

The Secret to the Success of the Doctrine of Double Effect (and Related Principles): Biased Framing, Inadequate Methodology, and Clever Distractions^{*}

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Abstract

There are different formulations of the doctrine of double effect (DDE), and sometimes philosophers propose “revisions” or alternatives, like the means principle, for instance. To demonstrate that such principles are needed in the first place, one would have to compare cases in which all else is equal and show that the difference in intuitions, if any, can only be explained by the one remaining difference and thus by the principle in question. This is not the methodology defenders of the DDE and of related principles use, however. I will discuss how they actually proceed, focusing on their preferred four pairs of examples. While these examples might have rhetorical force, they are nevertheless philosophically and methodologically useless (since they do not keep all else equal). As a corrective, I shall offer examples that do keep all else equal. These examples *undermine* the DDE and related principles. I then argue that while the *Loop* case and the “closeness” problem in the context of Jonathan Bennett’s *Sophisticated Bomber* example might once have been an embarrassment of sorts for defenders of the DDE, meanwhile their discussion serves as a convenient distraction from the many clear examples disproving the DDE and related principles. I conclude that there is simply no sufficient intuitive support for the DDE or related principles. Instead of looking for their “rationales,” they should be abandoned.

Key words

bias; closeness; doctrine of double effect; *Loop* case; means principle; methodology

Introduction

According to the doctrine of double effect (DDE) it is more difficult to justify inflicting a harm (or more precisely: an evil¹) on a person when the harm is intended (one *wants* to harm the person, which does not mean that one cannot on some level regret the harm as a necessary evil) than when it is merely a foreseen side-effect of the pursuit of one’s goals. A related principle (that in fact is sometimes used to “explain” the DDE²) is that it is more difficult to justify harming people such that the harm befalling them is a means for achieving one’s goals than to justify harming them when the harm is no such means (nor

^{*} This is a post-peer-review, pre-copyedit version of an article published in the *Journal of Ethics*. The final authenticated version is available online at:

<https://doi.org/10.1007/s10892-018-9272-6>.

¹ It seems that Aquinas, who is often credited as the “inventor” of the principle, did not consider the infliction of proportionate punitive harm on wrongdoers to be evil. We can avoid such complications by focusing, as modern discussions of the DDE mostly do, on harming the innocent.

² This explanation is then often referred to as the “Kantian” rationale of the DDE. See for instance Cavanaugh (2009: 147-158); Nelkin and Rickless (2014: 131-133, 147-154).

an end in itself). There are different formulations of the DDE, and sometimes philosophers propose “revisions” or alternatives, which, however, usually retain a certain structural or functional similarity with the DDE or the means principle and can therefore be considered as related principles.

“More difficult” is relative. In fact, some things might be more difficult to justify because they cannot be justified at all. Traditionally, the DDE was understood as an *absolutist* doctrine: producing an evil can *only* be justified if it satisfies all of the DDE’s criteria. Here is a classic formulation:

A person may licitly perform an action that he foresees will produce a good effect and a bad effect provided that four conditions are verified at one and the same time: 1) that the action in itself from its very object be good or at least indifferent; 2) that the good effect and not the evil effect be intended; 3) that the good effect be not produced by means of the evil effect; 4) that there be a proportionately grave reason for permitting the evil effect. (Mangan 1949: 43)³

What is implied here is, of course, that *otherwise* the action would not be licit. Most modern ethicists, however, are so-called threshold deontologists, that is, they think that almost anything can be justified if the stakes are high enough. For example, if it were necessary to make sure that a certain innocent person is dead to secure the survival of a sufficiently large number of other innocent people, then intending his death might well be justified. Traditional formulations of the DDE are of no use when it comes to expressing this *non-absolutist* and comparative idea that the infliction of intended harm, while more *difficult* to justify, can nevertheless still be justified if particularly demanding proportionality constraints are met. They are of no use for this purpose because they list proportionality as one of the justifying conditions of the non-intended infliction of harm, rather than describing the different strengths of the proportionality constraints in the case of intended harm on the one hand and of non-intended harm on the other as something that these conditions explain. The comparative idea can be expressed as follows, however:

If a person performs an action that produces a good effect and a bad effect, then this act is easier to justify – namely because it has to satisfy less demanding proportionality constraints – if three conditions are fulfilled at one and the same time: 1) the action is not evil in itself; 2) the good effect and not the evil effect is intended; 3) the good effect is not produced by means of the evil effect.

Why should anybody believe that this is true? Why should one believe that the intended infliction of harm is more difficult to justify than the “merely” foreseen infliction of harm? Those authors in particular who think that the means principle underlies the DDE emphasize the allegedly “acknowledged intuitive appeal of the very idea that using someone is wrong” (Nelkin and Rickless 2014). Yet this idea has no intuitive appeal at all, since asking someone for the time and then getting the requested information *is* to use that person, but it is not wrong. Of course, the “Kantian rationale” is

³ The first condition actually seems odd: if the act is “good in itself,” what else is there to say? It would therefore make more sense to formulate the condition negatively: the act is not supposed to be *bad* in itself. If, however, it is not possible for acts to be bad in themselves, then the condition will *always* be satisfied. In the following I will have nothing to say on this condition.

more precisely expressed in terms of using people *merely* as means.⁴ But then again, the idea that treating people as mere refuse is wrong also has considerable intuitive appeal. In other words, the fact that it is intuitively normally wrong to harm people in such a way that the harm serves one's purposes certainly does not show that it is *more* wrong than harming people in such a way that the harm does not even serve one's purposes (Bennett 1998: 218).

Thus, appeals to the alleged intuitive appeal of slogans like "Using people as means is wrong" will not suffice. More promising, in contrast, is the approach taken by most defenders of the mere means principle, the DDE, or of related principles, who "attempt to justify the mere means principle using coherence with moral intuitions, moral concepts and moral principles, as in a Rawlsian reflective equilibrium" (Bruers 2016: 417). This is allegedly a "powerful approach" (Nelkin and Rickless 2014: 131), but one should note that it is only as powerful as its execution. It does not suffice, for instance, to point out that the mere means principle is related to notions like respect, intrinsic value, dignity, basic rights, propertarian libertarianism, or the difference between doing and allowing (among other things).⁵ After all, the no-harm principle (which as such does not distinguish between means and side-effects) *also* relates to these notions. To be sure, the former principle relates to some notions the latter does not relate to – but that might well be an advantage of the no-harm principle, not of the means principle or the DDE.

Accordingly, an appeal to abstract "notions" will not suffice, either. And indeed, the preferred method employed by defenders of the DDE and of related principles is to compare concrete pairs of cases with regard to which our intuitions differ and to then argue that the difference in intuitions between the first case and the second can only be explained by the DDE or related principles.

I put the last sentence exactly the way I did for a reason. To wit, it is an entirely *flawed* methodology to selectively compare concrete cases towards which our intuitions differ. Rather, one must compare cases in which *all else is equal*, that is, where the *only* difference (apart from the differences that logically or conceptually follow from this difference – it makes little sense to use logically or conceptually impossible examples) is that in one case the harm is intended while in the other case it is merely foreseen – and *then* one has to *look to see* whether common intuitions really do differ with regard to these two cases or not.

This is not the methodology defenders of the DDE and of related principles use. In the following I will discuss how they actually proceed, focusing on their preferred four pairs of examples (*sections 1* and *2*). I argue that while these examples might have rhetorical force and will be met with an appreciative nod by those who are already convinced of the DDE and of related principles, they are nevertheless philosophically and methodologically useless (since they do not keep all else equal), and therefore they prove nothing. As a corrective, I shall offer examples that do keep all else equal. These examples, being methodologically appropriate, prove something – they *undermine* the DDE and related principles. Finally, in *section 3*, I argue that while the *Loop* case and the "closeness" problem in the context of Jonathan Bennett's *Sophisticated Bomber* example might once have been an embarrassment of sorts for defenders of the DDE, their endless

⁴ Even *that* might sometimes not even be *pro tanto* wrong. See Guerrero (2016).

⁵ Bruers (2016: 417) lists these notions in support of the means principle.

discussion has already for some time now *de facto* served as a convenient distraction from the many absolutely *clear* and far more powerful examples – some of which are to be found below – disproving the DDE and related principles. In short, there simply is no intuitive support for the DDE or related principles. Instead, the flawed methodology and the evasive maneuvers employed by defenders of the DDE and of related principles merely make it *appear* that there is. Appropriate examples and an appropriate methodology, in contrast, show that the emperor is naked, and has been all along.

1. A Rigged Comparison: The Terror Bomber/Tactical Bomber Example

Imagine I would in all seriousness – instead just as an illustration of a point I want to make – offer the following pair of examples in support of an alleged ethical principle “BWTB,” according to which, all else being equal, it is more difficult to justify when black people inflict harm than when white people do:

Neutral White Bomber

A white bomber (fighting a just war) drops a bomb on an enemy munitions factory, intending to destroy the factory and thereby damage the enemy’s fighting ability, foreseeing that the fallout from the resulting explosion will cause the death of a number of innocent civilians living near the factory, but not intending these deaths.

Terrible Black Bomber

A black bomber (fighting a just war) drops a bomb on an enemy munitions factory, intending the resulting explosion-fallout-caused deaths of a number of innocent civilians living near the factory as a means of terrorizing the rest of the enemy population into giving up the war effort.

