-Device (Bystander).

Fat-Man Seesaw Device (Bystander) is the example that we said we were surprised that Kamm did not make more of, given that it seems to be the Seesaw Device equivalent of Fat-Man Trolley and Fat-Man Loop. This is because, in this example, too, it is the hitting of the fat man that stops the five from being harmed. That is, it is the hitting of the fat man that stops the five from being pushed into the Trolley. This is because, if you recall, Kamm claims that, in this example, the five would be pushed into the trolley if it were not for the fact that the fat man stops the device. Thus, we can see that, in this example, unlike Wall (5:1) and Push (5:1), we are dealing with a device that makes full circle turns. Hence, by now, we should be able to appreciate that if we apply the Omissions Test to this example we can determine that this is a case where the bad effect is the means to the saving of the five. For this is a case where, if we omit the presence of the one it becomes clear that we cannot still save the five. This is because to swing the device in the absence of the one would be to push the five into the trolley. So, this is a case where the Means Doctrine will deliver a judgement of moral impermissibility.

However, this should come as no surprise, given that the Means Doctrine also delivers this same judgement with regard to Fat-Man Trolley and Fat-Man Loop. Thus, with regard to this version of the Seesaw-Device example, the Means Doctrine parts company with the PPH. But, keep in mind that it agrees with the PPH as far as Wall (5:1) and Push (5:1) are concerned. Thus, let us now determine just how the Means Doctrine handles what Kamm regards as the main version of Seesaw-Device. That is, let us now turn our attention to Seesaw-Device (Bystander).

The Means Doctrine as Applied to Seesaw-Device (Bystander).

If you recall, Kamm presents this example as being an example where we can save the five by swinging the device. However, if we do swing the device, it will hit and fatally injure the one who is standing nearby. Kamm maintains that this example is akin to Trolley and, therefore, it, too, warrants a judgement of moral permissibility on the grounds that the in-itself-good act of swinging the device causes the bad of the one being hit. Thus, as far as Kamm's account is concerned all of the Seesaw-Device examples warrant a judgement of moral permissibility. This is because, for Kamm the swinging of the device is on a moral par with the switching of tracks in Trolley. So, for Kamm the relationship between Fat-Man Seesaw-Device (Bystander) and Seesaw-Device (Bystander) is equivalent to the relationship between Fat-Man Loop and Trolley.

However, when we discussed this example earlier in relation to Kamm's account, we pointed out that Kamm fails to make it clear why we should accept that the five, in the Seesaw-Device example, are free from threat once the device is swung. For, as we said then, if the possibility exists that the device could make a full circle turn then it *could* be that it is the hitting of the one, whether he be fat or thin that stops the device from doing just that.¹⁰

Thus, we should now be able to see that before we can deliver a judgement with regard to this example, we need to know whether the device makes half or full circle turns. Much in the same way as we needed to know whether the tree trunk on the tracks is strong or weak. For, unless we know the parameters of the example, we cannot tell whether the one stops the device from pushing the five into the trolley or, indeed, whether the swinging of the device might be putting the one in danger as well as the five. Thus, we need to be aware that if the device could turn full circle and the hitting of the one would not prevent it from doing so, we would be dealing with a case like Thin-Man Weak-Tree-Trunk Loop, because

¹⁰ The idea here is that although it is obvious that the hitting of a thin man will not stop a trolley, it could be that the hitting of a thin man will stop a swinging device.

the device would then hit the one and keep going until it pushed the five into the trolley.

So, when it comes to asking what judgement the Means Doctrine will deliver with regard to this example, the answer depends on where the parameters of the example are set. If it is a case where the device only makes half-circle turns, then the Means Doctrine will deliver a judgement of moral permissibility. This is because, under these circumstances, the swinging of the device does, indeed, save the five and the hitting of the one is not the means to that saving. Moreover, this is so no matter whether the one is fat or thin. However, if it is the case that the device makes full circle turns, then the Means Doctrine will deliver a judgement of moral impermissibility. This is because, under these circumstances it, will either be the case that the hitting of the one is what stops the five from being pushed into the trolley or it will be the case that the one will be hit and then the device will keep swinging until the five are pushed into the trolley. And, it is the comparison between these two cases that highlights the fact that if the presence of the fat man were omitted the swinging of the device would not save the five. This is because, it is the hitting of the fat man that saves the five.

Thus, whereas Kamm affords all of the Seesaw-Device examples a judgement of moral permissibility, the Means Doctrine does so only with regard to those versions of it where the bad effect is not the means to the saving of the five. Having established that this is the case, let us now look at the two sets of examples that we claimed left Kamm's account open to the charge of making judgements that are not consistent with one another. That is, let us look at the two versions of Shake-the-Bridge and Grenade that we discussed in Chapter 5.

The Means Doctrine as Applied to Grenade and Shake-the-Bridge.

If you recall from our discussion of Kamm's account, each of these examples has two versions. There is Grenade (Stop) and Grenade (Lift-Up) and, as well as

Shake-the-Bridge, we have Shake-the-Bridge (Turning). We explained before that although Kamm is adamant that Shake-the-Bridge and Grenade (Stop) warrant a judgement of moral impermissibility, she is quite prepared to argue for the moral permissibility of Grenade (Lift-Up) and she is, therefore, committed to making the same judgement with regard to Shake-the-Bridge (Turning). Thus, we claimed that, whereas Kamm's account seemingly affords consistency with regard to Fat-Man Trolley, Fat-Man Loop, and Trolley, when it comes to these examples that sense of consistency is lost. Hence, it is important with regard to our claims about the Means Doctrine that it should be able to handle these examples without seeming to be inconsistent. Thus, let us see if we can.

In order to apply the Means Doctrine to these four examples we need to determine whether we could still save the five by either shaking the bridge or throwing the grenade, if we were to omit the presence of the one. The answer is that, yes, we could. Thus, the Omissions Test allows us to claim that, in all four of these examples, the bad effect is not the means to the saving of the five. Thus, these are all examples where the Means Doctrine will deliver a judgement of moral permissibility. However, we need to appreciate that our task of determining the moral permissibility of these examples is bolstered by the fact that, in all of these examples, the saving of the five is a stipulated given. So, no matter how bizarre it seems to think that the shaking of the bridge can either stop a trolley or send it careering down an embankment, that is precisely what we do have to accept. Similarly, no matter how doubtful we are that the throwing of a grenade could stop a trolley or lift the five up in the air long enough for the trolley to pass under them, again this is precisely what we do have to accept. We, therefore, also need to appreciate that, when it comes to thinking about these cases in real-life terms, we have to be prepared to question whether such acts *could* result in the saving of the five.

Thus, although the Means Doctrine does deliver a judgement of moral permissibility with regard to these examples, when it comes to thinking of these examples in real-life terms, all that we can say is that the Means Doctrine allows

that these cases *could* warrant such a judgement. Hence, when it comes to talking of these examples in real-life terms, what judgement is warranted will depend on the circumstances of the particular case. For, if the case is to warrant a judgement of moral permissibility, we have to be able to claim, with a certain amount of confidence, that the good effect will occur if we perform the act in question.¹¹ If we cannot do this, then the case will warrant a judgement of moral impermissibility. This is because it would then be a case where there is a strong possibility that the bad effect will occur and yet not be accompanied by the good effect. In other words, when it comes to real-life situations of these examples, whether we can deliver a judgement of moral permissibility depends on how certain we are that the act in question will result in the good effect. For, once we start talking in real-life terms we lose the notion of the occurrence of the good as an imposed certainty. Keeping this in mind, let us now turn our attention to Foot's One-in-the-Road example.

The Means Doctrine as Applied to the One-in-the-Road Example.

