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Quinn on Double Effect: The Problem of “Closeness”*

John Martin Fischer, Mark Ravizza, and David Copp

Pseek raisha ve-lo yamut. (You can’t cut off the head of a chicken and then say you’re not responsible for its death.) [TALMUD]

I

There are situations in which good can be secured for some people only if others suffer harm. The Doctrine of Double Effect (DDE) suggests that in these situations there are stronger reasons not to pursue the good when the harm is intended as a means than when it is merely foreseen. Warren Quinn has recently discussed the DDE and its application to some such situations.¹ His project is first to find a suitable formulation of the DDE according to which it can be seen to distinguish the sorts of cases its proponents wish to distinguish. Second, Quinn wishes to provide a plausible rationale for the DDE, so construed.

Consider two cases between which the DDE putatively distinguishes. It is intuitively easier to justify strategic bombing than terror bombing.² Indeed, this view must have been the justification (if there was a justification) for the United States’ massive bombing of Iraq conjoined with its condemnation of Iraq’s “scud” missile attacks on (for example) Israel. A strategic bomber bombs an enemy factory in

* A previous version of this article was read at the Central Division Meetings of the American Philosophical Association in Louisville, Kentucky, in April 1992. On that occasion we received insightful and helpful comments from our commentator, Kenneth Kemp; also, we benefited from incisive questions by Michael Bratman. Further, we have been helped by comments by Paul Hoffman. The article has undergone considerable revision as a result of extremely detailed and useful written comments by Jeff McMahan and Shelly Kagan.

1. Warren S. Quinn, “Actions, Intentions, and Consequences: The Doctrine of Double Effect,” *Philosophy and Public Affairs* 18 (1989): 334–51.

2. What we have in mind might more accurately be called “tactical bombing” rather than “strategic bombing.” But we follow the usage in the literature on the DDE.

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order to destroy its productive capacity, but in doing this she foresees that she will cause the deaths of innocent civilians who live nearby. In contrast, a terror bomber deliberately kills innocent civilians in order to demoralize the enemy. The DDE should distinguish these two kinds of cases. As Quinn puts it, the DDE "discriminates against agency in which there is some kind of intending of an objectionable outcome as conducive to the agent's end, and it discriminates in favor of agency that involves only foreseeing, but not that kind of intending, of an objectionable outcome."³

But on some interpretations of the DDE it does not succeed in distinguishing between such agents as the terror bomber and the strategic bomber. Someone might argue that the terror bomber may intend only her bombing and the "seeming deaths" of the innocent civilians—not the actual deaths of the civilians. Jonathan Bennett has argued that the terror bomber does not need the civilians actually to be dead.⁴ Rather, she only needs them to be "as good as dead" and to seem dead until the war ends; if, miraculously, they were to "come back to life" after the war was over, this would in no way impede the terror bomber's plans (or vitiate her strategy).

Against this maneuver a proponent of the DDE may invoke the notion of "closeness" in the following way. The terror bomber "strictly intends" the bombing of the civilians. And, given the "closeness" of the connection between the bombing and the deaths of the civilians, it follows that she also intends the deaths of the civilians. That is, the notion of closeness is adduced to provide a transition from what is intended in some strict (and relatively uncontroversial) sense to the resultant harm. This transition involves the transfer of intention via the medium of "closeness."

The following is a classic presentation of the idea of closeness by Philippa Foot:

Consider the story, well known to philosophers, of the fat man stuck in the mouth of the cave. A party of pot-holers have imprudently allowed the fat man to lead them as they make their way out of the cave, and he gets stuck, trapping the others behind him. Obviously the right thing to do is to sit down and wait until the fat man grows thin; but philosophers have arranged that flood waters should be rising within the cave. Luckily (luckily?) the trapped party have with them a stick of dynamite with which they can blast the fat man out of the mouth of the cave. Either they use the dynamite or they drown. In one version the fat man, whose head is *in* the cave, will drown with them; in the other he will be rescued in due course. Problem: may they use

3. *Ibid.*, p. 335.

4. Jonathan Bennett, *Morality and Consequences*, Tanner Lectures on Human Values 2 (Salt Lake City: University of Utah Press, 1981), pp. 110–11.

the dynamite or not? [The example is introduced in part] because it will serve to show how ridiculous one version of the doctrine of the double effect would be. For suppose that the trapped explorers were to argue that the death of the fat man might be taken as a merely foreseen consequence of the act of blowing him up. ("We didn't want to kill him . . . only to blow him into small pieces" or even ". . . only to blast him out of the cave.") I believe that those who use the doctrine of the double effect would rightly reject such a suggestion, although they will, of course, have considerable difficulty in explaining where the line is to be drawn. What is to be the criterion of "closeness" if we say that anything very close to what we are literally aiming at counts as if part of our aim?⁵

As Foot points out, the proponent of the doctrine of double effect needs to defend herself against the objection that her principle permits actions that she wants it to prohibit: in the case of the fat man in the cave, it might be objected that the DDE allows blowing the fat man to bits, because this (and not his death) is what is intended. Similarly, it might be argued that the DDE allows a craniotomy (in which the fetus's skull is crushed) because this—the crushing of the skull—and not the fetus's death is what is intended. (These problems are parallel to the problem about the "seeming deaths" pointed out by Bennett.) Traditionally, the proponent of the DDE has been inclined to invoke the notion of closeness to protect the intended implications: it is alleged that the death of the fat man and the death of the fetus are so "close" to what is strictly intended that they too are intended. But it is evident that this notion of closeness is obscure.

