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Philosophy and Theology: Notes on Double Effect Reasoning

Christopher Kaczor

Loyola Marymount University, Christopher.Kaczor@lmu.edu

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PHILOSOPHY AND THEOLOGY

The principle of double effect, or better, double-effect reasoning, remains a matter of discussion in a variety of ways. It plays a role in rival views about whether the use of condoms is ethically permissible in order to prevent the transmission of HIV/AIDS between spouses. In the recent Phoenix abortion case, double-effect reasoning came into play in the question of whether or not the abortion was “direct killing” or “indirect killing” in the situation where the life of the mother was threatened by pulmonary hypertension. Double-effect reasoning was called into service to justify the falsehoods told by undercover agents of Live Action in revealing the illegal practices of Planned Parenthood employees who cooperated with statutory rape. The doctrine of double effect is discussed in connection with many practical matters such as these, but it is also the subject of more theoretical reflection.

With roots in St. Thomas Aquinas’s discussion of self-defense, following the work of Rev. Jean Pierre Gury, SJ, in the 19th century,¹ double-effect reasoning is classically understood to have four conditions, each of which is necessary for an act to be justified. Double-effect reasoning holds that an action with two effects, one good and the other evil, is ethically permissible if the following conditions are met: (1) The action itself, its object, is not intrinsically evil; (2) the evil effect is not a means to the good effect; (3) the evil effect is not intended as an end; and (4) there is a morally serious reason justifying allowing the evil effect. Each of these conditions has been the subject of recent scholarly attention which merit comment.

The Action Itself, Its Object, Is Not Intrinsically Evil

The first condition, that the action itself is not intrinsically evil, is perhaps the condition that has received the most attention. How precisely one defines “the action itself,” or “the object of the human act,” remains the topic of intense scholarly

¹For the historical development of double effect, see Christopher Kaczor, “Double-Effect Reasoning: From Jean Pierre Gury to Peter Knauer,” *Theological Studies* 59.2 (June 1998): 297–316.

discussion. Much of this discussion has been occasioned by the work of Rev. Martin Rhonheimer. His article “The Perspective of the Acting Person and the Nature of Practical Reason: The ‘Object of the Human Act’ in Thomistic Anthropology of Action” highlights the role of the intention rather than the physical structure in defining the human act.² On this theoretical basis, Rhonheimer also offers his practical conclusions about the ethics of lying, the use of condoms to prevent HIV/AIDS transmission between spouses,³ and abortion in situations where the life of the mother is threatened. Rhonheimer developed his reflections on the latter topic into his book *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies*.⁴ His more extensive reflections on the nature of human action can be found in his *The Perspective of the Acting Person: Essays in the Renewal of Thomistic Moral Philosophy*.⁵

At least partly in response to Rhonheimer’s work, the journal *Nova et Vetera*, in its Winter 2008 issue, sponsored a symposium on moral action, in both its physical aspects and its non-physical, intentional aspects. Stephen Brock, Lawrence Dewan, Kevin Flannery, and Steven Long devoted meticulous and probing consideration to how to understand the object of the human act in light of Aquinas’s works, *Veritatis splendor*, and recent scholarly contributions to the debate.⁶ Brock and Dewan’s contributions merit particular attention and, though lengthy, are highly instructive. In a similar line of interpretation, Steven Jensen, in his book *Good and Evil Actions: A Journey through Saint Thomas Aquinas*, critiques a kind of Abelardian tendency to downplay the importance of the physical character of the object of the human act.⁷ The very first condition of double-effect reasoning is often the crux of the debate, at least among those in the natural law tradition, but the other conditions of double-

²Martin Rhonheimer, “The Perspective of the Acting Person and the Nature of Practical Reason: The ‘Object of the Human Act’ in Thomistic Anthropology of Action,” *Nova et Vetera* 2.2 (Fall 2004): 461–516.

³Martin Rhonheimer, “The Truth About Condoms,” *Tablet* (July 10, 2004): 10–11; and Benedict Guevin and Martin Rhonheimer, “On the Use of Condoms to Prevent Acquired Immune Deficiency Syndrome,” *National Catholic Bioethics Quarterly* 5.1 (Spring 2005): 40–48.

⁴Martin Rhonheimer, *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies* (Washington, DC: Catholic University of America Press, 2009). For a critique of Rhonheimer’s view, see William E. May, “Martin Rhonheimer and Some Disputed Issues in Medical Ethics: Masturbation, Condoms, Craniotomies, and Tubal Pregnancies” *Linacre Quarterly* 77.3 (August 2010): 329–352.

⁵Martin Rhonheimer, *The Perspective of the Acting Person: Essays in the Renewal of Thomistic Moral Philosophy* (Washington, DC: Catholic University of America Press, 2008), 195–249.

⁶Brock, “On (Not Merely) Physical Objects of Moral Acts,” 1–62; Dewan, “St. Thomas, Rhonheimer, and the Moral Object,” 63–112; Flannery, “Aristotle and Human Movements,” 113–138; and Long, “Veritatis splendor § 78 and the Moral Act,” 139–156.

