

A Critical Analysis of Thomas Aquinas' Principle of Double-Effect and the Natural Law

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Abstract

This paper discusses the principle of double effect, with emphasis on its formulation, historical development and applications. The discussion is expository, analytic and critical in its methodology. Although, there are so many cases to which the principle of double effect is applicable, I shall briefly mention some of the cases, but offer a detailed treatment of only two of them. Also, an attempt will be made to flesh out the distinction between the *motive* and *intention* for moral actions, for therein lies much of the confusion regarding this principle. Some traditional criticisms against this principle, and some misconceptions, will be highlighted and responded to. In the conclusion, it will be argued (in support of Thomas Aquinas) that the principle of double effect fits in well with Aquinas' *natural law* tradition, and that Aquinas' notion of natural law offers a valuable explanation for certain human actions. The idea is to provide some explanatory models, that do not violate traditional medical morality, addressing certain critical moral and medical issues.

Keywords: Human action, Intention, Motive, Natural law, Principle of Double-Effect.

1. Introduction

This discussion adopts the expository, analytical and critical methodology of inquiry. Admittedly, Aquinas does not present us with a distinct treatise on the principle of double effect in his

Summa Theologiae. But, it is within the context of his discourse on self-defense¹ that one can flesh out his indirect allusions to this principle. Although the principle of double effect has been formulated in various forms, the traditional understanding of this principle states that an action with two possible effects, one good and one bad, is morally permitted if the action is not in itself immoral, if it is undertaken only with the intention of achieving the possible good effect, without intending the possible bad effect even though it may be foreseen, if an evil is not the cause of a desired good and if the act is undertaken for a proportionately grave reason.² To begin with, let us make a briefly clarification of the notions of natural law and the principle of double effect in Aquinas' thought.

2. Natural Law and the Principle of Double Effect in Aquinas' Thought

The natural law tradition sees basic moral principles as objective, based on nature instead of convention, and knowable to all by natural human reason. Aquinas' notion of the natural law is based on his Christian faith. Thus, he sees morality as part of God's governance of the world, and the purpose of morality, for him, is to lead us to our final goal, which is eternal happiness with God. Our knowledge of basic moral norms derives from human reason and the Bible; and morality is possible because of how God created us, as rational animals with an intellect and a will. Human laws are set up to promote the good and must be in accord with the natural law. The first precept of natural law is that good is to be done and evil is to be avoided. We can know what is good by investigating our natural (rational) inclinations. Natural law is indeed a pluralistic tradition of doing ethics rather than a precisely formulated ethical theory. Hence, thinkers in the natural-law

¹ Thomas Aquinas, *Summa Theologiae*, *Ila-IIae* q. 64, art. 7.

² Pellegrino Sulmasy D. P, (ed), "The Rule of Double Effect, Clearing Up the Double Talk," *Archives of Internal Medicine* 159, no. 6 (March 22, 1999), 545-550. Also see, Paulinus Odozor, "Proportionalists and the Principle of Double-Effect: A Review Discussion," *Christian Bioethics* 3, no. 2 (August 1997), 119.

tradition can take different sides in the debate on super naturalism, naturalism, and intuitionism.

Catholic theological ethics is drawn from natural law for two fundamental reasons. First, it advances a form of moral realism which affirms that moral standards are based in reality, and in this sense 'objective', rather than manufactured by human decisions. Second, some ethicists are attracted to natural law for its universal scope and its claim to apply to all human beings, rich as well as poor, conqueror as well as conquered, men as well as women. Yet, the ancient and medieval contexts from which natural law doctrine emerged are now long gone. It is thus important to keep in mind that concepts taken out of context can generate misunderstanding and confusion unless explicated with care and interpreted in ways that make sense to new audiences. Aquinas required the moral act to correspond to its end (*actus sit proportionatus fini*), but in modern usage, the principle of double effect brings into usage a criterion which is implied in every decision of conscience: that an act is good means that a commensurate reason is recognised as present. Conversely, in an immoral act a lack of a commensurate reason (*ratio proportionata*) is recognised – that is, in terms of the whole reality the act in its existential character directly contradicts the very value which is intended to be sought, a situation in which a particular realisation of a value is sought at the price of a greater loss for the same value as a whole. This fact is not always clear in advance, and it must be cautioned that the reason for an act can be considered commensurate only if the whole horizon or reality is considered, and not some particular aspect. Conscience has to do with the whole.³

3. Different Versions /Formulations of the Principle of Double Effect

The principle of double effect provides us with specific guidelines for determining when it is morally permissible to perform an action in pursuit of a good end in full knowledge that the action will also

³ Peter Knauer, "The Hermeneutic Function of the Principle of Double Effect," *Natural Law Forum Paper* 127, Notre Dame Law School, 1967, p. 162

bring about bad results. The principle has its historical roots in the medieval natural law tradition, especially in the thought of Thomas Aquinas, and has been refined both in its general formulation and in its application by generations of Catholic moral theologians. Although there has been significant disagreement about the precise formulation of this principle, it generally states that in cases where a contemplated action has both good effects and bad effects, the action is permissible only if it is not wrong in itself and if it does not require that one directly intend the evil result. It has many obvious applications to morally complex cases in which one cannot achieve a particular desired good result without also bringing about some form of evil.

