Philosophical Medical Ethics

The principle of double effect and medical ethics

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In the last article I argued that there was no morally relevant difference between acts as a class and omissions as a class, and, in particular, between that subclass of actions described as killings and that subclass of omissions described as allowing to die. Does that mean that the widespread and deeply held intuition—widespread within law, medicine, and religion—that there is a morally important distinction here should simply be rejected? Does it mean that Clough's couplet: "Thou shalt not kill; but needs't not strive officiously to keep alive" should be regarded as no more than the satiric piece of nonsense he probably intended it to be? Strictly speaking I think the answer is yes; but two more or less related moral distinctions, while they do not support the acts and omissions doctrine, do support a rule of thumb, no more, that often corresponds with Clough's couplet. Both distinctions are reflected in important Roman Catholic moral doctrines—ordinary and extraordinary means, which I shall look at in the next article, and double effect, which I analyse here. Both doctrines, which Roman Catholic doctors are likely to have studied in considerably greater depth elsewhere,¹⁻⁸ are of general interest in philosophical medical ethics.

Evil in the pursuit of good

The doctrine of double effect was developed in its earliest form by Aquinas to delineate the conditions in which it is morally legitimate to cause or permit evil in the pursuit of good. One of its central distinctions is between the intentional causation of evil—for example, intentionally bringing about another person's death (whether by action or omission)—and foreseeing evil (including another's death) to be a consequence, either inevitably or probably, of what one does or omits to do. While I shall argue that the full doctrine is not ultimately defensible, unless one also accepts its absolutist theological presuppositions, and is indeed vigorously criticised even from within the Roman Catholic faith,^{1,2} it is an early and admirable attempt to confront the complexity of moral decision making in contexts when intended good effects of actions are inevitably or probably going to be accompanied by unintended but foreseeable bad effects.

Perhaps the most important general reminder for medical ethics that emerges from the doctrine of double effect is that actions cannot be morally judged solely in terms of their consequences. The conditions under which they are carried out, including the intention with which they are carried out, is a vital aspect of their moral assessment.⁹ If I shoot a peasant in the woods thinking that his brightly plumed hat is a pheasant then, while the consequences of my shooting are as bad as they would have been had I intended to murder him, none the less, my action of shooting with intent to kill a

pheasant is morally better than my action of shooting with intent to murder a peasant would be. This is but a tiny example of the complexity of the notion of human action (a useful introduction to which is given in White's collection of philosophical readings¹⁰), but it illustrates the crucial moral importance of intention.

It also reminds us of the difficulties of finding out what the real facts of the matter may have been ("Of course, m'lud, I was not trying to do away with the old lady so as to get my hands on her bequest. I was just trying to save her from suffering"). Such (epistemic) difficulties in finding out the facts are quite different from questions about what those facts actually are and questions concerning moral evaluation of those facts. Thus although it is difficult to be certain what a person's intention in acting actually was, we none the less try to do so because it makes a difference to our moral evaluation of his action.

Distinction of moral evaluations

In this context the distinctions alluded to earlier are important: between moral evaluation of the state of affairs that results from a person's action, moral evaluation of the action independently of its results, and moral evaluation of the agent himself. A person may have a fundamentally good or bad character and yet take specific actions that are atypical of his character, and the results of any of these particular actions may be bad despite the action being good or good despite the action being bad. Thus a thoroughly nasty surgeon (bad character) may take thoroughly admirable action in performing a difficult operation to try to save the life of his otherwise severely disabled patient (good action) and yet kill the patient on the table (bad result).

Given all that preliminary sorting, let us look at what the doctrine of double effect actually says. It states, in the context of actions that have both good and bad effects, that: doing an action that has a bad effect is permissible if (a) the action is good in itself, (b) the intention is solely to produce the good effect, (c) the good effect is not achieved through the bad effect, and (d) there is sufficient reason to permit the bad effect.¹¹

Only the fourth of those clauses is fairly uncontroversial (and widely accepted as vitally important to philosophical medical ethics). It requires that a bad effect may be risked or brought about only if there is "sufficient" (or, as some writers put it, "proportionately grave"¹²) reason to do so. In other words, there may be justification for bringing about or risking evil but only if the good expected is sufficiently weighty to overcome the usual prohibition against doing so. Of course, the clause raises a host of associated issues, including the problem of how one balances goods and evils against one another and the important and under-investigated issues of risk and medical ethics.¹²⁻¹⁴

Clearly, in deciding whether a bad effect is justified in the pursuit of a good effect not only must the relevant "weights" of each be assessed but also their respective probabilities. The lower the probability of their occurrence the more both harms and benefits must be discounted. There is no substantial doubt, however, that it may be entirely legitimate to take an action to try to achieve some

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good end—for example, the saving of a patient's life threatened by a malignant melanoma on his foot—even when one knows that this can be achieved only at the cost of some certain harms, such as the amputation of his leg (admittedly a medically controversial assumption), and others that are more or less probable, such as post-operative pain, phantom foot experiences, the adverse effects of chemotherapy and radiotherapy, death from anaesthetic, post-operative pulmonary embolus, and so on. Conversely, it would be morally naive to look at some medical action in retrospect, see that its results were in fact disastrous, such as the patient's dying, and conclude that therefore the action must have been wrong.

