

24

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THE DOCTRINE OF DOUBLE EFFECT

The distinction between intended and unintended consequences has historically taken the form of a principle known as 'double effect.' The phrase refers to the fact that actions may sometimes have two sets of consequences, one set being the intended consequences for whose sake the action is performed, and the other set being unintended side-effects. Suppose that an action is itself of a kind which is morally permissible, and is performed for the sake of a good result. Suppose that the action also has foreseeable but unintended bad consequences, and that it is absolutely wrong ever intentionally to bring about such consequences. The doctrine of double effect states that it may be permissible to perform such an action, since the bad consequences are unintended side-effects and are not intentionally procured.

The doctrine of double effect has traditionally been a component of Catholic moral teaching, where it is typically applied in conjunction with absolute principles, such as the prohibition against killing the innocent. I have previously mentioned . . . the idea that in war civilians are 'innocent' but combatants are not. This implies that an intentional attack on civilians in war is the intentional killing of the innocent, and is

therefore ruled out. The deliberate bombing of cities in the Second World War, for instance, both by the Germans and by the British and American forces, has been condemned on these grounds. The following is the kind of case in which the doctrine of double effect then comes into play. Suppose that the intention is to bomb a military target. Let us assume that the war is itself a just war, and that this military action will help to defeat the enemy. Attacking a military target involves killing combatants, but that is in itself permissible. Suppose, however, that a foreseeable but unintended side-effect of the action is that a certain number of civilians living nearby are likely to be killed. It would be wrong intentionally to bring about their deaths. The doctrine of double effect says that bombing the military target, with these side-effects, may nevertheless be permissible, since it is not the intentional killing of the innocent.

As with the acts and omissions doctrine, an initial caveat is needed. I said that the acts and omissions doctrine does not mean that omissions do not matter. Similarly, the doctrine of double effect does not mean that unintended consequences do not matter. It does not mean that an action can be justified no matter how many unintended deaths of innocent persons it may bring about. Unintended side-effects are still subject to other moral limitations, such as the requirement of

proportionality. The harm which they constitute must not be out of proportion to the good which could be achieved by allowing them. One could not, for example, bomb a target of only slight military importance, killing nearby civilians in huge numbers, and claim that their deaths did not matter because they were unintended. What the doctrine of double effect does is make it possible to apply an absolutist standard to the intended action and its intended consequences, while applying a consequentialist standard to the unintended consequences. Absolutist principles such as the prohibition against killing the innocent can then be kept intact, for, even though a refusal to perform the prohibited action may lead to even worse consequences, these are unintended consequences and therefore, though they should of course be prevented if possible, they cannot outweigh the absolute principle.

A particular controversial topic to which the principle of not killing the innocent and the principle of double effect have been applied is the issue of nuclear deterrence. The idea of deterrence is that by threatening to use nuclear weapons in retaliation, one can prevent other countries from launching a nuclear attack. It is claimed by many people that if Britain (or the United States or any other favoured country) did not employ nuclear weapons as a deterrent, the use of nuclear weapons by 'the other side' would be even more likely. However, employing nuclear weapons as a deterrent means being willing to use them, for if the possessors of the weapons were not willing to use them, they would not deter. And being willing to use them means being willing to kill millions of people, perhaps destroying whole societies, and possibly producing climatic and environmental effects which will entirely eliminate the human species.

