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# THOMAS M. SCANLON'S CRITIQUE OF THE DOCTRINE OF DOUBLE EFFECT: INTENTION AND PERMISSIBILITY

**Abstract.** This article examines Thomas M. Scanlon's critique of the Doctrine of Double Effect (DDE), focusing on its validity and implications for his contractualist framework. Scanlon challenges DDE by questioning the moral relevance of distinguishing between intended and merely foreseen consequences. While his critique raises important concerns, it may overlook DDE's practical utility in specific moral dilemmas. However, this article argues that Scanlon's broader contractualist framework – distinguishing the meaning, permissibility, and blame of an act – functions as a viable alternative to DDE. Crucially, this framework remains intact even if Scanlon's critique of DDE is deemed invalid, as it does not depend on rejecting DDE to maintain its coherence or applicability. This analysis highlights the strength of Scanlon's contractualism as a comprehensive moral theory, independent of DDE's fate.

**Keywords:** Doctrine of Double Effect (DDE); contractualism; permissibility; intention



## 1. INTRODUCTION

Thomas M. Scanlon's contractualism, as developed in *What We Owe to Each Other* (Scanlon, 1998), is a moral theory grounded in the idea that moral principles must be justifiable to others on grounds no one could reasonably reject. This standard of justification shapes his analysis of moral permissibility and provides the basis for his alternative to DDE. His account of moral judgment is structured on three dimensions: permissibility (what can be justified to others), meaning (what actions express in terms of moral concern), and blame (when moral criticism is warranted). In 2008 Scanlon published his

book *Moral Dimensions* (2008). In this work, he criticizes what he presents as a specific, absolutist version of the Doctrine of Double Effect (DDE), in which the permissibility of an action depends solely on the agent's intention. He argues that such a view is untenable and proposes an alternative grounded in his broader moral theory called contractualism. It is important to note that Scanlon's critique does not address all possible versions of DDE, but rather targets a strict interpretation that treats intention as the sole determinant of moral permissibility. In the first part of the paper, I will focus on reconstructing Scanlon's analysis of DDE, explain how he understands the doctrine itself, what arguments he advances against it, and what alternative he proposes. I will also describe how Scanlon understands intention and the role he assigns to it in the question of the permissibility of a moral act and its evaluation. In second part of the article, I will undertake an analysis of Scanlon's arguments against DDE, as well as selected responses to his criticism. I will consider his argument for intention and its relation to motivation, as well as the objection that it rests on an inaccurate distinction between these terms. I will also examine the case studies conducted by Scanlon and the conclusions drawn from them. Lastly, I will focus on the practical implications that emerge from the allegations that Scanlon's interpretation of DDE is inadequate. In the process, I aim to answer the following questions: Is Scanlon's criticism of DDE valid? Are the objections of DDE's proponents legitimate? Is the alternative proposed by Scanlon dependent on a valid critique of DDE? The conclusions of this analysis will be presented in the last chapter.

## 2. SCANLON'S CRITICAL ARGUMENTS AGAINST DDE

Here is how Scanlon understands DDE: "The doctrine of double effect holds that an action that aims at the death of an innocent person, either as its end or as a means to its end, is always wrong. In particular, it holds that such an action cannot be justified by its good effects, such

as saving the lives of a greater number of innocent people… many people believe that in war it can be permissible to bomb a military target even though this will also cause the deaths of some noncombatants living nearby, but that it would not be permissible to bomb the same number of noncombatants in order to hasten the end of the war by de moralizing the population. Again the doctrine of double effect seems to offer an explanation: in the latter case, but not the former, one would be aiming at the deaths of innocent people (people who pose no threat) as a means to one's end. The ability to explain cases of this kind gives the doctrine of double effect considerable initial appeal. But it is not at all clear how an agent's intentions could determine permissibility of an action in the way that the doctrine claims" (Scanlon, 2008, 1-2).