Because of this obscurity and its attendant problems of interpretation, Quinn wishes to avoid the notion of closeness altogether. Thus, his project is twofold: first, Quinn undertakes to give a formulation of the DDE which makes the appropriate distinctions without appeal to the notion of the closeness of the harm to what is strictly intended, and, second, Quinn proposes to provide a plausible rationale for the DDE, so interpreted. If Quinn's project is successful, it would solve an important traditional problem for the DDE.

II

Let us first look at Quinn's proposal for an interpretation of the DDE. There are two parts to this. First is his proposed distinction between "direct" and "indirect" agency. We argue that this distinction does not map onto the intuitive distinction that proponents of the DDE have had in mind. Second is his reading of the doctrine of double effect,

5. Philippa Foot, "The Problem of Abortion and the Doctrine of the Double Effect," in her *Virtues and Vices and Other Essays in Moral Philosophy* (Berkeley: University of California Press, 1978), pp. 21–22.

which results from his interpretation of the traditional doctrine in light of the distinction between direct and indirect agency. We argue in Section IV that the doctrine is normatively implausible on Quinn's interpretation of it.

Quinn says that, properly understood, the DDE distinguishes between "agency in which harm comes to some victims, at least in part, from the agent's deliberately involving them in something in order to further his purpose precisely by way of their being so involved . . . and harmful agency in which either nothing is in that way intended for the victims or what is so intended does not contribute to their harm."⁶ The first kind of agency is direct agency in the production of harm and the second kind of agency is indirect. According to Quinn, the DDE distinguishes between direct and indirect agency. He says,

Put this way, the doctrine solves the original problem of showing a genuine difference in the intentional structures of our contrasting cases, even under a strict interpretation of what is intended. And it makes no appeal to the problematic notion of 'closeness'. For direct agency requires neither that harm itself be useful nor that what is useful be causally connected in some especially close way with the harm it helps bring about. There is another, related advantage. With this version of the doctrine, we can sidestep all potentially controversial questions about whether the agents in our various cases kill or harm intentionally. It is enough that we can identify the things they uncontroversially intend as contributing to their goal.⁷

It is worth pointing out that Quinn interprets the account of the distinction between direct and indirect agency so that the agent violates a negative or positive moral right of the individual.⁸ In what follows, we shall restrict attention to cases in which the harm that befalls someone can reasonably be said to result from the violation of one of her moral rights by the agent in question.

The first thing to notice about Quinn's formulation is that it does not restrict attention to agency in which harm is foreseen. This marks a departure from the traditional idea, according to which the relevant

6. Quinn, p. 343.

7. *Ibid.*, p. 343.

8. *Ibid.*, pp. 344–47. It is interesting to note that absent this restriction the account has obviously implausible results. It would, e.g., classify a military commander's orders in a justified war as direct agency. (We owe this sort of example to Kenneth Kemp.) Suppose that such a military commander orders his troops into battle in a certain way, as a result of which some of the soldiers die. Here, the commander has deliberately involved his soldiers in something in order to further his purpose precisely by way of their being so involved; further, harm comes to them as a result of this. But, presumably, the commander's ordering his troops into battle in wartime is not a violation of their moral rights.

distinction is between actions with foreseen bad effects that are intended and those with foreseen bad effects that are merely foreseen. We will begin by following Quinn's explicit formulation of the distinction. However, since, as we will show, this formulation of the distinction between direct and indirect agency does not map onto the distinction that is traditionally incorporated into the DDE, we will go on to consider, in Section III, a modified distinction according to which all cases of direct and indirect agency are cases of agency in which the relevant harm is foreseen by the agent.

The second thing to notice is that Quinn's explicit formulation of the notion of direct agency employs the notion of an agent's "deliberately involving others in something." But nothing in the formulation implies that this "involvement" must be (or be taken to be) in any way bad for the relevant individuals (apart from the presupposed right violation). Given that the formulation also does not imply that the agent foresees the harm that comes to these individuals, the result is that Quinn's definition of harmful direct agency would be satisfied in a case where harm came to some victims as an inadvertent result of someone's having something good in mind for them (even though he violates one of their rights). But surely this is not the sort of agency the proponent of the DDE intends to "discriminate against"; after all, it is often alleged that the morally problematic feature of agents against whom the DDE is employed is that they "aim at evil" in some particularly salient way.

Evidently, Quinn must interpret the notion of "involvement" in such a way that the relevant agent has something in mind for the others which is (and, presumably, is taken to be) at least to some extent bad for them. (Further, the assumption is that some right of theirs is violated.) Even so, the account of direct agency seems to us problematic. This is because it seems to us that there can be cases in which an agent has in mind something which is "mildly bad" for someone else, and commits a minor violation of a right, but thereby brings about a serious harm (such as death) for that individual via a causal chain over which he has no control and for which he cannot be blamed. In such a case, Quinn's definition of direct agency in the production of harm is met, and yet the relevant agent may *not* be the sort of agent to which the DDE is allegedly applicable.

