

# Doing Ethics

by Rosemary Flanigan, C.S.J.

In my estimation, the "leading issue" in health care ethics both now and in the years ahead is the inability of many Americans to DO ethics. Last year an editorialist in *Newsweek* lamented that thinking is becoming a "neglected art" in the United States today. Thinking is seen by too many people as being unnatural, she said, because it requires solitude; we who have made an icon of speed and efficiency think that ideas should come in a flash, should arise spontaneously in the mind.

All thinking—and especially thinking about ethics—is an often slow and painful process. Yet if we are to remain truly autonomous people, we must learn to do that thinking for ourselves, aware of the principles on which our conclusions are based and of the implications of our positions.

Years ago I heard a biologist suggest that we need to return to something like town meetings all across America for the sole purpose of addressing the ethical dimensions of health care delivery. His suggestion is a good idea because it would give us practice in ethical thinking and articulation.

The most troublesome area in ethical thinking is the problem of relativism. When a group comes to a conflict of rights and values, our cultural thinking prejudices us to avoid normative judgments, and instead we break off the discussion with the statement, "Well, everyone is entitled to one's own opinion."

Doing ethics is not simply exchanging opinions, and to the end of ensuring hard, rational thinking and reasoned justification for actions taken in conflict of rights situations (because so many of today's medical/moral problems fit into the conflict mold), I propose to offer a re-look at the Principle of the Double Effect. Historically, the principle has not been well served. It was developed to assist ordinary people trying to act well in conflict situations, and to accomplish this goal it provided guidelines to help us avoid

acting from simple expedience (the end justifies any expedient means). Over the centuries the principle often became a technique to "justify" *a priori* reasoning, and the steps themselves were ossified into four somehow absolute and self-explanatory propositions. Forgetting the source of the principle, proponents through the ages turned what was originally a formal principle gained by analysis of the consensus of good people in real situations into one that called on a *a priori* sovereign content concepts.

Let me say at the outset that the principle enables us to think normatively only within an ethical theory that has some non-arbitrary value anchor.

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This anchor value will be formal, and I suggest it is the dignity of the human person as a self-orderer. The fundamental moral principle (also formal) that obtains in such a theory will be, "Act, so that in every act I do, I respect the unique self-ordering of each person affected by my act."

The Principle of the Double Effect points to four distinguishable moments in any reasoned analysis of a conflict situation:

(1) The act must not be in itself evil. The principle is directed only to actions where a right or value is affirmed AND a right or value negated.

(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. Of course, one consciously intends whatever is necessary to affirm the right or value supported, so one does intend the action that results in the existential evil of negating the right/value. But one should not **want** the evil; witness how

often one says, "I'm sorry, I wish there were another way!"

(4) There must be proportionality, both in the sense of what is intentionally done for the sake of the intended outcome, and in the sense of the outcome intended in relation to the evil permitted. In considering the ratio, or balance, between good and evil effected, one gains the insight that the end *may* justify the means, because **ONLY** an end *could* justify something being used as a means; but the end does not justify the use of **ANY** means.

Let me go back to the second "moment" in the Principle of the Double Effect: the evil outcome must not be the means to the good outcome. The action here is seen to have two outcomes, a right or value affirmed and a right or value negated. Now, the step under consideration does NOT mean, "one cannot do a morally evil act to achieve a good end," because such a statement begs the question. What IS meant is that the situation involves a ranking of values, a hierarchy; that is to say, an understanding that (1) not all rights and values are equal; (2) the lower must at times give way to the higher; (3) the negation of the lower does not necessarily entail a limit on the universal respect shown to all persons because there is still the unlimited respect expressed by the higher right/value; and (4) one should not *a priori* consider any right or value as absolute.

That rights and values are hierarchically arranged can be seen in examining our activities and the activities of those around us. Certain occupations or situations lead us willingly to sacrifice some values for others, and some values are inextricably tied to others; for instance, private property is valueless without security so we willingly pay taxes to support laws for its protection. But let us use the most difficult case in our analysis of this second "moment": May we kill in self-defense? Is the "evil outcome" (the death of the assailant) the "means" to the "good outcome" (the protection of our life)? The answer is Yes in one sense and No in another. If we use the

*continued on page 14*

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death of the assailant to secure our right to life, then we are making a charade of analyzing our action through the Principle of Double Effect, because there is no "double effect" in question. We have simply employed the Principle of Efficiency: the end justifies the use of any means. And in such an analysis, we have either (1) affirmed, *a priori*, that our right to life takes precedence over any other's, or (2) affirmed that the assailant "gave up" his/her right to life by the simple act of attacking us.