I shall highlight about five different formulations/versions of this principle. The first formulation will be that of Aquinas, the second and third will be from defenders of Aquinas on double effect, the fourth will be from an opponent of Aquinas on double effect, and the last one will be from a *Journal of Medical Ethics*. St. Thomas Aquinas' formulation of the principle of double effect, was within the context of his treatise on *Murder*, and in response to the question: whether it is lawful to kill a man in self-defense? Aquinas presents the principle, though indirectly, in the following words:

I answer that, nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental as explained above (q. 43, a. 3; Ia IIae, q. 12, a. 1). Accordingly, the act of self-defense may have two effects, one is the saving of one's life, the other is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life, is not unlawful, seeing that it is natural to everything to keep itself in "being," as far as possible.⁴

Also, J. P. Gury, a notable Jesuit theologian who has contributed to the literature on the *principle of double effect*, offers us a modern formulation of this principle in the following words: "*It is licit to*

⁴ St. Thomas Aquinas, *Summa Theologiae*, Ia-IIae, q. 64, article 7

*posit a cause which is either good or indifferent from which there follows a twofold effect, one good, the other evil, if a proportionately grave reason is present, and if the end of the agent is honorable – that is, if he does not intend the evil effect.”*⁵ In addressing the principle of double effect, Joseph M. Boyle gives particular attention to the intention of a moral agent in a given moral action. He says:

According to Aquinas, an act is morally speaking, the kind of act it is in virtue of what is intended. In other words, Aquinas believes that actions are at least in part defined by the intention with which the agent performs them; intention is an act of volition, and it is necessarily the case that one intend whatever functions as an end or goal in one's actions; one must intend not only the more distant and ulterior goals but the immediate aim one has in undertaking an action. Thus one must intend what Aquinas calls the formal object of one's act. In more contemporary language, an action is undertaken to bring about a certain state of affairs. This state of affairs is intrinsic or essential to the act and is necessarily intended.....The bad effect is intended if it is chosen as a means because it becomes something which the agent is committed to realising.⁶

Alan Donagan, in commenting on the *doctrine of double effect* states: “what you intend is therefore what you plan to do” whether as means or end. A good test of whether you intend a particular foreseen effect of an action, is to suppose that, by some fluke or miracle, the action does not have the effect that you foresee, and to ask whether you then consider your plan carried out and your

⁵ J. P. Gury, S.J (revised by A. Ballerini, S.J), *Compendium Theologiae Moralis*, 2nd Edition (Rome and Turin, 1869), p. 7, quoted by Joseph M. Boyle in his “Towards Understanding the Principle of Double Effect,” in *The Doctrine of Double Effect, Philosophers Debate a Controversial Moral Principle*, P. A Woodward, ed, (Notre Dame, Indiana: University of Notre Dame Press, 2001), 8.

⁶ Joseph M. Boyle “Towards Understanding the Principle of Double Effect”, published in *The Doctrine of Double Effect, Philosophers Debate a Controversial Moral Principle*, P. A Woodward, ed, (Notre Dame, Indiana: University of Notre Dame Press, 2001), 10-11

purpose accomplished.⁷ Also, P. J. Cataldo, provides an interesting formulation of the *principle of double effect* thus:

An action that is good in itself that has two effects – an intended and otherwise not reasonably attainable good effect, and an unintended yet foreseen evil effect--is licit provided there is a due proportion between the intended good and the permitted evil. When there is a clash between the two universal norms of "do good" and "avoid evil," the question arises as to whether the obligation to avoid evil requires one to abstain from a good action in order to prevent a foreseen but merely permitted concomitant evil effect. The answer is that one need not always abstain from a good action that has foreseen bad effects, depending on certain moral criteria identified in the principle of double effect. The object of the act must not be intrinsically contradictory to one's fundamental commitment to God and neighbor (including oneself), that is, it must be a good action judged by its moral object (in other words, the action must not be intrinsically evil); The direct intention of the agent must be to achieve the beneficial effects and to avoid the foreseen harmful effects as far as possible.⁸

Both in its traditional formulation by St. Thomas and in its contemporary formulations which I have highlighted so far, four basic conditions⁹ are presupposed. Although it has been argued

⁷ Donald B. Marquis, "Four Versions of Double Effect" quoted in P. A. Woodward (ed.), *The Doctrine of Double Effect, Philosophers Debate a Controversial Moral Principle*, (Notre Dame, Indiana: University of Notre Dame Press, 2001), 170.

