**Double Effect, Doing and Allowing, and the Relaxed Nonconsequentialist**

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**Abstract**

Many philosophers display relaxed scepticism about the Doctrine of Doing and Allowing (DDA) and the Doctrine of Double Effect (DDE), suspecting, without great alarm, that one or both of these Doctrines is indefensible. This relaxed scepticism is misplaced. Anyone who aims to endorse a theory of right action with Nonconsequentialist implications (henceforth any Nonconsequentialist) should accept both the DDA (or a replacement) and the DDE (or a replacement). First, even to state a Nonconsequentialist theory requires drawing a distinction between respecting and promoting values. This cannot be done without accepting some deontological distinction. Second, if someone is going to accept any deontological distinction she should accept either the DDE or the DDA or some replacement. Finally, anyone who accepts either the DDE or the DDA should accept both doctrines or a replacement of each. Unless both Doctrines can be defended or given a defensible replacement, any Nonconsequentialist is in trouble.

**Introduction[[1]](#footnote-1)**

The Doctrine of Doing and Allowing and the Doctrine of Double Effect are the two most famous moral principles based on deontological distinctions. Deontological distinctions divide the set of consequences of an agent’s behaviour into two subsets, a primary subject and a secondary subset and hold that there is a moral difference between the two subsets, for example bad consequences are harder to justify if they lie in the primary subset than in the secondary. The Doctrine of Doing and Allowing is based on a distinction between what an agent does or brings about and what an agent merely allows to occur. The Doctrine of Double Effect is based on a distinction between what an agent strictly intends and what he merely foresees. The Doctrine of Doing and Allowing states that, other things being equal, doing harm is harder to justify than merely allowing harm: some potential costs to the agent, or opportunities of producing greater good, that might justify merely allowing another to suffer a certain harm would not justify bringing about that same harm. The Doctrine of Double Effect states that, other things being equal, harm that is strictly intended is harder to justify than harm that is merely foreseen: some potential costs to the agent, or opportunities of producing greater good, that might justify merely foreseeably countenancing another suffer a certain harm would not justify strictly intending that same harm.

Many Nonconsequentialists, in conversation if not in print, express relaxed scepticism about the Doctrine of Doing and Allowing and the Doctrine of Double Effect. They are dubious about whether these doctrines can stand up under scrutiny, but are not greatly alarmed by this. I argue that such relaxed scepticism is misplaced.

First I show that anyone who endorses a theory of right action with Nonconsequentialist implications (henceforth any Nonconsequentialist) must accept some deontological distinction such as the Doctrine of Doing and Allowing or the Doctrine of Double Effect. Without some such deontological distinction, the Nonconsequentialist cannot make the crucial distinction between respecting a value and promoting a value that is necessary to prevent her view from collapsing into Consequentialism.

I then argue that there is good reason to think that if someone is going to accept at least one deontological distinction she should accept either the Doctrine of Double Effect or the Doctrine of Doing and Allowing or some replacement for these doctrines.[[2]](#footnote-2) Finally, I show that anyone who accepts the Doctrine of Double Effect (or a replacement for that doctrine) should accept the Doctrine of Doing and Allowing (or a replacement for that doctrine), and vice versa.

Thus any Nonconsequentialist must accept some deontological distinction and should accept both the Doctrine of Doing and Allowing, or its replacement, and the Doctrine of Double Effect, or its replacement. Unless each of these Doctrines or a replacement is defensible, then any Nonconsequentialist is in trouble.

 **Section 1: “Replacements” for the DDA and DDE**

Before beginning my argument, I will clarify what I mean by a ‘replacement’ for the Doctrine of Double Effect or the Doctrine of Doing and Allowing.

 In Thomson’s famous Trolley Case, a runaway trolley is heading towards five people trapped on a track. A bystander can pull a lever, switching the trolley to a side track, where only one person is trapped. Most people think it is permissible to pull the switch, saving the five but killing the one.[[3]](#footnote-3) In contrast, most people do not think it is permissible to push a large man off a bridge into the path of the trolley if this would bring the trolley to halt but kill the large man.[[4]](#footnote-4) The Doctrine of Double Effect explains such cases by appeal to the deontological distinction between strictly intended and merely foreseen harm. The Doctrine of Double Effect states that strictly intended harm is harder to justify than merely foreseen harm. Saving five lives is enough to justify turning the trolley and killing the one because the death of the one is merely foreseen. Saving the five is not enough to justify pushing the large man into the path of the trolley because the death of the large man would be strictly intended. [[5]](#footnote-5)

The Doctrine of Double Effect has faced serious criticism.[[6]](#footnote-6) In response to such criticism, several alternative attempts have been made to explain cases like Trolley and Bridge. I will call a principle a replacement Doctrine of Double Effect if it aims to explain cases like Trolley and Bridge by appeal to an alternative deontological distinction.[[7]](#footnote-7) Thus, for example, Frances Kamm’s Doctrine of Productive Purity counts as a replacement for the Doctrine of Double Effect.[[8]](#footnote-8)

A replacement for the Doctrine of Double Effect need not appeal to the agent’s intentions. My interest in this paper is in a particular phenomenon and a method of explaining it rather than the details of any given explanation. I am looking at principles that attempt to explain widespread intuitions about cases like Trolley and Bridge, the kind of cases that motivate appeal to the Doctrine of Double Effect in contemporary debate.[[9]](#footnote-9) I am interested in principles based on deontological distinctions: they must try to explain the difference between these cases by appeal to some distinction between types of harmful consequences of an agent’s behaviour. A Nonconsequentialist who accepts any such principle counts as accepting the Doctrine of Double Effect or a replacement for that principle.

Similarly, a “replacement” for the Doctrine of Doing and Allowing is any alternative principle that appeals to a deontological distinction to explain the types of cases[[10]](#footnote-10) that have typically motivated the claim that doing harm is harder to justify than merely allowing harm.[[11]](#footnote-11)

I argue that any nonconsequentialist must accept the DDA (or a replacement of the DDA) and the DDE (or a replacement of the DDE). My argument involves three premises:

*Premise 1: The Nonconsequentialist must accept some deontological distinction*

*Premise 2: The Deontological Distinction should be the DDE or DDA or a replacement of one of those doctrines*

*Premise 3: Anyone who one doctrine must accept both: anyone who accepts the DDE (or a replacement of the DDE) must accept the DDA (or a replacement of the DDA); anyone who accepts the DDA (or a replacement of the DDA) must accept the DDE (or a replacement of the DDE).*

*Conclusion: The Nonconsequentialist should accept both the DDA (or a replacement of the DDA) and the DDE (or a replacement of the DDE).*

I will now establish each of these premises in turn.