### Doing ethics is not simply exchanging opinions.

Now the first horn of this dilemma (that my right to life is *a priori* sovereign) is either an egoism that cannot be reasonably supported without committing a whole raft of logical fallacies, or is simply not borne out in subsequent situations when I find myself willing to sacrifice my life out of a genuine altruism, for then I would be acting inconsistently.

The second horn (that the assailant "gave up" his right to life) leads one to question how certain actions can, of themselves, contradict inalienable rights which are tied to one's very nature. How can an action, done by a human person, negate that person's very humanity?

To use the Principle of Double Effect here means letting go of both the previous insights, viz., that another person's life can be used to secure one's own and that any action can negate the inherent rights of persons themselves.

The assailant's attack and one's fighting literally for one's life (we are presuming here that no lesser means, such as knocking him out or yelling for the police, will deter the attack) is clearly a conflict between his right to life and one's own. The application of the Principle of Double Effect must entail seeing a hierarchy of rights or values here—not the simple "either his life or mine"—but some value higher than life. Let us call it "the right to security from unprovoked attack," so that when I regrettably (third "moment") kill him, it can be truly said that I am affirming a higher right—and this right would be **his** if the tables were turned and I were the aggressor—

and thus his death does not entail a negation of his being a person, a rights-holder. So if the means were proportionate (fourth "moment"), then the justification of the act of killing may be made without using the assailant's death "merely" as a means to the affirmation of my life.

Now, you might argue: What difference does it all make? The assailant is dead, either way. Have I simply engaged in a semantic argument, one that philosophers by profession are supposed to do well? Is that all that is involved in my hasty, though I hope clear, analysis—just a juggling of words?

I started off my remarks saying that the most important problem I see today is the inability of many people to **do** ethics: to do the sophisticated reasoning that avoids facile conclusions drawn from emotion, that does not overlook implications of choices made, and that does not simply rehearse things learned in grade school. Clearly it is possible for reasonable people to reach contradictory conclusions, and just as clearly we cannot find answers to ethical dilemmas at the back of a book. Nevertheless, at the very least, *reasons* can be posed against reasons, and the debate need not slip into relativism or the inexplicable plunge of . . . "but I *feel* it is right (or wrong)!"

The fundamental moral principle is, "Act, so that in every act I do, I respect the unique self-ordering of each person affected by my act."

I can argue with a utilitarian who would reject my Principle of the Double Effect out of hand because both the utilitarian and I know the problems rooted in that ethical theory. I find it harder to argue with an absolute natural law theorist who would also reject my Principle, because in absolute natural law there are values which are *a priori* sovereign and can never be ranked with "lesser" values; but I can at least understand how such a one is thinking and why, so relativism is avoided. A natural law theorist will never say, "You keep your opinion and I'll keep mine!"

Because the Principle of Double

Effect is a rational principle, it is non-relative. But it is a *formal* principle; it serves as a guide for the analysis of conflict situations and, if one is more interested in truth than in winning, one often sees that one is twisting it in order to justify some previously agreed upon conclusion. The principle can serve as a guide for rational explication, but it cannot determine the individual conclusion.

What the Principle does enable me to do is to justify those times when my actions must negate some rights while affirming others, and to enable me so to act that I still honor the person whose rights are negated in his/her essential dignity as an autonomous subject or self-orderer.

### Center Notes

*continued from page 12*

medicine and the biological sciences in Germany prior to and during the Nazi period. We believe it is important to learn about the behavior of German physicians during the Nazi period. To what extent were medical and scientific professionals involved in establishing policies concerning "euthanasia," racial hygiene, and sterilization? Are there significant parallels between the German experience and current health care policies about euthanasia?

November 29, 30 and December 1, Midwest Bioethics Center will host a two-day community conference which will focus on the meaning of the Holocaust for bioethics. Co-sponsors for this project are Rockhurst College, Congregation Beth Torah, Temple B'nai Jehudah, and the Jewish Community Foundation of Greater Kansas City.

Dr. Robert Jay Lifton, author of *The Nazi Doctors: Medical Killing and the Psychology of Genocide* and the leading scholar of Nazi medicine, and Professor Arthur L. Caplan, one of the country's leading bioethicists, will be featured. The goals of this conference are: (1) to study the origins and evolution of German thinking about "euthanasia" and the idea of "life unworthy of life"; (2) to clarify current analysis and practice of euthanasia in American medicine; (3) to ask if there are moral lessons we should learn from the German experience as we make life and death medical decisions today.

**Information about these projects or other activities of the Center may be obtained by calling (816) 756-2713.**

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