People would probably call me a racist, but this is neither here nor there, for if the principle is true, it is not racist (at least it would not be the expression of a racist prejudice but rather the expression of a racist truth). More to the point, philosophers would probably point out that the *labeling* (“neutral” vs. “terrible”) I use here is already an expression of sheer bias. Instead of allowing the reader to actually test his or her own intuitions, I make very clear from the start what intuitions he or she is supposed to have. The labeling betrays the fact that the aim here is not the unbiased pursuit of truth, but rather the confirmation of prejudice. Furthermore, philosophers acquainted with thought experiments would probably also point out that taking these two examples as supporting BWTB is – *even if we set the biased labeling aside and even if we intuitively deemed the second act as more difficult to justify than the first one* – an expression of methodological incompetence, for in order to prove that all else being equal the BWTB does any normative work, you have to actually keep all else equal. Yet it is obvious that things are *not* equal in the two examples.

Interestingly, however, quite a number of philosophers have absolutely no problem offering in all seriousness the following two examples in support of an alleged principle “DDE,” the Doctrine of Double Effect, and related principles, according to which, all else being equal, it is more difficult to justify the *intentional* infliction of harm (where the harm is either intended as an end in itself or as a means) than the merely foreseen infliction of harm, or more difficult to justify *causally involving* (whether intentionally or not) people as a means to an end than to harm them as a mere causal side-effect of one’s pursuing the end.

Strategic Bomber (often also called Tactical Bomber)

A bomber (fighting a just war) drops a bomb on an enemy munitions factory, intending to destroy the factory and thereby damage the enemy's fighting ability, foreseeing that the fallout from the resulting explosion will cause the death of a number of innocent civilians living near the factory, but not intending these deaths.

Terror Bomber

A bomber (fighting a just war) drops a bomb on an enemy munitions factory, intending the resulting explosion-fallout-caused deaths of a number of innocent civilians living near the factory as a means of terrorizing the rest of the enemy population into giving up the war effort.⁶

Unfortunately, offering this pair of examples in support of the DDE or related principles is methodologically almost as inadequate and unreasonable⁷ as offering the previous set of examples in support of the BWTB, and for the same reasons.

First, it certainly does not attest to an unbiased approach if defenders of the DDE use an inflammatory label for one example ("terror") and a sanitized one for the other ("strategic"). One could, after all, have used neutral terms like "intentional" and "foreseeing," or two *equally* inflammatory terms, like "terror bomber" and "collateral bloodbath bomber."⁸

⁶ The formulation of these examples is taken from Nelkin and Rickless (2016: 378). These examples, in slightly different formulations, pervade the entire pro-DDE literature.

⁷ Nelkin and Rickless (2016: 378) claim: "Not unreasonably, proponents of DDE see this pair of cases as evidence that the moral distinction between terror bombing and strategic bombing hinges on the distinction between intending harm and merely foreseeing harm ..." Given that things are unequal in the two examples, however, it is entirely unreasonable. Compare also Draper (2016: 140), who rightly deems the approach taken by defenders of the DDE "methodologically suspect," and points out: "[I]f we consider cases of terror bombing and tactical bombing that are very similar to each other, I doubt that most of us do have Quinn's intuition that the tactical bombing would be 'much easier to justify.'" Or as a psychologist complaining about confounding factors in the typical hypotheticals employed by defenders of the DDE puts it: "[P]hilosophers may endorse the DDE at least in part because they misattribute strong intuitions to the DDE that are in part driven by other factors." Cushman (2016: 774). Cushman's empirical findings might also find theoretical support in the "precautionary principle" of Guerrero (2016).

⁸ I have come across the objection that it is allegedly not obvious that the inflammatory terms influence the judgments of philosophers who spend a long time considering the cases before settling on a view that is intuitively acceptable. However, my point is that given that it *is* obvious that there is at the very least a *risk* of such an influence and given that this influence could easily be avoided by using a neutral terminology, choosing a non-neutral one anyway is an expression of bias and clearly methodologically inept. Moreover, these examples are presented not only to philosophers but also to a wider audience, including undergraduate classes. The same anonymous reviewer to whom I dedicate the next paragraph in the main text states, however, that he or she "does not know of any moral philosopher who provides potentially biasing labels to students when presenting pairs of cases designed to elicit unbiased intuitions." Given that countless undergraduate courses (this is easy to google) that deal with the DDE routinely have Quinn (1989) on their reading lists, an article that of course prominently features the

It is, incidentally, quite telling that I have received an objection to this diagnosis of bias that precisely serves to confirm it. To wit, I have encountered the objection that it would be “uncharitable in the extreme to suggest that use of these labels reveals prejudice, rather than unbiased pursuit of the truth. The cases are labeled for mnemonic purposes, or for the purposes of entertaining the reader, with the mutual understanding that the cases are labeled as they are as a reflection of the unbiased intuitions previously elicited from those who refer to them.”⁹ First, it clearly is not “uncharitable to the extreme” in my two examples of the “Neutral White Bomber” and the “Terrible Black Bomber” – so why should the “Strategic/Terror” comparison suddenly be “unbiased” although it *likewise* uses a terminology that already *rhetorically suggests* the very result one wants to “elicit”? Moreover, if the terminology is *rhetorically suggestive*, then the intuitions “previously elicited” by *the very same examples* can hardly count as unbiased. If, on the other hand, the intuitions have been elicited by *other, neutrally* formulated examples (which defenders of the DDE apparently keep secret) – what are *those* and why not use *them*? Second, it is difficult to see what is so “entertaining” about calling the bombers “strategic” and “terror” – it would certainly be far more entertaining to call them “toopsi” and “shnoopsi.” Third, “foreseeing” and “intentional” are clearly *far superior* – in fact the only adequate – “mnemonic devices” seeing as these terms have the considerable advantage of reminding the reader of the very distinction the examples are actually supposed to be about. If, instead, one reminds the reader of *other* things, then that seems to be not so much mnemonic as distractive. Fourth, a “mutual understanding” that is merely *presupposed* is anything but mutual. Unless defenders of the DDE only want to preach to the choir, they will also use their examples in the hope that readers *share* their intuitions; they want to precisely elicit their own intuitions about the DDE in the reader as well. But then – if the “unbiased pursuit of the truth” really is the goal – they must abstain from using examples that are rhetorically rigged to elicit intuitions that otherwise might well be entirely lacking. In fact, the objector *admits* that “[t]he labels are there to help the reader remember which cases are relatively disfavored and which are not.” This admission displays a patronizing attitude towards the reader, not one looking for “mutual understanding” in the course of an “unbiased pursuit of the truth.” If the latter were the aim, the reader would not need to be preventively made to “remember” what is “relatively disfavored” (by whom, exactly, if not simply the author?), but to be enabled to *find out* what does and what does not actually *deserve* to be disfavored. It is not a valid reply to claim that authors using such examples “are not conducting X-phi [experimental philosophy] on their readers.” What they are conducting – or better, what they *should* be conducting if they are really interested in an unbiased pursuit of truth and mutual understanding – is, precisely, an attempt to elicit *non-biased judgments* in the reader, not prejudicial ones. And here too the objector actually admits that “perhaps” “the existence of non-neutral labels lead readers of articles written by DDE-proponents to make biased

terminologically biased “Strategic Bomber/Terror Bomber” comparison (as do other articles that are popular in such reading lists), and given that quite a few of the teachers of such courses defend the doctrine by relying on precisely such examples, it is not really difficult to do the math.

⁹ This objection was raised by an anonymous reviewer. All quotes in this paragraph stem from this objection.

judgments.” Allegedly, however, this is “unlikely” because “[r]eaders of articles in professional philosophy journals are well aware of the norms involved in the use of non-neutral labels, and are unlikely to be swayed by their use.” Given, however, that evidently not even *authors* of articles in professional philosophy journals are well aware of said norms – after all, the biased comparisons I am criticizing here stem from the pages of professional philosophy journals – it is unclear why one should expect more of readers. It is also, additionally, beside the point to claim that “[r]eaders can be trusted to respond to pairs of cases with their own intuitions, regardless of the labels.” Yes, sure, with whose intuitions else should they respond? However, readers are certainly *not* to be trusted (nor are authors) to respond to rhetorically *prejudicial* examples with the same intuitions with which they would respond to rhetorically *neutral* ones – and that certainly is not “regardless of the labels.” Moreover, given that neutrally formulated pairs of examples are easily generated, using non-neutral ones anyway is and remains biased and methodologically inept.¹⁰ Thus my criticism stands.

The second reason why the *Strategic Bomber/Terror Bomber* pair of examples is inadequate as support for the DDE is that things – just as in the set of examples in support of the BWTB – are not equal at all.¹¹ (This is also true of the three other standard pairs of examples, to which I will come in due course.) One difference is that the two bombers do not both drop the bombs on what they intend to destroy; only the first bomber does.¹² (As we will see below, one can easily equalize both cases along this dimension by having both bombers drop their bomb on a neutral mark X.) Imagine, however, the first bomber dropped his bombs not on the munitions factory but (still intending to destroy the munitions factory) on the civilians (just as, according to the example, the second bomber drops the bomb on the munitions factory intending to kill the civilians). It would seem that this might change our moral assessment of the “tactical” bomber. It certainly would change the legal assessment under International Humanitarian Law, for now his act has arguably become a war crime. At the very least, we cannot *a priori* exclude the possibility that it is not only morally relevant what the bomber *intends to destroy* but also

¹⁰ See also note 8.