Although Scanlon does not give a formal definition of DDE in the passage above, from it we can understand how the author views the doctrine itself. This would be a doctrine whose main goal is to prevent the death of innocent people, and the total permissibility and value of a moral act would depend solely on the intention of the person acting. Scanlon disagrees that intention could be the main factor in the evaluation of a moral act. Furthermore, he states that there is no convincing explanation as to how an intention could determine the permissibility of an act. He proposes an alternative, which could allow for the evaluation of a moral act, as well as the formulation of general rules of conduct. As he notes there are two forms of moral judgment: the first deals with the issue of the permissibility of an act, it establishes when a person can perform a certain action. The second form of moral judgment deals with how a person came to a decision on whether to act. It considers what reasons a person had for an action. Based on these forms of moral judgement, Scanlon proposes to consider a moral act on three levels: permissibility, meaning and blame. Permissibility concerns whether an action violates principles that others could reasonably reject. According to Scanlon's contractualist framework, a morally

permissible act must be an action that is justified to others, based on principles that no one could reasonably reject. Meaning concerns how an act is understood within a common system of norms. The meaning of an act depends on what it reasonably conveys to others, rather than what the agent internally intended. Blame refers to whether an agent is adequately subjected to moral criticism for his or her actions. Scanlon argues that blaming should not be understood merely as a reaction to wrongdoing, but as a way to modify the relationship with the agent. Blaming is justified when an action indicates a lack of moral concern that harms the relationship, and the agent cannot reasonably reject the reaction to it. The first two levels derive from types of moral judgment, although the concept of the permissibility of an act is quite clear in contrast to the concept of meaning. We can ask what is the difference between meaning and intention, and why does the former affect the permissibility of an act while the latter does not? Scanlon explains it as follows: "I develop and explore an important distinction between the permissibility of an action and what I call its meaning – the significance, for the agent and others, of the agent's willingness to perform that action for the reasons he or she does. Although permissibility does not, in general, depend on an agent's reasons for action, meaning obviously does, and many of the cases in which permissibility depends on an agent's reasons for action are cases in which permissibility depends on meaning" (Scanlon, 2008, 4).

Meaning, therefore, affects the permissibility of an act through the reasons that lead to action or inaction; it determines the social significance of an act, which also affects its permissibility. We can certainly imagine situations in which we undertake an acceptable action but do it for the wrong reasons. An example of such an action would be helping an injured person: because of the pain we will cause him while helping, we have performed an acceptable act but with a bad meaning. Related to this is the third level of the evaluation of an act, that is, blame, which can be imposed on agents who have

performed an impermissible act or have performed a permissible act with a bad meaning. A person burdened with blame may be considered unreliable, and this may lead to a weakening of the relations with others or to breaking them. Scanlon devotes an entire chapter to this topic. However, in the context of his criticism of DDE it is not as important as the previous two levels, and I will focus on it later in this paper (Scanlon, 2008, 122-214).

It is worth noting that Scanlon believes that it is impossible to formulate a perfect explanation for all situations, as DDE attempted to do. By 'perfect explanation,' Scanlon refers to the expectation that a single principle (such as DDE) could offer a universally valid moral guidance across all cases, without exceptions or ambiguity. He believes that cases of tactical bombing are diametrically opposed to cases of thought experiments with a trolley, and that consequently we must approach the evaluation and acceptability of acts individually. As for Scanlon's interpretation of DDE, I would certainly agree with Ralph Wedgwood that the understanding he criticize is absolutist (Wedgwood, 2011, 465). However, this does not mean that his criticism is unwarranted or that his proposal collapses if we prove that DDE in a different form is escaping the errors he criticizes. It will only mean that DDE in another form can function as an ethical concept free of the problem raised by Scanlon. To resolve whether this is really the case, we must look at the criticism of an intention as the decisive criterion for evaluating a moral act.

## 3. THE INFLUENCE OF INTENTIONS ON THE PERMISSIBILITY OF A MORAL ACT

Scanlon begins his argument for intention by stating that there is a difference between hurting a person intentionally and doing so unintentionally. However, according to him this difference is not in the sphere of the permissibility of the act (Scanlon, 2008, 13-14). He notes that harming another person is impermissible regardless