Cf. Benedict Ashley and Kevin O'Rourke, *Healthcare Ethics: A Theological Analysis*, 4th Edition (Washington, DC: Georgetown University Press, 1997), 191-95. See also: D. B Marquis, "Four Versions of Double Effect," *Journal of Medicine and Philosophy*, 16 (1991): 515-44; P.J.Cataldo "The Principle of the Double Effect," *Ethics & Medics*, 20 (March 1995): 1-3.], available on-line at: http://ahslmo2.verus-tech.com/ethics/public/key_principles/double_effect.asp.

In the *New Catholic Encyclopaedia*, these conditions are states thus: (1) The act itself must be morally good, or at least indifferent. (2) The agent may not positively will the bad effect but may merely permit it. If he could attain the good effect without the bad effect, he should do so. The bad effect is sometimes said to be indirectly voluntary. (3) The good effect must flow from the action at least as immediately (in the order of causality, though not necessarily in the order of time) as the bad effect. In other words, the good effect must be produced directly

that the fourth condition was not originally present, but was introduced later by proportionalists, who found the three conditions incomplete, looking carefully at the different formulations of the principle of double effect, one thing that is very clear is the fact that they all have in view the distinction between direct and indirect intention. But I think this distinction has been debated by many moral philosophers, and perhaps this is why the need to make further distinctions in terms of motive and intention, has become relevant. According to John J. Jenkins' "while the motive for a moral act is primarily explanatory, the intention for doing any moral act is primarily informative, though contingently explanatory. Thus, the intention of an act indicates the purpose for which the act was done."¹⁰

Also, Elizabeth Anscombe, in making a distinction between *intention and motive*, claims that the intention of an act is the reason for which the act was done. That is, the "why" of the act. In discussing the *motive* of an act she makes a three-fold distinction: backward-looking, forward-looking, and interpretative motives.¹¹ Whereas the forward-looking motives explain a futuristic explanation for what is being done, the backward-looking motives explains what must have transpired, in retrospect, and then the interpretive motive offers a descriptive analysis of a given moral action, in the light of its blame-worthiness or praiseworthiness. An

by the action, not by the bad effect. Otherwise, the agent would be using a bad means to a good end, which is never allowed. (4) The good effect must be sufficiently desirable to compensate for the allowing of the bad effect. In forming this decision many factors must be weighed and compared, with care and prudence proportionate to the importance of the case. Thus, an effect that benefits or harms society generally has more weight than one that affects only an individual; an effect sure to occur deserves greater consideration than one that is only probable; an effect of a moral nature has greater importance than one that deals only with material things. (New Catholic Encyclopaedia, McGraw-Hill, New York, 1967), Vol. 4, pp. 1020-1022, quoted in P. A. Woodward (ed.), *The Doctrine of Double Effect, Philosophers Debate a Controversial Moral Principle*, (Notre Dame, Indiana: University of Notre Dame Press, 2001), p. 157.

¹⁰ John J. Jenkins "Motive and Intention" *The Philosophical Quarterly* 15, no. 59 (April., 1965), 155.

¹¹ G.E.M. Anscombe, "Intention," *Australasian Journal of Philosophy* 38 (1960), 79.

action is intentional only under a description; so the feature that made it intentional would have to make it intentional under a description. In many cases, there is a close association between the motive of an act and the intention for the act, but they are not by that fact the same. In so far as a given moral action was not involuntary or done unknowingly, a moral agent is ordinarily taken to intend the act done, as well as the natural and foreseeable consequences of his action. Also, Peter King, explains the distinction between *intention* and *motive* by quoting the words of John Stuart Mill that “the intention is what the agent wills to do” while the motive is “the feeling which makes him will so to do.”¹² A further distinction could also be made regarding “essential intention” and “circumstantial intentions” for moral action. It is important to distinguish between one's proximate or essential intention, one essential element of the object of an act, and the circumstantial intention. Circumstantial intentions are those further ends that are chosen in addition to the essential or proximate end of the action. Since such ends are not essential to the act, circumstantial intentions can only increase or decrease the moral goodness of an already morally good act, but they cannot determine the moral species (i.e., essential moral character) of the act.¹³ It is true that sometimes all these distinctions could be confusing, but I think that their relevance consists in the fact that they provide further nuancing to our reasons for moral action. In general, the primary difference between intention and motive is that intention specifically indicates the mental state of a person, (i.e. what is going on in his/her mind, while performing a given action), whereas motive implies the motivation, (i.e. what drives a person to do or refrain from doing something).

