

INTENTION, PERMISSIBILITY, TERRORISM, AND WAR

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1 Introduction

There are many important moral beliefs that have been comparatively stable over time and across cultures that seem to presuppose that the intention with which one acts can affect the permissibility of one's action. Until about forty years ago, the consensus among moral philosophers was that these beliefs are indeed best explained and justified by the idea that intention is relevant to permissibility, an idea that has traditionally been articulated in the Doctrine of Double Effect. This is the doctrine that it can be permissible to bring about bad effects, including the deaths of innocent people, provided that they are not intended either as an end or as a means but are unavoidable and proportionate side effects of the pursuit of good ends. Over the last four decades, however, the consensus in support of this view has dissolved. Most consequentialists (for example, act-consequentialists) have always maintained that it is permissible to intend to cause bad effects when this is a necessary means of producing the greatest good, so it is unsurprising that the earliest of the recent attacks on the relevance of intention to permissibility came primarily from philosophers who, if not avowedly consequentialists, are close enough to be reasonably mistaken for consequentialists.¹ Over the past two decades, however, a number of distinguished deontological and contractualist moral theorists have joined the attack, as have many practitioners of "experimental philosophy," and their combined efforts have probably reduced Double Effect to a minority position among moral philosophers. Between 2000 and 2007, when I was one of the editors of *Ethics*, I reviewed a number of submissions by junior philosophers in which Double Effect was relegated to a footnote and dismissed as an exploded view that no reasonable person could take seriously. I saw that as evidence of a decisive shift in philosophical orthodoxy.

According to the Doctrine of Double Effect, an act can be impermissible if done with a wrongful intention even if the same act — or at least an act

involving the same physical movements and having the same consequences — would be permissible if done with an acceptable intention. To accept this claim for a wide range of acts is to accept what I will refer to as the “relevance of intention to permissibility.” To deny it for a comparably wide range of acts is to accept the “irrelevance of intention to permissibility.” Those who accept the irrelevance of intention to permissibility should not be understood to claim that intention can *never* make a difference to the permissibility of action. For there are various special circumstances in which all would agree that the permissibility of an act turns on the intention with which it is done² — such as, to take a contrived example, circumstances in which one has promised to act only with a certain intention. This can be true even according to consequentialism. Suppose that a person’s moving her body in a certain way will have good and bad effects that are overall better than those of any other way she can move. Since many consequentialists would accept that an act done with only good intentions is a better state of affairs than an otherwise identical act done with a bad intention, they can accept that this person’s moving her body with the intention of causing the bad effect is worse than her moving in the same way without that intention. Since they believe that the only permissible act is the one that will produce the greatest good, they should conclude that it is impermissible for her to act with the bad intention.

In the following section, I will examine and criticize a few of the most influential arguments that have been advanced against the relevance of intention to permissibility. Then, in section 3, I will consider the suggestions that those who reject the relevance of intention to permissibility have made about how we can manage in the absence of that view.³ They have had to address this issue because, as I noted, the idea that intention is relevant to permissibility seems to explain large areas of common sense morality, and therefore also the corresponding areas of the law that aspire, at least in part, to enforce the prohibitions of morality.⁴ Those philosophers who have argued for the irrelevance of intention to permissibility must either, as some consequentialists do, repudiate significant areas of common sense morality, or else offer an alternative and better defense of those intuitions that have traditionally been defended by appeal to the relevance of intention to permissibility.

I will focus particularly on what these philosophers have said about the distinction between terrorism and just war. Acts of terrorism typically involve the killing of innocent people. But so do attacks on military targets in war that are carried out in pursuit of a just cause. The traditional way of distinguishing morally between terrorist acts (even in war) and permissible military action in a just war that kills innocent people is by reference to intention: terrorists kill innocent people intentionally, as a means of intimidating and coercing others who are specially related to the immediate victims, whereas combatants fighting permissibly in a just war kill innocent people only as an unavoidable and proportionate side effect of action intended only to destroy military targets. Those who reject the relevance of intention to permissibility must of course reject

this traditional explanation of the difference between terrorism and just war. It seems that they must either become pacifists, embrace terrorism, or find an alternative and more plausible way of distinguishing morally between terrorism and just war.

Some consequentialists are unapologetic about accepting that terrorism can be justified in a much wider range of cases than common sense intuitions would countenance. They do not regard it as a problem that their view has this counterintuitive implication because they also reject the assumption that moral intuitions have a certain normative authority. But most nonconsequentialist moral theorists who have rejected the relevance of intention to permissibility cannot adopt this position. For many of their most important arguments against the relevance of intention to permissibility are based on appeals to common sense moral intuitions. Yet none of the intuitions to which they appeal are so widely shared and compelling as the intuition that while terrorism is generally impermissible and abhorrent, war can sometimes — not just in principle but also in practice — be not only permissible but morally required. If the nonconsequentialist opponents of the relevance of intention to permissibility cannot provide an alternative and more plausible defense of this intuition, they will have lost the argument by reference to their own standard of intuitive plausibility.

2 Arguments Against the Relevance of Intention to Permissibility

2.1 Looking Inward

To examine the most influential arguments against the relevance of intention to permissibility, we will need before us the familiar examples of the tactical bomber and the terror bomber. Each bomber is a combatant in a just war who goes through the same set of physical movements, produces the same immediate effects, and achieves the same end: victory in the war. Each drops bombs on a military facility, destroying both the facility and a children's hospital adjacent to it. The tactical bomber intends to destroy the facility, thereby gaining a decisive military advantage. The destruction of the hospital and the killing of the children in it are foreseen but unintended effects. The terror bomber, by contrast, bombs the facility only because that is the best way to create an explosion large enough to demolish the hospital. He intends the deaths of the children as a means of intimidating the enemy and coercing their government to surrender.

Suppose that one of these bombers asks us in advance whether it is permissible to bomb the facility. We do not know whether he is the terror bomber or the tactical bomber. Suppose, Judith Jarvis Thomson writes, that

we make the following reply: "Well, it all depends on what your intentions would be in dropping the bombs. If you would be intending to destroy the [military facility] and thereby win the war, merely foreseeing, though not intending, the

deaths of the children, then yes, you may drop the bombs. On the other hand, if you would be intending to destroy the children and thereby terrorize the [enemy] and thereby win the war, merely foreseeing, though not intending, the destruction of the [facility], then no, you may not drop the bombs.” What a queer performance this would be! Can anyone really think that the pilot should decide whether he may drop the bombs by looking inward for the intention with which he would be dropping them if he dropped them?⁵

According to Thomson, the reasons for and against dropping the bombs are given by facts about the world that are independent of the bomber’s mental states. The balance of these reasons is what determines whether the bombing is permissible.

Most people throughout recorded history have not found it queer to advise others that the permissibility of their action can depend on their intention in acting. Few have supposed that an act that would be impermissible if done with a neutral intention could become permissible simply by being done with a good intention. But most have assumed that an otherwise permissible act can be rendered impermissible by being done with a wrongful intention. They have not, however, assumed that people should make judgments of permissibility by inspecting their own intentions. Among other things, the intentions of a person who is concerned to ensure that her action is permissible will generally remain undetermined until she has resolved the question of permissibility. What she concludes about permissibility will usually affect what she finds if she looks inward for her intentions.

Suppose, however, that it is the terror bomber who asks whether it is permissible to drop his bombs. He already has a determinate intention or motivating reason for dropping them. What he may want to know is whether it is permissible to drop them *for that reason*. Both Thomson and proponents of the relevance of intention to permissibility can agree that this reason cannot justify the killing of innocent children. The proponents would thus answer the terror bomber’s question by saying that, in dropping his bombs for that reason, he would be acting against rather than in accordance with the normative reasons that they and Thomson agree that he has, independently of his intentions. The proponents then conclude that he ought not to act for that reason — that it would be impermissible for him to act on the intention to kill children as a means of terrorizing the enemy.

The terror bomber’s having this intention is, of course, merely a fact about him; it does nothing to differentiate the tangible effects of his action from those of the tactical bomber’s action. It is a wholly agent-centered consideration. But deontological morality has agent-centered dimensions that are inseparable from some of its victim-centered elements. According to Warren Quinn, people’s rights not to be harmed are sensitive to the intentions of those who threaten them. In particular, they impose stronger constraints against the infliction of intended harms than they do against the infliction of foreseen but unintended harms.⁶

Hence intention magnifies the extent to which the contravention of a right is morally objectionable.

