

Is the Principle of Double Effect Morally Acceptable?

Haig Khatchadourian

I

THE SO-CALLED DOCTRINE or principle of double effect (hereafter called "the Principle") plays a central role in various areas of normative ethics, e.g., in medical ethics, and moral issues relating to war. It is a principle to which Catholic and certain non-Catholic moralists and moral philosophers adhere. But it is not without its critics. One critic is Jonathan Bennett, to whose article¹ I shall have occasion to refer. In fact the Principle is incompatible with utilitarianism and other forms of pure consequentialism; consequently, with moderate deontology (or moderate consequentialism), a form of which I hold.²

In what follows I shall first present and criticize two palpably inadequate formulations of the Principle, which I shall call Principle-I and Principle-II, then will examine and criticize a third and more plausible formulation of it which I shall call Principle-III.

II

Principle-I: In the Introduction to *The Ethics of War and Nuclear Deterrence*, James P. Sterba states:

As traditionally conceived, the Doctrine of Double Effect places four restrictions on the permissibility of acting when some of the consequences of one's action are evil. These restrictions are the following:

1. The act is good in itself or at least indifferent.
2. Only the good consequences of the act are intended.
3. The good consequences are not the effect of the evil.
4. The good consequences are commensurate with the evil consequences.³

Condition (1) is too restrictive. For the essential point or purpose of the Principle is to provide a moral justification for actions which, apart from (a) their actual or probable consequences and from (b) the agent's intentions, would be wrong on some deontological rule or other. An example is killing an innocent

¹Jonathan Bennett, "Morality and Consequences," in James P. Sterba, ed., *The Ethics of War and Nuclear Deterrence* (Belmont, CA, 1985), pp. 23–29.

²In the form in which I hold it, it combines an appeal to consequences with an appeal to human and other moral rights, in evaluating the morality of actions.

³Sterba, *op. cit.*, pp. 2–3.

human being or letting him or her die. In other words, the Principle's putative merit lies in allowing for *exceptions* to otherwise absolute deontological principles or rules, such as the Biblical "Thou shalt not kill" or Immanuel Kant's first formulation of his Categorical Imperative. Both parts of condition (1)—the first part more than the second—exclude the possibility I have described.

The point I am trying to make can be stated thus. If a particular act "A" is "good in itself" (whatever that may mean), the pure deontologist, the "intuitionist," has no trouble with its performance notwithstanding its double effect. Again he has no problem, if the act is morally indifferent. Further, so long as the consequences are good on the whole, the good outweighing the evil, the consequentialist too has no problem with "A's" performance. The same would perhaps also be true if, instead of condition (1), condition (4) were supposed to be true, provided all the other alternatives open to the agent in the circumstances had a preponderance of evil consequences. Again, those who regard good intentions or good motives as the whole and sole condition of an act's rightness (advocates of the pure "attitude" theory) consider act "A" right or wrong purely on the basis of condition (2).

Other flaws in Principle-I will be noted in the discussion of Principle-II and Principle-III.

III

Principle-II: The essentials of Principle-II are the following: an action "A" is morally justified or right if:

1. agent *P* performs "A" as a means to a good end "G";
2. *P* foresees that "A" will very probably (or even, certainly) also result in evil consequences "E";
3. *P* does not intend to bring about consequences "E";
4. "G" is not a result of "E."⁴

This version is inferior to Principle-I in one respect but superior to it in another. All in all it is closer to Principle-III than to Principle-I. It is inferior to Principle-I in leaving open the possibility that "E's" badness may outweigh "G's" goodness. Whenever that is true *P* cannot justifiably intend to bring about "G" by performing "A." If possible, he ought to choose to perform instead some other action, "W," which is also calculated to result in "G" but which is likely to have fewer evil consequences as a by-product. In fact, the consequentialist would demand that he perform that act which would result in "G" but with the least evil by-product possible in the circumstances. That act, not "A," would be morally right in the circumstances. In other words, the agent's intention must be to bring about the greatest balance of good over evil, given that "G" is the good aimed at. In fact, the consequentialist would regard it as the agent's moral duty to aim to realize the *greatest net balance of good over evil* possible in the circumstances; and that may require the agent's aiming at realizing a different good, greater than

⁴For statements of Principle-II see e.g., William V. O'Brien, "Just-War Theory," in Sterba, *op. cit.*, p. 42f. (where it occurs as part of what O'Brien calls "a standard and authoritative exposition of the principle of discrimination by Dr. Richard McCormick," p. 42). See also Elizabeth Anscombe, "War and Murder," in Richard A. Wasserstrom, ed., *War and Morality* (Belmont, CA, 1970), pp. 42–53.

