Harming the innocent to save lives

A critique of the Doctrine of Productive Purity

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Abstract

My thesis is concerned with the question 'In what ways, if any, should an agent be restricted in her pursuit of the greater good?' This question arises in cases in which an agent's duty to aid and her duty not to harm appear to come into conflict. In some of these cases, like the Trolley Case, it seems permissible for the agent to bring about the greater good; in others, like the Transplant Case, it clearly seems impermissible; and about further cases, like the Loop Case, we might have uncertain intuitions. Non-consequentialists are interested in resolving the apparent inconsistency between our intuitions about these cases. Traditionally, they have attempted to do this by appealing to the Doctrine of Double Effect (DDE). Recently, however, T. M. Scanlon, furthering the work of Judith Jarvis Thomson, has argued that the Doctrine rests on a fundamental mistake. In chapter 1 I argue that non-consequentialists have a good reason to investigate other approaches to restricting an agent's pursuit of the greater good. F. M. Kamm has done precisely that. She argues that the permissibility of bringing about the greater good turns on the causal relationship it will have with the evil in the case (or, more precisely, *could* have, given the agent's action). Her proposal is encapsulated in her Doctrine of Productive Purity (DPP). The bulk of my thesis is concerned with critiquing this Doctrine. Over the course of three chapters I answer two questions. Firstly, does the DPP deliver intuitively plausible verdicts? I argue that although the final formulation of the Doctrine does not have determinate content, the central tenet of the DPP returns intuitively plausible results when applied to a host of cases. I then turn to the question 'What morally significant ideas, if any, are captured by the DPP?' I argue that Kamm's own account of the DPP's 'deeper meaning' is circular, but that the central tenet of the Doctrine can be plausibly interpreted as a moral heuristic for risk management.

Declaration

This thesis comprises only the original work of the author towards the degree of Master of Arts in Philosophy (Advanced Seminars and Shorter Thesis), except where otherwise acknowledged in the text. The thesis is fewer than the maximum word limit of 22 000, including footnotes.

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Contents

Introduction

We all have a duty to aid. We all have a duty not to harm. Sometimes these duties appear to conflict. The Trolley Case is a famous example:

A runaway trolley is hurtling down a track towards five people who have no chance of escape. A bystander to this impending disaster is standing by a lever that, if pulled, will turn the trolley onto a sidetrack on which one person is stuck. Is it permissible for the bystander to pull the lever and, thereby, turn the trolley from five to one?[1]

In cases like this one, in which our duty to aid and our duty not to harm appear to conflict, the agent has the option of bringing about a greater good. In the Trolley Case, it seems permissible for the agent to choose to do this. That is, it seems permissible for the agent to kill the one and, thereby, save the five. However, achieving a greater good does not always seem to justify an agent in causing an evil. Consider the well-known Transplant Case:

Five people are dying of organ failure. Two need a kidney, two need a lung, and one needs a heart. Each transplant could be performed with certain success, but there are no organs currently available. However, a perfectly healthy person has just walked into the hospital for a routine check-up. His organs are compatible with the five patients. Is it permissible for a transplant surgeon to anaesthetise the one healthy patient and take his organs?

The assault on the one clearly seems impermissible. However, if the one is killed for his organs, then the five will be saved. Thus, just like the bystander in the Trolley Case, the transplant surgeon has the option of bringing about a net saving of four lives. The problem of explaining our seemingly contradictory intuitive responses to these and like cases is known as the Trolley Problem.

The Trolley Problem has received an extraordinary amount of scholarly attention. The thought experiments of which it is comprised are elegantly conceived and lend themselves well to subtle adaptions to further test our intuitions. No doubt the quality of the thought experiments has contributed to the Problem's popularity.

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[1] The origin of this case can be traced to Philippa Foot, "The Problem of Abortion and the Doctrine of the Double Effect," *Oxford Review* 5 (1967): 5-15. However, the case presented by Foot is subtly, though significantly, different from the one we are concerned with here. Whereas in Foot's version it is the driver who has the option of turning the trolley, here it is a bystander. For an explanation of why this change is significant, see Judith Jarvis Thomson "Killing, Letting Die and the Trolley Problem," *The Monist* 59, 2 (1976): 206ff.

However, the primary reason the Problem is so popular is that it is thought to represent far more than an apparent conflict between our intuitions in just a few cases. The Problem is meant to be a neat way of expressing our general ambivalence towards our duties to aid and not to harm. It is thought that, if you can resolve the Trolley Problem, then you will also have a quite general answer to a very interesting question, namely, 'In what ways, if any, should an agent be restricted in her pursuit of the greater good?'

The primary aim of this thesis is to critique how F. M. Kamm responds to this question, which she does by formulating a novel principle of permissible harm: her Doctrine of Productive Purity (DPP).[2] A principle of permissible harm is meant to identify the exceptions to the general principles requiring us to provide aid and avoid doing what will harm others. How a philosopher goes about formulating such a principle will depend greatly on her prior philosophical commitments.

Surveying the terrain from a high altitude, there are two broad camps: consequentialist and non-consequentialist. Consequentialists believe that morality requires us to generate the greatest amount of good. They maintain that we are justified in harming others if that is the only way of (1) preventing greater harm from occurring or (2) bringing about greater benefit. Therefore, they are committed to saying that it is permissible (indeed, that it is obligatory) to kill the one in both the Trolley Case and the Transplant Case.[3] Kamm is avowedly a non-consequentialist, at least in part, because she cannot accept that this is correct.[4] Non-consequentialists deny that the permissibility of an action is determined *solely* by the quality of its consequences. They are committed to the belief that the ability to save a greater number of lives will not always justify an exception to the general prohibition against killing. More broadly, they do not believe that it is always permissible to bring about an evil that is necessary to achieve a greater good. Non-consequentialists have

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[2] Given in *Intricate Ethics* (New York: Oxford University Press, 2007), esp. chapter five.

[3] A consequentialist might try to deny that she is committed to saying it is obligatory to kill the one in the Transplant Case. However, the onus is on her to explain why her theory does not entail this claim, if she believes it does not. Alternatively, the consequentialist can accept this unpalatable implication of her theory. For an example of this latter course, see J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), 67-73.

[4] She writes, 'We are looking for a principle and its justification that explain why it is permissible to help some by redirecting a fatal threat so that it kills one other person, and yet it would be impermissible to kill one person in order to harvest his organs to save others.' *Intricate Ethics*, 23.

typically adopted one of three approaches to restricting the ways in which an agent may pursue the greater good.[5] In order of historical development, they are:

1) Those that base restrictions on the intentions of the agent.[6]

2) Those that base restrictions on the rights of the people involved.[7]

3) Those that base restrictions on the causal relations between goods and evils.[8]

Although each of these approaches has been rigorously pursued, it is undoubtedly the first that has produced the most influential principle of permissible harm: the Doctrine of Double Effect (DDE). Very roughly, the DDE holds that whether an action is permissible sometimes turns on whether or not the agent intends harm. The Doctrine has been invoked to explain why it is permissible to turn a runaway trolley from five to one, but impermissible to take the organs from one to save five.

At one time, it could have been argued that the DDE was one of the central precepts of non-consequentialism.[9] Therefore, it is no surprise that the first of its modern critics should have come from the consequentialist camp.[10] More recently, however, some prominent non-consequentialists have contributed to the criticism.[11] T. M. Scanlon is among them. His work is particularly important because he not only calls the soundness of the Doctrine into question; he also provides an explanation of

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[5] T. M. Scanlon notes this in "Some Intricacies," *Philosophy and Phenomenological Research* 80, 3 (2010): 699.

[6] Those adopting this approach have tended to endorse some version of the Doctrine of Double Effect (see main text for a definition). This Doctrine is usually traced to Thomas Aquinas, *Summa Theologiae* (1265-74), Part 2 of Part 2, Question 64, article 7. It has had countless notable adherents. For a modern formulation of the Doctrine, see Warren S. Quinn, "Actions, Intentions, and Consequences: The Doctrine of Double Effect," *Philosophy and Public Affairs* 18, 4 (1989): 334-51. For a recent defence of the Doctrine, see Jeff McMahan, "Intention, Permissibility, Terrorism, and War," *Philosophical Perspectives* 23, 1 (2009): 345-72.

[7] As regards the Trolley Problem, this approach has been most thoroughly pursued by Thomson. See "Killing, Letting Die," 204-27; "The Trolley Problem," *The Yale Law Journal* 94, 6 (1985): 1395-1425; and *The Realm of Rights* (Cambridge, Massachusetts: Harvard University Press, 1990), chapter seven.

[8] This is Kamm's approach.

[9] Indeed, there are those who believe that there cannot be a theoretically robust non-consequentialist theory in the absence of the DDE. See, for example, McMahan, "Intention, Permissibility, Terrorism, and War," 352.

[10] Jonathan Glover, *Causing Death and Saving Lives* (London: Penguin, 1977), 86–91; Jonathan Bennett, "Morality and Consequences," in *The Tanner Lectures on Human Values*, vol. 2, ed. S. McMurrin (Salt Lake City: University of Utah Press, 1981): 95–116; James Rachels, *The End of Life* (Oxford: Oxford University Press, 1986), 92–96; and Shelly Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989), 128–82.

[11] Thomson is the earliest and most influential of this group. See "Self-Defense," *Philosophy and Public Affairs* 20 (1991): 292ff; and "Physician-Assisted Suicide: Two Moral Arguments," *Ethics* 109 (1999): 510ff.

why the Doctrine should seem so plausible, even though it is, in fact, mistaken.[12] In chapter 1 I summarise Scanlon's critique of the DDE. This chapter is relatively brief. Thus, staunch supporters of the DDE may not be convinced by what I have to say. However, I say enough to suggest that non-consequentialists have a good reason to examine new approaches to restricting an agent's pursuit of the greater good.

The bulk of this thesis is dedicated to critiquing Kamm's attempt in this regard, which she encapsulates in her DPP. The DPP makes essential use of the concept of causal structure. According to Kamm, harming an innocent person is only justified in those cases in which that evil is in the right kind of causal relationship with a greater good.

Chapter 2 is concerned with setting out Kamm's account of permissible harm more fully. Once the account is clearly in front of us we will be in a position to answer the question 'Does the DPP return intuitively plausible results when applied to cases?' The answer to this question comes over the course of two chapters. This is because I distinguish between (1) what I call the Doctrine's *central tenet* and (2) an *amendment* that Kamm makes to that tenet. In chapter 2 I assess whether the central tenet delivers plausible verdicts. I argue that it seems not to, but only because Kamm makes use of an unnecessarily coarse concept of 'evil'. Once this concept is refined, the central tenet does return plausible results – at least as many as the DDE.

Chapter 3 continues to press the question of whether the DPP returns plausible results, but here my focus is on a particularly significant amendment that Kamm makes to the central tenet of her Doctrine. I argue that Kamm's treatment of one case in particular – the Loop Case – leads her to alter her Doctrine in such a way that it no longer has determinate content, i.e., it no longer makes a specific claim about when it is permissible to bring about the greater good. This is because what I call the Loop Amended Version of the Doctrine returns different results depending upon how the greater good is characterised and there are several plausible ways in which to do this. A sympathiser of Kamm's could attempt to fill this gap in her theory by working off clues provided by her own case descriptions. But the constraints implied by these clues force us to reach an unpalatable verdict.

Given these problems with the Loop Amendment, I recommend abandoning it and reverting to the central tenet of the DPP. This *does* return plausible results.

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[12] Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, Massachusetts: Harvard University Press, 2008), chapters one and two.

However, as Kamm herself acknowledges, this is not enough to prove that the Doctrine is correct. There remains the question 'What morally significant ideas, if any, does the DPP capture?' This is a question of fundamental importance and particularly pressing for Kamm because, on its face, the concept of causal structure seems to lack moral significance. I argue that Kamm's own account of the Doctrine's 'deeper meaning' is circular. This presents us with the puzzle of explaining how the central tenet of the Doctrine is able to return so many plausible results. I argue that this is possible because causal structure is a measure of how risky a plan of action is.

Chapter 1: The Doctrine of Double Effect

Recent work by Scanlon convinces me that the Doctrine of Double Effect rests on a fundamental mistake. This chapter outlines Scanlon's criticism of the Doctrine. If these criticisms are convincing, then that gives non-consequentialists a good reason to investigate other approaches to restricting an agent's pursuit of the greater good.

The 'double effect' to which the Doctrine refers concerns two different relationships that an agent can have with the consequences of her actions. There are (1) the consequences that she intends and (2) the consequences that she merely foresees.

Friends of the Doctrine believe that if an agent intends the harm that her action brings about, then that counts against the permissibility of her action. The Doctrine prohibits an agent from pursuing the greater good so long as this involves intending harm. Two other constraints imposed by the Doctrine are (1) that the good must be proportionate to the evil, and (2) that there must be no better way of bringing about the good.

Friends of the Doctrine believe that it distinguishes the Transplant Case from the Trolley Case. In the Transplant Case, the surgeon intends to cut up the healthy person and extract his organs. Therefore, the agent intends harm. In contrast, the bystander does not intend the one on the sidetrack to be hit by the trolley. The agent in this case merely foresees harm. This distinction between the intentions of the two agents is meant to explain why the action of the first is impermissible and the action of the second is permissible.

This account of permissible harm has been fabulously influential. However, it has also been the subject of sustained criticism.