Frances Kamm denies this. Referring to the innocent victims of the terror bomber, she asks:

Do they have a right that he not act unless he acts for the right reason (or at least for a reason that they do not justifiably resent)? I believe . . . that the potential victims have no such right and that they can point to no grounds affecting them as reasons why the act should not be done. They have no right that the agent not bomb merely so that his wrong intention not lead to the bombing. It is in this sense that they cannot object to the agent's act, and it is in this sense that the act is not impermissible.⁷

These remarks echo T.M. Scanlon's account of moral justification. The suggestion seems to be that the terror bomber's dropping his bombs is permissible if, taking into account only the effects on individuals of a principle's being followed, the victims of the bombing cannot reasonably reject a principle that permits him to drop his bombs *when it would be permissible for the tactical bomber to drop his* (as Kamm assumes, by hypothesis, that it is).

In criticizing the agent-centered character of the view that intention is relevant to permissibility, the deontological critics of that view expose themselves to a risk that this same criticism also applies to another view that many people have thought to be essential in distinguishing deontological from consequentialist morality: namely, the view that doing harm is in general more seriously objectionable than allowing harm to occur. Deontologists believe, for example, that it is in general impermissible to kill one person even if this is necessary, either as a means or as an unavoidable side effect, to prevent two other innocent people from being killed by another agent. Whether an agent is instrumental in a killing via doing or via allowing is, it seems, regarded by deontologists as more important morally than the preservation of an additional life.⁸

In this case, however, the victim of the killing would be different from the victims who would be allowed to die — a complication that may introduce morally significant considerations other than the bare difference between killing and letting die. By contrast, in the comparison between the tactical bomber and the terror bomber, the identities and number of the victims are the same in both cases. To see whether the significance of the distinction between doing and allowing is vulnerable to the criticism that has been advanced against the significance of the distinction between intending and not intending certain effects, we should consider a comparison that is parallel to the comparison between the tactical bomber and the terror bomber in these respects. So consider a case in which it is permissible to allow a person not just to die but to be killed. Unless one intervenes to save him, an innocent person will be murdered by his enemy. But the only way one can intervene effectively is to shoot the enemy preemptively, and the only gun one has is one that, when fired, will recoil so forcibly that it

will inevitably break several of one's bones. Assume that if one could save the innocent person at no cost to oneself, one would be morally required to save him, but that the unavoidable cost of suffering several broken bones is sufficient to make it permissible to allow him to be killed. Now add another couple of features to the example. Suppose that one is a highly altruistic person who would normally save an innocent person even at the cost of suffering several broken bones. But one also knows that if this particular innocent person were to die, his organs could be used to save the lives of several people who could not otherwise be saved. Being altruistic, one decides to allow him to be killed in order to make his organs available for transplantation. If it is permissible to allow this person to be killed in order to avoid the cost to oneself of saving him, then those who deny the relevance of intention to permissibility should accept that it remains permissible not to save him if one refrains from saving him with the intention of making his organs available. (For most of us, this is counterintuitive. But the point here is to see what those who reject the relevance of intention to permissibility are committed to, particularly by the claims they make in arguing against that view.)

Now add one last feature to the example. One suddenly realizes that, although the enemy will certainly kill this innocent person (given that one will not save him), it is possible that she may do it in a way that will damage the victim's organs. One therefore decides to kill the innocent person preemptively by shooting him in the head, thereby ensuring that his organs will be usable for transplantation (and thereby also causing oneself to suffer some broken bones from the recoil). Call this case the "Altruistic Killer." The question it raises is whether, given that one is morally permitted to allow the person to be killed, one is also permitted to kill him. This is relevantly parallel to the question whether, given that the tactical bomber is permitted to drop his bombs, the terror bomber would be permitted, in the exact same circumstances, to drop his, thereby killing the same innocent people, only intentionally rather than unintentionally.

The person threatened by his enemy cannot, it seems, point to anything affecting him as a reason why one ought not to kill him — *given* that he would otherwise be killed at the same time by his enemy (for one is not required to save him and will not do so). This parallels what Kamm says of the immediate victims of the terror bomber. Yet it seems intuitively that one ought not to kill him, even though one is permitted not to save him, and that the moral difference between killing and letting die is reflected in the innocent person's rights. Even though he has no right that one save him, given the cost to oneself of doing so, he does have a right that one not kill him — despite the fact that one's killing him will not be worse for him and would be better for those who need organ transplants to survive. He does not lose his right that one not kill him just because a villain will kill him if one does not kill him first.

It could be argued that, in comparing allowing the person to die with killing him, I have failed to hold other relevant features constant. In particular, while the cost to the agent of saving the person is high — broken bones — there is no

comparable cost in not killing him. This is, however, irrelevant. In most cases, the cost of saving is substantial (not only because saving usually involves the sacrifice of time and resources, but also because it excludes all other options for the agent), while the cost of not killing is low (because it leaves all other options open for the agent). Some have argued that the explanation of why people believe that there is a moral difference between killing and letting die is that they tend to conflate that difference with the closely correlated difference in cost to the agent. These people argue that while the cost of saving generally exempts people from being required to save others, there is in general no cost involved in not killing that exempts people from being required not to kill. But this argument is self-defeating, because common sense intuition persists in finding killing to be impermissible even when the cost to the agent of not killing is high. This would be true in the case we are considering if the cost to oneself of not killing the innocent person were high. We would still find it impermissible to kill him. Unlike the reason we have not to allow innocent people to die, the reason we have not to kill innocent people is resistant to being overridden by considerations of cost to the agent. In the case as I have presented it, it is the cost to oneself of *killing* that is high, since the recoil from firing the gun at the person's head will break several of one's bones. While that could exempt one from being *required* to kill, it counts neither in favor of nor against the *permissibility* of killing.

Another objection to the argument based on the Altruistic Killer example is that it *is* sometimes permissible to kill an innocent person because he or she will otherwise be killed by someone else or die from another cause at much the same time. The best-known example in the philosophical literature is Bernard Williams's hypothetical case of the traveler who happens upon a soldier who is on the verge of wrongfully executing twenty innocent villagers but offers to allow nineteen to go free if the traveler will kill one. Most of us believe that it is permissible for the traveler to save nineteen by killing one, but only because the one who is killed would have been killed in the same way at the same time anyway, so that the traveler's action is not worse for him than the alternative. The question, though, is whether it is *always* permissible to kill people when this would not be worse for them because they would otherwise die from another cause, or whether there are other elements to the justification in cases in which killing is permissible that are not present in the Altruistic Killer case. This is a large question that I cannot pursue here. But there are features of the Altruistic Killer case that seem to make killing wrong even though it is not worse for the victim than the permissible alternative of allowing him to be killed. Killing the person seems wrong because one *could* save him but instead uses killing him as a means of benefiting others. Those who accept the relevance of intention to permissibility could, of course, make the same claim about intentionally allowing him to die. But this is not open to those who reject the relevance of intention to permissibility. Since it does intuitively seem impermissible to kill the person in this case, those deontologists who give weight to that intuition but reject

the relevance of intention to permissibility must, it seems, appeal to the moral asymmetry between killing and letting die to explain why killing him would be wrong. This seems to be a case, therefore, in which these moral theorists must accept that a fact about an agent — that one kills rather than allows an innocent person to be killed — is decisively relevant to the permissibility of that agent's action, even though the victim seems to have no ground for objecting to one's killing him rather than allowing him to be killed.

Kamm, like Thomson, accepts that the distinction between killing and letting die has moral significance in many cases. According to her view about the moral significance of causal relations — which is too complex to summarize here — the fact that the availability of the victim's organs would cause several others to be saved is not a justification for killing him. Yet she must concede that it is permissible to allow the victim to die because of the cost of saving him, even if his organs will then cause the others to be saved. What is problematic is that the relevance of the distinction between killing and letting die does not seem to be supported by the form of justification to which she appeals in rejecting the claim that people can have a right not to be harmed *for a wrongful reason*. For this form of justification also seems to imply that the victim in Altruistic Killer has, to echo Kamm's own phrasing, no right that one not kill him merely so that one's *doing* will not lead to his death. Yet it seems that the victim does have just such a right.