Suppose Jack plans to ask Mary out for a date. He knows Mary will be in a certain area of the library at a particular time. Just before that time, Jack sees Sam there. He realizes he would feel awkward if Sam were sitting there while he asked Mary for the date, but he does not want to confess this to Sam. In order to persuade Sam to go to the coffeehouse, he tells Sam a concocted story about some music being played there. He knows that Sam enjoys the coffeehouse, so it is not hard to persuade him. Sam takes the bait and drives toward the

coffeehouse. Unfortunately, as Sam is proceeding toward the coffeehouse, he is involved in an accident with a drunken driver and is killed. In this case, Jack has something bad (to some relatively mild degree) in mind for Sam, and indeed Jack deliberately involves Sam in something (he gets Sam out of the library) in order to further his purpose precisely by way of Sam's being so involved. Further, as a result of this, Sam dies. Jack has contributed to Sam's death. And he has violated Sam's right not to be deceived, even though his offense was only a mild one. But note that although Jack meets the conditions specified in Quinn's account of direct agency in the production of harm, Jack is not the sort of agent to which the DDE is thought to apply, for Jack does not "aim at evil" in the requisite way.

It might seem that there is a reading of Quinn's account which enables him to reply to the Jack and Sam example. Jack deliberately involves Sam in something (he keeps Sam away from the library) in order to further his purpose (of keeping Sam from preventing him from talking with Mary) precisely by way of Sam's being so involved, and harm comes to Sam from his driving to the coffeehouse, which is what Jack told Sam to do in order to keep him away from the library. There is a causal chain from the thing Jack involved Sam in to Sam's being harmed. But this may not seem to be enough for Jack's agency to count as harmful direct agency. It may be suggested that in cases of harmful direct agency, the harm must come to the victim at least in part from "precisely the aspect" of the events that further the agent's purpose. Quinn might say that it was the fact that Jack involved Sam in keeping away from the library that served his purpose precisely by way of Sam's being so involved, but harm didn't come to Sam as a result of this. It came to Sam from something "incidental," namely, that Jack kept Sam away from the library by sending him to the coffeehouse. He could have kept Sam away from the library in a multitude of other ways without its making any difference to his purpose. Thus, on this new reading of Quinn's account, Jack's agency is indirect rather than direct.

But notice that this new interpretation will yield clearly unacceptable results in other cases. Recall that someone might argue that the terror bomber strictly intends only her bombing and the "seeming deaths" of the civilians—not the "actual" deaths of the civilians. Quinn designed his account to sidestep this difficulty. But consider the new reading. The terror bomber deliberately involves the civilians in something (bombing the civilians so that they seem dead) in order to further her purpose (of terrorizing the enemy) precisely by way of the civilians' being so involved. The civilians are of course killed as a result. There is a causal chain from the bombing to their dying, so on the first reading, her action counts as direct agency. But on the new reading, it is arguable that harm didn't come to the civilians from precisely the aspect of the events that furthered her purpose of terrorizing the

enemy. For it was the civilians' seeming to be dead that served the bomber's purpose precisely by way of the civilians' being so involved. Harm came to the civilians from something "incidental," namely, that the bomber produced the seeming deaths by causing the civilians' actual deaths. She could perhaps have produced the seeming deaths in a variety of other ways, assuming, for example, that she were adept at Hollywood-style special effects. Their actual deaths could have been avoided. But this means that on the new reading, the terror bomber's agency arguably is indirect rather than direct. But Quinn is strongly committed to its being direct agency; indeed, Quinn motivates the introduction of his account by reference to just such a case (as presented by Bennett). Quinn must therefore reject the new reading and, with it, the proposed reply to our Jack and Sam example.⁹

The problem here is obvious. On the new reading, the terror bomber's action is classified as indirect agency because there was not a sufficiently close causal connection between precisely the aspect of what the terror bomber deliberately involved people in, in order to further her purpose (the seeming deaths), and the resulting harm (the actual deaths). The harm was not strictly causally required for the precise aspect of the events that furthered the bomber's purpose. One is tempted to say that the connection that is required on the new reading is "too close," while the connection required on the first reading is not "close enough." But, clearly, this is precisely the set of issues Quinn wishes to avoid. Indeed, it emerges from the above sort of example that Quinn is saddled with exactly the problem his theory was supposed to sidestep: specifying a suitable notion of closeness between what is strictly intended and the resultant harm.¹⁰

9. Someone might challenge our claim that on the new interpretation the terror bomber's agency is deemed indirect. He might argue as follows. The terror bomber's end is to intimidate the enemy into surrendering. Her means is to make the enemy believe that she has killed a large number of civilians. Her further means (the means of realizing her other means) is to drop a bomb on a city. And the harm that comes to the civilians comes to them from "precisely that aspect" of her action. So it might seem that the revised account of direct agency properly deems this a case of direct agency. But note that this response would imply that in the case of Jack and Sam, Jack's agency is direct. Jack's end is to ask Mary for a date. His means is to get Sam out of the library. His further means is to get Sam to drive to the coffeehouse. And the harm that comes to Sam comes to him from precisely that aspect of Jack's action. Of course, we are not saying that the case of the terror bomber is an exact parallel to the case of Jack and Sam. But the cases do not differ in any feature that is relevant to the application of the DDE, given Quinn's account of it. And the suggested moves with respect to the Jack and Sam example and the terror bomber example are parallel to one another.

10. Also, in the above example the problem for Quinn appears to stem from the fact that, although Jack strictly intends Sam's being out of the library, he does not intentionally bring about Sam's death. Thus, it is not at all evident (*pace* Quinn) that on his interpretation of the DDE we can sidestep all potentially controversial questions about whether agents kill or harm intentionally.

