

A Fresh Look at the Principle of the Double Effect

W. L. Lacroix

While the Principle of the Double Effect has been receiving some attention in journals in recent years, ethicists still seem to be approaching it in ways similar to those earlier presentations that have made it unattractive and relatively useless: that is to say, as if it were some wondrous *a priori* formula theorized by ethicists with no basis in everyday human experience.¹ I would suggest that both attacks on and defenses of the Principle have concentrated on “how to apply it,” rather than on “how the Principle originated” and on “how it is directive in application.” Perhaps this concentration simply on application is not only historically unfortunate but also methodologically incorrect.

If our everyday experience were in a world in which conflicts of values or rights never arose, where existential (i.e., non-moral) evils were always avoidable by acting on reasonable judgments, then one’s

¹The following works represent recent efforts to discuss the Principle of Double Effect: Joseph T. Mangan, “An Historical Analysis of the Principle of the Double Effect,” *Theological Studies* 10 (1949), pp. 41–61; Peter Knauer, “The Hermeneutic Function of the Principle of the Double Effect,” *Natural Law Forum* 12 (1967), pp. 132–162; Philippa Foot, “The Problem of Abortion and the Doctrine of the Double Effect,” reprinted in her book, *Virtues and Vices* (Oxford: Basil Blackwell, 1978), pp. 19–32; Joseph M. Boyle, Jr., “Toward Understanding the Principle of Double Effect,” *Ethics* 90 (1980), pp. 527–538; Jonathan Bennett, *Morality and Consequences*, The Tanner Lectures on Human Values, III (Salt Lake City, Utah: University of Utah Press, 1981); G. E. M. Anscombe, “Action, Intention, and “Double Effect,” *Proceedings of The American Catholic Philosophical Association* 56 (1982), pp. 12–25.

basic values, the ideals of virtues, and guides from specified and validated rights would give adequate direction for ethical decisions. However, humans quite often find themselves in situations that are not so simple. Sometimes the very actions done to support one value or right also have as their outcome the negation of another value or right. Sometimes no matter what alternative I choose, I am going to affect one human value positively and one negatively. Therefore, I am going to be *responsible for* (a broader expression, by the way, than “guilty of”) the occurrence of an existential evil.

This ethical problem is radical: is it ever reasonable to cause or permit such a negation? It is here that the ethicist must pay close attention to the explanations of ordinary people.

Some ethicists insist that certain values or rights are *a priori* sovereign. This is to say that after reflection the ethicist identifies certain values as decisive *a priori* for any subsequent experience. Examples of this approach occur in diverse formulations of the Natural Law tradition and are sometimes evident in the handling of a) the natural biological processes of nutrition and generation; b) innocent human life; and c) the compensation for past injustices. Often in this tradition it is argued that the negation of such values can never be morally justified. Acts or policies that do so as means to some otherwise valid goal are always immoral.²

Of course, the obvious objection against this tradition is that it appears to neglect the process of induction moving from actual human decisions to the establishment of moral principle. The non-inductive approach would have a content-specific principle become universally decisive at some historical moment and would preclude taking into account later judgments by people trying to do the right thing in situations which involve the same value. It thereby would omit any historically emerging new subset of experiences which could challenge the *a priori* principles of a purely deductive morality. For example, consider the difficulty some natural lawyers have faced grappling with whether masturbation is wrong even if practiced for a medical reason, such as the need to acquire a semen sample so as to test it for sterility. Ignoring the peculiarities of such situations is clearly

²This position denies that there can be situational relativity in certain content-specific moral matters, albeit many values and rights are not of this sovereign quality and so disputes concerning these latter would be reasonable.

arbitrary and objectionable and betrays a failure to appreciate how ethical generalizations have been traditionally established in the first place: namely, out of reflection on the actual decisions of people in lived circumstances.³

In their effort to come to terms with decisions that grapple with concrete conflict, many past ethicists (some of an *a priori* disposition, others of a more inductive temperament) embraced a formal principle, which goes by the classic description: “The Principle of the Double Effect” (PDE). This Principle requires careful examination and commentary as it has not only suffered much (perhaps justifiably) at the hands of its detractors but has also been sometimes harmed by its advocates.