¹² John Stuart Mill, *James Mill's Analysis of the Phenomena of the Human Mind*, Vol. XXXI (1861, 2: 19: 21n), quoted in Peter King's "In Deepest Consequences: What Makes Effects Moral," in users.ox.ac.uk/~shil0124/papers/consequences.pdf

¹³ Health Care Ethics, "Intention," in http://www.ascensionhealth.org/ethics/public/issues/intention.asp#dir_int

4. Application of the Principle of Double Effect to Selected Cases

In applying the principle of double effect to cases, the understanding is that in every given case, each member of a pair of cases will have a different level of satisfaction of the conditions of the double effect principle. This is to say that one member of that pair will satisfy all the conditions of the principle, rendering it morally permissible, while the other will fall short of that expectation in at least one or more of the conditions, and will therefore become morally forbidden.¹⁴ Now, let me list some of the cases that are usually considered: (1) Hysterectomy (2) Terror-Bomber (Sporadic-Bomber) and Strategic-Bomber (3) Self-defense against an unjust aggressor (4) Cave Explorers that are trapped in their cave. Here, I intend to focus on just two cases: one which is political (Terror Bomber and Strategic Bomber) and the other medical (Hysterectomy).

4.1 Hysterectomy¹⁵

Suppose a pregnant woman named **P**, discovers that she has uterine cancer which will certainly endanger the life of the foetus in her womb, the need to perform a hysterectomy becomes pressing. If she does not perform the operation, she might die, likewise the foetus. If she performs the operation, she might live, but the foetus would not survive since the womb will have to be removed, and the pregnancy aborted. This introduces a moral dilemma which option should be insisted on. Now, how does this fit into the natural law theory and principle of double effect, in particular? In as much as the woman has an obligation to fight for her life, the life of the foetus in her womb deserves protection as well. But since it is clear that both goods cannot be achieved together, the principle of double effect permits that the good that is directly willed and intended, be chosen. The life of the woman then becomes the paramount value since she has an obligation to

¹⁴ Donald B. Marquis, "Four Versions of the Double Effect," in *The Doctrine of Double Effect, Philosophers Debate a Controversial Moral Principle*, ed. P. A. Woodward (Indiana: University of Notre Dame Press, 2001), 156

¹⁵ Hysterectomy is the surgical removal of the uterus or womb.

fight her cancer. Applying the principle of double effect, one of its conditions is that it is not permissible to directly use an evil means to achieve a good end.

In the case given above, the intention is to save the life of the mother who has uterine cancer that is foreseen and intended. Although the possible death of the baby in her womb is foreseen, it is not intended. In this case, the principle of double effect permits the performance of the hysterectomy, since it is not a moral evil, but then this results in the death of an unborn child, which is in itself a moral evil. Using the principle of double effect, one might say that the moral culpability in this case might be modified by the very fact that the direct intention of the medical expert was not to terminate the life of the baby in the womb, even if that eventually became the case. It is difficult to say that the medical expert who performed the hysterectomy did not intend to kill the unborn child. It is what we intend that we plan to do, whether they become means to an end, or constitute ends in themselves.¹⁶ The difficulty that lurks in here consists in the fact that the effort to distinguish states of affairs that are positively willed (good states of affairs) and those that are merely permitted, but not positively willed (bad states of affairs), does not resolve the moral conflict involved in the termination of an innocent life.¹⁷

4.2 The Terror Bomber,¹⁸ and Strategic Bomber

Strategic bombing also known as level bombing is something slightly different from "Terror bombing". The terror bomber is indiscriminate in his aerial bombardment, and does it with a malicious intention, to cause destruction to life and property and to instill fear and trepidation in his opponents. Although its

¹⁶ Donald B. Marquis, "Four Versions of the Double Effect," p. 170.

¹⁷ Donald B. Marquis, "Four Versions of the Double Effect," p. 158

¹⁸ "Terror Bombing" is a phrase that was introduced into the vocabulary of warfare by Air Marshal Sir Arthur Harris — a terminological innovation for which the chief of Bombing Command in the Royal Air Force during the second world war is justly famous. Not one to rest content with verbal creativity, Harris

implications for civilians is basically the same, the direct target is different. It is usually directed at the war industry or military installations, within a given geographical territory. Terror bombing might assume a variety of forms and may not just be aerial bombing. It might be the bombing of a train station, a bus station, etc. However, since it is often very difficult to correctly differentiate a case of terror-bombing from that of strategic bombing, one may not be able to say exactly what the case is. But it needs to be pointed out whereas the principle of double effect allows the moral disvalues of strategic bombing as an unintended but foreseen consequence of a military act, it does not make such provisions for terror-bombing. In other words, terror-bombing is a direct evil that must be condemned.

