

THE ROAD TO HELL

by Alastair Norcross

1. Introduction: The Doctrine of the Double Effect.

My concern in this paper is a distinction most commonly associated with the Doctrine of the Double Effect (DDE). Elizabeth Anscombe claims that the denial of the DDE "has been the corruption of non-Catholic thought, and its abuse the corruption of Catholic thought." Many other philosophers, on the other hand, regard the DDE as not just wrong, but also wildly implausible. Some would even say that the most decisive refutation of the DDE is simply a clear statement of that doctrine. I, however, would never go in for such a cheap, though accurate, jibe. Nonetheless, let's begin with some statements of DDE.

Jonathan Bennett – It permits certain conduct that predictably leads to bad results, if it also leads to good ones and the following are all true:

- (1) The behaviour is not bad in itself.
- (2) The agent's intentions are good.
- (3) The good does not flow from the bad and/or the agent does not intend the bad as a means to the good.
- (4) The good is good enough, compared with the bad, and there is no better route to the former.

Charlie Curran – The manuals of theology generally propose the following four conditions under which one can be justified in causing evil in conjunction with good:

- 1) The action itself is good or indifferent.
- 2) The good effect and not the evil effect is the one sincerely intended by the agent.
- 3) The good effect is not produced by means of the evil effect. If the evil effect is not at least equally immediate causally with the good effect, then it becomes a means to the good effect and intended as such.
- 4) There is a proportionate reason for permitting the foreseen evil effect to occur.

Warren Quinn – The doctrine ... is typically put as a set of necessary conditions on morally permissible agency in which a morally questionable bad upshot is foreseen:

- (a) the intended final end must be good,
- (b) the intended means to it must be morally acceptable,
- (c) the foreseen bad upshot must *not* itself be willed (that is, must not be, in some sense, intended), and
- (d) the good end must be proportionate to the bad upshot (that is, must be important enough to justify the bad upshot).

2. The Means Principle

My concern, and that of most philosophers who discuss DDE, is with the third condition. In fact, some philosophers seem to equate DDE with the third condition. Thus Philippa Foot, in a very influential article: "By 'the doctrine of double effect' I mean the thesis that it is sometimes permissible to bring about by oblique intention what one may not directly intend." My concern is not with the origins or the interpretation of DDE. Rather, it is simply with the thesis that a particular distinction is morally relevant: the distinction between bringing about an intended bad effect as a means to a good effect and bringing about a foreseen but unintended bad effect in the course of bringing about a good effect. Following Bennett, I will call this *the means principle*.

3. Some worries about applying the Means Principle.

So, how are we to apply the means principle? Speaking of a case in which a doctor administers a pain-relieving drug to a mortally ill patient, knowing that the drug may kill the patient if the illness doesn't do so first, Anscombe says: "[E]veryone understands that it is a very different thing so to administer a drug, and to administer it with the intention of killing." But what *is* the difference? It isn't just a matter of desire. Consider a pair of cases often cited in connection with DDE:

Craniotomy: A woman in labor will die unless the head of the fetus she is trying to deliver is crushed. But the fetus may be safely removed if the mother is allowed to die.

Hysterectomy: A pregnant mother's uterus is cancerous and must be removed if she is to be saved. This will kill the fetus. But if no operation is performed the mother will eventually die after giving birth to a healthy infant.

Supporters of DDE often claim that the fetus's death is intended in the craniotomy case, and thus forbidden, but that it is merely foreseen in the hysterectomy case, and thus permissible. In the craniotomy case, though, it is reasonable to assume that the doctor has no desire that the fetus should die, even though he knows full well that it will. Perhaps it will be objected that the doctor must desire the fetus's death, since it is necessary for something else that the doctor desires, namely the life of the mother. However, the same reasoning could apply to the death of the fetus in the hysterectomy case. If desires were the only criteria of intention, the doctrine of double effect would be in danger of rendering the same judgments as consequentialism about most cases.

Indeed, we could argue that the doctrine can't really distinguish between the craniotomy and the hysterectomy cases. The death of the child in the former case is also an unwanted but foreseen consequence of the surgical

procedure and not, strictly speaking, a means to saving the mother's life, given a fairly plausible reading of the doctrine. It is, after all, only an alteration in the shape of the child's head that is required to save the mother's life. While it is true that such an alteration will, with medical certainty, result in the death of the child, it is also true that the hysterectomy will, with equal medical certainty, result in the death of that child. Philippa Foot admits that such an interpretation of the doctrine would "make nonsense of it from the beginning" but insists that there is yet something to it. That something, though, turns out to be a version of the distinction between doing and allowing, and doesn't seem to have anything to do with intentions. This problem threatens to place on the foreseen side of the intended/foreseen distinction all bad effects that intuitively are intended as a means to a good effect. This would clearly deprive the means principle of any force.

