

## Separation of Conjoined Twins and the Principle of Double Effect

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*This article examines the relationship between the principle of double effect and justification for separation surgeries for conjoined twins. First, the principle of double effect is examined in light of its historical context. It is argued that it can only operate under an absolutist view of good and evil that is compatible with the Bible. Given this foundation for application, scenarios for separating conjoined twins are considered against the criteria for the principle of double effect. It is concluded that the principle of double effect cannot be applied to cases wherein one of the twins must be killed. However, it is noted that this does not leave decision makers without options.*

**Keywords:** *conjoined twins, double effect, absolutism, Hippocratic*

### I. INTRODUCTION

A recent article by John Pearn which surveys several issues involved in caring for conjoined twins contains some striking remarks that are relevant for discussing the principle of double effect. On the one hand, Pearn notes that adult conjoined twins who do not undergo separation surgery are content and describe their lives as normal. On the other hand, he describes the doctrine of double effect as playing a prominent role in legal decisions supporting separation procedures (Pearn, 2001, p. 1968). This tension between the recognized good in the lives of adult conjoined twins and the prominence of separation surgeries sets the stage for this consideration of the doctrine of double effect. The tension between these two opposing viewpoints suggests that separation surgeries are carried out more often than they should

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be. Indeed, Alice Dreger comments that there is a widespread willingness to attempt separation surgery at any cost (Dreger, 2004, p. 78). An examination of the principle of double effect needs to be a part of questioning the justifications given for separation surgeries.<sup>1</sup>

The principle of double effect rests upon two binary relationships: foresight vs. intention and good vs. evil. While a good deal of attention is paid to the former, little is given to the latter. Although the principle is founded upon an absolutist deontological ethic, surprisingly little discussion is given to its absolutist nature.<sup>2</sup> For this reason, the distinction between foresight and intention is assumed and attention is given to the absolutist nature of the principle. The focus of the first section is upon laying an absolutist foundation for application. The second section applies the principle of double effect to various scenarios of separation surgery for conjoined twins.

The principle or doctrine of double effect can be used as a justification of a harmful effect if “the harmful effect is seen as an indirect or merely foreseen effect, not the direct and intended effect of the action” (Beauchamp & Childress, 1979, p. 102). Sharon Kaufman states, “The principle of double effect allows for death to be foreseen but not intended” (Kaufman, 2005, p. 357 n50). Specifically, the doctrine of double effect can be applied to medical situations wherein one attempts to fulfill the Hippocratic commitment to do no harm while knowing that harm will come as a secondary or unintended effect of care. Because the principle of double effect is acutely designed to handle situations wherein something harmful is unavoidable it should not be surprising that attempts have been made to apply it to the difficulties surrounding separation surgeries for conjoined twins.

There are four criteria which define cases wherein the double effect can justify an action:

1. The action in itself must be good or at least morally indifferent:
2. The agent must intend only the good effect and not the evil effect. The evil effect is foreseen, not intended:
3. The evil effect cannot be a means to the good effect: and
4. There must be a proportionality between the good and evil effects of the action.<sup>3</sup>

In addition, all of these criteria together must be met (Boyle, 2001, p. 6). But as John Pearn notes, “As in so many medical situations, not all of these criteria are always met in the separation of conjoined twins” (Pearn, 2001, p. 1969). This principle and corresponding set of criteria are not limited to medicine but as was noted above, it has been specifically applied in cases of conjoined twins. The admission that these criteria are not always met begs the question: When does the doctrine apply?

## II. MORAL FOUNDATIONS FOR APPLICATION

Understanding the principle of double effect is crucial for application. By beginning with the strongest critique against it, objections can be answered and strengths can be highlighted. The strongest critique is given by those who oppose foundationalist, absolutist, or divine command ethics. They find that the principle of double effect is unbending without major modifications. James Keenan, for example, finds the principle “disturbing” because “the principle itself justifies moral solutions” (Keenan, 1993, p. 294). While Keenan finds the justifying function of the principle in the principle itself, this is not the case. The foundation for the principle does not simply lie in its logical integrity; rather, it lies in the principle’s ability to take an ethical dilemma and find one solution right and one solution wrong. In other words, the foundation for the principle lies outside of itself.

