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THE DOCTRINE OF TRIPLE EFFECT AND WHY A RATIONAL AGENT NEED NOT INTEND THE MEANS TO HIS END

by Frances M. Kamm and John Harris

II—John Harris

THE MORAL DIFFERENCE BETWEEN THROWING A TROLLEY AT A PERSON AND THROWING A PERSON AT A TROLLEY

ABSTRACT Frances Kamm sets out to draw and make plausible distinctions that would show how and why it is, in some circumstances, permissible to kill some to save many more, but is not so in others. To do so she draws on a famous, and famously artificial, example of Judith Thomson, which illustrates the fact that people intuitively reject some instances of such killings but not others. The irrationality, implausibility and in many cases the self-defeating nature of such distinctions I had attempted to expose in my 'The Survival Lottery' over 25 years ago. I still think these distinctions irrational and implausible and I will try, in this response, to show why this remains the case and why doctrines of additional effects, to however many powers they are taken, remain unhelpful in ethics.

Many of the differences that will emerge between Frances Kamm’s approach and my own turn on the fact that Kamm seesthings from the point of view of the agent, and in particular from the point of view of the agent’s subjective consciousness. Thus when she talks of the ‘permissibility’ of actions, she is concerned with what the agent should permit herself to do or to become part of. I believe morality and hence ethics should be more concerned with the question of what is permissible, with what ought to be done or permitted to be done and only hence with the question of what an agent should permit herself to do. Moreover, when we talk of ‘permissibility’ we are also usually concerned with acts at the level of policy and so, very often, with what the law should say about all this. A large part of ethics is

2. I am grateful to my colleague Søren Holm for his astute comments throughout.
not concerned simply with the agent's perspective, but with what should be done and with what should be permitted to be done; it is this dimension of ethics that seems to be missing from Kamm's account. The issue between us is of course a version of the basic disagreement between consequentialists and deontologists, and although both 'schools' think that their arguments are decisive, it is fair to say that such a difference is unlikely to be finally resolved by philosophical argument alone. Rather a resolution will come, if it does, at the level of public policy, by the emergence of an approach that is of more use and relevance in the resolution of real moral dilemmas and in the ascription of responsibility for real events.

I

Doctrines of Additional Effects. Kamm identifies a new effect yielding a so-called 'Doctrine of Triple Effect' to replace the various forms of the Doctrine of Double Effect. Kamm wishes to establish that there are three morally significant relationships agents have to the effects of their actions. 'I act because the greater good will occur, not in order that it does...; I act because (something) will take place, not in order that it does. Hence, there is a third relation, in addition to intending and merely foreseeing—that I may have to an effect.' For Kamm, 'intending an outcome' involves 'acting in order that something occur' and this is supposedly distinguishable from and morally distinct to 'acting because something will happen'.

Two questions with which I will be concerned are whether these relations are distinct and with whether such a distinction makes a scrap of moral difference. We must start by reminding ourselves of the so-called trolley problem; I will use Kamm's excellent summary of it.

The standard Trolley Case involves, let us say, five people on a track towards which an out-of-control trolley is heading. If it continues, it will kill them. However, if we turn it away from them, it will go down another track where it will kill someone unable to be removed. Intuitively, even nonconsequentialists think we may turn the trolley in this case, thereby saving five and foreseeably killing one. Another way to stop the trolley from hitting the five is to throw a bystander in front of it. Its hitting him stops it, but we
foresee that he will die as a consequence. Nonconsequentialists think (intuitively) this is impermissible. (Call this the Bystander Case.) One account of why it is permissible to act in the Trolley Case but not in the Bystander Case is that in the former, we merely foresee the hitting and death of the one person but do not causally require or intend either to save the five. By contrast, in the Bystander Case, the hitting is causally required and we intend it, even while we foresee that being hit will certainly lead to the bystander's death.

While many people have claimed to see a difference between the trolley case and the bystander case and, as Kamm indicates, have tried to explain that difference in terms of intention or by appeal to the doctrine of double effect; this has always seemed to me to be either hypocritical or self-deceiving. Such distinctions are likely to appeal surely only to those whose moral sensibilities are able to detect a distinction between throwing a trolley at a person and throwing a person at a trolley. It is true that in the way the trolley case is usually described people do intuitively, or rather at first blush, see such a difference, but I believe that on analysis they come to see that their intuitions are at fault and that the choice does appear to be what it is, a choice between morally indistinguishable outcomes. Frances Kamm has tried to put fresh flesh on these old bones and to make such niceties more plausible. This paper will in part try to assess how successful this enterprise has been.