**Premise 1: The Nonconsequentialist must accept some deontological distinction**

Anyone who endorses a theory of right action with Nonconsequentialist implications must accept some deontological distinction. A theory of right action provides principles that tell us what do to in at least most circumstances. In identifying Nonconsequentialist theories of right action I am interested only in what the theory tells us do. I am not concerned with the ultimate justification offered by the theory. A moral theory might combine a Nonconsequentialist justification of what makes actions right with Consequentialist implications. For example, someone might interpret the Categorical Imperative as requiring that we minimise the destruction of rationality. This would count as a Consequentialist theory for my purposes.[[12]](#footnote-12)

The distinction between Consequentialist and Nonconsequentialist is familiar, but notoriously difficult to pinpoint. Philip Pettit has argued that this distinction should be understood in terms of the difference between honouring and promoting values. “Consequentialism is the view that whatever values an individual or institutional agent adopts the proper response to those values is to promote them…. Opponents of consequentialism, on the other hand, hold that at least some values call to be honoured whether or not they are thereby promoted.”[[13]](#footnote-13) To promote a value is to select options according to how far those options would lead to the realisation of that value.[[14]](#footnote-14) If the core value is honesty, promoting this value requires us to choose the behaviour which will lead to the least deception, even if this means lying ourselves. In contrast, it is generally accepted that honouring the value of honesty requires us to normally refuse to lie even when doing so will result in less deception.

Petit holds that for any value we can pick out both a Consequentialist response (promoting the value) and Nonconsequentialist response (honouring the value).[[15]](#footnote-15) David McNaughton and Piers Rawlings have argued that this claim is mistaken. They argue that there is no natural way of generating a single Nonconsequentialist response to the central Utilitarian value of happiness: we cannot make sense of honouring happiness.[[16]](#footnote-16)

Petit makes two comments about what honouring happiness may require: “honouring it might require concern for the happiness of those you deal with directly, regardless of indirect effects”[[17]](#footnote-17); “to honour [happiness] will be to try not to cause anyone unhappiness directly, even if doing so would increase happiness overall.”[[18]](#footnote-18) McNaughton and Rawlings understand these as two distinct suggestions corresponding to the following rules: (Rule 1) For all x, x is required to ensure that (for all y, if y has direct dealing with x, x is concerned with y’s happiness)[[19]](#footnote-19); (Rule 2) For all x, x is required to ensure that (for all y, x does not cause, directly, y any unhappiness).[[20]](#footnote-20) They argue that “given the structure of Pettit’s theory”[[21]](#footnote-21) neither of these can be accepted as what we mean by honouring happiness. They claim that the value being honoured in these rules is not the same value happiness that Utilitarians seek to promote. In obeying Rule 1, they claim the value that my conduct exemplifies is that of each person being concerned for the happiness of those with whom she has direct dealing.[[22]](#footnote-22) In obeying Rule 2, they claim my conduct exemplifies the value of not directly causing unhappiness.

This criticism relies on a very specific way of understanding Pettit’s theory. It assumes that there will be a tight, uniform connection between honouring a value and promoting that value, so that for any value V, we can convert any requirement to honour V into a requirement to promote V by “agent-neutralising”. [[23]](#footnote-23) I couldn't find any claim by Pettit that suggests he endorses this view of the relationship between honouring and promoting and I don’t think he should do so. Concern with the happiness of those you have direct dealings with is a response to the value of happiness. A requirement to show such concern should thus be accepted as a way of honouring happiness. The same is true of avoiding causing unhappiness directly.

While this response allows Pettit to avoid the conclusion that there is no natural way to understand honouring happiness, it does cast into doubt the claim that there is a single way to do so and, a fortiori, that for any value V we can pick out a single Nonconsequentialist response of honouring V. If what it takes to honour a value cannot be calculated algorithmically from what it is to promote a value, then we should not assume that there is a single response that counts as honouring each value. There may be several different ways of responding to V that could reasonably be regarded as honouring V. This fits with what we see in substantive ethical theory: many debates between Nonconsequentialists can be seen as disagreements about the appropriate way to honour values.[[24]](#footnote-24)

Some Nonconsequentialist responses to value might also be better described by an alternative term. Honouring a value suggests something strong. Suppose that I am sitting on my sofa, not killing anyone. I’m not making great efforts to avoid killing people. The thought of killing someone hasn’t even entered my head. It is a stretch to say that I am honouring the value of human life. Nonetheless, I’m doing something appropriate and important with respect to that value. I am not acting in a way that is contrary to the value of human life. I am *respecting* the value. Many Nonconsequentialist theories quite rightly normally demand only that we avoid acting contrary to important values and not that we activity think about those values or do very impressive deeds with respect to them. Given this, it is better to use the term ‘respect’ for Nonconsequentialist responses to value. This will not rule out those theories that do call for something stronger which would be appropriately described as honouring, as respecting a value can be seen to call for an impressive or deliberate response.[[25]](#footnote-25)

I have argued, contra Pettit, that there may be several ways of respecting a value. The Nonconsequentialist and the Consequentialist responses to a given value cannot be calculated algorithmically. Given this, it seems that we should not assume that there must be at least one response that naturally counts as respecting – or even perhaps promoting - each value. Pettit argues convincingly that we can pick out both respecting and promoting responses for many central values, but there seems no reason to assume that this is universal. Each substantive theory must state which values should be respected or promoted and what that involves.

The distinction between respecting and promoting is still useful in distinguishing Consequentialist and Nonconsequentialist theories. Any account of right action which holds that the proper way to behave is to promote some value requires us to act as Consequentialists. We should thus follow Pettit and say that a Nonconsequentialist theory of right action must hold that at least some values call to be respected where this is not equivalent to promoting any value. Any theory with Nonconsequentialist implications must hold that sometimes it is wrong to perform a certain action even if doing so would produce the best outcome.

 This claim, that some values should be respected where this is not equivalent to promoting some value, is only available to Nonconsequentialists who endorse some deontological distinction. This is because the distinction between respecting and promoting depends upon an implicit appeal to some such distinction. Without such a distinction, respecting collapses into promoting and Nonconsequentialism collapses into Consequentialism.

 The problem arises because the crucial notion of respecting a value, where this is something distinct from merely promoting some valuable outcome, requires the agent to draw a distinction between different consequences of her behaviour. To respect honesty, I must refrain from lying even if this sometimes results in more misrepresentation.[[26]](#footnote-26) This requirement only makes sense if we can distinguish between the different misrepresentations that I might countenance and pick out some of them as my lies. If every misrepresentation that I (knowingly) countenance counts as a lie, then the requirement not to lie even if this results in more misrepresentation is nonsense: respecting honesty becomes the same as promoting honesty. To make the distinction between lies and other countenanced misrepresentations, we implicitly appeal to deontological distinctions such as the distinction between doing and allowing or the distinction between intending and foreseeing. [[27]](#footnote-27)

I suggest that what is true of lying is true more generally. For any value, V, to say that I must respect, V, requires that we be able to pick out that behaviour which would fail to respect V. Any behaviour that fails to respect V must do so because it involves some action, ɸ-ing, which is contrary to V. We can imagine the counterpart of ɸ-ing, , ɸ\*-ing, which is like ɸ-ing but does not depend on any deontological distinctions i.e. is neutral between different ways I might be related as an agent to the consequences of my actions. ɸ\*-ing must be equivalent to countenancing some outcome O, for it is, by hypothesis, picked out solely by reference to the consequences of the agent’s actions. If a Nonconsequentialist does not endorse some deontological distinction such as the Doctrine of Doing and Allowing or the Doctrine of Double Effect, she cannot distinguish between ɸ-ing and ɸ\*-ing. The requirement to respect V becomes a requirement not to ɸ\*. A requirement not to ɸ\* is equivalent to a requirement not to countenance O or to promote not-O. Thus, without some deontological distinction, a requirement to honour, V, becomes simply a requirement to promote not-O. Promoting not-O may or may not be equivalent to promoting V, but it is not a Nonconsequentialist requirement on action.