of whether it was an intentional act. However, we can see that an intentional act and one that is not are different types of actions. According to Scanlon, the difference lies in the blame borne by the person committing the act. In the case of an intentional act, a person is to blame because of an intentional act; in the case of a person acting unintentionally, the blame is due to a lack of diligence or carelessness. However, there is something different between a case in which we act recklessly and are not adequately prepared to act and a case in which we are subjected to a random action that we could not foresee. This is a difference that affects the permissibility of the act, a difference in the meaning of the act. Negligence is impermissible because the agent should foresee the consequences of his action, even if he had no intention of causing them. An accidental event is not morally impermissible, because the agent could neither foresee nor control the harm. What is crucial is not the agent's intentions, but what the agent should have known or foreseen in the situation. There are two key conclusions to be drawn from this line of argument. Firstly, intent plays a role in the attribution of blame, but not in the assessment of permissibility; secondly, knowledge and the anticipation of consequences (epistemic requirements) are crucial in assessing the permissibility of an action. If intention is not central to moral permissibility, then the role DDE assigns to intention (distinguishing intended from unintended effects) becomes less important.

To show why his alternative is a better option than DDE, Scanlon conducts a case study in which basing the permissibility of an act on the intention of the acting agent leads to unwanted consequences (Scanlon, 2008, 16-20). In this analysis, he relies heavily on Judith Thomson's critique of DDE, with which he agrees (Thomson, 1999, 497-518). It is worth mentioning two examples he considers to anticipate Scanlon's critique of basing permissibility on intention, which I will discuss later. "Suppose that a patient is fatally ill and in great pain. The only course of medication that will relieve this pain will also cause the patient's death. Suppose that the patient wants to be

given this drug. Does the permissibility of administering it depend on the doctor's intention in doing so specifically, on whether the doctor intends to relieve the pain by causing the patient to die or intends to relieve the pain by giving the drug, which will, inevitably, also cause the patient's death? Thomson says, plausibly, that it does not" (Scanlon, 2008, 19).

Through this example, Scanlon tries to show that basing the evaluation of a doctor's actions solely on his or her intentions, and not on whether an action is morally permissible, is absurd. According to DDE, a doctor's action is permissible only if his intention is to relieve the patient's pain and his death is only a foreseeable possibility. While proponents of DDE argue that intention defines the act itself, Scanlon's approach allows us to evaluate the moral permissibility of an action independently of internal mental states, focusing instead on what reasons are justifiable to others. Scanlon agrees with Thomson and concludes that intention has no bearing on the permissibility of an act. Intention only affects blame. Thus, if the doctor acted only to end the patient's life, then he would be subject to blame but his act would still be permissible. The second example Scanlon examines is related to tactical bombing: "Suppose you were prime minister, and the commander of the air force described to you a planned air raid that would be expected to destroy a munitions plant and also kill a certain number of civilians, thereby probably undermining public support for the war. If he asked whether you thought this was morally permissible, you would not say, 'Well, that depends on what your intentions would be in carrying it out. Would you be intending to kill the civilians, or would their deaths be merely an unintended but foreseeable (albeit beneficial) side effect of the destruction of the plant?' Holding fixed the actual consequences of the raid and what the parties have reason to believe these consequences to be, might an action be permissible if per formed by an agent with one intention but impermissible if performed by an agent with a different

strategy in mind? I agree with Thomson in finding this implausible" (Scanlon, 2008, 19-20).

This example shows a perspective broader than the first example. Scanlon suggests that it is absurd to make the permissibility of an act dependent on the intentions of the person acting, and that it should depend on the potential consequences of the decision instead. He aims to show the superiority of his alternative, which places more importance on foreseeing the consequences of possible decisions and acting on the reasons one has.

Based on the examples cited (as well as others used in his book), Scanlon comes to specific conclusions about moral principles. First, he states that almost every moral principle allows for exceptions. For example, we should not keep a promise if we know that keeping it will involve great harm to some person. To fully understand when we can allow the use of an exception, we need to understand what considerations justify the use of an exception and what considerations do not. Secondly, moral principles can be employed in two ways: as standards for criticism or as guides for deliberation.

Moral principles as guides to deliberation would answer the question of whether an act is permissible, and clarify what considerations are relevant to evaluate whether we should consider a given act at a given time as permissible or impermissible. They may take into account other aspects such as the condition of the agent making the decision or what the agent considers to be reasons for action. Moral principles as standards of criticism are designed to trace the agent's considerations leading to a decision on the permissibility of a particular act in a particular case. They are intended to answer the question of whether the agent, under specific circumstances, made the right decision to perform an act, and thus whether he or she made the right considerations, whether he or she gave them the right weight, whether the considerations he or she made influenced the evaluation of the permissibility of the act in question, and so on (Scanlon, 2008, 21-28). Thus, it can be said that principles as

guides to deliberation serve to evaluate the permissibility of an act, while principles as standards of criticism serve to evaluate whether an agent is making moral decisions.