It has been a while since we thought about the One-in-the-Road example in any detail. But, if you recall, it is the example that Foot devised, where if we are going to save the five we have to run over the one who is trapped on the road.¹² Foot claims that we intuitively think that this case warrants a judgement of moral impermissibility. And, here again, we might want to question whether or not this is the case. For, as we said before, it does seem as though there are those who are quite prepared to claim that they intuitively think that this is a case where it *is* morally permissible to save the five. Furthermore, there are those who are unwilling to give a judgement on this case because they are unsure of how it should be judged. Thus, it is our claim that, just as with Fat-Man Loop, this example does not evoke a reliably shared response. Hence, this is a case where it looks as though we need to rely on the doctrine that we are using to explain just

¹¹ Refer back to Footnote #4 above.

¹² See Chapter 1 - The One-in-the-Road Example.

what judgement is warranted. So let us apply the Means Doctrine and see what judgement it delivers.

In order to apply the Means Doctrine to this case we need to omit the presence of the one who is trapped on the road and determine whether the act in question will still result in the saving of the five. The answer is that it will. For, it is obvious that we do not need the presence of the one on the road in order to be able to drive along it and save the five. So, this is a case where the bad effect is not the means to the good effect. Moreover, this is so despite the fact this is a case, unlike Trolley, where the bad effect occurs before the good effect. Thus, whereas the Doctrine of Doing and Allowing affords this example a judgement of moral impermissibility, the Means Doctrine affords it a judgement of moral permissibility.

However, here again, we need to realise that, in this example, the delivery of the judgement of moral permissibility is bolstered by the fact that the saving of the five is a stipulated given.¹³ So, when it comes to thinking of this example in real-life terms, we again have to consider just how sure we are that if we perform the act in question the good effect will occur. So, whereas, in the example, we can be vague about just how we are going to get to the five in time to save them, when it comes to a real-life situation we are going to have to be clear about what reaching them in time involves. For otherwise it is going to be difficult to judge just how certain we can be that the good effect will occur once the bad effect has occurred.

The need to be able to claim that we can, indeed, save the five in a real-life instance of this example seems even more salient in this example than it does in Shake-the-Bridge and Grenade. This is because in this example the bad effect occurs before the good effect, whereas in Shake-the-Bridge and Grenade the good and the bad effect occur simultaneously. Hence, when we think of the One-in-the-Road example in real-life terms we become aware of the fact that we could

¹³ Foot agrees that it is important to point out that, as the example stands, the saving of the five is a given. (Personal communication.)

actually end up making the situation worse, rather than better. This is because it seems more obvious that we could end up with a situation where the one gets run over but the five do not get saved. Of course, the same could be said with regard to real-life situations of Shake-the-Bridge and Grenade but somehow that possibility seems less obvious when we are dealing with cases where the good effect occurs at the same time as the bad effect.

Thus, it seems reasonable to suggest that how we respond to the One-in-the-Road example depends on whether our focus is rooted on the occurrence of the bad effect or the good effect. And, indeed, the same suggestion could be made with regard to Fat-Man Loop and Fat-Man Trolley. The only difference is that, in the latter two cases, we are more likely to direct our focus on the good effect because they are seemingly so closely akin to Trolley. Hence, we, again, become aware of the importance of keeping our focus not so much on the act in question, but rather on the overall structure of a given example.

Thus, there are a number of reasons we might find it hard to accept that moral permissibility of the One-in-the-Road example. Firstly, because there is a tendency for us to think that the classification of *not means* only applies to those bad effects that occur after the good effect in question. Secondly, because this *is* a case where the bad effect occurs before the good effect, it is all too easy to forget that the example stipulates that the act in question will result in the occurrence of good effect. In other words, we are much more likely to focus on the fact that the act in question will result in the occurrence of the bad effect. Moreover, the difficulty that we have in accepting the moral permissibility of this case could well serve a purpose. For, it emphasises to us the need that we have to check whether the bad effect in question is, or is not, the means to a given good effect. Furthermore, it brings home to us that when it comes to real-life situations of such a case we are not going to have the imposed stipulation that if we perform the act in question the good effect *will* occur. Thus, when it comes to real-life instances of this kind of case we are going to have to calculate how sure we can be that the good effect will occur once the bad effect has occurred. For, otherwise we could

find ourselves in the position of having caused a bad effect that is not accompanied by a good effect.

So, although the Means Doctrine does deliver a judgement of moral permissibility with regard to the One-in-the-Road example, we need to be aware that it does so because the occurrence of the good effect is a given. Thus, when it comes to thinking of this example in real-life terms what we need to be aware of is that the Means Doctrine allows that a judgement of moral permissibility *could* be warranted on the grounds that the bad effect is not the means to the good effect.

In support of our claim that, in the One-in-the-Road example, the bad effect is not the means to the saving of the five, let us now look at a version of this example where the bad effect is the means to the good effect. That is, let us look at an example that we will call Tyre-Traction.

Tyre-Traction: Five people are in need of saving. One person is trapped on the road that we need to drive along to reach the five. The road is muddy and the tyres of the jeep are spinning. We are unable to make progress along the road. However, we know that the trapped man's body will give the tyres the traction that they need in order to get the wheels turning.¹⁴ All we have to do is push the jeep a fraction and his body will provide the necessary traction.

If we apply the Means Doctrine to this variant of the One-in-the-Road example we find that we have a case where it would not be morally permissible to save the five because, here, the bad effect is the means to that good. We can determine that this is so because, in this case, if we omit the presence of the one who is trapped on the road we find that we cannot still save the five. For his presence is required in order to give the wheels the traction that they need to start them turning. Thus, we can see that, without his presence, we would be unable to drive along the road and reach the five in time to save them. So, in this case, unlike the One-in-the-Road example, the bad effect of the one being harmed is an effective part of the causal chain that results in the good effect. Hence, this is a case where the Means Doctrine will deliver a judgement of moral impermissibility.

¹⁴ The assumption here is that there is no other way that we could provide traction for the tyres.

In effect, Tyre-Traction relates to the One-in-the-Road example in the same way as Fat-Man Loop relates to Trolley. This is because in Tyre-Traction and Fat-Man Loop, unlike the One-in-the-Road example and Trolley, we could not perform the act in question and save the five if the presence of the one were omitted. So, now we can see that what differentiates Tyre-Traction from the One-in-the-Road is the same thing that differentiated Fat-Man Loop from Trolley. For, in the One-in-the-Road example, as in Trolley, in principle the one *could* be saved and, yet, the act that we perform will still result in the saving of the five. The same cannot be said for either Tyre-Traction or Fat-Man Loop. This means that, with regard to the One-in-the-Road example and Trolley, in principle the possibility exists that the good effect *could* occur and yet not be accompanied by the bad effect. Thus, what makes cases like Tyre-Traction and Fat-Man Loop warrant a judgement of moral impermissibility is the fact that, like Transplant, they are cases where no such possibility exists, given that the act in question will not result in the good effect unless, or until, the bad effect befalls the one. In order to emphasise this point, let us now consider how the Means Doctrine handles Foot's other rescue example - namely Two Disasters.

The Means Doctrine as Applied to Two Disasters.

If you recall, Two Disasters is the example where we can either save the one or the five. Foot uses the comparison between Two Disasters and the One-in-the-Road example in support of her claims for the Doctrine of Doing and Allowing. However, as we pointed out before, Two Disasters is not structurally akin to the One-in-the-Road example.¹⁵ This is because, in Two Disasters, if we do not act both the five and the one will die. This is not so with regard to the One-in-the-Road example because, with regard to it, only the five will die if we do not act. For, in the One-in-the-Road example, no harm will come to the one unless we do act. This is because the one is under no danger unless, or until, we act. We,

¹⁵ See Chapter 1 - A Discussion of Foot's Comparison Between Two Disasters and the One-in-the-Road Example.

therefore, suggested that a judgement of moral permissibility could be warranted with regard to Two Disasters, simply on the grounds that it is better to save five than to allow all six to die. However, we now want to see if we can arrive at that same judgement by applying the Means Doctrine.