A key part of this argument is the claim that any forbidden action, ɸ-ing, can be matched with a counterpart ɸ\*-ing, which, not depending on any deontological distinctions, is picked out solely by reference to the consequences of the agent’s actions. The underlying idea is that each action-type is identified by a distinctive set of consequences, usually with the requirement that to count as performing an action of that type the agent must stand in a specified relation with consequences of the relevant type. Thus to lie is (a) to countenance misrepresentation; (b) for the misrepresentation to be strictly intended and brought about rather than merely allowed (and possibly to meet some further conditions).[[28]](#footnote-28) To kill is (a) to countenance death; (b) for the death to be brought about rather than merely allowed (and possibly to meet some further conditions). Thus when we remove the appeal to deontological distinctions, all we have left to identify the action is the distinctive consequences. This understanding of action is compatible with that which Jonathan Dancy attributes to Prichard and Sidgewick: “…Sidgwick thinks of action as volition plus consequences, and Prichard thinks of it as the originating of those consequences, they agree that our terms for different types of action often take us way out along the train of effects, to things that at best we only ‘indirectly cause’.”[[29]](#footnote-29) To echo Dancy’s words: “My general suspicion…is that there are not that many rival conceptions of what an action is, and that the ones that there are don’t look as if they would change things much.”[[30]](#footnote-30) It is certainly hard to deny that most common prohibitions relate to actions which are associated with specified consequences. If it suggested that not all actions are identified in this way, the challenge remains for the Nonconsequentialist to show that she can give a halfway decent theory of right action in which the actions are not identified by consequences and deontological distinctions.

Some clarification is needed here. I am not claiming that without deontological distinctions the would-be Nonconsequentialist theory must be equivalent to traditional Act-Consequentialism. The would-be Nonconsequentalist can still include lots of Nonconsequentialist features into her theory, for example giving non-instrumental significance to choice, rights, gratitude, desert and promises. Moreover, the would-be Nonconsequentialist can still endorse a theory of right action that is, in one important way, agent relative. There is nothing to stop O being agent-relative. By hypothesis, whether I count as ɸ\*-ing or not is neutral with respect to how I am related to the consequences of my actions *as an agent*. However, it need not be neutral with respect to how I am related to the consequences of my actions *tout court*. A theory which does not endorse deontological distinctions must have Consequentialist implications in the sense that it requires us to bring about a certain type ofconsequence, but the consequences I am required to bring about may have some special relation to me and differ from the consequences you are required to bring about. For example, suppose I am required to teach my first year Ethics class. Without a deontological distinction, we cannot make sense of a requirement that I *teach* the course rather than simply bringing it about that the course is taught. However, we can certainly make sense of a requirement to bring it about that *that* group of students, the ones enrolled on *my* course, are taught, rather than that students in general are taught. McNaughton and Rawlings distinguish overall agent-relativity and *author* agent-relativity. Author agent relative requirements include an interest in the author of the required activity. In McNaughton and Rawlings’ words, they require us to do certain things “directly”.[[31]](#footnote-31) Author agent-relative requirements only make sense if we can identify the difference between doing something directly and ensuring that it is done. It is this type of agent-relativity which requires an appeal to some deontological distinction such as the Doctrine of Doing and Allowing or the Doctrine of Double Effect.

My worryis related to the worry that any Nonconsequentialist theory that does not meet certain conditions can be “consequentialised”. As noted above, typical features of a Nonconsequentialist theory such as the importance of honesty, of avoiding rights violations, of keeping promises, of recognising special relationships can be imported into a Consequentialist theory. This is done simply by taking account of these features in the theory of the good, in other words, adding them to the set of values to be promoted. Consequentialism recognises the importance of honesty by holding that we must reduce the number of misrepresentations.[[32]](#footnote-32) However my worry is not just that the Nonconsequentialist who does not accept a deontological distinction will have a theory that is extensionally equivalent to a consequentialist theory, but that such a Nonconsequentialist won’t be able to say some things that she thinks she can say and wants to say. She won’t be able to say that I must not lie even if lying would reduce the total amount of misrepresentation or that I should refrain from violating rights even if violating rights would reduce the amount of rights violated.

**Premise 2: The Deontological Distinction should be the DDE or DDA or a replacement of one of those doctrines**

 I now argue that there is good reason to think that the Nonconsequentialist who endorses some deontological distinction should endorse either the Doctrine of Double Effect (or a replacement) or the Doctrine of Doing and Allowing (or a replacement). In order to avoid accepting a form of Consequentialism, the Nonconsequentialist needs constraints that are author-agent-relative. Any set of constraints that do not appeal to some idea of authorship will be equivalent to a Consequentialist theory. This is what we see with the requirement above that states that I am required to ensure that my students – but not the students of others – are taught Ethics. Meeting this requirement simply involves promoting the learning of my students. The need for author-agent-relative constraints rules out deontological distinctions based on, for example, distance between agent and those affected by his actions. I cannot see any obvious alternative candidate deontological distinction that can provide author-agent-relative constraints. Indeed, I cannot see any obvious plausible alternative candidates. The Nonconsequentialist constraints that are actually put forward appear to appeal to the distinctions that ground either the Doctrine of Double Effect or the Doctrine of Doing and Allowing, or both. This gives us reason to think that if a Nonconsequentialist does accept a deontological distinction in order to make sense of the respecting/promoting distinction, it will be Doctrine of Double Effect or the Doctrine of Doing and Allowing or a replacement for one of those doctrines.

In addition, if a theory endorses a deontological distinction it is, other things equal, better to endorse a distinction that explains widespread intuitions. Let NC1 be a Nonconsequentialist theory that endorses some form of the Doctrine of Double Effect or the Doctrine of Doing and Allowing. Let NC2 be a Nonconsequentialist theory that endorses some alternative deontological distinction. Both NC1 and NC2 must bear a justificatory cost. Each must explain why the deontological distinction it endorses is morally relevant. However, the theoretical payoff for NC1 is much greater. NC1 is able to explain widespread and deeply held intuitions about a set of cases (either the cases that motivate the Doctrine of Double Effect or the cases that motivate the Doctrine of Doing and Allowing). Thus, other things being equal, NC1 is preferable to NC2.

In an effort to endorse a deontological distinction without accepting Doctrine of Double Effect or the Doctrine of Doing and Allowing, a Nonconsequentialist might propose that we adopt a local deontological distinction. For example, she could hold that there is a morally significant distinction between lies and merely countenanced misrepresentations without holding that this depends on a generally significant distinction between what is done and what is merely allowed or what is strictly intended and what is merely foreseen. Specifically, she might hold that the doing/allowing and intended/foreseen distinctions are not significant when it comes to proper responses to the value of well-being. She might say that the proper response to the value of well-being is to promote it: thus we should not draw a moral distinction between doing and allowing or between foreseen and strictly intended harm. Such a Nonconsequentialist does not endorse the Doctrine of Double Effect or the Doctrine of Doing and Allowing as generally understood.