Kamm sets out the problem like this:

My main point... here will be to distinguish between doing something in order (or intending) to bring about something else and doing something because something else will be brought about. I hope to show that in the Loop Case, we do not intend the hit on the one. Hence, while Thomson may be right that the person in Loop is a mere means, we do not intend his being a mere means. By contrast, in Bystander, we do intend this. This difference may be morally significant. This distinction between 'in order to' and 'because of' forms the basis for my introducing the Doctrine of Triple Effect (DTE), which not only permits doing something because an evil (that we do not intend) will occur, but also permits doing something because a great good (that we do not intend) will occur. Investigating the distinction between doing something in order to bring about and doing it because we bring about also enable us to see that (contrary to what is usually thought) a
rational agent, insofar as he is rational, need not intend a means necessary to an end that she intends

Kamm’s arguments then are directed to two substantive ethical issues. One is whether the distinctions she draws make any difference to the permissibility of what is done. The second concerns intention. Kamm, as we have noted, introduces a distinction between ‘in order to’ and ‘because of’ which in turn ‘forms the basis for... introducing the Doctrine of Triple Effect (DTE), which not only permits doing something because an evil (that we do not intend) will occur, but also permits doing something because a great good (that we do not intend) will occur.’ Clearly a main point is the contents of the brackets, that the goods or evils are not intended. It seems to me highly artificial and totally implausible that there should be a moral difference between doing something with the intention (in order to) achieve a particular result and doing it for the reason that (because) the result will occur.

My contention will be that what we might call common-sense consequentialism holds something not dissimilar to Kamm’s position but infinitely more plausible, despite the divergence of intuitions about some cases noted by Thomson and others. It seems to me true3 that we are permitted to do something (whether we intend it or not) to prevent a significantly greater evil, but also permitted to do something (whether we intend it or not) because an importantly greater good will occur. This I believe is what matters morally and that the density of the arguments into which Kamm is drawn to make her distinctions, make this, perhaps naïve, principle even more plausible.

All Doctrines of Additional Effects, whether double, triple or n-powered, are really attempts to re-describe the action minus the intention. This is, in principle always possible in some sense and Kamm’s examples illustrate such re-descriptions. But the question remains as to whether this has any effect on our assessment of moral responsibility or permissibility. Remember the whole exercise starts with an appeal to intuitions. Do we intuitively feel that doing something because something else will occur

3. True both in the sense that it follows from the best moral theory but also in the sense that it is more in line with what is objectively acceptable, acceptable both to individual decision makers and at the level of policy.
is morally different to doing it \textit{in order that} something else will occur? Does it really seem different in most (any?) of Kamm's examples?

I don't believe so. I believe very few people thinking through the examples Kamm presents will think that the fine distinctions, niceties perhaps, attributed to the parties make a ha'p'worth of difference.

But suppose we concede the main point, let's suppose that Kamm has convinced us about intention. We now accept that we can kill someone in order to achieve some greater good, because the greater good will occur, but, this notwithstanding, not intend to kill them for that reason. What follows as to the \textit{permissibility} or \textit{morality} of the actions in question? What follows as to the legal relations between the parties?

II

\textit{The Law and intention.} One reason to be interested in intentions is that they form one half of the required elements in any crime under common law. There must be the \textit{actus reus}, the action, the doing of the dirty deed and the \textit{mens rea}, the being minded to do the deed; in the present terminology \textit{intending} to do the deed. I prefer to think of \textit{mens rea} in terms of being \textit{minded} to do the deed as simply having the deed before one's mind as an inevitable part of the action that one is performing. However, tradition may well be against me here, so I will continue to translate \textit{mens rea} as if it meant 'intending' to do the deed. That said, and accepting that Kamm has succeeded in interpreting 'intention' in such a way that her agents need not intend the inevitable and foreseen consequences of their action, is this likely to make any difference to either moral or criminal responsibility?