A further problem. Quinn defines indirect agency in the production of harm as "harmful agency in which either nothing is [in the above specified way] intended for the victims or what is so intended does not contribute to their harm."¹¹ The most obvious problem is with the second disjunct, but there is a related problem with the first. The problem with both, although in different ways, is that an agent can have the worst intentions (intuitively and according to the DDE) and nevertheless "luck out" in the sense of achieving her purpose as a result of bringing about harm of the kind she foresaw and chose as a means to her end, but not as a result of what she deliberately involves anyone in precisely in order to further her purposes. Such an agent would meet Quinn's conditions for indirect agency, and yet she would presumably be just the sort of agent condemned by proponents of the DDE.

Consider, for instance, a terror bomber who misses the school she intends to hit, but instead hits a hospital. Quinn's account distinguishes this terror bomber from the first terror bomber (who successfully hits her school). But surely this is not the distinction of the proponents of the DDE. That distinction has to do more with the structure of agents' motivations and, specifically, whether the agents "aim at evil."

Further, consider Bill, who knows that Jack has told Sam that there will be music at the coffeehouse. Bill hates Sam and believes that the only way he can carry out his criminal plans is to kill Sam. Bill thus forms the intention of running Sam over and killing him after Sam gets out of his car. Bill drives to the parking lot, but Sam sees him before getting out of his car (before Bill can involve him in what he intends). Sam is distracted from his driving by Bill's flashy car, swerves into the path of a passing truck, and is killed. Here, Bill has the requisite sort of intention. Bill's having the intention does of course contribute to Sam's being harmed, for it brings Bill to the parking lot where Sam sees him and is distracted by him. But it is not the case that what Bill intends for Sam contributes to his being harmed, for what Bill intends for Sam (namely, his being run over by Bill's car) does not occur. Thus, on Quinn's account, Bill's agency is indirect.¹²

To be sure, it may well be that some advocates of the DDE would agree with Quinn's theory in classifying both Bill's agency and the agency of the terror bomber who missed the school as indirect. Yet it seems to us that if these are classified as indirect, the result is to undermine the plausibility of the DDE. We address the normative plausibility of the DDE more fully in Section IV. But it seems to us

11. *Ibid.*, p. 344.

12. Bill has violated Sam's right not to be the object of murderous intentions, or not to be subjected to attempted murder. If it be objected that Sam's death did not involve a violation of his rights, we can change the case slightly and imagine that the driver of the truck was driving recklessly or was drunk.

that the agency of the terror bomber who hits the school is morally on a par with the agency of the terror bomber who hits the hospital while intending to hit the school. Yet if the former is direct and the latter is indirect, then the DDE says that the former but not the latter is objectionable in the sort of way that the DDE is supposed specifically to condemn. Also, if Bill's agency is indirect while Jack's is direct, then the latter but not the former is objectionable in the sort of way that the DDE is supposed specifically to condemn. This seems to us to be implausible, and not a result congenial to the DDE. We therefore think that proponents of the DDE would want to classify both Bill's agency and the agency of the terror bomber who missed as direct. The problem is that Quinn's account classifies both as indirect!¹³

III

So far we have not altered Quinn's explicit formulation of the distinction between direct and indirect agency even though it allows cases of direct or indirect agency where the agent does not foresee the harm that results from his action. It may seem that it would be more charitable to amend Quinn's formulation in light of what he says at the beginning of his paper, in footnote 3. There he says that the doctrine of double effect states necessary conditions of the permissibility of doing something when one foresees a bad upshot.¹⁴ Indeed, it is reasonable to think that Quinn wishes his explicit formulation, which he develops in the text of his paper, to be embedded within a set of presuppositions which includes the constraint that the agent foresees the relevant bad upshot. Thus, in what follows we shall assume that Quinn's explicit formulation of the direct/indirect agency distinction is meant to operate within the domain of foreseen events—otherwise the doctrine of double effect is simply irrelevant. Even if this is the case, we believe that Quinn's account is problematic for reasons quite similar to those adduced above. Indeed, we will now reformulate the Jack, Sam, and Bill examples to challenge the newly amended account, according to which actions count as cases of direct or indirect agency only if the agent foresees the harm that comes to the victims.

First, assume that Jack and Sam are not friends, but mere acquaintances (or perhaps business colleagues). We add to the original case mentioned above the fact that Jack knows that a group of drunk drivers are having a drag race in the area, and thus he foresees that Sam will indeed be hit by a drunk driver and killed. Without informing

13. And as argued above, if one switches to the second interpretation (according to which an extremely tight connection is required between what the agent deliberately involves people in and the resulting harm), then one gets implausible results in other cases, such as the terror bomber. On either interpretation, Quinn's account issues in the mirror image of what one should expect.

14. *Ibid.*, p. 134.

Sam of this, Jack convinces Sam to go to the coffeehouse (as above, to enjoy the music), thus allowing Jack to be alone with Mary.¹⁵ Even on the account which includes the constraint requiring that the upshot be foreseen, Quinn must consider the reformulated example a case of direct agency. But intuitively the case would seem to be a paradigm case of indirect agency—the case seems to be relevantly similar to the strategic bomber in terms of the structure of the agent's motivational states, and just the sort of case classified by the proponent of the doctrine of double effect as indirect agency. (Note that the point here is about the structure of the agent's motivational states and the causal structure of the situation; it is not being claimed here that the proponent of the DDE would consider Jack's action morally permissible.) Thus, even if Quinn's account is interpreted as including a constraint requiring the relevant bad effect to be foreseen, it is clearly inadequate; it does not appropriately classify the cases.