But if the right not to be killed is stronger than the right to be saved from being killed, even when the victim has no reason to prefer that one allow him to be killed rather than kill him, then perhaps the right not to be killed intentionally as a means can also be stronger than the right not to be killed foreseeably as a side effect — just as Quinn suggests.⁹ Although the distinction between doing and allowing and the distinction between intending an effect and bringing it about knowingly but unintentionally are quite separate, they are nonetheless related. They have served together as the mutually reinforcing foundations, or twin pillars, of traditional nonconsequentialism.¹⁰ There are, therefore, risks for nonconsequentialists in rejecting one while relying heavily on the other — in putting all of their nonconsequentialist eggs in one theoretical basket. One of these risks, as I have tried to show, is that reasons for doubting the significance of one distinction may also seem to be reasons for doubting the significance of the other. Another risk, as we will see, is that one distinction alone may be unable to do all the work that nonconsequentialism requires of it.

2.2 *The Prohibition of the Permissible*

Here is Thomson:

Here is Alfred, whose wife is dying, and whose death he wishes to hasten. He buys a certain stuff, thinking it a poison and intending to give it to his wife to

hasten her death. Unbeknownst to him, that stuff is the only existing cure for what ails his wife. Is it permissible for Alfred to give it to her? Surely yes.¹¹

Thomson poses her question in this passage in a way that may seem to evade what is at issue. It is of course permissible for Alfred to give his wife the stuff. But the relevant question is whether it is permissible for him to give her the stuff with the intention to kill her. Defenders of the relevance of intention to permissibility can answer *this* question in the following way, supplementing their answer with two further claims that are consistent with it.

- (1) It is impermissible for him to give her the stuff with the intention to kill her.
- (2) It is permissible for him to give her the stuff with an acceptable intention.
- (3) If, for example, the stuff is inexpensive and there is no better use to which it could be put, he may be morally *required* to give it to her, albeit with an acceptable intention.

Thomson has, however, stipulated that “if Alfred were to give-his-wife-the-stuff, he would in fact give-his-wife-the-stuff-to-kill-her.”¹² This puts pressure on the reader to concede that it *must* be permissible for him to give it to her with the wrongful intention, for otherwise morality would needlessly condemn her to die. One response to this is to note that even if Alfred will in fact act in only one of two ways — he will either give her the stuff with the intention to kill her or not give her the stuff at all — his *options* include giving it to her with an acceptable intention. And what it is permissible or impermissible for him to do depends on what his options are, not on what he is *willing* to do. His refusal to do what he is permitted or required to do cannot make it permissible for him to do whatever is best among the acts he is willing to do. The acts he is willing to do may all be impermissible.

This response, however, ignores an important feature of the example: namely, that Alfred has a false belief about the nature of the stuff. As long as he believes that the stuff is a lethal poison, he cannot give it to her for a reason that is both morally acceptable and accessible to him. But this feature of the case is, for our purposes, an irrelevant complication. It arises even if Alfred is well motivated. Suppose he desperately wants to save his wife but reasonably believes that the stuff is poison. Is it permissible for him to give it to her? Thomson would again say “Surely yes.” That is because she believes not only that intention is irrelevant to permissibility but also that belief is irrelevant to permissibility. Most philosophers, however, accept that there are several senses of permissibility: what is permissible in relation to what the agent believes, what is permissible in relation to the evidence available to the agent, and what is permissible in relation to the facts.¹³ If one accepts, as I do, that all these senses have a legitimate role in our moral thought, one will have to accept that there is no single answer to the

question whether he may give her the stuff. This is because the question itself is multiply ambiguous.

To assess the intuitive plausibility of the idea that a wrongful intention can make an act impermissible, what we need is an example of an act that is clearly permissible if done with a certain intention but that can also be done, in a way that involves the exact same physical movements and has the same consequences, for a wrongful reason, or with a wrongful intention. Scanlon, another eminent critic of the relevance of intention to permissibility, offers what he takes to be an example of this sort, precisely in order to refute the kind of response I initially gave to the case of Alfred. He asks us to imagine that a person who is in danger of dying is rescued by an agent who “hates the person who needs help and would be happy to see him die, but . . . saves him anyway because she does not want him to die *right then*, since that would mean that his heir, with whom she is locked in a bitter political contest, would have much more money to spend on his campaign.”¹⁴ The response to this case that he thinks will appeal to defenders of the relevance of intention to permissibility parallels the response I gave to Thomson’s example: “helping for the wrong reason and not helping at all are not the only alternatives: what she *ought* to do is to help him for the *right* reason.”¹⁵

Scanlon’s objection to this response is that it presupposes that the agent can choose to act on the basis of the right reason. The question of permissibility, he says, is: which of the available options may one choose? This question “thus applies only to alternatives between which a competent agent can choose.” Yet agents cannot “*choose* what to see as reasons.”¹⁶ The question of permissibility therefore cannot apply to the reasons for which an agent acts. If, moreover, it is not within the agent’s power to choose to act for the right reason, we are left with the kind of dilemma that Thomson wanted us to confront in the case of Alfred: either it is permissible for the agent to save the victim for a bad reason or with a bad intention, or it is impermissible for her to save him at all. Since it is undeniably permissible for her to save him, it must be permissible for her to save him with a bad intention.

Yet even in the case of the rescue, the rescuer does not act for a *wrongful* reason, or with a *wrongful* intention, in saving the other person. It is not wrong to prevent one’s political adversary from obtaining more campaign funding, provided that one’s means are not wrongful. And there is nothing in itself wrongful in saving an innocent person’s life. When understood in this way, it is obvious that there is nothing wrong in saving an innocent person’s life as a means of limiting an adversary’s campaign funds.

When Scanlon suggests that defenders of the relevance of intention to permissibility might claim that agents ought to act “for the *right* reason,” he is offering them far more than they need, or ought to accept. Those who believe that intention is relevant to permissibility need not believe that agents must always act for the best or “right” reason. All they claim is that agents must not act for *wrongful* reasons, or with wrongful intentions. They can agree that it is permissible to act for a reason that is not wrongful — or, as I will say,

“acceptable” — however unpleasing it may be. It is, for example, permissible for people to refrain from theft solely in order to avoid the risk of imprisonment. That is not the right reason to refrain from stealing from others; it is not an admirable reason; but it is not a wrongful reason. So the defender of the relevance of intention to permissibility does not claim that an agent must choose to act on the basis of the right reason, or even one of a number of equally right reasons. Rather, there may be a wide range of acceptable reasons for which an agent may do a particular act.¹⁷

This may not, however, provide even a partial answer to Scanlon’s challenge, for his claim applies even to the choice to act for an acceptable reason. What he denies is “that an agent who, for whatever reason, does not see the force of . . . a reason is nonetheless in a position to *choose* to see its force, or to act on it.”¹⁸ Motivating reasons are not the objects of existential choice any more than beliefs are. This seems right. But does it follow that if, in a particular case, an agent cannot choose to act in a certain way for an acceptable reason, it must be permissible for him to act in that way for a wrongful reason, or not to act in that way at all? There is a particular kind of case that seems to challenge Scanlon’s view about the connection between choice and permissibility — namely, the kind of case in which an agent has a positive duty to aid another person but has *no* reason to provide the aid other than the right reason, or several equally right reasons. Suppose, for example, that an agent is morally required to save the life of someone he can save at only a trivial cost to himself. But he cares nothing for this person and will gain *nothing* — no gratitude, no enhanced reputation, and so on — by saving her. The *only* reason he has to make the sacrifice to save her is that it will prevent a great harm to her. But he does not see the force of this reason and is thus indifferent to it. If he is to act, however, it must be for *some* reason. As Scanlon notes, “any action is guided by some aim, and in choosing to perform that action we are choosing to be so guided.”¹⁹ So if this agent cannot choose to see the potential victim’s need as a reason to save her, it seems that he cannot act for the only reason he has to save her, and thus cannot choose to save her. If Scanlon is right that the question of permissibility is the question of which option to choose, it seems that it cannot be impermissible for this agent to allow this person to die. It must be wrong, therefore, to have supposed that the agent is morally required to save her.