Although Scanlon offers us further explanations and extensive case studies to prove his point, I think the argument presented here is sufficient to consider the validity of the criticism raised against it by other authors.

## 4. A CRITIQUE OF SCANLON'S DDE ARGUMENT

### 4.1. INTENTION AND MOTIVATION

Wedgwood in his work takes up Scanlon's arguments against DDE. Admittedly, he does not undertake a defense of DDE as understood by Scanlon, but only in a weaker version according to which the murder of an innocent person is not always completely impermissible. One of his objections is that Scanlon does not distinguish between intention and motivation: "What is meant here by 'intention'? Strikingly, Scanlon does not distinguish between the intention with which an action is done and the motivation of the action. The motivation of an action consists of the whole mental process that results in the action: this process typically includes not only intentions but many other motivating states as well – such as desires, emotions, wishes, and beliefs" (Wedgwood, 2011, 465).

The above quote is true only in the context of his book, *Moral dimensions*. Scanlon undertakes an analysis of motivation, desires, emotions and beliefs and their impact on intention in his work *What we owe to each other* (Scanlon, 1998, 33-55). Here he would agree with Wedgwood that motivation plays an important role in the formation of intentions and that it indirectly influences action, by affecting which considerations strike us as reasons. However, the considerations that motivational states such as desires make salient will not always be rational, and thus an intention formed under their influence

will not always be supported by a sufficient reason for action, even though it may appear to be such. Therefore, it is necessary to reflect on our motivational factors and assess the reasons for action on the basis of rational deliberation, rather than simply on what we happen to desire or believe. A parallel risk is that we may form "akratic beliefs." According to Scanlon, "Akratic actions (and irrational thoughts) are cases in which a person's rational capacities have malfunctioned, not cases in which these capacities are overmastered by something else, called desire" (Scanlon, 1998, 40). This happens when the agent, despite having previously judged certain reasons as insufficient for action (e.g., the pleasure of drinking), acts upon them due to their momentary motivational force. This conflict between judgment and motivation reflects a breakdown of rational governance, which Scanlon treats as a failure of deliberation rather than a triumph of desire.

Using Scanlon's example, Wedgwood proposes the following case: "I may decide, before going to a party, that the pleasures of drinking and the conviviality it brings are not sufficient reasons for having more than two glasses of wine. Once at the party, however, these very same reasons may have a stronger effect on me, and I may act on them even though my judgment as to their sufficiency does not change" (Scanlon, 1998, 34).

According to Wedgwood, motivational factors such as desires or beliefs serve as means to lead an agent to a certain intention; then, depending on the reasons for an action we may put that intention into action or not (Wedgwood, 2011, 466). We can imagine a situation in which we feel the desire to drink a third glass of wine, and our intention is to continue enjoying the company of our friends and the taste of good wine. The intentional purpose of our action is to please ourselves and our friends. Therefore, we undertake this action. Then, on the way home we cause a car accident. In DDE, our act of causing an accident would be unintentional, unforeseen and therefore not morally wrong (at least in the version of DDE that Scanlon criticizes). However, in Scanlon's alternative the fact

that the act was unforeseen would be due to epistemic negligence. It would be the result of our failing to adequately consider the reasons for the action and giving them inadequate weight. Therefore, I believe Wedgwood's charge is misplaced: considering motivational factors or intentions as decisive elements of moral judgment can lead to irrational actions. The main source of our reasons for action should be rational deliberation about what counts in favor of acting, including the reasons others would have to reject principles permitting such actions and adequate epistemic preparation, i.e., predicting as many effects of our actions as possible and choosing the most appropriate one. Moreover, attaching too much importance to motivational factors can lead to what Scanlon calls 'akratic actions'. This can happen as a result of self-deception, which can include, among other things, rationalizing irrational reasons for action, unjustifiably accepting beliefs as true, bringing out the fuzziness of concepts and exposing it in one's own reflection, or avoiding contentious problems (Piłat, 2013, 214-221).

