

Taking Aim at the Principle of Double Effect: Reply to Khatchadourian

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IN THE MARCH ISSUE of this journal Haig Khatchadourian asked the question which the title of his article bore, "Is the Principle of Double Effect Morally Acceptable?"¹ Khatchadourian made a clearly coherent argument that in the long run, the principle is superfluous. I believe, however, that Khatchadourian missed the target. He missed the target because the object of his critique is a principle which derives its meaning from a particular system of moral thought. Without that system, the principle is certainly insignificant, but inasmuch as Khatchadourian did not take aim at the system itself, the principle remains, as I shall argue now, morally acceptable.

Khatchadourian's article tries to show why the consequentialists and not the deontologists are correct. Admittedly, if deontology is wrong, the principle of double-effect is superfluous. Yet, I believe that the principle makes sense for the purpose it has in a deontological framework. The principle can only be not nonsense or not "superfluous" when we have deontological, absolute prohibitions. Indeed, Khatchadourian points that out on page 22, but his examples concern universal or even general rules. As far as I understand, the principle is used for specific rules. I propose that the question concerning the legitimacy of the principle is two-fold: do deontological grounds for absolute prohibitions on specific matters have justification? Khatchadourian does not raise this. Rather he raises the question about the moral acceptability of the principle itself. In doing that, he misses the specific point of the principle, for, indeed, if one does grant the deontological grounds for certain prohibitions, then some actions recommended by the principle of double-effect will remain moral even though they cause more harm than other options outside of the principle itself.

Khatchadourian argues against condition 1 (that the act must be good) of principle I on the grounds that an act permitted by the principle is precisely one that "would be wrong on some deontological rule or other" (p. 21). Condition 1, however, is central, because it argues implicitly, that a "bad" act cannot be performed. Yet Khatchadourian, in replacing this condition with those of principle II and of principle III, omits the point of the principle, that is, that a bad action cannot be intended as an end or chosen as a means.

Condition 1 is important because it presupposes a deontological prohibition which is determined apart from any consequential logic or effects. This prohibition is found apart from the question of harm caused. What does this mean?

¹Haig Khatchadourian, "Is the Principle of Double Effect Morally Acceptable?" *International Philosophical Quarterly* 27 (March, 1988), 21-30.

Bruno Schüller has done remarkable research here.² He and a disciple of his, Lucius Ugorji,³ have shown that the principle has been used *only* in the context of particularly specific rules. Faced with morally unacceptable courses of action, the principle of double effect remedied particular quandries. “Deeply concerned with the deplorable results of a rigoristic conclusion” Schüller assumes Catholic moral theologians have “resorted to a kind of compromise between the deontological prohibition of killing and teleological considerations.”⁴

Schüller argues that these unacceptable courses of action are so deemed because they either frustrate “a natural (God-given) faculty” or are performed without the “required authorization” (*ex defectu iuris in agente*).⁵ Thus, apart from the question of desirable effects, certain actions falling under these concerns are *absolutely* prohibited as means or as ends. Since the Church’s teachings are predominantly teleological, however, *only* in these few instances of absolute, deontological prohibitions does the principle of double effect arise. Only there its purposefulness is understood. The principle is adopted as a means of responding to certain situations in which one mistakenly could understand the possible, though not necessary, effects of an act as identical to the means used. Resolving this problem accounts for the principle’s utility and “moralness.”

Faced with absolute, deontological prohibitions, the principle of double effect is raised. Thus, in its first use,⁶ Thomas Aquinas is faced with the prohibition of taking the life of another without authorization.⁷ But when asking the question of the legitimacy of self-defense, Thomas implicitly distinguishes the object of an action that can be a means or an end from the effect of an action.⁸ There Thomas distances the object of the act, self-defense, from one effect of the act, the possible harm or death of the attacker. Since its inception the principle has always concerned justifying action that appears to employ an immoral object. The principle responds to the problem of unravelling situations that could be interpreted as usurping the authority of a deontological prohibition.

Khatchadourian omits, therefore, the key condition to understanding the principle. Khatchadourian may attempt to argue that others use the principle as he describes it in principle II. But, the oversight of those proponents does not legitimate naming principle II the principle of double effect.