The principle of double effect operates on a binary system or a polarity of *substantia* between good and evil. The very principle itself is designed to deal with situations wherein it is difficult to determine the difference between the two. Via the distinction between foresight and intention,<sup>4</sup> the principle becomes the wedge that separates the proverbial sheep from the goats: One action is wrong and one action is right. Thus, the principle becomes impractical when it is removed from an absolutist background. This is why it is incommensurable with pure utilitarian ethics. A pure utilitarian ethic is not based on absolutist or qualitative values; rather, it is based upon quantitative values which can render the nature of actions as good or evil based on net gain.

Like any ethical speech-act, the principle of double effect is based on presuppositions about how the language it uses will be understood. The foundation for the principle rests in an understanding that there is an ontological (substantial) difference between good and evil. This is evident in the phraseology of principle one: stating that the action itself must be *good* or at least indifferent. Timothy O’Connell argues against this first principle on this very ground. He states, “[O]bviously the word ‘evil’ in this context does not just mean ‘nonideal.’ It does not even mean ‘partially destructive’” (O’Connell, 1990, p. 198). He rejects this attempt to define evil in such an ontological manner outside of reference to a circumstance. O’Connell is recognizing that the principle carries with it the ontological presupposition that evil can be described in terms of quality, not quantity.

O’Connell also asserts that this principle is erroneous based on the language of the third criterion which states that the evil effect cannot be a means to a good effect. O’Connell suggests that “human experience” teaches that “we allow evil to function as the means for the achievement of good, and in a way that seems quite moral, even obligatory” (O’Connell, 1990, p. 198). It is not clear, however, that good and evil are defined in such a situational way in human experience. It would seem just as valid to

claim that experience teaches us that evil is not obligatory. If evil becomes “moral” or non-evil, depending *completely* on the situation, the foundation for the principle of double effect will obviously be weak and its foundation will be completely pragmatic.

Though both O’Connell and Keenan reject the doctrine of double effect on the grounds that it asserts absolutes, both come to opposite conclusions as to how the principle is connected to presuppositions. Though O’Connell’s grounds for rejecting it are false, he recognizes that “it is really describing the essence of all human choices” (O’Connell, 1990, p. 199). The doctor, parent, or court that relies upon the principle of double effect must come to *a priori* conclusions about good and evil.

Where should these conclusions about good and evil come from? Understanding the Judeo-Christian origins of the principle will help to maintain its veracity and prevent Derrida-like interpretations wherein evil becomes good and good becomes evil. The bioethicist ignores postmodern interpretative methods to his or her detriment. For example, Jacques Derrida addresses this issue of interpretation by saying, “First, I have no stable position on the texts you mentioned, the prophets and the Bible. . . . I want to keep the right to read these texts in a way which has to be constantly reinvented. It is something which can be totally new at every moment” (Derrida & Caputo, 1997, p. 21). It is one matter to disagree about the meaning of a text; it is quite another matter to say that meaning must be constantly reinvented and deconstructed. The former is presupposing that singularity of meaning exists while the later presupposes it does not.

At this point, hermeneutical theory intersects with historiography and bioethics. If one follows Derrida’s approach to texts, it becomes difficult to provide a stable, historical foundation for the principle of double effect. The two most important historical contexts for the origins of the principle are found in the Roman Catholic theologians Thomas Aquinas and Jean Pierre Gury. Gury, for example, a 19<sup>th</sup> century French Jesuit, is most often considered the originator of double effect reasoning (Kaczor, 1998, p. 300). Gury’s foundation for understanding good and evil as found in his *Compendium theologiae moralis* is the Apostle Paul’s epistle to the Romans (3:8): “evil should not be done that good may follow” (Kaczor, 1998, p. 300). The bioethicist who appropriates the principle of double effect must understand that its Judeo-Christian heritage of absolute differences between good and evil are key to a cogent application.

The need for grounding the principle of double effect in its historical context is evident in light of reinterpretations as exemplified in the movement known as “proportionalism.” The principle of double effect for proportionalists such as Peter Knauer is dependent upon the “presence or absence of commensurate [proportional] reason” which ends up looking like utilitarianism (Kaczor, 1998, p. 301). Proportionalism first demands a presupposition about the nature of good and evil (and God?). In contrast to the traditional Judeo-Christian view wherein one wants to avoid situations

where one has to choose between two wrongs, proportionalism turns this concept on its head by asserting that *every* action brings evil effects. Knauer explains, “The choice of a value always means concretely that there is denial of another value which must be given as a price in exchange” (Kaczor, 1998, p. 301). Economically speaking, the existence of opportunity cost is an ontological evil. Because humans (God as well?) are continually giving up opportunities, every action is evil. Kaczor explains in his analysis of proportionalism that “Since every act is necessarily an omission of goods that could have been realized, the nonrealization of these goods is a premoral evil” (Kaczor, 1998, p. 301). Proportionalism illustrates the fact that reinterpretation of good and evil drastically changes how the four criteria operate. The very usefulness of the principle of double effect depends in large part on the presuppositions and interpretations that one brings to the ethical table.