History seems to show that ethicists first uncovered the Principle by means of analyzing actual decisions of ordinary people in their effort to act well in situations involving conflict. The first use of this Principle seems to occur in Thucydides, specifically where the Athenians explain to the Boeotians why they seized a temple.⁴ Aristotle later assumes the Principle in his discussion of actions mixing the voluntary and the involuntary.⁵ Cicero appeals to it as he ranks differently the duties under justice in his analysis of how people can consider the existential evils of war to be justifiable. This ranking involves qualitative difference, not some utilitarian quantity.⁶ Later, Athanasius, also in the context of war, affirms the PDE as he indicates that the physical action and its existentially evil results need not be morally decisive.⁷ To name other instances, I will suggest later that the PDE is behind the difference between Abraham’s response to Yahweh’s request for the sacrifice of Isaac and Agamemnon’s response to Artemis’s request for the sacrifice of Iphigenia.

³See Aquinas, *Nicomachean Ethics Comm.* III, 10, 494. This is connected with the Aristotelian theme that *phronesis* (*prudentia*) is not scientific since it is concerned with the ultimate particular situation, “since the thing to be done is of this nature.” It is not about types of particular situations because types of situations are universals (*Nicomachean Ethics*, 1142a 23–25). *Phronesis* is about the proportion of values as they appear in context (*Nicomachean Ethics*, 1106b 36–1107a 3). See Robert B. Loudon, “Aristotle’s Practical Particularism,” in *Essays in Ancient Greek Philosophy IV: Aristotle’s Ethics*, ed. John P. Anton and Anthony Preus (Albany, New York: SUNY Press, 1991, esp. pp. 164–166.

⁴Thucydides, *The History of The Peloponnesian War*, IV, 98.

⁵*Nicomachean Ethics*, III, 1110a 4–35.

⁶*De Officiis*, I, 160.

⁷Athanasius, *Epistola ad Amunem Monachum*.

It is important to stress that the PDE is not a principle that ethicists have made up. Ethicists have no special source of ethical knowledge, nor do they have a special authority to tell people how to make moral decisions. The only valid source for such a principle has been the articulations of good people as they have tried to explain why they acted as they did in the midst of ethical conflicts.⁸ People who have tried to act rightly in situations involving conflict have been found to give rather consistent explanations for their conduct. Consider such statements as “I didn’t want to, but I had no choice”; “I’m sorry about that but this was more important”; and “I didn’t want to do more damage than I absolutely had to.” Such remarks are frequently heard and, even more importantly, are considered proper. Over time a consensus has arisen to mandate these explanatory appeals as forms of ethical justification. Upon analyzing these appeals, ethicists discovered distinguishable elements in these explanatory articulations. The point of the analyses was to identify the intelligible structure within the ordinary good person’s conflict resolution. So far, so good.

Unfortunately, proponents through the years ossified these “elements” into propositional phrases which they and others mistook as self-explanatory and absolute ethical guides. The following phrases typify how the elements have been put into propositional form:

- 1) the act must not be in itself evil;
- 2) the evil outcome must not be the means to the good outcome;
- 3) the evil outcome must be only permitted, not intended for itself; and
- 4) there must be proportionality, both in the sense of what intentionally is done for the sake of the intended outcome, and in the sense of the outcome intended in relation to the evil permitted.

When later medieval proponents tried to apply the PDE to new conflicts, they simply forgot the source of the Principle. They not only separated the phrases from the PDE as used in everyday moral decisions and from the articulated explanations (a perfectly acceptable

⁸Aquinas commented that in ethics it is a “serious defect” to spend time on “reason” and the “parts of the soul” rather than on the human actions themselves (*Nicomachean Ethics Comm.* I, 11, 136).

method, by the way, for formulating a principle in ethical analysis),⁹ they also used the phrases as *a priori* boundaries for the application of the principle without seeing whether good people in these new conflicts agreed. (The recurrent “manual” case citing the removal of the bleeding uterus of the pregnant woman instead of direct abortion is a relevant example.)

