Euthanasia, Intentions, and

The Doctrine of Killing and Letting Die^{*}

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> Kai-Yee Wong The Chinese University of Hong Kong

1. Introduction

In 1996, the 9th Circuit Court of Appeal of United States ruled that a Washington law banning physician-assisted suicide was unconstitutional. In the same year, the 2nd Circuit found a similar law in New York unconstitutional. One year later, the U.S. Supreme Court reversed both rulings, saying that there was no constitutional right to assisted suicide. However, the Court also made plain that they did not reject such a right in principle and that "citizens are free to press for permissive reforms... through legislation or referendums" (Dworkin 1997: 6). (The unanimity of the vote was therefore, as Dworkin notes (1997:1), deceptive.) Oregon chose to do so and legalized physician-assisted suicide in 1997. Oregon's "Death with Dignity Act" is one of the latest expressions of a medical and legal consensus that has gradually emerged in U.S. and some European countries over the past two decades, that is, the consensus that recognizes the right of terminally ill and competent patients to receive assistance with suicide.¹

Physician-assisted suicide — killing oneself by ingesting prescribed lethal medication — is one of a spectrum of life-ending acts in medical context, ranging from foregoing life-sustaining treatment to prescribing high doses of pain-relieving

medication to active euthanasia, the performing of which involves a physician directly administering lethal medications. If the consensus behind the Oregon legislation is seen as a development of the wider and growing one that "termination of life support is legitimate under certain circumstances" (Meisel 1992), should a similar consensus on active euthanasia be expected to emerge? ² If so, how will or should one see the distinction between active and passive euthanasia, a distinction regarded as clear and significant by many if not most in the medical and legal professions, as well as among the general public?

It is not the deeply controversial issue of physician-assisted suicide but rather the distinction just mentioned that is the concern of this paper, but I have started off with the former in order to give an "old" topic — namely, James Rachels' famous arguments concerning euthanasia in his well well-known article "Active and Passive Euthanasia" (1975) — a sense of relevance to the recent debate over physician-assisted suicide. ³ For one sort of complexity in this debate concerns precisely the distinction between active and passive euthanasia and the related distinction between killing and letting die. In his seminal article, Rachels offered a critique of the idea that there is a moral difference between active and passive euthanasia, arguing that it rests on the mistaken traditional *doctrine of killing and letting die*. In some subsequent writings, he defended his view by taking issue with the idea that *intention* is not relevant to the moral assessment of action. The following pages will offer a critical assessment of Rachels' overall position on the issues of the distinction of passive and active euthanasia, the doctrine of killing and letting die, and the moral relevance of intention.

To provide the context for our critical assessment, it is well to begin with a clarification of the interplay of the three issues by looking at a debate between Rachels and two representative critics.

2. Overview of a debate

The following 1973 policy statement from the House of Delegates of the American Medical Association, now familiar among bio-ethicists, was cited and attacked by Rachels in his 1975 article:

The intentional termination of the life of one human being by another - mercy killing - is contrary to that for which the medical profession stands and is contrary to the policy of the American Medical Association.

The cessation of the employment of extraordinary means to prolong the life of the body when there is irrefutable evidence that biological death is imminent is the decision of the patient and/or his immediate family. The advice and judgment of the physician should be freely available to the patient and/or his immediate family.

This statement, Rachels thinks, endorses the conventional idea that there is an important moral difference between active and passive euthanasia, according to which "it is permissible, at least in some cases, to withhold treatment and allow a patient to die, but it is never permissible to take any direct action designed to kill the patient" (Rachels 1975: 112). Rachels' most general and central objection to this conventional idea is that it rests on the mistaken traditional "doctrine of killing and letting die", as it is sometimes called, the doctrine that there is a moral difference between killing someone and letting him die. That this doctrine is mistaken can be shown, he argues,

by considering the following pair of *equalized cases* (cases equalized for all facts besides some; in this case, the bare difference between killing and letting die): ⁴

- (a) Smith kills his six-year-old cousin for the sake of gaining a large inheritance. He sneaks into the bathroom and drowns the child.
- (b) Jones sneaks into the bathroom intending to drown the child for the same reason, but happens to see the child slip and fall face down in the water. Jones is delighted. He could have saved the child, but he lets him die.