The issue could also be understood from a semantic perspective. The crucial issue for the application of principle of double effect is the relationship between the signified (content) and the signifier (expression). In other words, what is the reality that undergirds these words? As has been demonstrated, if the reality can be in such a state as to allow for radical change, this becomes problematic. Moreover, how can this relationship cross over cultures, time, and convention? This is particularly important for ethics and the ability to judge another’s actions. If the reality behind the sign is not of a referential nature, one community cannot judge another (Zimmermann, 2004, p. 77). Let us suppose that the connection between signifier and signified is not referential. In such a scenario, our reality is composed of *totally* relative values that prevent us from condemning the Nazis simply because there is no reality to cross the bridge between our world and theirs.

The conflict between referentialism and the idea that reality is defined by the self confronts the user of the principle of double effect with this question: what are the signs ultimately referring to and how can these signs be useful as an ethical tool? Once again, it is clear that one’s presuppositions rule the day. Jens Zimmerman notes that “Luther defined the concept of love according to the word of God. Love is defined by Christ’s self-sacrifice. To love in any context means to esteem another above oneself. Without such an ultimate definition, love may mean any number of things” (Zimmermann, 2004, p. 77). The historical and theological roots of the principle also provide it with semantic stability. Today we can understand what Aquinas and Gury were referring to because their words or signs were connected to a signified from the stability of the Bible.

It is almost axiomatic that “we live after Christendom” (Engelhardt, 2003, p. 141). Bioethics is becoming secularized as the West is becoming dominated by the secular and pluralism. The first argument against the principle that Timothy Quill, et al. asserts is that “the rule originated in the context of a particular religious tradition” (Quill, Dresser, & Brock, 1997, p. 1769). It is for that reason that he and his colleagues recognize that it is

incompatible with radical cultural pluralism as currently found in the United States. Quill, et al. contend that medicine must “accommodate various approaches” that surround pluralism (Quill, 1997, p. 1769). Yet it has been demonstrated that an application of the principle of double effect cannot be separated from its theological and historical roots without radically depriving it of force and meaning. The strength of the principle lies in its ability to interact with moral absolutes. Because the doctrine of double effect carries with it a demand to call evil “evil,” it demands more rigorous ethical consideration than other approaches. John Frame points out in this regard that those who hold to moral absolutes often “must struggle longer” than those who claim that they are stuck in a situation wherein every situation is evil (Frame, 1988, p. 10 n4). This discussion has now set the stage for considering various scenarios of conjoined twins in light of the principle of double effect.

### III. SCENARIOS CONSIDERED

Perhaps the best way to approach this question regarding application of the double effect to separation surgeries is to consider the opposite question following the *via negativa* methodology: When does the doctrine of double effect not apply? Each scenario is examined against the four criterion mentioned above.

#### It Does Not Apply When One Twin is Born Dead

Because one of the twins is dead there is no evil effect which takes place when the dead is separated from the living. Surely an evil can transpire against a dead body in the form of disrespect and/or any of the crimes against a body that are recognized by the United Nations (DeBaets, 2004, p. 133). In such a scenario,

1. the action of separation is good;
2. the agent is only intending good;
3. there is no evil effect; and
4. if any evil effects are found against the body of the dead, they are proportionately less than the good effect achieved of saving the life of the living twin.

#### It Does Not Apply When Connecting Tissue is Minimal

Today, twins such as Chang and Eng (the famous “Siamese” twins) could have easily been separated. Yet it is most likely that the medical technology of their time would have left at least one of them dead had separation been attempted. Today such a surgery could be performed with relative ease due

to technology that can analyze “every little facet” (Atkinson, 2004, p. 504). This is not to imply that separation surgeries be demanded, only that the doctrine of double effect does not apply if foreseen events do not entail moral problems. There is a degree of subjectivity to this which changes depending upon technology advances and availability. In this scenario,

1. the action of separation is good;
2. the agent is only intending good;
3. if any evil effects exist, they are not a means to an end;
4. if any evil effects do occur, they are proportionately less than the good effect achieved.