If a strategic bomber, while aiming at military targets kills innocent civilians, this is an evil consequence that is understood as merely foreseen but unintended, and is therefore permissible. On the contrary, the terror-bomber who directly and intentionally bombards an area, killing innocent civilians in order to weaken the resolve of his opponents, is by that fact morally reprehensible for his act. The direct and foreseen intention is to secure an important military objective. However, the death of innocent civilians within that territory is foreseen but not intended, but then the terror bomber drops bombs on a military target knowing very well that the death of innocent people will be a likely consequence. The puzzle here is: How can a moral principle of value endorse a morally praiseworthy act in a given case and endorse another act that is morally reprehensible within the same frame of reference?

The seeming inconsistency of this principle shows up here.¹⁹ Certainly the *principle of double effect* is applicable to a wide range

endowed the concept with body and substance through a series of destructive incendiary air raids on civilian populations in Germany, culminating in the destruction of Dresden. It was an example that the US emulated with great success in Japan, until closing out the argument in its own way, at Hiroshima and Nagasaki." (Iraq — 'Terror Bombing', Starvation and Mechanical Force US Prescription for Good Governance, by S. M. Menon. Available online at: <http://tmh.floonet.net/articles/terrorbombing.shtml>)

¹⁹ "Notes on the Doctrine of Double Effect and the Doctrine of Acts and Omissions," in philosophy2.ucsd.edu/~rarneson/Courses/13daodde2004.pdf

of circumstance; both hypothetical and real situations in which the achievement of a particular good result becomes almost impossible without a clearly accompanying bad result. It has been applied to cases in palliative care, euthanasia, physician assisted suicide, birth control pills, abortion, and other issues in bioethics. One might say that a lot of our moral choices, in certain situations, employ the principle of double effect, even if we do not formally enumerate them in our minds, but simply act out of common sense. So, without intentionally producing evil, we may intentionally do (in pursuit of a suitably greater good) what we foresee will in fact produce evil, provided we regard this evil as an unwanted side-effect which we would avoid if possible. Apart from the traditional cases that are usually listed as scenarios where the *principle of double effect* is applicable, there are more practical situations that one might wish to identify:

1. An aviator who tests planes, with the aim of improving on aeronautic equipment, but may be involved in a crash and die.²⁰
2. A law enforcement agent who tries to capture an escaping criminal, and may get killed in the process.
3. A charitable person who attempts to separate two people that are fighting, and may get terribly injured in the process.
4. A priest who ministers to lepers, and a doctor who attends to lepers, and runs the risk of being infected by leprosy.²¹

These are cases of possible physical evils (e.g. danger to life and bodily welfare), which one might tolerate because of a good result that is envisaged. The actions involved are good ethical actions employing the Principle of Double Effect, and whatever bad effects

²⁰ "The Principle of Double Effect," in *MPA 8300, Leadership Ethics*, <http://www83.homepage.villanova.edu/richard.jacobs/MPA%208300/theories/double%20effect.html>

²¹ *MPA 8300, Leadership Ethics* "The Principle of Double Effect" at: <http://www83.homepage.villanova.edu/richard.jacobs/MPA%208300/theories/double%20effect.html>

may follow, (to the detriment of the lives and health of those involved), is outweighed by the good effect such actions confer on the welfare of the society.²²

5. Disputed Distinctions regarding the Principle of Double Effect

5.1 Pain-Relief Treatment and Euthanasia

Here there is an attempt to make a distinction between the direct administration of life-terminating drugs and mere pain-relief treatment, which invariably leads to the shortening of the life of the patient. The former is considered as not involving any primary intention to kill the patient, as in the latter case. Hence the two cases are considered distinct in kind and in degree.²³ However when large doses of pain-relief drugs are administered with the direct intention of terminating the life of a patient with irredeemable health conditions, there is no justification for it under the principle of double effect. Suppose the *principle of double effect* is to be applied here it is required that:

First, the act resulting in a bad consequence (such as the shortening of life) is morally neutral. Providing pain-relief treatment would qualify as at least a morally neutral act. Second, the pain relief must not be achieved by shortening life (i.e. through a bad consequence). Third, the bad consequence, the shortening of life, must not be primarily intended as either an end or a means, rather, the primary intent must be the legitimate aim of relieving pain. Fourth, there must be no other reasonable way of achieving the pain relief without involving the undesired effect of shortening life. Lastly, the proportionality of good and bad consequences required to justify the bad ones must be present. Providing necessary pain

²²MPA 8300, *Leadership Ethics* "The Principle of Double Effect" at: <http://www83.homepage.villanova.edu/richard.jacobs/MPA%208300/theories/double%20effect.html>

²³ Margaret A. Somerville, "Death talk: Debating Euthanasia and physician-assisted suicide in Australia" *MJA* 178 (17 February, 2003), 172.

relief, even if it shortens life, fulfils all of these conditions; but euthanasia fulfils none of them.²⁴

So, the use of pain-relief treatment is distinguished from a direct case of *euthanasia* because in the former, the possible or eventual death of the patient is beside the intention of the medical practitioner. It is the relief of the pains of the suffering patient that is directly intended. However, in euthanasia, it is the death of the suffering patient that is directly willed and intended. And since a moral action derives its species from the intention of the moral agent, the former (pain-relief treatment) is good and permissible, while the latter (euthanasia) is bad and so not permissible.