“G,” instead. In that case his intention must be geared to that good (“N”) rather than to the good “G” which he picks out and aims at the outset, and he must choose a course of action designed to realize it.

There are, to be sure, many possible situations in which Principle-II can naturally come into play. I mean situations in which some individual desires to realize a particular end which is, in fact, desirable to realize in such circumstances. In such cases it would not do for the consequentialist to demand that the would-be agent abandon or postpone either the goal itself or the attempt to realize it at the particular time and place, if realizing that goal would mean a lesser net balance of good over evil. In another important way, however, the consequentialist has a good point. For, first, if the price of realizing the particular goal “G” in the particular situation is too high in terms of the evil by-product of the action(s) needed to realize it, rationality, no less than morality, would dictate that the attempt to realize “G” should be, if possible, postponed, if not completely abandoned (e.g., if the evidence shows that the cost of realizing it will always or almost always be very high). An example would be the tactical bomber in Bennett’s hypothetical situation, in which his destruction of an enemy munitions factory is foreseen by him to cause the death of ten thousand civilians.⁵ Second, where a good end must be realized at a particular time in a particular situation, if it is to be realized at all, morality does dictate, it seems to me, that the means employed ought to be such as (probably) to have the least evil consequences possible in the circumstances.

The upshot of the preceding considerations is that, *minimally*, a fifth condition must be added to the four conditions of Principle-II, thus:

5. The intended good “G” must outweigh the unintended but foreseen evil by-product “B” of the act.

It is admittedly difficult in some instances, and perhaps impossible in others, to compare the goodness of something good and the badness of something bad. We are often hard put to compare the goodness/badness of two good/bad things! Still, we frequently do—indeed, are forced to—make such comparisons in a rough and ready way in daily life as well as in moral philosophy. And though our rankings of goods and evils are relative to standards which in principle are contestable and which in practice are often disputed, the concepts of good and bad, of value and disvalue, are scalar notions and so admit of degrees or amounts. As to what standards of good/bad, value/disvalue, I believe would be rationally defensible, that is a large question into which we cannot and need not go in this paper.

The greater plausibility of Principle-II compared to Principle-I lies in its not being saddled with condition (1) of the latter version, which I have criticized.

IV

Leaving aside the differences between Principle-I and Principle-II, the two versions are particularly noteworthy for their omission of a crucial condition whose absence rules each of them out of court as a morally acceptable principle.

⁵For further discussions of this point, see later.

That condition, if added to the conditions of Principle-II together with condition (5), yields Principle-III:

6. Act "A" is, on the best evidence available to the agent in the circumstances, absolutely necessary for "G's" realization in the circumstances. It follows [from condition (2) of Principle-II] that it is actually very difficult or impossible to realize "G" without also bringing about evil consequences "E." No other means—certainly, no other practicable means—for "G's" realization, with lesser evil consequences than "E," are actually open to the agent in the circumstances.

There is no contradiction between conditions (5) and (6). The former pertains to the end "G," while the latter pertains to the means for "G's" realization. Whether any indirect conflict exists remains to be seen.

Applying Principle-III to the tactical bomber, his bombing of the enemy factory would be morally justified if:

1. the factory's destruction is a good (as helping to win a just war and bringing about a just peace);
2. the tactical bomber foresees that his bombing the factory will also kill ten thousand civilians (innocent persons);
3. the factory's destruction, as a good, outweighs the killing of ten thousand civilians;
4. the tactical bomber solely intends the factory's destruction, not (or not also) the killing of civilians;
5. the factory's destruction *and* the killing of civilians are the result of the bombing;
6. bombing the factory at the particular time and the particular circumstances is actually the only possible or practicable way of destroying it; hence if the factory must be destroyed to help realize the just war's ultimate goal, the harming of civilians (or even, of a particular number of civilians) is unavoidable.