This is intended to be a reductio of Scanlon’s view about the connection between choice and permissibility. Perhaps I have misunderstood that view. There is certainly a part of it I do not understand, which concerns the distinction between choosing and deciding. “We have to decide,” he writes, “whether something is a reason or not — this is part of our being responsible. But deciding in such a case is not choosing, because it lacks the relevant element of free play.”²⁰ I do not understand why is it choosing rather than deciding that is connected with permissibility. As far as I can tell, Scanlon offers no reason to suppose that the question of permissibility applies to alternatives among which an agent can choose rather than to alternatives among which an agent can

decide. If the relevant difference between choosing and deciding is that choosing has an element of “free play,” I see no reason to suppose that permissibility is necessarily connected with free play in the selection of an act, or indeed a reason, from among the different possible alternatives. When an agent fails to see the force of a normative reason she actually has, and thus fails to act as she ought to, we do not condemn her for failing to exercise some supposed capacity to freely choose to act for that reason. To that extent Scanlon is right. But neither do we conclude that she has not behaved impermissibly because she could not have chosen to see the force of the reason that applied to her. Instead we condemn her for having failed to engage sufficiently in a kind of deliberation of which she is capable and that should eventually have enabled her to see the force of the reason and to decide to act on it.

If being a morally responsible agent involves being able to decide, after sufficient deliberation, whether a certain consideration is a reason for acting, and if agents can decide to act on the basis of what they have determined to be reasons, then they ought to be able to decide that some reasons for acting a certain way are acceptable while others are wrong, and to act for an acceptable rather than an unacceptable reason. A person can, for example, deliberate about what reasons there are to bomb a military facility next to a children’s hospital and then decide whether to pursue his just cause as a tactical bomber or as a terror bomber. Suppose he then drops his bomb with the intention to produce terror. It is not to demand the impossible to say that he ought instead to have dropped his bomb with the intention of achieving a military advantage and therefore acted impermissibly in acting as he did.

2.3 Third Party Intervention

Suppose that the stuff that Alfred has is inexpensive and that the only way it can be used to any effect is as a cure for his wife. We might then tell him that he is mistaken to think it is a poison and that he is morally required to give it to his wife, for otherwise she will die. If he refuses to give it to her, it would be justifiable to take it from him, by force if necessary, in order to give it to her. But suppose that the stuff is his and is in fact so rare and expensive a medicine that he cannot be morally or legally required to sacrifice it for the sake of his wife. But he still thinks it is a poison and plans to give it to her. We desperately want him to give it to her but are not entitled to demand that he do so because he is morally required to. I suggest that we ought to encourage him to give it to her in the belief that he will be murdering her. We ought, in other words, to encourage him to act in a way that I claim is impermissible — though impermissible not because of the consequences of the act but only because of the intention with which it would be done.

Thomson would disapprove of this suggestion. For she thinks that if we believe that it would be impermissible for him to give her the stuff in order to

kill her, “morality calls for us to feel ashamed of ourselves” even for *wanting* him to give it to her.²¹ While Thomson thinks the conception of morality that calls for this is excessively agent-centered, I think it is *insufficiently* agent-centered. Deontological morality demands of us that *we* not act impermissibly, which includes acting with wrongful intentions. But it makes no similar demand that we prevent others from acting impermissibly, particularly when the act would be wrong only because it would be done with a wrongful intention. In many instances, of course, deontological morality does require that we prevent people (and other sentient beings) from being *harmed*. And because many of the harms that people suffer are caused by wrongdoing, the prevention of harm often requires the prevention of wrongdoing. But we have comparatively little reason to prevent impermissible acts from being done — particularly acts that are impermissible not because of their effects but because of the intention with which, or the reasons for which, they are done — over and above the reason we have to prevent any bad effects of their being done.

We are, in short, primarily responsible for our own action, and our own intentions. Suppose that a military commander correctly determines that the contribution that the destruction of a military facility will make to military victory in a just war is sufficient to justify the concomitant destruction of the children’s hospital adjacent to it. He needs a pilot to carry out the mission and has two from which to choose. He knows that one of these would pursue the mission for the right reason. Yet this pilot is incompetent and would probably be shot down by enemy air defenses; and even if he were not he would probably miss the target. The other pilot is highly competent. He is almost certain to evade the air defenses and to drop his bomb with perfect accuracy. Yet he would drop the bomb only in order to destroy the hospital, in the hope of winning the war through causing terror and intimidation. The commander knows this and believes (correctly, in my view) that the competent bomber — the terror bomber — would be acting impermissibly. Yet this is compatible with its being permissible for the commander to choose the competent pilot for the mission. In general, military commanders and others in authority are responsible only for the *behavior* of their subordinates. Responsibility for the subordinates’ motives and intentions lies with the subordinates themselves.

The commander does, of course, have various moral reasons not to send the terror bomber on the mission. For example, because this bomber will be acting on a wrongful intention, or for a wrongful reason, he will be tarnishing his moral record. That is bad *for him*. It is not that acting impermissibly is in itself against his *interests*. But one does have reason to wish, *for his own sake*, that he not stain himself morally in this way. It may also be worse for the victims in the hospital to be killed wrongfully than to be killed with justification. It may be worse for them to be *wronged* in this special way than simply to be *harmed* as a side effect of morally justified action. Finally, there may be a respect in which the terror bomber’s act would be worse *impersonally* than that of the tactical bomber; for an act done with a wrongful intention may

itself be a worse *event* than an otherwise identical act done with the right intention.

All these considerations are, however, outweighed by the importance of the success of the mission. In general, the prevention of wrongdoing matters little in comparison with the importance of preventing the harms caused by wrongdoing. Suppose that one could either prevent 100 people from being maliciously pushed over a cliff or prevent 101 different people from accidentally stumbling off a cliff. Assuming that the murderer (or murderers) would subsequently be confined and thus prevented from causing further harm, I think that one ought to prevent the 101 natural deaths rather than the 100 murders. Indeed, even if the alternative to preventing the murders would be the prevention of 100 natural deaths together with the prevention of one other person's breaking his leg, I still think that one ought to prevent the natural misfortunes rather than the murders. The staining of the murderer's soul, the wrong to his victims, and the impersonal badness of the event of an act of murder are together insufficient to outweigh one additional death, or even an innocent person's breaking a leg.

2.4 The Trolley Loop Case

In the original Trolley case, a runaway trolley will kill five people on the main track unless a bystander throws a switch that will divert it onto a branch track, where it will kill one person. In what I will call the "means-variant" of this case, the only way to prevent the trolley from killing the five is to push a large man onto the track and into the path of the trolley, which will be stopped by colliding with his body. Most people believe that it is permissible to kill the one and save the five in the original version but not in the means-variant. Many have thought that the obvious explanation of the difference in permissibility is that in the original case the killing of the one is an unintended side effect of the saving of the five, whereas in the means-variant it is an intended means of saving the five. Proponents of the relevance of intention to permissibility have thought that the plausibility of this explanation supports their view. But Thomson argues that there is a further variant that undermines that explanation. In this "loop" variant, the branch track on which one person is trapped loops around the area on the main track where the five are trapped and rejoins the main track, so that even if the runaway trolley is diverted onto the branch, it will circle around and kill the five from the other direction *unless* it is stopped by hitting and killing the one. It seems that there is no reason to divert the trolley in this case except to run it into the one as a means of saving the five.²² But Thomson believes that it is permissible to divert the trolley in this case, just as it is in the original case: "we cannot really suppose that the presence or absence of that extra bit of track makes a major moral difference."²³ If this is right, the Loop case not only undermines the claim that it is the difference in intention that explains the moral difference between the original version and the means-variant

but also constitutes a positive counterexample to the relevance of intention to permissibility, since that view implies that diverting the trolley is impermissible. Scanlon shares Thomson's intuition and cites this argument, along with others of Thomson's, in his rehearsal of the case against the relevance of intention to permissibility.²⁴

This intuition about the loop case has always been alien to me. Diverting the trolley in this case seems to me virtually indistinguishable morally from using the man to stop the trolley in the means-variant. Perhaps those who find it permissible to divert the trolley in the loop case are influenced by the structural similarities to the original case: all the elements are much the same apart from that "extra bit of track." But one's intuition might be different if one were to focus more on the similarities to the means-variant. Here is a way to make those similarities more vivid. Suppose that after throwing the switch to divert the trolley, the bystander in the loop case discovers that it is possible to free the person on the branch track before he will be hit by the trolley. Call this the "loop-option" case. Ought she to free him? If she had this option in the original case, she would clearly be required to free him. But in the loop-option case she needs his body to stop the trolley. Suppose she refuses to free him. How is this *relevantly* different from placing the man in the path of the trolley in the means-variant? In both cases the bystander *kills* a man as a means of stopping the trolley. The difference is that in the means-variant, she moves the man into the path of the trolley, whereas in the loop-option case she puts the trolley on course for the man and then refuses to allow him to get out of its path. I cannot see these differences as making the difference between impermissibility and permissibility. My intuition is that if she directs a trolley toward an innocent person, she must enable him to get out of its path, if she can, even if she thereby loses the opportunity to save the five. (Similarly, if she has pushed the man into the trolley's path in the means-variant, she must enable him to get out of its path if she can.) But if that is true, it hardly seems plausible to suppose that she may direct the trolley toward him in the first place.