 This position seems to me to be peculiar. First, as noted above, other things being equal any theory that endorses a deontological distinction must justify that distinction. To do the theoretical work of justifying a deontological distinction without the payoff of explaining widespread intuitions is inefficient. More importantly, the position about the proper response to value seems unmotivated. There are differences between the value of honesty and the value of well-being. It is quite plausible that the only way that we are required to respond to honesty is to respect it. We might not be required to promote honesty even if to do so is compatible with respecting it.[[33]](#footnote-33) In contrast, it seems clear that there is a requirement to promote well-being when doing so is compatible with other moral requirements and not too demanding. But what this Nonconsequentialist requires is that the intended/foreseen or doing/allowing distinction should be deeply significant when it comes to the value of honesty, but not significant at all when it comes to the value of human well-being. It is hard to see what features of honesty or well-being could explain this. Even if it could be shown that promotion is the correct response to human well-being, there are other values in this area. Consider the value of bodily autonomy. Surely anyone who holds that honesty must be respected, even if not thereby promoted, should also hold that bodily autonomy must be respected. Taking these other values into account seems likely to leave the Nonconsequentialist with something very close to the traditional deontological doctrines.

**Premise 3: Anyone who accepts either doctrine must accept both**

Suppose the Nonconsequentialist accepts that she must endorse either the Doctrine of Double Effect (or a replacement) or the Doctrine of Doing and Allowing (or a replacement). How should she choose between them? Shelly Kagan has argued persuasively that we should not endorse the Doctrine of Double Effect without also endorsing something like the Doctrine of Doing and Allowing.[[34]](#footnote-34) As Kagan believes that he has already established that the Doctrine of Doing and Allowing is untenable[[35]](#footnote-35), he takes this as an argument against the Doctrine of Double Effect. In contrast, I think that this argument favours endorsing a combination of deontological distinctions, both the Doctrine of Double Effect (or replacement) and the Doctrine of Doing and Allowing (or replacement). The argument shows that these two deontological doctrines, often portrayed as rivals, are in fact mutually supporting.[[36]](#footnote-36)

 Kagan’s argument begins with the observation that the Doctrine of Double Effect should not licence unrestrained foreseen harm. Suppose a factory owner plans to increase his profits by using a new chemical process that will, as a side-effect, release poisonous waste into the river and kill people nearby. The factory owner cannot evade blame by noting that the harm to the residents is merely foreseen and not strictly intended.[[37]](#footnote-37) Kagan concludes that the Doctrine of Double Effect must contain a requirement of “due proportion” if it is to avoid licensing such behaviour. The Doctrine of Double Effect should not hold that harm is always permissible if it is merely intended. Instead, it should hold that, unlike strictly intended harm, merely foreseen harm may be justified if there is *due proportion* between the various aspects of the outcome countenanced by the agent: the good aspects of what he countenances must be enough to justify countenancing the bad. In the Factory case, the profit to the factory owner is not significant enough to justify countenancing the deaths of innocent people. Due proportion is not satisfied. The factory owner’s behaviour is impermissible, even if he does not strictly intend harm.[[38]](#footnote-38)

 Kagan doubts that the appeal to due proportion can be satisfactory. This is because he doubts that we can find a consistent, plausible way of understanding exactly what due proportion requires. Consider the following cases:

Mosquito Poison II: Using the smoke bomb would have polluted the river, causing an elderly man in the next town to die from drinking poisoned water.

Mosquito No-Donation II: I could have used the money spent on the smoke bomb to fit a water filter to the house of an elderly man in the next town. Without the water filter he dies from drinking poisoned water.[[39]](#footnote-39)

Intuitively, Mosquito Poison is impermissible while Mosquito No-Donation is permissible. But the two cases are proportionally identical. The harm countenanced is the same: an individual’s death. The cost of avoiding countenancing that harm is the same: a backyard full of mosquitoes. So how can we hold that one satisfies due proportion while the other does not?

 As Kagan points out, the obvious answer is to appeal to the Doctrine of Doing and Allowing. Mosquito Poison involves doing harm while Mosquito No-Donation involves merely allowing harm. Doing harm is harder to justify than merely allowing harm. This explains why the homeowner’s behaviour may be unjustified in Mosquito Poison but justified in Mosquito No-Donation even if the potential costs are equal, the potential harms are equal and neither case involves strictly intending harm.[[40]](#footnote-40)

Kagan does not think that appeal to the Doctrine of Doing and Allowing will work. First, he argued in the previous chapter that the doing/allowing distinction itself is untenable. If those arguments succeed then supporters of the Doctrine of Double Effect will not be able to appeal to the Doctrine of Doing and Allowing to shore up their understanding of due proportion. I do not think Kagan’s arguments against the Doctrine of Doing and Allowing succeed, although I will not argue for this here.[[41]](#footnote-41) Second, he does not think that we can give a satisfactory account of due proportion in cases of doing harm when that harm is not strictly intended. Kagan suggests two options: we might accept a simple counter-balancing requirement, holding that it is permissible to do harm that is not strictly intended if and only if the good aspects of the outcome outweigh the bad; alternatively, we might endorse a constraint against doing harm, even when the harm is not strictly intended, either so that the good must be several times the size of the bad or so that it is always forbidden to bring about harm. He claims that both these options are unsatisfactory. The strong constraint account cannot explain the permissibility of minimising deaths in cases like the classic Trolley case described earlier and:

Meteor: A meteor is racing towards a large city and can be deflected towards an area where it will cause fewer deaths.

The Strict Proportionally account cannot explain the impermissibility of minimising deaths in cases like:

Operation: An operation to save five will unavoidably release poison gas, killing a sixth patient who cannot be moved.

and

Meteor Explosion: The meteor can be deflected into the ocean but only by exploding a missile just above another inhabited area which will cause fewer deaths. [[42]](#footnote-42)

 Thus, Kagan argues, the defender of the Doctrine of Double Effect cannot accept either way of understanding the due proportion requirement for cases of bringing about harm that is not strictly intended. Neither of these interpretations leaves us with a requirement of due proportion that gives plausible results.

 Kagan claims that the defender of the Doctrine of Double Effect would believe it permissible to minimise harm in Meteor and Trolley “no matter how small the net gain in lives saved.”[[43]](#footnote-43) It seems to me quite plausible to deny this. Although we might think that it is permissible to divert the meteor from a city of three million to a town of five thousand, we might not think it permissible to divert it from 3 million towards two and a half million. It would be rather odd to think it permissible to divert it from 3 million towards three million minus one. Similarly, even if it seems permissible to turn the trolley from five towards one, it might not seem permissible to turn the trolley from two to one or to turn the trolley towards one to prevent the trolley from killing one person and breaking another’s leg. Thus Kagan is wrong to hold that the defender of the Doctrine of Double Effect must think it permissible to minimise harm in these cases no matter how small the net gain. Some, or even most, defenders of the Doctrine of Double Effect will have intuitions that are compatible with holding that the good must be several times the size of the bad for minimising harm to be permissible in cases like Meteor and Trolley. These cases do not rule out accepting a constraint against bringing about unintended harm that is stronger than simple counter-balancing.

