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# The Principle of Double Effect: Act-Types and Intentions

*James G. Murphy SJ*

ABSTRACT: Objections to the principle of double effect usually concern its first and second conditions (that the act not be evil in itself, and that the good effect and not the evil effect be intended). The difficulties often arise from a rejection of the idea that acts have a moral nature independent of context, and a tendency to interpret intention as purely psychological. This article argues that the “act itself” should be understood as the act-type, and suggests that examples of evil act-types are not hard to find. It argues that the notion of intention is involved in both conditions, but in different ways. It proposes that these different ways can be interestingly illuminated by Anscombe’s distinction between acting intentionally and acting with an intention.

## I

The principle of double effect (PDE) dates back to at least to the time of Aquinas and such commentators as John of St Thomas, and it has long been associated with Catholic moral theology. In recent decades it has been deployed by many secular ethicists who reject consequentialism.<sup>1</sup> While it is both too complex and in some ways too vague to

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<sup>1</sup> For important articles on PDE, see ed. P.A. Woodward, *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle* (Notre Dame, Indiana: University of Notre Dame Press, 2001). For a recent full-length book on the topic, see T.A. Cavanaugh, *Double-Effect*

count easily as a fundamental principle of ethics, and thus might be better regarded as a strategy for reasoning, I shall nevertheless conform to the common usage of terming it a principle.

Certain aspects of the PDE appear not to be well understood.<sup>2</sup> For a start, the first condition, that the act itself not be evil, seems obscure to many authors and is frequently treated only cursorily if not ignored altogether. Second, the role of intention is often significantly understated, if not neglected.

In this article, I shall argue that intention is relevant to the first two conditions. It is relevant to the second in a rather obvious way, since some versions of the second condition explicitly mention it. It is also relevant to the first, for all talk about an act is talk about an intentional entity. I suspect that sometimes talk of the act itself, as found in the first condition, is interpreted as speaking about the physical motion involved in the act. But when intention is abstracted from an act, the abstract physical motion (or abstracted matter) remaining is not something capable of moral evaluation, and hence not something that could figure as one of the conditions in the PDE. I shall endeavor to explain how intention might turn up in each of the PDE's first two conditions. Some other preliminary remarks are also in order.

Some ethicists labor under the impression that the PDE holds that all instances of intentional killing of an innocent person are wrong.<sup>3</sup> But, as has been cogently argued by

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*Reasoning* (Oxford: Clarendon Press, 2006). For a brief survey of the present state of the field, see Alison McIntyre, "Doctrine of Double Effect", *The Stanford Encyclopedia of Philosophy* (Fall 2011 Edition), Edward N. Zalta, ed. URL = <http://plato.stanford.edu/archives/fall2011/entries/double-effect/>.

<sup>2</sup> See McIntyre, "Doctrine of Double Effect" for a representative instance.

<sup>3</sup> See, for instance, T.M. Scanlon, *Moral Dimensions* (Cambridge, Massachusetts: Belknap Press, 2008), p. 1, where it is explicitly stated; see also McIntyre, "Doctrine of Double Effect," where it is assumed.

Suzanne Uniacke, the PDE itself does not hold that certain types of act are intrinsically immoral or that certain moral norms are exceptionless.<sup>4</sup> The claim that acts of raping or sexually trafficking are always wrong or that their act-types are wrong is independent of the PDE. In addition, it is (as Sophie Botros argues) mistaken to interpret the PDE as aimed at condemning certain actions as intrinsically wrong; the PDE is deployed rather to consider the permissibility of actions that have both good and bad consequences.<sup>5</sup>

The claim that certain act-types are wrong finds support in Aristotle and in the Judeo-Christian moral tradition, particularly as expressed in St Paul's letter to the Romans.<sup>6</sup> It is more explicit in Aquinas, who holds that acts can be identified by their species, their nature or type.<sup>7</sup> He assumes that certain act-types are morally wrong, i.e. that their species, which is defined by their objects, is evil.

Contemporary Roman Catholic moral doctrine holds that certain act-types are inherently or intrinsically immoral.<sup>8</sup> However, that doctrine does not make any reference

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<sup>4</sup> Suzanne M. Uniacke, "The Doctrine of Double Effect," *The Thomist* 48 (1984): 188-218.

<sup>5</sup> Sophie Botros, "An Error about the Doctrine of Double Effect," *Philosophy* 74/287 (1999), p. 72.

<sup>6</sup> Aristotle, *Nicomachean Ethics*, 1107a9-26, 1110a26-29; St Paul, Romans 3:8.