III

\textit{Kenny's hangover and foreseeability.} Anthony Kenny\textsuperscript{4} pointed out long ago that if I get drunk tonight knowing full well, foreseeing,

\textsuperscript{4} See my \textit{Violence and Responsibility} Routledge and Kegan Paul 1980, p. 50. I say there and still maintain that 'I think the conclusion to be drawn is that "intention" which lends itself to such sophistical arguments, is not much help in determining moral responsibility or in distinguishing the moral quality of different actions with the same consequences. It looks as though intention can be so narrowly defined as to yield any moral answer that is wanted.'
that I will have a hangover in the morning it would be odd to say that I get drunk with the intention of having a hangover in the morning. However, if for some reason having a hangover were morally significant or carried with it criminal responsibility, the fact that the foreseen hangover was unintended would not cut much moral ice. Suppose I am a pilot and if I fly with hangover I may crash the plane or, I must testify in a crucial trial tomorrow and with a hangover I know I will forget the relevant evidence. While it is true, if you like, that I do not intend to have the hangover, it will not be true that I am innocent of the consequences of that hangover, either morally or (probably) criminally.

IV

The Counterfactual Test. Let's return to Kamm and remind ourselves of what she is trying to establish. Kamm considers a crucial test, which might undermine her claim. She calls it 'the counterfactual test.' This is how she introduces it:

The Counterfactual Test. I claim that doing something because this will cause the hitting does not imply that one intends to cause the hitting or does anything in order to hit. If this is true, it suggests that a common test for the presence of an intention, known as the Counterfactual Test, is inadequate. This test asks us to consider an effect, such as the hitting of the bystander, and imagine that (contrary to the laws of nature) it would not occur if we performed the act we wish to perform. Would we still continue to perform the act? If we decline to perform the act, it is said, that shows we intended to produce the effect. But if, as I claim, one can do an act because one believes it has a certain effect and not do it if one does not believe it has that effect and yet not intend that effect, then the Counterfactual Test for the presence of intention is inadequate. To consider the plausibility of this claim, we should now consider other tests for intention besides the Counterfactual Test. If they show we do not intend the hitting in this case, the Counterfactual Test can be rejected.

Kamm then goes on to consider three tests proposed by Michael Bratman. None of them is exactly the same as the counterfactual

test, but Kamm, seems to assume that in answering them she has demonstrated the inapplicability of the counterfactual test. I'm not sure why she thinks this, and on a careful reading I do not see how this has been accomplished. The counterfactual test has strong intuitive appeal; it demonstrates, surely conclusively, exactly why an action was performed, what changes in the world it was aimed at bringing about. To drive a wedge here between what changes an act was aimed at, targeted on, and what changes were intended by the act seems highly artificial. However, again let's suppose that Kamm has brought off the trick and demonstrated that people can fail the counterfactual test and still not intend the effect that was the sine qua non of the action. What should we conclude from Kamm's demonstration of such a distinction? Again I think we would say that this shows the irrelevance of intention to these sorts of moral issues. The counterfactual test does surely succeed in isolating what the agent did, what she willed to have happen and hence what she is morally responsible for achieving. If the agent can do all this without intending the consequences for which she is morally responsible and clearly sought to bring about; then she is to be congratulated on her subtlety and to be condemned or praised all the same for what she has knowingly and voluntarily done.

A crucial argument for the purposes of criminal responsibility and also for the plausibility of Kamm's position occurs in Kamm's discussion of the third of Bratman's tests; and this also seems to be the closest to the counterfactual test which Kamm never really confronts.

Remember Kamm's claim is: doing something because this will cause the hitting does not imply that one intends to cause the hitting or does anything in order to hit.

Here is Kamm's discussion of Bratman's third test:

(3) If we intend x, and our intentions should be consistent insofar as we are rational, then we will filter out intentions that conflict with intending x. But, I believe, it is consistent for someone who turns the trolley because he believes it will hit the one to then try to rescue the one from being hit. If intending the rescue is inconsistent with intending the hit, this would show the agent did not intend the hit. Call this the Rescue Test. (It is purely hypothetical: we ask ourselves whether we could will rescuing consistent with other things we will. No actual rescue need be possible.) The person who turns
the trolley in Loop may think: 'I will turn the trolley and then run
to push the one out of the way. For if I have an opportunity to
save him and do not merely because he would then be hit, I would
intend his being hit. This I must not do whether by action or omiss-
ion. If I fail in my rescue efforts, I get the advantage of the five's
being saved because the one will be hit. If I succeed in the rescue,
the five are no worse off and they had some chance of being saved
(for I might have been unsuccessful in the rescue). I still only
bother to turn the trolley because the one can be hit.'