 This does leave a puzzle about why it is impermissible to minimise deaths in the Meteor Explosion and Operation cases even when the numbers are the same as in the permissible versions of Meteor and Trolley, respectively. I think this is part of the target of the Doctrine of Double Effect or its replacement. We hope that the final version of the Doctrine of Double Effect will explain this difference. The need to explain such cases is a reason to suspect that the original Doctrine of Double Effect will need to be modified or replaced. Alternatively, we might retain the simple original Doctrine of Double Effect and add a third deontological distinction to explain these cases. Either way, appeal to the Doctrine of Doing and Allowing is still the simplest response to the original worry about how to understand due proportion with respect to the Doctrine of Double Effect. Our conclusion from considering Kagan’s argument should thus be: (1) the Doctrine of Double Effect can only give a plausible account of the due proportion constraint when combined with the Doctrine of Doing and Allowing; (2) the final version of the Doctrine of Double Effect –or its replacement - will need to distinguish Trolley and Operation as well as Trolley and Bridge or be accompanied by some third deontological distinction. The discussion above has been framed in terms of the original Doctrine of Double Effect, but it seems likely that these arguments would apply to any putative replacement of the Doctrine of Double Effect. Thus we should conclude that anyone who accepts the Doctrine of Double Effect or a replacement should also accept some the Doctrine of Doing and Allowing or a replacement.

 A parallel argument can be made with respect to the Doctrine of Doing and Allowing, showing that the Doctrine of Doing and Allowing needs something like a requirement of due proportion and that a plausible account of the constraint can only be given when the Doctrine of Doing and Allowing is combined with the Doctrine of Double Effect. This argument begins, like Kagan’s argument, by noting that the Doctrine of Doing and Allowing should not license unrestrained allowing of harm: there must be some limits on the permission to allow harm. This means that the Doctrine of Doing and Allowing needs something like the requirement of due proportion. We then observe that there is a challenge in setting out this requirement. We face difficulties explaining what conditions must be met for allowing harm to be permissible. Consider the following cases in which both Fred and I are being attacked by zombies:

One-gun: Fred has no weapon to defend himself. I have a weapon but do not give it to him because I am using it to defend myself. I escape. Fred dies.

Bait: I have many guns but due to my position I cannot shoot my way out. I could easily throw a gun to Fred who is closer to an exit and could use it to shoot his way out. If I do so, Fred will escape and I will die. If I do not give Fred a gun, the zombies will overpower him and the resulting feeding frenzy will allow me to escape. I do not give him the gun. I escape. Fred dies.

The same phenomenon, on a larger scale, is common in medicine/ medical research:

Shortage: 3000 people suffer from a disease. If we tried to treat this disease we would have a 95% probability of success but it would take a lot of resources. We decide to devote our resources to research into another disease which affects a different group of 100 000 people, raising our probability of curing that disease from 10% to 95%.

Experiment: 3000 people suffer from a disease. If we tried to treat this disease we would have a 95% probability of success. We do not treat the sufferers because observation of the deterioration in such a large data sample will be of invaluable help in developing treatment for another disease which affects a different 100 000 people, raising our probability of curing that disease from 10% to 95%.

It is permissible to refuse to save Fred’s life in One-Gun, but not in Bait. It is permissible to fail to treat the rare disease in Shortage but not in Experiment. The Doctrine of Doing and Allowing alone can’t explain this. All cases involve merely allowing harm. The probability of success and the potential cost to the agent and the harm to the victim is the same in each case. So any understanding of the constraints against allowing harm based simply on the Doctrine of Doing and Allowing plus risks of potential harms and benefits would give the same verdict in each case. We need something like the Doctrine of Double Effect to explain the constraints against allowing harm in Bait and Experiment. These are just two examples, but similar pairs are easy to construct or to find by a glance through the literature.

A few remarks are required about the interpretation of the phrase “due proportion”. Kagan states that we require “due proportion between the *various aspects* of the outcome countenanced by the agent.”[[44]](#footnote-44) So due proportion is not to be understood as simply a relationship between potential harm and potential costs. What it is for due proportion to be satisfied is for the behaviour to be justifiable given the potential cost to the agent, the potential harm to the victim, and any relevant facts about how the agent will countenance that harm, the relationship between the victim and the agent, what has happened in the past etc. Thus the phrase “due proportion” is misleading insofar as it suggests as an unvarying ratio between potential harms and potential costs. “Due proportion” is also misleading if it suggests an additional requirement on top of the requirement to respond appropriately to the various morally relevant factors. A moral system which combines a duty (of the appropriate strength) to promote the good with constraints (of the appropriate strengths) based on the various deontological distinctions plus appropriate recognition of any other morally relevant features will automatically cover the requirement for due proportion.[[45]](#footnote-45) Due proportion becomes a concern when we look at a deontological distinction in isolation and understand it as permitting certain types of behaviour. It is then we need the requirement of due proportion to make sure that this permission is not translated into unrestricted licence.

Consideration of the requirement for due proportion for the Doctrine of Double Effect and the Doctrine of Doing and Allowing shows that neither of these principles should stand alone. Without the Doctrine of Doing and Allowing, the Doctrine of Double Effect cannot give a consistent, plausible account of the limits of the permission to countenance merely foreseen harm. Similarly, without the Doctrine of Double Effect, the Doctrine of Doing and Allowing cannot give a consistent account of the limits of the permission to allow harm. These doctrines should be understood not as rivals, but as mutually supporting sister principles.

One might worry that this argument is simply a disguised version of the simple claim that some of our intuitions seem to reflect the Doctrine of Double Effect and some reflect the Doctrine of Doing and Allowing. I think it is more than that. My conclusion that neither the Doctrine of Doing and Allowing and the Doctrine of Double Effect are plausible alone does rely on intuitions about cases. It is open to someone to avoid this conclusion by accepting alternative verdicts about cases. This is a consistent position, although it would leave us with a systematically counter-intuitive moral system. The motivation for defending deontological distinctions is often in part a desire to reflect strongly held intuitions about particular cases. Insofar as this is true, the response of endorsing these systematically counter-intuitive implications would be at odds with the deontologist’s motivation. But there is more to this argument than simple intuition pumping. The point is that there is something misleading about arguments in which the Doctrine of Double Effect and the Doctrine of Doing and Allowing are presented as rivals. Normally, when we argue for the Doctrine of Double Effect we do so while tacitly assuming the truth of the Doctrine of Doing and Allowing (or vice versa). We take it for granted that there are much stronger constraints against doing harm than against allowing harm and understand the proposed distinction between intended and foreseen harm in this light. Consider the pairs of cases that are used to motivate the Doctrine of Double Effect. In Trolley and Bridge we must choose whether to kill one person to save five. We do not try to motivate the Doctrine of Double Effect by looking at cases where we must choose whether to kill one to save two, because we assume that it is not permissible to kill one to save two, even when the killing would be merely foreseen. We tacitly assume that there is a constraint against killing and take this into account when choosing the case we use to support the Doctrine of Double Effect.[[46]](#footnote-46) This is fine if the Doctrine of Double Effect is being understood as a supplement to the Doctrine of Doing and Allowing.[[47]](#footnote-47) It is unacceptable if the Doctrine of Double Effect is proposed as an alternative to the Doctrine of Doing and Allowing.