<sup>7</sup> Aquinas, *Summa Theologiae* I-II, 18 a.2 and a.4. See also Gerard J. Hughes, "'Double Effect' or Practical Wisdom?" in David S. Oderberg and Timothy Chappell, eds., *Human Values: New Essays on Ethics and Natural Law* (New York: Palgrave Macmillan): "Aquinas claims that while a type of action can be morally neutral, an individual action cannot. Hence the first clause in the traditional formulation of the PDE [Principle of Double Effect] was probably intended to refer to types of action rather than to individual actions." (p. 219). "While the texts are not entirely clear, I believe that what Aquinas means by the 'object' of an action just is the (perhaps complex) action-type which that individual piece of behavior instantiates, whatever that might be" (p. 220). Joseph Pilsner, *The Specification of Human Actions in St Thomas Aquinas* (Oxford: Oxford University Press, 2006) gives an exhaustive account of Aquinas's treatment of action.

<sup>8</sup> This is stated in John Paul II, *Veritatis Splendor*, no. 79: "One must therefore reject the thesis, characteristic of teleological and proportionalist theories, which holds that it is impossible to qualify as morally evil according to its species—its 'object' — the deliberate choice of certain kinds of behavior or specific acts, apart from a consideration of the intention for which the choice is made or the totality of the foreseeable consequences of that act." The following passage from the Catholic Church's Second Vatican Council (1962-65) gives a list of candidates for such act-types: "Furthermore, whatever is opposed to life itself, such as any type of murder, genocide, abortion,

to the PDE or cite it in support of any claim.<sup>9</sup> It does require that one distinguish the act-type from the intention(s) informing a particular action or act-token. Accordingly, Catholic moral doctrine holds that “The morality of human acts depends on the object chosen, the end in view or the intention, and the circumstances of the action.”<sup>10</sup> While the circumstances of the action are consequences and any other contextual factors, the object of the act is its design or aim. Whereas the intention of the act concerns the desired goal or sought outcome, the object of the act concerns what one is trying to do by performing that act. While the two may overlap or even be identical in some cases, they are in principle distinguishable, as will be seen later.

Without the claim that certain act-types are inherently immoral, a position termed moral absolutism by some authors, it is not clear that there would be any work for the

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euthanasia or willful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons; all these things and others of their like are infamies indeed.” Vatican II, *Pastoral Constitution on the Church in the Modern World: Gaudium et Spes*, no. 27.

[http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_cons\\_19651207\\_gaudium-et-spes\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html)

<sup>9</sup> Even in the Catholic Church’s official teaching on euthanasia, the PDE as such is not mentioned; see Congregation for the Doctrine of the Faith, *Decree on Euthanasia*, [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19800505\\_euthanasia\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19800505_euthanasia_en.html). Donald Marquis “Four Versions of Double Effect,” in Woodward, *The Doctrine of Double Effect*, p. 156 suggests that the PDE “underlies” the doctrinal position on euthanasia taken in that document. That suggests that Catholic teaching is based upon or depends upon the PDE, which is not the case. It would be more accurate to say that the PDE is one way of elaborating certain moral intuitions involved in traditional Catholic morality. The Church does not take its stance on the basis of some kind of commitment to the PDE; rather the PDE is a way of making sense of its position, particularly in difficult cases.

<sup>10</sup> *Catechism of the Catholic Church* (United States Catholic Conference, Washington DC: Libreria Editrice Vaticana, 1997 – 2<sup>nd</sup> edition), no. 1750. This formulation goes back to Aquinas. See also *ibid*, nos. 1749-61, and for more detailed discussion of what is meant by the object of the act, see John Paul II, *Veritatis Splendor*, nn. 71-82, particularly n. 78.

PDE to do.<sup>11</sup> The PDE was developed as a line of ethical reasoning (a) to cope with certain counter-intuitive results to which such moral absolutism could allegedly lead, and (b) to express certain distinctions that common-sense morality makes between apparently similar instances. The PDE has traditionally been deployed in cases to do with causing death, whether in self-defense, war, termination of pregnancy, or euthanasia. Here the PDE has generated a fine-grained analytic distinction between killing and causing death.

To a consequentialist, the PDE has nothing to recommend it, and is indeed unnecessary, since the consequentialist norm (at least in act-consequentialism) is that the rightness or wrongness of an act-token is determined solely by its consequences. Accordingly, consequentialism neither needs nor can accommodate the notion of act-types having a specific moral character. Many of the opponents of the PDE come from the deontologist camp, where the PDE finds its natural home. Teasing out its implications in response to its deontologist critics is more likely to yield insight.

In the following section, I outline certain criticisms of the PDE. Section three compares two standard formulations of the PDE, while section four focuses on act-types, and section five turns to intention. In section six, I summarize the implications for the critic's position.