The rationale of condition (6) is, I think, clear. If it is not satisfied—for example, if the factory can be destroyed in some other way than by bombing it, or at some other time of day or night than in the imagined example, so that fewer innocent persons are harmed—the alternative means and/or timing would be what morality enjoins. (In fact, morality would enjoin not destroying the factory at all if equally effective alternative means of weakening the enemy can be found, involving fewer civilian casualties still.) The time it takes to perform the action or to prepare for it, and the ease or difficulty with which it can be performed relative to the alternative envisioned, and similar factors, may or may not be relevant to the morality of the action chosen *vis-à-vis* possible alternatives. Where they are (as they would be in wartime), these and other relevant factors must also be carefully weighed. Similar remarks sometimes also apply to the foreseen evil by-products of alternative means to the intended good.

Insofar as Principle-I and Principle-II do not include condition (6) they are open to the fatal objection that the intended good end does not morally justify the use of means that also result (other things being equal) in worse by-products than necessary in the circumstances. This stricture can be readily applied to the tactical bomber, as well as to the terror bomber, if we imagine him to fail to satisfy condition (6). (Terror bombing also fails on some of the other conditions of Principle-III.)

Although condition (6) is crucial for the Principle in the way described, the

champions of the Principle in its first or second version would vehemently reject it—and with good reason! They would rightly object that it renders superfluous or meaningless the crucial distinction between intended and unintended ends. In effect, it would replace Principle-I and Principle-II, each as a whole, with a purely consequentialist condition of right action which champions of Principle-I or II cannot accept, since the Principle exemplifies a different ethical tradition, namely, a deontological-*cum*-attitudinal (Christian) tradition.⁶

That condition (6) is a purely consequentialist condition—though logically different from the “greatest good (in classical utilitarianism, the greatest happiness) principle”—is fairly obvious. It is a very special or restricted form of the consequentialist principle that we ought to (strive to) realize the greatest net balance of good over evil possible in the circumstances, since it comes into play only when the actual means for the realization of a certain desirable goal are in practice limited to *just one* course of action. In fact, this furnishes the Principle’s advocates with an additional reason for rejecting it, since it restricts the Principle’s (Principle-III’s) applicability to a very small and rather uncommon set of possible cases.

Thus the Principle’s advocates are faced with a grave dilemma: if they omit condition (6), the Principle is crippled; if they admit it, the Principle is rendered superfluous and so in effect collapses.

Despite the greater plausibility of Principle-III (though attained at the price of a drastic restriction in the scope of its applications), it is unsatisfactory as a moral principle and must be rejected. I shall now present some support for my contention. Some or all of the considerations I shall present will also count against Principle-II and/or Principle-I.

1. A crucial difference between the Principle in its three formulations and pure consequentialism is the role which right intentions play, or are supposed to play, in them. 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. On the other hand, the standard consequentialist (utilitarian) view is that a right intention is one which generally results in beneficent actions.⁷ And the opposite is the case with what we call wrong or bad intentions. Thus “right (wrong) intention” is defined or understood in terms of good (bad) *actual* or *probable* consequences, rather than independently of them. For the intended consequences and the probable or actual consequences of an action (or kind of action) may or may not be contingently the same, may or may not actually coincide in particular cases, apart, of course, from the fact that they are logically distinct.

⁶For example, a form of the Principle follows from St. Thomas’ ethical theory, thus: (a) “intended consequences” consist in some or all foreseeable and some or all unforeseeable consequences of one’s actions; (b) we are not morally responsible for the unforeseeable consequences of our actions; i.e., unforeseeable evil consequences do not make the agent’s will an evil will (Aquinas); (c) but some foreseeable consequences may be unintended; (d) we are morally responsible only for the intended consequences of our actions (Aquinas); therefore, (e) we are not morally responsible for the foreseen (hence foreseeable) but unintended evil consequences of our actions.

⁷Cf., J.J.C. Smart in *Utilitarianism For & Against* (Cambridge, 1973), p. 48. Smart speaks of good and bad motives rather than of good and bad, or right and wrong, intentions; but what he says applies to the latter. He writes: “A good motive is one which generally results in beneficent actions, and a bad motive is one which generally ends in maleficent actions.”

