

The Doctrine of Doing and Allowing II: The Moral Relevance of the Doing/Allowing Distinction

Fiona Woollard*

University of Southampton

Abstract

According to the Doctrine of Doing and Allowing, the distinction between doing and allowing harm is morally significant. Doing harm is harder to justify than merely allowing harm. This paper is the second of a two paper critical overview of the literature on the Doctrine of Doing and Allowing. In this paper, I consider the moral status of the distinction between doing and allowing harm. I look at objections to the doctrine such as James Rachels' Wicked Uncle Case and Jonathan Bennett's argument that any acceptable analysis of the distinction leaves it implausible that the distinction is morally relevant. I consider defences of the Doctrine from Philippa Foot and Warren Quinn. I argue that neither Foot nor Quinn provides a satisfactory justification of the Doctrine of Doing and Allowing, but that the idea of self-ownership discussed by Quinn can be developed to provide a justification of the doctrine.

The Doctrine of Doing and Allowing (DDA) states that, when other people are harmed because of the way we behave, it matters morally whether we have done harm or merely allowed harm. More precisely, doing harm is harder to justify than merely allowing harm. If jumping into the river to save Bob would cost you your life, it is permissible to allow him to drown but it is not permissible to push him into the river to save your own life. If you must choose between rescuing both Fred and Frieda from a fire and rescuing George, it is permissible to allow George to die so you can save the greater number, but it is not permissible to run over and kill George even if this is only way to get to the others in time.

The contemporary debate about the DDA began with Philippa Foot's 1967 article, "Abortion and the Doctrine of the Double Effect". Foot proposed we should appeal to a moral distinction between doing and allowing harm to explain many of the cases that have typically been thought to support the Doctrine of Double Effect.¹ Since Foot's landmark article, the DDA has been the subject of fierce debate. Many have argued against it. There have been valiant attempts to defend it.

This debate is very important. For whether we accept the DDA or not has significant implications for our understanding of what morality requires of us. The DDA is explicitly appealed to in many applied ethics issues, from abortion and euthanasia to duties of global justice. More than this, rejecting the DDA would change the very shape of commonsense morality. If there is no morally relevant distinction between what we do and what we merely allow, then morality must either be far more demanding than we commonly think or far more permissive. Either doing harm is far easier to justify than we ordinarily believe – and we may kill to protect our personal projects – or allowing harm is harder to justify – and we should all be sacrificing a lot more to help those in need. Finally, many other debates seem to implicitly presuppose the DDA. For example, contemporary discussion about when it is permissible to kill in self-defence only seems to make sense if killing is seen as harder to justify than merely allowing someone to die.

Defenders of the DDA must complete two tasks. First, they must provide an analysis of the distinction between doing and allowing harm: what makes an agent count as doing harm rather than merely allowing harm? Then they must provide a justification for the DDA: they must show that the distinction between doing and allowing is genuinely morally significant.² These two tasks correspond to the two main types of objection to the DDA. The first type of objection involves arguing that there is no genuine descriptive distinction between doing harm and allowing harm. When we describe behaviour as doing rather than allowing, our classifications are capricious or circular.³ The second type of objection involves arguing that even if there is a genuine descriptive difference between doing and allowing, this difference is not morally relevant.⁴

This article is the second of a pair. In “The Doctrine of Doing and Allowing I: Analysis of the Distinction”, I explore attempts to give an account of the descriptive difference between doing and allowing harm. In this article, I will focus on arguments about the moral significance of the difference between doing and allowing harm.

I will begin by looking at the contrast strategy: attempts to use our intuitions about contrasting cases to either support or undermine the DDA. I will argue that James Rachels’ famous contrast strategy arguments against the DDA do not succeed. They depend on an inadequate understanding of the doctrine. However, attempts to establish the DDA using the contrast strategy are also unsatisfactory. The most they can establish is that we intuitively treat the distinction between doing and allowing as morally significant. We should be interested in whether the distinction *is* morally significant.

I will then consider Jonathan Bennett’s argument against the DDA. Bennett suggests that any plausible analyses of the distinction between doing and allowing show this distinction to be utterly without moral significance. I will argue that there is reason to think that the distinction, as understood by Bennett, is in fact morally significant.