5.2 Withdrawal of Life-Support Versus Euthanasia

Many advocates of euthanasia, claim that there is no distinction between the withdrawal of life-support and direct administration of euthanasia. By so doing, they seem to blur the difference between "killing" and "letting-die". For them, both in intention and causation, the withdrawal of a life-support treatment that results in death, and the use of a lethal injection, are the same. Also, they claim that the respectful refusal of life-saving treatment, is not ethically distinct from euthanasia.²⁵ So, "the patients" right to refuse treatment is a corollary of the right to inviolability (i.e. the right not to be touched).

Whereas there is a right to have treatment withdrawn, on the part of the terminally ill patient, there is no right to be killed. How we die matters a lot both morally and legally, and our moral intuitions make us know that there is a world of difference between "letting nature take its course" including the refusal of life-giving support treatment and killing a dying person. Here I would like to respond by saying that there is a distinction between killing and letting die. Whereas the former is morally reprehensible: a case of active euthanasia, the latter is not, since that would be a case of passive euthanasia. When "extra-ordinary means of preserving life" can no longer be provided, letting the

²⁴ Somerville, "Death talk," 172.

²⁵ Somerville, "Death talk," 173.

patient die is not the same as actively terminating his/her life. Euthanasia contravenes the principle of the dignity and sanctity of human life.”²⁶

6. Some Limitations (Problems) of the Principle of Double Effect

It has been argued that the *principle of double effect* is ambiguous with regard to human intentions which are often subjective and unclear. It is also ambiguous regarding the difference between *intended means* and *foreseen consequences*, the distinction between *intentions* and *motives*, and the minimalisation of the bad effect of a given act.²⁷ As true as this objection might be, I would also like to point out that it is principally because our intentions are usually unclear to others that we need such a principle to help explain our presuppositions and goal for moral actions. In terms of its relationship to the natural law doctrine, one might argue that the *principle of double effect*, seems to undermine the first principle of the natural law theory: *avoid evil and do good*. This impression arises from the assumption that the principle of double effect sometimes gives room for moral disvalues, and justifies them on the basis of commensurate or proportionate reasons, and the lack of direct intention. However, I would think that this critique would not hold, if and only if one accepts that there is really no basic difference between what is *directly intended*, and what is *merely foreseen* but *unintended*. In clinical contexts the *principle of double effect*, has been criticized on the following bases:

- i. The lack of consistency in its application. For example, when the agonizing pains of a comatose patient necessitates the administration of "terminal sedation" permissible in law and in medical ethics, which then renders the patient unconscious until death occurs. So,

²⁶ Somerville, "Death talk," 173.

²⁷ "Centre of Bioethical Research Analysis," in <http://www.nuigalway.ie/philosophy/cobra/double-effect.html>

- by withdrawing the means of life-preservation, death is intentionally hastened.²⁸
- ii. The lack of clarity regarding the main purpose of a given moral agent.²⁹
 - iii. Trying to base the moral and legal validity of a particular medical treatment on the assumed “subjective” intention of the doctor, is regarded as an unsound basis for public policy.³⁰
 - iv. Sometimes it runs the risk of exempting medical doctors from the moral responsibility and culpability of their professional and ethical decisions. It is also argued that the wishes of the patients, their informed consent and their right of bodily integrity and self-determination, are oftentimes undermined by this principle. Also, in some cases medical doctors do not present less harmful alternatives to the patients.³¹
 - v. Also, even if distinctions between directly intended and merely foreseen consequences make some sense in scholastic, philosophical or theological discussion, they make little sense at the end-of-life decision making. This is because the whole decision-making process is so 'situation determined', that isolating one moment at which the doctor's intention may change from relieving pain to assisting death is completely arbitrary. What is crucial however, is that entirely different legal controls come into effect, at this point.³²

However, despite the many criticisms levelled against Aquinas' formulation of the *principle of double effect* by secular philosophers, legal theorists, moralists, etc., I think it still remains a handy and

²⁸Timothy E. Quill, Rebecca Dresser, and Dan W. Brock, “The Rule of Double Effect - A Critique of Its Role in End-of-Life Decision Making,” in *The New England Journal of Medicine* 11 (1997), 5. See also *The New England Journal of Medicine* (1998), 389-90, available at: <http://www.saves.asn.au/resources/facts/fs23.htm>