We can look at the matter in this way. By definition an intention is an intention to bring about some particular end or kind of end; or, perhaps better, to bring about a particular end or kind of end by means of some particular action or kind of action. But the consequentialist—or the moderate deontologist such as myself—would argue that unless a particular intention, as a kind of intention, generally leads to beneficent actions—to actions that *in fact* produce desirable results—that kind of intention can have no claim to being called a right or good intention. But for an intention to lead to beneficent actions, the agent who intends a good end must choose those actions which, on the best available evidence, are likely to realize that good. And the same, *mutatis mutandis*, with “wrong or bad intentions.” Thus, only if these conditions are satisfied, would intentions have moral significance. (This is true even if “right intention” is somehow defined independently of *actual* or *probable* consequences.)

With regard to the Principle itself, what these things mean is that unless condition (6) is adopted, the agent’s intending only the good consequences of his actions would be a hollow, morally meaningless, gesture, because condition (6) concretely expresses or makes manifest⁸ the agent’s intent and resolve to attempt to realize the intended good only if its undesirable by-product is unavoidable.

Ironically, analysis of the limited types of situations in which Principle-III is applicable, shows that the heart of the principle of double effect in all its forms—the agent’s intention to produce only the good end and not the foreseen evil by-product—plays no morally significant role at all! Consider first moral dilemmas in which only two morally relevant and significant courses of action are open to the agent, each of which has a double effect. The two available choices would consist in either doing something “X” or in refraining from doing it (which may mean the agent’s continuing to do what he has been doing, or continuing to do something of the same kind as before). The crucial thing here is that only one action-type, “X,” can realize a desirable end “G,” and only one action-type, “not-X,” can realize another desirable end “H.” The dilemma obtains because the production of “G” by “X” would be accompanied by the evil by-product “not-H,” while the production of “H” by “not-X” would be accompanied by the evil by-product “not-G.” Thus condition (6) is satisfied.

A paradigm-case is provided by a pregnant woman whose life or physical/emotional health is seriously threatened by the pregnancy. The only choices open to her are either (1) ending the pregnancy by abortion, or (2) letting it continue. I shall assume that (1) would save the mother’s life or health, but would result in the fetus’ death; and that (2) may save the fetus’ life but result in the mother’s demise or in her serious incapacitation. (It is sometimes possible that the life of both mother and fetus would be saved by not having an abortion; but even then the latter’s health may be severely, sometimes permanently, damaged.) Let us assume for the sake of discussion that abortion is the only way in which the mother’s life or health can be saved, and that not aborting is the only way in

⁸In “Self-Defense and the Just War” I distinguished intention “as an objective, overt state of affairs” from intention as a “subjective, psychological phenomenon.” The former is “defined by what one actually does and not independent of and temporally prior to it. In that sense it is, so to speak, embodied in the actions performed. . . . With regard to intention in the former sense the kind of action one performs determines the intention it involves” (Sterba, *op. cit.*, p. 163). Using that distinction I presented an argument against the principle of double effect to which the reader is referred.

which the fetus' life can be saved. Here, therefore, abortion is necessary for the former, while not aborting the fetus is necessary for the latter.

The consequentialist would defend (1) as morally right if in the particular circumstances or as a rule he judges the mother's life/health to be a greater good than the fetus' survival.⁹ On the other hand, he would regard not aborting the fetus as the morally right course of action if he believes that, all things considered, the fetus' life possesses greater value than the mother's life.

It appears to me that in this type of situation the agent who follows Principle-III would have to act in exactly the same way as the consequentialist, and for the same reasons, i.e., by intending to realize, and so by taking the necessary steps to realize what he considers to be the greater good in the circumstances. His intending to produce only the good consequences and not the evil by-product of the action which he deems necessary to realize the former, would appear to play no role at all in the decision and the consequent action performed. A different, morally significant intention—the intention to act in such a way as to maximize the good or minimize the evil possible in the circumstances—is instead operative there and indeed one which the consequentialist would consider a right intention. For it is the intention to do what, in the circumstances, his duty calls for, that is, maximizing the good or minimizing the evil possible. In the present case that right intention would be to save the mother's life *if abortion is already chosen*, or the intention to save the fetus' life *if abortion is decided against*; as a result of weighing the positive values of the two.