When those who were not proponents of the PDE looked at the application of these phrases in new conflicts, they judged that the PDE forced one to take positions that were inadequate. Put in terms used above, the historical use by proponents of the PDE turned what was originally a formal principle gained by analysis into one that carried *a priori* sovereign content that set moral limits to actions, limits that good people would think irrational in real situations. A good test is whether in the application of the principle (where such *a priori* moral limits are absent), there might yet prevail a consensus of good people differing from what the principle interpreted as an *a priori* standard would imply.

With this history one might dismiss the PDE as a lost cause. I would be tempted to agree except that I continue to encounter obvious uses of the Principle in such areas as the “scrutiny” processes of Supreme Court decisions, in Due Process cases, and in debates on societal ethics. Consequently, I have asked whether the PDE might not be rescued from its epigones and made useful once again.

The PDE operates as a rational and thus as a non-relative principle. But it is a formal or procedural principle only. Recall that it emerged out of an analysis of the articulations of people who made hard, but what they thought were ethically defensible, decisions in conflicts as diverse as killing in war, breaking a promise, telling an untruth, and implementing affirmative action programs.

To effect this rescue, let us take the above four propositional phrases that attempt to express the PDE and see how such phrases have meaning drawn out of the actual moral experience of people.

1) The act must not be in itself evil. Because the use of the PDE only occurs when it is inevitable that a value will be negated (such a negation being equivalent to an existential evil), it is important to

⁹I thank my colleague, Rosemary Flanigan, CSJ, for advising me to add this clarification.

understand how the term “evil” is used in this requisite part. The action done, which for moral adequacy appeals to the PDE, acknowledges by that very appeal that an evil outcome is germane. This appeal to a principle to resolve an ethical conflict takes into account two important facts. First, there cannot be a question of a right or a value being lost prior to the action at hand. For example, if an “aggressor against my life or my property” did lose some basic right by such aggression, the principle would not apply. There would be no need for a principle to resolve a non-existent conflict.¹⁰ Obviously, the first requisite for the PDE does not say that the action done cannot have any humanly evil outcome. By using the PDE an individual acknowledges that a humanly evil outcome will result no matter what one does. The question, of course, is whether such an outcome is morally tolerable.

Secondly, there cannot be reference here to “morally evil acts,” i.e., acts that are asserted to be “intrinsically evil abstracted from any context.” The whole point of the appeal to the PDE in a conflict is to use it to judge the morality of the possible action. One would be helpless to judge the action in a conflict situation *by means of* the PDE, if one of the elements requisite for use of the PDE *is the moral judgment itself* on the action. So the first requisite cannot require the moral judgment prior to the PDE’s functioning in an actual situation. This would reduce the PDE to a simple tautology: “One cannot morally do a morally evil act.” The whole point of the PDE, however, is to respond to the following question: “How can one morally do an action that effects an existential evil?” By using the PDE an individual affirms that the resultant negation of rights or values is not to be trivialized or ignored, but also that no right or value of itself is *a priori* decisive for the PDE resolution. To hold that a value or a right is *a priori* decisive (which would imply, of course, that any action negating it would be intrinsically wrong regardless of the situation) is, in fact, to decide a case of moral conflict by using some principle other than the PDE.

Nevertheless, some proponents envision the first requisite as a separate phase from the other parts of the PDE, a phase wherein one

¹⁰Minimally, those who advance this concept would have to consider the right to life to be a merit right only. Actually, the position of Locke and others, when they make a case for defending life and property against aggression, may be interpreted to appeal to a hierarchy of values or principles, which will be discussed later.

distinguishes humanly evil acts or outcomes in general from specifically identified acts or outcomes unexceptionally settled as morally evil prior to any actual conflict. Following this distinction, one tests whether the proposed resolution of the conflict would involve an *a priori* moral evil. Recently, for example, James F. Keenan has argued that the PDE “can only be not nonsense or not ‘superfluous’ when we have deontological, absolute prohibitions” on specific content values which cannot be intended as an end or chosen as a means.¹¹ Additionally, Bruno Schüller identified “the frustration of a natural faculty” or action without “required authorization” (e.g., killing in private self-defense) as specific deontologically unacceptable courses of action at issue for Catholic moralists.¹²