I will then consider Philippa Foot’s justification of the DDA in terms of an asymmetry between positive right to goods or services and negative rights to non-interference. I will argue that Foot is correct that there is such an asymmetry, but that this cannot be used to justify the DDA until the asymmetry between positive and negative rights has itself been justified. Warren Quinn provides an interesting argument that negative rights must take precedence over positive rights. He suggests that strong negative rights are necessary for an agent’s body and mind to belong to him. I argue that Quinn’s argument is unsuccessful as it stands, but that an argument inspired by Quinn’s comments on self-ownership can provide a justification for the DDA.

Finally, I will briefly consider the issue of euthanasia, which motivated many of the original attacks on the DDA. I will argue that the DDA does imply that there is a moral difference between active and passive euthanasia, but does not imply that active euthanasia is impermissible.

1. The Contrast Strategy

The most famous argument against the DDA is James Rachels’ use of the Wicked Uncle⁵ example. This pair of cases is designed to show that the difference between doing and allowing is not in itself morally significant.⁶ In the first case, Smith wants his young cousin out of the way so that he will inherit a large fortune. Smith sneaks in and drowns the child while he is in the bath. In the second case, Jones is in the same position. However, when Jones goes into the bathroom planning to drown his cousin, he sees the child slip, hit his head and fall face down in the water. Although he could easily lift the child out, Jones watches him drown. Rachels suggests that the two men behave equally horribly: it

does not make any moral difference that one kills the child, doing harm, while the other merely lets the child die, allowing harm (115–66).

Rachels' argument uses the Contrast Strategy. This strategy involves putting forward contrasting pairs, which are identical in all features except that one involves doing harm while the other involves merely allowing harm. The idea is that we will see a moral difference between the cases if and only if the doing/allowing distinction is morally significant in itself. If the cases are morally equivalent, then the doing/allowing distinction is not morally significant in itself.

As Shelly Kagan has argued, there are several problems with the contrast strategy ('The Additive Fallacy'). It is noticeable that using the contrast strategy provides contradictory results. For it is possible to find pairs of contrast cases which do seem morally inequivalent. In the previous article, I described a pair of cases in which you are a Mountain Rescue worker. In the first case, you are driving Alastair and Bryan to the hospital for life-saving treatment. You see that Charlie is trapped on the hillside. A boulder is rolling towards him and he will be crushed to death by it unless you save him. You could save him, but it would delay you so that it would be too late to save Alastair and Bryan. You drive on. In the second case, the boulder is blocking the route to the hospital. The only way to get to the hospital is to push the boulder towards Charlie, who is trapped on the hillside. You push the boulder. In both cases, you must choose whether Charlie is crushed to death by the boulder or Alastair and Bryan die from their injuries. The only difference seems to be that you merely allow harm in one case and do harm in the other. However, it is clearly permissible to refuse to stop and free Charlie in the first case and impermissible to push the boulder towards Charlie in the second case. Applying the contrast strategy to the Mountain Rescue cases suggests that the doing/allowing distinction is morally significant. Applying the Contrast Strategy to the Wicked Uncle cases suggests that the distinction is not morally significant. There is clearly a problem with the contrast strategy (Kagan, 'The Additive Fallacy' 6–8).

Kagan's diagnosis is that the contrast strategy does not work because it wrongly assumes that if a factor makes a moral difference anywhere it will make the same moral difference everywhere ('The Additive Fallacy' 12). This assumption is false. In some case, a normally morally significant feature can have its moral significance undermined or over-ridden by the other features of the situation ('The Additive Fallacy' 13, 19–21).⁷ Additionally, as Warren Quinn points out, the key claims made by supporters of the DDA are not focused on the "badness" of transgressions. The DDA states that it is harder to *justify* doing harm than merely allowing harm. Considerations of personal cost or of the greater good may justify allowing a certain harm to befall a person when those same considerations would not justify doing that same harm to him. This does not imply that *unjustified* doings of harm will appear "worse" than *unjustified* allowings of harm (Quinn, 288–90).⁸ Jones fails to save a young child, a member of his family, when he could easily do so, simply because he wants the child to die so that he can inherit some money. Little wonder that the defence that Jones "merely let the child die" is "no defence at all" (Rachels, 116).