This, as we have noted, has some resemblance to the counter-
factual test and Kamm's rejection of it surely fails.

Would someone who reasons like this be a rational agent?
Would they be sane? All they need to do to effect the rescue is
not turn the trolley in the first place. Having turned it, the merely
theoretical (logical?) possibility of a rescue is hardly germane.
What would we think of the rescuer who claims virtue for an
attempted rescue when they have not only deliberately caused
the danger which necessitates the rescue, but have done so in a
way which makes the rescue hopeless. This is surely like the man
who fires the gun at another's head and then hares off after the
bullet in the hope, (with the intention?) of getting between the
bullet and it's target before the bullet strikes. What of the sin-
cerity let alone rationality of such an agent?

Since the point of Kamm's distinctions must be, if they are to
have any application in the real world, to speak to the issue of
mens rea; then one would expect them to be persuasive as to
criminal responsibility. Kamm's account seems deficient here
because, as we have noted, he only looks at the agent's
intention.

We may imagine our defendant in the dock. He has just
explained his (unhappily?) vain attempt to interpose his body
between the bullet and his designated, his chosen, but not we are
asked to believe his intended, victim. He has of course referred
to and quoted at some length the authority of Kamm's argu-
ments in discussion of Bratman's third test. He addresses the
judge: 'M'lud, I shot him it is true,\(^6\) but I intended rescuing

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\(^6\) Here I apologise for recalling Polonius ' 'tis true, 'tis true 'tis pity/and pity 'tis,
'tis true—a foolish figure'. Shakespeare *Hamlet Act II Scene II*. See also my *Violence
& Responsibility* p. 96ff.
him from my act—I just wasn’t quick enough; despite my best endeavors I just couldn’t keep up with the bullet let alone overtake it. I only wish I’d gone to more of them keep fit classes when I was a nipper—is it my fault they make bullets so fast these days?

Of course the judge would reject such sophistry, but equally, he might be wrong so to do. I have, of course, made the defendant sound insincere, partly perhaps by putting his plea in a sort of music hall vernacular. But let’s assume he was, like Kamm’s witness, perfectly, if implausibly, sincere, what then? If the judge or the jury would have been wrong to reject the defendant’s account of his intentions we would surely want to revise our attitude to the relevance of intention to criminal responsibility for conduct.

This is why it is difficult not to regard this sort of over subtle reasoning, as sophistical rather than sophisticated. The best way of rescuing is not doing the turning or the pushing in the first place. How rational is a rescue that has absolutely no chance of success? In medicine treatment that has absolutely no chance of success is rightly termed ‘futile’ and it is generally regarded as unethical to waste precious resources on it.

We may conclude for the moment that the Rescue Test fails to rebut the Counterfactual Test which, recall ‘asks us to consider an effect, such as the hitting of the bystander, and imagine that (contrary to the laws of nature) it would not occur if we performed the act we wish to perform. Would we still continue to perform the act? If we decline to perform the act, it is said, that shows we intended to produce the effect.’ Someone who deliberately creates the situation that calls for a rescue in the first place and then attempts to mitigate moral and legal responsibility for that act by attempting (no not even attempting surely but ‘going through the motions of’) a futile rescue, has surely failed morally to distinguish their act from that of the person who doesn’t ‘attempt’ the rescue.

Remember, this is not a case where the rescue indicates a change of heart, in the sense that the agent now does not want to bring about the greater good which will be achieved when the rescue fails. Nor do they believe that that greater good is somehow insufficient to justify the initial act.
V

Judging people and judging actions. Here it may be important to recall a distinction emphasized by Jonathan Glover, and familiar to consequentialists, between judging people and judging actions. The person who fully intends the lesser evil which is justified by the greater good thereby to be achieved, may, if Kamm is right, be thought to be a less good person, than the person without such an intention, but this does not say anything about the permissibility of the act which brings about the greater good. If the greater good should be achieved at this cost (the infliction of the lesser evil) then that is it's sufficient justification.