Scanlon argues that the DDE misjudges the relationship between an agent's intentions and the permissibility or impermissibility of her actions.[13] According to the Doctrine, there is a direct relationship. The Doctrine maintains that, holding all consequences constant, whether or not an action is permissible can alter depending upon the intentions of the agent. Scanlon rejects this thesis. On his account, there is only an *in*direct relationship between intentions and the permissibility or impermissibility of actions. He suggests that friends of the Doctrine might have

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[13] For his account of the moral significance of intentions, see *Moral Dimensions*, chapter two.

reached their mistaken conclusion by running together two different forms of moral assessment: one to do with the question of permissibility – i.e., 'May I do such-and-such?' – and another to do with the agent's reasoning process.[14]

Scanlon suggests that there are two ways in which principles can be used: deliberatively and critically.[15] When used deliberatively, a moral principle is a guide to action. It states the considerations that count for and against a given action. When used critically, a moral principle is a standard for assessing the way in which an agent went about deciding how to act. This critical assessment examines what the agent actually took to be reasons and compares them to those specified by the principle in its deliberative application. For example, suppose I promised to meet you for dinner tonight, but that when the time comes I just can't be bothered and, for that reason, don't show up. The fact that keeping my promise to have dinner with you will be inconvenient for me is not a sufficient reason for me to break my promise. A deliberative application of the principle of promise-keeping would point this out. A critical application of the same principle would indicate that I am morally at fault for treating this reason as if it were sufficient. Such an assessment is more specific than a general character assessment; it assesses a particular piece of decision-making on the part of the agent.

On Scanlon's view, the permissibility of an action is determined by the considerations that count for and against it, not on what an agent takes those considerations to be.[16] An example from Graham Greene's novel *The Quiet American* will show how the two sets of considerations can come apart.

In the novel, Pyle – a young, idealistic American – is intent on introducing a 'Third Force' to the Indochina War. Although he is earnest in his belief that this will resolve the conflict, the reader is convinced that this is, actually, a terrible idea. Pyle's actions have already led to the deaths of many innocent people. Fowler – a British journalist posted in Saigon – knows this, and plays a key role in a successful plot to assassinate Pyle. This is obviously an ethically murky area, but it is at least arguable

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[14] Scanlon, *Moral Dimensions,* 20-28.
[15] Ibid., 21-23.
[16] Scanlon believes that an agent cannot choose the reasons for which she acts. See *Moral Dimensions*, 58-60. I agree, but the view is controversial. It might be protested that agent can find a certain consideration motivationally efficacious without actually endorsing it as a reason to act. Ralph Wedgwood picks up on something like this when he criticises Scanlon for failing to distinguish between 'the *intentions* with which a person acts and the person's *motivating reasons* for her action'. See "Scanlon on Double Effect," *Philosophy and Phenomenological Research* 83, 2 (2011): 469.

that the assassination of Pyle is permissible – it probably saves many innocent lives. But there are further considerations that complicate our moral assessment of the situation. Fowler's beautiful young lover, Phoung, has left him for Pyle. Fowler predicts that, once Pyle is killed, Phoung will return to him – which, indeed, she does. Fowler's motivation for helping to assassinate Pyle is unclear to the reader. Indeed, it is probably unclear to Fowler himself.

Does the permissibility of helping to assassinate Pyle depend upon the reasons for which Fowler performed the action? Scanlon would argue, and I agree, that it does not. Outside the sphere of professional moral philosophy, it is generally accepted that it is possible to do the right thing for the wrong reason. Scanlon's distinction between the deliberative and critical use of principles helps explain this appealing popular notion. Using moral principles deliberatively, we can isolate the considerations that bear on the question of permissibility. In the case of Fowler's dilemma, these would include Pyle's death and the possibility of saving innocent people from harm. In contrast, using moral principles critically, we can assess whether or not an agent did, in fact, isolate the relevant considerations and give them the proper weight in his reasoning. In the case of Fowler's dilemma, his love of Phoung and jealousy of Pyle are examples of considerations that are irrelevant to the question of whether or not it is permissible for him to help kill Pyle. If Fowler took these considerations to count in favour of his decision to help kill Pyle, then he reasoned incorrectly and is open to moral criticism on that account. However, the fact that he acted for these reasons would not itself go towards determining what is permissible or impermissible in the circumstances.

The considerations that count for and against the permissibility of killing Pyle have nothing to do with Fowler's state of mind. However, it is easy to mistakenly believe otherwise. This is because Fowler's state of mind is relevant to another closely related moral question; that is, the question of how to evaluate Fowler himself. Following Scanlon, I contend that judgments about Fowler's moral reasoning and character are distinct from the judgment about whether or not it is permissible for him to help kill Pyle.

By separating the permissibility of an action from an agent's reasons for performing that action, Scanlon is able to explain some of the cases that trouble friends of the DDE. For example, imagine that the bystander in the Trolley Case turns the trolley with the intention of killing the one (Bad Driver Case). So long as the

bystander intends the death of the one, the Doctrine seems to prohibit her from turning the trolley. However, this does not seem right.

Friends of the Doctrine are aware of this objection and have tried to respond to it.[17] I find the responses on offer unconvincing. However, I cannot rule out the possibility that someone will be able to develop a compelling analysis to counter Scanlon's. Still, I believe that Scanlon and earlier critics (on whose work Scanlon has built) have done enough to make us seriously question the soundness of the DDE. Given these reservations, it seems appropriate to adopt another approach to the Trolley Problem. Kamm has done precisely that. The remainder of this thesis is dedicated to critiquing the principle she offers to replace the DDE, namely, her Doctrine of Productive Purity.

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[17] For example, see Joshua Stuchlik, "A Critique of Scanlon on Double Effect," *Journal of Moral Philosophy* 9, 2 (2012): 178-99, which builds on a proposal made by William J. FitzPartick in "Acts, Intentions, and Moral Permissibility: In Defence of the Doctrine of Double Effect," *Analysis* 63, 4 (2003): 317-21.

Chapter 2: The central tenet of the Doctrine of Productive Purity

Kamm's approach to the Trolley Problem is motivated by the interesting observation that, although bringing about a greater good cannot always justify causing an evil, it seems that if a greater good is associated with an evil in a particular way, then it has justificatory force.

Kamm maintains that the permissibility or impermissibility of bringing about a greater good turns on the causal structure of the case. In particular, she is concerned with the causal relations between evils and the greater goods that might justify them. She thinks that it is only permissible to bring about some of these causal relations.

In this chapter I begin the task of assessing what causal structures are prohibited by the DPP. I pursue this task with a view to determining whether or not the DPP returns intuitively plausible results when applied to cases. In the absence of a certain troubling amendment, and when properly interpreted, my view is that it does as well in this regard as any other principle on offer. In particular, it captures all the intuitively plausible judgments that are captured by the Doctrine of Double Effect, which is the foremost non-consequentialist principle of permissible harm.

Furthermore, it could be argued that the DPP enjoys an advantage over the DDE. The DDE seems to prohibit an agent from bringing about the greater good for the wrong reason. Consider, for example, the Bad Driver Case mentioned at the end of the last chapter. The only difference between this case and the Trolley Case concerns the agent's state of mind. In the former case, she acts with the intention of killing the one. In the latter, she acts with the intention of saving the five and merely foresees the death of the one. The DDE permits the latter action, but seems committed to prohibiting the former, even though the outcomes in both cases (and, indeed, even the physical movements of the agent) are exactly the same. It seems odd that a mere difference in the agent's intentions should make all the difference as regards the question of permissibility.[18] If this is a fault with the DDE, then there is a reason to believe that the DPP delivers plausible verdicts in a broader range of cases.

In spite of its ability to accommodate popular judgments about many cases, there is one prominent case that creates grave problems for the DPP. This is the Loop

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[18] Though there are those who are willing to accept this implication. See, for example, Victor Tadros, *The Ends of Harm: The Moral Foundations of Criminal Law* (New York: Oxford University Press, 2011), 155-7.

Case, which Judith Jarvis Thomson presents in the course of one of her attempts to resolve the Trolley Problem.[19] Kamm believes that it is permissible to bring about the greater good in this case. She amends the central tenet of her Doctrine to accommodate this judgment. The upshot of what I call the Loop Amendment is that the DPP no longer has determinate content. When we attempt to apply it to a new case, we see that it delivers multiple verdicts that are incompatible with each other. However, in the absence of this Amendment, the DPP *does* make specific claims about when it is permissible to harm someone in the pursuit of the greater good and these claims are plausible.

I defer discussing the problems created by the Loop Amendment until the next chapter. This will permit us to take full stock of the plausible aspects of Kamm's account of permissible harm. Furthermore, an inability to accommodate the judgment that it is permissible to bring about the greater good in the Loop Case is not a problem that is peculiar to the DPP. The DDE also prohibits bringing about the greater good in this case. Neither principle can be held to be superior to the other on account of the verdict it delivers in this instance. The Loop Case, therefore, seems to present an especially difficult challenge to non-consequentialists attempting to formulate principles of permissible harm.[20] This is another reason that Kamm's treatment of this case should be given separate attention.

Setting out the central tenet

Let us begin by defining our basic concepts. Thus far I have been referring to 'goods' and 'evils' while assuming my reader's familiarity with the terms. This is probably a safe assumption. However, since the concepts are at the heart of Kamm's account, it is worthwhile defining them. 'An evil' is an event or a state of affairs that, barring all other considerations, people in general want to avoid bringing about. In contrast, 'a good' is an event or a state of affairs that, barring all other considerations, people in general want to bring about. Given that we are concerned with cases in which an agent can save some innocent people only by killing others, the evils in question are the deaths of people and the goods are states of affairs in which people have been

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[19] Thomson, "The Trolley Problem," 1402-3.

[20] For instance, it also seems to be an exception to the famous Kantian prohibition against treating a person as a mere means. See Thomson, "The Trolley Problem," 1401-3 and Scanlon, *Moral Dimensions*, 117-21.

saved from a lethal threat. (Given that the DPP is a principle of permissible *harm*, it is, presumably, meant to apply to less severe evils than killings and lethal threats. However, I shall not be concerned with that complication here.)

'A good' and 'an evil' are, thus, merely descriptive terms. They can be used without presupposing an answer to the question of permissibility. An action is not impermissible simply because it brings about an evil. Nor is an action permissible simply because it brings about a greater good. The question Kamm is intent on answering is precisely 'When does a greater good justify bringing about an evil?'

Kamm endorses a complex version of the Downstream Principle (DP). According to the DP, evils must come causally downstream from greater goods.[21] The Principle would permit an agent to pursue the greater good in the following case. Imagine that the only way for an agent to prevent a runaway trolley from hitting five people is for the agent to push the five people off the track. Once the five people are off the track though, the trolley will hit a sixth person who, given he is further down the track, would not otherwise have been hit. (I am making the ghoulish assumption that, if they were not moved, then the bodies of the five would bring the trolley to a halt before it reaches the one.) In this case, it would be by bringing about the good (the five being saved)[22] that the agent would cause the lesser evil (the one being hit). According to the DP, since (1) the good is greater than the evil and (2) the evil is causally downstream from the good, it is permissible for the agent to save the five and, thereby, kill the one.

(It is perhaps tempting to think that if the agent were to push the five off the track she would not, thereby, kill the one. This thought is strengthened by the presumption that, if she only had time, the agent would go back and also push the sixth person off the track. This might be so. However, it is still correct to describe the agent as killing the one in this case. By pushing the five off the track, she is making the one subject to a lethal threat that he was not subject to before. It is only because she pushes the five out of the way that the one's life is threatened and, so, only because of that that the one's life is ended. If we hesitate to say that the agent kills in this case, that is only because we think the killing is justified. Imagine another case in which, rather than five people, a pile of debris is lying on the track that would prevent

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[21] Kamm, *Intricate Ethics*, 138.
[22] Logical syntax requires 'being' to be a gerund rather than a present participle. That is, the greater good is really the five*'s being saved*, not the five being saved. But here, as elsewhere, I prefer to drop the cumbersome apostrophe.

the trolley from hitting the one. If the agent pushes the debris off the track, then surely she kills the one.)

Kamm grants that all acts permitted by the DP are, in fact, permissible. However, she finds the Principle too restrictive. She maintains that it prohibits acts that should not be prohibited.[23] Thus, she sets about revising the Principle. Her method of revision consists of presenting a large variety of hypothetical cases, registering her intuitions about what it is permissible for an agent to do in those cases, and accommodating those intuitions in her account of permissible harm. Ultimately, she arrives at the Doctrine of Productive Purity. The DPP is expressed in such dense and technical language that stating it in full is more likely to confuse than aid comprehension.[24] However, the essence of it can be stated simply enough: it is impermissible to bring about evils that are causally upstream from greater goods.[25] I call this claim the *central tenet* of the DPP. This chapter assesses the central tenet's ability to return intuitively plausible results. I believe that this tenet has a stronger claim to being correct than the Doctrine in its entirety.

I shall not attempt to summarise all the cases that Kamm considers in the course of 'discovering'[26] the central tenet.[27] However, I shall consider its application to a few cases that are salient in the literature on the Trolley Problem.

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[23] Ibid., 140ff.