Rachels thinks that the two men's acts were equally reprehensible from a moral point of view. For they acted from the same motive and had the same end in view. If Jones pleaded, in his own defense, that he didn't kill the child but just let him die, such a defense, Rachels says, would carry no weight at all and can only be regarded as a "grotesque perversion of moral reasoning" (Rachels 1975: 116). This shows that killing and letting die are morally equivalent per se. It follows that active euthanasia, the act of putting to death a patient suffering from incurable conditions, is morally on a par with passive euthanasia, the act of omission whereby the patient is allowed to die. Thus, the AMA policy is seriously flawed.

Let us look at two earlier representative criticisms of Rachels' view. Bonnie Steinbock (1979) argues that Rachels has mistakenly read into the AMA statement a support of the distinction between active and passive euthanasia. The statement contains, she argues, an unmistakable objection to euthanasia, both active and passive euthanasia, but cessation of life-supporting treatment is not always or necessarily passive euthanasia, understood as *intentionally* allowing a patient to die (Steinbock 1979: 122). In other words, since in some situations the cessation of treatment is not a decision to intentionally terminate a life, it should be conceptually distinguished from

passive euthanasia. Steinbock identifies two such situations: the case in which the doctor accedes to the patient's request to refuse treatment and the case in which continuing treatment will cause more discomfort and has little hope of benefiting the patient. In the first situation, the cessation of treatment concerns the recognition of the patient's right to refuse treatment, and in the second situation, the cessation is a decision not to inflict more pain without a reasonable hope of recovery. So, there can be a point to the cessation of treatment in such situations other than "an endeavor to bring about the patient's death". Therefore, the "blanket identification of cessation of treatment with the intentional termination of a life is inaccurate" (Steinbock 1979: 121). The AMA's support of cessation of treatment is thus not inconsistent with its rejection of euthanasia.

Similarly Thomas D. Sullivan (1977) finds Rachels' interpretation of the policy statement disputable. The position of the AMA resolution, Sullivan argues, is that while intentional termination of life is objectionable, withdrawal of extraordinary means of preserving life, as opposed to ordinary means, need not be prompted by an intention to bring about death. It may be prompted, for example, by the physician's unwillingness to submit a patient to further treatment that offers little hope of recovery and is excruciating. So, the traditional position represented by the AMA policy is "not a doctrine that rests on some supposed distinction between 'active' and 'passive euthanasia'". The position is not incoherent as it is "simply a prohibition against *intentional killing*, which includes both direct actions and malevolent omissions" (Sullivan 1977:137).

To meet Sullivan's (and in effect also Steinbock's) challenge, Rachels (1978) puts forward a "no-relevance" view of the moral relation between act and intention, maintaining that the latter does not have a role to play in the moral evaluation of the former. Sullivan's position, he suggests, rests on the traditional view that there is a very definite sort of relation between the moral quality of an action and the relevant intention. According to this view,

An act which is otherwise permissible may become impermissible if it is accompanied by a bad intention. The intention makes the act wrong. (Rachels 1978: 140)

Again with a pair of equalized cases, Rachels tries to show that such a position is dubious.

- (c)Jack visits his sick and lonely grandmother and cheers her up for the afternoon. He does it because he loves her. Jack knows that his visit might influence the making of her will, in his favor, but that is no part of his plan.
- (d) Jill also visits the grandmother and provides an afternoon's cheer. But her concern is that the old lady will soon be making her will. Jill wants to be included among the heirs.

Since Jack and Jill did the same thing, spending an afternoon cheering up their sick grandmother, we must say, Rachels argues, that what either did was as right, or wrong, as the other. That Jill had a bad intention may cast a reflection on her *character*, but it does not give a reason for us to assess her act differently from Jack's. The example suggests that "the intention is not relevant to deciding whether the *act* is right or wrong, but instead it is relevant to assessing the character of the person who does the act, which is very different" (Rachels 1978: 141).

3. The method of equalized cases: used against Rachels

The no-relevance view about intention, however, would oblige Rachels to make implausible judgments regarding actions in some situations. I shall try to show this by means of the very method that characterizes Rachels' arguments as stated above.