It certainly seems that the Means Doctrine can uphold a judgement of moral permissibility with regard to Two Disasters. This is because, if we omit the presence of the one, it is obvious that we could still save the five. For, after all, why should we need the presence of one person, who is in need of saving, in order to be able to save the five? The fact that we do not gives us the grounds that we need to claim that the bad of the one being harmed is not the means to the saving of the five. This claim is supported by the fact that, in this example, just like the One-in-the-Road and Trolley, the one *could* be saved and yet the act we perform will still result in the five being saved. Hence, it is hardly surprising that this is an example where we do have the reliably shared intuition that this is a case where it is morally permissible to save the five. However, it is still important to remember that this is a case where, if we were not to act, harm will befall both the one and the five.

Now that we know that the Means Doctrine will deliver a judgement of moral permissibility with regard to both of Foot's Rescue examples, let us see how the Means Doctrine will handle the two rescue examples that Quinn introduced. That is, let us now turn our attention to Quinn's Train Brakes and Explosion examples.

The Application of the Means Doctrine to Quinn's Rescue Examples.

If you recall, Quinn introduced two rescue examples of his own - namely Train Brakes and Explosion.¹⁶ He did so because he needed examples that were akin to Foot's but which involved an act of allowing, rather than a doing. Quinn maintains that Train Brakes is akin to the One-in-the-Road example and that Explosion is

¹⁶ See Chapter 2 - Train Brakes and Explosion.

akin to Two Disasters. Thus, we should be able to apply the Means Doctrine to both of these cases by echoing what we said with regard to Foot's examples. Let us see if this is, in fact, the case. Let us take each example in turn, starting with Train Brakes.

The Means Doctrine as Applied to Train Brakes.

Train Brakes is the example where we are faced with the choice of either letting the train run over the one who is trapped on the track thereby allowing us to get to the five in time to save them, or we can stop the train from running over the one by applying the brakes. However, if we do apply the brakes and stop the train, we will not be able to save the five. If we apply the Omissions Test to this example, we find that the running over of the one is not the means to the saving of the five. This is because, just as in the One-in-the-Road example, we would still be able to save the five if the presence of the one were omitted. Thus, given the kinship between this example and the One-in-the-Road example, it is hardly surprising that the Means Doctrine delivers a judgement of moral permissibility with regard to this case, too. Furthermore, it does so on the grounds that here, too, the running over of the one is not the means to the five being saved. But, again, if we think of this example in real-life terms, we have to realise that we cannot just assume that the five will be saved provided we do not stop the train. Thus, we need to be aware that, when it comes to real-life instances of this example, the Means Doctrine simply allows that a judgement of moral permissibility *could* be warranted on the grounds that the bad effect is not the means to the good effect.

However, it is worth pointing out that this example does differ from the One-in-the-Road example in as much as it is a case, where in order to save the one, we actually have to do something. This is because, in this case, we have to put on the brakes and, thereby, stop the train if the one is to be saved. This is not the case in the One-in-the-Road example. For, in that example, the one is in no danger unless, or until, we perform the act that will save the five. Having noted that this is so, let

us now determine how the Means Doctrine will handle Quinn's second rescue example.

The Means Doctrine as Applied to Explosion.

Explosion is the example where we are in the process of saving the five at the back of the train when we are told that there is one person trapped on the track up ahead. Thus, we can either stay with the five and save them or we can stop the train and save the one. We cannot do both. Thus, in this case, just as in Train Brakes, if the one is to be saved we actually have to do something. Thus, it is important to point out, that in this example, just as in Train Brakes, there is a link between the saving and the not saving of these cases that does not exist with regard to Two Disasters. This is because, in Two Disasters, there seems to be a clear divide between the choice of saving the five or saving the one. Hence, it is not at all clear that Quinn can claim that this example is analogous with Two Disasters. But, having noted that this is the case, let us now apply the Means Doctrine to Explosion.

Given that we have already determined that, in Train Brakes, if we omit the presence of the one we will still be able to save the five, it seems clear that the same holds for this case. For, after all, we are already in the process of saving the five when we have to take the decision of whether or not to stop the train. Thus, there is no question of there being a need for there to be someone on the track who is in need of saving in order to be able to save the five. Hence, in this case, just as in Train Brakes, and the One-in-the-Road example, the running over of the one is not the means to the saving of the five. So, this, too, is a case where the Means Doctrine delivers a judgement of moral permissibility.

Thus, the Means Doctrine delivers the same judgement as Quinn's account does with regard to Explosion but not so with regard to Train Brakes. Keeping this in mind, let us now turn to the example that we claimed posed a problem for Quinn.

That is, let us now turn to the example that we called Threat-of-a-Second Explosion.

The Means Doctrine as Applied to Threat of a Second Explosion.

Threat of a Second Explosion is the example where we cannot stop the train to save the one who is on the track because, not only would this involve our leaving the five who have sustained injuries from the first explosion, but it would also mean that the five could not survive the second explosion that will occur as soon as we apply the train's brakes.¹⁷ We said in Chapter 2 that this example poses a problem for Quinn because, according to his account, he would have to claim that it warrants a judgement of moral impermissibility because our purpose of saving the five *is* served by the running over of the one. And yet, in this case, just as in Explosion, all we do is stay with the five so that we can save them. Hence, although Quinn's account can, seemingly, explain the moral difference between Train Brakes and Explosion, when it comes to the comparison between Explosion and Threat-of-a-Second-Explosion things are different. For, according to Quinn's account, Threat-of-a-Second-Explosion will warrant a judgement of moral impermissibility on the grounds that it is a case, like Train Brakes, where the train's continued progress forwards serves the purpose of our saving the five. This leaves Quinn's account open to the charge of inconsistency because it is hard to see that a judgement of moral permissibility is warranted in Explosion but not so in Threat-of-a-Second-Explosion.

However, as far as the Means Doctrine is concerned Threat-of-a-Second-Explosion is no problem because, if we apply the Omissions Test to it, we find that it, too, is a case where the running over the one is not the means to the saving of the five. For, if we omit the presence of the one, we find that we can still save the five. Thus, here, too, the Means Doctrine will deliver a judgement of moral permissibility. Hence, in this case as well as in both of Foot's and Quinn's rescue

¹⁷ See Chapter 2 - Threat of a Second Explosion.

examples, the Means Doctrine consistently delivers a judgement of moral permissibility. With this point established, let us now turn our attention to the example we began with in Chapter 1 - namely Foot's Poisonous Fumes example.

The Means Doctrine as Applied to Poisonous Fumes.

If you recall, Poisonous Fumes is the example that Foot maintains undermines the credibility of the DDE. Her claim is that it does so because we intuitively think that this example warrants a judgement of moral impermissibility and, yet, this is an example where the DDE will deliver a judgement of moral permissibility on the grounds that we foresee, rather than intend, the bad effect that befalls the one. Hence, Foot's Poisonous Fumes example is as important to her claims about the application of the Doctrine of Doing and Allowing as is Shake-the-Bridge and Grenade (Stop) to Kamm's claims about the application of the Principle of Permissible Harm.¹⁸ Thus, this example is, also, important with regard to the claims that we are making for the acceptability of the Means Doctrine.