[24] Full statement as follows: '(1) If an evil* cannot be at least initially sufficiently justified, it cannot be justified by the greater good that it is necessary (given our act) to causally *produce*. However, such an evil* can be justified by the greater good who component(s) cause it, even if the evil* is causally necessary to help *sustain* the greater good or its components. (2) In order for an act to be permissible, it should be possible for any evil* side effect (except possibly indirect side effects) of what we do, or evil* causal means that we must use (given our act) to bring about the greater good, to be at least the effect of a good greater than it is working itself out (or the effect of means that are non-causally related to that greater good that is working itself out). I shall call these two conditions the Doctrine of Productive Purity (DPP), as it is especially concerned with the causes that produce the greater good and concomitant evil* side effects'. *Intricate Ethics*, 164. 'Evil*' is Kamm's shorthand for evil (i.e., harm) and 'the involvement of a person without his consent when foreseeably this will lead to an evil to him'. *Intricate Ethics*, 93. Kamm attaches a Modal Condition to the DPP such that it is not the *actual* causal structure that matters. Rather, what is essential to permissibility is that, given the agent's action, it is *possible* that the greater good could come about in accordance with the DPP. *Intricate Ethics*, 159-61, 64. Nothing in my critique will turn on our construal of this Modal Condition.

[25] Before discussing the Loop Case, Kamm writes, 'It seems that, rather than it being crucial that evil* be downstream, it is crucial that evil* *not* be causally upstream from a greater good (and not being causally upstream is *not* the same as being causally downstream)'. *Intricate Ethics*, 153.

[26] I use the verb 'discover' advisedly. In registering her intuitive responses to cases Kamm takes herself to be uncovering an 'underlying psychologically real structure that was always (unconsciously) part of the thought process of some people'. *Intricate Ethics*, 5, footnote 4. For more on Kamm's methodology see the introductions to *Creation and Abortion* and *Morality, Mortality*, volumes 1 and 2 (New York: Oxford University Press, 1992, 1993, and 1996, respectively).

[27] For the full range, see *Intricate Ethics*, 130-53.

First of all, the central tenet accommodates the intuition that it is permissible for an agent to turn a runaway trolley from five to one. This is one advantage that Kamm sees her account as having over the Downstream Principle, which holds that evils must be causally downstream from greater goods. Since the greater good does not cause the evil in the Trolley Case, the Principle prohibits the agent from pursuing the greater good. In contrast, the tenet only prohibits bringing about evils that are causally upstream from greater goods. Clearly, 'the one being hit' does not cause the five to become saved in Trolley Case. Therefore, turning the trolley is permitted according to Kamm's account.

However, some significant questions remain. One, how *precisely* are the evil and greater good related? Two, how are these occurrences related to the agent's action? Before we can define these relationships we will, of course, have to define the things that are being related. The agent's action is 'pulling the lever' or 'turning the trolley'. The greater good is 'the five becoming saved' or 'the continued life of the five'. The evil seems to be equally obvious. Isn't it simply the death of the one? Kamm's analysis of the case suggests this.[28] In fact, I believe this is an inadequate account of the evil at play in the case. This is a point I shall return to below. For the moment, let us proceed on the understanding that the greater good is 'the five becoming saved' and the evil is 'the death of the one' or 'the one being hit by the trolley'.

Taking these as our definitions, it is correct to say that turning the trolley causes the evil. However, it is not so clear that turning the trolley causes the greater good. Kamm argues that the agent's action is related to the greater good, but that the relationship is not a causal one.[29]

That two events can be related in a non-causal way is a foundational claim in Kamm's account. She argues that two events are related in a non-causal way when they share a relationship that is tighter than one of causation. The two forms of such a relationship that she specifies are those of identity and constitution.[30]

If two events are identical, then Kamm calls them the 'non-causal flip side' of each other. Here is an example: as I stand up from my seat, my lap disappears. The two events, namely, 'my standing up from my seat' and 'my lap disappearing', are, in

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[28] See Kamm, *Intricate Ethics*, 140-1.
[29] Ibid.
[30] Ibid.

fact, the same event under different descriptions. My standing up does not cause my lap to disappear. Rather, it just is my lap disappearing.

If one event is partly constitutive of another, then Kamm calls the former event a 'non-causal aspect' of the latter. Here is an example: as I stand up from my seat, my left thigh rises. The event 'my left thigh rising' constitutes part of the event 'my standing up from my seat'. My standing up does not cause my left thigh to rise. Rather, my left thigh rising is just an aspect of my standing up.

Kamm believes that delineating these two non-causal relationships can help us solve the Trolley Problem.

With these concepts in hand, let us return to the Trolley Case. As the trolley is turned away from the five, they cease to be subject to any threats. Their being free of threats is what constitutes their becoming saved. Kamm argues that the events 'turning the trolley' and 'the five becoming saved' share a relationship that is tighter than one of causation. The two events are, in fact, identical. In her terminology, the five becoming saved is the 'non-causal flip side' of the redirection of the trolley.[31] Since the agent's action has a good as its non-causal flip side, it may permissibly cause a lesser evil. As long as that structure obtains, the evil in question is not causally upstream from the good.

This analysis seems to neatly distinguish the Trolley Case from the Transplant Case. In the Transplant Case, the agent can take the organs from the one and use them to save the five. It is clear in this case that the evil (of the one being cut up) is part of a causal sequence that leads to the greater good (of the five becoming saved from organ failure). Since the evil in this case would be causally upstream from the greater good, Kamm says it is impermissible for the agent to pursue the greater good. This is surely the right conclusion.

Kamm believes that the central tenet of the DPP can also support our intuition about the Bridge Case:

A runaway trolley is hurtling down a track towards five people who have no chance of escape. A bystander to this impending disaster is standing on a footbridge that runs over the track. Next to her is a very fat man. The bystander could push the fat man into the path of the trolley. If the fat man were pushed onto the track, then he would be killed, but the trolley would be stopped before hitting the five.

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[31] Ibid., 141.

Kamm believes that it is impermissible to push the fat man off the bridge. She justifies this belief by arguing that the evil in this case is 'a causally necessary means to producing the greater good'.[32] If the evil is a causally necessary means, then it is causally upstream form the greater good. On her account, that makes it impermissible for an agent to bring that evil about.

I am not satisfied by this explanation of the impermissibility of pushing the fat man. As it stands, Kamm's account of non-causal relationships implies that it is permissible for the agent to push the one in the Bridge Case.

In keeping with our analysis of the Trolley Case, let us assume that the evil in the Bridge Case is simply 'the death of the one' or 'the one being hit by the trolley'. Let us also assume that the greater good in the Bridge Case, as in the Trolley Case, is 'the five becoming saved' or 'the continued life of the five'. Given these characterisations, it is not obvious that the evil is a 'means to' the greater good.

It seems that the events 'the one being hit' and 'the five becoming saved' share a relationship that is tighter than one of causation. Recall, Kamm maintains that the five are saved in the Trolley Case when they no longer face any threats. Their being free of threats is what constitutes their becoming saved. Now notice that after the one is hit in the Bridge Case, nothing further needs to happen in order for the five to be saved. In this manner, the one being hit in the Bridge Case is like the trolley being turned in the Trolley Case. In the Trolley Case, the trolley being turned 'is the same event as [the five] becoming free of threats, and this is the same event as their becoming saved'.[33] Similarly, the one being hit in the Bridge Case is the same event as the five becoming free of threats, and this is the same event as their becoming saved. In contrast to both these cases, the one having his organs taken in the Transplant Case is *not* the same event as the five becoming free of threats, and is *not* the same as their becoming saved.

If Kamm is to be consistent, then she must grant that the five becoming saved in the Bridge Case is the non-causal flip side of the one being hit by the trolley. If she grants this, then the evil of the one dying occurs as the greater good of the five becoming saved is achieved. If the evil and the greater good occur simultaneously, then the evil cannot be causally upstream from the greater good. If this is true, then

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[32] Kamm, *Intricate Ethics*, 143.
[33] Ibid., 141.

pursuing the greater good in this instance is not prohibited by the central tenet of the DPP.

I do not offer this counter-analysis of the Bridge Case because I think it is permissible to push the one. Indeed, I am confident it is not. My point is that Kamm does not deal with this case as neatly as she supposes.

Kamm has the resources to resist my counter-analysis. She could accuse me of having misunderstood what counts as an evil in the case. I presumed that the evil in the case was simply the death of the one. I took this as my definition because it is suggested by her analysis of the Trolley Case and, at least in that case, the definition seems to function well. However, Kamm would probably say that this understanding of evil is too narrow. Above, I defined an evil as an event or a state of affairs that, barring all other considerations, people in general want to avoid bringing about. The salient morally bad feature of the cases we have been considering is the death of an innocent person. Thus, I have been using the term 'an evil' virtually as a synonym for 'harm' (or, more particularly, 'lethal harm'). However, Kamm's definition of evil goes beyond harm and includes 'the involvement of a person without his consent when foreseeably this will lead to' him being harmed.[34]

Given this broader definition of evil, it is clear that the evil in the Bridge Case begins before the one is hit. At minimum, it begins the moment the agent pushes the one. By pushing the one, the agent involves the one without his consent when foreseeably this will lead to him being killed. We can thus say that the evil of the one being hit is itself brought about by the evil of the one being pushed. It then does not matter whether the evil of the one being hit is causally or non-causally related to the greater good, as it is clear that the evil of pushing the one is causally related to the greater good. According to this analysis, an evil is causally upstream from the greater good in the Bridge Case. Therefore, it is impermissible to push the one according to the central tenet.

This analysis is compatible with the rest of Kamm's account and, so, available to her when it comes to explaining the impermissibility of pushing the one in the Bridge Case. However, the definition of evil that it relies upon is still unnecessarily coarse. Kamm's definition conflates two concepts that are normally distinguished. 'Harm' is the first component of her definition. 'Involvement that will foreseeably

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[34] Ibid., 93.

lead to harm' is the second. This component is very nearly synonymous with the commonplace English term 'threat'.

Kamm invokes the concept of 'harmful involvement' because Warren S. Quinn appeals to it in his defence of the Doctrine of Double Effect.[35] However, the concept of 'a threat' has the advantage of being more readily identified and understood than that of 'harmful involvement'. Furthermore, it seems to me that the idea of 'being a threat to someone' captures slightly more than the idea of 'involving a person when this will foreseeably lead to him being harmed'. If I involve a person in situation S, then I cause that person to take part in S. The agent in the Bridge Case, for example, certainly does cause the one to take part in the developing situation. However, the threat to the one seems to exist prior to him being forced to participate – i.e., prior to the agent actually laying her hands on him.

A threat is something that is likely to cause harm. It is plausible to suppose that the agent is likely to cause the one harm from the moment she forms the intention to push him off the bridge.[36] Of course, it could be argued that the one is also 'harmfully involved' from the moment the agent forms the intention to push him. If you feature in a plan I have, then perhaps it is right to say that you are involved in that plan, even if I am yet to commence acting on it. If this is true, then the one is harmfully involved before any actual shoving begins. This would dissolve the distinction between 'threats' and 'harmful involvement'. However, it would not detract from the fact – and this is the important point – that there are distinct kinds of evil at play in the Bridge Case.

When the agent forms the intention to push the one, and when she rushes at him, she threatens him.[37] When the agent actually lays her hands on the one, the threat of harm merges into harm itself. First, there is the harm of being pushed off the bridge. This harm is followed by another: the one is hit and killed by the trolley.

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[35] See Quinn, "Actions, Intentions, and Consequences: The Doctrine of Double Effect," 341ff. Kamm defines 'evil' in the chapter in which she criticises the DDE and presents her own principle that bases restrictions on the mental states of the agent – her Doctrine of Triple Effect (DTE). Although she spends a considerable amount of time setting out this Doctrine, her considered view is that it cannot serve as an adequate principle of permissible harm. For one, it returns the wrong result in some cases. More substantively though, Kamm, like Scanlon and Thomson, believes that an agent's intentions are not directly relevant to the question of permissibility. See Kamm, "Failures of Just War Theory: Terror, Harm, and Justice," *Ethics* 114, 4 (2004), 666ff.

[36] This is an example of what Scanlon calls the 'predictive significance' of intentions. See, *Moral Dimensions*, 12-20.

[37] Perhaps this also counts as harmful involvement.

The distinction between threats and harms is similar to the legal distinction between assault and battery. Assault is an act that creates a reasonable apprehension of imminent harmful or offensive conduct.[38] Battery is a physical act that results in harmful or offensive conduct.[39] When I draw back my fist, I assault you. Battery begins the moment my fist makes contact with your nose. Of course, the assault continues past the point of my making physical contact with you. My fist touching your nose does not extinguish your reasonable apprehension of imminent harmful conduct. Quite the opposite. In this way, assault merges into battery. Of the two, battery might often be the graver offence. However, assault by itself is still undoubtedly wrongful.

This legal distinction brings clarity to our thinking, but it is not quite the distinction that we are interested in. Whereas the occurrence of an assault depends, in part, upon the victim's apprehension of the danger he is in, the occurrence of a threat does not. You could be threatened – and, thereby, wronged – even if you are completely unaware of the fact. A drunken motorist is a threat to other road users whether or not she is seen to be one. Further, she wrongs her fellow road users by driving under the influence of alcohol. Even if she arrives at her destination without actually harming anyone, her recklessness indicates that she undervalues the interests and moral standing of others.