Both in launching his attack on the moral distinction between passive and active euthanasia and in replying to Sullivan's objections, Rachels relied on the use of pairs of equalized cases. ⁵ This *method of equalized cases*, as we may call it, is characterized by two features. The first is the presence of a *bare difference* between the two cases equalized. In the Smith-Jones example, the case of Smith is the same as the case of Jones, save the bare difference between act (killing the cousin) and omission (letting the cousin die). Similarly, in the Jack-Jill example, the only unequalized fact is that whereas Jack's action was prompted by a good intention, Jill's was by a bad one. The other feature concerns our moral responses: presumably the two contrasting acts in question are to invoke in us *equivalent* moral responses. It is hardly necessary to point out that Rachels expected us to agree with him that what Smith did was as atrocious as what Jones did, and what Jill did was as good as what Jack did. These two features of the method are supposed to have a combined force such that we are led to think that in the relevant example the bare difference between the two cases cannot be morally significant.

The distinction between killing and letting die is an instance of a more general distinction, usually referred to as "the distinction between act and omission" (or "act and inaction" or "doing and allowing" or "making and allowing"). Philosophical discussions on this general distinction have commonly focused on the soundness of the *doctrine of act and omission*, according to which there is some moral difference between deliberately bringing about a result and omitting to act in circumstances in

which it is foreseen that as a consequence of the omission the same result occurs. In what follows, I shall sometimes talk in terms of the more general distinction of act and omission, instead of that of killing and letting die.

Using the method of equalized cases, let us now try to turn the table on Rachels. Consider the following example, which involves two kinds of differences that according to Rachels are morally *in*significant: a difference in terms of act and omission and a difference in terms of intention:

- (e)Sam's cousin, Mary, who has a liver problem, has a tendency to become an alcoholic. Fortunately Mary's income only allows her to drink meagerly. Sam stands to gain a hefty inheritance if anything happens to their cousin. Knowing about Mary's tendency and her liver problem, Sam provides Mary with an abundant supply of alcohol that Mary cannot otherwise afford. This ends up killing her, as foreseen by Sam.
- (f) Mary is Joe's cousin. He knows about her liver problem and her alcoholic tendency. He also knows that she has been drinking obsessively and foresees that it is going to cost her her life. He does not intervene; not that he has in his view the inheritance. Joe thinks that Mary, being a grown-up, should make her own choices and that it would be unduly paternalistic for him to try to tell her how she should live her life. Mary later dies of liver failure. If Joe had intervened, Mary would not have died.

The bare difference that is relevant between (e) and (f) is a combination of two facts: (i) that Sam kills Mary but Joe only lets her die and (ii) that there is a malicious intention behind Sam's action but not Joe's. Since, according to Rachels, a person's intention is irrelevant to determining whether his or her action is right *and* the distinction between

act and omission is morally insignificant, he should think that the bare difference between (e) and (f) is irrelevant as far as our moral assessment of Sam's or Joe's action is concerned. Thus, from his point of view, Joe's act would be morally comparable to Sam's. Such an assessment, however, seems to me perverse or highly contestable at best. We would all agree, I believe, that Sam did something terribly wrong. What he did, prompted by a sinister motive, is tantamount to killing by poisoning. In contrast, Joe did, most of us would say, nothing reprehensible. He refrained from intervening out of his respect of Mary's autonomy, rather than a desire for personal gain. Even if we conceded that Joe was wrong to let Mary die, most of us, I think, would say that Sam's behavior was much *worse*. However, by reason of consistency, Rachels not only should think badly of Joe, but should also think that his act was wrong in a way comparable to Sam's. Such an assessment would seem unacceptable to most of us.

4. Intentions, double effect, and IAUO cases

I have tried to show that Rachels' *overall* position is questionable. The root of the problem, as I shall try to explain in the remaining of this paper, is that the two issues Rachels has dealt with separately — the issues of the moral relevance of intention and the doctrine of act and omission —are subtly connected.

Before we go into that, it is worthy noting how implausible Rachels' norelevance view would seem if we consider such cases as the following one inspired by Richard Brandt (1975: 318):

(g)Pilot A is extremely depressed and in a suicidal mood when, flying over a heavily populated area by the sea, his single-seater airplane goes out of control. If he decides to bail out and save himself, his plane will fall right down and kill a good many civilians. Thinking that life is not worth living anymore, he decides against bailing out. And prompted by the peculiar thought that a decent-looking dead body is more desirable than a burnt one or just ashen remains, he steers the plane so that it plunges into the sea and kills himself.