A little further elaboration is needed here. Earlier, I suggested that I would be happy to accept a combination of the Doctrine of Doing and Allowing, the Doctrine of Double Effect and some third principle which explains cases like Meteor Explosion. It might be wondered whether I’d be happy to accept other explanations of the cases that look quite different from the standard the Doctrine of Double Effect and Doctrine of Doing and Allowing. If the arguments for my first and second premises are right, we need at least one Double Effect/Doing and Allowing style principle built on an author-agent-relative deontological distinction. This principle must be built on features of the agent’s special relationship to a certain subset of the consequences of her behaviour. However, the arguments I’ve given are compatible with the other principle being replaced by something quite different: it might be a victim-centred principle; it might be a set of multiple overlapping principles.[[48]](#footnote-48)

**Conclusion**

Anyone who endorses a Nonconsequentialist account of right action must also accept some deontological distinction such as the Doctrine of Double Effect or the Doctrine of Doing and Allowing or some replacement. Without some such distinction, the Nonconsequentialist is unable to make the crucial distinction between respecting a value and promoting a value. Her view collapses into Consequentialism. The problem is not just that her view is extensionally equivalent with some Consequentialist theory, but that she is unable to make some moral claims that she wishes to make. For example, she is unable to say that an agent must not lie even if this is the best way to reduce overall misrepresentation or that I should refrain from violating rights even if violating rights would reduce the amount of rights violated. She cannot say that I should not cheat my customers if this is the best way to reduce how much they are cheated overall.

There is reason to think the Nonconsequentialist who accepts some deontological distinction for this purpose should accept either the Doctrine of Double Effect or the Doctrine of Doing and Allowing or some replacement. First, there is no obvious alternative candidate that can provide the author-agent-relative constraints needed to avoid Consequentialism. Second, the Nonconsequentialist constraints that we actually see put forward seem to appeal to the deontological distinctions underlying the Doctrine of Double Effect or Doctrine of Doing and Allowing or both. Finally, an Nonconsequentialist theory that includes the Doctrine of Double Effect or Doctrine of Doing and Allowing or a replacement has a payoff that is lacked by theories appealing to alternative distinctions: for the same justificatory work it produces the additional benefit of explaining widespread and deeply held intuitions about a set of cases.

Anyone who endorses either the Doctrine of Doing and Allowing or a replacement or the Doctrine of Double Effect or a replacement should accept both doctrines or their replacements. Without the Doctrine of Doing and Allowing or its replacement, the Doctrine of Double Effect cannot give a consistent, plausible account of the limits of the permission to countenance merely foreseen harm. The same is true, mutatis mutandis, of the Doctrine of Doing and Allowing. These Doctrines are not rivals but mutually supporting sister principles.

It follows that anyone who endorses a Nonconsequentialist account of right action should endorse both the Doctrine of Double Effect and the Doctrine of Doing and Allowing or their replacements. There is a difference in the strength of my first conclusion and the second and third conclusions. My first conclusion is that any Nonconsequentialist *must* endorse some deontological distinction. Unless she does so, she will unable to draw the crucial distinction between respecting and promoting and thus her theory will be incoherent. The second and third conclusions combine to suggest that if a Nonconsequentialist is going to endorse a deontological distinction, she *should* endorse both the Doctrine of Double Effect and the Doctrine of Doing and Allowing or replacements. I take it that a Nonconsequentialist may avoid these two later conclusions by agreeing to bear various costs, for example by accepting certain implausible implications about cases.[[49]](#footnote-49) In contrast, if my arguments are correct, it is not open to the Nonconsequentialist to avoid the first conclusion.

This paper is not an argument for the Doctrine of Double Effect and the Doctrine of Doing and Allowing. Instead, it is an argument for the importance of the investigation and defence of these doctrines for Nonconsequentialists. As noted in the introduction, many Nonconsequentialists, in conversation if not in print, express a kind of relaxed scepticism about the Doctrine of Double Effect and the Doctrine of Doing and Allowing. They are dubious about whether these doctrines can stand up under scrutiny, but are not alarmed by this. If I am right, such relaxed scepticism is not an option for Nonconsequentialists. If defence of these doctrines is not possible, Nonconsequentialism itself is thrown into doubt.

Someone might wonder whether it would be more direct to skip the defence of the Doctrine of Double Effect and the Doctrine of Doing and Allowing, moving straight to an account of which values must be respected rather than promoted and what doing so entails. This strategy is compatible with my arguments, although there may be strategic reasons tostart with a defence of the Doctrine of Double Effect and the Doctrine of Doing and Allowing [[50]](#footnote-50), which can then be used as the model for a broader distinction between respecting and promoting values, rather than jumping straight into the larger project. In any case, even those who move straight to the larger project would need to explain and defend a distinction between respecting and promoting and thus at least some deontological distinction, most plausibly both the Doctrine of Double Effect and the Doctrine of Doing and Allowing.[[51]](#footnote-51)

1. I thank audiences at the University of Hull, the University of Southampton and at the Workshop on the Moral Significance of Intentions at the University of Leeds. I would also like to thank Chris Bennett and Anton Markoc for detailed comments. [↑](#footnote-ref-1)
2. I thank Alex Gregory for pointing out that the way in which I initially formulated this claim had unfortunate implications and required revision. [↑](#footnote-ref-2)
3. Judith Jarvis Thomson, 1976. “Killing, Letting Die, and the Trolley Problem.” *The Monist 59* (2), 1976: p. 207. The original trolley case was designed by Philippa Foot (“The Problem of Abortion and the Doctrine of Double Effect”. In: *Oxford Review*, No. 5 (1967). Reprinted in: *Killing and Letting Die*, Steinbock and Norcross (ed), p. 270.) In her case the *driver* of the runaway trolley must decide whether to turn the trolley or not. [↑](#footnote-ref-3)
4. Thomson, “Killing, Letting Die, and the Trolley Problem”, p. 207-8. [↑](#footnote-ref-4)
5. Another pair of cases that the Doctrine of Double Effect is used to explain is Terror Bomber/ Tactical Bomber. These are pervasive in the literature on the Doctrine of Double Effect (see for example, Shelly Kagan, *The Limits of Morality*, (New York, Oxford University Press, 1989), p. 162) but I have been unable to find a definitive first reference. [↑](#footnote-ref-5)
6. Prominent amongst these is the Closeness Problem. What should we say about intuitively impermissible cases in which what the agent strictly needs for her plans to succeed is not the harm to the agent. For example, the Terror Bomber does not actually need the children to be killed, but merely for them to appear dead long enough to sap the morale of the enemy. See, for example, Warren Quinn, “Actions,intentions,and