Do all threats that do not result in harm wrong those who are subject to them? I anticipate that there will be differing opinions on this point. However, it should be granted that the lethal threats we have been considering are distinct kinds of wrongs, i.e., that they could exist independently from the harms that they merge into. This claim is sufficient for Kamm's purposes.[40]

It allows her to say that when I rush at someone intent on pushing him off a bridge, I threaten and, thereby, wrong him, irrespective of whether any actual harm to him eventuates. Similarly, when I come at someone with a scalpel intent on taking his organs, I threaten him and, thereby, wrong him. In contrast, when a person is pushed off a bridge or has his organs removed, he is not only threatened, he is also harmed.

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[38] LexisNexis Australia, *Encyclopaedic Australian Legal Dictionary*, s.v. "Assault," accessed 23 December, 2014, http://www.lexisnexis.com.ezp.lib.unimelb.edu.au/au/legal/search/dictsumbitForm.do
[39] Ibid., s.v. "Battery".
[40] That you can be *wronged* even if you are not *harmed* is a non-consequentialist idea. For a discussion of the differences between the consequentialist and non-consequentialist conceptions of harm, see Rahul Kumar, "Who Can Be Wronged?," *Philosophy and Public Affairs* 31, 2 (2003): 102-5, esp. footnote 4.

Given that there is a commonplace conceptual and semantic distinction between threats and harms, I see no obvious benefit to lumping them together as a single concept.

If we apply the central tenet of the DPP keeping the distinction between threats and harms in mind, then the tenet can easily accommodate the intuition that it is impermissible to kill the one in the Bridge Case. The distinction also allows for a more perspicuous treatment of the other cases we have considered so far. I shall not run through each of them, but by way of a general example it is worth reconsidering the balance between goods and evils in the Trolley Case.

When the agent arrives on the scene, each of the five is subject to a lethal threat. The agent has the option of eliminating this evil. Unfortunately, the only means she has of doing so will result in the one being lethally threatened. Since the threat to the five is a greater evil than the threat to the one, redirecting the trolley would be justified according to a consequentialist analysis. It is also justified according to the central tenet. 'The five ceasing to be threatened' and 'the one being threatened' are two descriptions of the same event, namely, 'the trolley being turned'. The greater good of eliminating the threat to the five is, thus, the non-causal flip side of the evil of threatening the one. Therefore, this evil is not causally upstream from the greater good.

Of course, that is not the end of the story. The story ends when the one dies. The death of the one is surely a very bad thing. Like the lethal threats, it is an evil. What is there to justify this evil? This evil is justified by the greater good of saving five lives. But hasn't that good already been counted? No, what was counted was the elimination of the threat to the five, not the saving of five lives. Of course, both goods are achieved simultaneously in the Trolley Case. But that does not mean that they are not distinct goods. It becomes clear that they are, in fact, distinct goods when we acknowledge that their opposites are, obviously, distinct evils. At least in some cases, it is morally objectionable to be threatened, even if that threat does not result in harm. You do not have to wait for a person to cut you in order to object to her brandishing a knife at you. Nor is that person's act of brandishing the knife rendered morally neutral if she is apprehended before she can cut you.

There are two evils at play in the Trolley Case: the threat to the one and the death of the one. According to the central tenet, these are permissibly brought about because they are each a consequence of the agent bringing about a greater good. The

goods are eliminating a threat to the five and saving the lives of the five. In neither instance does the evil precede the good that justifies it.

That the tenet returns an intuitively plausible result when applied to the Trolley Case and so many other prominent cases speaks greatly in its favour. It suggests that there can be a non-consequentialist theory of permissible harm even if intentions are irrelevant to permissibility. However, Kamm amends this tenet so as to accommodate her judgement about the Loop Case. As I argue in the next chapter, her treatment of this case casts doubt over her Doctrine's ability to return any verdict at all.

Chapter 3: The Loop Amendment

In the last chapter, I pressed the question 'Does the central tenet of the DPP return intuitively plausible results?' I concluded that the tenet does, so long as it is applied with a sufficiently refined conception of 'evil'. In this respect it rivals, and perhaps even surpasses, the DDE. This is an impressive aspect of Kamm's work. Unfortunately, it does not carry over to her final formulation of the DPP. She amends the tenet to accommodate her judgement about the Loop Case. After she has thus amended her account, it is far from clear that it has determinate content. That is, the final formulation of the Doctrine seems incapable of making specific claims about when it is permissible and when it is impermissible to bring about the greater good.

Here is the Loop Case:

A runaway trolley is headed towards five people who have no chance of escape. An agent who happens to be standing nearby has the option of turning this runaway trolley onto a sidetrack on which one person is stuck. This sidetrack loops back around to join the main track where the five are. If the one were not on the sidetrack, and the agent turned the trolley, then the trolley would loop and hit and kill the five from behind. As it is, the one is on the sidetrack and, so, if the agent turns the trolley, then the one will be hit and killed, but the trolley will be stopped by his body and the five will be saved.

Kamm thinks it is permissible for the agent to turn the trolley in this case.

Let us consider the goods and evils at play. When the agent arrives on the scene, the five are threatened with death. This is an evil. Eliminating this evil would be a good, and this good is obviously greater than the evil of threatening one person with death. Threatening the one would, therefore, be justified according to a consequentialist analysis. According to central tenet of the DPP, the agent would only be justified in bringing about this evil if it is not causally upstream from the greater good. However, this condition appears to be met. The threat to the one in this case is the non-causal flip side of the state of affairs in which the five cease to be threatened. That is, 'the one being threatened by the trolley' and 'the five ceasing to be threatened by the trolley' are, in fact, the same event under different descriptions. Therefore, the threat to the one cannot be causally upstream from the state in which the five cease to be threatened. So far, so good.

But now we seem to encounter a problem. The threat to the one is not the only evil at play in the Loop Case. There is also the harm to the one, which is death. Of course, if the one is hit, though he will be killed, the trolley will be stopped. This means that the five will be saved. Therefore, there is a greater good that will eventuate. Once again, the evil at play would be justified according to a consequentialist analysis. However, it seems as if the central tenet prohibits bringing about this evil. The one being hit will *cause* the five not to be hit: that is, it will *cause* them to be saved. The truth of this claim seems to entail the truth of another: namely, that the evil of the one being hit will be causally upstream of the greater good from the five becoming saved.

However, Kamm believes that it is permissible for the agent to turn the trolley in the Loop Case. In order to accommodate this intuition she invokes a new concept: the structural equivalent of the greater good ('structural equivalent' for short).[41] Setting out how Kamm sees the structure of the Loop Case will help us get a grip on this concept.

Here is how she sees the structure:

When the agent arrives on the scene, the trolley threatens the five: it will hit them head on. This is the first problem. It is necessary that this problem be dealt with if the five are to live. However, dealing with this problem may not be sufficient to save them. Assume the agent acts so as to eliminate this problem. Unfortunately, the only available means of eliminating this problem gives rise to a new problem. The trolley will loop and threaten the five again: it will hit them from behind. Kamm emphasises that this new problem only arises because of what the agent did to eliminate the first problem.[42] In the absence of this new problem, Kamm thinks we have the structural equivalent of the greater good.[43]

Structural equivalents of the greater good are states that have all the qualities of the greater good, absent any problems created by the agent's action. The problem of the trolley hitting the five head on is the only problem that exists independently of the agent doing anything to save the five. If this problem were dealt with, and no other problems were to arise as a result of the agent's rescue efforts, then the five would be saved. However, a new problem does arise: the threat of the looping trolley.

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[41] Kamm, *Intricate Ethics*, 154.
[42] Ibid., 134.
[43] Ibid., 154.

Kamm asks us to put this problem to one side though. If we abstract the rest of the case from this new problem, then we have what Kamm calls 'the structural equivalent of the greater good'.

To some the looping trolley may seem not so much like a new problem, but rather a continuation of the original problem.[44] Indeed, this is surely the most natural way to first understand the case. However, Kamm would say that this natural understanding is, in fact, a misunderstanding. It may be that each threat in the Loop Case is embodied by the same physical entity, namely, the trolley, but mere physical identity does not entail identical moral assessments. We only consider the trolley to be a moral problem because a certain state of affairs obtains, namely, one in which someone stands to be killed by the trolley. In the absence of that state, the trolley – that particular physical entity – would not be of any moral concern at all.

As regards the five in the Loop Case, there seem to be two distinct events that could occur, each of which would be a moral problem: the trolley hits the five head on, the trolley hits the five from behind. We can imagine cases in which there is no chance that one of these events will occur, but some possibility that the other might. Given that we can separate the problems like this, it is fair to consider them separate problems, even in cases in which there is a risk that either one of them might occur. Therefore, Kamm's claim that the looping trolley is, in fact, an additional threat is plausible.

Still, the fact that the new threat is physically identical to the old threat is liable to increase the difficulty of comprehending Kamm's concept of a structural equivalent. So, let us imagine a slightly different case. Imagine that the track does not loop, but that the sidetrack runs parallel to and above the main track. The sidetrack is not often used and the agent can foresee that if the trolley runs along it, then loose earth near the track will be disturbed. The disturbed earth will transform into a landslide that will crush the five on the main track. In this Landslide Case, if the agent turned the trolley, then she would bring about a structural equivalent of the greater good: the five would be saved from the threat of the trolley and, absent any problems created by the agent's rescue efforts, that is the same as the five becoming saved.

[44] For example, see Alastair Norcross, "Off Her Trolley? Frances Kamm and the Metaphysics of Morality," *Utilitas* 20, 1 (2008): 74-5; Henry S. Richardson, "Discerning Subordination and Inviolability: A Comment on Kamm's *Intricate Ethics*," *Utilitas* 20, 1 (2008): 88-9; and Michael Otsuka, "Double Effect, Triple Effect and the Trolley Problem: Squaring the Circle in Looping Cases," *Utilitas* 20, 1 (2008): 105-6. Kamm replies to this claim in "Responses to Commentators on *Intricate Ethics*," *Utilitas* 20, 1 (2008): 127ff.

Unfortunately, a new problem will be created: there will be a landslide. If nothing happens to prevent the threat of the landslide from resulting in harm, then the structural equivalent *will not* be sustained. If something does happen to prevent the harm (perhaps the landslide will be halted by a barrier running along the main track), then the structural equivalent *will* be sustained. When the new problem is embodied by a different physical entity (in this case, sliding earth as opposed to a trolley), then the concept of a structural equivalent is easier to comprehend.

Let us return to Kamm's analysis of the Loop Case. The threat to the one is related in a non-causal fashion to the elimination of the first threat to the five. That is, the trolley turning towards the one and the trolley turning away from the five *just are the same event*. Since the evil of threatening the one is related to a greater good in a non-causal fashion, it is not causally upstream from the greater good. Therefore, it is permissible to bring it about. However, now the looping trolley poses a second threat to the five. This threat promises to undo the good that has been brought about so far.

Kamm describes the looping trolley as a threat that could 'defeat' the greater good.[45] However, we know that this threat will not ultimately be able to defeat the greater good. We know that the looping trolley will be stopped when it hits the one. In this way, the potential 'defeater' of the greater good is itself 'defeated' by the evil of the one being hit. By 'defeating' a potential 'defeater' of the greater good, the evil *sustains* the greater good.[46]

(Talk of 'defeaters' and 'defeaters of defeaters' is liable to invite confusion, given that these are technical terms in epistemology. In what follows I shall use the verb 'prevent' rather than the verb 'defeat'. Both verbs have a sufficiently wide application and, on balance, the change in terminology seems to clarify the points at issue. Those who disagree, however, are invited to mentally revert to Kamm's terms as they read on.)

Kamm claims (1) that it is impermissible for evils to *produce* greater goods, but (2) that it is permissible for evils to *sustain* greater goods. Claim (1) seems to be another way of expressing the central tenet, namely, that it is impermissible for evils to be causally upstream from greater goods. Claim (2) is what I call the Loop Amendment. The Loop Amendment seems to be in tension with the central tenet. Consider: 'sustaining' is a kind of causal relation. 'To sustain something' is just one

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[45] Kamm, *Intricate Ethics*, 155.
[46] Ibid.

way of being causally responsible for that thing. Therefore, if E sustains G, then there is, at least, a sense in which E is causally upstream from G. Obviously, Kamm does not believe that the Loop Amendment is in tension with the central tenet. Rather, the Amendment is meant to be a way of qualifying the tenet. However, there is a difficult question here about how to understand this qualification. It concerns the distinction between producing and sustaining. But what does this distinction amount to?

To make sense of the producing/sustaining distinction we should notice, first, that it is only possible to *sustain* something that is *pre-existing*. If E sustains G, then G must pre-date E. My financial contributions to a business can only sustain that business if there is a business there to begin with. Similarly, Australia's greenhouse gas emissions can only sustain global warming if global warming is already occurring. If E sustains G, then G cannot be a wholly new state of affairs. Rather, G must be a pre-existing state of affairs. If G is a pre-existing state of affairs, then there is a sense in which E cannot be causally upstream from G. What is the relevant sense? The DPP states:

> …an evil* can be justified by the greater good whose component(s) cause it, even if the evil* is causally necessary to help *sustain* the greater good or its components.[47]

Kamm claims it is only permissible for E to sustain G if E is itself caused by a component of G. What counts as a 'component' of the greater good? To answer this question we should return to the Loop Case. Kamm believes that this is a case in which the evil permissibly sustains the greater good. Therefore, a component of the greater good must cause the evil in this instance.