²⁹ Quill, Dresser and Brock, *The New England Journal of Medicine*, 5

³⁰ Quill, Dresser and Brock, *The New England Journal of Medicine*, 5

³¹ Quill, Dresser and Brock, *The New England Journal of Medicine*, 5

³² Scott Davidson, “The Doctrine of Double Effect and Potential Criminal Liability of Medical Practitioners in Australia,” *Journal of Law and Medicine*, 28(2):503-504

strong moral principle, especially for those with strong deontological convictions. In applying the principle of double effect, it is easy to distinguish the relationship between a moral agent and the intended outcomes of his actions from merely foreseeable but unintended effects. J. Bentham for example differentiates an “oblique” intent from a “direct” intent,³³ while J. Meiland distinguishes “non-purposive” from “purposive” intention. So, “if I drive my car knowing that this will wear down the brakes, I intend to wear down the breaks, even if this is not an *intention* with which I act.”³⁴ In explaining the prospects of the *principle of double effect*, Thomas Nagel says argues that despite the problems that this principle might have in its application, it nonetheless provides us with a guide to the “extension and character of deontological constraints.”³⁵ My understanding of this comment is that unlike the opposition to this principle from the proportionalists and consequentialists, the deontological position fully appreciates the value of this principle and sees it as a handy tool for explaining moral cases.

What Aquinas prohibits is intentional killing, not simply the prevention of indirect harm to goods, which given their moral value, may not be directly harmed. The attitude with which one performs a moral action certainly affects the quality of the act. So, whereas life for Aquinas may become violable, for example, when public officials kill (some offenders) intentionally, this is something they would not do if they held life itself to be inviolable. One’s respectable goods are inviolable.³⁶ One’s moral or spiritual good is the state of one’s moral or spiritual health or character. Also, the

³³ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, (New York: Hafner Publishing Co., 1948), 45 Quoted in Anthony Duff, “Intention, Responsibility and Double Effect,” in *The Philosophical Quarterly* 32, no. 126 (Jan., 1982), 3.

³⁴ Jack W. Meiland, *The Nature of Intention*, (London: Methuen, 1970), pp. 7-15, quoted in Anthony Duff’s “Intention, Responsibility and Double Effect” *Philosophical Quarterly*, Vol. 32, No. 126 (Jan., 1982), 3.

³⁵ Thomas Nagel, “The Limits of Objectivity” in *The Tanner Lectures on Human Values* Vol. 1, ed. S. McMurrin (Cambridge: Cambridge University Press, 1980), 126, quoted in Woodward, *The Doctrine of Double Effect*, 140

³⁶ Daniel Montaldi, “A Defense of St. Thomas and the Principle of Double Effect,” in *Journal of Religious Ethics* 14, no. 2 (1986), 256-257.

common good is another instance of a respectable good which is "the good of everyone considered collectively," (i.e. the wellbeing of the entire community as a whole).³⁷ Also, within the category of respectable goods, Aquinas includes *physical* and *material* goods, such as "life itself", which might suggest that he thinks bodily well-being is respectable, and that "only in a particular context specified by the PDE can harming become permissible."³⁸ So, considering the principle of the sanctity of life in isolation and not with reference to any context, Aquinas himself would not subscribe to the killing of a sinner (even an unjust attacker).³⁹

7. In Support of Aquinas on the *Principle of Double Effect*

Even if Aquinas in any way misapplied the PDE to the justification of many kinds of killing in self-defense, that does not in itself undermine the relevance of the principle, for its aim is to determine whether or not a given moral act is right, instead of offering excuses for pre-determinedly wrong moral actions, in relation to other available moral principles. So the principle of double effect must constantly be weighed against other principles of morality in order to determine "what states of affairs are morally wrong to be brought about intentionally, and whether there is sufficient reason for indirectly causing some other bad state of affairs."⁴⁰

Aquinas therefore employs the PDE in conjunction with a more basic principle of practical reason in general: *the natural law* that requires all moral agents to do or seek the good, and to avoid evil.⁴¹ Herein lies the relationship between Aquinas' formulation of the *Principle of Double Effect*, and his doctrine of the *Natural Law*. One might even suggest that the PDE seems to make explicit what is already implicit in the Natural Law tradition of Aquinas. And by doing so, it seems to complement and enhance our understanding

³⁷ Cf. Montaldi, "A Defense of St. Thomas," 300.

³⁸ Cf. Montaldi, "A Defense of St. Thomas," 301.

³⁹ Cf. Montaldi, "A Defense of St. Thomas," 301

⁴⁰ Cf. Montaldi, "A Defense of St. Thomas," 298.