Foot presents Poisonous Fumes as being an example where we can save the five from what ails them, provided we can manufacture a special gas. However, if we do manufacture this gas, poisonous fumes will seep into the room next door, and fatally injure the one person who is trapped in there. Foot maintains that this is a case where we intuitively think it would not be morally permissible to save the

18 It is worth noting that Kamm does discuss Foot's Poisonous Fumes example but she does not talk of it in the same terms as Foot. Kamm talks of an example, where while we are administering a gas to the five, there are poisonous fumes being released into a room that has one person trapped in it. Kamm calls this example Operation I. See Kamm, F. M. (1996) p.151. This alteration to the example makes it more in keeping with Shake-the-Bridge and Grenade (Stop). This is because it becomes a case where the good and the bad effect occur simultaneously. However, Kamm has a version of this example which is akin to Grenade (Lift-Up). She refers to it as Operation II. See Kamm, F. M. (1996) p.152. In this version of the example we administer a gas to the five which gives them their normal capacity for breathing back. But, because all five are then breathing normally, the air current is changed and germs that were safely closeted are released into the room next door where one person is trapped. Kamm maintains that this example, unlike Operation I, warrants a judgement of moral permissibility because, here, the bad effect is the result of the greater good. Thus, in Operation II, just as in Grenade (Lift-Up), it is easy to see that the act that we perform actually does save the five. Whereas in Operation I, just as in Grenade (Stop), although we are aware that the act we perform will save the five, what is salient in our mind is the fact that the one is going to be fatally injured as a result of that act.

five. Hence, she maintains we need a doctrine that will deliver a judgement of moral impermissibility with regard to this case. However, it is our claim that it is not at all clear that this is how we do intuitively respond to this example. For, just as with One-in-the-Road, Fat-Man Loop, Shake-the-Bridge and Grenade, it seems much more appropriate to claim that there are those who respond in this way but there are, also, those who intuitively think that it would be morally permissible to save the five. Furthermore, there are those who are unsure of how they would respond to this example. If this is so, then our intuitive response to this example is not reliably shared and we, therefore, need to look to the doctrine that we are using, and the comparisons between different doctrines, to determine what judgement is warranted. Hence, let us apply the Omissions Test to this case and determine just what judgement the Means Doctrine will deliver.

When we omit the presence of the one in this example we find that we can still manufacture the gas and save the five from what ails them. Hence, the harm that befalls the one in this case is not the means to the saving of the five. So, the Means Doctrine will deliver a judgement of moral permissibility with regard to Poisonous Fumes. But, again, this is because the saving of the five is a stipulated given. In a real-life situation we would need to question just how confident we could be that the five will be saved provided we act to manufacture the gas. Thus, as far as a real-life instance of this example is concerned, all the Means Doctrine does is allow that such a case *could* warrant a judgement of moral permissibility on the grounds that the bad effect will not be the means to the good effect. Our view is that, insofar as people have intuitions to the contrary, this is because they have failed to keep in clear focus the stipulated certainty of the good outcome. This claim is confirmed by the fact that this, too, is a case where the one *could* be saved and, yet, that would not prevent the act we perform resulting in the saving of the five. Hence, this is a case where in principle the saving of the five does not preclude the one being saved as well.

Thus, we reiterate the claim that the Means Doctrine can determine whether a given example warrants a judgement of moral permissibility or impermissibility

through the application of the Omissions Test. This is because it is the Omissions Test that allows us to determine whether or not a given act is the means to the good effect. Hence, the Means Doctrine can explain the moral permissibility or impermissibility of a given example by determining whether it is structurally akin to Trolley or Transplant. So, the Means Doctrine can explain the moral permissibility or impermissibility of a given example without our judgements seeming to be inconsistent with one another and without having to think of Trolley as being some kind of special case.

However, having said that, there are a number of examples to which we still have not applied the Means Doctrine. For, as yet, we have not considered the example that proved so difficult for Foot's Doctrine of Doing and Allowing - namely the Beggar example. Nor have we considered the medical and military pairings of examples that we spoke of earlier, with regard to Quinn's Intentions Formulation of the DDE. Thus, it is to these kinds of examples that we now turn.

Chapter 8

The Means Doctrine and Its Application to those Examples that are Most Commonly Associated with the Doctrine of Double Effect.

In the previous chapter we applied the Means Doctrine to a variety of different examples and explained how it manages to uphold our intuitive judgement, while at the same time demonstrating that we are not making judgements that are inconsistent with one another. However, there were a number of examples that we did not include in that chapter, despite the fact that they did feature in earlier chapters. But, somehow, it seems fitting that these examples should be discussed separately. This is because they, more than the other examples, seem to be the ones that are most often used in discussions concerning the application of the DDE. That is, examples like Strategic Bombing, Terror Bombing, the Hysterectomy Case, and the Craniotomy Case. In fact, examples that we discussed in relation to Quinn's account and his suggested Intentions Formulation of the DDE. But, as well as those examples, we also want to discuss Foot's Beggar example. This is because it is the example that, as we saw earlier, proved fatal for Foot's claim that the DDE could be replaced by the Doctrine of Doing and Allowing. This is also the example that leads Quinn to claim, and Foot to agree, that what we need is some sort of harmonised application of both doctrines. Thus, it is important that the Means Doctrine should be able to uphold our intuitive response with regard to the Beggar example and still be able to hold by our explanation for the moral difference between Trolley and Transplant. Hence, it is to the Beggar example that we will turn to first.

The Means Doctrine as applied to the Beggar Example.

The Beggar example is the one where Foot stipulates that Medical Science is in need of bodies in order to carry out some vital research that will presumably allow

the saving of many lives in the future. The question that she poses is this: Is it morally permissible not to give a starving beggar the food he needs so that he will die and his body can then be used for the research project in question? Our intuitive response to this example is that it certainly would not be morally permissible not to give the beggar the food that he needs for survival. Hence, we need an account that will explain why this example is morally akin to Transplant, rather than Trolley. This example proved difficult for the DDA because it is a case where the death of the beggar seems to be the result of *an allowing*, rather than *a doing*. Thus, it is hard to see how the DDA could do anything other than deliver a judgement of moral permissibility with regard to this case. Hence, what we need to know now is determine whether the Means Doctrine can deliver a judgement of moral impermissibility with regard to the Beggar example.

Thus, here again we need to determine whether or not the bad effect is the means to the good effect. To do so we need to omit the presence of the beggar and determine whether or not we could still bring about the good of the research project going ahead. But, as soon as we omit the presence of the beggar it becomes obvious that this is not the case. For, what the research project needs is the beggar to be dead so that his body can be used for that purpose. Thus, we can see that not only do we need the beggar to be present, we need him to be dead in order for the research project to go ahead. So, whereas in Transplant, we need the presence of someone who is healthy, in this example we need the presence of someone who is on the verge of death. Hence, with regard to this example, just as with Transplant, the Means Doctrine delivers a judgement of moral impermissibility on the grounds that the bad effect is the means to the good effect.

Thus, the Means Doctrine can easily accommodate our intuitive judgement of this case. Furthermore, it does so without the need to consider whether the agent does, or does not, intend the death of the beggar. For as we said in Chapter 6, intentions need only concern us when it comes to determining judgements about the moral worth of a given agent. That is, intentions only come into play when we are applying the Intentions Doctrine. Having said that, let us now turn our attention to

the two military cases that we discussed earlier when we were concerned with how Quinn's Intentions Formulation of the DDE dealt with them. That is, let us now consider how the Means Doctrine handles Strategic Bombing and Terror Bombing.

The Means Doctrine as applied to Strategic Bombing and Terror Bombing.

If we first of all consider how the DDE is traditionally said to explain the moral difference between Strategic Bombing and Terror Bombing, what we find is an echo of what was said with regard to the moral difference between Trolley and Transplant. For we find that we are meant to accept that a judgement of moral permissibility is warranted with regard to Strategic Bombing because it is a case where the agent foresees but does not intend the harm that befalls the civilians that live in the vicinity of the weapons factory, whereas a judgement of moral impermissibility is warranted with regard to Terror Bombing because it is a case where the agent does intend the harm that befalls the civilians in that example. Quinn uses the application of the Intentions Formulation of the DDE in support of such an explanation. He does so by explaining that we can verify the presence or absence of intention on the part of the agent by determining whether or not the agent's goal is served by the involvement of the civilians in question. With this in mind, let us now determine how the Means Doctrine explains the moral difference between these two examples. Let us start by looking at how the Means Doctrine handles Strategic Bombing.

Strategic Bombing.