The component in the Loop Case must be the structural equivalent. When the agent turns the trolley, she eliminates the first threat to the five. She thereby brings about a state of affairs that has all the qualities of the greater good, absent any problems created by her action. This is what Kamm calls the structural equivalent. Bringing about the structural equivalent creates a new problem. The trolley will loop. This is a threat that could undo the good brought about so far. However, 'the one

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[47] *Intricate Ethics*, 164. As already noted, 'evil*' is Kamm's shorthand for evil (i.e., harm) and 'the involvement of a person without his consent when foreseeably this will lead to an evil to him'. *Intricate Ethics*, 93.

being hit' prevents the 'looping trolley' from preventing 'the continued life of the five'. Thereby, Kamm reasons, 'the one being hit' sustains 'the continued life of the five'. Kamm's analysis of the Loop Case thus suggests the following Formula for Sustaining:

- If A prevents B from preventing C, then A sustains C.

It is not entirely clear what items should be entered into this Formula. However, Kamm's description of the Loop Case suggests the following abstract account:

- A should be an evil.
- B should be a threat to the greater good created by the agent's action, i.e., a threat to the structural equivalent.
- C should be the greater good.

All this has the appearance of being a relatively robust account of 'sustaining'. However, this appearance evaporates when we attempt to apply the DPP as a general principle. Remember, Kamm presents the Doctrine as a principle of permissible harm. This means that it should be able to test acts for permissibility in a wide range of cases. The relevant range of cases is not just those involving trolleys. The DPP should be able to answer the question of permissibility whenever an agent has the option of bringing about the greater good.[48] This is when her duties to aid and not to harm appear to come into conflict. Below, I present a case in which there appears to be such a conflict. This will reveal that the DPP *with the Loop Amendment* does not deliver a clear verdict. For ease of exposition, I shall call our focus the Loop Amended Version of the DPP. (We must remember though that this is only an expository device. The Loop Amendment is, in fact, integrated into Kamm's final formulation of her Doctrine. Kamm herself does not distinguish between the DPP *with the Loop Amendment* and the DPP *without it*. Although, before discussing the Loop Case, she does offer the provisional finding that 'it is crucial that evil* *not* be causally upstream

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[48] Although Kamm explicitly describes her Doctrine as concerned with constraints on *harming*, she could perhaps object that she is actually only concerned with an important subclass of harms, namely, killings. This potential objection needn't concern us though because the case I present involves a choice between killing one and letting more people succumb to lethal threats.

from the greater good'.[49] This is what I call the Doctrine's central tenet and, as I have said, it seems more plausible than the Doctrine's final formulation.)

Consider the following Riot Case:

A terrible crime has been committed in a small town and the people are demanding that the perpetrator be punished. The sheriff is under pressure to order the execution of an innocent person who, through no fault of his own, has fallen under suspicion. The innocent man has been sequestered somewhere. None of the townspeople know where he is. However, the prison guards have abducted five of the man's friends and threaten to execute them unless the sheriff reveals the man's location and publicly announces his guilt. Suppose she does this. Her action of announcing the man's location and guilt eliminates the lethal threat to the five. This is a state of affairs that has all the qualities of the greater good, absent any problems created by the sheriff's action. Unfortunately, there is a new problem. The sheriff's announcement causes the townspeople to believe that justice requires the innocent man to be executed. If the guards fail to execute the man, then the townspeople will riot. The man's five friends will be targeted and killed in the riot. As it happens, the guards do execute the man, the townspeople do not riot, and the five are saved.

Is it permissible for the sheriff to bring about the greater good in this case? According to Kamm, this depends upon whether or not the evil *produces* or *sustains* the greater good. We should be able to determine this by applying the Formula for Sustaining that I derived from Kamm's work. In order to do this we must specify the morally salient features of the case, which are to be entered into the Formula. The following are plausible descriptions:

- The evil is the execution of the innocent man.
- The threat to the structural equivalent is posed by the townspeople.
- The greater good is the riot not occurring.[50]

If we insert these into the Formula for Sustaining, we get the following:

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[49] Kamm, *Intricate Ethics*, 153.
[50] The equivalent claims in the Loop Case are:
- The evil is the one being hit.
- The threat to the structural equivalent is posed by the looping trolley.
- The greater good is the continued life of the five.

- 'The execution of the one' prevents 'the townspeople' from preventing 'the state of the riot not occurring'. Therefore, 'the execution of the one' sustains 'the state of the riot not occurring'.

The state of the riot not occurring is, of course, a pre-existing state of affairs. It is the state in which the town normally exists. Therefore, it is more natural to describe that state as being sustained than to say that it is produced. If the evil sustains the greater good in the Riot Case, then, according to the Loop Amended Version of the DPP, it is permissible to bring it about. Given that it clearly seems impermissible to execute the innocent man, Kamm will want to dispute this result. She could do this by objecting to my description of the morally salient features of the case. That is, she might claim that I have only reached a counter-intuitive result through a tendentious description of these features. In particular, she might say I have mischaracterised the greater good. Very well. Perhaps we should say that:

- The greater good is peace in the town.

Given this description, it is an open question whether the evil produces or sustains the greater good. Kamm might claim that 'the execution of the innocent man' produces 'peace in the town'. But it is just as plausible to claim that 'the execution' sustains 'peace in the town'. This is because 'peace' can be interpreted both as a *new* state of affairs – as in 'peace was declared on the 11th hour of the 11th day of the 11th month' – or a *pre-existing* state of affairs – as in 'her calm demeanour kept the peace'. States of affairs may be either produced or sustained depending upon whether they are new or pre-existing. This observation raises the question 'Why should these niceties of English grammar be playing such a major role in our basic moral thinking?' I am troubled by this question, but let's bypass it. For the sake of argument, let us assume that there is a good reason for the Doctrine's verdict to be partially determined by linguistic intuitions.

If we grant Kamm this possibility, then we should take note of the following: if item C in the Formula for Sustaining can *only* be interpreted as a *new* state of affairs, then the Formula will sound strained and unnatural. For example, suppose we say that:

- The greater good is the five becoming saved.

It sounds odd to say that 'the execution of the one' prevents 'the townspeople' from preventing 'the state of the five becoming saved'. Similarly, it sounds odd to say that 'the execution' sustains 'the state of the five becoming saved'. This is because 'becoming saved' is a new state of affairs. Of course, it is typical for people to walk around in a state of 'not being threatened'. But to 'become saved' is to '*cease* to be threatened'. And people do not walk around in that state as a matter of course. Therefore, it does not make sense to talk of sustaining it. The alternative is to say that 'the execution' produces 'the state of the five becoming saved'. This statement conforms to our linguistic intuitions. If the evil produces the greater good in the Riot Case, then the Loop Amended Version of the DPP prohibits bringing it about. This is the result Kamm is after.

However, why should we prefer this description of the greater good to the first two? The fact that it entails an intuitively plausible moral judgment is no reason. It would be hopelessly circular to (1) describe the structure of a case in such a way as to ensure that the 'right' moral verdict is reached and then (2) point to that structure as independent evidence of that verdict. Kamm is interested in delineating the causal structures of cases because she believes that the permissibility and impermissibility of actions is entailed by the causal relations they bring about. If this approach to ethics is going to work, then the 'right' or 'appropriate' description of a case must be conceptually prior to any moral judgments we have made about acting in that case. What we need is an independent reason to prefer the last description to the others – i.e., a reason that is independent of our judgment that it is impermissible for the agent to pursue the greater good in this case.

Kamm might argue that this latest description should be accepted because it is more precise than the first two. Perhaps 'preventing the riot' and 'keeping the peace' are only rough approximations at defining the greater good. After all, don't we only care about these things because they entail that no one will be harmed? If we do, then perhaps 'the five becoming saved' is the most precise (and, therefore, most appropriate) description of the greater good.

However, there are other descriptions that are just as precise that Kamm would want to avoid. For instance, we could say that the greater good is 'the five being free

from lethal threats'. The five become free from the first threat to them when the sheriff announces the guilt and location of the one. This announcement eliminates the reason the prison guards have to harm the five. If the five are free from threats from this point, then, at the time of the execution of the one, their being threat free is a pre-existing state of affairs. Therefore, it makes sense to say that 'the execution of the one' sustains 'the five being threat free'. If this is our characterisation of the greater good, then the Loop Amended Version of the DPP seems not to prohibit the execution.

Could Kamm accept that 'the five being threat free' is a legitimate characterisation of the greater good, but argue that it cannot be sustained because it is not a pre-existing state of affairs? If the townspeople have a contingent reason to riot from the moment the sheriff makes her announcement, then it could be argued that the five are threatened from that moment. If there is never a moment when they are free from lethal threats, then perhaps 'the five being threat free' is a *new* state of affairs and, as such, cannot be sustained.

There are two things to be said in response to this objection. One, it has a very odd implication. Consider: the more likely the execution of the one is to occur, the less likely it is that the townspeople will threaten the five. The less likely the townspeople are to threaten the five, the more plausible it is to say that the good of the five not being threatened is sustained (rather than produced). We are supposing that it is permissible to sustain this good, but impermissible to produce it. Jointly, these claims entail that the more likely the guards are to actually execute the one, the more likely it is for that execution to be permissible. It would be strange if the guards' being likely to execute the one were a consideration that counts in favour of the permissibility of that action.

Two, even if Kamm were willing to accept this odd implication, the objection is in danger of undermining her analysis of the Loop Case. Any reason that we have to say that the five are never really free from threats in the Riot Case seems to apply just as strongly in the Loop Case. When the agent turns the trolley onto the sidetrack, the problem of the looping trolley arises immediately. Still, Kamm is committed to saying that the one being hit *sustains* the greater good in this instance. If she claims that the execution in the Riot Case does *not sustain* the greater good, then that cannot be on account of the second threat to the five arising immediately after the first is eliminated.

Upon consideration, it is plausible to suppose that the five being threat free is a state that can be sustained. Further, this description of the greater good seems just as appropriate as 'the state of the five becoming saved'. On what basis are we to pick between these rival descriptions, or any of the others we have considered? Let's recap what they are. The execution of the one:

- Sustains the state of the riot not occurring.
- Produces or sustains peace in the town.
- Produces the state of the five becoming saved.
- Sustains the five being threat free.

This medley of results indicates that the producing/sustaining distinction is not robust enough to do the kind of work that Kamm requires of it. Kamm expects the distinction to distinguish between justifiable and unjustifiable causal structures. Importantly, this distinction between causal structures must be conceptually prior to our moral judgment of them. However, it is not clear that the producing/sustaining distinction can designate *the* causal structure of a case. As we have seen, the distinction is heavily dependent on our linguistic intuitions. Different case descriptions elicit different linguistic intuitions, while leaving our moral judgment unaffected. The producing/sustaining distinction thus generates contradictory answers to the question of permissibility.

Whether the evil produces or sustains the greater good in the Riot Case depends upon how we choose to describe that case. In particular, it depends upon how we choose to characterise the greater good (item C in the Formula for Sustaining). This can be done in a number of plausible ways and Kamm has not developed adequate constraints on which description is the 'right' or 'appropriate' one. The upshot is that the Loop Amended Version of the DPP is not capable of delivering a clear verdict in this case. Yet, we have a strong intuition that it is impermissible to execute the innocent man. The Doctrine's failure to support this intuition is a serious problem for Kamm. Her intention is to uncover the deep psychological structure that is responsible for her non-consequentialist moral judgments and to express it in her

principle of permissible harm.[51] Consideration of the Riot Case shows that she has failed to do this.

Could a sympathiser of Kamm's respond to my discussion by acknowledging that there is a gap in the theory here, but maintain that this simply indicates that the Doctrine is in need of further refinement? 'After all,' a sympathiser might argue, 'in the previous chapter you critiqued the central tenet of the DPP and concluded that it is capable of delivering clear verdicts about whether it is permissible to bring about the greater good. Those verdicts are intuitively plausible. This gives us a good reason to be charitable in our assessment of this Amendment that Kamm makes to her Doctrine. Your discussion just indicates that more work needs to be done. We can remedy the shortcomings of the Loop Amendment by providing a more robust account of the distinction between producing and sustaining.'

Our linguistic intuitions obviously condition our application of the producing/sustaining distinction. This renders it a precarious basis on which to assess the permissibility of actions. However, a sympathiser might try to make the distinction determinate by stipulating constraints on the 'proper' way to describe cases. However, a close reading of Kamm's work suggests that she might already be committed to describing the greater good in such a way that the Loop Amended Version of the DPP returns an unpalatable result in the Riot Case. Here is a note on how she conceives of the greater good:

> I take it that whenever we do something that will save a greater number of people (even in the Transplant Case), we think of ourselves as pursuing the greater good, which is the greater number living for a significant period of time beyond what they would otherwise have lived. When we save people from threats such as the trolley or from a disease, and they thereby live a bit longer, this is a necessary component in producing the greater good, which is their living significantly longer.[52]

This is a plausible conception of the greater good. For this reason, I defined the greater good in the Loop Case as 'the continued life of the five' rather than 'the five not being hit by the trolley'. This suggests that the appropriate description of the

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[51] Kamm, *Intricate Ethics*, 5, footnote 4.
[52] Ibid., 24, footnote 40.

greater good in the Riot Case is also 'the continued life of the five'. If the five were to be soon killed by something other than the townspeople, then that would seem to extinguish any reason there is to execute the innocent man.