There are two possible moral criticisms of nuclear deterrence. It can be argued that a policy of nuclear deterrence is unacceptable because it involves the build-up of nuclear arsenals and therefore increases the risk of the ultimate catastrophe of an all-out nuclear war. Abandoning nuclear deterrence has its dangers but it can be argued that, taking into account both their relative magnitude and their relative probability, the dangers of nuclear disarmament are outweighed by the dangers of deterrence. Such consequentialist arguments seem to me to be persuasive, but I cannot make them here.¹ The moral criticism of nuclear deterrence which concerns me here is the absolutist argument. One cannot threaten to use nuclear weapons, even in retaliation, unless one is willing to carry out the threat. If one could be entirely certain that deterrence would succeed, it would be possible for a government to follow a deterrent policy in the confidence that it would never have to carry out the threat. In fact, however, no such certainty is available, and governments which follow such a policy therefore have

to recognise that the policy may fail and that they must be willing to carry out the threat. (Making deterrent threats which are really a bluff is theoretically possible, but unlikely to be feasible in practice, given the nature of the political and military command structures, and in any case the deterrent policies of the nuclear-armed states are not based on bluff.) But, the absolutist argument maintains, one should not be willing to use nuclear weapons in any circumstances, since to use them would be to engage in the deliberate killing of the innocent. Nuclear deterrence is therefore not a morally acceptable way of preventing other states from using nuclear weapons. *Whether or not* it is an effective means of preventing them, it is not a permissible means, since it requires one to be willing to violate the absolute prohibition against the intentional killing of the innocent. If, as a result of our country's refusal to maintain a nuclear deterrent, another state were actually to launch a nuclear attack and kill millions of innocent people, this would be an *unintended* consequence of our refusal. The prevention of this unintended consequence could not justify a willingness intentionally to violate the absolute principle.²

The absolutist criticism of nuclear deterrence, then, is one example of how absolutism can be reinforced by the distinction between intended and unintended consequences which is contained in the doctrine of double effect. What are we to make of the doctrine? One problem is the inherent slipperiness of descriptions of intentions. The doctrine seems to lend itself to evading one's moral responsibility by redescribing one's intention, by saying 'I didn't intend that, what I really intended was ...'. Thus advocates of the bombing of German cities in the Second World War might have said 'We don't *intend* to kill civilians, what we intend is to destroy German morale. And whilst the intentional killing of civilians is indeed morally unacceptable, destroying German morale is a permissible act.' The doctrine then seems to become empty, for given sufficient verbal agility one can justify anything whatsoever.

To some extent the doctrine can be defended against this criticism. Any doctrine or principle can be misused, and though the doctrine of double effect perhaps lends itself to misuse more easily than most, misuse is still misuse. Intentions are not infinitely redescribable. For a start, an intention incorporates not just an ultimate aim but the intended means of achieving that end. So, in the example, destroying German morale may be the aim, but bombing cities is the chosen means of achieving it. It is not a side-effect, it is the intended means, and is therefore an inseparable element in the full description of the intention.

One can of course *say* what one likes about one's intentions; that is how the 'intentional/unintentional' contrast can be misused. The important question, however, is not how a person describes his or her inten-

tions, but whether the description is a true description, and this is a matter of objective fact, even though it may be difficult for others to ascertain. It has sometimes been suggested, for instance, that a doctor who is opposed to euthanasia but whose patient is dying slowly in great agony can resolve his/her dilemma by administering a painkilling injection which will also, 'as a side-effect,' hasten the patient's death. The 'double effect' principle is invoked to suggest that the doctor is not intentionally terminating the patient's life, since the intention is to ease the pain. If this is advocated as a resolution of the doctor's dilemma, it is simply dishonest. The doctor's dilemma consists of her thinking it wrong intentionally to end a life, but recognising that it may be better for her patient that she should do so. If, in response to this dilemma, she deliberately administers a particular kind of painkilling injection *because* it will also hasten death, then she is intentionally terminating a life. The fact that her intention is also to relieve pain makes no difference; if she says that she is not intentionally ending the patient's life, she is deceiving either herself or others.