Obviously, this “where to apply” concentration is much too narrow to cover the many manifestations of the PDE by ordinary good people, who utter excuses like “I wouldn’t have done it except that. . . .” What seems in the everyday application to be the intelligible content of this first requisite is this: one may not do the act if one foresees that the act will have only an existential evil as a result. In other words, the requisite demands that there be a “second effect” of the act, one which affirms a right or a value. To act only to bring about the first result—i.e., only the existential evil—would be irrational, and so would be to perform a morally evil act.¹³

2) The evil outcome must not be the means to the good intended. This requisite focuses on the relation of the two outcomes. It elaborates the articulated explanation of people wherein they claim that the resolution of the conflict is one in which they did not want to bring about the bad effect that they, in fact, produced; it is not as if the bad effect were unworthy of consideration except as a step on the way to an intended good. Ordinary people in those kinds of conflict-situations express their consensus in such terms as: “This (the good effect) was more important.”

¹¹James F. Keenan, “Taking Aim at the Principle of Double Effect: Reply to Khatchadourian,” *International Philosophical Quarterly* 28 (June, 1988), p. 201.

¹²Bruno Schüller, “The Double Effect in Catholic Thought,” in *Doing Evil to Achieve Good*, eds. R. McCormick and P. Ramsey (Chicago: Loyola University Press, 1978), p. 174.

¹³Aquinas said that “moral acts receive their species in virtue of what is intended.” *ST.*, II-II, 64, 7. See also, I-II, 72, 1.

This source in experience is significant, for some proponents of the PDE often have interpreted this requisite as if it were saying “one may not do a morally evil act to achieve a good end.” That such begs the question has been mentioned above.

Other advocates have interpreted the requisite to say that the evil effect, even as existentially evil, cannot be the means to the good effect. That this also cannot be correct seems clear from a common exemplary case: using physical force in self-defense. The agent’s end is self-defense from the aggression. The act done involving physical force has two effects: a) of stopping the physical acts of the aggressor; and b) of physically injuring or killing the aggressor. I choose the act I do because I want to stop the physical acts of the aggressor. If I could talk her out of it, that would achieve the end of the act as means to my end as agent. But if I have to use physical force to stop her aggressive physical acts, then it is a feckless velleity to say the existential evil of physical injury is not a means. It is, indeed, the way that I stop the aggression and thereby achieve my end as agent.

So we must explore more carefully the relation of the evil outcome to the good outcome precisely in terms of “means” and “end.” From the experience of people, the heart of the PDE is simply that, for the conflict resolution to be ethical, the agent must do that alternative action which will express the more qualitatively important right or value. The existential evil is caused/permitted in that context. What has this to do with “means” and “end”? Perhaps we could find help by asking why a negation of a value can be morally problematic. In its most severe expression the question asks: what morally is the problem with using a human being merely as a means? The consensus seems to be that using another human being as a means is morally acceptable as long as it does not debilitate, eliminate, or disdain the other’s dignity. (For example, I may *pay* for “full service” at the gas station.) But to use another “merely as a means” is precisely to do something which debilitates, eliminates, or disdains the dignity of the one used. Now such a disdaining of the one who bears the burden of the conflict resolution would occur in the act if the value negated were the same as, equal to, or even higher than the value affirmed. For the act would say “such and such here is not one who has intrinsic importance.”

This interpretation of the “merely as a means” principle ties in with the ordinary explanation from experience: that one acted for the more important value. The consensus explanation indicates that the correct resolution of the conflict is to act for the more important value. This

does not mean that to act for the less important value is in itself unethical. The point rather is that, in a situation where conflicts come into play, to act for the less important value is to act in a way which expresses falsely that the negated value is less important.