3 Efforts to Distinguish Just War from Terrorism

Thus far I have reviewed and criticized some of the most influential arguments against the relevance of intention to permissibility. At this point I see no compelling reason to abandon a view that has offered a reasonable explanation and justification of a wide range of robust intuitions, such as that it is permissible to divert the trolley in the original case but not to place the man in the path of the trolley in the means-variant. The most important intuitions that the relevance of intention to permissibility has traditionally been invoked to defend are, however, those concerned with the difference between just war and terrorism. Intuitions about hypothetical trolley cases are, of course, important for moral theory, but our beliefs about the morality of war and terrorism affect whether

and how we pursue these activities, and this is obviously a matter of the greatest practical significance. It is widely recognized among moral philosophers that the belief, which most of them share, that there is a significant moral difference between just war and terrorism has traditionally been defended by reference to the relevance of intention to permissibility. It is therefore understood that those who reject the relevance of intention to permissibility are obliged to say something about the beliefs whose traditional foundations they take themselves to have undermined. I propose now to examine the main responses that have been offered.

I suggest that, for present purposes, we understand terrorism as the intentional harming (usually killing) of innocent people as a means of intimidating and coercing other people associated with them, usually for political purposes. Various questions are raised by this understanding — for example, whether the immediate victims of terrorism must actually be innocent in the relevant sense, whether those doing the harming must believe them to be innocent in some sense, etc. This is not the place, however, for a precise analysis of the concept of terrorism. What is important for our purposes is that virtually everyone agrees that terrorism involves intended harm to innocents and most people have seen that feature as an essential part of the explanation of why terrorism is almost always wrong. But if intention does not magnify the moral objection to killing an innocent person — if, that is, an innocent person's right not to be killed imposes no stronger constraint against intentional killing than it does against foreseen but unintended killing — then terrorism should be no more objectionable, other things being equal, than military action in war that foreseeably but unintentionally kills innocent people.

3.1 The Two Extremes: Terrorism and Pacifism

Following the established custom in the philosophical literature of discussing just war and terrorism by reference to the tactical bomber and the terror bomber, Jonathan Bennett, an early and influential critic of the relevance of intention to permissibility, summarizes his view by saying that “what the terror bomber does may be morally all right, but I do not accept that it could be all right for him to behave in this manner without compunction, without considering the cost to the civilians, without looking for less lethal alternatives. All of this holds equally, of course, for the tactical bomber.”²⁵ It may appear as if Bennett is sternly insisting that terrorist action meet certain stringent constraints, but in fact all he says is that terrorists must be sensitive and conscientious, reflect on what they propose to do to civilians, and make an effort to see whether they could achieve their goals in some other way. He seems to take it as given that the unavoidable and proportionate killing of civilians as a side effect of military action in a just war is permissible. Rejecting the relevance of intention to permissibility, he then adopts

a straightforwardly consistent position on terrorism, forthrightly embracing it as a tactic, subject to the same restrictions that govern the killing of innocent civilians as a side effect in war.

Another admirably consistent position is to retain the intuitive view that terrorism is impermissible in almost all instances and conclude that acts of war that foreseeably kill a comparable number of innocent people in the process of achieving comparable ends are also impermissible. Rather than relaxing the constraint on intentional killing, as Bennett does, this alternative approach strengthens the constraint on foreseen but unintended killing.²⁶ According to this view, the proportionality constraint on the unintended killing of innocent people is as restrictive as the prohibition of the intentional killing of the innocent has traditionally been assumed to be. Since almost all contemporary warfare involves the killing of innocent bystanders in large numbers, this view entails pacifism as a matter of practical policy.

Notice that this view presupposes a strong moral asymmetry between killing and letting die. It requires a strong constraint against killing in order to rule out terrorism. Yet terrorism could also be permissible if there were an equally strong prohibition of allowing people to die or be killed. If killing innocent people and allowing innocent people to die or be killed were morally on a par, it would be permissible to engage in the terrorist killing of n innocent people as a means of saving $n+1$ innocent people. Because saving some innocent people in war often requires killing others, either as a means or as a side effect, such a view would permit both war and terrorism as means of preventing innocent people from being killed by others. If, therefore, intention is irrelevant to permissibility, the extent to which terrorism is permissible depends on how strong the reason to save innocent people's lives is in relation to the reason not to kill innocent people. Terrorism can be ruled out in most instances only if there is a very strong moral asymmetry between killing and letting die. Yet, as I noted earlier, the combination of the rejection of the relevance of intention to permissibility with the acceptance of a strong asymmetry between doing harm and allowing harm to occur is an unstable position, since some of the objections to the relevance of intention seem also to challenge the asymmetry between doing and allowing. Because this combination of views also entails pacifism as a matter of practical policy, it is intuitively unacceptable to most of us.

3.2 Representative Authorization

If the rejection of the relevance of intention to permissibility forced us to embrace either terrorism (if we accept that there is no asymmetry, or only a weak asymmetry, between killing and letting die) or pacifism (if we accept a strong asymmetry between killing and letting die), then those who have argued against the relevance of intention *on intuitive grounds* would have lost the argument.

But there are, of course, other possibilities. One quite general suggestion is that there is a different feature of paradigm instances of terrorism — some feature other than or in addition to the intentional harming of innocent people — that accounts for their distinctive wrongness. Different writers have made different suggestions about what that feature might be. But probably the most plausible of these is Lionel McPherson's claim that the violence of what we think of as paradigm terrorist groups — the IRA, the PLO, al Qaeda, and so on — is specially objectionable because

they employ it on their own initiative, so that their political goals, their violent methods, and, ultimately, their claim to rightful use of force do not go through any process of relevant public review and endorsement. Nonstate terrorism's distinctive wrongness does not lie in the terrorism but rather in the resort to political violence without adequate license from a people on whose behalf the violence is purportedly undertaken.²⁷

While this does indeed identify a morally significant feature of most instances of terrorism by nonstate groups, it is not the feature that accounts for or justifies our special revulsion at such terrorist acts. Authorization of the use of violence by those on whose behalf the perpetrators claim to be acting is important for at least two reasons. One is that making such authorization a condition of acting imposes certain institutional and procedural constraints on the resort to political violence. Yet violence that lacks this authorization may be fully justified, so that it would have satisfied the constraints had it been subject to them. More importantly, terrorist violence sometimes does have full democratic authorization or, in the case of nonstate groups, the enthusiastic support of the majority of the people on whose behalf it is committed. British bombing raids on German cities in World War II and the American destruction of Tokyo, Hiroshima, and Nagasaki are examples of democratically authorized and popularly supported state terrorism. More recently, the people of Gaza elected Hamas to govern them in full awareness of its commitment to a policy of firing rockets into civilian areas in Israel. Yet authorization by legitimate democratic governments does nothing to mitigate the wrongness of annihilating entire cities. Nor does widespread approval among Gazans do anything to diminish the wrongness of Hamas's efforts to kill ordinary Israelis. If anything, formal authorization and popular support for terrorist attacks makes them even more repugnant. The mass slaughter of the innocent is all the more horrifying when the great majority of an entire population is implicated in it. The complicity of so many ordinary Germans in the aggressions and atrocities of the Nazis is, for example, part of what makes the history of Nazi Germany so awful to contemplate. And I doubt that any American's indignation over 9/11 would be appreciably diminished if it were to emerge that the populations of Saudi Arabia and Egypt had voted overwhelmingly in a clandestine plebiscite to authorize their fellow citizens to fly civilian planes into the World Trade Towers.