¹¹ I said “almost as inadequate” in the previous paragraph because there is an additional difference in the first set of examples, namely the difference of color. However, removing this difference definitely does not keep *all else* equal in the second set of examples.

¹² An anonymous reviewer objects that this difference is “irrelevant” because, allegedly, intuitions will not change if we “suppose that the Terror Bomber also intends to destroy the enemy munitions factory on which the bombs are dropped.” First, the reviewer misses the point of the present discussion: the point is that it *is a difference* and that it is methodologically inept to proceed by announcing its “irrelevance” and keeping it instead by simply getting rid of it, thus *equalizing* the examples. Moreover, the reviewer declares the “irrelevance” of the distinction by now introducing an entirely *new* difference and thereby displaying the very methodological ineptitude I am criticizing: the “Terror Bomber” now wants to destroy *both* targets, the Strategic Bomber only *one* (I assume, for if he *also* wants to destroy *both* targets, then we have just *one* kind of bomber, not two). So how does the reviewer know that it is not this *new* difference that plays the decisive role? Clearly, the only methodologically adequate course is to keep all else equal.

what he *targets*, and these things can come apart.¹³

At this point I have to report still another peculiar objection that, again, just confirms my diagnosis. The objection is that the just mentioned change of our moral assessment “doesn’t show that a new pair of cases, in which both the tactical bomber and the terror bomber target civilians, fails to support the DDE (or works against the DDE)” because there might be “a moral principle that speaks against the intended targeting of innocents, in addition to, or as a corollary of, the DDE. ... If it’s an additional principle, then the change in one’s moral appraisal doesn’t speak against the DDE ..., because the presence of one morally relevant factor (i.e., targeting innocents) that accounts for similar judgments in two cases doesn’t entail the moral irrelevance of the other factor (i.e., intention to harm or destroy innocents).”¹⁴ Note that this cuts both ways, however, which has been precisely my point all along: when there is a non-DDE-factor that accounts for similar judgments in two cases to those entailed by the DDE, then, conversely, the judgments in those cases do *not* entail the moral *relevance* of the DDE. To rely, as the critic does, on one edge of the double-edged sword while continuously downplaying or ignoring the other is, indeed, biased. Moreover, I have in no way advanced the changed judgment mentioned above as an indication that the DDE is wrong but merely as an indication that targeting is relevant and that thus examples that do not keep factors like these and others equal are *useless*. The objection of the critic seems to confirm that, which makes it self-defeating.

Talking about other factors: A further obvious difference is that in “Tactical Bomber” the military advantage lies directly in the destruction of the military facility, while in “Terror Bomber” the advantage is indirectly achieved: the advantage is not directly the destruction of the innocent persons, but the indirectly (via the destruction of those persons) achieved *terrorization* of the population. The presence of *terror* in one example and its absence in the other certainly looks like a relevant difference.¹⁵

¹³ It is correct that in the original *Strategic Bomber/Terror Bomber* examples not even the “terror bomber” targets the civilians. But again, this is beside the point. The point is that there is still said difference between them: one bomber targets what he wants to destroy, the other not. The only way to exclude this difference without introducing a new one is by having both bombers target some neutral third target (see below for a relevant example).

¹⁴ I am not sure what a corollary principle is. Either the principle is implied by the DDE, then it is a part of it and cannot explain anything the DDE cannot also explain; or it is not, then it is a different principle, and thus additional. I will therefore put the talk about corollaries aside.

¹⁵ The reviewer in question actually admits that but then claims that “[t]he question ... is whether this is a difference that makes a difference.” Actually, that is *not* the question we need to ask if we want to find out whether the DDE finds intuitive support. Then the question is rather why we should risk distorting factors in the first place given that we can easily avoid them. Avoiding them would clearly be the methodologically appropriate course to take. Moreover, the reviewer claims that one could “equalize” the cases by either supposing that the *Tactical Bomber* bombs the munitions factory knowing (but not intending) that the resulting fallout will also terrorize the enemy population into giving up the war effort or by supposing that the terror bomber does not want to terrorize but

Thus, if defenders of the DDE (and of related principles, for that matter) want to discuss the plausibility of the DDE (or of related principles) in a methodologically adequate and competent way, they should choose examples that indeed abide by the *ceteris paribus* clause, that is, that indeed keep all else equal that can be kept equal without undermining the descriptive distinction between intending and merely foreseeing and without defying logic. By not defying logic I mean, as already mentioned, that of course it is logically impossible that the two examples *only* differ in the dimension of intending and merely foreseeing – they will and must also differ in what *logically or conceptually follows* from this difference. To wit, if one stipulates that both bombers intend to contribute to the war effort and that neither of them intends the destruction of the ammunitions factory or of the civilians as an end in itself but only as a means to the end of contributing to the war effort, then one cannot keep the causal beliefs identical.¹⁶ If, for example, both believed that bombing the ammunitions factory would *not* contribute to the war effort, then, for obvious logical and conceptual reasons, it cannot be true that the strategic bomber intends to destroy it *as a means* to advance the war effort. Conversely, if they both believed that *both* courses of action *equally* and independently contribute to the war effort, then one can *only* (if at all) ascribe to the “terror bomber” the intention to contribute to the war effort by means of killing the civilians but not by means of destroying the factory if he would not go through with the attack *if* instead he believed that the civilians would not be killed: but this, of course, is incompatible with the stipulation that he does not consider the killing of the civilians as an end in itself – after all, unless killing the civilians is not only a means for him but also a motivating end in itself, he would be happy to destroy the ammunitions factory without killing the civilians.¹⁷ (If he is motivated to destroy *both*, as he is *per exemplo*, then, given the causal beliefs just stipulated, the only explanation for the fact that he is not motivated to destroy only one is that destroying the other is also a motivating end in itself for him). Thus, an adequate methodology cannot, *literally*, keep all else equal apart from the distinction one is interested in; rather it must keep those things equal whose inequality does not logically follow from the crucial difference. The strategic bomber/tactical bomber comparison does *not* abide by this methodological requirement. The following two examples, in contrast, do:

Foreseen Homicide

Holy Spider A sits on Hermit A’s head. If the spider is killed, the enemy population

merely to “demoralize.” Yet, by simply replacing one unequal factor (“terror) with another one (“demoralization), one has certainly not achieved any equalization. Nor by having the tactical bomber foresee the terror stemming from destroying the factory. Such terror hardly equals the terror stemming from killing civilians.

¹⁶ For a fascinating discussion of what happens if one attributes to the “terror bomber” and to the “tactical bomber” the same causal beliefs and a demonstration that this does not end well for the DDE, see Di Nucci (2014: 163-166). I consider Di Nucci’s book to be a definite refutation of the DDE. It is therefore not surprising that recent defenses of the DDE entirely ignore it – apart from a hostile note (Gordon-Solmon 2016) that dismisses the book without argument.

¹⁷ Di Nucci (2014: 164-166) makes a similar point, though not in terms of ends in themselves.

will be demoralized and give up the war effort. A bomber (fighting a just war) drops his bomb on a mark X in front of the spider and the hermit, intending that the explosion kill the former and foreseeing that the explosion will also kill the latter.

Intended Homicide

Spider A sits on Holy Hermit A's head. If the hermit is killed, the enemy population will be demoralized and give up the war effort. A bomber (fighting a just war) drops his bomb on a mark X in front of the spider and the hermit, intending that the explosion kill the latter and foreseeing that the explosion will also kill the former.

Is there a moral difference between these two cases? I discern none. But even if one thinks that the two cases are morally different, my point is that it is *such* examples, which do indeed keep all else equal, that must be discussed if one wants to ascertain the plausibility of the DDE, and not examples that are beside the point, like "Terror Bombing" and "Tactical Bombing."

Yet defenders of the DDE seem to be entirely unwilling to do that. To wit, even when they realize (or are made to realize) that the "Terror Bomber"/"Tactical Bomber" pair of examples does *not* abide by the methodological requirement of keeping all else equal, they are not prepared to let go off it. Instead of discussing pertinent examples, they continue to endlessly discuss the bomber examples – probably because the really relevant examples, like *Foreseen Homicide* and *Intended Homicide*, fail to make the DDE look good.¹⁸

For instance, Neil Francis Delaney, a staunch defender of the DDE, acknowledges what seems to have escaped the attention of other enthusiasts of the "Terror Bomber"/"Tactical Bomber" examples, namely that *targeting* is normatively relevant. Indeed, he even *admits* that "there is no morally significant difference between SB [Strategic Bomber] and TB [Terror Bomber]" in cases where the "only way to hit the target [the munitions cache] is to drop the bombs on the school itself" (because the cache is below the school) (Delaney 2008: 346). Yet in order not to have this concession undermine the *Terror Bomber/Tactical Bomber* example and its supposed evidentiary worth for the normative relevance of the intending/foreseeing distinction, let alone have his very own school/munitions cache example suggest that intention is not the operative factor after all, he assures the reader that the "relation between the civilians and the (primary) target makes it the case that an intention to destroy the munitions cache either just is a proper part of an intention to: [destroy the cache and kill civilians] or (as we are now speaking) carries with it an intention to kill them" (Delaney 2008: 346, the parentheses and brackets are in the original). Yet this is simply wrong. It is quite possible to *target* something with lethal weapons without *intending* to destroy or kill it. To wit, if Greedy Greg is offered 1000 dollars by Villain if Greg targets an innocent person's head and pulls the trigger (having the head in the cross-hairs) *and* misses him anyway, then Greg, if he wants the money, would actually have to be *irrational* to *intend to kill* the innocent person. Targeting with lethal force and intending to kill are simply not the same.