To apply the Means Doctrine to Strategic Bombing we need to determine whether we could still drop bombs on the weapons factory and bring the production of weapons to an end, if the presence of the civilians who live in the vicinity of the weapons factory were omitted. The answer is that we could. We can see that this is the case because our ability to drop bombs on the weapons factory in no way

depends on there being any civilians in the area that surrounds it. Hence, through the application of the Omissions Test we can determine that the bad effect is not the means to the good effect. Thus, the Means Doctrine will deliver a judgement of moral permissibility with regard to Strategic Bombing. This judgement is based on the assumption that if the aggressor nation has no weapons their attacks on us will stop. And this certainly seems a reasonable assumption. Keeping this in mind, let us now determine how the Means Doctrine handles Terror Bombing.

Terror Bombing.

In Terror Bombing we are working on the assumption that if we drop bombs on a group of innocent civilians the leaders of the aggressor nation will become demoralised and stop their attacks on us. How effective this plan will be seems to be open to doubt, given that it seems just as possible that the leaders of the aggressor nation might be incensed by our action and step up their attacks on us. The fact that our action in no way diminishes the weapons available for this purpose supports the credibility of this claim. Hence, right from the start, it looks as though it might be difficult to determine that this is a case where we can be reasonably certain that if we perform the act in question a proportionately greater good will occur. But having said that, let us simply assume that we have it on good authority that the leaders of the aggressor nation will stop their attacks on us if we do drop bombs on a given group of civilians. Then what we need to do is check whether or not the bombs being dropped on the innocent civilians does or does not count as the means to the good in question.

In order to do this we need to apply the Omissions Test and determine whether we could still bring about the good in question without the presence of those innocent civilians. It is clear that we could not. For, it is obvious that we need the presence of those civilians so that harm can befall them, otherwise we will have no chance of succeeding in our plan to demoralise the leaders of the aggressor nation. Hence, in Terror Bombing the harm that befalls the civilians is the means to the good

effect. Thus, according to the Means Doctrine this example warrants a judgement of moral impermissibility.

But, say, for example, that we know that the number of civilians affected could be greatly reduced if we were to employ the tactics of Terror Bombing, rather than those associated with Strategic Bombing. Would we have to accept the tactics of Strategic Bombing with its larger number of civilian deaths just because their deaths would not be the means to the good of stopping the aggressor nations attacks on us? If we were talking an absolutist approach to the DDE it looks as though we would. But we are not doing so. So, there could be a case for claiming that because the attacks upon us are unprovoked and, therefore, unjustified it is open to us to use the tactics associated with Terror Bombing provided we do so on the grounds that fewer civilians will be harmed than would be the case if we were to use the tactics associated with Strategic Bombing instead. But, again, this is working on the assumption that Terror Bombing will result in the aggressor nation stopping their attacks on us. Moreover, it in no way undermines the fact that when we apply the Means Doctrine to these two examples it is clear that it is only in Strategic Bombing that the bad effect is not the means to the good effect. Having established that this is the case, let us now consider how the Means Doctrine handles the other two examples that are so often associated with the DDE - namely the Hysterectomy Case and the Craniotomy Case.

The Means Doctrine as applied to the Hysterectomy Case and the Craniotomy Case.

Traditionally, the DDE is said to deliver a judgement of moral permissibility with regard to the Hysterectomy Case because it is a case where the death of the unborn child is foreseen rather than intended, whereas in the Craniotomy Case it delivers a judgement of moral impermissibility because it is a case where the death of the unborn child is intended. Thus, most of the discussions about these two cases centre around arguing about whether or not this is so. And, as we saw in Chapter

3, Quinn goes to a great deal of trouble to explain just how the Intentions Formulation of the DDE can uphold the fact that this is the case. However, the problem remains that some of us, at least, intuitively think that both of these cases warrant a judgement of moral permissibility. Thus, it looks as though we need a Doctrine that can both explain and accommodate our intuitive response to these two cases. Can the Means Doctrine do that? Let us look at each case in turn and determine whether or not it can.

The Hysterectomy Case.

In the Hysterectomy Case we are dealing with a pregnant woman who is found to be suffering from cancer of the womb. The claim here is that the woman will die unless we remove her womb. There are two important features about this case which never seem to get explained. Firstly, it is never made clear just when the woman is likely to die. Secondly, we are not told precisely what stage of development the child she is carrying has reached when the diagnosis is made. But then you might think, ‘why should we need to know such things?’

The reason is that there are a number of ways to look at this case. If the unborn child is in the very early stages of its development and the woman’s life expectancy, without the operation, is limited to weeks rather than months then this looks as though it is a case where if we do nothing both the woman and the unborn child will die. For our technology is such that no foetus in the early stages of its development can survive outside the womb of the woman who is carrying it. If the unborn child is in the latter stages of its development then it seems we might well be dealing with a case where we could both operate on the woman and save the unborn child. If the woman’s life expectancy, without the operation, will allow her just enough time to see her child delivered then our choice seems to be between operating, thereby saving the woman, or not operating, thereby saving the child. Thus, this example is not as straight forward as it might at first seem.

However, given that there is this lack of information, we are going to assume that this is a case where the woman's cancer is detected at approximately the same time as she is found to be pregnant. Hence, we are assuming that the unborn child is at a very early stage of its development. Furthermore, given the seriousness of a cancer diagnosis we are going to also assume that life expectancy of the woman is measurable in weeks, rather than months, if the operation is not performed. We are, therefore, assuming that this is a case where, no matter what, we are not going to be able to save the unborn child. Thus, this is a case where we are faced with a choice of either saving or not saving the woman. Hence, we are talking here in terms of a ratio of 1:0. We, therefore, need to determine whether the good of saving the woman is proportionately better than not saving her, given that the bad of the unborn child's death will occur either way. It certainly seems that we can claim that this is so. If this is the case, then what we need to do next is apply the Omissions Test and determine whether or not the harm that befalls the unborn child is the means to the saving of the woman.

Thus, we need to omit the presence of the unborn child and determine whether we could still save the woman. The answer is that we could. This is because the removal of the woman's womb in no way depends on there being an unborn child in it. Hence, this is a case where the death of the unborn child is not an effective part of the causal chain that results in the saving of the woman. That is, it is not the means to the good effect. Thus, according to the Means Doctrine this is a case that warrants a judgement of moral permissibility. Furthermore, this seems to be a judgement that is in accord with the way we intuitively think that this case should be judged. Having determined that this is the case, let us now turn our attention to the Craniotomy Case.

The Craniotomy Case.

In the Craniotomy Case what we have is a situation where, during the process of delivery, the unborn child has become stuck in the birth canal of the woman's

pelvis. The first point to note about this case is that the unborn child we are dealing with has reached the stage of its development where it should be able to survive outside of the woman's womb. In fact, you could say that it has reached the stage of its development where it is imperative that it is removed from the woman's womb. However, the question of the unborn child's survival is dependent on more than just its advanced stage of development. For there are, of course, other factors that will come into play with regard to its ability to survive delivery. This is presumably why, as we pointed out in Chapter 3, that this example has two versions. One version is where it is stipulated that the unborn child cannot survive the woman's death and another is where it can. However, in either version it is possible to save the woman if we crush the unborn child's skull thereby allowing it to be removed from the birth canal.¹ The first of these we shall refer to as the Tragic version and the second as the Woman/Child version. Thus, let us look at each in turn.

The Tragic Version of the Craniotomy Case.

In the Tragic version of the Craniotomy Case, as in the Hysterectomy Case, there is no question of our being able to save the unborn child. Thus, in this case, too, we have to determine whether or not it is morally permissible to save the woman, given that either way the unborn child will not survive. Hence, here too we are talking in terms of 1:0 ratio, rather than a ratio of 1:1. Moreover, we are never given any indication of what makes it the case that the unborn child cannot survive the mother's death. So it is hard to challenge the notion that the unborn child will die when the mother does. However, what we do know is that we can save the woman's life provided we crush the unborn child's skull so that we can remove it

¹ It is interesting to note that it is never suggested that we could possibly save the unborn child who will not survive the woman's death if we prised her pelvis apart and hauled the unborn child out. This could be because such a procedure is not technically possible or it could be that the mere thought of it is too gruesome to bear. However, the idea of crushing the unborn child's skull is pretty gruesome, too.

from the birth canal. Thus, what we need to do now is determine what judgement the Means Doctrine will deliver with regard to this case.