(h)Pilot B is also flying over a populated area when his plane goes out of control. Like Pilot A, he has the choice of bailing out at the cost of certain death for a good many civilians. He heroically decides to stay in the plane and steer it towards the sea, knowing that it will cost his life. The plane plunges into the water.

What Pilot B did was admirable. What about Pilot A? We may or may not think he did something immoral. It depends on our view of the morality of suicide. But we certainly would not say that he did something heroic or admirable. Note that the only (relevant) difference between the two cases is that only B's action had an honorable intention. If Rachels is right that intentions are irrelevant to the moral assessment of actions, we will be left without an account of our moral responses to the present cases. Our judgment that the two pilots' acts differ in their moral qualities shows that Rachels' view on the irrelevance of intentions to the evaluation of moral acts is contestable, at least on intuitive grounds. It also becomes explicable why Rachels' view would entail a perverse assessment regarding the case of Sam and Joe: on his view, Joe's intention cannot make his act less questionable than Sam's.

Double effect

By way of discussing briefly the traditional doctrine of double effect, I shall now explain how Rachels' rejection of the moral distinction between killing and letting die is marred by his no-relevance view on intention. The doctrine of double effect aims to provide guidelines for determining the permissibility of a certain kind of action in a way that recognizes the role of intention in the moral assessment of actions. Many of our acts have both good and bad effects. This gives rise to the question of when an action of this kind is morally permissible. On a crude formulation, the doctrine states that it is wrong to *intentionally* bring about a bad consequence but permissible to perform an action in pursuit of a good when the resulting harm is foreseeable but not intentionally procured. Examples like the following pair of cases are typically used to illustrate the principle.⁶ In the case of Strategic Bombing, a pilot bombs a military installation, knowing that he will kill unarmed civilians who live nearby, but he does not regard killing them as his intended goal. Many of us see this kind of military action as easier to justify than Terror Bombing, where the pilot intentionally and deliberately kills the innocent in order to demoralize the enemy.

Most of us may also agree that Terror Bombing is more difficult to justify because of the intention involved. This, however, is not entirely uncontroversial. Jonathan Bennett has objected that the Terror Bomber does not, in the strict sense, intend that the civilians actually die. This can be shown by considering how he would react if a miracle happened such that the civilians killed came back to life after the bombing—he would be more likely to feel glad than frustrated (Bennett 1981). This line of objection threatens to trivialize the doctrine of double effect. If the kind of re-description of intention as seen in Bennett's example is allowed, the doctrine will permit almost any action, provided the re-description is imaginative enough. To go into a detailed discussion here will take us too far afield. For our purposes, a plausible idea is worth noting: it is important to take into account how *closely* the intended effect is connected in *causal* terms to the foreseen effect, or, to put it differently, to take into account the degree of inevitability of causing one effect without causing the other.⁷ The idea, in other words, is that such a connection is much closer in Terror Bombing than in Strategic Bombing, and this accounts for, at least partly, the moral difference between the two kinds of acts. Just imagine what we would say if the Strategic Bomber used a nuclear bomb instead that completely wiped out everything in the large area surrounding the military installation. We would not think that the bomber could let himself off the hook by saying that it was not his intention to cause harm to the civilians. The plausibility of this kind of causal consideration is also reflected in a tighter formulation of the principle of double effect such as the following, according to which:

four conditions [are required to] be met if the action in question is to be morally permissible: first, that the action contemplated be in itself either morally good or morally indifferent; second, that the bad result not be directly intended; third, that the good result not be a direct *causal* result of the bad result; and fourth, that the good result be "proportionate to" the bad result. (Becker and Becker: 418, emphasis added)

On this formulation of the principle, Terror Bombing, regardless of whether it fails to meet the second condition, is impermissible as it fails to meet the third condition. Also, on this tighter account, one can see how revising the example of Strategic Bombing into a nuclear-bomb attack can result in assimilating it morally to Terror Bombing. For Strategic Bombing so revised will fail to meet to the third condition (and arguably the fourth one as well).