An additional worry about the Contrast Strategy is that it assumes that our intuitions are absolutely accurate ('The Additive Fallacy' 10). It assumes that we will be able to look at pairs of cases like the Wicked Uncle cases and detect whether there is any moral difference at all between the cases – just by considering our reaction to those cases. This seems to demand too much of our intuitions, particularly when those intuitions are distracted by salient features such as a reprehensible willingness to kill a child for money. Richard Trammell puts this beautifully: "The fact that one cannot distinguish the taste of two

wines when both are mixed with green persimmon juice does not imply that there is no distinction between the wines” (132).

So Rachels’ use of the Contrast Strategy to disprove the DDA is unsuccessful. Nonetheless, the use of the Contrast Strategy to support the DDA is not entirely successful either. For the most that this strategy can establish is that many people intuitively treat the doing/allowing distinction as morally significant. This is the starting point of a defence of the DDA, not the end. We should be interested in whether the distinction *is* morally significant not whether it *seems* morally significant. The challenge from opponents of the DDA is compelling: if serious harm comes to another and it was within your power to make it the case that this did not happen, how can it matter whether you did harm or merely allowed harm? Isn’t this simply a fetishistic concern with “clean hands” which is downright immoral when lives are at stake? I do not think it can be simply a basic moral fact that the doing/allowing distinction is morally significant. The DDA must be justified by showing that the doing/allowing distinction links up with more fundamental moral concepts.⁹

2. Other Attacks on the DDA

Other attacks on the DDA share a common form. They seek to show first that the burden of proof lies with those who would defend the DDA and then that it is reasonable to believe that no such proof can be given. For example, Jonathan Bennett offers a sustained attack on the DDA, first in his Tanner Lectures and then in his monograph, *The Act Itself*. Bennett’s argument rests on analysis of the doing/allowing distinction. He claims that the only promising analyses of the doing/allowing distinction make it clear that the distinction is utterly lacking in moral significance.

Bennett argues that our intuitions about doing and allowing are influenced by two distinctions working in tandem. First, the positive/negative distinction reflects whether the agent had to make some specific movement in order for the harm to occur. An agent counts as positively relevant to a harm if the relevant fact about his behaviour is positive i.e. if the fact tells us that the agent moved in a fairly specific way so that most ways the agent could have behaved *would not* have made that fact true. He is negatively relevant if the relevant fact about his behaviour is negative i.e. if the fact tells us only that the agent did not move in a given specific way so that most ways the agent could have behaved *would* have made the associated proposition true. (*The Act Itself* 88–96).¹⁰ Second, the active/passive distinction reflects whether the harm implicates the agent’s agency. If the harm would still have occurred even if the agent had temporarily lost the power to act, the agent counts as passive with respect to the harm. If the harm would not have occurred if the agent had lost the power to act, the agent counts as active with respect to the harm (*The Act Itself* 105–9). We will be most confident in our classifications when the two distinctions agree: so if the agent is both positively relevant to and active with respect to a harm, we will confidently classify him as doing harm; if an agent is both negatively relevant to and passive with respect to a harm, we will confidently classify him as merely allowing harm.

Bennett carefully explores what he sees as the alternative ways of trying to analyse the distinction. He argues that all of these either fall apart under scrutiny or reduce to either the active/passive distinction or the positive/negative distinction (*The Act Itself* 121–42). Thus, he suggests, if neither the active/passive distinction nor the positive/negative distinction is morally significant, the DDA must be rejected (139–40).

Bennett suggests that the positive/negative distinction is “*obviously*” without moral significance (*The Act Itself* 102). The active/passive distinction may appear to be of moral

significance, for it may seem as if you cannot be blamed for something that would have occurred whether or not you were capable of acting. However, Bennett argues that this apparent moral significance is illusory. If you are not capable of acting, then you cannot be held responsible for what happens. If you *are* capable of acting and you *could* have acted so that harm did not occur but chose not to do so, the mere fact that the harm would still have happened in the counterfactual situation where you were unable to act does not undermine your responsibility (*The Act Itself* 119).

Most critics of Bennett accept his claim that the two distinctions he picks out are without moral significance. This is often used to argue that Bennett cannot have correctly identified the distinctions underlying the DDA. His analysis leaves the widespread belief in the DDA mysterious.¹¹ However, I do not believe that it is obvious that these distinctions are without moral significance. I suggest that it might be morally significant whether a fact about an agent is positive or negative in Bennett's sense. For example, a requirement to make some positive fact about your behaviour true, to make sure that your body moves in a very specific way, impinges on your freedom in a way that a requirement to make a negative fact about your behaviour true does not. It can be seen as being required to put your body at another person's use. Bennett's analysis presents a challenge, for his distinctions are not obviously morally significant. I suggest that it is too quick a step to conclude that they are obviously without moral significance.