The second reason why there is a general requirement that political violence committed in the name of a group be authorized by the members of that group is that this helps to protect the members from being dragged into violent conflict against their will. This consideration is, however, in general more important in the case of states than in the case of nonstate groups, which are the primary focus of McPherson's argument. This is because political violence by a state tends to implicate all its citizens in ways that members of groups associated with nonstate terrorists may not be. Citizens face conscription, taxation and other forms of sacrifice to finance the state's military operations, and in some cases even violent retaliation by the victims of their state's action. These can be substantial burdens and people ought not to be compelled to suffer them without their consent. But when nonstate terrorist groups announce themselves to be acting on behalf of some group, they cannot in general involve the members of the group in these ways. When, for example, members of al Qaeda claim to be acting on behalf of Islam, and therefore on behalf of all Muslims everywhere, their action may be no more than a cause for shame — and perhaps misplaced shame at that — for most Muslims. There are, of course, exceptions. No one can doubt that Hamas's commitment to terrorist tactics has had appalling consequences for the people of Gaza.

McPherson's claim — that terrorism is distinctively objectionable when, and because, it is unauthorized by those in whose name it is done — is vulnerable to two objections that together seem decisive. The first is that what is distinctively repugnant about terrorism is a matter of what it does to its immediate victims and the reasons for which the victims are treated in these ways. These aspects of terrorism are not made worse by not having been approved by the members of some larger group — indeed, it might have been worse, for the reason I gave, if they *had* been approved. If the members of the group in whose name a terrorist act is done are not consulted, they may well be wronged by having their group invoked as part of the alleged justification for the act; but *that* wrong is not what makes terrorism distinctively wrong.

The second reason why lack of the relevant form of authorization is not what makes terrorism distinctively wrong is that this lack of authorization may be equally present in political violence by nonstate groups that is *not* terrorist in character. McPherson is explicit that the lack of authorization is what is distinctively *wrong* about terrorism, not what is *constitutive* of terrorism. Political violence by a nonstate group directed solely against the military forces of an unjust occupying power, for example, would not constitute terrorism. But it might be carried out without the authorization of the occupied people, or even knowingly against their will. (The resistance fighters might believe that their fellow citizens are a mix of cowards, collaborators, and fifth columnists.) If McPherson's argument were correct, this nonterrorist violence would be distinctively wrong in just the way unauthorized terrorist violence by a nonstate group is. Yet it clearly is not. It might be wrong for a variety of reasons but it would not have the features that make terrorist violence particularly repugnant.

3.3 “*There is a war on*”

As my earlier discussion attests, the most influential critic of the relevance of intention to permissibility is Judith Jarvis Thomson. Like the other critics, she has to say something about the contrast between the tactical bomber and the terror bomber. But unlike most of the others, she begins her discussion with an expression of skepticism about the permissibility of the action of the tactical bomber. She compares the case of the tactical bomber with another variant of the trolley problem, which she calls “Trolley-Preemption,” in which one is in the path of a runaway trolley and the only way one can prevent oneself from being killed by it is to blow it up. But blowing it up will involve killing an innocent bystander as a side effect of the explosion. Thomson claims, and I agree, that it would be impermissible to blow it up. “But,” she says, “Trolley-Preemption is [Tactical] Bomber without the war.”²⁸ Since she intuitively judges that the tactical bomber may permissibly drop his bomb, she suggests that the difference between the cases must be that in the case of the tactical bomber “there is a war on.”²⁹

The idea that morality becomes more permissive in conditions of war is familiar but it turns out to do no actual work in Thomson’s discussion. She ends this discussion by confessing that she is unable to say how conditions of war might alter the requirements of morality: “I will have to bypass as too hard the question how the fact of war affects questions of self-defense. . . . We here bypass the question what makes it permissible for the pilot to drop his bombs in [Tactical] Bomber, and impermissible (if it is) for him to do so in Terror Bomber.”³⁰ But she does offer one suggestion — namely, that in war “the stakes are higher.”³¹ This, I think, provides a full explanation of the difference between the situation of the tactical bomber and one’s situation in Trolley-Preemption. If one were not alone in the latter case but were one of five people who would be killed if the trolley were not blown up, most people would find it permissible to blow it up — just as they find it permissible to kill one to save five in the original trolley case.

But if it is permissible for the tactical bomber to drop his bombs and intention is irrelevant to permissibility, why does Thomson suggest that it is “impermissible (if it is)” for the terror bomber to drop his? The reason is simply that she assumes that large-scale terror bombing “mostly is, or even in fact always is, unnecessary for the accomplishing of any morally acceptable wartime purpose.”³² Hence the parenthetical phrase: if terrorism *were* necessary, or even just a little more effective than tactical bombing, it would presumably be permissible, on her view. For Thomson, then, the moral difference between just war and terrorism is just a matter of presumed effectiveness. Her position turns out to be the same as Bennett’s, though she combines it with optimism about the greater effectiveness of attacking military rather than civilian targets, an optimism that a great many military and political leaders have not shared. (Curiously, she rejects the permissibility of placing the man in the path of the trolley in the

means-variant.³³ But I do not see how using the killing of an innocent person in this case to save a greater number of innocent people is relevantly different from terror bombing, except that it is guaranteed to be effective in a way that Thomson claims that terrorism is not.)

Recently, however, Thomson has revised her moral views quite radically. She now accepts that it is impermissible to kill one to save five in the original trolley case. Put crudely, her claim is that since the bystander at the switch would not be willing to kill herself to save the five, she is not entitled to kill the person on the branch track for that same purpose.³⁴ This general claim also applies in Trolley-Preemption. Since none of the five who are threatened by the trolley would agree to kill himself to save five others in a similar situation, none of them is permitted to kill the unconsenting bystander by blowing up the trolley. Unless she thinks that conditions of war are such that this reasoning does not apply in war, her new position commits her to the view that the tactical bomber's action is impermissible as well. And if it is impermissible for him to drop his bombs, it must also be impermissible, on virtually any view, for the terror bomber to drop his. So, while Thomson earlier confronted the problem of distinguishing between just war and terrorism by embracing the in-principle permissibility of terrorism while hoping that terrorism would turn out to be impermissible in practice, she now embraces a view that entails pacifism — at least as a matter of practical policy. She does not note that implication in her recent work, but it follows from her explicit acceptance of a strong moral asymmetry between killing and letting die together with her rejection of the relevance of intention to permissibility. This means that the implications of her position are likely to be more difficult to accept than any of the implications she attributes to the view that intention is relevant to permissibility. For example, the Allies killed a vast number of innocent people as a side effect of preventing the Nazis from intentionally killing many more than that. (The Allies also killed a vast number of innocent people through terror bombing, but put that aside.) The strong asymmetry between killing and letting die that is presupposed by Thomson's new view of the trolley cases suggests that the Allied resistance to the Nazis was unjustified. The only way she can avoid that implication is to claim, as she does, that the permissions and prohibitions of morality are different in conditions of war. I believe that that claim is untenable, but I cannot argue for that here.³⁵

3.4 Military Advantage

T.M. Scanlon accepts the common sense view that killing innocent people as a side effect of military action in a just war can be permissible even when killing a comparable number of innocent people to achieve the same ultimate goal via terrorism is not. He seeks to defend this position by arguing that the moral difference between the tactical bomber and terror bomber lies in an account of the reasons that can and those that cannot justify exceptions to the prohibition

of knowingly killing innocent people. He takes as given a familiar account of the morality of permissible killing in war:

In war, one is sometimes permitted to use destructive and potentially deadly force of a kind that would normally be prohibited. But such force is permitted only when its use can be expected to bring some military advantage, such as destroying enemy combatants or war-making materials, and it is permitted only if expected harm to noncombatants is as small as possible, compatible with gaining the relevant military advantage, and only if this harm is “proportional” to the importance of this advantage.³⁶

It is important that Scanlon does not offer this as just one possible way that a justification for killing innocent people in war might go. As in the case of other critics, the plausibility of his rejection of the relevance of intention to permissibility depends on his ability to provide a convincing explanation and justification of our belief that there is a significant moral difference between just warfare that kills innocent people as a side effect and terrorism. His claim is that there is an exception to the prohibition of killing innocent people when the act that kills them brings a military advantage but not when an act operates to achieve the same ultimate outcome via the creation of terror and intimidation.