Similarly, the case of Bill can straightforwardly be reformulated. Bill can be taken to foresee with high probability that Sam will be killed. He expects Sam to be killed in an accident with a drunk driver. But just in case Sam avoids this fate, Bill drives to the parking lot with the intention of killing Sam, if Sam miraculously avoids the drunken drivers.¹⁶ Suppose further that just before Bill would have been called upon to finish him off, Sam is distracted by Bill's flashy car and swerves, thus causing him to drive onto some railroad tracks; unfortunately, Sam is run over by a train and dies. Bill's agency is intuitively a paradigm case of direct agency: he is tugged and guided by evil, and he would adjust his behavior to carry out his evil intentions. And yet Quinn's account must classify Bill's agency as indirect.

Note here that what Bill intends (as opposed to Bill's having the intention) does not cause the harm. Bill does indeed intend that Sam be in the dangerous situation of having to dodge drunk drivers and Bill, until he is hit. But it does not seem plausible to say that this is what causes Sam's death.¹⁷ Again, as above, Bill's agency is deemed indirect, whereas Jack's agency is deemed direct—precisely the opposite of what one would expect!

15. Apart from the deception, Jack also violates Sam's rights by deliberately exposing him to the risk of the drag race, without warning him.

16. Bill violates Sam's right not to be the object of murderous intentions.

17. It might be objected that the alleged counterexample is unfair because although Bill does foresee a harm of a certain type (Sam's death), he does not foresee the precise way in which this harm will be brought about. But the requirement implicit in this objection is surely too strong; if it is required that the agent foresee not only that a harm of a certain type will take place but also the way in which it is caused to happen, then many cases which should intuitively count as direct agency (the kind condemned by the DDE) will not so count.

IV

In the previous section we argued that Quinn's approach is descriptively inadequate—it does not divide up the cases in a way which captures intuitive views about the structures of agents' motivational states. Here we shall argue that Quinn's approach is normatively inadequate—it leads to highly implausible normative claims.

As Quinn formulates it, the doctrine of double effect is a comparative principle. Its effect, he says, is to impose a stronger moral barrier against the violation of moral rights by direct agency than by indirect agency.¹⁸ He adds that on the traditional interpretation the DDE implies that "the pursuit of a good tends to be less acceptable where a resulting harm is intended as a means than where it is merely foreseen."¹⁹ When Quinn's account of the distinction between direct and indirect agency is read back into this doctrine and combined with his claim about rights, his point becomes: pursuit of a good tends to be less readily justified where, in the course of pursuing it, a foreseen harm is brought about by direct agency in violation of a right than where it is brought about by indirect agency in violation of a right.

It is important to note that our critical remarks in this section are directed specifically to Quinn's claim that all other things equal, a harm produced by direct agency is harder to justify than a harm produced by indirect agency. It remains open to other proponents of the DDE to reject this claim but maintain their allegiance to the DDE. While conceding that there can be pairs of cases in which all other things are equal and in which it is not the case that the harm produced by direct agency is less easily justified than the harm produced by indirect agency, such a theorist might wish to invoke other resources (apart from the DDE) to analyze the cases. For example, there may be various principles (or other considerations) by reference to which the pertinent harm produced by indirect agency can be denounced and indeed deemed equally difficult to justify as the relevant harm produced by direct agency.²⁰

To begin to see the problem for Quinn's claim, consider Bomb Remover 1. There is a bomb on a table in the library. It is in a black box near some extremely valuable books that we do not want to be destroyed. The books are in a vermilion box on the same table. We are standing outside the library talking to Mary. Mary knows nothing about the situation, and she wants to please us. We say to her, "Go on up to the top floor and fetch the black box off the table next to the vermilion box." We foresee an extremely high probability of her death,

18. *Ibid.*, p. 346.

19. *Ibid.*, p. 335.

20. For this point we are indebted to Kenneth Kemp and Michael Bratman.

for the bomb is very sensitive to movement as well as being on a timer. Further, imagine that we know that we could get someone else to do the deed for us, or even that we could program a robot to do so. Mary goes up there and the bomb goes off, killing her, just as she gets the black box far enough away from the vermilion box. The books are saved.

This is a case of harmful direct agency. We foresee a harm to Mary, and the harm comes about. It comes about partly as a result of our involving her in removing the black box in order to further our purpose of saving the books, and it comes about precisely by way of her being involved in removing the black box.

Now consider Bomb Remover 2. There is a bomb on a table in the library. It is in a black box near some extremely valuable books that we do not want to be destroyed. The books are in a vermilion box on the same table. We are standing outside the library talking to Mary. Mary knows nothing about the situation, and she wants to please us. We give her a steel case that will protect the books and say to her, "Go on up to the top floor and put the vermilion box into this one." (Again, as above, Mary is not indispensable to the success of our project. We could have chosen to use our robot.) We foresee an extremely high probability of her death due to her coming in close proximity to the black box, for the bomb is on a timer and is just about to go off. But since the books will be in a steel case, they will be saved. On her way up to the top floor, Mary forgets what she is supposed to do, and she simply leaves the steel case on the floor. She picks up the black box and carries it away with her. The bomb goes off, killing her, just as she gets the black box far enough away. The books are saved.

On Quinn's approach, this seems to count as a case of harmful indirect agency. We foresee a harm to Mary, and the harm comes about. We intend to involve her in something "in order to further [our] purpose precisely by way of [her] being so involved." But "what is so intended does not contribute to [her] harm," for what is so intended is that she put the vermilion box in the case, and that does not happen.²¹ Since it does not happen, it cannot play a causal role in contributing to her harm.