Indeed, the history of the principle speaks for itself. In providing an account of the principle’s development Ghooos states that Medina (1528–1580), Lessius (1554–1623), Laymann (1575–1635) and Molina (1536–1600) all argue that a bad act

²Bruno Schüller, “Direct Killing/Indirect Killing,” *Readings in Moral Theology, No. 1*, edd. R. McCormick and C. Curran, (New York: Paulist Press, 1979), pp. 138–157. “The Double Effect in Catholic Thought: A Reevaluation,” *Doing Evil to Achieve Good*, edd. R. McCormick and P. Ramsey (Chicago: Loyola Univ. Press, 1978), pp. 165–91.

³Lucius Ugorji, *The Principle of Double Effect* (Frankfurt am Main: Peter Lang, 1985).

⁴Bruno Schüller, “The Double Effect in Catholic Thought,” p. 174.

⁵*Ibid.*, p. 169.

⁶Joseph Mangan makes this claim in “An Historical Analysis of the Principle of Double Effect,” *Theological Studies* 10 (1949), 41–61. J. Ghooos challenges Mangan and argues that the principle was first established by John of St. Thomas in “L’acte à double effet, étude de théologie positive,” *Ephemerides Theologicae Lovanienses* 27 (1951), 30–52.

⁷ST II–II 64. 3.

⁸ST II–II 64. 7.

makes superfluous all discussion about the permissibility of harmful effects.⁹ Mangan shows that the Salmanticenses in the *Cursus Theologicus* (1647) held the same first condition.¹⁰ In fact, the standard manuals, whether by Gury (1874)¹¹ or by Noldin (1922),¹² Davis (1934)¹³ or Kelly (1958),¹⁴ hold the same condition: the act cannot be one that is already prohibited. Let us now consider some examples.

Bernard Häring tells the case of a doctor who had a patient in her fourth pregnancy with an adnexal tumor. Faced with removing the fetus or removing the uterus with the fetus, he chose the former to minimize harm: the woman's fertility remained intact. But, the Church, contrary to Katchadourian's position, (cf. footnote 9) forbids direct abortion. That act is in itself absolutely prohibited.¹⁵

Given the deontological norm, a direct abortion is ruled out. Nonetheless, the principle of double effect provides that the bleeding uterus may be removed. Its logic appears rather legalistic; but actually it is simply trying to resolve a situation in which a direct abortion cannot be performed, simply because, as the deontological prohibition reads, a direct abortion is not the right of human agents. Thus, it argues that the act of removing the uterus has a two-fold effect, the saving of the mother, and the death of the fetus. The act of the direct abortion has only one end and a consequent effect: the death of the fetus that restores the health of the mother. Thus, the latter method employs an unacceptable means. Faced with that, the alternative is the former method with two effects. The principle of double effect has meaning when one accepts the condition that acts exist that may be absolutely prohibited for reasons beyond the question of harm.

The same issue applies to the ectopic pregnancy: a doctor may choose between shelling the tube by a direct abortion or may remove the defective tube. Like the former case, guided by the principles of beneficence and non-maleficence, the former option appears more reasonable because it causes less harm. But, direct abortion is deontologically absolutely prohibited. In the absence of the right to take innocent life, the option to perform a direct abortion is precluded. If the

⁹J. Ghooos, "L'acte à double effet," p. 43. "Sous l'influence de Medina tous les auteurs formulent du moins une règle fondamentale, à savoir: quand l'acte causal est mauvais, toute discussion sur la licéité de l'effet nuisible devient superflue."

¹⁰In his "An Historical Analysis of the Principle of Double Effect," Joseph Mangan writes that the first condition of the principle of double effect excludes "the question of performing licitly actions that are evil in themselves, but only those that are good in themselves or at least indifferent, even though these may be vitiated by their effects." p. 57. Cf. Salmanticenses, *Cursus Theologicus*, t. 7, tr. 13, disp. 10, dub. 6, n. 211–13.

¹¹Jean Pierre Gury, *Compendium Theologiae Moralis* (Naples: M. D'Auria, 1934), 1.2, p. 28, n. 9. "Requiritur causa bona, vel saltem indifferens, scil. ut actus nulli legi opponatur."

¹²Hieronymous Noldin, *Summa Theologiae Moralis* (Oeniponte: Feliciani Rauch, 1956), 1, p. 84, n. 83. "Si actio ipsa est bona vel indifferens vel saltem non praecise ideo prohibita, ut effectus malus impediatur."