Moreover, Bennett's argument relies on the success of his criticism of other attempts to analyse the doing/allowing distinction. I suggest that his criticisms of Philippa Foot's threatening sequence account show that it is unacceptable in its original form. Nonetheless, it is possible to produce a Foot-style that avoids these criticisms.¹²

3. *Justifications of the DDA: Positive and Negative Rights*

Philippa Foot appeals to the notion of rights to defend the Doctrine of Doing and Allowing. She argues that negative rights – rights against interference – are stronger than corresponding positive rights – rights to goods or services.¹³ When an agent does harm, he interferes with the victim and thus violates a negative right. When an agent merely allows harm, he merely refuses a service or the use of some goods. Thus he only violates a positive right. Costs to the agent or considerations of the greater good that are able to override the relatively weak positive rights will often not be enough to over-ride the more stringent negative rights. This explains why allowing harm is often permissible when doing harm would be impermissible. ('The Problem of Abortion' 274–6; 'Killing and Letting Die' 284–5).

Intuitively, Foot is correct. Negative rights are more stringent than positive rights. However, as it stands this does not seem to be an adequate defence of the doing/allowing distinction. It does not seem to be enough simply to note that intuitively negative rights are stronger than positive rights. After all, intuitively doing harm is harder to justify than merely allowing harm. We are seeking a deeper justification for such intuitions.¹⁴

Warren Quinn makes an interesting attempt to provide just such a justification. Quinn begins by arguing that it is incoherent to suppose that positive rights take precedence over negative rights. Suppose that positive rights take precedence over negative rights. Then if we can save one person by killing two, we should do so. But then, Quinn claims, the two are in danger of death, which activates their positive rights to be saved, and these will collectively outweigh the first individual's right to be saved (307).¹⁵

If Quinn's argument is correct, then either negative rights must take precedence over positive rights or positive and negative rights are equally stringent. The next part of

Quinn's argument is intended to show that equally stringent rights are unacceptable. For in this case matters of life and death are to be decided simply by consideration of what will produce the greatest good. Whether or not my body is to be destroyed to save others depends solely on whether what they stand to gain is greater than what I stand to lose. In this case I no longer have any real say about what happens to my body. Without such a say, my body does not truly belong to me. "It seems rather to belong to the whole human community, to be dealt with according to its best overall interests" (308). Quinn suggests that constraints against doing harm are needed to recognise the agent's ownership of his body and mind.

Quinn's suggestion that constraints against doing harm are required to recognise the agent's ownership of his body and mind seems to me to be correct. However, I do not think he has provided an adequate defence of the DDA. Quinn has not provided an argument which shows why this particular set of constraints is necessary. As Frances Howard-Snyder points out,

...there are other ways to divide up rights than the division into positive and negative rights. We might divide them into the rights of children and the rights of adults, rights concerning the upper half of the body and rights concerning the lower half, etc. and then give precedence to one set over the other whenever they come into conflict. These seem arbitrary and wasteful, but their rationale seems no worse than Quinn's.

We need to know why this particular set of rights, rights against having harm done to you, is necessary to give the agent authority over his body and mind. This requires an analysis of the distinction between doing and allowing that links up with the authority necessary for ownership.

I suggest that a defence upon these lines can be provided. There is not space to provide a full defence of the DDA here, so I will simply give a brief outline. My sequence-based analysis (see Part I) of the doing/allowing distinction can be shown to connect with a suggestion from Frances Kamm. Kamm argues that doing harm involves the agent imposing on the victim, while allowing harm involves the agent refusing to be imposed upon by victim (*Morality, Mortality* 24). On my sequence-based account, an agent does harm if and only if he is part of the sequence leading to harm; an agent merely allows harm if and only if he does not count as part of the harmful sequence because any link between his behaviour and the harmful sequence is broken by a negative fact about his body or his resources.¹⁶ Thus doing harm does involve imposing on the victim: it involves a sequence of positive facts leading from the agent to a harmful effect on the victim.¹⁷ The agent's behaviour reaches out beyond his own sphere into the sphere of the victim. Equally, constraints against allowing harm involve the potential victim imposing on the agent. The agent is required to make some positive fact about his body or his resources true for the sake of the potential victim. This amounts to a requirement to put his body or his resources at the potential victim's use. The victim's needs reach out beyond his own sphere and intrude into the agent's life.¹⁸ As Quinn argues, an agent's body does not belong to him unless he has a special say over what happens to it. Indeed, for any resources to genuinely belong to a person he must have a say over it that allows his needs to over-ride the needs of others. I suggest that this say involves precisely the type of protection against harmful imposition provided by the DDA, which includes constraints against doing harm (preventing others' behaviour from affecting what belongs to you against your will) and permissions to allow harm (preventing others' needs from requiring you to put what belongs to you at their use). Thus, the DDA must hold if anything genuinely belongs to us, even our own bodies.