So, it seems more plausible to claim that intentions are, pace Rachels, relevant to the moral assessment of actions, though what determines the moral weight an intention has in any particular case may require complex analysis. Considerations about Terror Bombing and the two versions of Strategic Bombing have shown how features of a causal sort may affect the moral weight that an intention may bear on an action. I cannot afford the space here to sort out the features that are salient in this regard but have to be content to note that a central difference between killing and letting die concerns precisely the *causal* aspect of an action and its results. To kill a person is, roughly speaking, to initiate a causal process leading to the person's death and to let a person die is to refrain from intervening or to allow some causal process that brings about death. Given the considerations above, it does not seem implausible to think that the distinction between killing and letting is yet another way in which causal considerations may affect the moral weight that an intention may bear on an action.

The intentional structure of equalized cases

The above observations suggest that what a pair of equalized cases about killing and letting die can be used to show may depend, though not necessarily fully, on the intentional structure of the cases contemplated. What this means is not that:

 The goodness or badness of the intention accompanying an act determines the morality of the act or at least always constitutes a sufficiently weighty moral reason,

but rather that, when evaluating moral acts, we must give due considerations to both the act/omission aspect and the intentional aspect.⁸ That is, in light of the observations above, we should claim:

(2) Whether and how much killing differs morally from letting die in a particular case may depend on what sort of intention is involved.

One can see that (2) does more justice to our moral responses by noticing that most of us would hold, e.g., that:

(3) Knowingly but *unintentionally* letting people die of starvation in Africa (where their plight is not caused by us) is less objectionable than killing them knowingly as an unintended side effect of, say, strategic bombing, ⁹

It is important to note that a claim such as (3) need not mean that letting someone die remains less objectionable when (harmful) death is *intended*. Having shown that the intentional structure is important, we can now say that at best Rachels' Smith-Jones example may show that killing and letting die are morally equivalent when they are *intentional*, but nothing in what he has said can show that killing and letting die are morally equivalent when killing is intentional but letting die is unintentional.

The starkest contrast: IAUO cases

Though we shall not be able to elaborate (2) here, any appropriate elaboration, I think, should be such that, in general, the claim that

(4) Intentional killing is worse, or more difficult to justify, than unintentional letting die.

would turn out to be true.¹⁰ (4) is of utmost importance. For, as far as our moral intuition is concerned, the contrast between the act and the omission is the starkest in the case of *intentional-act versus unintentional-omission* (IAUO). That is, our common moral responses to IAUO cases conform strongly to (4), and it will be easy to make sense of this if we accept (2). For if both the intentional aspect and the act/omission aspect of an action carry moral weight, the moral contrast between killing and letting die when the former is intentional and the latter unintentional will be *doubly affected* by relevant considerations concerning the two aspects of the action.

As said, our common moral responses to IAUO cases conform strongly to (4). It is our moral intuitions behind such responses that the non-consequentialist wants to take account of by invoking the doctrine of double effect and the doctrine of act and omission. My assessment of the Sam-Joe example above appealed to the same kind of moral intuition. Sam killed intentionally. But Joe only failed to save Mary and, moreover, his omission was not accompanied by any "deadly" intention. So, what Sam did was worse. Rachels, in keeping with the consequentialism behind his arguments, would object that Joe's act was as wrong as Sam's. ¹¹ But our discussion of the example, a typical IAUO case, should serve to remind him of some of our most basic moral responses and of the fact that his consequentialist stance fails to do justice to them.

Given the special status of IAUO cases, Rachels' consequentialist's objections to the doctrine of killing and letting die are bound to strike us as most disturbing in such cases. Perhaps that is why Rachels chose to invite us to consider, as the basis of his generalization, a pair of cases involving actions that are *indistinguishable* in terms of *intention*. In the light of the above analysis, this is unfortunate for it can be argued that that example is precisely one where the moral weight of the distinction between killing and letting die is *counteracted*, or *overshadowed*, by the presence of the malicious intention shared by Smith and Jones. To deal with this problem, Rachels would have to argue that intentions have no such counteracting effects. In his reply to Sullivan, he did try to argue exactly for that by denying the moral relevance of intention to the evaluation of action. However, if our discussion above is on the right track, such a position should be considered mistaken.