Other authors, in turn, acknowledge that in *Tactical Bomber*, as I noted above, the

¹⁸ If that *is* the reason – whether consciously or not – for the loyalty toward the irrelevant examples, then the affected authors have crossed over from the pursuit of truth about the DDE to pro-DDE propaganda.

military advantage lies directly in the destruction of the military facility, while in *Terror Bomber* the advantage is not directly the destruction of the innocent persons, but the indirectly (via the destruction of those persons) achieved terrorization of the population. To wit, Thomas Scanlon, a critic of the DDE, has suggested that in war harming non-combatants can only be allowed if it is done in the course of achieving a “military advantage,” where “military advantage” is used in a narrow technical sense, so that “[t]he death of noncombatants is not rendered a ‘military advantage’ by the fact that it would shorten the war by undermining public morale” (Scanlon 2010: 29), but only if it comes in the course of “destroying enemy combatants or warmaking materials” (Scanlon 2010: 28). In any case, killing and terrorizing people are certainly two *distinct* ways of harming or wronging people (Kamm 2004), and therefore the presence of terror in the “Terror Bomber” case and its absence in the “Tactical Bomber” case make the two examples unequal beyond the mere difference between intention and foresight.

Yet even defenders of the DDE who – finally – acknowledge that there is this difference between the two examples are not thereby led into giving up on them. Instead, they try to show – *without* considering examples where everything else is indeed equal – that this difference does not really have normative relevance.¹⁹ Notice that the *only* way this strategy would not be entirely flawed methodologically is if there were no examples available in which all other things *are* equal. But of course such examples are available, as the above *Foreseen Homicide/Intended Homicide* hypotheticals show. I say “entirely flawed” for a reason: the strategy is flawed *both* as a defense of the DDE *and* as an independent evaluation of the moral significance of the distinction between “military advantage bombing” (in the narrow sense of military advantage) and “terrorization of the population bombing.” After all, the appropriate way of testing whether these distinctions have normative relevance or not is precisely to consider examples where everything else is kept equal. Yet the *Foreseen Homicide/Intended Homicide* example strongly suggests (if not even proves) that the intending/foreseeing distinction is *not* normatively relevant. But if *Terror Bomber* is worse than *Tactical Bomber*, as defenders of the DDE maintain, then this, in turn, suggests – all assurances to the contrary notwithstanding – that something else is doing the work – like, for instance, the distinction between “military advantage bombing” and “terrorization of the population bombing.”

In fact, it is almost painfully *obvious* that this distinction does make a real difference. After all, terror is an *additional* harm inflicted on people. But harms inflicted in war, especially (but not only) if they are inflicted on the wider population, would certainly have to go into the proportionality consideration – and proportionality affects permissibility.

Here it might be noted that if all else is to be kept equal then we must assume that the tactical bomber also terrorizes the population (although he does not intend to). However, if that is the case, we should not have to assume that; rather, those who offer the *Tactical Bomber/Terror Bomber* examples would have to make this explicit in their hypotheticals. Yet terrorization is only mentioned in one of the examples, not in the other, and for reasons already stated it is downright absurd to think that this will not influence intuitive reactions and therefore make the examples useless as supposed evidence for the alleged

¹⁹ Examples for this strategy are McMahan (2009: 365-369); Lippert-Rasmussen (2010: 551-553); Nelkin and Rickless (2014: 144-145); Elster (2012: 84-86); Tadros (2017: 6-7).

relevance of the intending/foreseeing distinction.

In any case, if defenders of the DDE think that the difference between “military advantage bombing” and “terrorization” is irrelevant – why then not keep military advantage and terrorization simply out of the examples? In fact, why not keep war out altogether, for as sometimes even defenders of the DDE admit, war is a special case to which special rules might apply, so that intuitions with regard to war might not be generalizable over other cases (Liao 2012: 713).²⁰ Thus, duly keeping out unnecessary distractions like terror, military advantage, and war, we arrive at the following pair of examples:

Pedestrian I

A private person (pursuing a just cause) throws his hand grenade on a mark X in front of a pedestrian, intending that the pedestrian will die.

Pedestrian II

A private person (pursuing a just cause) throws his hand grenade on a mark X in front of a pedestrian, foreseeing that the pedestrian will die.

Any difference in justifiability between *I* and *II*? I discern none.²¹

Yet I have come across the objection here that avoiding special contexts and the role responsibilities of doctors and soldiers might create problems of its own – to wit, according to the objection, a private person does not have a justification to use lethal

²⁰ However, while Liao complains about “confounding factors” introduced by “the context of war” when discussing a certain war-related counter-example to the claim that a permissible act can be made impermissible on grounds of intention alone, he does not mention these very same confounding factors at the beginning of the same article when offering the *Terror Bomber/Tactical Bomber* example in support of said claim (Liao 2012: 704-705). Moreover, while he removes the “institutional role factor” in a pair of revised bombing examples subtly labeled *Neutral* and *Thug*, he adds entirely new confounding factors in *Thug* (which therefore is two times longer than *Neutral*): namely bad character (the bomber is a thug), bad emotions (hatred of children), and bad attitudes (he does not care about winning the just war or about hiding his hatred) – and then Liao informs the nonplussed reader that the moral “key difference” between these two cases surely must be intention (Liao 2012: 719-720).

²¹ While Cushman (2016: 763) says that the influence of the intended/foreseen distinction is “Lilliputian,” he acknowledges its existence “even after the relevant confounds are eliminated” (Cushman 2016: 766), but states that it might be due to the psychological effect of “a mere statistical co-occurrence” with other factors normally present (Cushman 2016: 768), which suggests that the effect is not only Lilliputian but due to distortion. That is bad enough for the DDE, of course. However, it should also be noted that the cases used by Cushman and his colleagues do not involve such drastic uses of force as bombing or vaporization. My guess – confirmed by Di Nuccis (2014: 177-187) study – is that in such cases the effect of the distinction is not only Lilliputian but non-existent (I am, of course, open to empirical evidence to the contrary). Finally, it is worth mentioning that “[a]part from the influences of confounding factors ... current models of the psychological basis of the DDE raise even more fundamental concerns about its normative status” (Cushman 2016: 774). These additional concerns are beyond the scope of this paper.

force at all, and this would allegedly explain why the two cases are equally unjustified. However, first, it is entirely implausible to claim that private persons can *never* have a lesser evil justification (let alone a self-defense justification) to use lethal force. If the stakes are high enough (and that might well be the case in the two examples), they do. Second, I left the special context of war and the role responsibilities of soldiers untouched in *Foreseen Homicide* and *Intended Homicide* – but there still wasn't any difference.

To be sure, defenders of the DDE might see a difference between these cases and between *Pedestrian I* and *Pedestrian II*. But then again, some people might also feel the intuitive pull of the racist BWTB above. The fact that you find *some* people who might endorse an alleged ethical principle is hardly sufficient support for the claim that the principle is correct. Moreover, given that there are so many philosophical detractors of the DDE and related principles, its defenders should perhaps be more reticent before making confident claims about how “intuitive” the moral difference between examples like *Pedestrian I* and *Pedestrian II* or even between *Terror Bomber* and *Tactical Bomber* is. They do not show such reticence. They claim, instead, that the intuition that the act of the *Tactical Bomber* is more easily justifiable than the act of the *Terror bomber* is a “typical first reaction” (Nelkin and Rickless 2014: 125), that “[m]any” (Quinn 1989: 336; Lippert-Rasmussen 2010: 543) (how many is that?) or even “[m]ost people” (Tadros 2017: 2) share it,²² and that it expresses “common moral intuitions” (Stuchlik 2012: 183). Not surprisingly, they provide no evidence whatsoever in support of these claims.²³ Sometimes they even contradict themselves. For instance, McMahan, a defender of the DDE, mentions (shortly before introducing the inevitable terror bomber and his noble twin) “the intuition that while terrorism is generally impermissible and abhorrent, war can sometimes be ... permissible” (McMahan 2009b: 347); but then later recognizes the existence of “popularly supported state terrorism” in the form of “British bombing raids on German cities” and “the American destruction of Tokyo, Hiroshima, and Nagasaki” (McMahan 2009b: 362). Thus it would seem that the intuition to which McMahan appeals is not “so widely shared” (McMahan 2009b: 347) as he makes it out to be.²⁴ On

²² Liao (2016: 850) simply talks of “people’s judgment that *Terror Bomber* is a case of impermissible action while *Tactical Bomber* is a case of permissible action.” What people are that? *All* people?