Kai Draper also uses ideas of self-ownership and rights of exclusion to explain the intuitions that motivate the DDA. However, Draper wishes to replace the DDA with a rights-based account that includes not only rights of ownership and self-ownership but also exclusionary need rights. Draper's rights-based alternative to the DDA states that if harm comes to a person because the agent has acted-on something to which that person had a right, without permission, then the agent has unjustly harmed the person. In contrast, if harm comes to a person, but the agent has not acted-on something to which the person had a right, the agent has not unjustly harmed the person.¹⁹

Whether an agent's behaviour lies on the doing or allowing side of Draper's distinction may depend on the cost to the agent of acting differently. Suppose someone is sheltering from a rain of bullets behind your car and you drive the car away. How Draper classifies this case will depend on whether you drive the car away to save your own life or simply to prevent damage to the paintwork. This is because the cost to you of leaving the car where it is will affect whether you have a need right to the car. If you need the car to save your life, your ownership right plus your need right outweigh the potential victim's need right. If you do not need the car, the potential victim's need right to the car will override your right of ownership (273).

I suggest that the DDA is most useful in picking out asymmetries in the type of cost to the agent or greater good required to justify countenancing a given harm. Whether you need the car to save your life will affect whether allowing harm by removing the car is justified. However, it should not affect whether removing the car counts as doing harm or merely allowing harm. My version of the DDA can be understood as based on a single unifying idea: it is a principle that gives us (prima facie) protection against the behaviour or needs of others intruding upon what belongs to us. It recognises the authority that we have over what belongs to us. Thus I think it is better to retain a DDA which does not incorporate need-rights but to recognise that considerations of harm and benefit may outweigh the authority of possession. Thus an agent may be permitted to do a trivial harm to another to avoid a significant cost or required to prevent a serious harm if the cost of doing so would be trivial.

4. *The DDA and Euthanasia*

The DDA is often discussed with reference to issues in applied ethics such as the permissibility of active euthanasia. For example, Rachels' argument against the DDA was motivated by what he saw as an unjustified constraint on active euthanasia. It might be assumed that acceptance of the DDA supports a prohibition on active euthanasia while making room for medical professionals to withdraw treatment when it is no longer in the interests of the patient.

While the DDA does support a distinction between active euthanasia and the withdrawal of treatment, it does not lead to a prohibition on active euthanasia. Continuing to treat a patient when this is both against his wishes and against his interests involves unjustifiably doing harm. Non-consensual treatment involves imposing on the patient's body without his consent, infringing the patient's authority over his body. Given the importance of decisions about the end of life, the patient must have the strongest possible protection against being treated in this way. Thus the DDA implies that the medical team is *required* to comply with any request for the withdrawal of treatment by a patient who is still autonomous. Failure to comply with a request for active euthanasia does not involve doing harm to the patient. Thus, the DDA does *not* in itself imply that the medical team is required to comply with any request for active euthanasia by an autonomous patient.²⁰

Nonetheless, on my understanding the DDA does not count against active euthanasia, where this is understood to be in line with the patient's wishes. For the DDA forbids *harmful* imposition on a person *against that person's will*. Active euthanasia in line with a patient's wishes does not involve harmful imposition on the patient against his or her will. In fact, genuine euthanasia does not involve doing *harm* at all, for genuine euthanasia must be death for the patient's sake. I do suggest that something very similar to the DDA would speak against active euthanasia against the patient's wishes. Even if this did not involve doing harm, it would still be an imposition on the patient's body, with significant effects, against the patient's will, and thus forbidden by the agent's say over his own body. But when death is both in the patient's interests and in line with the patient's wishes, the DDA does not condemn active euthanasia (C.F. Foot 'Euthanasia'; McMahan 461–2).