⁷Steven J. Jensen, *Good and Evil Actions: A Journey through Saint Thomas Aquinas* (Washington, DC: Catholic University of America Press, 2010).

effect reasoning have also given rise to scholarly discussion, particularly among philosophers outside the natural law tradition.

The Evil Effect Is Not a Means to the Good Effect

Consider this case raised by Neil Delaney: “Suppose an FBI agent wants to collapse a building housing a terrorist cell. He notices a hostage wearing a bandolier of explosives standing right beneath the primary support column to the structure. As luck would have it the FBI agent has only a firearm and very little time to act so as to destroy the terrorist cell. So he fires his bullet at the bandolier worn by the hostage, blowing the hostage to smithereens and collapsing the building with the force of the explosion of the bandolier.”⁸ Would the death of the hostage be intended by the FBI agent? If so, then the agent’s action violates double-effect reasoning. If not, then his action may be justified if the other conditions are met.

One way of construing the difference between intended and unintended consequences is by considering the chronological order of the appearance of the effects. The explosion of bandolier brings about two effects—the death of the innocent hostage and the deaths of the terrorists—but does not bring about both effects simultaneously. The death of the hostage occurs first, and the death of the terrorists comes about a short time later via the collapse of the building. Does the order of the effects make the earlier effect an intended means to the later effect? In this case, is the death of the hostage a means to stopping the terrorists?

The answer to this question is negative. Clearly, one effect can appear *before* another effect without being the means to that effect. *Post hoc* does not entail *propter hoc*. In a gravid cancerous uterus case, the removal of the cancer occurs first, and the death of the previable human being in utero comes second, but it does not follow that the death of the fetus is the means to removing the cancer.

Another way of construing the difference between intended and unintended consequences is by assessing how “close” one effect is to another effect. Clearly, in this case, the effect of the death of the hostage is closely linked to the effects of the building’s collapse and the death of the terrorists. So, if effects that are closely linked are all intended, then the death of the hostage is intended and therefore impermissible.

This way of distinguishing intention from foresight also does not succeed. Consider another example, from Lawrence Masek:

Suppose I turn on a light bulb on a hot summer night. I then run an air conditioner to compensate for the heat from the light bulb. A criterion of closeness seems to entail both that I intend the heat from the light bulb and the noise from the air conditioner. In fact, I regard both effects as nuisances, not as means to my ends. The strict definition correctly classifies them as side effects, even though they unavoidably occur simultaneously with my turning on the light bulb and running the air conditioner. (“Intentions, Motives and the Doctrine of Double Effect,” *Philosophical Quarterly*, July 2010)

⁸Neil Delaney, “Two Cheers for ‘Closeness’: Terror, Targeting and Double Effect,” *Philosophical Studies* 137.3 (February 2008): 335–367.

This example, I believe, shows why not all “close effects” are in fact intended, but the force of the example can be made even more evident. No sane person can both intend and not intend the same effect at the same time. But if close effects are also intended, then in this example the person intends *both* to make the room hotter (in virtue of intending *stricto sensu* turning on the light and its close effect of the light’s heating up the room) and not to make the room hotter (in virtue of turning on the air conditioner). But this is absurd because a (sane) person cannot at the same time both intend to make the room hotter and also not intend to make the room hotter. However, a person could turn on the light and the air conditioner at the same time, so close effects must not be part of the means that are intended.

The Evil Effect Is Not Intended as an End

For Alison Hills, the interiority of intention, its nonpublic nature, renders double-effect reasoning problematic. She writes, “the DDE [doctrine of double effect] may be correct, but it is nearly practically useless: we cannot use it to make moral assessments of other agents unless we can tell what they intend to do. If there is no distinction between intentions and foreseen consequences, then DDE cannot be true. If there is no way of telling what other agents intend, then DDE is of little practical significance” (“Intentions, Foreseen Consequences and the Doctrine of Double Effect,” *Philosophical Studies*, March 2007). The epistemological problem is ever-present in double-effect reasoning insofar as what one intends depends in part on what one believes, and what one believes is not (always) readily evident to outside observers. Consider the following case, from Lawrence Masek’s article, of a woman who does not believe she is pregnant: “She does not know that she is pregnant, or that the pill is an abortifacient that can cure her nausea only by killing her foetus. According to the definition of intention stated above, the woman does not intend her foetus’ death because she does not believe that the pill will kill it. Defining intention without referring to the woman’s beliefs would entail that she intends the foetus’ death without having any idea that it even exists.” Intention itself, as well as the beliefs that intentions presuppose, is not directly evident to outside observers. In so far as ethics is for the sake of making judgments about others, double-effect reasoning is useless.