What action is morally unacceptable?

The first three components of the doctrine of double effect are essentially reflections of the moral absolutism of standard Roman Catholic morality and so can be expected not to appeal to those who reject such absolutism. None the less, each has important lessons even for the non-absolutist. The first implies that unless the proposed action, shorn of its consequences, is good or at least morally neutral then it is morally unacceptable. But suppose a doctor believes, for example, that unless he lies to a patient about the death of his entire family in a car crash (the patient himself being critically ill and under intensive care) there would be a substantial risk that his anguish would kill the patient. Most of us would find such lying more or less repugnant but justified as part of the morally more important enterprise of keeping the patient alive over his acute critical phase. The good achieved would for most of us be a sufficient or proportionately grave reason to justify the evil of lying during that critical phase. Yet the first clause of the doctrine of double effect should rule out, in principle, such lifesaving lying. Thus for non-absolutists the first clause is too demanding; but it does importantly remind us that one's proposed action may in itself be morally unacceptable quite apart from its consequences. If so the pluralist would seek to "weigh" the evil intrinsic to the proposed action against any good that it would be likely to achieve, as required in the fourth clause. The difficulties of such weighing, to which I have repeatedly alluded, will seem to the pluralist less morally objectionable than the counterintuitive results of absolutism.

Intention to produce a good effect

The second clause requires that "the intention is solely to produce the good effect." There are at least two problems with this. The first is that when one knows that a bad effect will result from one's action then it seems to be simply self-deceiving, perhaps hypocritical, to say that one does not intend it. Imagine a surgeon saying that he does not intend the patient's loss of a leg as he puts him on the list for an amputation, that he merely foresees that result, that his intention is only to save the patient from dying from disseminated cancer. The second problem is that even when it is only probable that an unintended bad effect will occur—for example, that a patient will become sterile from cytotoxic chemotherapy—there remains a general assumption that as moral agents we should accept moral responsibility for effects we foreseeably cause, even though we do not intend them. Most would go further and say we should accept moral responsibility for effects the risks of which we ought to have foreseen, even if we have not foreseen them. If these assumptions are accepted then we cannot get off the moral hook simply by saying, however truthfully, that, although we foresaw the probability of a certain bad result, we did not intend that result, only the good result.¹⁵

What analysis of this clause of the principle of double effect does seem to show is that for a careful moral evaluation of an action or proposed action it is important to distinguish between (a) the intended end and the intended means to that end; (b) the intended results, whether means or ends, of one's actions and the unintended but foreseen risks of side effects of one's action; (c) the desired results and intended results—doctors and their patients repeatedly intend, as means to some desirable result, certain undesirable

results; and (d) the overall result, all things considered, of one's proposed action and the individual components of that overall result. For each of these distinctions it seems possible to suggest morally plausible medical examples in which one disjunct is bad, the other good, and in which provided one can reasonably expect to achieve a balance of good over evil and provided that that balance meets the "proportionality" requirements of the crucial fourth clause of the principle, then the proposed action would be justifiable.

Justification of good ends by bad means

The third clause of the doctrine, according to which the good effect must not be achieved by means of the bad effect is again likely to be rejected by non-absolutists as counterintuitive on the grounds that sometimes it is justifiable to achieve a good end by a bad means. The example of the amputation above seems an obvious example, though perhaps every surgical operation affords one. Thus to be deprived of a leg is obviously a horrible effect of the decision to amputate; but if removal of that leg is the least damaging way of securing a reasonable chance of saving a patient's life, and assuming that that is what the patient wants, then few would reject such treatment, given the magnitude of the benefit predicted, despite the fact that the good effect can be achieved only by means of the bad effect, thus transgressing this third clause of the doctrine of double effect. (Heroic redressions of the amputation to avoid this conflict are frankly unconvincing.) The conflict between good and bad effects would be assessed by those who rejected this clause by appeal, once again, to the requirement of proportionality or sufficient reason in the fourth clause.

In summary then, while the doctrine of double effect points up some important facts about the nature of moral judgment, including the need, when judging the morality of actions, to take the agent's intentions into account, it is unlikely to be accepted in full by non-absolutists (and is indeed rejected by many Roman Catholics). What remains virtually unassailed are its claims (a) that evil can rightly be done or even risked only in the pursuit of doing good and (b) that evil may rightly be done or even risked only if there is sufficiently weighty (or proportionately grave) reason to justify it. As doctors acquire ever more dangerous and unpleasant techniques in their unremitting quest to benefit their patients these residual components of the doctrine of double effect crucially serve both to justify and to restrict their application.

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