²³ Draper (2016: 141) also laments the lack of evidence in support of such claims. However, I have, remarkably enough, encountered the curious suggestion that a more “charitable” reading of the usual “most people” claim of defenders of the DDE is that they are not really meant as empirical claims. Yet, first, I do not think that it is charitable to assume that analytical philosophers, who usually praise clarity, are unable to express themselves clearly. Secondly, they do explicitly make the claims I just quoted, and it is only fair to point out that these claims are unsupported by any evidence. Third, in personal conversations I found no indication whatsoever that they do not mean them as empirical claims. Fourth, if defenders of the DDE nevertheless secretly do not “mean” them as empirical claims, although semantically that is exactly what they are, then they are misleading their readers. That is understandable, however regrettable, since admitting that their intuitions are *not* “widely shared” will not inspire confidence in the DDE.

²⁴ Incidentally, McMahan (2009b: 346) seems to think that opponents of the DDE must deny the “relevance of intention to permissibility.” It depends what this means, though.

the contrary, the one empirical study of the *Terror Bomber/Tactical Bomber* case that I have encountered demonstrates that *most* people do *not* have the intuition that *Terror Bomber*'s act is worse than *Tactical Bomber*'s (Di Nucci 2014: 177-187). In other words, the “common moral intuitions” to which defenders of the DDE and related principles appeal are not *common* at all but in fact idiosyncratic. The wrongness of the DDE might explain this empirical fact.

Let me note one final objection here, namely one directed at *Homicide* and *Pedestrian*. Allegedly, these examples do not manage to do the work I think they can do. The *Homicide* cases “are bizarre” and, so the objection goes, “bizarreness is a potential confound when eliciting intuitions. (Imagine that the description of Tactical Bomber started as follows: ‘A bomber with pigeon droppings on his hat and a banana in his pocket...’).”²⁵ First, if DDE defenders really believe that, they should then perhaps heed their own advice and not use examples in which trolleys are stopped by throwing fat men from bridges. Second, what, exactly, is actually supposed to happen when we begin the description in this way? I must say that in my case nothing happens: I think that killing people while having pigeon droppings on one’s hat and a banana in one’s pocket isn’t worse than doing so while not having pigeon droppings on one’s hat and a banana in one’s pocket, and I would be seriously surprised if other people – including the reviewer – would not reliably share this intuition. Thus, bizarreness itself is *not* a problem – having examples where all else is unequal, however, obviously is. The objection continues that the causal presuppositions are unbelievable, since it is not believable that the enemy will be demoralized by the death of a holy spider or a holy hermit. Yet I simply need not believe that the causal presuppositions will ever be satisfied in the real world (that is why it is called a hypothetical) in order to have clear intuitions about what *would* be permissible if they *were* satisfied. Moreover, if one complains about the unrealistic causal connections of *Homicide* but is evidently not in the least disturbed by the causal presuppositions of *Terror Bomber*, where the death of “a number of innocent civilians” will “terrorize the rest of the enemy population into giving up the war effort” (even quite high numbers of civilian deaths have not achieved this goal in Germany and other places), then this is again rather one-sided.²⁶

Moreover, there is nothing particularly bizarre about the *Pedestrian* cases. But here the critic has an objection too. It is that the “cases are now so underdescribed that it is impossible to elicit any reliable intuitions about them. How important is the just cause

Opponents of the DDE deny that there is a morally relevant distinction between intended harming and foreseen harming, but of course they need not deny (some do, I don’t) that there is a morally relevant distinction between intended harming and accidental or even unwitting harming. Moreover, McMahan (2009a: 43) distinguishes between “objective justification” and “subjective justification.” Intention *cannot* be relevant for *objective* justification, since objective justification is “independent of the agent’s beliefs” (ibid.) – intention, however, obviously is not.

²⁵ This objection was raised by an anonymous reviewer. All quotes in this and the next paragraph refer to this reviewer’s comments.

²⁶ The critic also thinks that it is a shortcoming of the case that only one person is involved. Really? Would adding a few further hermits and spiders elicit different intuitions about the two cases? I invite readers to test this for themselves.

that the private person is pursuing? What is the causal connection between throwing the hand grenade, the location of the X, the death of the pedestrian, and the achievement of the just cause (in either case)?” Actually, first, the intuitions seem to be very clear – there is no difference between the two cases – and second, the description of these cases are only a little thinner than the descriptions of the Bomber cases (there we are also not told anything about the importance of the just cause and only little about the causal relations). And far from this thinness being a problem, it is an advantage, because it does not distract with additional factors. If the critic begs to differ, it is not enough to make a mere claim: the critic should herself provide a *thick* description of two cases where *all else is equal* but we nevertheless think (on basis of the thickness now, it appears) that the DDE explains our differing intuitions. That no such example is being offered is revealing.

Thus, so far I have pointed out four problems with offering the *Terror Bomber/Tactical Bomber* examples as alleged support for the DDE and related principles. First, the *labels* used are already biased and can hence unduly influence intuitions; second, the examples are philosophically useless (although, perhaps, propagandistically effective) since they do not keep everything else equal; and third, the intuitions defenders invoke with regard to these examples are *not* commonly shared. Fourth, and as flip side of the second point, by constantly using methodologically inadequate examples like *Terror Bomber/Tactical Bomber*, defenders of the DDE seem to systematically avoid discussing relevant ones – which is not surprising, since relevant examples, as we saw, do not support the conclusions defenders of the DDE and related principles would like to draw.

2. *The Equally Rigged Hysterectomy, Guinea Pig, and Trolley Examples – and a Universal Counter-Example*

The other standard examples of defenders of the DDE and related principles do not fare any better. Look at these:

Hysterectomy

A doctor removes a pregnant woman’s cancerous uterus in order to save her life, foreseeing that the operation will lead to the death of the fetus.

Craniotomy

A doctor removes a fetus from a pregnant woman’s body in order to save her life by crushing its skull and sucking the remains through the mother’s birth canal.²⁷

Even some defenders of the DDE admit that “many people see less of a moral difference between these two cases” than they (allegedly) see in the *Terror Bomber/Tactical Bomber* examples (Quinn 1989: 336). More to the point, *no* defender of the DDE provides *any* evidence that many people, let alone most, see a moral difference *at all* here. But putting that aside, it is obvious that again all else is not equal in the two cases. For one thing, in *Craniotomy* the fetus is *targeted*, force is *directly aimed* at the fetus: crushing the fetus’s skull and sucking it out certainly qualifies. Moreover, just like there might be special rules for war, there might also be special rules for doctors.²⁸ So let us keep all else equal again – like this, for instance:

Dematerialization I

²⁷ I take the formulation from Nelkin and Rickless (2016: 380).

²⁸ As sometimes even defenders of the DDE realize. See Liao (2012: 717-721).

A private person fires his uterus-*and*-fetus-dematerialization ray gun at a woman in order to save her life, intending to dematerialize the uterus and foreseeing that he will also dematerialize the fetus.

Dematerialization II

A private person fires his uterus-*and*-fetus-dematerialization ray gun at a woman in order to save her life, intending to dematerialize the fetus and foreseeing that he will also dematerialize the uterus.

Any moral difference? I seriously doubt it. But *these* two pairs of examples are methodologically adequate. The *Hysterectomy/Craniotomy* examples, in contrast, are not. So defenders of the DDE should discuss *Dematerialization I/ Dematerialization II* instead. They do not do that, of course, since then there is not much left to defend.

A further standard pair of examples is this:

Direction of Resources

There is a shortage of resources for the investigation and proper treatment of a new, life-threatening disease. Doctors decide to cope by selectively treating only those who can be cured most easily, leaving the more stubborn cases untreated. This way, the doctors expect to do a significant amount of long-term medical good.

Guinea Pig

There is a shortage of resources for the investigation and proper treatment of a new, life-threatening disease. Doctors decide on a crash experimental program in which they deliberately leave the stubborn cases untreated in order to learn more about the nature of the disease. By this strategy, they reasonably expect to do as much long-term medical good as they would in *Direction of Resources*.²⁹

A first thing to note is that again we are faced with biased labeling: the neutral “direction of resources” there, the “guinea pig” here – and who wants to be a guinea pig? Second, a “crash” had to be added in the second example for good measure (“responsible” probably would not have achieved the desired effect).³⁰ Third, we are again dealing with doctors, who might have special role responsibilities. Fourth, if all else is to be kept equal in a pair of examples that is supposed to support a *deontological* principle, one would expect that one does not encounter an unspecified reference to the *amount* of long-term medical *good*. After all, if the *kinds* of medical goods are different, all else is *not* equal. Fourth, and somewhat ironically, not one of the two examples makes any reference to the intending/foreseeing distinction. Given that this distinction is supposed to be the very subject of the two examples, this omission does not bode well.

Let us look at this more closely. What exactly is supposed to be intended in each of the two examples, and what foreseen? In the *Terror Bomber* example the death of the civilians is intended. What do the doctors intend in *Guinea Pig*? Well, one might say, they intend that the “stubborn cases” not be treated. But, unfortunately for defenders of the DDE, they intend the very same thing in *Direction of Resources*. The difference is not one between intention and foresight; rather, the *reasons why* the doctors intend not to treat the stubborn cases differ. In the first case they intend to leave the stubborn cases untreated *in order to ration resources* and thereby save lives, and in the second case they

²⁹ Again I take the formulation from Nelkin and Rickless (2016: 380).