consequences: the doctrine of double effect”, *Philosophy and Public Affairs,* 18 (1989), pp. 338-39; J. M. Fischer, M Ravizza and D Copp, “Quinn on Double Effect: The Problem of ‘Closeness’”, *Ethics,* 103(1993), pp. 711-12; Jeff McMahan, “Revising the Doctrine of Double Effect”, *Journal of Applied Philosophy*, 11 (1994): 201-212. It has been suggested to me that the Doctrine of Double Effect should not be understood as an attempt to explain the Trolley and Bridge case, because the Closeness Problem means it is obviously unable to give asymmetrical results in these cases. It seems to me that at least on our intuitive understanding, the agent in Bridge has objectionable intentions with respect to the large man but the agent in Trolley does not have objectionable intentions with respect to the single person. It is not obvious that the Closeness Problem cannot be resolved in a way that reflects this. There is certainly an ample literature in which the DDE is understood as an attempt to explain such cases. I thank Anton Markoc for this point. For other objections to the Doctrine of Double Effect, see, for example, Frances M. Kamm, “The Doctrine of Double Effect: Reflections on Theoretical and Practical Issues”. *Journal of Medicine and Philosophy* 16 (1991):571-585; T.M. Scanlon, ‘Intention and Permissibility’. *Proceedings of the Aristotelian Society*, *Supplementary Volumes,* Vol. 74 (2000): 301-317. [↑](#footnote-ref-6)
7. Sometimes it may be difficult to say whether a given principle is a replacement for the Doctrine of Double Effect or a modification of it. This does not matter for my purposes. [↑](#footnote-ref-7)
8. Frances Kamm, Intricate Ethics. (New York, Oxford University Press. 2007), Chapter 5. [↑](#footnote-ref-8)
9. In this paper, I will not attempt to evaluate whether the Doctrine of Double Effect or some alternative principles does the best job of explaining the intuitions in question. [↑](#footnote-ref-9)
10. The classic examples are Foot’s Rescue I and II: in Rescue I, you choose to rescue five people instead of one person when you cannot rescue both; in Rescue II, you drive over one person on the way to rescue five. (Philippa Foot, "Killing and Letting Die," Jay Garfield, ed., Abortion: Moral and Legal Perspectives (Amherst, Mass.: University of Massachusetts Press, 1984), pp. 179.) For various reasons, I prefer Push and Non-Interpose, in which you have been bitten by a snake and need to get to hospital immediately. In Push, a boulder is blocking your path and you push it towards Victor who is trapped on the hillside. In Non-Interpose, the boulder is already rolling towards Victor and you could interpose your car in the boulder’s path, but refuse because this would delay your trip to hospital. I use Push and Non-Interpose in various places including Woollard, Doing and Allowing Harm (Oxford University Press, forthcoming). They are modifications of cases proposed by Jonathan Bennett (‘Morality and Consequences’. In: *The Tanner Lectures on Human Values*, Sterling McMurrin (ed.) Salt Lake City, University of Utah Press. 1981, p. 52-3). [↑](#footnote-ref-10)
11. Replacements for the Doctrine of Doing and Allowing are less common. Those who are sceptical of this Doctrine have tended to conclude that there is no morally significant distinction in this area rather than proffering an alternative. (See Bennett, *The Act Itself* (Oxford: Oxford University Press, 1995) Shelly Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989), Michael Tooley, *Abortion and Infanticide* (Oxford: Clarendon, 1983) and James Rachels, ‘Active and Passive Euthansia’, *New England Journal of Medicine* 292, (January 1975): 78-80. ) Nonetheless, some authors have put forward principles that can be aptly described as alternatives to the Doctrine of Doing and Allowing. (See Kai Draper’s rights based theory and Timothy Hall’s three category distinction (Kai Draper, ‘Rights and the Doctrine of Doing and Allowing’, *Philosophy and Public Affairs* 33 (July 2005): pp. 255-280; Timothy Hall, ‘Doing Harm, Allowing Harm, and Denying Resources’, *Journal of Moral Philosophy* 5 (2008): pp. 50-76).) [↑](#footnote-ref-11)
12. I thank Anton Markoc for helping me to clarify my thoughts on this. [↑](#footnote-ref-12)
13. Philip Pettit, “Consequentialism” in Singer’s *A Companion to Ethics*, p. 231. [↑](#footnote-ref-13)
14. Ibid, p. 232-233. [↑](#footnote-ref-14)
15. Ibid, p. 237. Elsewhere, Petit does suggest that for some valuable properties it may sometimes be unclear in practice what a Nonconsequentialist response to these values requires. He uses happiness as an example. His worry appears not to be based on the concerns about what it would take for an action to honour happiness, but on the possibility of cases where there is uncertainty about the results of action: “Non-consequentialists do not tell us how to choose when none of the available options is going to display the relevant value for sure” (p. 233). [↑](#footnote-ref-15)
16. David McNaughton and Piers Rawlings, “Honoring and Promoting Values”, *Ethics*, 102 (1992), pp. 835-43, p. 836. [↑](#footnote-ref-16)
17. Pettit, “Consequentialism”, 233 [↑](#footnote-ref-17)
18. Pettit, “Consequentialism” 237 [↑](#footnote-ref-18)
19. McNaughton and Rawlings “Honoring and Promoting Values”, p. 838 [↑](#footnote-ref-19)
20. Ibid, p, 839. [↑](#footnote-ref-20)
21. Ibid, p. 838. [↑](#footnote-ref-21)
22. McNaughton and Rawlings, “Honoring and Promoting Values”, p. 839 [↑](#footnote-ref-22)
23. Suppose we have a rule such as (AR) For all x, x is required to ensure that x does not lie. We agent-neutralize AR, by replacing any occurrences within the brackets of the initial bound variable ‘x’ with a new variable, z, bound to a new universal quantifier within the brackets. This gives us a new agent-neutral rule, (AN) For all x, x is required to ensure that (for all z, z does not lie). See David McNaughton and Piers Rawling, ‘Agent Relativity and the Doing-Happening Distinction’, Philosophical Studies 63 (1991): 167-185. [↑](#footnote-ref-23)
24. I thank Pekka Väyrynen for this point. [↑](#footnote-ref-24)
25. I thank Kurt Sylvan and Dawn Wilson for raising this point. There may be some values, for example, humour, where the appropriate response is not aptly described as “respect”. The values that theories of morally right action are concerned with will generally be values to which the appropriate response is respect. However, if not, we can treat ‘respect’ as a term of art and stipulate that it includes these other non-promotional ways of responding to value. [↑](#footnote-ref-25)
26. The following passage was originally written in terms of countenanced deception rather mispresentation. It was suggested to me that an agent might count as lying even if she does not bring about – or even believe that she will bring about - deception. I accept that we can lie even if we do not expect to be believed. However, there is some consequence which must be both foreseen and intended for someone to count as lying: a person being presented with an untruth as if it were truth. It is this that I intend to pick out with the term “misrepresentation”. I thank Kamila Pacovska for pressing me on this. [↑](#footnote-ref-26)
27. Elizabeth Anscombe argues that the Doctrine of Double Effect is “essential” for Christian Ethics to be able to recognize prohibitions because “…if I am answerable for the foreseen consequences of an action or refusal, as much as for the action itself, then these prohibitions will break down. If someone innocent will die unless I do a wicked thing, then on this view I am his murderer in refusing: so all that is left to me is to weigh up evils.” (Anscombe “War and Murder”, in Walter Stein (ed.), *Nuclear Weapons: A Catholic Response* (London, 1961), pp. 44-62, p. 57.) [↑](#footnote-ref-27)
28. I will not normally count as lying if I bring it about that my mother utters a falsehood to my father. For discussion on these additional conditions see Bennett *The Act Itself* (Oxford: Oxford University Press, 1995): 4-6. [↑](#footnote-ref-28)
29. Jonathan Dancy, “Has anyone ever been a Non-Intuitionist”, in Thomas Hurka (ed) *Underivative Duty: British Moral Philosophers from Sidgwick to Ewing* (Oxford University Press, 2011), p. 91. [↑](#footnote-ref-29)
30. Dancy, “Has anyone ever been a Non-Intuitionist” p. 95. [↑](#footnote-ref-30)
31. David McNaughton and Piers Rawling, ‘Agent Relativity and the Doing-Happening Distinction’, Philosophical Studies 63 (1991): 176-177. [↑](#footnote-ref-31)
32. C.F. James Dreier, ‘Structures of Normative Theories’, The Monist 76 (1993):