⁴¹ Aquinas, *Summa Theologiae*. II-II, 94, 2; II-II, 68, 8 ad 1 40, 1

of how the general principles of Natural Law are observed into a variety of moral contexts. Aquinas appeals to an order of priorities in charity,⁴² where the promotion of certain goods might lead to the harming of others, or may be the failure to promote them.⁴³ Through the application of the *Principle of Double Effect*, we are able to ascribe *intentional agency* and *responsibility* to moral actions, which then renders one answerable for a given moral action, and reveals both the significance and relevance of the effect in question.⁴⁴

8. Conclusion

The principle of double effect claims that “it is never permissible to directly will evil and that it is permissible to indirectly will evil when and only when there is proportionate reason, which is generally, though not always, taken to involve some sort of weighing of goods and evils.”⁴⁵ It is true that the principle of double effect has a lot of difficulties to wrestle with especially in the justification of homicide vis-a-vis the principle of the sanctity of life, in which life is considered as sacred and inviolable. However a clear understanding and proper use of this principle would be a wonderful help for health care professionals as a reversal of their attitude to euthanasia, pain-relief treatment and assisted suicide.⁴⁶

Certainly this rule is of immense practical importance in the care for dying patients, and provides some element of moral reassurance and thus encourages optimal care of the dying.⁴⁷ While some people criticise the rule of double effect, on the basis of its

⁴² Aquinas, *Summa Theologiae*, II-II, 26, 1-6.

⁴³ Cf. Montaldi, “A Defense of St. Thomas,” 298

⁴⁴ Anthony Duff, “Intention, Responsibility and Double Effect,” *The Philosophical Quarterly* 32, no. 126 (Jan. 1982), 6.

⁴⁵ Sanford S. Levy, “The Principle of Double Effect,” *Journal of Value Inquiry* 20 (1986), 1.

⁴⁶ Daniel P. Sulmasy and Edmund D. Pellegrino, “The Rule of Double Effect: Clearing Up the Double Talk,” *Arch Intern Med.* 1999;159:545-546, available at: <http://www.saves.asn.au/resources/facts/fs23.htm>

⁴⁷ “The Rule of Double Effect: Clearing Up the Double Talk,” *Arch Intern Med.* 1999; 159:545-550. Available at: <http://www.saves.asn.au/resources/facts/fs23.htm>

seeming incredibility, they nonetheless acknowledge the fact that it provides justification for adequate pain relief and other palliative measures for dying patients. If one considers the rule of double effect as incoherent, then even its application to the care of dying patients is in itself questionable.⁴⁸ It must also be pointed out that many critics misconstrue this moral rule when they suggest that it is simply a rule that enables one to decide whether one potentially harmful action is preferable to another. This is not true. The principle of double effect is not to be used as an instrument of consequentialist reasoning, (i.e. determining the moral status of an action on the basis of net utility). One does not begin double effect reasoning by first examining the consequences of a proposed action and then deciding whether the net consequences are such that there might be a good reason to override some *prima facie* prohibition against the action. Rather, one sets out to do a morally good action, taking full account of the foreseeable consequences. If the action conforms to the conditions of the rule of double effect, one may proceed even under circumstances in which that action might have dangerous side effects. This is a different idea from the notion that one simply picks the lesser of two evils.

To use the rule of double effect properly, one must be careful to specify the effects one is aiming at, and be reasonably sure that the proposed intervention can possibly achieve this effect. Occasionally, it is possible to experience moral quandary, in which case one may be unable to decide how best to handle a particular moral situation. With the insights provided by the principle of double effect, one could assess one's intentions for whatever one is planning to do, alongside with one's motive for acting. By doing so, one is able to forestall the possibility of using an evil means to achieve a good end. Unlike what some people might think, I do not consider the principle of double effect as having the kind of flexibility some people ascribe to it.

The four conditions it presents us with, serve as protective belt, helping us to judge wisely, and make the right decisions, in a given

⁴⁸ John Conley, "The meaning of life-threatening disease in the area of the Head and Neck," *Acta Otolaryngol* 99 (1985), 201.

moral situation. In applying the principle of double effect to the two cases I have discussed, one sees how an act that may appear bad (at face value) could be better and differently understood as good in the light of the intentional agency and responsibility of the moral agent. Also, natural law procedures and methodologies presumably can be used to arrive at ethical directives in ever changing historical and cultural contexts. This all-important objectivity about the human condition, however, sometimes is exaggerated so as to eliminate historical change in moral teachings. Sometimes, claims are exaggerations because human beings evolve, and so does human understanding and ethical judgment. Natural Law anthropology does ground universal ethical standards, but it also evolves. Natural Law thinking aspires to objectivity and universality and at the same time is open to the continuing influence from history and politics. Natural Law ethics begins with an attempt to work out, with the exclusive tools of human reason, the constituents of humanness: a defensible philosophical anthropology. That anthropology has to take account of the fact that human beings are rational and free and must use both capacities to create an inner-self.⁴⁹

⁴⁹ James Drane, "Natural Law, History and Politics," *Acta Bioética* año VIII, n° 1 (2002), 88-89.