³⁰ Nelkin and Rickless (2016) take this example too from Quinn (1989: 336). The “crash” is already to be found in his version.

intend to leave the stubborn cases untreated *in order to acquire knowledge* and thereby save lives. It is difficult to see, however, why intending to save lives by rationing resources should be more easily justifiable than intending to save lives by acquiring knowledge. Thus, the *Guinea Pig/Direction of Resources* examples are irrelevant not only because all else is not being kept equal, but also because the intending/foreseen distinction is not even present in the example.³¹

What is present is a distinction between *using as a means* and not using as a means. This distinction does not coincide with the intending/foreseeing distinction. *Both* distinctions apply to the *Terror Bomber/Tactical Bomber* examples. The means distinction, however, does not apply to the *Hysterectomy/Craniotomy* examples. Can the means principle, according to which harmfully exploiting people as a means to one's ends is more difficult to justify than harming them as a side-effect of the pursuit of one's ends, support the idea that *Guinea Pig* is worse?

It cannot. Far from it being wrong for the doctors to intend to learn from the effects of not giving treatment to the stubborn cases and in that sense to use the persons presenting these stubborn cases as a means of acquiring knowledge, the doctors are actually *obliged* to do so. That is (part of) their job. To forego the opportunity to acquire life-saving information from these cases would be irresponsible. To be sure, it would be wrong for the doctors to let the patients die in order to acquire knowledge if they have enough resources to prevent their death (but note that there is a shortage of resources in *both* cases). But this does not support an alleged "means principle" but rather the following principle of professional ethics for doctors: "Don't harm your patients (by act or omission) if you can avoid doing so." And what they can avoid is, within medical ethics, to be understood with regard to available resources and the needs of other patients, not in terms of "long-term medical good."

That the means principle does not do any interesting work here is also confirmed by again keeping all else equal, as follows for instance:

Watching I

A private person withholds treatment from both a human being and a pig infected with a new disease because he thinks that allowing the disease to take its natural lethal course in the human will provide invaluable information for developing an actual cure, and paying attention to the symptoms of the dying human is incompatible with taking care of the pig.

Watching II

³¹ I have encountered the claim that there *is* a crucial difference: in *Guinea Pig* the doctor's intentions would allegedly be thwarted if somebody else (like Doctors without Borders) arrived to treat the stubborn cases. However, both cases work against the background of scarce resources (and this background conditions the intentions as well), and accordingly nothing in *Guinea Pig* implies that the original doctors would keep the newly arriving doctor from treating the stubborn cases if she used *her own* resources – after all, then the original scarcity is at least mitigated. (Of course, you can just *stipulate* that they would, but then you have *changed* the example.) They might, however, (although not even *that* is implied by the wording of the example) keep her from using the original doctors' resources. But so might the doctors in *Direction of Resources*. There simply is no difference in this respect.

A private person withholds treatment from both a human being and a pig infected with a new disease because he thinks that allowing the disease to take its natural lethal course in the pig will provide invaluable information for developing an actual cure, and paying attention to the symptoms of the dying pig is incompatible with helping the human.³²

I do not doubt that some defenders of the means principle will see a moral difference here, but without any evidence to the contrary, I find it very hard to believe that many other people will share such an assessment, especially since they do not even share it, as we saw, in the *Tactical Bomber/Terror Bomber* cases.

Last, but not least, we have these famous examples:

Trolley

A runaway trolley is hurtling down a main track towards five innocent people who are trapped on the main track. A bystander happening by sees that she can save the five by pulling a lever and thereby shunting the trolley onto a side track, where one innocent person happens to be trapped. The bystander pulls the lever as a means of saving the five, foreseeing but not intending the death of the one on the side track.

Large Man

A runaway trolley is hurtling down a main track towards five innocent people who are trapped on the main track. A bystander happening by sees that she can stop the trolley by pushing a large man standing beside her into its path. The bystander pushes the large man into the path of the trolley as a means of saving the five, intending the impact that leads to the large man's death.³³

Again one can only be astounded that this pair of examples is in all seriousness offered as support for the DDE or the means principle. To wit, almost nothing is equal here. The one man on the side track is run over by the trolley. That is not good, but that is all that happens there. The large man, in contrast, is non-consensually touched (which can already constitute assault by itself), *kinetic force* is applied to him,³⁴ he is *moved against his will*, he *falls from a bridge* (probably a stressful experience, since the falling person will realize that things are not going to end well for him), and only *then* is he finally run over by the train. The first four factors alone already make a difference, and they make an even bigger difference in combination. To be sure, defenders of the DDE and the means principle often realize that all else is not equal in these pairs of examples, but

³² This pair of examples – just like *Foreseen Homicide/Intended Homicide* – also undermines Ramakrishnan's (2016: 134) principle "Utility." Ramakrishnan himself does not compare pairs of examples at all to motivate "Utility." He just affirms that it is "plausible" (ibid., 156.) He alludes, however, to "compelling case-based intuitions" (ibid.). It is probably fair to assume that he has exactly the kind of cases in mind that are the object of the present critique.

³³ Again I take the formulation from Nelkin and Rickless (2016: 379).

³⁴ The two elements of touching and applying kinetic energy combine to constitute "personal force." Empirical studies "indicate that harmful actions involving personal force are judged to be less morally acceptable" Green (2016: 183). Some versions of the examples remove the two mentioned elements – that still leaves the other two confounding factors. Moreover, having the large man stand, for example, on a trap door adds the additional factor of "pulling the rug from under somebody's feet."

unfortunately that does not bring them to use examples in which *all else is equal*. Let us correct this mistake and not compare *Large Man* with *Trolley* but rather with:

Trolley II

A runaway trolley is hurtling down a main track towards five innocent people who are trapped on the main track. A bystander happening by sees that she can save the five by immediately making a certain pushing motion in a particular direction (where, unfortunately, a large man is standing), thereby, thanks to the train's sensory system, shunting the trolley onto a side track. The bystander makes the pushing motion as a means of saving the five, foreseeing but not intending the impact that leads to the death of the large man she just pushed in front of the train.

The bystander intends neither to push the man, nor to use him as a means for anything. The bystander's *movements* are the means for diverting the trolley; the fat man simply happens to be in the wrong place at the wrong time – just like the man on the side track in *Trolley*.³⁵ Yet intuitively *Trolley II* seems to be as difficult to justify as *Large Man* – which suggests that using as a means or intending to harm has nothing to do with it. (One could also imagine a robot being activated by pulling the lever, so that as a side-effect of pulling the lever the robot pushes the fat man in the way of the diverted trolley. That still seems intuitively as difficult to justify as *Large Man*.)

Here is another interesting variation that keeps all else equal, this time not by *adding* factors to *Trolley II* that are also present in *Large Man*, but by removing factors like touching, moving, and kinetic energy:

Ray Gun

A runaway trolley is hurtling down a track towards five innocent people who are trapped on the track. The trolley is equipped with a sensor system (evidently programmed by a racist madman) and connected to satellites. It constantly monitors all Native American people on the planet and a panel of buttons. The buttons trigger vaporization rays from one of many deadly satellites, which are equipped with randomizers. The trolley will stop when it registers either one of the following things: a) there is now one Apache less than there was 5 seconds ago (one can randomly vaporize an Apache by pressing button 1), b) button 2 is pressed (which, unfortunately, will trigger the vaporization of a random Sioux), c) a random Cherokee is vaporized, d) a vaporization ray is fired randomly at one of the many mysterious C-Boxes around the world (unfortunately, if a C-Box is fired at, it in turn fires its own vaporization ray at a random Comanche), e) a vaporization ray is fired in the direction of a Navajo who has no cover. A bystander sees that she can

³⁵ According to Quong (2009: esp. 530, 532-533), treating a person as a means comprises using (against his consent) his property or anything he has a right to. Thus, he might say that there is still a relevant difference between *Trolley* and *Trolley II*: by extending his movement into the large man's space, the bystander uses him as a means. However, if the man on the side track in *Trolley I* stood exactly at the beginning of the new track, diverting the trolley would also only be possible by infringing his space. If one says that the tracks he is standing on are not his property, we can also have the fat man stand on the tracks. Do these variations make any difference to the justifiability of the respective actions? It does not seem so. For critiques of Quong's account, see Ferzan (2011); Hanna (2012); Ross (2015); Steinhoff (2016); Draper (2016: 132-134).

save the five by pushing one of five buttons, which correspond to options (a) to (e), respectively.