### 4.2. TACTICAL BOMBING

Many authors who criticize Scanlon's views focus on his case studies and point out that the conclusions he draws from them are incorrect. One such author is Kasper Lippert-Rasmussen, whose argument relates to the tactical bombing case cited earlier. In order to point out the problem in the assessment of a moral act proposed by Scanlon, he modifies the original case with two additional variations: "The Altruistic Terror Bomber. This case is like the original terror bomber case with the added stipulation that the altruistic terror bomber will achieve a certain economic benefit for herself if she carries out the raid but that she considers this irrelevant to what she should do and, thus, decides to go ahead with the raid simply to end the war and thereby minimize the overall number of civilian deaths. The Selfish Tactical Bomber. A pilot bombs an ammunition factory, not as in the original

Tactical Bomber case dreading the civilian losses foreseen to result – this bomber simply has no concern for civilians – and not with the intention of ending the war by destroying the factory. Rather, this bomber is motivated to carry out the raid solely by a personal economic gain of the same size as the economic gain our altruistic terror bomber considered irrelevant to her deliberations and by the belief that carrying out the raid is a means to obtain this gain" (Lippert-Rasmussen, 2010, 549).

According to Scanlon's account the Altruistic Terror Bomber is morally worse than the Selfish Tactical Bomber (Lippert-Rasmussen, 2010, 549-551). Rasmussen argues instead that it is the Selfish Tactical Bomber who conducts better deliberations and, despite the fact that he decides to act for the wrong reason of a financial gain, he does not neglect epistemic requirements; moreover, he is the one who ultimately decides to perform the permissible act. The Altruistic Terror Bomber, on the other hand, does not carry out any deliberations. He chooses to murder civilians because he believes that this will end the war and thus reduce the overall number of casualties. I agree with Rasmussen that according to the requirements proposed by Scanlon the Selfish Tactical Bomber is less blamable, but it should be noted that he is still guilty. His guilt lies in the meaning of the act. Moreover, his considerations are wrong and assign inadequate values to the reasons by which he performs a morally permissible action for the wrong reason, whereas the agent in the first case is guilty of lacking adequate considerations by which he acts for the wrong reason (if it can be called a reason at all in Scanlon's sense) that leads him to an impermissible act.

Rasmussen disagrees that Scanlon's argument is more convincing than DDE, which would find both cases morally unacceptable (even if the altruistic case has the good intention of ending the war, this implies the death of innocent people which is unacceptable). He also accuses Scanlon's theory of being less convincing because it is less unified than DDE and that his explanations of the moral differences

in the two cases are 'ad hoc,' i.e. dependent on the specific rules and exceptions in each case (Lippert-Rasmussen, 2010, 547-564). I do not believe that Rasmussen's allegations are accurate, and I will try to address them from the standpoint of Scanlon's theory.

In addressing the problem of universality and 'ad hoc' exceptions, we must understand that Scanlon's approach is rooted in contractualism, which is based on the principle of mutual justification. This does not require the search for universal principles, but rather principles that no reasonable person could reject in a particular situation (Scanlon, 1998, 4). Such a model reflects moral reality better than rigid universal theories. Moreover, the universalization of principles (as in DDE) can lead to a simplification of complex moral dilemmas, ignoring the context and specificity of individual situations. Scanlon's approach provides more flexibility in assessing different scenarios in light of their distinctive features. Scanlon explains that every moral principle contains exceptions that result from the analysis of special cases. For example: in the case of the Tactical Bomber, its action is morally permissible because it meets the criteria of the exception for the use of force in war. Harm to civilians is anticipated but minimized, and the attack has a direct military benefit. The Terror Bomber, on the other hand, acts with the intent to harm civilians, which does not fall within the scope of legitimate exceptions. This allows Scanlon to accurately explain the differences between the cases without referring to intent as a key factor. Rasmussen describes Scanlon's approach as 'ad hoc,' suggesting that explanations are invented for specific cases. However, I disagree with this characterization. and believe that Scanlon's analysis is not arbitrary. Rather, it is the result of an examination of a variety of moral principles and their exceptions. This is not inconsistency, but a conscious avoidance of simplifications that can lead to errors in moral reasoning. Consequently, I do not consider the lack of unification a defect of contractualism, but rather one of its central characteristics that arises from the assumptions of the theory. The exceptions introduced by Scanlon aim to avoid

generalizations and through deliberation arrive at the best possible decision as to moral action in each individual case.