### It Does Not Apply When It is Supposed that One Twin Might Die Eventually

This scenario should be distinguished from the scenario wherein one twin is in the state of imminent death. Many cases of conjoined twins involve one twin who is stronger and healthier than the other. It may be tempting to try and apply the doctrine of double effect and kill the weaker one who “might die eventually” in order to give the healthier twin organs or tissue. However, this is to treat the weaker as a means to an end; it also involves according human value based on predicted outcome and may involve defining personhood along groundless lines. This scenario is further weakened by the fact that the diagnosis might change, that the Hippocratic principle is being violated for the weaker twin, and by the likelihood that the option for letting the twins remain united has been neglected.

In this scenario, the action of separation surgery does not meet the criteria for the double effect. The action of killing the weaker twin in separation:

1. is certainly not morally neutral, if not an evil;
  2. the agent may be intending good in some way;
  3. evil effects are the means to an end;
  4. the evil effects are parallel to or out of proportion with other options.
- John Frame states, “Dying is not, of course, the same as death. One who is dying is still alive, and our responsibility to that patient is not to bury him but to give care” (Frame, 1988, p. 63).

### It Does Not Apply When One or Both of the Twins are in the State of Imminent Death

The state of imminent death could be characterized as a time when the nature of care changes its strategy, but not its essence. The change of strategy may involve recognizing that care may mean removal of feeding tubes or

increasing medication to provide comfort. The state of imminent death may provide grounds for applying the doctrine of double effect. Wall states that, "The most frequently documented reason for limiting life support was the neonatologist's belief that continued treatment was futile in the face of imminent death" (Wall & Partridge, 1997, p. 66).

But does the doctrine of double effect apply when one conjoined twin is in the state of imminent death? This question is particularly challenging because if one twin dies, the other will shortly be in a state of imminent death due to the septic blood from the corpse. If separation surgery is not done, a case of imminent death for one twin means imminent death for the other. This is most difficult because if a separation surgery is not carried out, both twins will be lost as a result of refusing to kill one.

Can the double effect allow for killing one instead of losing both twins? A consideration of the criteria concludes that it does not. The following items preclude an affirmation:

- 1) the action of killing one or both of the twins is not morally indifferent;
- 2) the essence of the care is removed from the child killed, causing an evil effect;
- 3) the evil effects of the child's death, caused by the hand of the doctor, are the means to an end;
- 4) the evil effects are parallel to or out of proportion.

This particular scenario does not have to result in losing both twins as a result of caring for both. If one twin is in imminent death, it is conceivable that it could be cared for until it actually dies and then separated in surgery before the other twin is affected by the septic body.<sup>5</sup>

#### IV. ARE WE STUCK?

Having gone through the various scenarios of conjoined twins and compared each one against the four criteria for applying the principle of double effect, none have resulted in a positive conclusion. We are left with the singular question: Will the principle ever apply to a case of conjoined twins as a proper justification for separation surgery? To answer, the principle will never apply to a separation surgery that requires the killing or euthanization of one of the twins. According to the first criteria, the nature of the act is killing a person and is thus a wrong. According to the second and third criteria, the killing of a person is being used in a way to benefit another and is thus a wrong. According to the fourth criteria, the killing of a person entails disproportionate effects. These bad effects include but are not limited to: a



destruction of Hippocratic medicine, a weakening of social contract theory obligations, a society with blood on its hands, and most of all, the murder of a person. It is also important to remember that all the criteria of the principle must be met.

John Pearn concludes in his aforementioned article that issues such as quality of life and predictions about residual defects “do not alter the view of those who value life as an absolute; and critics of potential separation would point out that society generally, and the law specifically, do not permit euthanasia of children, however disabled” (Pearn, 2001, p. 1969). The argument advanced here goes beyond this. Specifically, it has been argued here that supporters of euthanization in separation surgeries are acting immoral, *as well as* unreasonable if their justifications appeal to the principle of double effect as historically understood.