Now it might be replied that the relevant project is the project of saving the books, or of preventing damage to the vermilion box. Since Mary does save the books, and does prevent damage to the vermilion box, it is perhaps arguable that the procedure we intended to involve her in to further our purposes does happen and does contribute to her harm. But note here that we are back in the game of distinguishing intentions and ascertaining "closeness," which Quinn wishes to avoid. Moreover, it is clear that the project we involve her

21. *Ibid.*, p. 343.

in, in order to further our purposes precisely by way of her being so involved, is the project of putting the vermilion box in the steel case. That was the means we chose to further our purpose.

Thus, Quinn must deem the agency in the second case indirect and the agency in the first case direct. But it seems inappropriate to think that our action is more easily justified in Bomb Remover 2 than in Bomb Remover 1. For the right of Mary's that we violate is the same in both cases. And our action would have counted as direct agency in case 2 if only Mary had done what we had asked her to do. Apparently, on Quinn's account her mistake makes our action more easily justifiable, which seems implausible. As Quinn's account is presented, the victim's mistake can alter the moral quality of the agent's action, even if the mistake does not change the nature of the harm that befalls her.²²

Consider now Bomb Remover 3. Mary is in the library working at a table that is far removed from the valuable books. The books are scattered on another table at the other end of the library, and on that table is a black box containing the bomb. The bomb is on a timer and will blow up, we realize, in a matter of minutes. We grab the black box and carry it quickly to Mary's side of the library, where we gingerly place it on the table at which Mary is working. We run from the scene, leaving Mary to her fate and realizing that there is an extremely high probability of her death. The books are saved. Mary is killed when the bomb blows up.

On Quinn's approach, this is deemed a case of indirect agency. We foresee Mary's death. She does die, and her death is a result of our involving her in something (namely, working in close proximity to a bomb). But her involvement does not further our purpose. Our

22. Quinn might reply however that the doctrine of double effect should be used *ex ante* to evaluate the action we intended to perform, and that the action would have been a case of direct agency. But this does not answer our objection, for our objection is that, as events transpire, our action actually qualifies as a case of indirect agency. To avoid this objection, Quinn would have to maintain not only that the DDE should be used *ex ante*, but also that it is somehow improper to use the DDE *ex post* to evaluate actions that are actually performed. It is unclear how he could motivate this position, especially given that it is quite natural to deploy the DDE both *ex ante* and *ex post*. Consider, e.g., a case in which a craniotomy is intended for a fetus in order to save the life of the mother, but in which the doctor manages by good luck to save both the fetus and the mother. In this case, one would want to use the DDE to evaluate both the intended action and the action that was actually performed. Moreover, Quinn cannot rule out *ex post* application of the DDE, for he defines indirect agency in a way that does not make sense except in the context of *ex post* evaluation. He says an action counts as a case of indirect agency if "what is [relevantly] intended does not contribute to [the relevant] harm" (p. 343). This part of Quinn's account obviously would make no sense if he wished to rule out *ex post* deployment of the distinction between direct and indirect agency.

purpose is to put the bomb down far away from the books and to escape before it blows up. We could have told Mary to get out of there, or we could have put the bomb in another area. Her involvement certainly does not further our purpose by way of the precise way in which she is involved. So this is indirect agency, on Quinn's view.

If we are correct that on Quinn's account Bomb Remover 1 is a case of direct agency but Bomb Remover 2 and 3 are cases of indirect agency, Quinn must say that other things equal our action is less easily justified in 1 than in 2 or 3. But what we do is the same in cases 1 and 2, it has the same mix of good and bad effects, and our intentions are relevantly similar. And the right of Mary's that we violate appears to be the same, namely, the right not to be exposed to substantial risk of death without being informed of the risk. So surely our actions are equally justified or unjustified, contrary to what Quinn apparently must say.

In case 3 the mix of good and bad effects is the same as in case 1. The harm we foresee is the same and the good we pursue is the same. So, arguably, we have parallel cases of direct and indirect agency. So, arguably, on Quinn's account our pursuit of the good of saving the books without getting killed (with the foreseen cost of Mary's death) is more easily justified in case 3 than in case 1. But this is implausible. Intuitively, the actions which issue in the harms in cases 1 and 3 are equally difficult to justify. Thus, Quinn's normative claim implies an intuitively unacceptable differentiation.

A similar point can be seen by considering Quinn's discussion of an example he ascribes to David Lewis. Recall again Quinn's distinction between "agency in which harm comes to some victims, at least in part, from the agent's deliberately involving them in something in order to further his purpose precisely by way of their being so involved . . . and harmful agency in which either nothing is in that way intended for the victims or what is so intended does not contribute to their harm." He says,

I might instead have said "agency in which harm comes to victims . . . from the agent's deliberately producing some *effect on them* in order to further his purpose precisely by way of their being so affected." But there is a certain kind of ingenious case, attributed to David Lewis, that such a formulation might seem to miss. Suppose that another terror bomber wishes to demoralize enemy leaders by bombing a major center of population, and suppose he knows that these leaders will be convinced that the city is destroyed by seeing, from afar, the explosion of his bombs over it. The explosion occurs an instant before the fatal effects below. So in this case the bomber does not, strictly speaking, intend to blow up the civilians, or produce any *physical* effects on them, as a means to his end. Yet the case seems, morally

speaking, to be like TB [Terror Bomber] rather than SB [Strategic Bomber]. But notice that while such a strategy does not aim at *physically* affecting its victims, it does strictly aim at exploding bombs in their vicinity. Whether or not this change in their situation could be counted as an effect on them, as I think it could, the bomber strictly intends to involve them in something (to make his bombs explode over them) in order to further his purpose precisely by way of their being involved.²³