It might be thought that the intention only to bring about the good consequences aimed at can and does play a morally significant role in relation to the timing of the abortion (if that is decided on) as well as in the decision to have the abortion performed in a particular hospital or medical center, by a particular obstetrician; and so on. But these matters pertain to the maximization of the good and the minimization of the evil consequences of the abortion. The intention to bring about only the good consequences aimed at is not involved.

The preceding point can be dramatically shown if we turn to Principle-III's other necessary conditions of right action. For I think that exactly the same conclusion as above would be reached. That is, if we limit ourselves to judging that (a) the abortion's good consequences outweigh its probable evil consequences; and that (b) abortion/non-abortion are the only ways of preserving the mother's/fetus' life/health. The absence of a morally significant third alternative has the same logical force or implication whether the intention is to save the mother's life/health or to save the fetus' life.

The same crucial difficulty with Principle-III regarding its "right intention condition," can also be shown to be true in situations where, for some special reason, a particular course of action or procedure is causally necessary to bring about a particular desirable state of affairs "G." An example might be the surgical procedure designed to remove certain types of malignant tumors from a patient's brain or lungs, say, where removing the tumor may be the only way to prevent the patient's imminent death.

A third type of situation in which condition (6) would be satisfied and where

⁹Note that this is also, at present, the position of the Catholic Church (which is not, however, a consequentialist one).

Principle-III as a whole may apply is illustrated by another medical example. I refer to situations in which a patient's grave health problem does not respond to standard treatments or procedures, forcing the attending physicians to use highly experimental and potent drugs or dangerous procedures with serious—known or suspected—side-effects. In some cases the treatments or procedures may have the known potential for killing the patient. The champion of Principle-III would claim that the fact that the treatments or procedures are a last resort would justify the possibly greater risks involved, particularly since the physicians' intent would be not to harm the patients but to cure them.

Another kind of last resort example is sometimes provided by international conflicts that lead to war. In just war theory a necessary condition of a just war is the "last resort" condition that in international disputes war is permissible only as a last resort, that is, only when all available means for a peaceful settlement of the conflict have been exhausted.¹⁰

Once again, the criticisms I stated in relation to the two other types of situations in which Principle-III may apply, can be made here. I shall, therefore, not repeat them.

2. The Principle's champions may attempt to avoid the difficulties in Principle-III resulting from the adoption of condition (6), by proposing the following condition instead:

- (6') among all the courses of action productive of the desired end "G," namely, "A," "B," "C," etc., available to the agent *P* in the circumstances, "A" has the least evil by-product.

Unfortunately, the Principle does not fare much better on this condition either. It would certainly apply to a much wider range of situations or cases, but it would also render useless or superfluous—and essentially in the same way as condition (6)—the Principle's other conditions, including the "good intention condition." It is, however, a sound consequentialist condition.

In time of war condition (6') would coincide with, or become identical with, the celebrated Principle of Discrimination, which prohibits direct and intentional attacks on innocent persons and their residences, property, etc.: in the latter case, generally nonmilitary targets. That principle is widely recognized, and with good reason, as a crucial condition for a just war.¹¹

Jonathan Bennett's example of the tactical bomber and the terror bomber illustrates the preceding point well. Bennett's central thesis is that the patent difference between the two bombers' intention marks no moral difference in their actions. In other words, the distinction between intended actions and foreseen, but unintended, actions has no moral significance. Thus the Principle fails.

The actual target of Bennett's detailed and largely cogent criticism¹² is, in effect, what I have called Principle-II. A fatal flaw in that form of the Principle, which Bennett's strictures underscore without making explicit, and on which I

¹⁰See, for example, "Self-Defense and the Just War," *passim*.

¹¹O'Brien, *op. cit.*, includes it among the conditions of *jus in bello*, the determinants of a just prosecution of a war.