The objection raised by Hills presupposes that the purpose of ethics is to make it possible for us to judge other agents in their concrete activities. I do not believe this is the purpose of ethics. Indeed, precisely because intentions and beliefs are not publically accessible, it is unreasonable and immoral to judge other people as if we could come to a definitive, infallible judgment. It is important for us *as agents* to try to figure out what is the morally right thing to do, to consider various plans of action and whether these plans of action are ethical or not. Double-effect reasoning can play a part in this process. It is important for us as teachers, parents, or friends to instruct others in terms of which intentions are permissible and which are impermissible. However, it is not important for us to cast ourselves in the role of judge to declare other people good or evil. An agent’s ethical condition as good or evil is known in part to himself but is known fully only to God. We can judge that certain kinds of actions are intrinsically evil, such as intentionally killing innocent human beings. At the same time, we should refrain from judging people as formally guilty of murder, unless we have sure grounds for knowing the person’s intentions and beliefs. In some cases, there will be evidence of such intentions and beliefs from what the agent has

said or written and from a reasonable interpretation of the agent's behavior. In other cases, the agent's intentions and beliefs remain opaque to us.

But is it not important in certain contexts to know whether someone else is doing an evil action, like when you are considering marrying someone or admitting someone into a religious community or considering promoting someone in certain situations (head of the ethics board)? In certain contexts, is it important to try to come to the best understanding of the character of another person. We can often do this by means of having a conversation with them and observing their behavior to make reasonable inferences to their intentions and beliefs from this behavior.⁹ But in the end, whether or not a particular action is formally murder is a judgment that we cannot infallibly make, precisely on account of the interiority of intention and belief. We can and should judge actions that are materially right or wrong, that is to say, certain kinds of action if knowingly and willingly chosen undermine the character of the agent who chooses them. We cannot and should not judge this or that action of a particular agent as formally evil.

*There Is a Morally Serious (Proportionate) Reason
Justifying Allowing the Evil Effect*

Of all the conditions of double-effect reasoning, the fourth one is arguably the least emphasized and explored. Joseph Boyle, John Finnis, and Germain Grisez have explicated this fourth condition in as much detail as almost anyone. In an article that merits careful reading, Robert Anderson summarizes the view of Boyle, Finnis, and Grisez about how the fourth condition can be violated:

For example, accepting bad side effects might be prohibited (1) because accepting them violates fairness (such as the injury or death of person Q after throwing that person on the grenade in the bunker rather than oneself), or (2) because they result from a fanatical pursuit of a good (such as the untalented person's wasted life that results from a lifelong quest to play professional sports, "make it on Broadway," or the like) or (3) because they result from a fainthearted pursuit of a good (such as the poor results when students become convinced that study is hopeless), or (4) because they could have been avoided (wholly or partially) with a more creative pursuit of a good (such as collateral damage in war that could have been avoided had peace among nations been sought by means other than force, like diplomacy, UN sanctions, or embargoes), or (5) because they could have been avoided without the sacrifice of anything of comparable moral importance (such as the injury and death that could have been avoided had seat belts been worn). ("Boyle and the Principle of Double Effect," *American Journal of Jurisprudence*, 2007)

Anderson adds his own considerations about how to understand the fourth condition. Indeed, Anderson provides the best and most detailed account of the fourth condition that I've read:

Besides the prohibitions that Boyle, Finnis, and Grisez have explained, others seem to exist. For example, practical reasonableness would seem to prohibit accepting bad side effects that result while carrying out futile projects (such

⁹On this point, see Steven J. Jensen, "Getting inside the Acting Person," *International Philosophical Quarterly* 50.4 (2010): 461–471.

as the deaths of those ejected from the lifeboats so that others can hold out longer, though rescue and making of land are impossible). Again, rules of efficiency would seem to make unacceptable the bad side effects that result in the pursuit of a good with very little chance of achieving rather than a good with reasonable prospects of achieving (such as the failure, wasted effort, squandered money, and public cynicism that result from a space program bent on a Mars landing before first attempting a Moon landing). Likewise, practical reasonableness would seem to prohibit accepting bad side effects when they can be avoided if a less urgent good is set aside now for pursuit later (such as the irretrievable loss of antiquities when site work is not halted so that they can be removed). Finally, the pursuit of a good in such a way that the bad side effects ruin the good pursued often seems unreasonable (such as labor's fidelity to unions when their demands entail the bankruptcy of businesses and so the loss of the benefit packages, favorable working conditions, jobs, and all else-that labor sought).

The fourth condition of double-effect reasoning remains an aspect that is relatively under-explored. In a sense, this is to be expected. To determine whether or not there is a morally sufficient reason for allowing a given evil effect is a judgment for which there is no algorithm. Since circumstances are infinitely variable, and since circumstances must always play a role in determining whether, all things considered, there is sufficient reason for allowing a particular evil effect, practical wisdom must be used in coming to a judgment about the fourth condition. There is no substitute for prudence in coming to such a determination. Indeed, there is an irreducibly central role for practical wisdom, not just for cases involving double-effect reasoning but for the moral life generally.

CHRISTOPHER KACZOR