This solution seems to require some ranking of values, a ranking somehow independent of the desires of the actor.¹⁴ It is by this ranking that the actor can rationally settle which value to affirm and which to negate. The action is rational, if the value affirmed by the act is higher and belongs to all persons, including the persons who have another (lower) value negated by the act.¹⁵

The initial evidence for this hierarchy is that people are willing to sacrifice some values for the sake of others (e.g., to sacrifice personal comfort to help others; to risk life for a loved one; or to give misleading responses to keep secrets). With this evidence one can a) reflect on the hierarchy and find dependencies. One can see that “x” value loses its worth without “y” value. For example, property needs security, so one can b) see that some values include others in a descending scale: the right “to be recognized and treated as a person” is specified by the right “of all persons to a reasonable security within which to act as persons”; which is specified by the right “to security against unprovoked physical aggression”; which thus might be higher at times than the right to or the value of “physical life.”

Our society has laws covering actions such as “justifiable homicide.” In ordinary explanations of why it is morally correct to kill in self-defense, there are repeated references to the “aggressor” who “voluntarily attacked” the “defender” who “did not choose to be in the situation.” All these references would be irrelevant if the value of physical life were the only value involved, or if the defense achieved were the only outcome of importance in the resolution of the conflict.

¹⁴Some such ranking of values is clearly implied in Aquinas’s analysis of the morality of killing a malefactor for the good of the community (*ST.*, II-II, 40, a 1; 64, a 2, 3, and 7) and of doing physical harm for the sake of justice (*Quaestiones Quodlibetales*, 9, q. 7, a. 15; *ST.*, II, 188, 3 ad 1).

¹⁵Many presuppositions would be necessary for such a solution. Key elements of a solution are a) that there is, in fact, a hierarchy of values (acknowledging that not all values are of equal significance for persons); b) that the lower value must at times give way to the higher; c) that the negation of the lower value does not necessarily entail a limit on universal respect shown to all persons because there is still unlimited respect expressed in the higher; and d) that one should not *a priori* consider any value as absolute.

(Consider the explanation of the moral difference between killing in self-defense and killing in a duel.) Likewise, the claim by many, such as John Locke, that there is a loss of the right to life by the very commission of an unprovoked aggression must imply that such aggression violates a right more important than that of physical life. (With the acknowledgment of the hierarchy, of course, the claim that the aggressor loses the right to physical life is unnecessary.)

Interestingly, most trouble in resolving conflicts emerges because it is often impossible to settle which right or which value is more important (higher). This indicates that there is not one single hierarchy in human experience, but rather that there are many independent hierarchies. This would parallel the position that humans have many diverse goals in their pursuits, and that these goals cannot all be subordinated to one ultimate goal.¹⁶ Of course, multiple and competing scales of values are a feature of ethics that makes the discipline untidy and troublesome. Perhaps one of the more troublesome clashes between hierarchies is that between the scale of values that pertains to an individual as an abstract person and the hierarchy of values that pertains to the individual as a member of a private or a public group.

3) The evil outcome must be only permitted, not intended for itself. Examples of explanatory phrases from experience relevant to this condition would be “I am sorry I had to do it, for I didn’t want to”; “I wouldn’t have done it had there been another way”; and “I had no choice.” Such phrases bring out two aspects of this requisite: first, that the freely done act was judged somehow morally necessary (in self-defense, for example, the aggressor’s act eliminated other ways for the defender to actualize the higher value); secondly, that the evil outcome was unwanted. Again, the act was necessary because it was judged only rational to affirm what was more important. Still, the act was unwanted because the agent continues to affirm the human value that the act negated. This point further supports the ordinary judgment that the negated right to the value is not lost.

¹⁶To use older terminology, not all “ends in themselves” are also “means” to one unifying “ultimate end,” but may be constitutives in the aggregate that makes up the ultimate end. See Aquinas, *ST.*, I-II, 3, 2 ad 2; 1, 5 ad 1; 1, 6 ad 1 and 2.

Consciously one intends whatever is necessary to affirm the value supported. So one must intend the physical action that involves the existential evil (the negation of the value). But this requisite insists that one cannot ethically want the existential evil, and would avoid it if possible. Thereby, one still respects the value negated in the act. And yet the act is rational because it is necessary if one is to affirm the higher value belonging to all persons.