Suppose there could be a case where a great good could be achieved by the commission of a lesser evil and that either Tom or Dick could bring about this great good. For reasons we don't need to imagine (perhaps because they are unimaginable) Tom could bring off the trick of failing to intend the lesser evil but Dick (because he has too much integrity?) cannot. Perhaps he cannot make, or believe in the plausibility of, the necessary fine distinctions. Does this mean that only Tom may legitimately bring about the greater good in this way? Suppose they have time to discuss the matter and both agree that for Kammesque reasons, Tom should do the deed because he will be guiltless of the act. Would anyone think the world was a better place for Tom's being the agent in these circumstances rather than Dick?

Shakespeare, as ever, is peerless in exposing such self-deception with point and economy. Recall the hypocrisy of Sir Robert Brakenbury in Shakespeare's Richard III. Brakenbury knows that he is being wrongfully commanded to deliver Clarence to his murderers, but he squares things with his conscience thus: 'I am by this commanded to deliver/The noble Duke of Clarence to your hands:/I will not reason what is meant thereby,/because I will be guiltless of the meaning'. Brakenbury of course well knows that the men who bring such a warrant come to murder Clarence. When he says he 'will not reason what is meant' in order to be 'guiltless', we are left in no doubt that he has such a

8. Act I. Scene IV.
reason not to reason only because he has already done the requisite reasoning and is guilty of, not only the meaning, but the consequences.

Returning to Tom and Dick, suppose now that Tom dies before he can complete the action that will achieve a great good at the cost of a smaller harm. Should Dick refuse to take over, because he realizes he will intend the lesser harm, would it be better that the greater good did not happen if Dick's intentions are added to the moral costs? Suppose Tom realizes at the point of action that he was deceiving himself and, let us suppose, he realizes that the formation of an intention to rescue those who must die to bring about the greater good was ridiculous and insincere. He has a sudden insight that he too must also intend the lesser evil in the requisite sense of intention. Does this mean that neither of them should, from a moral point of view, bring about the greater good?

Is it a question of how many scruples Dick's scruples about intention add to the moral balance pan? Remember neither Tom nor Dick, nor the people in Thomson's nor Kamm's scenarios are bad people. They are not people with wicked intentions. They are people, like all of us, forced by events to face murky alternatives, which they would not willingly have chosen to face. They see that it is better from a moral point of view that, say, five survive rather than one. They would far rather no one would have to die, and, because they are human, they would far rather they did not have to make the choice and do the morally necessary deed. They are surely good, decent, people; already as good as they need to be, as they could reasonably be expected to be. What do the doctrines of double or triple effect aim at, what are they for?

The answer must be that they are to preserve morality, to make the world a better place and people better people. Here it emerges, if it has not done so already, that Kamm and I have different ideas about what making the world a better place amounts to.

In all the cases so far considered, the moral point is to ask what choices would have the effect of making the world a better

9. I shall not address here the vexed question of whether and to what extent the numbers count.
place. Do we want a world where five lives count for everything if one can be killed without anyone intending his death, but count for nothing (or not for enough), when they can only be saved at no lesser cost, save for the intention to kill in such a cause? Is there really a plausible difference between the person who kills another because he can thereby save five and the person who kills another in order thereby to save five? Each of such people we may all agree to be decent well-motivated individuals. Is it plausible to think that one of them will be more decent or better motivated for possessing the ability to appeal, for example, to the possible rescue fantasy? Arguably anyone who appealed to such a transparently self-deceiving fantasy would be a worse person, not a better one.

I am unconvinced by Kamm's examples, ingenious as they are, but even someone convinced by them would surely be left feeling that they somehow missed the point of moral argument, that they somehow failed to engage with what really makes a moral difference. The point of moral argument is, among other things, to distinguish the permissible from the impermissible. Any philosophy that relied on such fine distinctions would have little application in the real world of moral choice, or for that matter to issues of criminal responsibility.

Better surely to go directly to the main issue and encourage people to ask themselves the question: what should I do and at what cost is it still permissible to do it? If an evil is too great to be justified by a greater good then it simply should not be performed by anyone, whatever their intentions. If the greater good is sufficiently important to be brought about at the cost of the sacrifice of innocent lives, it is surely unlikely that the intentions of the agents necessary to bring it about are likely to add sufficient scruples to the balance to make the actions required to bring about that good impermissible.