¹³Henry Davis, *Moral and Pastoral Theology*, 5th ed. (New York: Sheed and Ward, 1946), p. 13. "It is permissible to set a cause in motion, in spite of its foreseen evil effect, provided that the act which produces the evil effect is not itself a morally wrong act."

¹⁴Gerald Kelly, *Medico-Moral Problems* (St. Louis: Catholic Hospital Association, 1958), p. 13. "The action, considered by itself and independently of its effects, must not be morally evil."

¹⁵The case of the mother's life as endangered was expressly raised among the reasons for permitting direct abortion. In response to that and other reasons, the *Declaration on Procured Abortion* (1974) wrote, "We proclaim only that none of these reasons can ever objectively confer the right to dispose of another's life, even when that life is only beginning" (paragraph 14).

Church argues that that right is prohibited, how can the Church resolve the matter? She offers the principle of double effect: aim to heal the woman without performing a direct abortion. If this is not possible, then the Church offers no other permissible option. Fortunately, in an ectopic pregnancy, a solution can be found that is beneficial albeit less non-maleficent than performing the direct abortion. Given that the method of a direct abortion is unacceptable, another method is offered. This method does not entail choosing an act which is “bad.”

I believe that Khatchadourian overlooks the centrality of the “object” in this principle. He writes, “For the principle a particular (kind of) intention is right or wrong depending on whether it is an intention for the realization of a good or an evil end, respectively” (p. 25). A reading more closely of Thomas would show that the end is first an object presented to the will by the reason.¹⁶ Since an end is originally an object, any intended end can be considered also a chosen means.¹⁷ Therefore, an issue is raised, can we measure acts as “objects,” that is, not according to their effects, but according to their meaning? Can we measure acts not according to what we want to happen, but also according to what we do? Thus, the principle argues that an intention is right or wrong not only by the effects it wills but also according to the object it wills.

On the surface of it, this may seem a precious distinction. Yet, here is the claim that our actions can be measured by the object itself, quite apart from any effects. Before an end is even willed, are there objects which are prohibited? The meaning of a vasectomy is direct sterilization, the meaning of a direct abortion is the direct killing of an innocent, and the meaning of a craniotomy is a direct abortion, a contraceptive is a direct frustration of a natural finality. These objects are prohibited, whether as ends or means. Hysterectomies, the surgical removal of a tube, natural family planning, self-defense, etc. do not have these meanings.

Given that we have not the right to take the life of another (except where that right is delegated to the state in the maintenance of justice), the Church forbids direct euthanasia. For this reason, one cannot inject a substance whose meaning is to kill. The act is already prohibited because the object has its own meaning. One may administer the pain killer, however, to relieve the pain of a patient in great agony and with no hope of relief or recovery. In relieving that pain one may actually administer such high doses, necessary for the relief of pain, that the patient’s life would be shortened. One could not administer a lethal drug (here the object and its effect are forbidden) nor a pain killer to kill the patient (here though the object is right, the willed effect is not) but one could administer the pain killer according to the necessary amounts of relieving pain (here both object and its effect are permissible).¹⁸

Because Khatchadourian focuses on “ends” he again bypasses the central issue from which the principle of double effect takes its meaning. The issue concerns objects prohibited either *ex defectu iuris in agente* or on account of the frustration of a faculty. Are these grounds valid? That question to me seems the real issue.

¹⁶Cf. *ST I. II. 18. 2c*, ad 1, 2, and 3, wherein Thomas asks whether the good or evil of one’s action is derived from its object.

¹⁷*ST I. II. 13. 3. ad 2.*

¹⁸Pius XII, “Address to delegates to the Ninth National Congress of the Italian Society of the Science of Anesthetics,” *Catholic Mind* 55 (1957), 260–78.

Inevitably, if one fails to include this condition, the principle of double effect is reducible to nothing other than proportionate logic as Peter Knauer¹⁹ has already shown. But Khatchadourian, like Knauer, overlooks this condition. Reinstating condition 1, that on grounds other than either proportionate or consequential the act cannot be a prohibited one and you have the Principle. And then, condition 6 must be restricted, more nuanced, and hardly makes the principle superfluous. The problem becomes then no longer the Principle of Double Effect, but rather the meaning or claims of those deontologically grounded absolute prohibitions.

¹⁹Peter Knauer, "The Hermeneutic Function of the Principle of Double-Effect," *Readings in Moral Theology, No. 1*, edd. R. McCormick and C. Curran, (New York: Paulist Press, 1979), pp.1–39.