Moreover, correctly describing the agent's intentions is not just a matter of ascertaining the psychological facts, but also in part concerns the nature of the action itself. The action may itself be such as to exclude certain possible intentions. Consider again the case of nuclear deterrence. Defenders of the deterrent policy have sometimes tried to reconcile it with the prohibition on killing the innocent by advocating what is called a 'counter-force' rather than 'counter-city' policy. 'If,' it is said, 'the deterrent takes the form of nuclear weapons targeted on military installations we would admittedly, if we used them, kill millions of innocent civilians, but our intention would be to destroy the military installations.' This defence fails because nuclear weapons, with their massive destructive power, do not permit that discrimination of intentions. By their very nature they destroy everything and everyone within a large area, and in using them you cannot intend to destroy some of the things or people and not others. Intending to use them against, say, a missile silo is just intending to use them against the whole area in which the missile silo is located. The intended goals to be achieved may be different, but the intended actions are indistinguishable. (Compare hitting a nail with a hammer: you can intend to hit the head of the nail, but you cannot intend to hit this particular spot on the nail-head rather than that.)

It may be objected that I seem to be incorporating too much into the description of intentions. I may seem to be moving towards the claim that all aspects of an intended action which are known to the agent must be part of the agent's intention. That, however, would run together precisely the two things between which the doctrine of double effect is supposed to discriminate—the action and its side-effects. In my earlier example of

the conventional (*i.e.* non-nuclear) bombing of a military installation, are we to say that the concomitant deaths of civilian passers-by, or of civilians hit by bombs which fall off target, are an intrinsic part of the intended action? The doctrine of double effect as traditionally applied does not carry that implication. It says that these would be side-effects. If, by contrast, we are to say that in the case of nuclear bombing the destruction of the civilian population is an essential part of the intended action and therefore cannot be described as unintended, then the distinction between 'action' and 'side-effects' is going to have to carry a good deal of moral weight, and it is not clear that the distinction is sufficiently sharp to do so. Thomas Nagel, in a discussion of 'double effect,' considers the example of American actions in the Vietnam War, bombing villages in which guerrillas are suspected to be hiding. Inevitably the victims were mostly unarmed women and children, but 'the government,' he says, 'regards these civilian casualties as a regrettable side-effect of what is a legitimate attack against an armed enemy.'³ One might counter that the action is an indiscriminate attack on the village and therefore on guerrillas and civilians alike, discrimination between them being impossible, but the reply, Nagel envisages, might be that the action is obliteration bombing of the *area* in which the guerrillas are located, with civilian deaths as side-effects. Because of the inconclusiveness of arguments about the appropriate description of the action, Nagel says that the principle of double effect 'introduces uncertainty where there need not be uncertainty.'⁴

I think it has to be agreed that the boundary between 'intended actions' and 'unintended side-effects,' though perhaps not as indeterminate as Nagel implies, is not a sharp one. This might not matter. [I]n our moral thinking we may have to live with vague boundaries and grey areas. Perhaps the grey areas in the doctrine of double effect are greyer than most, but this is not the heart of the problem. Suppose that we can in fact draw a relatively workable distinction between 'intended actions,' with their 'intended consequences,' and 'unintended side-effects.' Suppose we were to satisfy ourselves that, in the Vietnam example, bombing the whole village is the intended means of killing the guerrillas, whereas in the other case bombing the airfield near a heavily populated area would lead to civilian deaths only as unintended side-effects. Even if the distinction holds, I think that the underlying worry is likely to be: how can such a fine distinction make so much moral difference? I mentioned previously the impression often created by the 'double effect' principle, that it is an evasion, that it lets people off the hook. I have noted one crude way in which it furnishes an evasion: either through dishonesty or self-deception, someone might attempt to evade responsibility for an