¹²In a few places Bennett tends to stretch the similarities between the two bombers or minimize the differences between them but without damage to his main thesis.

touched briefly in Section III, is that in that form (despite appearances) the agent's intention really plays no morally significant role. What particularly concerns us here, however, is the underlying reason for this. To my mind it is precisely that Principle-II lacks the "unavoidability condition" (6) that Principle-III incorporates. A main reason why the tactical bomber's intention fails to provide a morally significant difference from the terror bomber's intention, is that, like it, it does not deter the agent from bombing the factory, despite his knowledge of the huge civilian casualties it will cause. If the tactical bomber were morally good, he would be schooled by that fact to consider alternatives with less drastic by-products, as I have stated in Section III in criticizing Principle-II.¹³ In other words, he would be schooled by condition (6'). For nothing *logically* prevents him from being so schooled,¹⁴ since, in contrast to the terror bomber, killing innocent persons is not logically necessary for the success of his mission.¹⁵

Thus we may say that Bennett's criticism, like my earlier criticism of Principle-II, rests on a consequentialist condition of morally right action, namely, condition (6'). True, Bennett talks of the morality (or immorality) of the tactical bomber rather than of the morality (or immorality) of his action, but if he is an (im)moral agent *qua* tactical bomber, his act is likewise (im)moral; or rather, as we should properly put it, he is an (im)moral agent in the example insofar as his action is (wrong) right.

On consequentialist grounds, the tactical bomber's *intention* is a morally right intention (*a fortiori*, a morally significant intention) if it satisfies condition (6) or, alternatively, condition (6'). Among other things, satisfying the latter condition entails that whenever *in future* the tactical bomber is confronted with situations in which all the available alternatives have a double effect, he would choose those that have the least evil by-products.

V

The final question is whether any of the conditions of Principle-I or Principle-II (that is, in addition to conditions (6) and (6') that I have proposed) can be profitably adopted by the pure consequentialist and the moderate deontologist. My answer is "yes." I have in mind the rule, implicit in them, that one ought not intentionally to act so as to produce (directly *or* indirectly) evil states of affairs (Rule I). This rule restricts permissible beneficent actions relative to particular desirable states of affairs either to those which scrupulously avoid the production of evil states of affairs, or, where that is very difficult or impossible in practice,

¹³Cf., Aquinas: "The consequences of an act are either foreseen or not. If they are foreseen, it is evident that they increase the goodness or malice. For when a man foresees that many evils may follow from his act, and yet does not therefore desist from it, this shows his will to be all the more inordinate." ("Morality and Natural Law," *Great Traditions in Ethics*, Fifth Edition [Belmont, CA, 1984], edited by Ethel M. Albert, *et al.*, p. 123.)

¹⁴Of course he may be compelled by his superiors to bomb the factory exactly as he had been ordered to, or he may be court marshalled for disobeying orders; but I am ignoring these complexities here for the sake of simplicity.

¹⁵*Contra* Bennett, who argues that the tactical bomber's success logically requires the killing or wounding of civilians. He forgets that the killing of civilians is only a contingent (causal) consequence of the tactical bomber's mission; in contrast to the terror bomber's mission, whose success logically requires the wounding or killing of innocent bystanders.

to those beneficent actions which have the least foreseeable evil consequences. Rule I is, in effect, implicit in the consequentialist rule (Rule II) that we ought to (strive to) produce the greatest net good over evil possible in the circumstances. But it qualifies the latter rule in those situations which force us to choose between doing "A" and doing something else "B." Supposing that both actions are beneficent and maleficent to different extents. Suppose "A" is calculated to produce a greater net balance of good over evil consequences, but that "B," though calculated to produce a lesser net balance of good over evil, is also less maleficent. Rule II would enjoin the agent's doing "A," while the modified or qualified rule would enjoin him to do "B" instead. And that, to my mind, is as it should be.

One last word. A significant part, though not the whole, of my criticism of the Principle in its three forms rests on a partly or wholly consequentialist ethical position; yet no arguments in *its* support have been provided.¹⁶ To that extent the validity of the criticism must be considered as conditional on the possibility of convincing evidence being provided for a credible form of consequentialism. Such evidence, I believe can be found. But I must leave for the future that large and important subject.

¹⁶But see my "Medical Ethics and the Value of Human Life," *Philosophy in Context*, vol. 14, 1984, pp. 42–50, where I proposed and presented some support for a *consequentialist* moral principle that it is *prima facie* wrong to harm anyone. (See also H.L.A. Hart, *The Concept of Law* [Oxford, 1961], p. 176f.) The logical relation between that rule and conditions (6) and (6') is, I think, obvious. It is, however, logically independent of the consequentialist Rule II above.