ABSTRACT. The distinction between harm that is intended as a means or end, and harm that is merely a foreseen side-effect of one’s action, is widely cited as a significant factor in a variety of ethical contexts. Many use it, for example, to distinguish terrorist acts from certain acts of war that may have similar results as side-effects. Yet Bennett and others have argued that its application is so arbitrary that if it can be used to cast certain harmful actions in a more favorable light, then it can equally be manipulated to do the same for any kind of harmful action. In response, some have tried to block such extensions of the intend/foresee distinction by rejecting its application in cases where the relation between the plainly intended means and the harm is “too close”. This move, however, has been attacked as vague and obscure, and Bennett has argued that all the plausible candidates for explicating the idea of excessive closeness ultimately fail. In this paper, I develop and defend an account of excessive closeness with the aim of rescuing the intend/foresee distinction from such charges of arbitrariness. The account is based on the distinction between merely causal and constitutive relations among states of affairs, and I show both how it escapes Bennett’s objections to other accounts and how it applies to a variety of cases. Finally, I also examine Quinn’s alternative move of shifting the focus of the intend/foresee distinction in an attempt to sidestep the issue of closeness, and argue that it is not ultimately successful. In fact, Quinn’s view has shortcomings that can be resolved only by returning to an appeal to some notion of closeness, underscoring the need for the sort of account I offer.

1. INTRODUCTION

The intend/foresee distinction has long played a role in ethical thought, and while some of its traditional applications no longer have much appeal outside of the Catholic Church, it continues to be widely cited in a variety of ethical debates. Even those who reject traditional moral appeals to the intend/foresee distinction in voluntary end-of-life cases, for example, often
find it indispensable to a proper characterization of terrorism, and of what sets terrorism apart from other acts that may have similar results as unintended side-effects (Quinn, 1993b). It also figures prominently in debates over cloning for biomedical research, and not just from religious perspectives (see FitzPatrick, 2003a).

The intend/foresee distinction has typically (though not exclusively) been employed in connection with the doctrine of double effect (DDE) – the idea, broadly, that it is sometimes permissible to bring about as a foreseen but unintended side-effect some harm it would have been impermissible to aim at as a means or as an end, all else being equal.¹ We may distinguish, for example, between foreseen but unintended harm to civilians ("collateral damage") caused by strategic strikes on nearby military targets, on one hand, and intended harm to civilians brought about through terrorist strikes that target civilians deliberately as a means to military, political or religious ends, on the other. Acts involving the former are certainly not always or easily justifiable, even in the context of an otherwise just war. Still, it is a common and plausible thought that such acts may at least sometimes be morally justified, while acts involving the deliberate targeting of civilians as means are either never justified or are so only in much rarer and more extreme circumstances. And while it may be possible to account for this thought in part by appeal to consequentialist considerations ("terrorism doesn’t work"), many feel a strong pull to locate the moral difference directly in the intend/foresee distinction itself – in the idea that there is something distinctly problematic about intending harm to innocents as a means to one’s ends. This seems to get at something missed not only by consequentialist accounts, but also by accounts that focus exclusively on other constraints, such as one built around the doing/allowing distinction, since one is plainly doing the harm to innocents in both bombing cases above.²

I shall not be concerned here to try to show that the intend/foresee distinction is indispensable in normative ethics, though I believe it is. Instead, I wish to examine and respond to a fundamental challenge that, if not successfully answered,