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Title of extract: **Ends and Means: Double Effect**

Name of Author: **Glover, J.**

Title/Author of book/edition (if applicable): **For Causing Death and Saving Lives.**

Glover, J.

Name of Visual Creator or other acknowledgement (if applicable):

Journal details –title/Vol/Year (if applicable):

Publisher: **Penguin**

Pages scanned: **86 - 91**

Course of Study (Module name and number): **Moral Philosophy CSPH7026**

Name of Designated Person
authorising scanning:

Date authorised: 12.07.13

Moodle/Powerpoint

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Chapter 6 Ends and Means: Double Effect

There is a further clear distinction between using means for the relief of suffering which may, as a secondary result, shorten life, and actively ending life. Here the guide is the principle known as the principle of double effect. It is a principle commonly misunderstood, but one which in fact guides doctors whenever the problem of undesirable side-effects arises with any treatment . . . The use of medicaments with the intention of relieving pain is good, and if by repeated pain relief the patient's resistance is lowered and he dies earlier than he would otherwise have done, this is a side-effect which may well be acceptable . . . On the other hand, to give an overdose *with the intention that the patient should never wake up* is morally wrong. It is killing.

Jonathan Gould and others: *Your Death Warrant? The Implications of Euthanasia*, London, 1971

The objections to killing defended here rest to a large extent on consequences, though not entirely so, because the need to respect someone's autonomy is given some weight independent of good consequences. This can be seen as accommodating part of what is valued when it is said that we ought always to treat people as ends in themselves and never merely as means.

But many people disapprove of giving the consequences of acts even the restricted, though still important, role that they play in the moral beliefs advocated here. These beliefs will to them still be sufficiently close to traditional utilitarianism to provoke the criticism that, in an objectionable way, 'the end justifies the means'. Those who make this criticism will want some set of principles according to which the relations between

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the consequences of an act and its morality are more indirect. In discussions of the morality of killing, two such principles are often either cited or else tacitly presupposed. One says that there is a morally significant difference between acts and omissions. This will be the subject of the next chapter. The other is the doctrine of double effect.

This doctrine can be summarized crudely as saying that it is always wrong intentionally to do a bad act for the sake of good consequences that will ensue, but that it may be permissible to do a good act in the knowledge that bad consequences will ensue. The doctrine is explained in terms of the difference between intended and foreseen consequences.

G.E.M. Anscombe, who believes in the double-effect doctrine, has illustrated it with the case of killing in self-defence.¹ If you attack me, I may, if necessary, defend myself by striking you so hard that your death results. (The 'if necessary' is important here: I have a duty to use the minimum force necessary.) But, if I know you are searching for me to kill me, I am not morally permitted to arrange for you to be poisoned before you find me.

The explanation usually given of this moral difference is that, where I arrange for you to be poisoned, I must intend your death as a means to my own safety. On the other hand, when I hit you in self-defence, I intend only to prevent you from killing me. If I only knock you unconscious, this will be just as effective. If you do die, this can be a foreseen but unintended consequence of my blow, rather than itself the intended means of my defence.

Some applications to cases of abortion of the double-effect doctrine may be mentioned. The doctrine allows that a pregnant woman with cancer of the womb may have her life saved by removal of the womb, with the foreseen consequence that the foetus dies. But, if the doctor could save only the mother's life by changing the composition of the amniotic fluid and so killing the foetus while still attached to the womb, this would

1. G.E.M. Anscombe: 'War and Murder', in W. Stein (ed.): *Nuclear Weapons, A Catholic Response*, London, 1961.

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not be permitted. In the second case the death of the foetus would be an intended means; in the first case it would be merely a foreseen consequence.

The double effect doctrine is often criticized on utilitarian grounds. The two abortion cases would each have the same outcome: the death of the foetus and the saving of the mother. A utilitarian is bound to see this moral doctrine as unacceptable: depending on a distinction without a difference. If the death of the mother is a worse outcome than the death of the foetus, it seems to a utilitarian immoral to act as the double effect principle tells us.

Professor Hart has cited another application of the double effect doctrine that is open to similar objection.² There was a case in which a man was trapped in the cabin of a blazing lorry, with no hope of being freed. He asked a bystander to shoot him in order to save him from further agony. The bystander did so, but his act would have been condemned by the double effect doctrine. For, according to this view, if it is wrong intentionally to kill an innocent man, it is still wrong to do so even as a means to saving him from pain: better not shoot him, with the foreseen consequence that he will burn to death.

There are also problems of stating the doctrine precisely. How do we draw the line in difficult cases between an intended means and a foreseen inevitable consequence? If, as a political protest, I throw a bomb into a football crowd, causing an explosion and killing several people, are their deaths intended means to my protest or inevitable consequences of it? On what principles do we decide whether the explosion alone is included in the means or whether we must count both explosion and deaths as part of the means? This cannot be decided on the grounds of the virtual inevitability of the deaths if the explosion occurs, for the double effect doctrine tells us that there can be consequences foreseen to be inevitable, yet which do not count as intended means. The matter cannot hinge on whether or not the deaths are desired, for in the forbidden abortion case

2. H.L.A. Hart: 'Intention and Punishment', *The Oxford Review*, 1967, reprinted in H.L.A. Hart: *Punishment and Responsibility*, Oxford, 1968.