Thus, in this case, as with all the others, we need to omit the presence of the unborn child and determine whether we could still save the woman. However, as soon as we omit the presence of the unborn child in this case something untoward happens. We find that the woman is no longer in danger and, therefore, no longer in need of saving. Thus, we become aware of the fact that the woman's life is under threat precisely because the unborn child is stuck in her pelvis. Hence, we could say that the unborn child is an, albeit unwitting, threat to the woman's life. Thus, we might think that if only the child's head had not been so big there would not be a problem. But, there again, we might say that if only the woman's pelvis had been bigger there would be no problem. Thus, we might just as easily claim that it is the woman who is an, albeit unwitting, threat to the unborn child. And yet we must not forget that, even if this is so, we still have to face the fact that the unborn child cannot survive. Is it not better to save the one that can be saved, rather than standby and watch both die? It certainly seems as though it would be.

Hence, we might well consider that this case warrants a judgement of moral permissibility but it is not at all clear that we can reach this judgement through the application of the Means Doctrine. But that is not to say that there is not some other principle that applies here. For, remember, we are not taking an absolutist position with regard to the Means Doctrine. We are only offering it as being one doctrine among many that can be used to determine the moral permissibility or impermissibility of a given example.

Thus, it could be that we just have to accept that this example does not come within the remit of the Means Doctrine. So, here again, we see the importance of determining what the structure of a given example actually is. That is, we can see how important it is not to simply assume that one example is structurally akin to another simply on the grounds that certain features are common to both. Having

said that, let us now turn our attention to the Woman/Child version of the Craniotomy Case.

The Woman/Child Version of the Craniotomy Case.

The first point to note with regard to the Woman/Child version of the Craniotomy Case is that we are not dealing with a ratio of 1:0 as we are in the Hysterectomy Case and the Tragic version of the Craniotomy Case. For here we are dealing with a 1:1 ratio. This is because, in this case, it is stipulated that the unborn child can survive the woman's death. So, right away, we can see that this case is structurally different from both the Tragic version and the Hysterectomy Case. The second point to note is that we are not dealing with a ratio of 5:1 as we were with virtually all the other cases. This second point should immediately make us question whether this is a case that will come under the remit of the Means Doctrine, given that the DDE applies only to cases where the good effect is proportionately greater than the bad effect.

But then why has the Craniotomy Case, more than any other, come to be associated with the DDE? It could be that, traditionally, the woman has been regarded as having a count of five.² However, if we regard the unborn child and the woman as being on a moral par with one another it is not at all clear that we should do this. And yet what we are told is that, according to the traditional view of the DDE, what we have to do in this case is let the mother die because to do otherwise would involve our intending the harm that befalls the unborn child. The implication here is that it is morally permissible to let the woman die because to do so does not involve our intending the harm that befalls her. For that harm is merely foreseen. But where is the necessary proportionately greater good? It would seem that the only way this judgement gives us a proportionately greater

² Foot certainly seems to think that we have a tendency to think that this is the case. See Foot. P. (1976) p.302.

good is if we give the count of five to the unborn child. However, why should we do that?

As far as the Means Doctrine is concerned it looks as though it does not apply to this version of the Craniotomy Case any more than it did with regard to the Tragic version. Thus, it would seem that with regard to both of these versions of the Craniotomy Case we need to make appeal to some other principle in order to determine what action is or is not morally permissible. What principle applies here is a matter for further research.

The fact that we recognise that the Craniotomy Case is outwith the remit of the Means Doctrine in no way undermines the claim that we can use it to determine the moral difference between examples like Transplant and Trolley. However, it does help us to see that the structure of the Craniotomy Case is different from any of the other examples that we have discussed. Having said that there is an example that Foot mentions which she seems to think of as being akin to the Craniotomy Case. This example involves a party of six potholers, one of whom is fat. Thus, we shall refer to this as the Fat-Potholer Case. Hence, it is to this example that we now turn.

The Fat-Potholer Case: A party of potholers have imprudently allowed the fat man amongst them to lead the way out of the cave, and he gets struck in the entrance of the cave thereby causing the other five to be trapped inside the cave. This presents a problem because the water level within the cave is steadily rising.³

There are two versions of this example. In the first version the fat potholer is facing into the cave. We will refer to this as the Inward Facing version. In the second version the fat potholer is facing outwards. We will refer to this as the Outward Facing version. With regard to both of these versions of the case it is stipulated that the five potholers have at their disposal a stick of dynamite. Thus, they have the where-with-all to blast the fat potholer out of the mouth of the cave. However, given that we do not normally think of the woman in the Craniotomy case as being in a position to save herself it seems more appropriate to claim that

3 See Foot, P. (1976) p.297.

the dynamite is in our hands, rather than being in the hands of the five.⁴ Thus, we need to determine whether or not it is morally permissible for us to blow up the fat potholer and thereby save the five. Let us consider each version in turn.

The Fat-Potholer (Inward Facing) Case.

In this version of the Potholer example our choice is between saving the five or not saving them. For, in this example, just as in the Hysterectomy Case and the Tragic version of the Craniotomy Case, there is no question of our being able to save the one. This is because in this version of the example the fat potholer is also under threat from the rising flood waters within the cave. In this version, unlike the Outward Facing version, there is no question of our having time to wait for the fat potholer to lose weight so that we can then simply pull him out of the entrance to the cave. So here we are talking in terms of a 5:0 ratio.

Hence, the question we are faced with here is whether it is morally permissible to save the five, given that there is no way that we can save the one who is stuck in the entrance. But in this case, just as in the Craniotomy Case, we find that if we consider whether we could still save the five if we omit the presence of the one it becomes obvious that it is the presence of the one that is causing the problem. For if he were not stuck in the entrance of the cave then either of two things could happen. The five could simply walk out of the cave before the flood water gets to them or we could go in and get them out.

Thus, in this case, just as in the Craniotomy Case there is an inextricable link between the one and the five which prevents us from effectively applying the Omissions Test. Hence, we cannot apply the Means Doctrine to this version of the example. All we can say is that it seems that it should be morally permissible to

⁴ This claim is based on the notion that in the Potholer example the five equate with the woman in the Craniotomy Case and the fat potholer equates with the unborn child, given that he is the one that is stuck in the mouth of the cave.

save the five, given that there is no chance of saving the one. In support of this claim just think what would the case if we put the dynamite back in the hands of the five? Would they have any cause to think that they could use the dynamite to save themselves? It seems that this could well be the case. But, here again, we would need to give some explanation for why this is the so. However, to do that would take us outwith the boundaries of this thesis. Thus, let us instead turn our attention to the Outward Facing version of this example.

The Fat-Potholer (Outward Facing) Case.

In this version of the example the fat potholer is under no threat. This is because, although he is trapped in the entrance of the cave, we will eventually be able to get him out of that predicament. In effect, his being trapped in the mouth of the cave is no different than the one being trapped on the road in the One-in-the-Road example. Similarly, the fact that the five are in danger of being drowned in the flood waters of the cave is no different from the five being in danger of drowning in the One-in-the-Road example. Indeed it looks as though we could say that this version of Fat-Potholer is just an underground version of the One-in-the-Road example. And yet, given what we have just said with regard to the Inward Facing version of this example, that cannot be the case. For in this version of the example, too, there is an inextricable link between the one and the five that precludes us from making such a claim. What unites this case with the Inward Facing version and differentiates it from the One-in-the-Road example is the fact that the presence of the fat potholer in the entrance of the cave is what puts the five under threat from the rising flood waters.