The pressing of which button is “easiest to justify”? At the very moment of asking this question one already wants to bite one’s tongue, because in the light of the example the question seems so very absurd. “What’s the difference?” one might wonder. “Vaporized is vaporized.” Nevertheless, let us dwell on it for a moment, as painful as it might be. After all, people who think that there are significant moral differences between intended harm and foreseen harm, between harming a person in the course of using him as a means and harming a person without using him as a means, between upstream causation and downstream causation, etc., must think that it does make a significant difference here who the bystander is going to vaporize. The first two distinctions have already been explained. Let me briefly explain the third. According to a downstream theory, harming a person is more difficult to justify if the good that is done is causally downstream from an evil event. Typically, this means that the evil causes the good.³⁶

However, these different principles do not all exactly agree on the assessment of the different options in *Ray Gun*. If the bystander pushes Button 1 and thus vaporizes an Apache, the trolley’s computer will stop the train. It is not a case of “opportunistic killing,” that is, of a killing that profits from the presence of the Apache (if the Apache had vanished into thin air before the bystander had pushed the button, the train would have stopped already), but a case of “eliminative killing.”³⁷ It is also a case of intended vaporization. Does the bystander use the Apache as a means? Well, he stops the train *by* vaporizing the Apache, but most defenders of the means principle will probably understand “using as a means” in such a way that it is incompatible with elimination. Other interpretations are, of course, possible, but we need not speculate on them here. Finally, pressing Button 1 is a killing where the good that is done is causally downstream from an evil event.³⁸ What about the case of the Cherokee (killed by pushing Button 3)? The computer will stop the trolley if it registers the vaporization of the Cherokee, and it cannot register the Cherokee’s vaporization without the Cherokee being there to be vaporized in the first place.³⁹ Thus the Cherokee would be used as a means,

³⁶ There can be further complications, which need not interest us for the moment. But see Kamm (2008: ch. 5). Another principle one could consider is Walen’s (2014) “Restricting Claims Principle.” Øverland (2014) has developed a similar account. A powerful but succinct (two pages) criticism of Walen’s original “Restricting Claims Principle” has been offered by Draper (2016: 136-137). Walen (2016) has recently reformulated his “RCP.” I find the new version somewhat obscure and do not want to speculate what it implies for the *Ray Gun* options. For further criticism of both Walen’s and Øverland’s accounts, see Steinhoff (2018b).

³⁷ Quinn (1989: 344) thinks that “eliminative agency” is easier to justify than “opportunistic agency.” Opportunistic agency might not always be the same as using a person as a means, as we will see in a moment. See also Tadros (2015: 64, n. 21).

³⁸ Note that the vaporization of the Apache is *not*, unlike the shifting of the trolley in *Trolley*, the “noncausal flip side” of the five being saved. The saving of the five is *not* “constituted” by the vaporization of the Apache; it is constituted by the computer’s stopping the train. See on these concepts Kamm (2008: 141).

³⁹ Of course, if he had not been there another one could have been vaporized, but that

opportunistically killed, and his vaporization would be intended.⁴⁰ (And the good achieved would again be causally downstream from the evil.) If, in contrast, one vaporizes the Sioux (pushing Button 2), he (unlike the Cherokee) is not used as a means or opportunistically killed. After all, the ray need never actually be fired, only the button has to be pushed. His death or vaporization is meaningless for the computer and thus plays absolutely no causal role in stopping the trolley, quite unlike the vaporization of the Apache and the Cherokee. His vaporization therefore need not be intended but is only foreseen, and the good achieved is not causally downstream from the evil. If one pushes Button 4, the evil, not the good, of the resulting vaporization of the Comanche is causally downstream, it is only foreseen, not intended, the Comanche is not used as a means, he is not killed opportunistically. If, finally, one pushed Button 5 and thereby vaporized a random Navajo, he is at least not used as a means in the sense that something is done with or to his body which then causes the train to stop. After all, the ray need never touch the Navajo; it need only be fired *in his direction*. Yet in order for the ray to be fired in his direction, the Navajo would actually have to be there, and thus he is opportunistically killed (and in *that* sense he might also be used as a means). Nevertheless, just as in the case of the Comanche, the Navajo's death or vaporization is meaningless for the computer and thus plays absolutely no causal role in stopping the trolley, quite unlike the vaporization of the Apache and the Cherokee. His vaporization therefore need not be intended but is only foreseen.

This brief – and probably quite confusing – overview makes the previously asked question only more pressing: what moral difference are these distinctions supposed to make? The answer that suggests itself is: none. It does not matter that one person would be randomly vaporized as a side-effect and the other as a means, that the vaporization of one of them would be intended and the random vaporization of the other merely foreseen, or that one is “opportunistically” vaporized and the other “eliminatively,” etc. What matters is that each of them would be *vaporized*. *That* is intuitively quite a significant fact. In contrast, if the above-mentioned distinctions did make a difference, then this would imply that if one increased the numbers of persons to be saved, there must be some number x so that randomly vaporizing n innocent members of one tribe to save the x people on the track would be impermissible while randomly vaporizing *more than* n members of the other tribe would be permissible. This strikes me as morally absurd.⁴¹

Thus, if we do keep all else equal, it seems to be the DDE itself, along with related principles, that gets vaporized. And it is *such* pairs of examples, where all else remains equal, that must be discussed, not examples where the decks are conveniently stacked. Thus in order to find out whether our intuitions reflect the DDE or a related principle,

hardly means that the one who has actually been vaporized has therefore not been used or opportunistically killed.

⁴⁰ More precisely, *a* Cherokee's vaporization would be intended, not necessarily the vaporization of this one.

⁴¹ For an ingenious argument that all these different distinctions and principles cannot be important enough to outweigh the value of an additional saved (or spared) life, see Nye (2014). Nye's article, like Di Nucci's (2014) book, is another definite refutation of the DDE and related principles. Not surprisingly, recent defenses of the DDE or of related principles do not mention it.

said intuitions must be tested not by comparing *Tactical Bomber* with *Terror Bomber* but by comparing *Foreseen Homicide* with *Intended Homicide* or *Pedestrian I* with *Pedestrian II*. Likewise, it is useless to compare *Hysterectomy* with *Craniotomy*; rather, one must compare *Dematerialization I* with *Dematerialization II*. And one must not compare *Trolley* with *Large Man*, but rather compare the different killings in *Ray Gun* or compare *Trolley* with *Trolley II*.

3. Convenient Distractions: The Loop Case, Closeness, and the “Sophisticated Bomber”

Again, defenders of the DDE and related principles do not do this. Yet where methodological rigor and objectivity will philosophically hurt, the pretense to both might propagandistically help. Enter the *Loop* case (Thomson 1986: 101-102). *Loop* is like *Trolley*, only that the side track loops back to the five people on the main track, so that they will be killed if the impact with the man on the side track does not stop the train. Thus, if the bystander knows that and turns the trolley to the man on the side track in order to save the five, she seems to intend to use him as a means to save them. Quite a few people, however, including some defenders of the DDE and related principles, feel the pull of the intuition that turning the trolley in *Loop* is justified.

Loop is often considered to be an embarrassment for defenders of the DDE and the means principle.⁴² And when Thomson originally introduced it, it probably was. Meanwhile, however, the real embarrassment is that defenders of the DDE still limit themselves to discussing *Loop* instead of any of the many much stronger examples (of the kind listed in the paragraph before the last) – examples one can easily produce by simply *keeping all else equal*. The *Loop* case, however, does not keep all else equal in comparison to *Trolley*. To wit, in *Loop* the trolley approaches from another direction and thus the threat materializes through a different causal chain than in *Trolley* (Kaufman 2016: 29).⁴³ One might wonder whether this is a significant difference, but the point is: it definitely *is* a difference. The turning of the trolley, even without the man on the side track present, saves the five from being killed from one side. The impact with the man, however, saves them from being killed from the other side. Thus, there actually seem to be two different threats (Kamm 2008: 94).

Moreover, in contradistinction to the *Tactical Bomber/Terror Bomber* examples, it has been empirically shown that the vast majority of people do think that there is a significant difference between *Trolley* and *Large Man*, so that killing the man on the side track is easier to justify than killing the large man. Yet it has also been shown that far *fewer* people deem turning the trolley in *Loop* permissible than in *Trolley*. In fact, empirical data suggest that the intuitions are split 50/50 on the question (Kaufman 2016:

⁴² See for instance Otsuka (2008); Liao *et. al.* (2012); McMahan (2009b: 358-359). McMahan insists on his own intuitions, Otsuka (2008: 119) somewhat dramatically invites “moral philosophers to reject, as a moral illusion, the intuition that it is permissible to divert in looping cases,” Liao *et. al.* basically claim that the unwanted intuitions are produced by distorting order effects.

⁴³ Kaufman (2016: 22) actually thinks that “our uncertain intuitions in the Loop case in fact match up very well with the Double Effect principle.” While I would agree that *Loop* is not as detrimental to the DDE as some have thought, it is quite a stretch to claim that it matches up with it.

26). Thus, given that all else is not equal in *Trolley* and *Loop* and that intuitions in *Loop* are rather inconclusive, *Loop* is most certainly not the most embarrassing counter-example against the DDE and related principles – which might make *Loop* a welcome distraction from the numerous far more powerful examples. It is, however, those powerful examples that keep all else equal that should be discussed, not *Loop*.