5. Conclusion

I have sought to provide a critical overview of the literature on the moral relevance of the distinction between doing and allowing. I have suggested that we cannot settle questions of moral relevance by appeal to pairs of cases. The strategy used against the DDA in James Rachels' Wicked Uncle argument is unsatisfactory. However, responses to Rachels that appeal solely to our intuitions about particular cases do not provide a fully fledged defence of the DDA. Working out whether the distinction between doing and allowing is morally significant requires deeper argument. We must show whether the distinction between doing and allowing matches up with more fundamental moral concepts.

Jonathan Bennett attempts to give such an argument against the DDA. His discussion is a model work of analytic moral philosophy and the best developed attack on the DDA. However, his attempt to show that no acceptable analysis of the distinction can be plausibly thought to be morally relevant is unsuccessful. First, the distinction that he states is obviously without moral significance may plausibly be thought to matter morally. Secondly, there are ways of developing a Foot style analysis of the distinction so that it avoids the objections he raises against it.

Foot rights points out that the DDA can be understood in terms of an asymmetry between strong negative rights to non-interference and weaker positive rights to goods or services. However, this observation alone does not justify the DDA – for the asymmetry between positive and negative rights must itself be defended. Warren Quinn attempts to do this by arguing that this asymmetry is necessary if we are to recognise a person's authority over his body and mind. If what happens to this body is decided simply in terms of need, the body no longer genuinely belongs to me but is rather a common resource for the community as a whole. I argue that Quinn's argument is unsatisfactory as it stands, but that his ideas can be developed to provide an adequate justification for the DDA.

I briefly outlined my own defence of the DDA. The DDA should be understood as a principle that protects us from harmful imposition. When an agent does harm, he imposes on the victim. When an agent is required to prevent harm he is imposed upon by the potential victim. Protection against both types of imposition, as provided by the DDA, is required to recognise our authority over what belongs to us. If the DDA is not true, then nothing genuinely belongs to us, even our own bodies.

I ended by arguing that the DDA is not in conflict with the claim that voluntary active euthanasia is morally permissible. This is an important conclusion because many of the

arguments against the DDA have been motivated by the conviction that active euthanasia is permissible.

My aim in this paper has been to give a critical overview of the literature on the moral relevance of the doing/allowing distinction. Unfortunately, the extent of the literature on this topic means that a complete survey cannot be provided in an article of the size. Considerations of space have forced me to leave out some of the excellent recent work on this topic. I hope that the list of further reading given below will do something to make up for this deficiency.

Short Biography

Fiona Woollard's main area of research is Normative Ethics, in particular the moral permissibility of doing and allowing harm. She also has side interests in Applied Ethics and the Philosophy of Sex. She has published papers in these areas in *Mind*, *Pacific Philosophical Quarterly*, and *Ratio* and co-authored a paper in the *Monist*. She is currently writing a monograph in which she defends the moral significance of the distinction between doing and allowing harm, arguing that constraints against doing harm and permissions to allow harm are necessary for anything to genuinely belong to a person, even his own body. The monograph will also explore our obligations to aid others. Before taking up her present post as a Lecturer in Philosophy at the University of Southampton, she held a temporary lectureship at the University of Sheffield. She is currently on a 6-month Early Career Research Fellowship supported by the Mind Association and is a Visiting Fellow in Philosophy at Harvard University from October to December 2011. She holds a BA in Mathematics and Philosophy from the University of Oxford, an M.Litt in Philosophy from the University of St Andrews and a PhD in Philosophy from the University of Reading.

Notes

* Correspondence: School of Humanities, University of Southampton, Southampton, S017 1BJ, UK. Email: f.woollard@soton.ac.uk.

¹ The Doctrine of Double Effect states that harm that is strictly intended, either as an end or as a means, is harder to justify than harm that is foreseen but not strictly intended. Thus it may be permissible to kill one person as a side effect of saving five, but not permissible to kill one person in order to save five.

² See Samuel Scheffler for an attempt to defend the DDA without analysis of the distinction.

³ Shelly Kagan raises an objection of this type against the DDA (*The Limits of Morality*, 83–127).

⁴ Some opponents of the DDA will use a mixed strategy, arguing that the appeal of the DDA comes from the combination of an apparent distinction which, if coherent, could be morally relevant, and a genuine distinction that is morally irrelevant. This seems to be Jonathan Bennett's strategy.