The above extract from Kamm's writing is far from a clear statement of constraints on the 'right' or 'appropriate' description of the greater good. At best, the passage offers a clue about how a sympathiser of hers should go about developing a robust account of the producing/sustaining distinction. Unfortunately for that sympathiser, the account suggested by this clue returns an intuitively implausible result in the Riot Case. In keeping with the extract, let us take the following as descriptions of the case's morally salient features:

- The evil is the execution of the one.
- The threat to the structural equivalent is posed by the townspeople.
- The greater good is the continued life of the five.

Entering these into the Formula for Sustaining, we get the following:

- 'The execution of the one' prevents 'the townspeople' from preventing 'the continued life of the five'. Therefore, 'the execution of the one' sustains 'the continued life of the five'.

According to this description of the case, the Loop Amended Version of the DPP does not prohibit executing the one.

Conclusion

In this chapter I have criticised Kamm's treatment of the Loop Case. The Amendment she makes to accommodate her judgment about this case casts doubt over the determinacy and correctness of her Doctrine.

Firstly, the Loop Amended Version of the DPP is not plausible because it delivers mutually incompatible verdicts in the Riot Case. This indicates that the Doctrine does not actually entail specific claims about when it is permissible to bring about the greater good. Of course, it is possible that a sound principle might render

indeterminate results in hard cases. However, that cannot suffice as an explanation of the concerns raised in this chapter. It clearly seems impermissible to kill the one in the Riot Case. By Kamm's own reckoning, it is very important that her Doctrine should reflect this judgment. She writes:

> The responses to cases with which I am concerned are not emotional responses but are judgments about the permissibility or impermissibility of certain acts… Even though these judgments are not guaranteed to be correct, if they are, they should fall into the realm of a priori truths.[53]

For Kamm, intuitive responses are sacrosanct and counter-intuitive implications are grounds for revision. Therefore, if she shares my judgment about the Riot Case (and I would be very surprised if she did not), then she must concede that her account of permissible harm has gone wrong somewhere.

The problem lies in her producing/sustaining distinction, which is not sufficiently well drawn to establish a distinction between causal structures. Rather, the producing/sustaining distinction suggests that different causal structures obtain – and, thus, that we should make different moral judgments about the case – depending upon how the greater good is characterised. There are several plausible characterisations that fit the Riot Case. Furthermore, if we are forced to choose the 'most plausible' characterisation – i.e., the one that most closely conforms to Kamm's conception of the greater good – then her Doctrine delivers an implausible verdict. A sympathiser of Kamm's might accept this – much like some consequentialists accept that their theories do not always square with their moral intuitions. It is possible to advocate the DPP without being a hard-core intuitionist like Kamm. However, whether or not this is a sensible course depends upon what, if any, morally significant ideas are captured by the Doctrine. This is the question of the next chapter.

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[53] Kamm, *Morality, Mortality,* vol. 1, 8.

Chapter 4: The question of deeper moral significance

Even if the DPP delivered plausible verdicts in all the cases to which it is meant to apply, that would not be sufficient to prove that it is correct. There would remain the task of demonstrating that the Doctrine is related to morally significant ideas. We require not only a specific postulation from Kamm, but also an account of why we should accept that postulation. These twin requirements are incumbent on all moral theorists. Consider the utilitarian: she must not only specify what 'utility' consists in, but explain why it is something we ought to maximise. Similarly, Kamm must explain the evaluative significance of the distinctions she makes (or attempts to make) between causal structures. She acknowledges this:

> Then, consider the principle [DPP] on its own, to see if it expresses some plausible value or conception of the person or relations between persons. This is necessary to justify it as a *correct* principle, one that has normative weight, not merely one that makes all of the case judgments cohere.[54]

The need for Kamm to do this is particularly pressing because, on their face, distinctions between causal structures – i.e., between different ways in which evils can be causally related to greater goods that might justify them – seem to lack moral significance. They do not feature in our everyday moral thinking. They do not even feature as prominent ideas in professional moral philosophy. Therefore, the overall plausibility of Kamm's Doctrine depends upon her giving us an account of the moral significance of the causal structures she has delineated. Unfortunately, Kamm does not spend much time on this important task. In her own words:

> …we might go deeper to investigate whether there are any ideas that we think have some intuitive moral significance with which these found distinctions [between causal structures] are connected. I said in the introduction to my book [*Intricate Ethics*] that I would do much less of this sort of thing, focusing rather on considering my intuitions and what differences in the cases seem to generate them. I wrote barely two pages on the deeper issue, roughly making one

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[54] Kamm, *Intricate Ethics*, 5.

suggestion about the difference between substitution and subordination, and at the end of that I even suggested that this might not be the right answer.[55]

Let us consider Kamm's tentative suggestion about the 'deeper meaning' of the DPP. She writes:

> I believe that on the causal structures distinguished by the DPP supervenes a moral distinction between substituting one person for another and subordinating one person to another.[56]

She contends that substitution is 'often permissible', whereas subordination is 'prima facie wrong'.[57] How should we understand this claim about supervenience?

The suggestion, I take it, is that by describing different causal structures, Kamm takes herself to be describing certain natural facts about how the greater good comes about. These facts are, thus, not meant to depend upon anyone's moral evaluation of those structures. However, these facts are meant to ground certain evaluative properties, i.e., the structure of the case determines whether it is an instance of substitution or subordination. In particular, if the properties of the causal structure are in keeping with those permitted by the DPP, then it should be a case of substitution; if they are prohibited by the Doctrine, then it should be a case of subordination. From this claim about supervenience it follows that there cannot be two cases that are alike in causal structure that differ with respect to these evaluative properties. Also, a case cannot alter with respect to its evaluative properties without also altering with respect to its causal structure.

There are at least two questions to be asked about this suggested account of the DPP's deeper meaning. One, has Kamm described the substitution/subordination distinction in such a way that it actually does vary in accordance with the causal structures that the DPP permits/prohibits? Two, does the substitution/subordination distinction capture a morally significant difference?

Taking the first question first, we can see that, once again, the Loop Case creates a serious problem for Kamm's account. Kamm judges that it is permissible to bring about the greater good in this case. She believes that the DPP reflects this

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[55] Kamm, "Responses to Commentators," 112.
[56] Kamm, *Intricate Ethics*, 165.
[57] Ibid.

judgment. Therefore, she is committed to saying that the agent does *not* subordinate the one in this instance. However, her definition of subordination seems to fit the case snuggly. She writes:

> …when we do something bad to someone as a causal means to save someone else from a threat, the first person occupies a different position than the second person would have in being threatened. The position he occupies involves subordination to that other person, because the position he occupies – as the means to the good of another – makes essential reference to his usefulness to achieving a good for that other person.[58]

The agent in the Loop Case certainly does something bad to the one, and this is a necessary means to save the five from a threat. Does the position the one occupies make 'essential reference to his usefulness to achieving a good for' the five? Obviously, this claim can't be literally true. *Positions* cannot make reference to anything. What could be literally true is that the agent who moves the one into 'the position he occupies' would, if she were asked to justify her action, make 'essential reference to [the one's] usefulness [in that position] to achieving a good' for the five. Kamm probably eschews *this* claim because she believes that an agent's state of mind is irrelevant to the question of permissibility. Therefore, she has a good theoretical reason to want to avoid defining the concept of subordination in terms of an agent's *motivational* reasons – i.e., the reasons that motivate her to act, which may or may not be the same as the reasons she actually has. However, it is certainly true that the position of the one in the Loop Case is *useful* in that his being there achieves a good for the five. Irrespective of the agent's state of mind, the one being hit is a means to the five being saved. Therefore, according to Kamm's own definition, the Loop Case clearly seems to be an instance of subordination.[59]

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[58] Ibid.

[59] Richardson reaches a similar conclusion. On his interpretation, Kamm's 'account of inviolability as non-subordination centers on a certain type of asymmetry in the way parties are situated… The core idea of this account of inviolability is actually quite simple. It hinges on whether or not someone's being harmed is a causal means to the greater good'. He recognises that this interpretation of subordination forces him 'to reject Kamm's valiant efforts to explain the permissibility of redirecting the trolley in the famous Loop Case'. He does 'not accept the moral relevance of th[e] distinction between producing and sustaining' and, so, does 'not find it to be permissible to redirect in the Loop Case'. The quotes are from "Discerning Subordination and Inviolability," 89, 87, 88, respectively.

In response to commentators on her work, Kamm admits that her 'brief description of subordination, saying that it makes essential reference to someone's usefulness to achieve a good for another person, was probably much too brief'.[60] By way of elaboration, she writes:

> My way of understanding 'achieve' is limited to producing, and so it would distinguish between usefulness in producing and in sustaining. But even if someone's causal role need only be to sustain a greater good, this could also involve subordination. To see this, it is important to emphasize the role of the Rescue Test in my discussion. Suppose we turned the trolley in the Loop Case because the one would be hit and stop the looping. But now we see it would be possible easily to rescue the one person off the track. Refusing to do what would help him or giving the trolley an extra push so that it would keep him down, when this was not justified by some other property of the omission or extra push, would be in service of his sustaining rather than producing the greater good. Nevertheless, these behaviours would be wrong. The typical way of putting this is that the agent would then be intending the one's being hit. My non-state-of-mind way of putting it (in chapter 5 of IE) is that neither the omission nor the extra push has a non-causal, flip side relation to a component of the greater good; they are extras, not needed to move the trolley away from the five, that are mere means to having the hit to the one person occur.[61]

This attempt to clarify the concept of subordination is in danger of being circular. It appears that Kamm is just defining subordination in terms of the causal structures she has already delineated. It is almost as if she were claiming that an action subordinates one person to another if and only if it brings about a causal structure that is prohibited by the DPP. However, she appealed to the concept of subordination precisely in order to explain the deeper meaning of these structures. The explanatory power of her supervenience claim depends upon subordination being a concept that is distinct from – although related to – these structures.

Kamm's account of substitution seems similarly circular. She offers the following note:

[60] Kamm, "Responses to Commentators," 139.
[61] Ibid.

I thought that the Trolley Case was a pretty clear case of substitution rather than subordination, as I was using these terms. This is because the five being threatened and the one not being threatened are two sides of the same coin (i.e. non-causal flip sides). Therefore, the one being in a threatened *position* cannot be a position whose function it is to help the five (i.e. that essentially makes reference to the good of the five).[62]

As with subordination, Kamm appears to be defining substitution in terms of the causal structures she has already delineated.

Finally, Kamm claims that in the Loop Case 'the bad that initially happens to the one comes as a result of an *initial substitution* (not subordination) of him'.[63] Presumably, Kamm describes this as a case involving *initial* substitution because it looks like there are two different causal structures at different stages of the unfolding drama. First, there is the threat to the five of being hit head on. As regards this threat, it seems as if the bad thing that happens to the one is simply the bad thing that would otherwise have happened to the five. Therefore, this looks like an instance of substitution.[64] Regarding the second threat though – i.e., the looping trolley – it seems as if the bad thing that happens to the one is useful in that it achieves a good for the five. Therefore, the agent's handling of this threat looks like an instance of subordination. However, Kamm seems committed to a unified analysis of this case. I take it that this is why she invokes the concept of a structural equivalent. On her account, then, the structure of the Loop Case should ground *one* evaluative property. This makes her use of the adjective 'initial' puzzling.

If Kamm's supervenience claim is correct, then the natural facts about a case's structure will determine that case's evaluative properties and, hence, whether it is permissible/impermissible to bring about the greater good. Therefore, on the presumption that – as Kamm has argued – the Loop Case has a unified structure, it cannot be an instance of *both* substitution *and* subordination. If it were to be, then it would be altering with respect to its evaluative properties without altering in structure – this would not be in keeping with a supervenience relationship. However, if Kamm claims that the Loop Case is *wholly and only* an instance of substitution, then that

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[62] Ibid., 140.

[63] Ibid.

[64] Kamm writes, 'When we choose to send a threat to one person rather than another, one person occupies the very same position that another person would have occupied relative to the threat… This is substitution.' *Intricate Ethics*, 165.

seems to undercut her definition of subordination. On a plausible interpretation of the definition, the one clearly seems to be subordinated to the five in the Loop Case. The only way Kamm seems able to avoid this implication is to define the concept in terms of the causal structures themselves.

Thus, it seems that either (1) the evaluative features Kamm gestures at do not co-vary with her moral judgments about cases or (2) 'substitution' and 'subordination' are, in fact, just new terms that Kamm is using to describe the same old causal structures. Either way the concepts do not have the kind of explanatory priority over the causal structures that Kamm requires. Her account of the DPP's deeper meaning thus fails to establish that the Doctrine captures any morally significant ideas.

What are we to do in light of this realisation? We could simply reject the DPP. Kamm herself admits that in order for the DPP to be justified it must be demonstrated that it expresses something of deontic significance. Since Kamm has failed to do this, it seems that we have good grounds for dismissal. Furthermore, at the end of the last chapter I concluded that the DPP in its final formulation (what I call the Loop Amended Version of the DPP) does not have determinate content. In an attempt to accommodate her judgment about the Loop Case, Kamm invokes a distinction between evils that produce and evils that sustain the greater good. I argued that this distinction is not sufficiently well defined to distinguish between different causal structures and, thus, that the DPP (so long as it makes use of this distinction) does not entail specific claims about the permissibility or impermissibility of bringing about the greater good. However, if we dismiss Kamm's account of causal structure as being outright morally irrelevant, then we are left with a puzzle. As I outlined in chapter 2, the *central tenet* of the DPP returns intuitively plausible results when applied to a host of cases. What could explain this except for the fact that *it* captures something of moral significance?