VI

Intentions and reasons for action. Kamm sums up her arguments as follows:

The Doctrine of Triple Effect. However, the Unintended Good Case clearly violates the DDE and DDE(R) as standardly presented. In this case, I act because the greater good will occur, not
in order that it does. In the Loop Case, I act because the hitting will take place, not in order that it does. Hence, there is a third relation, in addition to intending and merely foreseeing—that I may have to an effect. Even if intending a bad effect were impermissible, acting because of it might not be. Interestingly enough, this same relation to an effect—acting because of it rather than merely foreseeing it or intending it—can capture our relation to the greater good which justifies our act... Then to take account of this third relation to effects (both good and bad), I suggest a revision of titles, from the Doctrine of Double Effect to the Doctrine of Triple Effect (DTE). The DTE(R) should say: 'A greater good that we cause and whose expected existence is a condition of our action, but which we do not necessarily intend, may justify a lesser evil and involvement leading to it that we must not intend but may have as a condition of action.' The DTE(R) still requires that we intend some good, however small.

The 'because of' relation, as Kamm describes it, doing something because of what it will cause or prevent rather than intending it is not surely a new relation, it is simply one way of giving reasons for action. 'Why did you do that?' 'Because it would cause/prevent so and so'. 'Why did you do that?' 'In order to cause/prevent so and so'. If there is a breath of moral difference between these two answers it is so fragile and unstable as to be unhelpful in moral argument and useless as we have indicated, in legal contexts. The main support for it I can detect in Kamm's paper is the 'Rescue Test' and this, as we have seen is hardly plausible. The counterfactual test seems to me the most plausible test for intention at least where moral or legal consequences are important. Certainly it is the best simple test to identify reasons for action. But, even if Kamm sustains her point and is persuasive that a wedge may be driven between what we do because of its consequences and what we do in order to bring about the consequences; and even if she is right to claim that what distinguishes the cases is the intention of the agent, we must surely ask what has this contributed to ethics?

I think a decent person pondering all this would say: 'so much the worse for intention, that just shows that intentions, if divorced from reasons for action, are too fickle to make moral differences either to the moral character of agents or to the moral qualities of their actions'. We should thus re-interpret the mens rea element of common law crimes to require that the agent is
minded that something happen. And to be minded that something will occur is to act because it will occur.

VII

*The blazing vehicle.* H. L. A. Hart pointed out in a discussion of the doctrine of double effect, that such a doctrine would forbid the following action: 'a man had been trapped in the cabin of a blazing lorry from which it was impossible to free him, and a bystander, in answer to his pleas, shot him and killed him to save him from further agony as he was slowly being burned to death.' The doctrine of triple effect would be equally helpless here because on any account the bystander intended the drivers' death, acted *because* the death would result and *in order that* it would. If the doctrine of triple effect would forbid such an action it is clearly at fault.

A classic case of appeal to doctrine of double effect is where terminally ill cancer patients are given morphine at levels which will shorten life but which will control pain. It is claimed that doctors are innocent of causing premature death because their intention was to control the pain. This principle is accepted as a justification in English Law. Imagine the following scenario:

*Two painful illnesses.*

Illness (1) is a terminal illness characterized by three weeks of intense pain followed by death. The only way to control the pain effectively is to give drugs at levels, which will cause death after one week.

Illness (2) is not terminal. It is characterized by three weeks of intense pain, comparable to that in illness (1) but followed by complete remission. The only way to control the pain effectively is to give drugs at levels, which will cause death after one week.


11. And of course it would only forbid such an action when combined (as it usually is) with a strong prohibition against killing. Here of course the driver is requesting death but Doctrines of Additional Effects are usually invoked to distinguish cases in the field of Euthanasia where the request for death is a constant.

Tom and Dick are now identical twin brothers age 30, neither is competent to make their own decisions but each has a life worth living prior to the illness. Tom suffers from illness (1) and Dick from illness (2). Is there any difference in the ethics of effective pain control for the two brothers? In each case the doctrine of double effect allows the doctor to say, and sincerely intend, the same thing. 'I am intending to treat pain not to hasten death.' Yet hastening death (killing) is something the doctors must do if they are to relieve pain in each case.