A satisfactory account of this third requisite perhaps can be crystallized in the following analysis: in consciousness one combines a) the intention to do whatever necessary to affirm the value supported;¹⁷ and b) the sincere, conscientious effort to avoid complacency or indifference regarding the value negated. (Aeschylus makes Agamemnon's key character flaw—namely, his complacency in accepting the gods's decree to kill his daughter—the source of tragedy)¹⁸ True, this negated value, as foreseen, may be psychologically intended. To deny this would be to indulge in mere “word-games.”¹⁹ When I strike at the physical aggressor in self-defense, I intend to stop her by an action which inflicts physical harm and may even risk her death. That action and its effects are precisely the means to stopping the aggression and to achieving self-defense. They are, therefore, as much intended as is the end. Harming or killing the aggressor is itself an existential evil, and yet must be, as means to the end, an intended effect of my action. The action taken involves intentionally brought about existential evil, even if I do not intentionally bring about the existential evil of her death. Thus, Aquinas's insistence that I cannot intend the death of the aggressor is morally a second question, since the first question is: “can I morally intend any existential evil?” In light of the above qualifications, the answer to this question derived from reflection on the explanations of good people is “Yes.”²⁰

¹⁷Aquinas, *De Veritate*, 22, 13c; I-II, 12, 1, esp. ad 4.

¹⁸Martha Nussbaum summarizes the flaw: “We notice the correctness of his [Agamemnon's] decision is taken by him to justify not only action but also passion: if it is right to obey the god, it is right to want to obey him [sic].” “Aeschylus and Practical Conflict,” *Ethics* 95 (1985), p. 250.

¹⁹See Elizabeth Anscombe's medalist address at the American Catholic Philosophical Association, “Action, Intention, and ‘Double Effect,’” *Proceedings of the American Catholic Philosophical Association* LVI (1982), pp. 12–25.

²⁰*ST.*, II-II, 64, a. 7. Aquinas's analysis of “intention” played a major role in the manual articulation of the PDE. Problems arise if there is a move from “the act gets its moral specification

Of course, this requisite makes sense only if there is the reality of hierarchies of rights and values as taken when discussing the phrase or proposition in #2. The sign that the negation is unwanted will be the attentiveness to the fourth requisite of the PDE.

4) There must be proportionality, both in the sense of what intentionally is done for the sake of the intended outcome, and in the sense of the outcome intended in relation to the existential evil done. If one has a rational respect for persons, and if one acknowledges that these persons have rights and values that intelligibly coerce one's actions, then one will constantly take care so that encroachment upon rights and values by one's actions takes place only insofar as is necessary for the affirmation of higher conflicting rights and values. Expressions of this from common experience are that "I only did as much as I had to"; or that "more wasn't necessary"; or that "if there were a better way, I would have done that."

Three items are operative in such a proportionality judgment: a) how important is the value to be promoted? b) how important is the value to be negated? and c) how necessary are the means taken to promote the higher value? (Is there a feasible alternative? Is that alternative one that will do less existential harm?) The proportionality is always judged in the situation. It is never possible to set it *a priori*.

The evidence that proportionality is not an otiose guide comes from history. Those trying to act morally as heads of families, associations, or governments have made decisions, some of which, for a time at least, have achieved a consensus among others similarly positioned. Ordinarily, these consensus positions have been referred to by set phrases, such as "protecting the home"; "following sound business practice"; or "acting against unjustified aggression." These were shorthand for the message that, even though the actions taken were causing physical evils for some, reasonable people nevertheless considered them morally adequate ways to secure or advance important human values.

from what is intended" to "so if what is intended is an existential evil, intending it is a morally evil action." Good people would judge this to be true only if the intended existential evil were unnecessary for securing the higher value.

In conclusion, the PDE can be salvaged so long as the philosopher honors how ordinary reasonable people supply the starting point of ethical reflection and analysis. When this lesson is forgotten, a creeping *a priorism* corrupts moral philosophy. Aristotle and Aquinas were on guard against this sort of corruption. Their descendants, however, have too often lost sight of their example. As a result, the PDE has suffered at their disciples's hands, appearing muddled when it need not be.