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the death of the foetus is no more desired than it is in the permitted case.

It may be suggested that what is crucial is the 'closeness' of the connection between cause and effect. (Jonathan Bennett has raised the question why 'closeness' should be of any moral importance, aside from its link with the extent to which the effect is either inevitable or desired.³ A lot of explaining seems called for.) What sort of 'closeness' is in question? Is it closeness in time? If so, having someone poisoned in order to prevent them catching and killing me will turn out not to be forbidden if the poison used is very slow-acting. If it is some other form of closeness, how is it specified and what degree of it is required?

The next problem in formulating the doctrine is that of identifying the class of 'bad' acts that can never be justified by appeals to consequences. Some people believe that they know the contents of the list of such bad acts, which has been laid down by an authority, perhaps by God. They have no difficulty in justifying their claim to know which acts are forbidden (apart from familiar problems of saying how they know God exists, how they know what he commands, and why they should obey his commands). If the identification of the class of forbidden acts depends on this kind of appeal to authority, those of us who are unimpressed by such appeals can discard the double effect doctrine at once. But perhaps this is too hasty. Is there any way of identifying the 'bad' acts which can never be justified by good consequences, without appealing to some authority?

These acts cannot be identified by the badness of their consequences in a particular case, for the forbidden and permitted abortions can have the same effects on the interests of all concerned. Perhaps an appeal to the beneficial consequences of a rule is involved. Because it is in general better that people do not take innocent life, a rule is made saying that it must never be done. This raises the problem: why should I obey the rule in cases where to do so does not have the best overall consequences?

3. Jonathan Bennett: 'Whatever the Consequences', *Analysis*, 1965.

There is also a further problem. For there are many things that are in general undesirable, but which are not made the subject of these absolute prohibitions. Lying is in general undesirable, but it is not commonly suggested that it is absolutely wrong to lie, for instance as a means of saving someone's life. So, why killing? Even if killing is 'in itself' worse than lying, this is surely a matter of degree. It seems hard on this basis to justify an absolute prohibition. For suppose killing is a million times worse than lying. If we can lie to avoid someone's death, how can we justify refusing to kill someone where this will save a million lives?

There is a parallel problem of deciding what kinds of foreseen but unintended consequences can be justified by the double effect doctrine. For I cannot, according to the doctrine, perform an act which brings about a small intended benefit, with disproportionately disastrous foreseen consequences. I may not tell the truth about an innocent fugitive's whereabouts to an assassin, with the foreseen consequence that he is murdered. But, having allowed this concession to utilitarian calculation, where is a line to be drawn, and why?

The situation is complicated by the difficulty of deciding where to draw the line between an act and its consequences. If we are on a desert journey and I knowingly use all the drinking water for washing my shirts, my act may be described merely as one of 'washing shirts' or of 'keeping up standards even in the desert', and our being without water may be thought of as a foreseen bad consequence. But it is at least equally acceptable to include the consequence in the description of the act, which may then be described as one of 'using up the last of the water' or of 'putting our lives at risk'. This general problem of distinguishing acts from their consequences is clearly related to the problem already mentioned, of distinguishing intended means from foreseen consequences.

It is crucial for the double effect doctrine that some limit must be set to the re-description of acts in terms of their consequences, for otherwise the doctrine will forbid nothing. Killing the foetus while it is attached to the womb will be permitted

under the description 'saving the mother's life'. Eric D'Arcy⁴ quotes the jingle 'Imperious Caesar, dead and turned to clay, might stop a hole to keep the wind away', but protests that it would be wrong to describe killing him with that end in view as 'blocking a draught'. D'Arcy's own solution to the problem is to claim that 'certain kinds of act are of such significance that the terms which denote them may not, special contexts apart, be elided into terms which (a) denote their consequences, and (b) conceal, or even fail to reveal, the nature of the act itself'.

This is an attractive claim, for we do feel that there is something wrong with describing Caesar's murder as 'blocking a draught'. Our objection to such an oblique description is presumably because it omits features of great importance to our moral appraisal of the act. But such incompleteness is a matter of degree. Many acts have so many facets of some relevance to moral evaluation that we often have to sacrifice completeness to brevity. In describing a man's act of rushing a seriously injured person to hospital, we do not have to include in our description of his act the consequence that he broke a promise to meet someone for lunch. We value explicitness of description, and we often disapprove of people slurring over themorally unattractive aspects of actions, especially of their own actions. But the degree of explicitness we think desirable may vary in different contexts, and there may be disagreement as to how incomplete a description can be before it reaches objectionable evasiveness.

If the doctrine of double effect is to have any content, it must stipulate that acts which fall under certain descriptions may never, for purposes of moral evaluation, be described in a way which omits this feature of them. We have seen that the drawing-up of a list of absolutely forbidden acts raises difficulties. A parallel list of un-elidable act-descriptions is likely to be morally just as debatable.

The lack of intuitive plausibility of some of the applications of the double effect doctrine, together with the difficulties both of drawing the key distinctions and of defending their relevance, are good reasons for rejecting it.

4. Eric D'Arcy: *Human Acts*, Oxford, 1963, Ch. 4, part 3.