But consider another terror bomber who knows that the leaders will be convinced that the city is destroyed by his producing an optical illusion of a certain sort. Specifically, the illusion will be produced by the process leading to the bombing, but the process is automated and irreversible, so that once his plane turns and begins its final approach to the city in order to drop the bombs, the bombs will be dropped. In all of the terror bomber cases, the bomber drops the bombs on the city as part of the goal of demoralizing the enemy. The only difference between this case and the case in Quinn's response to Lewis is that the bomber realizes that the leaders will be convinced by an optical illusion produced by the process leading to the bombing, rather than the bombing itself. In this case, given Quinn's analysis of the original terror bomber case, he should say that strictly speaking the bomber does not intend to involve the civilians in anything, unless an optical illusion concerning civilians is taken to be something the civilians are involved in—thus emptying this notion of any content. And if this is so, then Quinn must say that the bomber's agency here is indirect. That is, it appears that he must say the bomber in Quinn's reply to Lewis (who believes that the leaders will be convinced by the explosion of the bombs over the city) engages in direct agency, whereas the bomber in the optical illusion case (who believes that the leaders will be convinced by the optical illusion preceding the bombing) engages in indirect agency.

Now we do not know whether proponents of the DDE would tend to agree that the bomber's agency in the optical illusion example is indirect. If they would not agree, then the case is another example which illustrates that Quinn's way of distinguishing between direct and indirect agency does not capture the intuitive distinction that underlies the DDE. But whether or not they would agree, the example shows that Quinn's way of distinguishing between direct and indirect agency issues in an intuitively unacceptable normative differentiation. Surely, killing the civilians in the optical illusion variant is not less bad or objectionable (or less difficult to justify) than killing the civilians in Lewis's case. The two cases seem morally speaking to be on a par.

23. Ibid., p. 343, n. 16.

Thus, as with the Bomb Remover cases, Quinn's approach implies a normative distinction that is intuitively implausible.

V

In exploring Quinn's putative rationale for the DDE, let us first put aside the problems discussed above. We shall here lay out the three pairs of cases discussed by Quinn. Then we shall ask whether the supposed rationale implies the distinctions in question.

The first pair of cases is the original pair consisting of the strategic bomber (SB) and the terror bomber (TB). The second pair of cases involves a shortage of resources for the investigation and proper treatment of a life-threatening disease. In the first member of this pair the doctors selectively treat only those who can be cured most easily (in order most effectively to deploy extant resources). This is the Direction of Resources Case (DR). In the second member of the pair, the doctors embark on a crash experimental program in which they deliberately leave the stubborn cases untreated in order to learn more about the nature of the disease. This is the Guinea Pig Case (GP).²⁴

The final two cases involve pregnant women. In the Hysterectomy Case (HC), a pregnant mother's uterus is cancerous and must be removed if she is to be saved; unfortunately, the removal of her uterus will cause the death of the fetus. In the Craniotomy Case (CC), a woman will die unless the head of the fetus she is trying to deliver is crushed. (The fetus may be safely removed if the mother is allowed to die.)

As Quinn points out, the DDE distinguishes the first member of each pair from the second. It implies that deliberately causing the harm in the first members of each pair is permissible, whereas in the second members it is impermissible. Alternatively, the DDE implies that there are stronger reasons against deliberately causing the harm in the second members than in the first members.

Quinn claims that the DDE can be given a Kantian rationale. He claims that in direct (but not indirect) agency the victims are not only harmed but "used" in a certain sense.²⁵ He says that "the DDE rests on the strong moral presumption that those who can be usefully involved in the promotion of a goal only at the cost of something protected by their independent moral rights (such as their life, their bodily integrity, or their freedom) ought, *prima facie*, to serve the goal only voluntarily."²⁶

On Quinn's account, in direct agency—as opposed to indirect agency—the agent "has something in mind for his victims—he proposes to involve them in some circumstance that will be useful to him

24. *Ibid.*, p. 336.

25. *Ibid.*, p. 350.

26. *Ibid.*, p. 349.

precisely because it involves them.”²⁷ Thus, Quinn concludes that such an agent views his victims “as material to be strategically shaped or framed by his agency.”²⁸ Further, Quinn concludes 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.”²⁹

Consider first Quinn’s “voluntariness requirement.” It seems to us that, if this specifies a legitimate moral consideration, it applies symmetrically to the first and second members of each pair. Granted, there may be some difference in the nature of the agents’ intentions in the first members and the second members. But this difference in itself does not seem to imply any difference with regard to the voluntariness requirement. That is to say, if it is wrong to cause a harm to someone by having something in mind for him (that will be useful precisely because it involves him) without his consent, then surely it is wrong to cause an equal harm to someone by doing something which will be useful to oneself (and which one foresees will harm him) without his consent. If the lack of voluntary consent is what renders it wrong to harm in the second members of each pair, then this should also render it wrong to harm in the first: there is nothing in the pairs which would imply that considerations of consent and voluntariness should apply asymmetrically. And, in general, Kantian considerations—appeals to voluntariness, consent, respect, nonexploitation—seem to apply to all the cases symmetrically and thus cannot be used to discriminate the relevant cases.