action by claiming that it was unintended and that their real intentions were morally acceptable. This would be a misuse of the doctrine. Even if it is employed honestly, however, we may still feel that this focus on the distinction between the 'intended' and 'unintended' effects of actions puts the emphasis in the wrong place. The distinction seemed appropriate when we looked at examples of the intended and unintended consequences of *omissions*. The Halborough brothers' responsibility for their father's death [in a short story by Thomas Hardy] seems akin to murder because they intentionally let him die [by not rescuing him when he falls into a river], whereas if Vokinloksar [in a novel by Dostoevsky] fails to save the old woman by giving her his legacy [so that she can have the surgery needed to save her life], he does not intend her death. In the airfield example, however, the civilian deaths, even if not intended, are the foreseen consequences of the attackers' *actions*. Killing the civilians is *what they do*. I have acknowledged that the 'double effect' principle is not supposed to absolve the attackers of all responsibility for the unintended side-effects; civilian deaths are still supposed to be avoided if possible. I can acknowledge also that the difference between intentionally killing civilians as the means to some end, and killing them as an unintended side-effect, may have *some* moral importance. It may seem, then, that the issue is simply that of *how much* importance the distinction should have. In the context of the present discussion, however, that is indeed a crucial question, for the distinction is supposed to make all the difference between thinking in absolutist terms and thinking in consequentialist terms. And we may doubt whether it can plausibly do this. If killing civilians as an intended means to some military goal is thought to be so morally appalling as to be absolutely ruled out, can it then be morally acceptable on consequentialist grounds to bomb a military target knowing that what one is also doing, though unintentionally, is killing civilians? There *is* a distinction, but many people's intuitive response will be that it cannot carry that much weight.

What re-emerges from such examples, I suggest, is the importance of *agency*. The acts and omissions distinction and the double effect principle have both been introduced as common ways of defending absolutism, and in that guise they both seem to point in the same general direction. The weakness of each, however, turns out to be its neglect of the plausibility of the other. The acts and omissions distinction fails to take account of the importance of intentions; it neglects the fact that intentional omissions may be on a par with actions. The double effect principle emphasises the importance of intentions but neglects the importance of agency; it fails to recognise the important difference between the unin-

tended consequences of omissions and the unintended, but foreseeable, side-effects of intentional actions.

The importance of agency is a deep-seated feature of the way in which we view our lives. Consider the following case. Suppose that a child runs out into the road in front of a car without any warning; it is quite impossible for the driver to stop or to swerve in time, and he knocks down the child and kills her. It might be quite correct to say that there was nothing the driver could have done to avoid killing the child, and that he is therefore not to be blamed in any way. I do not want to resist that moral conclusion, but I do want to point to the fact that the driver is nevertheless likely to feel distraught at *what he has done*.⁵ This is quite distinct from the grief which any observer may feel at the tragedy of the child's death. What is likely to preoccupy the driver is the thought that, however blamelessly and unintentionally, *he killed her*, and his feelings about this will be very different from his feelings about the fact that there are many other children in the world who have died and whose lives he could have saved if he had lived his own life differently. If the driver feels terrible about what he has done, I do not think that such a feeling is irrational. What it points to is, I think, a deep connection between one's *agency* and one's *identity*. The things that I have done go to make up my life, they are distinctive features of my sense of who I am. This is not normally true of my omissions. It might be in particular cases; the experience that someone's life has depended on me and I have failed to save them may be a distinctive event in my own life-history. But this is not true of the myriad other harms in the world which I, along with innumerable other people, could have prevented.

Now I am not saying that, when my failure to prevent harms is a failure I share with others rather than a failure that is special to me, this makes it morally acceptable. Indeed I want to emphasise again that in the example of the driver I am not drawing any moral conclusions at all. What I am trying to do is to explain why, in cases where questions of moral responsibility do arise, it may be plausible to make a distinction between actions and omissions. I am suggesting that it gets its plausibility from the link we make between our agency and our identity, and that the significance of this link is confirmed by the way in which we think about non-moral cases such as the driver example. It may be said in response that we should challenge this feature of our thinking—that we should regard our omissions as being just as definitive of our lives as our actions are. I doubt whether this is possible. I suspect that any such proposed conceptual revision would turn out to be incoherent. For the moment, however, I simply want to draw attention to the pervasiveness of the idea that killing someone, even if the death is unintended, has a different significance from failing to prevent someone's death.