Thus, we have to concede that the Means Doctrine cannot be used to deliver a judgement with regard to this case. But, given that this version of the example is meant to be analogous with the Woman/Child version of the Craniotomy Case, this is hardly surprising. Thus, here, too, we need to accept that if we are going to determine the moral permissibility or impermissibility of this case we need to look

for some alternative principle. But, there again, this does not undermine the fact that the Means Doctrine can explain the moral difference between example like Trolley and Transplant without having to think that we are making judgements that are not consistent with one another. In support of this claim, let us now consider whether the Means Doctrine can explain the moral difference between the two other medical examples that we discussed earlier. That is, let us consider how the Means Doctrine handles the comparison that Quinn makes between the Direction of Resources example and Guinea Pig.

The Means Doctrine as Applied to the Direction of Resources example and Guinea Pig.

If you recall, Direction of Resources and Guinea Pig are the two examples that Quinn devised to show that his Intentions Formulation of the DDE could cut across the distinction that the DDA makes between harming and allowing harm. Thus, Quinn introduces this comparison between examples, as a contrast to the comparison between the Hysterectomy Case and the Craniotomy Case. Thus, what we want to see now is whether the Means Doctrine can deliver a judgement with regard to both of these examples, even though, as we said above, it cannot do so with regard to the Craniotomy Case. Both of these examples involve the allocation of limited resources to the investigation and treatment of a new life threatening disease. Quinn leaves the details of both cases somewhat vague. With this fact noted, let us consider each example in turn.

The Directed Resources Example.

In this example we decide to direct the allocation of resources towards treating the disease the best way we can. We, therefore, treat the easy cases and leave the difficult cases untreated. The implication is that in this way we will be able to save more people. Thus, the good effect is that the easy cases get treated and the

bad effect is that the difficult cases are left untreated. Thus, we need to apply the Means Doctrine and determine whether or not the bad effect is the means to the good effect. Hence, we need to omit the presence of those who are severely affected by the disease and ask whether we can still treat those who can easily be treated. The answer is that we can. This is because our treating the easy cases is not dependent on the presence of anyone who is severely affected by the disease. Hence, the harm that befalls those who are severely affected by the disease is not an effective part of the causal chain that results in the saving of those who can easily be treated. Thus, this is a case where the Means Doctrine can deliver a judgement and that judgement is one of moral permissibility. For, this is a case where the bad effect is not the means to the good effect. But can it also deliver a judgement with regard to Guinea Pig?

Guinea Pig.

In this example all our available money is spent on investigating the nature of the disease. Thus, we deliberately leave the difficult cases untreated so that we can learn more about the disease. The implication here is that this will help us save many more people in the future. But, given what we have just said with regard the Direction of Resources example, it becomes clear that here the difficult cases are an effective part of the causal chain that results in saving the many in the future. This is because, in this case, it is not possible to omit the difficult cases and still save the many in the future. For here we need there to be those who are severely affected by the disease. Otherwise, we will not be able to gain the necessary information about the disease. Thus, with regard to this example, the Means Doctrine will deliver a judgement of moral impermissibility on the grounds that the bad effect is the means to the good effect.

Hence, the Means Doctrine can deliver judgements with regard to both of these examples, while at the same time explaining why it is that both of these judgements are consistent with one another. Thus, the comparison between these

two examples, just like the comparison between Trolley and Transplant, can be used in support of our claim that the Means Doctrine can accommodate our intuitive response to cases, while at the same time explaining why some examples warrant a judgement of moral permissibility while others do not. Having determined that this is the case, let us now turn our attention onto one last example. This is an example that we have not mentioned before. We mention it now because it is an example that is often associated with the DDE. Thus, it seems important to consider how the Means Doctrine handles it. We will refer to it as the Painkilling Injection example.

The Means Doctrine as Applied to the Painkilling Injection Example.

The Painkilling Injection example is normally represented as being the case where we have to decide whether it is morally permissible to give a painkilling injection to a terminally ill patient in order to relieve her pain, given that we know that the injection could also hasten her death. Traditionally, it has been said that the DDE permits us to give the injection provided our intention in doing so is that it should relieve the patient's pain and not that it should hasten the patient's death. Thus, here again, we can understand why the DDE is accused of being nothing more than sophistry. But, given the claim that we have made about intentions being the concern of the Intentions Doctrine, it seems that we should be able to explain the moral permissibility of this example through the application of the Means Doctrine without leaving ourselves open to such a charge. Hence, let us see if this is the case.

The first point to note about this example is the fact that the patient that we are dealing with is suffering from a terminal condition. This means that the patient's condition can only get worse. That is, there is no possibility of it getting better. Thus, the kind of pain we are taking about here is both severe and/or unremitting which means it is debilitating. What makes this pain so hard to bear is the fact that it is not going to go away and, in fact, it is probably going to get worse as time

goes on.⁵ Hence, the relief of pain counts as the good in this example. But is it a good which is proportionately greater than the bad? In order to answer this question we need to realise that the bad that we are talking about here is not death, as such, but rather the hastening of death. But, given that we normally think of death as being the ultimate in bad, it is probably hard to see how we would not think of the possibility of the hastening of death as being as close as you can get to the ultimate bad. And, of course, for some people this may always be the case. However, once you start to think of, or experience, a life that is dominated by pain and suffering it becomes slightly easier to see how the possibility of the hastening of death could seem less of a bad than it normally would. If this is the case, then it seems that the relief of pain could be proportionately greater than the bad of the possibility of the hastening of death.

Having said that, what we need to do now is apply the Omissions Test. Thus, we need to consider whether we could still give a painkilling injection and relieve the patient's pain in the absence of the possibility of the hastening of death. And, it certainly seems as though we could, provided of course that we are using the appropriate drug and dosage. It is, therefore, obvious that the possibility of the hastening of death is not an essential part of the causal chain that results in the good of relieving the patient's pain. Thus, we can determine that this is a case where the Means Doctrine will deliver a judgement of moral permissibility on the grounds that the bad effect is not the means to the good effect.

But then we might ask what if the patient's pain is such that no injection of a painkilling drug is going to relieve it? What if death is seen to be that patient's only escape from pain? Then it could well be that death takes on the appearance of a good, rather than a bad. But then we have a completely different example. For then we are talking in terms of euthanasia and the use of a lethal injection.⁶

⁵ Although we normally think of the patient in this example as being in the terminal stages of a disease it seems as though it is just as applicable to other cases as well. For example, it could be that the patient has an illness that causes severe and unremitting pain to the extent that they are completely debilitated but where death is not considered to be imminent.

⁶ With regard to the distinction between lethal injections and painkilling injections see Singer's discussion of the Lillian Boyes Case. Singer, P. (1995) *Rethinking Life & Death*. p.139.

That is, we are talking of an example that does not seem to fall within the remit of this thesis and its claims with regard to the Means Doctrine. So this, too, is a matter for further research.

However, the fact that the Means Doctrine does deliver a judgement of moral permissibility with regard to the Painkilling Injection example is comforting. For it means that, even if we cannot return a patient to health, we can at least do our best to make sure that she does not need to face death in pain unless she chooses to do so.

Chapter 9

Is there a Theoretical Motivation for Accepting the Doctrine of Double Effect?

Throughout this thesis our strategy has been to defend the DDE by demonstrating that it is a consistent and coherent doctrine that can survive the various attacks made upon it. We have done so by making out a case for why the DDE should be regarded as two quite separate doctrines - each with its own function to fulfil. Hence, we have proposed that the DDE involves the application of both the Intentions Doctrine and the Means Doctrine. This claim is based on the fact that there is a distinction to be drawn between making moral judgements that pertain to the moral worth of a given agent, on the one hand, and those that pertain to the moral permissibility or impermissibility of a given act, on the other. Thus, we maintain that it is through the application of the Intentions Doctrine that we can determine the moral worth of a given agent, whereas it is through the application of the Means Doctrine that we can determine the moral permissibility or impermissibility of an act that has two effects - one good (proportionately so) and one bad.