22–40; Jennie Louise, ‘Relativity of Value and the Consequentialist Umbrella’, The Philosophical

Quarterly 54 (2004): 518–536; Douglas W. Portmore, ‘Consequentializing Moral

Theories’, Pacific Philosophical Quarterly, no. 88 (2007): 39–73; Campbell Brown, ‘Consequentialize This!’, Ethics, 121 (2011): 749-777; David McNaughton and Piers Rawling, ‘Agent Relativity and the Doing-Happening Distinction’, Philosophical Studies 63 (1991): 167-185. [↑](#footnote-ref-32)
33. It seems plausible to me that not all values are such that we should promote them if we can do so while respecting them. Indeed, as noted above, I am open to the possibility that there are some values where there is no natural way to understand what it is to promote that value. I thank Joseph Raz for pressing me on this. [↑](#footnote-ref-33)
34. Kagan, *The Limits of Morality*, pp. 151-165 [↑](#footnote-ref-34)
35. Ibid, 83-127. [↑](#footnote-ref-35)
36. Jeff McMahan also argues that Nonconsequentialists must endorse the Doctrine of Doing and Allowing and that this may be problematic for those who reject the Doctrine of Double Effect. However, his argument differs substantially from mine: McMahan’s argument is based on showing that a common objection against the Doctrine of Double Effect also undermines the Doctrine of Doing and Allowing. Jeff McMahan, “Intentions, Permissibility, Terrorism, and War”, pp. 349–352. [↑](#footnote-ref-36)
37. Kagan, *The Limits of Morality*, (New York, Oxford University Press, 1989), p. 151. [↑](#footnote-ref-37)
38. Ibid, p. 152. [↑](#footnote-ref-38)
39. Ibid, p. 154. I have modified Kagan’s original cases to equalise for distance and manner of death. Some people might have the intuition that it is permissible to use the smoke bomb in both these cases. Others might have the intuition that it is impermissible in both cases. The first group should imagine progressively greater harms being caused as side effects. The second group should imagine progressively more serious costs for the agent in refraining from using the smoke bomb. This process should produce a pair of cases in which the Mosquito Poison behaviour is intuitively impermissible while the Mosquito No-Donation behaviour is intuitively permissible. [↑](#footnote-ref-39)
40. Ibid, p. 155. The standard Doctrine of Doing and Allowing includes both special constraints against doing harm to individuals for the greater good and special permissions for agents to allow harm to avoid costs to themselves. We need both aspects of the Doctrine of Doing and Allowing to give a satisfactory account of due proportion. The examples given above focus on justifying countenancing foreseeable harm for the benefit of the agent, but it is just as easy to produce a pair of example where the agent wishes to countenance foreseeable harm for the greater good. I thank Victor Tadros for pressing me on this. [↑](#footnote-ref-40)
41. Kagan claims that the distinction between doing and allowing falls apart under scrutiny. Any putative way of drawing the distinction will either give counter-intuitive results or fall victim to vicious circularity by drawing on normative conclusions (pp. 92-111, p. 155). For an analysis of the doing/allowing distinction which is neither implausible nor trivial, see Woollard, *Doing and Allowing Harm*, (OUP, 2015). Kagan also argues that the Doctrine of Doing and Allowing, taken seriously, condemns too much because it must count some cases of withdrawing aid as cases of doing harm (pp. 106-110, p. 155). I suggest that this argument depends upon confusing the doing/allowing distinction and the action/inaction distinction. For arguments that the doing/allowing distinction and the action/inaction distinction are not the same, see Foot, The Problem of Abortion and the Doctrine of Double Effect, p. 26; McMahan, “Killing, Letting Die, and Withdrawing Aid.” *Ethics,* 103 (Jan., 1993), p. 251-252, and Woollard, “If This is My Body: A Defense of the Doctrine of Doing and Allowing,” Pacific Philosophical Quarterly 94 (2013): 318-319. [↑](#footnote-ref-41)
42. Kagan, *The Limits of Morality*, pp. 158-161. [↑](#footnote-ref-42)
43. Kagan, *The Limits of Morality*, p. 159. [↑](#footnote-ref-43)
44. Kagan, *The Limits of Morality*, p. 152 (Italics added.) [↑](#footnote-ref-44)
45. Kagan suggests that “There is some reason to say that due proportion will require nothing at all when it comes to unintended harm that is merely allowed…. It is the interplay of the pro tanto reason to promote the good and the appeal to cost that will yield a set of options and thresholds, determining when it is permissible to allow harm as a mere side effect, and when it is not permissible… Talk of a requirement of due proportion may mislead us, for it may suggest that some additional work is going to be done by something other than the appeal to cost and the pro tanto reason to promote the good.” (*The Limits of Morality,* p. 157). [↑](#footnote-ref-45)
46. I thank Nick Zangwill for showing I needed to extend my comments on this issue. [↑](#footnote-ref-46)
47. See T.M. Scanlon for a defence of the practice of holding some normative assumptions fixed while assessing others. (T.M. Scanlon, What *We Owe to Each Other*. Cambridge, Mass.: Harvard University Press. 1998, p. 213-215). [↑](#footnote-ref-47)
48. See T.M. Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Harvard University Press, 2010). I thank Daniel Elstein, Anton Markoc and Victor Tadros whose comments made me clarify this. [↑](#footnote-ref-48)
49. I thank a member of the audience at the Workshop on the Moral Significance of Intentions, 21-22 February 2014, Leeds for pressing me on this. [↑](#footnote-ref-49)
50. It can be very difficult to argue that a certain way of acting is the best way to respect a given value. For example, there is a classic defence of deontological constraints which claims that agents have greater inviolability if it is impermissible to harm them even if this is necessary to prevent others from being harmed. Shelley Kagan notes that such agents may have higher inviolability but they have lower “saveability” than under an alternative principle that maximizes harm prevention. (Kagan, 1991, 919-920). This can be understood as a disagreement about which principle does the best job of respecting the value of persons. Disputes of this kind suggest that the concept of respecting may be initially too vague. This would count in favour of starting by defending the Doctrine of Double Effect and the Doctrine of Doing and Allowing using these concrete principles to give an account of the respecting/promoting distinction. I thank Pekka Väyrynen and Gerald Lang for the objection and suggested response, respectively. [↑](#footnote-ref-50)
51. I thank Chris Bennett for pressing me on this. [↑](#footnote-ref-51)