Another distraction comes in the wake of the infamous “closeness problem.” Philippa Foot points out that someone might claim that he actually did not intend to kill another person but “only to blow him into small pieces.” She states that this use of the DDE would be “ridiculous” because the two events (being killed and being blown into small pieces) are “much too close.” She admits, though, that one would “have considerable difficulty in explaining where the line is to be drawn” and what “the criterion of ‘closeness’” is supposed to be, and then simply suggests that we “leave this difficulty aside” (Foot 1978: 21-22). Obviously, however, it is asking too much to leave this difficulty aside, for without a criterion of where to draw the line the doctrine becomes unworkable and entirely arbitrary (Di Nucci 2014: ix and 6). To put it this way: one man’s terror bomber would be another man’s tactical bomber. And indeed, Jonathan Bennett claims that all that the terror bomber “intended was that the people’s bodies should be inoperative for long enough to cause a general belief that they were dead” (Bennett 1981: 111). Thus the terror bomber, according to Bennett, does not really intend that the civilians die. Bennett comes to this conclusion, which he himself deems to be “absurd” (Bennett 1981: 114), through an investigation of how one can determine a person’s intentions, and since he deems his investigation to be correct, he feels that the result, absurd as it might seem, is inescapable.⁴⁴

I need not go into the considerable intricacies of the debate. Rather, I want to point out that the closeness problem as formulated by Foot is not quite the same as Bennett’s challenge (although both are discussed under the heading of “closeness” in the literature). Foot laments that it might not be easy to draw a clear line. Bennett, however, seems to suggest that he provides a clear line, although one that people might not like. He does not say that it is *unclear* what the “terror bomber” intends; rather, he states that from his analysis it follows that the bomber intends to make the victims’ bodies inoperative. He says that this is the “truth” of the matter and what is “[r]eally” the case (Bennett 1998: 210). This seems also how Quinn interprets Bennett’s “disturbing objection”: “under a strict enough interpretation the doctrine fails to rule against many or most of the choices commonly taken to illustrate its negative force” (Quinn 1989: 335).⁴⁵ It is not that the doctrine is rendered *arbitrary* – on the contrary. Its *strict* (and thus non-arbitrary) application would classify certain acts, which according to defenders of the DDE should be as difficult to justify as the original *Terror Bomber* (provided that, *pace* Bennett, he intends the deaths of his victims), as no more difficult to justify than the *Tactical Bomber*. In other words it would lead to counter-intuitive results (at least as far as the intuitions of

⁴⁴ I actually think that “the only account of intentions which [Bennett] can make sense of” (Bennett 1981: 114) and on which he relies elsewhere does *not* imply the absurd conclusion at all, but this is something I need not go into here. See, however, Steinhoff (2018a).

⁴⁵ Quinn uses the term “strictly intended” several times.

defenders of the DDE are concerned).⁴⁶ The manifestation of this uncanny transformation of the *Terror Bomber* in a potential counter-example to the DDE is the:

Sophisticated Bomber

A bombardier is fighting a just war and intends only that ten civilians should appear dead in order to frighten the enemy into surrendering. The bombardier foresees that the civilians will certainly die as an unintended side effect.⁴⁷

This is the distraction I was talking about. Yes, it is true that defenders of the DDE do consider the closeness problem to be an annoyance. But note how much more satisfying, nevertheless, it must be for a defender of the DDE to discuss the *Sophisticated Bomber* instead of *Intended Homicide* or *Pedestrian II*. First, even Bennett himself deemed his results absurd, but if an analysis leads to an absurdity, one can always reasonably suspect that something must have gone wrong in the course of the analysis, so that the *Terror Bomber* really does intend to kill the civilians after all, instead of merely being an unfairly maligned *Sophisticated Bomber*. Second, even if it should turn out that the *Sophisticated Bomber* does not, strictly speaking, intend the death of the civilians, it might still be possible to “revise” the DDE in such a way that one gets him back on the hook for some other intention. This is Quinn’s own solution (and others followed him in “revising” the doctrine in their own ways⁴⁸). He thinks that according to his “new and better formulation of the doctrine . . . we should say that it distinguishes between agency in which harm comes to some victims, at least in part, from the agent’s deliberately involving them in something in order to further his purpose precisely by way of their being so involved (agency in which they figure as *intentional objects*) and harmful agency in which either nothing is in that way intended for the victims or what is so intended does not contribute to their harm” Quinn (1989: 343).

I put aside the question of whether this alleged solution actually works.⁴⁹ However, by focusing attention on the comparison between *Terror Bomber* and *Sophisticated Bomber* and trying to show that a “revised” DDE can still condemn the latter as much as the former, these authors divert our attention away from the fundamental issue, namely from the question whether it is really true that each (or one) of them is actually worse than *Tactical Bomber* and hence whether the revised DDE captures anything of moral relevance. It is therefore not surprising that it never occurs to defenders of the DDE to compare the *Sophisticated Bomber* who intends that civilians appear dead with a

⁴⁶ This is also how, for instance, Nelkin and Rickless (2016: 381) and Liao (2016: 851) see the problem of closeness.

⁴⁷ I take this formulation from Liao (2016: 851), but have shortened it. The talk about the terror bomber becoming “philosophically sophisticated” comes from Quinn (1989: 340).

⁴⁸ Revising the DDE seems meanwhile to be a philosophical discipline in its own right. There are several articles that announce the revision of the doctrine in their very titles, and many other articles and books offer one revision or the other in the course of their discussion.

⁴⁹ For doubts, see Fischer, Ravizza, and Copp (1993); Liao (2016: 853-858); and McMahan (1994). McMahan offers a revision of the revision, which then is criticized by Mapel (2001). For a defense of Quinn, see Smith (2007). Nelkin and Rickless (2014) support Quinn, but in the end also offer a variation. Sarch (2017: 461-462) doubts that this variation works.

Sophisticated Bomber II who intends that the munitions factory appears to be completely and utterly destroyed (and perhaps radioactive so that nobody gets the idea to use it and its ammunition). Of course, in the end this is not much of a loss since, as we know, one needs to keep all else equal in order to get useful results. So what really needs to be done in this context is to compare two sophisticated agents in two examples that do keep everything else equal. Let us base these examples on *Foreseen Homicide* and *Intended Homicide*, as follows:

Sophisticated Homicide with Apparently (and Really) Dead Spider

Holy Spider A sits on Hermit A's head. If the spider appears to be dead, the enemy population will be demoralized and give up the war effort. A bomber (fighting a just war) drops his bomb on a mark X in front of the spider and the hermit, intending that the explosion make the spider appear dead and foreseeing that the explosion will kill both the spider and the hermit.

Sophisticated Homicide with Apparently (and Really) Dead Hermit

Spider A sits on Holy Hermit A's head. If the hermit appears to be dead, the enemy population will be demoralized and give up the war effort. A bomber (fighting a just war) drops his bomb on a mark X in front of the spider and the hermit, intending that the explosion make the hermit appear dead and foreseeing that the explosion will kill both the spider and the hermit.

According to Quinn's principle, the second case is supposedly more difficult to justify than the first one. Is that intuitive? Is there any moral difference? Again, I discern none.⁵⁰

Conclusion

The methodology used by defenders of the DDE or related principles is driven by bias and it is deeply flawed.⁵¹ Once an adequate methodology is used, the intuitions on which defenders of the DDE or of related principles base their endorsement of such principles evaporate.⁵² Accordingly, there is no sufficient evidence to support the DDE and related principles. Quite the opposite. But this, then, is perhaps the mark of the *Sophisticated DDE Defender*: he does not choose examples that could actually *reveal* the truth about

⁵⁰ If someone claims that "most people" would see a difference here, I would very much like to see empirical evidence for this astounding claim, especially given that the empirical evidence we have on the original *Tactical Bomber/Terror Bomber* suggests otherwise, as we saw.

⁵¹ So, for that matter, are the "rationales" they offer, or so I argue in a sister article to the present one, see Steinhoff (2018b).

⁵² As shown by the empirical evidence offered by Cushman (2016); Di Nucci (2014: 177-187); and Green (2016). Note that I have heard the – methodologically confused – objection that I have not done empirical testing of my own examples. Obviously, it need only be the case that there are *some* methodologically adequate empirical studies that undermine the claim about the "intuitiveness" of the DDE while there are *no* methodologically adequate empirical studies that support it to substantiate the claim I just made – and it *is* true. So the burden of proof is flatly on the other side now. But if DDE defenders want to empirically test my examples: be my guest. I am pretty sure, however, that they will avoid doing so at all costs.

his principle. Instead, he prefers to choose examples that offer some chance to make it *appear* right.

DDE defenders will probably be offended by this charge, and many analytical philosophers will at least cringe. They might believe that such *ad hominem* charges are unnecessary. That belief, however, is entirely naïve. Not the whole, but a main point of the present paper is that the pro-DDE debate sustained itself for decades *in spite of* the lack of convincing arguments and evidence in support of the DDE. But to then expect that it can be undermined by good arguments alone is ingenuous, and such an expectation only plays into the hands of defenders of the DDE. A baseless but discursively nevertheless very successful ideology cannot be undermined by good arguments alone; rather, it requires *Ideologiekritik* – one needs to expose the deeper forces sustaining it. Of course, defenders of the DDE might claim that the phenomena I described – the biased framing, the inapt methodology and rigged examples, the empirically unwarranted claims about how widely shared certain intuitions are, and the avoidance of the strongest counter-examples – can be explained other than by systematic bias. Then, however, it is incumbent upon defenders of the DDE to indeed provide such an explanation, and it is not only fair, but philosophically absolutely necessary to *demand* that they indeed do provide such an explanation. I cannot wait to hear it.

Finally, and more generally speaking, every morality and ethics demands that the blame game be played. That is also true for the professional ethics of a philosopher – philosophers must be called out for a violation of professional standards, and using an entirely inadequate methodology certainly is such a violation. Calling people out for this violation, in contrast, is not – which, in my experience, seems to be remarkably difficult to understand. I suggest that we all be less concerned about tone and more about methodology.⁵³

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⁵³ The research presented in this paper was supported by a grant from the Research Grants Council of the Hong Kong Special Administrative Region, China (Project No. HKU 17612817). I am very grateful for this support.

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