Simply because we cannot apply the principle of double effect to separation of conjoined twins does not mean that no options are available. The first option is to consider surgery at the point where one twin dies of natural causes after normal care. The second option is similar, letting the twins remain united. Alice Dreger gives a host of reasons why this option is neglected. Those who declare that they are in a position wherein no right choice can be made or that no right choice exists may be the first ones to ignore such an option. This is not to say other causes are not influencing decisions toward premature or unnecessary separation surgeries. Among these may be the desire to test new abilities to perform microsurgeries, the surgeon’s desire for fame and approaches to medicine that demand “something be done.” Dreger notes reasons for ignoring other options for conjoined twins such as lack of follow up studies on separation surgeries, support groups, information for parents, and a culture that abhors abnormalities (Dreger, 2004, pp. 70, 72, 80, 57). Good can be done and right choices can be made. The principle of double effect is but a small reminder that we cannot create a medical vacuum that is impervious to religion and theology.

## NOTES

1. Richard Huxtable makes a similar conclusion with regard to jurisprudence, stating that “difficulties should not lead law to abandon the principle, although its terms should be clearly stated and rigorously policed” (Huxtable, 2004, p. 62).

2. Alison Hills states, “The traditional doctrine of double effect was linked to an absolutist deontological ethic” (Hills, 2003, p. 134). The focus of her defense is on the distinction between foresight and intention, which she views as commitment.

3. Pearn follows the same basic four criteria that Beauchamp and Childress lay out (Pearn 2001, p. 1969; Beauchamp & Childress, 1979, p. 103).

4. The key distinction between foresight and intention could be described as “deliberation.” Foresight does not involve deliberation, while intention requires a search for means (Schwarz, 2004, p. 127).

5. This point was suggested by Jim Davia, M.D.

## REFERENCES

- Atkinson, L. (2004). 'Ethics and conjoined twins,' *Childs Nervous System*, 20, 504–507.
- Beauchamp, T. & Childress, J. (1979). *Principles of Biomedical Ethics*. New York: Oxford University Press.
- Boyle, J. M. Jr. (2001). 'Toward understanding the principle of double effect,' in P. A. Woodward (Ed.), *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle* (pp. 7–20). Notre Dame: University of Notre Dame Press.
- DeBaets, A. (2004). 'A declaration of the responsibilities of present generations toward past generations,' *History and Theory*, 43, 130–164.
- Derrida, J. & Caputo, J. (1997). *Deconstruction in a Nutshell: A Conversation with Jacques Derrida*. Bronx, NY: Fordham University Press.
- Dreger, A. (2004). *One of Us: Conjoined Twins and the Future of the Normal*. Cambridge, MA: Harvard University Press.
- Engelhardt, H. T. Jr. (2003). 'The dechristianization of Christian hospital chaplaincy: Some bioethics reflections on professionalization, ecumenization, and secularization,' *Christian Bioethics*, 9, 139–160.
- Frame, J. (1988). *Medical Ethics: Principles, Persons, and Problems*. Phillipsburg, NJ: P&R.
- Hills, A. (2003). 'Defending double effect,' *Philosophical Studies*, 116, 133–152.
- Huxtable, R. (2004). 'Get out of jail free? The doctrine of double effect in English law,' *Palliative Medicine*, 18, 62–68.
- Kaczor, C. (1998). 'Double-effect reasoning from Jean Pierre Gury to Peter Knauer,' *Theological Studies*, 59, 297–317.
- Kaufman, S. (2005). *And a Time to Die: How American Hospitals Shape the End of Life*. New York: Simon and Schuster.
- Keenan, J. F. (1993). 'The function of the principle of double effect,' *Theological Studies*, 54, 294–315.
- O'Connell, T. (1990). *Principles for a Catholic Morality*, Revised Edition. San Francisco: Harper.
- Pearn, J. (2001). 'Bioethical issues in caring for conjoined twins and their parents,' *Lancet*, 357, 1968–1971.
- Quill, T., Dresser, R., & Brock, D. W. (1997). 'The rule of double effect — A critique of its role in end-of-life decision making,' *New England Journal of Medicine*, 337, 1768–1771.
- Schwarz, J. K. (2004). 'The rule of double effect and its role in facilitating good end-of-life palliative care: A help or hindrance?,' *Journal of Hospice and Palliative Nursing*, 6, 125–135.
- Wall, S. & Partridge, J. (1997). 'Death in the intensive care nursery: Physician practice of withdrawing and withholding life support,' *Pediatrics*, 99, 64–70.
- Zimmermann, J. (2004). *Recovering Theological Hermeneutics: An Incarnational-Trinitarian Theory of Interpretation*. Grand Rapids, MI: Baker.