⁵ The example is almost always referred to as the "Wicked Uncle" example, even though the characters are cousins.

⁶ For reasons of space, I do not discuss another very prominent pair of apparent counterexamples to the DDA, Michael Tooley's Machine Case. Many of the objections raised to Rachels' use of the Contrast Strategy also apply to Tooley's argument. In particular, Tooley assumes that if the doing/allowing distinction makes a moral difference anywhere, it will make the same difference everywhere – and that we will see this moral difference reflected in our intuitive judgements. Helen Frowe has argued convincingly that the Machine Cases are not morally equivalent, despite initial appearances.

⁷ Frances Kamm offers a similar argument appealing to what she calls the Principle of Contextual Interaction. See for example *Intricate Ethics* 17. Heidi Malm has responded to Kagan with a defense of the contrast strategy.

⁸ Frances Kamm has suggested that there is a moral difference between the cases, even if it is hard to detect. She suggests that it would be permissible to kill Smith to bring the child back to life but not permissible to kill Jones to bring the child back to life (*Intricate Ethics* 17).

⁹ My point does not depend upon a realist metaethics. A non-realist can ask whether after reflection we would endorse acceptance of the Doctrine of Doing and Allowing. Is it appropriately connected to features that we see as important? See Bennett *The Act Itself* (12–21) for discussion of normative ethical critique from a non-realist point of view.

¹⁰ See Part I for discussion of an alternative formulation of Bennett's account.

¹¹ See Thomson 'Critical Review of *The Act Itself*' 550.

¹² For further discussion, see "The Doctrine of Doing and Allowing I: Analysis of the Distinction" and Woollard.

¹³ Throughout, it should be assumed that we are comparing corresponding positive and negative rights. Foot does not suggest that all negative rights are stronger than all positive rights. The right not to be killed is stronger than the right to have your life saved, but the right not to have your hair pulled is not stronger than the right to have your life saved.

¹⁴ C.F. Bennett *The Act Itself*, 81–2.

¹⁵ Quinn's argument that a system in which positive rights take precedence is incoherent has been ably criticised by Alan Strudler and David Wasserman.

¹⁶ An agent counts as *merely* allowing harm if and only if *all* links between his behaviour and the harm run through a negative fact about his body or resources. However, if there are several links between his behaviour and the harm, and only some of these run through such a negative fact, the agent will count as both doing and allowing harm. This commonly occurs when we ignore an opportunity to prevent harm that we have set in motion. For example, suppose I push a boulder towards you and then drive my car out of the boulder's path. The fact that I drive the car away is only relevant to your death because the absence of the car is relevant: if whether the car was in place had no bearing on the route to your death, neither would my driving. Thus the fact that I drove runs through the negative fact that my car is not in the boulder's path and I count as allowing harm. The fact that I pushed the boulder is not relevant simply because the absence of the car is relevant: even if the car were too small to stop the boulder, the fact that I had pushed the boulder would still be relevant to your death. So we have an unbroken link between the agent and the harm, my behaviour counts as part of the sequence and I count as doing harm.

¹⁷ Some might balk at the fact that I refer to *the agent's* being part of the sequence, *the agent's behaviour* being part of the harmful sequence and *a sequence of positive facts* leading from the agent to an effect on the victim. Strictly speaking, on my view sequences are made up of facts. However, I think we will say that an agent (qua agent) is part of a harmful sequence if and only if (and then because) a fact about his behaviour is part of the sequence. A similar position in the philosophy of causation is that talk about agents, events and objects causing upshots is acceptable, but any such claims must be understood in terms of more basic fact causation.

¹⁸ I suggest that, other things being equal, constraints against doing harm do not impose on the agent. The agent is required to make some negative fact about his body true for the sake of the other. However, not all requirements on our behaviour are impositions. There is a striking difference between such negative requirements and requirements to make positive facts about your behaviour or resources true which put the agent's body at the other's use.

¹⁹ I take that on Draper's account the fact that the agent has not unjustly harmed the person does not imply that the agent's behaviour is permissible. The agent may have failed in a duty to help the person.

²⁰ C.F. Bonnie Steinbock argument that the right to refuse treatment, which requires medical professionals to agree requests for the withdrawal of treatment by competent adults, leads to an asymmetry between active euthanasia and the withdrawal of treatment. (122).

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