### 4.3. AN INTERPRETATION OF DDE AND ITS PRACTICAL IMPLICATIONS

Melissa Moschella takes up the defense of DDE against the arguments of many modern philosophers, including Scanlon. Her line of defense is based, among other things, on the assertion that DDE cannot be considered outside the Thomistic theory within which it was formulated: "T.M. Scanlon similarly argues that the DDE's appeal is 'illusory' and that agent intent cannot in itself determine moral permissibility. These and many other criticisms of the DDE rest on a failure to understand the principle's broader theoretical context and presuppositions. It should not be surprising that if one isolates a principle from the broader moral theory of which it is a part (and within which the principle was first formulated), that principle will end up seeming arbitrary and difficult to defend" (Moschella, 2023, 298).

Recognizing DDE as a dependent theory may indeed weaken Scanlon's argument, which considers it outside of a Thomistic context. However, it is necessary to consider Moschella's assumption is only possible given the social nature of the theory, as well as what the consequences of recognizing DDE as a dependent theory would be. Although DDE is mainly related to medical ethics, it is relevant in a large number of ethical codes, including military codes and the law of armed conflict.

An example of the use of DDE in medical codes can be found in the American Medical Association's code of ethics. The AMA Guidelines address the principle of double effect in the context of palliative care. Specifically, the recommendations indicate that administering pain medications that may hasten a patient's death is ethically acceptable if the goal is to relieve suffering rather than cause death (American Medical Association, 2018). We can find

similar recommendations in the code of ethics of the General Medical Council of the United Kingdom. In its guidelines for the care of terminal patients, it indicates that measures to alleviate pain are acceptable, even if they may lead to unintentionally hastening the patient's death, provided they are in the patient's best interest (General Medical Council, 2010).

As I pointed out earlier the relevance of DDE is not limited to the codes of ethics. An example is its use in the US Department of Defense Law of War Manual, which says that military action can be justified if civilian harm is unintentional and proportionate to military objectives (United States Department of Defense, 2016). Thus, as we can see DDE as an independent theory is employed in various types of ethical codes and has an impact on our lives through the actions of doctors or military actions (as in the examples cited by Scanlon). In doing so, we cannot assume that all individuals who fall under such codes of ethics know the full theoretical context of the doctrine, but rather adhere to DDE as a fully independent principle. Therefore, I do not believe that Moschella's argument that DDE is a dependent theory is defensible as a claim about DDE's practical normative role, even if its theoretical justification may still be dependent on a broader framework.

## 5. CONCLUSION

Scanlon targets a very radical and absolutist version of the Doctrine of Double Effect, one which treats intention as the fundamental morally relevant factor in evaluating permissibility. This is a highly specific interpretation and not one universally accepted by DDE's proponents. Importantly, none of Scanlon's critics considered here defend the version of DDE he targets. Rather, they propose more moderate accounts that incorporate additional moral factors. For this reason, I believe that Scanlon's criticism is valid, but it should be understood as applying only to the absolutist version of DDE as reconstructed in

*Moral Dimensions*. This significantly narrows the scope of his critique but also makes it more precise and targeted. Although some elements of Scanlon's approach, such as its multidimensional moral analysis, may resonate with less absolutist versions of DDE, key differences remain. In light of this, I believe that advocates of DDE should focus on justifying the moral significance of intention in complex cases, rather than defending a version of the doctrine that is not under serious philosophical threat. Moreover, some who criticize Scanlon's views do not take into account that they are part of a broader contractualist theory and often rest on assumptions from Scanlon's previous works. This has led to misunderstanding the argument in *Moral Dimensions*.

Answering the questions posed in the introduction, I believe that Scanlon's criticism is valid. However, it applies only to the absolutist version of DDE he criticize. The objections raised against him are often misplaced and lack an understanding of contractualism. They also focus on defending contemporary versions of DDE, which however are not criticized. Lastly, Scanlon's alternative does not depend on a criticism of DDE, but on a criticism of intention as an independent criterion of evaluation and its influence on the permissibility of a moral act.[1]

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1 It is worth noting that has escaped some critics that, although the influence of intention in Scanlon's case is only indirect it is not completely removed from moral considerations.

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