The central tenet of the DPP as a moral heuristic

So far I have been pressing the question of moral significance on the assumption that the DPP is meant to serve as a fundamental moral principle – i.e., a principle that marks the distinction between permissibility and impermissibility in the cases we have been considering. Kamm does not identify any morally significant ideas that

support the DPP's claim to this status. However, it is possible that at least the *central tenet* of the DPP could serve in a different capacity, namely, as a moral heuristic – i.e., a principle that can be used by agents to guide their deliberations about how they should conduct themselves.

Recall the central tenet of the Doctrine: it is impermissible to bring about evils that are causally upstream from greater goods. Obviously, this tenet is only meant to apply to cases in which an agent has the option of bringing about a greater good. These are cases in which her duty to aid and her duty not to harm seem to conflict. Now, if an agent in such a case were to act in accordance with the central tenet, what results could we expect?

Importantly, the agent would not risk harming anyone except in those cases in which she had already aided a greater number of people. The Trolley Case is a case of this sort. Here, the action that threatens the one – and will lead to his death – is the same action that eliminates the threat to the five and, thereby, saves them. As regards her pursuit of the greater good, the agent in this case is onto a sure thing.

In a real-life version of the Trolley Case, if the agent makes a decision to turn the trolley, then she can be confident about what the consequences of that action will be. The five will be saved and the one will be killed. Indeed, the first of these consequences – the good effect of her action – is slightly more likely to eventuate than the second. As the trolley moves onto the sidetrack, the agent knows that the five are saved. They are no longer threatened. The greater good is in the bag. Then there is a chance that the evil will not follow. Perhaps something will stop the trolley before it reaches the one. Perhaps the one will free himself at the last minute. In the hypothetical cases we have considered, these possibilities are ruled out. However, in a real-life version of the case, these possibilities exist. Of course, they are slim. My point is not that the agent should pursue the greater good because these miracles might occur. My point is that in a real-life case the agent is justified in being slightly more confident that the good will come about than that the evil will.

This confidence is based on her assessment of possible interventions. There exists a window between when the agent decides to pursue the greater good and when the evil is expected to come about. I call this a window for *positive* interventions. This is a period during which something might happen to prevent the evil from occurring. The further downstream the evil is from the agent's action, the larger this window is. Importantly, when the greater good is upstream from the evil, this window remains

open after the greater good has been achieved. This is when the greater good is in the bag but there remains a chance that the evil will not follow.

There is, of course, an equivalent window for the greater good. This window exists between when the agent decides to pursue the greater good and when the greater good is expected to come about. I call this a window for *negative* interventions. This is a period during which something might happen to prevent the good from occurring. For example, perhaps the agent cannot turn the trolley because the lever is jammed. Obviously, an agent intent on bringing about the greater good wants this window to be as small as possible. However, so long as the evil is not causally upstream from the greater good, this window's being open is not morally risky. If the evil is not causally upstream, there is no chance of it coming about but the greater good failing to.

The central tenet of the DPP directs an agent to act in the following way: only pursue the greater good in those cases in which the risk of the evil occurring depends upon the greater good already having been achieved. The slogan for this heuristic might be 'Don't risk an evil unless a greater good is in the bag'. More generally, the central tenet encourages agents to restrict the scope for *negative* interventions – things that could obstruct the greater good – and expand the scope for *positive* interventions – things that could obstruct the evil. These policies do not follow from the letter of the tenet, but they are in keeping with the idea of risk management that I believe constitutes the tenet's deeper moral significance.

Consider how the tenet applies to a real-life version of the Lazy Susan Case:[65]

A runaway trolley is hurtling down a track towards five people tied to a Lazy Susan turntable. The agent cannot affect the direction of the trolley, but she can try to start up the Lazy Susan, which will turn the five away from the trolley. Unfortunately, the Lazy Susan's turning will start a rockslide that will probably kill a bystander.

In this case, the evil is not upstream from the greater good. It will only be if the agent succeeds in bringing about the greater good that she will risk causing the evil. If she cannot manage to turn the Lazy Susan, then there will be no risk of her creating the rockslide. If she can turn the Lazy Susan, then the greater good will be achieved, but the window for positive interventions will not be closed. Perhaps the rockslide will miss the bystander. Perhaps he will be able to outrun it. Of course,

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[65] Kamm gives several formulations of this case. This version is from *Intricate Ethics*, 24.

these might be highly unlikely occurrences. However, the agent can be confident that, if she pursues the greater good, she will not end up in a state in which she has failed to save the five but killed the one. The same cannot be said of all the cases Kamm discusses.

In the Transplant Case, before the agent is in a position to aid the five she must already have performed a deadly assault on the one. She must have extracted five vital organs from him. Now, this conduct seems impermissible *even if* we guarantee that the five will be saved from organ failure as a result. However, let us not forget that, in reality, it is extremely unlikely that this outcome will be achieved. In any real-life version of the Transplant Case, the agent will be guaranteeing the death of the one for *some chance* at saving the five. The window for positive interventions is virtually non-existent, and there is far greater scope for negative interventions than in either the Trolley Case or Lazy Susan Case.

Something similar is true of any real-life version of the Bridge Case. Here, it is only after the one has been threatened and almost certainly killed that there is any prospect that the five might be saved. As in the Transplant Case, there is considerable scope for negative interventions. For example, one objection often cited by newcomers to the Trolley Problem is that it seems very unlikely that the body of a person will stop a runaway trolley – no matter how fat that person might be. Old hands dismiss this as 'philosophically uninteresting' or 'nitpicking'. The dismissal is well founded if our concern is with deriving fundamental moral principles that explain what is permissible when the outcomes of our actions are certain. However, if instead we are trying to formulate principles that can guide our decision-making in real-life cases, then the observation is a significant one. This turn away from ethical theory and towards more practical considerations means confronting the fact that, in the real world, we are always acting under some degree of uncertainty.

The central tenet of the DPP can be interpreted as a moral heuristic for risk management. Generally speaking, certain causal structures are related to risker ways of bringing about the greater good. In particular, whenever a greater good is causally downstream from an evil, there is scope for negative interventions after the evil has been brought about. The further downstream the greater good is from the evil, the higher the risk that the evil will not be compensated for by any good. Causal structures are, thus, a measure of how risky a plan of action is. While this idea does not feature explicitly anywhere in Kamm's account of permissible harm, it provides

the best explanation of why the central tenet of her Doctrine is able to deliver plausible verdicts in so many cases.

Appropriate risk management is an important part of our concept of respect for persons. We can see how the central tenet captures this morally significant idea by sketching an account of the interplay between rights in the relevant cases.

I began this thesis by noting that we all have a duty to aid and we all have a duty not to harm. These duties correlate with rights.[66] We all have a right to be aided. We all have a right not to be harmed. These rights protect our interest in living. Sometimes this protection can be forfeited. If, for example, a person is responsible for posing an unjustified threat to someone else, then she is liable to be harmed. Therefore, her being harmed would not violate any of her rights.[67] However, when a person is not responsible for any wrongdoing – i.e., when she is innocent – then her rights to be aided and not to be harmed apply in full force. The Trolley Problem is comprised of a set of cases in which these two rights are played off against one another. In some of these cases, it seems permissible to comply with the rights of the five to be aided. In others, it seems as if the agent must comply with the right of the one not to be harmed. And in still others, we might be unsure what to think. There are at least two ways to understand what is going on here.

The first is to view these cases as representing an *apparent* conflict between our right to be aided and our right not to be harmed. The challenge, then, is to show why these cases do not, in fact, represent a conflict between rights. Someone who takes this view believes that our right not to be harmed is limited in some significant way that has not yet been fully spelled out. The limit in question has something to do with the greater good. However, it is not a straightforward appeal to the greater good. Kamm, as we have seen, believes that her DPP expresses part of the way in which the right not to be harmed is limited.

A second option is to view these cases as representing an *actual* conflict between our right to be aided and our right not to be harmed. If there is an actual conflict, then that means that the two rights are being weighed against one another. What is permissible in the circumstances will, therefore, depend upon which right (or

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[66] Technically, such rights are called 'claims', which is a term of art we owe to Wesley Newcomb Hohfeld. See Thomson, *Realm of Rights*, 37ff.

[67] It is popularly believed that we can lose the protection of our rights in this way. However, my exposition here follows that given by Seth Lazar in "Risky Killing and the Ethics of War" (forthcoming in *Ethics*).

set of rights) is weightier. The challenge for someone who accepts this view is to explain why the same right (or set of rights) does not take precedence in every case – i.e., to explain why the right of the one not to be harmed does not always outweigh the rights of the five to be aided, or vice versa.[68]

Like Kamm, I am more inclined to the first view of the Trolley Problem than the second. However, if we suppose that the agent is acting under uncertainty, then the idea of weighing rights becomes a more plausible 'solution' to the Problem.

Imagine that the agent in the Trolley Case thinks to herself, 'I can see that there are five people in danger who have a right to be aided, and I see another person who is currently safe who has a right not to be harmed. It is clear to me that I cannot comply with everyone's rights in these circumstances, but I will do the best I can.'

Let us suppose that this agent attaches a certain moral value to complying with a right. The weightier a right is, the greater the moral value of complying with it and the greater the moral *dis*value of failing to comply with it. Further, suppose she believes, as many non-consequentialists do, that it is morally worse to kill than it is to let die.[69] For this reason, she considers the right not to be harmed to be weightier than the right to be aided. Still, like most people who have considered the Trolley Case, she intuits that it is permissible to turn the trolley. From this she infers that the aggregate weight of the rights of the five to be aided must be greater than the one's right not to be harmed. Mind you, she only intuits that it is *permissible* to turn the trolley, not that it is *obligatory*. So, the rights of the five must only just outweigh the right of the one. The fact that the good is ever so slightly more likely to occur than the evil as a result of her action might be what tips the balance in favour of the action being permissible. Whether or not *that* difference makes the ultimate difference, the

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[68] An analogy might help to make this contrast in views lucid. Consider the case of a woman who is pregnant because she has been raped and wants to have an abortion. It is plausible to view this as a case in which the woman's right to do what she wants with her body *is in conflict with* the fetus's right to life (supposing it has one). Someone might attempt to resolve this conflict by weighing the rights against each other. However, Thomson argues that the right to life does not include the right to use another person's body to sustain life. See "A Defense of Abortion," *Philosophy and Public Affairs* 1, 1 (1971): 47-66. If this is correct, then there is, in fact, no conflict between rights in this case. Thomson's argument is designed to show one significant way in which the right to life is limited. Indicating this limitation dissolves the apparent conflict.

[69] Of course, this is a controversial claim. The moral significance of the killing/letting die distinction has been rigorously attacked and defended. For example, see Jonathan Bennett, *The Act Itself* (Oxford: Oxford University Press, 1995), chapters four to eight and Jeff McMahan, "A Challenge to Common Sense Morality," *Ethics* 108, 2 (1998): 394-418. For the purposes of this thesis, I merely assume the distinction's moral significance. Given that I am concerned with non-consequentialist ethics, and that many non-consequentialists accept the moral significance of this distinction, I hope the assumption will be granted.

agent concludes, 'The five's rights do outweigh the right of the one. If I turn the trolley, I will be complying with the weightiest set of rights I can in the circumstances. Thus, as regards this conflict between rights, turning the trolley is the action with the largest expected moral value.'

Note: this agent is not committed to the idea that it is permissible to fail to comply with rights just if they happen not to be very weighty. Rather, she is committed to the idea that, if it is not possible to comply with everyone's rights in a particular instance, then it is permissible to comply with the weightiest set of rights that one can. By acting on this idea, the agent would, arguably, still be respecting the moral status of all the people involved.

This idea allows that an agent who is committed to saving the five in the Trolley Case needn't be committed to saving the five in a real-life version of the Transplant Case. This is where risk becomes a salient moral consideration. If the agent is acting under uncertainty, then she has a good reason to suppose that she will simply not be able to comply with the rights of the five to be aided. She should foresee that she could easily be left in the position of having killed the one with no greater good to show for it. The same is true of an agent acting under uncertainty in the Bridge Case. In both cases there is a significant scope for negative interventions *after* the evil has been brought about.

The proposal in front of us is that in cases in which an agent cannot comply with all the rights at play, she should maximise the expected moral value of her action. An agent may be justified in not complying with a right if this is her only means of complying with a weighty right (or set of rights). The value of complying with a right is multiplied by the probability that it will actually be complied with and the disvalue of not complying is multiplied by the probability that non-compliance will actually occur. In this way, the proposal factors in risk as a consideration. The expected moral value of an action is given by adding together the value of the likelihood of compliance and the disvalue of the likelihood of non-compliance.