Kamm's doctrine of Triple Effect would not help here because in either case the doctor would be acting 'because the drugs will relieve pain', and in neither case will she be acting in order to bring about death or because death will result. Triple effect here has nothing to say which would distinguish the two cases. In these cases triple effect says nothing, double effect says something morally unacceptable, only consequentialism says something useful: namely 'act to achieve the best overall consequences'. Of course Kamm's formulation of the Doctrine of Triple Effect allows her to distinguish these two cases in terms of the magnitude of the goods (and bads) that we cause in each case and clearly these are very different. However Kamm would have to say that in the case of illness (2) that the doctor cannot control the pain because of the consequences of so doing. And here Kamm's position relies on consequentialist reasons for distinguishing the moral imperatives in each case.

Now suppose the brothers are competent. What should they be told about the pain relief options available? In each case I believe an unavoidable description is 'I can control the pain but doing so effectively will kill you.' The only remaining question is as to whether the patient minds being killed in order to secure pain relief given what will thereby be lost to them by way of possible periods of extra life.

VIII

Occam's razor and strategic bombing

Here is an application of the DTE(R) to another situation: A strategic bomber targets for destruction one portion of a munitions

13. See page 53.
14. Or reasons that are so close to consequentialist reasons as to be for all practicable purposes indistinguishable.
factory. He intends to bring about this small good but foresees two side effects: (1) killing ten innocent civilians and (2) stopping a massacre of twenty different civilians because the killers are distracted by the sound of bombing. (Massacre Case). (1) is too large an evil to be outweighed by the small intended good. (2) is a great enough good to outweigh (1), but it is not intended since its occurrence is not necessary to the war effort. Hence, if the DDE or DDE(R) as standardly understood were a necessary condition for moral permissibility, they would block the attack on the factory. The DTE(R) permits it if the agent acts because of (2)

We may bomb the factory and save the lives with but only if we do so for that reason. Fair enough but surely simpler to apply Occam’s razor and to ask under what conditions would the bombing of the factory be justified? The answer will be: bomb the factory (1) If the war is morally justified in the first place. (2) If the bombing is a rational way of pursuing the war effort. And (3) If the bombing does not result in more innocent lives being lost than are thereby saved including of course, lives saved by the contribution to the war effort of the action. We don’t then need to know what the intentions of the parties were.

To say that saving twenty innocents is not intended since it’s occurrence is not necessary to the war effort’ is surely artificial in the extreme. The fate of the twenty may have formed no part in the decision that led to targeting the factory in the first place. But once it is known that their rescue is part of what will happen if the factory is bombed, it becomes part of what the agents do, and for which they are morally responsible. The war effort, if it is morally defensible to pursue it at all, cannot be defined narrowly as ‘that which will do maximal damage to the enemy’s capability to make war’. It has to be understood as including the moral objectives that make fighting or resisting the enemy permissible in the first place. These must of course include the moral costs of prosecuting the war in particular ways.

Kamm’s conclusion is drawn as follows:

Conclusion. I said that one focus of this article was how to distinguish the Bystander Case from the Loop Case. One way to do so is to rely on the DTE(R). The Bystander Case violates the DTE(R), as in it we intend that the one be hit, but the Loop Case passes. However, I do not think we should endorse the DTE(R) as an adequate principle of permissible harm. There are acts it
incorrectly permits and cases it does not correctly distinguish, I believe, though I shall not prove that here. As interesting and fruitful as I find the issues it raises, we must look further for a correct principle of permissible harm.

It is difficult not to concur in the last part of Kamm’s conclusion, namely that we must look further for a correct principle of permissible harm. Since Kamm ultimately rejects her Principle of Triple Effect she has in a sense already anticipated part of my conclusion. So far from there being three morally significant relations agents have to the effects of their actions I believe there is just one—responsibility. What matters is that for which we are responsible, our moral obligation is to decide those things we may legitimately do or bring about. If something\textsuperscript{15} shouldn’t be done, then we shouldn’t do or intend to do it. If it should be done then we are free to intend it or have any other relationship of responsibility for making it happen.

If we can add to Kamm’s rejection of her own principle a rejection of all Principles of Additional Effects, ethics will have advanced. If we can also reject all distinctions aimed at purifying the hands that do ‘dirty’ deeds by washing them clean of intentions, but which leave them free to perform the acts that must not be intended, but may none-the-less be freely chosen, ethics will have advanced even further. And finally, if we can remove the prohibition against achieving greater goods via forbidden intentions, not only will ethics have advanced but also the world will be a better place.

\textsuperscript{15} Of course ‘the something’ must be carefully specified and will sometimes be specified in a way, which permits some, but not others bringing them about.