At this point in the discussion we might conclude that, having come full circle, what we need is a combination of the 'acts and omissions' principle and the 'double effect' principle. The 'acts and omissions' distinction fails to take due account of the fact that intentionally letting someone die may be morally on a par with killing them. The 'double effect' doctrine fails to take due account of the fact that knowingly killing someone, even if the death is unintended, is importantly different from unintentionally failing to save lives. Perhaps what we need, then, is a theory which takes account *both* of the difference between acts and omissions *and* of the difference between intended and unintended deaths. Such a theory might state that we are as responsible for the intended consequences of our omissions, and for the unintended but foreseeable consequences of our actions, as we are for our intended actions and their intended consequences, but that we are not in the same way, or to the same degree, responsible for the unintended consequences of our omissions. This hybrid theory could provide the necessary support for an absolutist prohibition of killing (or of killing the innocent). The absolute principle would be that it is always wrong knowingly and avoidably to kill (innocent) people, or intentionally to let (innocent) people die. It would be wrong even if that were the only way of preventing other, unintended, deaths. Faced with a situation where, whatever we did, people would die, it would still be wrong to violate that absolute principle. Since the resulting deaths would be unintended, the principle would not be shown to be inconsistent in the way suggested by our original consequentialist criticism of absolutism.

I do indeed think that a satisfactory theory needs to take account of the plausible elements in both the 'acts and omissions' principle and the 'double effect' principle. As yet, however, such a conclusion has something of an *ad hoc* air about it. The argument so far has consisted in assessing the intuitive plausibility of those

two principles when tested against various examples. By proceeding in this way we can patch up an anticonsequentialist position which looks reasonably coherent, but it does not take us to the heart of the matter. [We need] a more thorough-going analysis of what is wrong with consequentialism.

Endnotes

1. The consequentialist case against nuclear deterrence has been made most effectively by Douglas Lackey. See his 'Ethics and Nuclear Deterrence' in James Rachels, ed., *Moral Problems* (3rd edition, New York, 1979), and 'Missiles and Morals: A Utilitarian Look at Nuclear Deterrence' in *Philosophy and Public Affairs* vol. II (1982), reprinted in *International Ethics*, ed. C. R. Beitz, M. Cohen, T. Scanlon and A. J. Simmons (Princeton, 1985).

2. Examples of the absolutist rejection of nuclear deterrence are G. E. M. Anscombe, 'War and Murder' and 'Mr. Truman's Degree,' in *Ethics, Religion and Politics*, vol. III of her *Collected Philosophical Papers* (Oxford, 1981), and Anthony Kenny, *The Logic of Deterrence* (London, 1985). See also essays by Kenny, Dummett and Ruston in *Objections to Nuclear Defence*, ed. Nigel Blake and Kay Pole (London, 1984).

An attempted moral defence of nuclear deterrence might be that, although one cannot be *certain* that deterrence will succeed, it may *in fact* succeed (and has done so); therefore, though the practitioners of the policy must be *willing* to do what is wrong, it may turn out to be the case that they do not *in fact* do wrong. This defence depends on the premise that it may be morally permissible to be willing to do something which it would be wrong actually to do. Whether that premise is acceptable is a question I shall not pursue further, other than to note that it is unlikely to cut much ice against the kind of absolutism we are considering here, which is allied to the 'double effect' principle and accordingly stresses the moral importance of intentions.

3. Thomas Nagel, 'War and Massacre,' in *International Ethics*, ed. Beitz *et al* (see fn. 1 above), p. 61. The article originally appeared in *Philosophy and Public Affairs* vol. I (1972), and is also reprinted in Nagel, *Mortal Questions* (Cambridge, 1979).

4. *Ibid.*, p. 60.

5. Cf. Bernard Williams, 'Moral Luck,' p. 28 in *Moral Luck* (Cambridge, 1981).