This idea that the DDE is a double doctrine also allows for the claim that all the concerns about the difficulty of determining what the intentions of a given agent are can be directed towards the Intentions Doctrine. This means that when it comes to the application of the Means Doctrine we are free of such concerns. Thus, the focus of our attention can be directed toward the objective task of determining whether a given bad effect is or is not the means to the good effect in question. To assist us in this task we have devised what we have called the Omissions Test. And, over the last two chapters, we have shown how it can be used to deliver judgements with regard to a wide range of examples. Thus, we have concluded that the Means Doctrine specifically, and the DDE in general, can handle these examples better than the proposals put forward by Foot, Quinn,

Thomson, and Kamm. For the Means Doctrine delivers judgements that are both consistent and defensible.

We have shown the consistency of its judgements by explaining that, if the bad effect in a given example is the means to the good effect, then it, like Transplant, warrants a judgement of moral impermissibility. But if the bad effect in a given example is not the means to the good effect then it, like Trolley, warrants a judgement of moral permissibility. Thus, we have used the strength and shared nature of our intuitive responses to examples like Transplant and Trolley in order to explain and determine the moral permissibility or impermissibility of a given case. Hence, we have been able to uphold our claim that cases like Fat-Man Loop, Fat-Man Trolley, and Fat-Man Bridge are all structurally akin to Transplant despite their apparent similarity to Trolley. Similarly, we have been able to uphold our claim that cases like the One-in-the-Road, Poisonous Fumes, Shake-the-Bridge, and Grenade are all structurally akin to Trolley, despite the fact that they appear not to be.

Thus, in effect, what we have shown is that, through the process of what is often referred to as *narrow reflective equilibrium*, we can establish that we have a basic theoretical justification for accepting the application of the DDE. What we want to do now is tentatively suggest that there may be a higher level of theoretical justification to be gained for the acceptance of the DDE. So, we now want to consider the possibility that the DDE is in keeping with the spirit of the Kantian ideal of human community and interaction. However, we readily accept that a much deeper exploration of this question would be needed in order to give this claim any real substance. But that deeper exploration is a task to be explored in future work.

The notion that the presentation of the DDE as a double doctrine can be given a theoretical motivation within a Kantian framework is generated by the thought that the means/not means distinction fits in well with Kant's claim that we should:

*Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.*¹

We are, of course, not the first to put forward such a suggestion. For Quinn also claims that the DDE echoes the “Kantian ideal of human community and interaction.”² Moreover, Thomson, albeit fleetingly, accepts that it would not be surprising if we were to think that Kant’s claim could support our intuitive judgement that Trolley warrants a judgement of moral permissibility, but Transplant does not.³ However, Thomson quickly dismisses the usefulness of this thought on the grounds that it is not at all obvious what treating a person *simply* as a means amounts to. Nor, for that matter, is it obvious why it would be wrong to do so.⁴ But, just because the answers to both of these difficulties are not obvious, it does not follow that there are no answers. And, given the amount of care and thought that we have put into looking at the structure of all of the examples with which we have been dealing, we have cause to think that we can now give answers to both of these difficult questions. If this is so, then Thomson should have no grounds for dismissing the thought that the moral differences between examples can be given support from within a Kantian framework. With this in mind, let us now explain why we think we can give answers to both of the questions that Thomson recognises as being difficult.

Let us start by thinking about what treating a person *simply* as a means amounts to. The first thing to note about Kant’s claim is that he is not stipulating that we cannot treat ourselves or others as a means to some end, but, rather, he is informing us that we cannot treat ourselves or others *simply* as a means. And it is just as well that he does not rule out our using ourselves and others as a means. For, in everyday terms, so many of the acts that we perform involve using people as a means to some end or other. We use postmen to deliver our letters. We use milkmen to deliver our milk. We use policemen to enforce law and order. We could go on and on, for the list is endless. But, what matters with regard to acts

1 Paton, H. J. (1948) p.91.

2 Quinn, W. (1993) p.192.

3 See Thomson, J. (1992) p.284.

4 See Thomson, J. (1992) p.284.

where we are using people to do things like deliver the mail, milk, and law and order is that, in doing so, we are still respecting and upholding their value as free rational agents. That is, we are not treating them in a way that denies them their value as free rational agents. To see what it would be to use people in all these various ways and yet not be respecting their value, all we need do is think in terms of slavery. For when we think in terms of these tasks being accomplished through slavery, we lose all sense that we are using these people in a way that respects and upholds them as being free and rational. Thus, when Kant stipulates that we must not treat ourselves or others *simply* as a means it seems reasonable to claim that he means we should not treat them as though they have no value.

The claim that we want to make is that the Means Doctrine upholds the notion that the moral permissibility or impermissibility of acts can be established by determining the presence or absence of respect for the value of agents. This is because the Means Doctrine allows us to distinguish between acts that uphold the value of both the greater and the lesser number that are involved in a given case and acts that only uphold the value of the greater number. The Means Doctrine allow us to make this distinction because it allows us to determine when a given bad effect is or is not the means to the saving of the greater number. However, it is not at all obvious why the means/not means distinction should equate with the absence or presence of respect for the value of agents. For, after all, in all of these examples, no matter whether the bad effect is, or is not, the means to the saving of the greater number, it is going to be the case that the lesser number are going to die if we perform the act in question. So, it seems reasonable to assume that, no matter which case we are dealing with, we deny the value of the lesser number. But, given the amount of discussion we have had with regard to the comparison between means and not means cases, we should now be able to see that this is not the case.

Recall, if you will, the comparison that we made between Fat-Man Loop and Trolley.⁵ What differentiates the act of switching tracks in these two cases is the

5 See Chapter 4 - Figures 1 and 2.

fact that, in the former case, if the hitting of the one were omitted then that act would not result in the five being saved. For, in Fat-Man Loop, it is the hitting of the one that stops the trolley reaching the five. Hence, in Fat-Man Loop, we view the one as we would a heavy object. That is, we view the one as being something that is heavy enough to stop an out-of-control trolley from reaching the five. This is not the case with regard to Trolley. Similarly, if we think of Transplant, we can see that if we were to cut up the one and use his organs to save the five, we would be viewing him as if he were nothing more than an object. Thus, our claim is that, if the bad effect is the means to the good effect, then the lesser number in the given example are being used just as if they were an object or a tool. That is, the lesser number are being used as if they have no value which, in Kantian terms, means that we are treating them as if they were not ends in themselves.

Hence, we should now be able to see how to answer Thomson's other concern. For, it now seems that we can say what makes it wrong to treat someone *simply* as a means is that, if we do treat people in this way we undermine the idea that we all have a value that demands respect. Thus, what makes it morally permissible to save the greater number in cases like Trolley is the fact that the act that we perform does uphold the idea that we all have a value that is worthy of respect. For these are not cases where the one is treated like an object or a tool, even though they are cases where, if we perform the act in question, the lesser number will die. Thus, what makes it morally impermissible to save the greater number in cases like Transplant is the fact that, although the act that we perform recognises the value of the greater number as being what underlies the need for them to be saved, it does so at the expense of denying the lesser number that same value. For in cases, like Transplant, the act in question will not result in the good effect, unless, or until, the bad effect befalls the lesser number. So, the use of lesser number as an object or a tool is an inescapable given in cases where the bad effect is the means to the good effect. Hence, it seems that the Means Doctrine can be said to be in keeping with the spirit of Kant's claim that we are all ends in themselves and should be treated as such. Thus, the suggestion that the Means

Doctrine specifically, and the DDE in general, can be credited with a higher theoretical motivation.

However, as far as the aims of this thesis are concerned, what matters is that we have been able to theoretically motivate the Means Doctrine on at least a basic level through a process of reflective equilibrium. For we have shown how the Means Doctrine specifically, and the DDE in general, can determine the moral permissibility or impermissibility of a wide range of cases without those judgements seeming to be inconsistent with one another. Moreover, it does so in a way that is plausible, coherent, and reasonably simple. Thus, it is our claim that the DDE can explain and uphold our intuitive judgement in cases like Trolley and Transplant, provided that we recognise that it involves the application of two quite separate doctrines - namely the Intentions Doctrine and the Means Doctrine.

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