To make this proposal perspicuous, let us attribute some values to the rights with which we are concerned:

- Not killing has a moral value of 10
- Rendering life-saving assistance has a moral value of 2

- Killing has a moral disvalue of -10
- Not rendering life-saving assistance has a moral disvalue of -2

The agent in the Trolley Case knows that if she turns the trolley, then she is certain to save the five and almost certain to kill the one. The expected moral value of her action is thus $(2{\times}5{\times}1) + (-10{\times}0.99) = 0.1$.[70] In contrast, if she does not turn the trolley, then she is certain that she will not save the five and certain that she will not kill the one. Thus, any act that does not involve turning the trolley has an expected moral value of $(-2{\times}5{\times}1) + (10{\times}1) = 0$. As regards this conflict between rights, turning the trolley is the action with the largest expected moral value.

The agent in the Transplant Case knows that if she performs the transplant, then she is certain to kill the one and has some chance of saving the five. Let us say her chance of saving the five is 0.5. The expected moral value of the complex action 'performing the transplant' is thus $(-10{\times}1) + (2{\times}5{\times}0.5) = -5$. In contrast, if she does not perform the transplant, then she is certain that she will not kill the one and certain that she will not save the five. Thus, any act that does not involve performing the transplant has an expected moral value of $(10{\times}1) + (-2{\times}5{\times}1) = 0$. As regards this conflict between rights, performing the transplant is not the actions with the largest expected moral value.

Attributing numbers to the moral values at play makes this account of risk management look contrived. But this is just an expository device and should not detract from the basic idea being considered. In real-life cases in which an agent has the option of pursuing the greater good there is, of course, always a risk that she will not be able to achieve her objective. An agent should avoid the risk of leaving herself in the position of having brought about an evil with no greater good to show for it. If her plan involves such a moral risk, then she should not act on it.[71] This is the morally

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[70] Assuming that her action does not also comply with or fail to comply with any additional rights. For ease of exposition, I don't make this qualification explicit in the main text, but it applies to all the statements of expected moral value.

[71] Lazar defends the following principle of Risky Killing (RK), which is relevant to our discussion: 'ceteris paribus, when A's φing kills a non-liable person, her objective pro tanto wrongdoing is morally graver the higher the probability when she φd that her action would kill a non-liable person'. In other words, other things being equal, the higher the probability that an agent's action will kill an innocent person, the weightier the moral reason that counts against that action. Lazar argues that riskier killings are more wrongful than less risky killings, in part, because killing someone more riskily shows greater disrespect for him by more seriously undervaluing his interests and moral standing. We are considering special cases in which it might be possible to risk killing an innocent person without undervaluing his interests or moral standing. However, this possibility depends upon us bringing about a greater good

significant idea that I believe is captured by the central tenet of the Doctrine of Productive Purity. At any rate, it explains the tenet's ability to deliver so many intuitively plausible verdicts.

Furthermore, this account of the tenet's deeper meaning also sheds light on why Kamm has such difficulty making her Doctrine accommodate her judgment of the Loop Case. Remember, the slogan for the central tenet could be 'Don't risk an evil unless the greater good is in the bag'. When the agent turns the trolley in the Loop Case, it is unclear whether or not the greater good is in the bag. As Kamm's analysis suggests, it is in a modally fragile state. The first threat to the five has been eliminated, but in nearby possible worlds this good will be undone by a second threat – i.e., the looping trolley. Thus, the greater good exists, but it is vulnerable. It's continued existence is contingent on unfolding events. After the trolley is turned, there is still scope for negative interventions. However – and this is significant – there is *also* still scope for positive interventions. The case is problematic for Kamm because the central tenet encourages an agent to (1) expand the scope for positive interventions and (2) restrict the scope for negative interventions. However, here, these objectives are in tension with each other. Anything the agent might be able to do to increase the likelihood that the evil will be obstructed will necessarily also increase the likelihood that the greater good will be obstructed.

Kamm implicitly acknowledges the conflicting claims her account is making on the agent when she writes:

> Suppose we turned the trolley in the Loop Case because the one would be hit and stop the looping. But now we see it would be possible easily to rescue the one person off the track. Refusing to do what would help him… would be wrong.[72]

It is odd to suppose that (1) it is permissible to turn the trolley and that (2) the agent is under an obligation to save the one if she can. To turn the trolley and then save the one seems only to accomplish terrifying an additional person. But now we can see

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we could not otherwise bring about. In keeping with Lazar's principle, it could be argued that, other things being equal, the greater the risk that an agent's action will kill an innocent person without bringing about a greater good, the weightier the moral reason that counts against that action. Lazar presents and defends RK in "Risky Killing" (unpublished paper on file with author).

[72] Kamm, "Responses to Commentators," 139.

why Kamm insists on this course of action. When the greater good is in its modally fragile state in the Loop Case, the set of possible positive interventions and the set of possible negative interventions are identical.

However, it should be noted that the central tenet still delivers a specific verdict in this case. Remember, the tenet only *encourages* an agent to expand the scope for positive interventions and restrict the scope for negative ones. Generally speaking, these courses of action will be in keeping with risk mitigation, but they are not actually what the tenet directs. The tenet directs agents only to pursue the greater good in those cases in which the risk of the evil occurring depends upon the greater good already having been achieved. It is fair to characterise 'achievement' as a modally secure state. In the Loop Case, the risk of evil exists prior to the greater good having been thus secured. Therefore, the central tenet prohibits turning the trolley. This is the same verdict given by the Doctrine of Double Effect. And it is a verdict that some non-consequentialists are prepared to accept.[73]

Conclusion

It could be argued that the central tenet is more than a moral heuristic for risk management; that it is, in fact, a solution to the Trolley Problem. An argument to this effect could begin by acknowledging that, as Thomson points out:

> …none of the most interesting solutions on offer [have] worked. We shouldn't take that fact lightly. It is, of course, consistent with there actually being a solution to the trolley problem that nobody has been clever enough to find it. But we should be troubled by the fact that so many people have tried, for so many years – well over a quarter of a century by now – and come up wanting.[74]

This suggests that there might be a problem with the Problem. In a spectacular volte-face, Thomson argues that it is actually *impermissible* to kill the one in the Trolley Case.[75] For those of us unwilling to accept that proposal, I have another suggestion about how something might have gone wrong at the outset.

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[73] For example, see Otsuka, "Squaring the Circle in Looping Cases," 92-110, esp. 110.
[74] Thomson, "Turning the Trolley," *Philosophy and Public Affairs* 36, 4 (2008): 363.
[75] For criticisms, see FitzPatrick, "Thomson's Turnabout on the Trolley," *Analysis* 69, 4 (2009): 636-43; and McMahan, "Intention, Permissibility, Terrorism, and War," 365.

Newcomers to the Trolley Problem are often troubled by how implausible some of the cases are. It is not uncommon to hear protests about the precariousness of organ transplants, the physics of runaway trolleys and the likelihood of state secrets getting out. It is often seen as a sign of philosophical maturity when one stops objecting to the improbabilities inherent in many thought experiments and, instead, starts concentrating on the conceptual claims at issue. However, perhaps there is one improbability in particular that moral philosophers should be more alert to.

Typically, the outcomes in all the cases we have been considering are stipulated as certain. In each case, if the agent decides to pursue the greater good, she is guaranteed to achieve it. It could be disputed whether our intuitions are actually attuned to this stipulation. The intuitions we have could be a response to the respective riskiness of pursuing the greater good in each case. Excluding the vexed Loop Case, this idea makes all the popular non-consequentialist judgments cohere.

By stipulating that the outcomes of actions are certain, we are positing conditions that could never obtain in the real world. But it is in the real world that our intuitions develop and in which they guide our behaviour. Perhaps this salient respect in which the hypotheticals differ from real-life cases should make us less inclined to trust our intuitions about the hypotheticals. I am not here suggesting that we should rule out thought experiments. They can serve as legitimate aids to philosophical inquiry. However, I am more hesitant than Kamm in my commitment to my judgments about them. I cannot be sure that my intuitions are always had in response to the facts of the case *as they are described*, as opposed to how they would obtain in reality.

However, on balance, it seems to me that it would be impermissible to kill the one in the Transplant Case *even if* it were supremely likely that the agent would succeed in saving the five. This is one reason I do not tender the account of risk management as a solution to the Trolley Problem. A second reason is that I do not find the notion of 'weighing' rights to be conceptually satisfying. Consequentialists believe that we are under a moral obligation to maximise the good. Appealing to rights is one popular way of resisting this idea. As such, it seems as if their force should not be sensitive to utility calculations. Of course, the account of risk management does not entail that utility trumps rights in every case. It is designed to apply only to those cases in which there is a conflict between rights – i.e., cases in which we assume that all the rights at play cannot be complied with. But this

conception of the cases presupposes that there can be *actual* conflicts between rights. I prefer to think that these are cases in which it merely *appears* that there is a conflict, and infer that this just goes to show that we have not articulated the relevant rights precisely enough. So, I conclude without a solution to the Trolley Problem, but by proposing that specifying our right to be aided and our right not to be harmed is the most promising means of arriving at one. At least, we have less reason to doubt the future of this approach than any that is based on either the agent's intentions or the causal structure of the case.

Bibliography

Aquinas, Thomas. *Summa Theologiae*. 1265-74.

Bennett, Jonathan. *The Act Itself*. Oxford: Oxford University Press, 1995.

_____. "Morality and Consequences." In *The Tanner Lectures on Human Values*, vol. 2, edited by S. McMurrin. Salt Lake City: University of Utah Press, 1981.

FitzPartick, William J. "Acts, Intentions, and Moral Permissibility: In Defence of the Doctrine of Double Effect." *Analysis* 63, 4 (2003): 317-321.

_____. "Thomson's Turnabout on the Trolley." *Analysis* 69, 4 (2009): 636-643.

Foot, Philippa. "The Problem of Abortion and the Doctrine of the Double Effect." *Oxford Review* 5 (1967): 5-15.

Glover, Jonathan. *Causing Death and Saving Lives*. London: Penguin, 1977.

Kagan, Shelly. *The Limits of Morality*. Oxford: Oxford University Press, 1989.

Kamm, F. M. *Creation and Abortion.* New York: Oxford University Press, 1992.

_____. "Failures of Just War Theory: Terror, Harm, and Justice," *Ethics* 114, 4 (2004), 650-92.

_____. *Intricate Ethics*. New York: Oxford University Press, 2007.

_____. *Morality, Mortality*, vol. 1. New York: Oxford University Press, 1993.

_____. *Morality, Mortality*, vol. 2. New York: Oxford University Press, 1996.

_____. "Responses to Commentators on *Intricate Ethics*," *Utilitas* 20, 1 (2008): 111-142.

Kumar, Rahul. "Who Can Be Wronged?" *Philosophy and Public Affairs* 31, 2 (2003): 99-118.

Lazar, Seth. "Risky Killing." Unpublished paper on file with author.

_____. "Risky Killing and the Ethics of War." Forthcoming in *Ethics*.

LexisNexis Australia. *Encyclopaedic Australian Legal Dictionary*. Online, updated 2014.

McMahan, Jeff. "A Challenge to Common Sense Morality," *Ethics* 108, 2 (1998): 394-418.

_____. "Intention, Permissibility, Terrorism, and War." *Philosophical Perspectives* 23, 1 (2009): 345-372.

Norcross, Alastair. "Off Her Trolley? Frances Kamm and the Metaphysics of Morality." *Utilitas* 20, 1 (2008): 65-80.

Otsuka, Michael. "Double Effect, Triple Effect and the Trolley Problem: Squaring the Circle in Looping Cases." *Utilitas* 20, 1 (2008): 92-110.

Quinn, Warren S. "Actions, Intentions, and Consequences: The Doctrine of Double Effect." *Philosophy and Public Affairs* 18, 4 (1989): 334-351.

Rachels, James. *The End of Life*. Oxford: Oxford University Press, 1986.

Richardson, Henry S. "Discerning Subordination and Inviolability: A Comment on Kamm's *Intricate Ethics*." *Utilitas* 20, 1 (2008): 81-91.

Scanlon, T. M. *Moral Dimensions: Permissibility, Meaning, Blame*. Cambridge, Massachusetts: Harvard University Press, 2008.

_____. "Some Intricacies." *Philosophy and Phenomenological Research* 80, 3 (2010): 694-701.

Smart, J. J. C., and Bernard Williams. *Utilitarianism: For and Against.* Cambridge: Cambridge University Press, 1973.

Stuchlik, Joshua. "A Critique of Scanlon on Double Effect." *Journal of Moral Philosophy* 9, 2 (2012): 178-199.

Tadros, Victor. *The Ends of Harm: The Moral Foundations of Criminal Law*. New York: Oxford University Press, 2011.

Thomson, Judith Jarvis. "A Defense of Abortion." *Philosophy and Public Affairs* 1, 1 (1971): 47-66.

_____. "Killing, Letting Die and the Trolley Problem." *The Monist* 59, 2 (1976): 204-217.

_____. "Physician-Assisted Suicide: Two Moral Arguments." *Ethics* 109 (1999): 497-518.

_____. *The Realm of Rights*. Cambridge, Massachusetts: Harvard University Press, 1990.

_____. "Self-Defense." *Philosophy and Public Affairs* 20 (1991): 283-310.

_____. "The Trolley Problem." *The Yale Law Journal* 94, 6 (1985): 1395-1415.

_____. "Turning the Trolley." *Philosophy and Public Affairs* 36, 4 (2008): 359-374.

Wedgwood, Ralph. "Scanlon on Double Effect." *Philosophy and Phenomenological Research* 83, 2 (2011): 464-472.

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