The principle that an act that kills innocent people can be permissible provided that it also achieves a military advantage (and satisfies constraints of necessity, minimal force, and proportionality) is a curiously restricted moral principle. For there is no area of life other than war in which military advantage has any significance or justificatory force. But perhaps military advantage is an instance that can occur only in war of a broader kind of justificatory consideration that appears in other contexts, such as self-defense. Perhaps what is significant about the achievement of military advantage is that the force it requires is necessarily directed against opposing force. According to the traditional view, this is a sufficient justification (given the satisfaction of the constraints Scanlon mentions). I believe that this is a mistake and that the use of force is justified by military advantage only when the advantage serves a just cause. But we can leave this aside and simply treat military advantage as an effect in war the achievement of which can justify an exception to the prohibition of killing innocent people.

Suppose that a tactical bomber’s dropping his bomb achieves a decisive military advantage, thereby giving his side victory in its just war. In a parallel case, a terror bomber’s dropping his bomb effectively terrorizes the enemy population, forcing their government to surrender, thereby giving his side victory in its just war. Assume that both kill an equal number of innocent people, that both achieve the same just cause, and that the killing is proportionate in relation to the importance of the cause. According to Scanlon, the tactical bomber’s action is permissible but the terror bomber’s is not. This is also what a defender of the relevance of intention to permissibility would say. Whose explanation is better?

Military advantage is not good in itself. On its own it provides no reason or justification for killing innocent people. It is a neutral phenomenon that derives all its power to justify the killing of innocent people from its being an effective means of achieving what is good as an end: the just cause. Ultimately, therefore, the tactical bomber's killing of the innocent is justified not by reference to the value of military advantage, since that value is entirely instrumental, but by reference to the value of the just cause. Yet the killing of the innocent is not justified by reference to the achievement of the just cause in the case of the terror bomber. That must be because of the way the killing operates causally in that case. It operates as a means to a further means that is not neutral: the creation of terror among other innocent people.

Scanlon's view can be illustrated as follows. This causal sequence, initiated by the tactical bomber, is permissible.

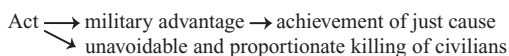


Figure 1.

Yet the causal sequence initiated by the terror bomber is not.

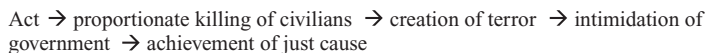


Figure 2.

The reason why there is an exception to the prohibition of the killing of the innocent in the case of the tactical bomber seems to be that his act operates through neutral means to achieve the just cause. All that lies on the causal path between the act and the achievement of the just cause is the neutral phenomenon of military advantage. Again, however, it is the achievement of the just cause rather than the mere achievement of military advantage that ultimately justifies the killing of the innocent people. The terror bomber's act, by contrast, operates through morally objectionable means. It achieves the same just cause but that does not justify the killing of innocent people when the just cause is reached via this objectionable causal route.

Consider now a third bomber who is also fighting for the same just cause as the other two bombers. His enemy's society is organized so that it will continue to pursue its unjust war only if a certain proportion of the civilian population supports it. It conducts periodic referenda and if the percentage of the population supporting the war drops below a certain threshold, the government automatically surrenders. If this third bomber drops his bomb in an area known to be inhabited almost exclusively by supporters of the government and its war, he will reduce the percentage of supporters below the threshold, thereby directly bringing the war to an immediate and victorious conclusion. Suppose he would kill the same number of civilians as the other bombers, so that the killing would

by hypothesis be proportionate. Finally, assume that the fact that these people support their side's unjust war is compatible with their being innocent in the relevant sense (an assumption that holds in all discussions of the tactical bomber and terror bomber). This bomber is, strictly speaking, neither a tactical bomber nor a terror bomber. Call him an "eliminationist" bomber. His action can be represented as follows.

Act → proportionate killing civilians → achievement of just cause

Figure 3.

It seems that if, on Scanlon's account, the tactical bomber's action can be an exception to the prohibition of the killing of the innocent, so can the action of the eliminationist bomber. If the killing of the innocent can be justified as an unavoidable concomitant of a neutral means of achieving the good end, then it should also be justifiable as the immediate means of achieving the good end. If there is an exception to the prohibition of killing the innocent in a case in which there is the killing, a neutral means, and the good end, that exception should apply as well when the neutral means is omitted and all that occurs are the killing and the good end. Nothing of moral significance seems to be lost along with the intervention of the neutral means. It seems, therefore, that Scanlon's account of how the tactical bomber's action can be permissible when the terror bomber's is not implies that the eliminationist bomber's action is permissible as well. Even though the eliminationist bomber's action may not count as terrorism, since it does not operate through the creation of terror, it nevertheless does involve the intentional killing of innocent people as a means of winning a war, and as such it would be found impermissible by most people.³⁷

There is, it may be said on Scanlon's behalf, this difference: that for the tactical bomber the killing of civilians is a side effect of a neutral means to the good end whereas for the eliminationist bomber the killing itself is the immediate means to the good end. That is, the killing of the innocent is a side effect for the tactical bomber but a means for the eliminationist bomber. Could this difference in causation alone make the difference between permissibility and impermissibility?³⁸ If so, Scanlon would have the resources to condemn the act of the eliminationist bomber along with that of the terror bomber while still rejecting the relevance of intention to permissibility.

For most people, the moral significance of a bad effect's being a means is an implication of the relevance of intention to permissibility. That is, the significance of a harm's being a means is that the harm is *intended* as a means, so that the person harmed is being *used* as a means to someone else's end. Without the intention, the fact that a harm actually functions causally to bring about some good effect may seem insignificant. Suppose, for example, that a bomber intends to act as a tactical bomber: he intends for the dropping of his bomb on a military facility next to a children's hospital to function as a means to the achievement of his side's just cause by securing a military advantage. The

unavoidable killing of innocent people in the hospital is an effect he foresees but does not intend, though he is aware that it could operate causally to create terror. As it turns out, his bombing causally overdetermines his side's victory in the following sense. The killing of innocent people in the hospital creates terror that leads to an immediate surrender, but if it had not created so much terror the bombing would soon have crippled the enemy military, as the bomber intended, leading to victory via the achievement of military advantage. In this case the actual causal path to victory is through the creation of terror, which suggests that it would not constitute an exception to the prohibition of killing innocent people, on Scanlon's account. Here I agree with a remark of Thomson's: "It can hardly be thought that the fact that the causal route to . . . winning the war passed through . . . terror, rather than through . . . lack of munitions, shows that it was impermissible for the pilot to drop his bombs."³⁹

Taking the argument in this direction raises questions about the relevance of belief, or reasonable belief, to permissibility, and about the relevance of moral luck to permissibility. I think, however, that we need not pursue these questions here. This is because the suggested way in which Scanlon might respond to the challenge posed by the eliminationist bomber presupposes that the permissibility of killing innocent people can depend entirely on whether the killings are the cause of a good effect or a causally barren effect of the cause of the good effect. It is hard to believe that this could be right. Even to describe this contrast as the difference between the killings' being a means and their being a side effect is misleading, and biases the discussion in favor of Scanlon's view. For the notion of a "means" is more than just the notion of a cause. A means is analytically connected to *use*, or potential use, by a purposive agent. If intention is irrelevant to permissibility, the word "means" should be replaced by "cause" in discussions of permissibility. And the idea that it matters morally whether the killing of innocent people is a cause of a good state of affairs or is an effect of the cause of a good state of affairs seems less plausible than the idea that it matters whether the killings are a means or a side effect.