Thus, we get something like the following test: in order to determine whether a particular harm, that resulted from an action, was intended by the agent, we ask whether the agent would have performed the action if s/he had believed the harm wouldn't have occurred. If the answer is yes, the harm is not intended. Lets apply this test to another familiar pair of cases:

Strategic Bomber: A pilot bombs an enemy factory in order to destroy its productive capacity, and thus shorten the war, which results in the saving of over one million innocent lives. However, the pilot foresees that he will certainly kill ten thousand innocent civilians who live near the factory.

Terror Bomber: A pilot deliberately kills ten thousand innocent civilians in order to demoralize the enemy, and thus shorten the war, which results in the saving of over one million innocent lives.

The standard approach to these cases is to claim that the terror bomber intends the deaths that he causes as a means to shortening the war, while the strategic bomber merely foresees the deaths that he causes. Thus, if it is absolutely forbidden intentionally to kill the innocent, the terror bomber acts wrongly. The strategic bomber, on the other hand, may act permissibly, if we judge that saving the lives of over a million outweighs the deaths of ten thousand. Even if there isn't an absolute prohibition against intentionally killing the innocent, the means principle tells us that the behavior of the strategic bomber is morally better than the behavior of the terror bomber.

But does the counterfactual test give the result that the terror bomber intends the deaths and the strategic bomber merely foresees them? Here's how it's supposed to go. We ask, of each bomber, would he have dropped the bombs, if he had believed that he wouldn't thereby kill innocent civilians? The terror bomber, we say, clearly wouldn't have dropped the bombs, since he wouldn't then have been able to achieve his objective of demoralizing the enemy and thus shortening the war. The strategic bomber,

on the other hand, would have dropped the bombs, and done so more eagerly, since he would have been able to achieve his objective and wouldn't have had to cause the deaths that he, in fact, regrets. But not so fast. It's not clear that this is the right answer. An equally plausible answer is that the strategic bomber wouldn't have dropped his bombs, since, if he had believed that he wouldn't thereby kill innocent civilians, given what he knew about the proximity of the civilians to the factory, he would have believed either that he was off target and that he wouldn't have hit the factory, or that his bombs would not have been powerful enough to destroy the factory. Likewise, in the hysterectomy case, if we asked whether the doctor would have performed the operation, if she had believed that she wouldn't thereby have killed the fetus, we could just as easily answer no as yes. Given what the doctor knew about the patient (for example, that she was pregnant), if she believed that a hysterectomy wouldn't have resulted in the death of a fetus, she would have believed that she was operating on a different patient.

5. The Means Principle applied to character.

What, then, is the moral significance of intentions, if any? I suggest, in common with other consequentialist moralists, that the moral significance of intentions concerns our appraisals of agents as opposed to actions. The primary source for our judgments of agents is, of course, their actions, but intentions are significant too. Consider the following case: the President of the US is at a public rally surrounded by crowds of people. A security man suddenly raises his gun and shoots a would-be assassin who was within a few feet of the President with his own gun raised. The security man is praised for saving the President's life. If we were to discover that the security man was totally unaware of the presence of the assassin and had, in fact, tried to shoot the President, but by a lucky chance had not only missed but actually hit the other killer, we would, I think, judge him somewhat differently. We would, of course, still be thankful that he had shot, for if he hadn't, the President would have been killed by the other man. We would not have altered our judgment of the action, but only of the character of the security man.

Consider again the case of the fetus-destroying hysterectomy. Let us say we are quite satisfied that it is the right thing to do in the circumstances. We regret the death of the fetus, but we value the life of the mother more highly. Now suppose we discover that the doctor who performs the operation had a burning desire to kill the fetus, and that was the main reason he agreed to perform the operation. This doctor gets a lot of personal satisfaction out of killing fetuses. We would probably be horrified to learn this and would think the doctor utterly reprehensible, but would we think that the operation should not have been performed (suppose there were no other doctors available who could have done it in time)?