5. Concluding remarks

The arguments above, if sound, will cast serious doubts on Rachels' objection to the doctrine of killing and letting die. One might suggest, however, that although such considerations as above call into question Rachels' views on the doctrine, they have

not undermined his conclusion that the distinction between active and passive *euthanasia* is morally insignificant. This suggestion is supposed to be based on the following claim: that *only* when an act (or omission) results in *harm* does the doctrine of killing and letting die have a role to play as a guide, among others, on when and how much moral disvalue is to be attached to the act. With this claim, one may argue that in a case of euthanasia, since the act of killing or letting die does not bring harm to the patient, the relatively stronger prohibition against killing and the relatively greater permissibility of letting die as entailed by our arguments no longer apply. Yet, whatever merits there may be to the above claim, it states a substantive thesis for which Rachels has not provided any arguments. Of course, even if such support were available, thereby showing that after all Rachels is right about the moral equivalence of active and passive euthanasia, the fact remains that his general view regarding the doctrine of killing and letting die is far from convincing.

Lastly, it must be mentioned that our arguments, if correct, can strengthen the kind of objection to Rachels' views as raised by Steinbock and Sullivan. Recall that they accused Rachels of misinterpreting the AMA's position on euthanasia. In some situations, withdrawal of life-supporting treatment, they pointed out, is not prompted by an intention to hasten the patient's death. So, in those situations, the case at hand is one of *unintentional* letting die, not one of euthanasia, which the AMA prohibits. In other words, the moral distinction relevant to the AMA policy is one between intentional killing and *unintentional* letting die, pertaining to (4) above, or some version of it. By taking issue on the moral relevance of intention, Rachels tried to argue (in effect) that such a distinction is as irrelevant to the assessment of moral acts as the distinction between intentional killing and intentional letting die because intention just doesn't count morally. But our considerations above have called into doubt this argument. So, even if it is granted that as far as euthanasia is concerned the doctrine of (intentional) killing and (intentional) letting die is false because it applies only to acts and omissions that result in harm, it does not follows that the AMA's position on cessation of treatment (at any rate in such situations as those mentioned by Steinbock) as a form of unintentional letting die is unjustified. Perhaps Rachels might want to claim that (4), intuitively appealing though it is, is false when one kills with an intention to produce good consequences. But, again, this would be a substantive claim for which Rachels has not provided any arguments.

Notes

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¹ It should be noted, however, that it is not entirely clear whether this consensus should be characterized as involving a positive right to receive assistance with suicide, or, perhaps more plausibly, as involving a negative right to be left alone, that is, as the rejection of any interference by the state when a patient and a physician agree on assisted suicide. E.g., see Orentlicher (1996:663).

² Of vital importance here is whether assisted-suicide is to be seen as closer (both in an ethical sense and in a conceptual sense) to active euthanasia than to refusal or withdrawal of treatment. In legal and medical practices, a distinction is generally drawn between active euthanasia, on the one hand, and assisted suicide and passive euthanasia, on the other. But there have also been considerations suggesting that a fundamental distinction be drawn between foregoing treatment, on the one hand, and assisted suicide and active euthanasia, on the other (e.g., Miller 2000). The issues involved here are complex and controversial. See Brock 1993, Brody 1993, Draper 1998, Miller 1996, Miller 2000, Pellegrino 1992.

³ Three decades on, the issues raised by Rachels' famous article are still very much alive. For such issues and related ones, see Campbell and Collinson 1988, Ciocoo 1996, Draper, 1998, Gennaro 1996, Hanser 1999, Haslett 1996, Kamm 1983, Kamm 1996, Malm 1989, McMahan 1993, Meisel 1992, Miller 2000, Nesbitt 1995, Norcross 2003, Perrett 1996, Sullivan 1994, and Tooley 1994.

⁴ The term "equalized cases" is due to Kamm 1996.

⁵ There are, according to Kamm, different procedures for producing equalized cases. See Kamm (1996: Part I).

⁶ The example is from Quinn (1989: 177). Similar examples can be found in Norman 1995 and Nagel 1972.

⁷ See Bennett 1966, Bennett 1981, Foot 1967, Hart 1968, and Quinn 1989,.

⁸ I therefore find Norman's view on killing and letting die congenial. See Norman 1995.

⁹ Here, as in some other contexts, "unintentionally" should be taken to mean "without the presence of a bad intention'.

¹⁰ An acceptable elaboration will almost certainly find it necessary to subject (4) to a *set* of constraints, for instance, the proportionality of intended benefit and resulting harm. ¹¹ See Rachel 1986 for his consequentialist stance.

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