This fact about Kantian considerations is illustrated by the Bomb Remover cases. For it seems that in all three cases, Mary ought not to have been exposed to the risk involuntarily, or without her consent. In all three cases, moreover, we do not treat Mary with the respect she is due. To be sure, it seems appropriate to say in Bomb Remover 1 that we exploit Mary and we use her, while in Bomb Remover 2 we attempt to exploit her to use her in one way, and only manage by good fortune to exploit her in a different way, due to her mistake. In Bomb Remover 3, by way of contrast, we do not seem to exploit or to use Mary at all. Indeed, the fact that her death serves no purpose is one reason our treatment of her seems so objectionable in that case. Moreover, the fact that we do succeed in using Mary in case 2, even though in an unintended way, shows that exploitation of a victim can be a feature of indirect agency as well as of direct agency.

Quinn might reply, however, that all cases of harmful direct agency involve exploitation and lack of respect for the victim, while some cases of harmful indirect agency do not involve exploitation or

27. *Ibid.*, p. 348.

28. *Ibid.*

29. *Ibid.*

lack of respect.³⁰ But even if so, what this suggests is that, on Quinn's argument, cases of harmful indirect agency that do involve exploitation and lack of respect should be viewed as morally on a par with cases of harmful direct agency. That is, the reply does not rescue Quinn's purported rationale for the DDE from our objection that it fails to discriminate the relevant cases in the way they are discriminated by the DDE. Further, it is not clear that all cases of direct agency involve exploitation or using. Recall the example in which Jack sends his business associate Sam away to the coffeehouse in order to have a private conversation with Mary. This is a case of harmful direct agency. But Jack need not be exploiting or using Sam by sending him to the coffeehouse, even though he doesn't warn Sam about the drag race. For, to change the case slightly, we can imagine that he has explained to Sam why he wants him to leave the library. Nor need he be showing any disrespect for Sam, or be treating him merely as a means.

Quinn says that in direct agency the agent views his victim as "material to be shaped or framed by his agency." This is alleged to follow from the nature of the agent's intentions, and it is alleged to be absent in the case of indirect agency. But it is, frankly, unclear what Quinn has in mind here. What is it for an individual's agency to shape or frame his victim? Why is this sort of phenomenon present in the second members of the pairs of cases but not the first?

Quinn further says that in direct (but not indirect) agency the agent takes a distinctive and objectionable attitude toward his victim: he treats his victim as if he were there for the agent's purposes. But, again, it is not clear what Quinn's point is. What is it to treat someone as if he were there for one's purposes? One thing this could mean is that one treats someone as if the person intended to serve one's purposes; that is, one treats that person as if his reasons for being there are that he wishes to help one promote one's goals. But this is surely not the way the agent in a case of direct agency thinks, nor is it plausible to ascribe such a view asymmetrically to the agent in direct (and not indirect) agency. Indeed, the point of the agents' behavior in all the cases is quite independent of any assumptions by them about the motivational states of the victims. What, then, is it to treat someone as if he were there for one's purposes? And why is this sort of phenomenon present in the second members of the pairs of cases but not the first?³¹

30. This reply is suggested in Shelly Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989), p. 171.

31. Perhaps Quinn's idea is that in direct but not indirect agency the agent forces or conscripts the victims to serve his plans. The Bomb Remover cases are instructive here. For in Bomb Remover 1, although it is quite clearly the case that we use Mary to serve our purposes, we do not force or conscript her to serve our purposes. We ask

Despite our arguments, it may seem that Quinn is on the right track in thinking that the DDE can be given a Kantian rationale. It may seem that we have managed neither to uncover the best interpretation of Quinn's remarks nor to defeat the root idea of a Kantian rationale. We are willing to concede that we have merely shifted the burden of argument to the Kantian defender of the DDE. But we are convinced that a Kantian strategy cannot work in defending the DDE as Quinn interprets it, given his way of drawing the distinction between direct and indirect agency. For as we have been arguing, there are Kantian objections of precisely the same kinds to instances of both direct and indirect agency.

VI

We have argued that Quinn's distinction between direct and indirect agency does not capture the intuitive distinction between actions with foreseen bad effects that are intended and those with foreseen bad effects that are merely foreseen. We have also argued that Quinn's interpretation of the DDE, in terms of his distinction between direct and indirect agency, is not normatively plausible. In short, Quinn's account does not capture the DDE. Finally, we argued that the Kantian rationale proposed by Quinn does not map smoothly onto the contours of the discriminations licensed by the DDE. We believe there is a good explanation for this. The Kantian rationale tracks features of agents' motivations—such as whether they treat others with respect, or whether they use or exploit others, or whether they treat others as ends in themselves and not merely as means—that are simply not reflected in the DDE. We cannot argue in detail for this here. We suggest, however, that while (if Quinn is correct) the Kantian rationale speaks for a duty of "respect for persons," failures of respect can be found on both sides of the distinction drawn by the DDE. For instance, the victim in all of the Bomb Remover cases is treated with a lack of respect.³² If this is correct, then Kantian considerations clearly cannot provide the rationale for the DDE.

her, and she agrees. Moreover, Bomb Remover 2 is on a par with Bomb Remover 1 in these respects. Also, the victims of the terror bomber who hits the school and the victims of the terror bomber who hits the hospital by mistake are treated alike in that all are "conscripted." Yet the agency of the former bomber is direct while that of the latter is indirect, according to Quinn's account. It seems, then, that victims can be forced or conscripted in cases of indirect agency as well as in cases of direct agency and that the victims of direct agency are not invariably forced or conscripted.

32. Quinn, p. 348. Similarly, Kagan says, "the offensive attitude can be found on both sides of the line." See Kagan, p. 171.