4 Conclusion

When Scanlon states the case against the relevance of intention to permissibility, the only objection that he cites that I have not yet discussed is that "no one has come up with a satisfying theoretical explanation of why the fact of intention, in the sense that is involved here — the difference between consequences that are intended and those that are merely foreseen — should make a moral difference."⁴⁰ As I have tried to indicate, I think there is a theoretical rationale, though perhaps not of the kind for which Scanlon is looking — such as, for example, a contractualist justification. I think the theoretical case for the relevance of intention to permissibility is a matter of reflective equilibrium, a matter of the integrity and coherence of our core moral beliefs. As I noted at the

outset, many of our firmly held moral beliefs — such as that there is a significant moral difference between just war and terrorism, that it is permissible to divert the trolley in the original case but not to push the man into its path in the means-variant, and so on — are explained in a simple and seemingly plausible way by the principle that one's intention can affect the permissibility of one's action. Scanlon and other critics of the relevance of intention to permissibility have sought to provide alternative foundations for these beliefs but, as I have tried to show, even the more impressive of these efforts seem less plausible than the explanation we already have, so to speak, on the shelf. If we follow Scanlon's approach, we must, as he does for a couple of prominent cases, examine each case in which we thought that intention makes a difference to permissibility and find an alternative explanation and defense of our intuitions in terms of what exceptions there are to certain broad prohibitions. But given that we already have to hand a simple and quite general explanation of our intuitions in these cases, why would we want to exchange it for a set of disparate, heterogeneous and, sometimes at least, seemingly ad hoc explanations whose only unity is that they are identified as exceptions to a prohibition? Admittedly, we might be forced to follow Scanlon's approach if there really were decisive objections to the idea that intention is relevant to permissibility. But the most influential arguments on offer turn out, on careful examination, to be insufficient to make it rationally required to abandon the relevance of intention to permissibility.

I concede that if I were designing morality from scratch, it might not occur to me to make intention relevant to permissibility. If I were a contractualist asking what principles people could not reasonably reject, the set of principles I would end up with might not include ones that make acts impermissible solely because of the intention with which they are done. But if we want to preserve many of our most firmly held moral beliefs, we may well be required to recognize that intention is relevant to permissibility. At a minimum, we ought not to abandon that view without making every effort to determine what can be said in its defense.

Notes

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1. See, for example, Jonathan Bennett, "Morality and Consequences," in S. McMurrin, ed., *The Tanner Lectures on Human Values*, vol. II (Salt Lake City: University of Utah Press, 1981): 46–116; Jonathan Glover, *Causing Death and Saving Lives* (London: Penguin, 1977), pp.: 86–91; James Rachels, *The End of*

- Life* (Oxford: Oxford University Press, 1986), pp.: 92–96; Shelly Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989), pp.: 128–82.
2. T.M. Scanlon, *Moral Dimensions: Permissibility, Meaning, and Blame* (Cambridge: Harvard University Press, 2008), chapter 2.
 3. I will not examine here the important work of Frances Kamm, except in passing. It is too extensive and complex to be to be adequately considered here. This omission is one of various ways in which the arguments of this paper are incomplete. For a brief but powerful critique of Kamm's strategy of appealing to causal relations among the effects of action to explain intuitions that have traditionally been explained by reference to the Doctrine of Double Effect, see Victor Tadros, "Wrongdoing and Motivation" (unpublished paper on file with the author).
 4. Douglas Husak, "The Costs to Criminal Law Theory of Supposing that Intentions are Irrelevant to Permissibility," *Criminal Law and Philosophy* 3 (2009): 51–70.
 5. Judith Jarvis Thomson, "Self-Defense," *Philosophy and Public Affairs* 20 (1991): 283–310, p. 293.
 6. Warren Quinn, "Actions, Intentions, and Consequences: the Doctrine of Double Effect," *Philosophy and Public Affairs* 18 (1989): 334–51. Quinn's ingenious way of responding to the problem of determining when what is intended is a *harm* rather than just an effect on a person that is closely related to a harm forces him to make this point rather differently from the way I have in the text.
 7. F.M. Kamm, "Terrorism and Intending Evil," *Philosophy and Public Affairs* 36 (2008): 157–86, pp. 168–69.
 8. See Jeff McMahan, "Killing, Letting Die, and Withdrawing Aid," *Ethics* 103 (1993): 250–79, p. 279.
 9. Thomson herself writes that "I strongly suspect that giving an account of what makes it wrong to *use* a person . . . would . . . require appeal to the concept of a right." See "The Trolley Problem," *Yale Law Journal* 94 (1985): 1395–1415, p. 1404.
 10. Thus Warren Quinn also defends the moral significance of the distinction between doing and allowing in an essay paired with, and sharing the same main title as, his essay in defense of the relevance of intention to permissibility. See "Actions, Intentions, and Consequences: The Doctrine of Doing and Allowing," *Philosophical Review* (1989): 287–312. Note also that Kagan, in attacking deontological constraints in *The Limits of Morality*, treats both distinctions as targets of equal importance. See esp. p. 83.
 11. "Self-Defense," p. 293.
 12. *Ibid.*, p. 294.
 13. See Derek Parfit, *On What Matters* (Oxford: Oxford University Press, forthcoming), chapter 7.
 14. *Moral Dimensions*, p. 57.
 15. *Ibid.*
 16. *Ibid.*, pp. 58 and 60.
 17. The claims in this paragraph are challenged by Tadros in "Wrongdoing and Motivation," though he remains noncommittal in the end on what kinds of intention can make an act impermissible.
 18. *Ibid.*, pp. 61–2.

19. *Ibid.*, p. 59.
20. *Ibid.*, p. 60.
21. Judith Jarvis Thomson, "Physician-Assisted Suicide: Two Moral Arguments," *Ethics* 109 (1999): 497–518, p. 516.
22. Thomson explicitly accepts this claim in her presentation of the case. See "The Trolley Problem," p. 1403. The claim has been ingeniously disputed by Frances Kamm in various places but her arguments have been answered, in my view decisively, in Michael Otsuka, "Double Effect, Triple Effect and the Trolley Problem: Squaring the Circle in Looping Cases," *Utilitas* 20 (2008): 92–110.
23. "The Trolley Problem," p. 1403.
24. *Moral Dimensions*, p. 18.
25. Jonathan Bennett, *The Act Itself* (Oxford: Oxford University Press, 1995), p. 218.
26. For an example of this approach, see David Rodin, "Terrorism without Intention," *Ethics* 114 (2004): 752–71.
27. Lionel K. McPherson, "Is Terrorism Distinctively Wrong?," *Ethics* 117 (2007): 524–46, p. 542.
28. "Self-Defense," p. 296.
29. *Ibid.*, p. 297.
30. *Ibid.*, p. 298.
31. *Ibid.*, p. 297.
32. *Ibid.*
33. "The Trolley Problem," pp. 1409–10.
34. Judith Jarvis Thomson, "Turning the Trolley," *Philosophy and Public Affairs* 36 (2008): 359–74.
35. My book, *Killing in War* (Oxford: Clarendon Press, 2009), is in effect an extended defense of the view that the morality of war is continuous with the morality of ordinary life.
36. *Moral Dimensions*, p. 28.
37. As Kasper Lippert-Rasmussen forcefully points out in a forthcoming paper ("Scanlon on the Doctrine of Double Effect"), Scanlon's account of permissible killing in war implies that one unusual kind of terrorism is permissible. Because the account requires only that an act that kills innocent people should operate via military advantage, it implies that it can be permissible for a bomber to kill innocent people intentionally as a means of terrorizing or demoralizing enemy *soldiers*, whose consequent desertion in significant numbers then yields a military advantage.
38. My response to this question has some relevance to the assessment of Frances Kamm's view, which seeks to substitute facts about causal relations for the traditional focus on intention in explaining intuitions such as those concerning the tactical bomber and the terror bomber, and those concerning different versions of the trolley case. For a better argument than the one I give, see Tadros, "Wrongdoing and Motivation." Tadros argues that if causal and noncausal relations among good and bad effects have moral significance independently of agents' intentions, it ought to be better if a falling asteroid diverts the trolley away from the five and toward the one than if a falling asteroid pitches a large man into the path of the trolley, thereby stopping it before it hits the five. Yet the difference in causal relations in these cases seems evaluatively insignificant.
39. "Self-Defense," p. 297.
40. *Moral Dimensions*, p. 18.