Consider again the strategic and terror bombers of the original example. Both bombers knowingly cause the deaths of ten thousand innocent

civilians in the course of saving a million lives. The strategic bomber doesn't intend these deaths as a means to his goal, but he does foresee them with certainty. The terror bomber intends the deaths as a means to his goal. Assume further that the strategic bomber would refuse to perform the terror raid, but that the terror bomber would be equally willing to perform the strategic raid, were it an option. Is there any reason to think, given these details, that the terror bomber has a worse character than the strategic bomber?

Assume, for the moment, that character is, in some sense, a measure of one's propensity to perform better or worse actions. This approach can be roughly characterized as follows: One character trait, C1 is better than another, C2, just in case the possession of C1 makes one likely, *ceteris paribus*, to perform better actions than does the possession of C2. This approach can be subject to many variations. For example, do we compare C1 and C2 with respect to a particular person, a particular type of person, the "average" person, etc.? Do we compare propensities with respect to the circumstances a particular individual is likely to encounter, given what we know about her, given her social position, given "normal" circumstances, etc.? It may be, for example, that certain combinations of character traits that would be bad in most people would be good in politicians, or soldiers, or hockey players. This may make it appropriate to describe someone as a good politician but a bad person. What we mean by that (or rather what we ought to mean by that) is that, given that she is a politician, she is a good person, but had she had the same character but a different calling, she would have been a bad person.

Back to the strategic and terror bombers. If my earlier argument against the means principle as applied to actions is correct, there is an obvious respect in which the terror bomber has a *better* character than the strategic bomber. Given certain choices between two different war-ending raids, the strategic bomber would perform the worse action, but the terror bomber would perform the better one. Furthermore, if the only way to end the war were to carry out the terror raid, the strategic bomber would refuse, thus condemning a million people to death (if there were no other suitable pilot available). Are there any situations in which the strategic bomber would make a better choice than the terror bomber? Clearly there are not, if they are sincere, accurate, and not self-deceived in their assessments of the harms and benefits that result from their actions.

Of course, my whole approach to assessments of character traits might be challenged ... Consider the kantian prohibition on using a rational agent as a mere means. Such a prohibition is, in kantian thought, closely tied to the notion of respect for persons. It might then be argued, on roughly kantian lines, that a willingness to cause harm to a person as a means to a greater good involves a lack of morally appropriate respect. In order to provide an argument for a character analog of the means principle, it would also have to be argued that a willingness to bring about harm to a person as a

foreseen but unintended effect of an action that also causes a greater good does not involve such a lack of respect.

Perhaps it involves no lack of respect, or perhaps it involves a less serious lack of respect. But how would such an argument go? It is not in the least clear to me that the willingness to cause me harm as a side-effect of an intended means to a good end involves any more respect for me than does the willingness to cause me harm as an intended means to the same good end. Either willingness is compatible with a recognition of my moral worth. Neither willingness necessarily involves a failure to take my interests into account. It is precisely because the utilitarian recognizes the equal moral worth of everyone that she is prepared to harm me as a means to a greater good. A refusal to do so seems to involve a failure to respect the others who could be helped by harming me.

It is true that many people profess a dislike of being used. The usual contexts in which people consider the matter, though, involve being used to further someone else's selfish goals. Furthermore, such contexts typically involve the user making little or no attempt to take the victim's interests into account. If I were told that I could either be harmed as a means to bringing about a greater good, or harmed to the same degree as a foreseen but unintended side-effect of bringing about the same greater good, it's not clear that it would be rational to prefer one over the other. Whether or not it would be rational, it would be psychologically understandable to prefer the *former* over the latter. After all, if the harm to me were actually a means to producing the good effect, there's a sense in which my suffering (or even death) would have meaning. I could say to myself, "at least my death achieves something good". If my death were simply a side-effect of the means to the good effect, it could seem as if my death were insignificant, and perhaps even pointless. I can see no reason, then, to accept this kantian argument for a character analog of the means principle, save for a dogmatic insistence that the willingness to harm someone as a means to a greater good involves a lack of morally appropriate respect.

If intentions are, as I suggest, only relevant to our judgments concerning moral character, and even then only final intentions, they cannot enter into a principle which distinguishes certain acts as morally permissible and others as impermissible. Furthermore, it is far from clear that they can enter into a character analog of the means principle. Truly, then, the road to Hell is paved with bad distinctions.