## II

The PDE is of interest because it appears to capture certain common-sense moral intuitions. Many of us think that it would be acceptable, even morally obligatory, for a

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<sup>11</sup> This probably does not apply to Warren Quinn's radical reinterpretation of the PDE, where he shifts the focus away from acts, intended or unintended, to what he calls objects of harm (e.g. persons). See Warren Quinn, "Actions, Intentions, and Consequences: the Doctrine of Double Effect," in Woodward, *The Doctrine of Double Effect*.

doctor to give pain-relief medication to a terminally ill person, even though it might also shorten her life, whereas we would think it wrong for a doctor to medicate the same person in order to end her life. We think it acceptable in wartime to bomb a military installation even where the bomber-pilot knows that doing so is likely to kill (some) civilians, but wrong for him deliberately to target civilians even if doing so might shorten the war. Common-sense moral intuitions (or at least those of recent decades in the Western world) have thus drawn fine distinctions, even if those same intuitions may sometimes be an uncertain guide to the nature of those distinctions.

Acknowledging these common-sense moral intuitions, Alison McIntyre nevertheless considers that not enough explanation or justification has been provided to support the PDE: “Doubts about the explanatory value of double effect have often been focused on the difficulty of distinguishing between harmful effects that are regretfully intended as part of the agent’s means and harmful effects that are regretfully foreseen as side effects of the agent’s means.”<sup>12</sup> In addition, she claims: “What the critics of double effect emphasize is that the distinction between what is intentional and what is foreseen does not explain the permissibility of these exceptions.”<sup>13</sup> Similarly, Gerry Hughes argues that the “PDE cannot provide any decision procedure at all that would be a useful means to dealing with difficult cases, nor can it provide a satisfactory *post factum* explanation and defense of what was done, nor can it explain why the agent should be exonerated from full responsibility for the adverse effects.”<sup>14</sup> Part of my purpose in this article is to address those concerns, since they involve significant misunderstandings both of the PDE and of the notions of intention underlying it.

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<sup>12</sup> McIntyre, section 3.

<sup>13</sup> McIntyre, section 4.

<sup>14</sup> Hughes, p. 218.

Ambiguity about what is meant by intention has muddied the waters. Sometimes intention has been confused with the agent's desire to make a certain state of affairs come to pass, regardless of the means used to that end. On that view, goodness of intention would require solely that the agent's goal be good; it would not address the moral status of what she was actually going to do, assuming that to be totally derivative from the moral status of the goal. Understanding intention in that fashion would make the PDE totally malleable, manipulable for any purpose. Once there was a good outcome in addition to the bad outcome, and the bad outcome was not disproportionate to the good to be attained, it would not matter what means was used to bring about the good outcome. Although Blaise Pascal's 17<sup>th</sup> century satire on casuistry attacked that view, it has never been seriously defended. However, confusion about it has sometimes bedeviled discussion of the PDE.<sup>15</sup>

Intention has to be understood as directed to or encompassing action as well as outcome, means as well as end. Contemporary works, going back to Anscombe's *Intention* (1957), discuss various kinds of intention; each involves action in some way. She distinguishes between having an intention to act in a certain way, acting intentionally, and acting with an intention.<sup>16</sup> Kieran Setiya uses similar language:

Philosophical perplexity about intention begins with its appearance in three guises: intention for the future, as when I intend to complete this entry by the end of the month; the intention with which someone acts, as I am typing with the

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<sup>15</sup> Anscombe felt it necessary to emphasize its untenability. See G.E.M. Anscombe, "War and Murder", in Woodward, *The Doctrine of Double Effect*, p. 257: "It is nonsense to pretend that you do not intend to do what is the means you take to your chosen end." McIntyre, "Doctrine of Double Effect", section 3 also identifies it as a common misunderstanding of the PDE.

<sup>16</sup> G.E.M. Anscombe, *Intention* (Cambridge: Harvard University Press, 2000), p. 1.

further intention of writing an introductory sentence; and intentional action, as in the fact that I am typing these words intentionally.<sup>17</sup>

In the view of Anscombe and those influenced by her, the task is to develop a properly nuanced notion of intention that can encompass all three kinds.

With respect to the PDE, the first, having an intention for future action or intending to act so as to bring about a certain state of affairs, does not present any point of distinct interest here. Of greater relevance are the second (acting with an intention of achieving a goal) and the third (acting intentionally). The second focuses on what the agent seeks to accomplish by performing the act or to the intentional element driving the act. It has some resemblance to Aristotle's notion of final cause. The third draws attention to the act itself or to the intentional element inherent in all action, and has some similarity to Aristotle's notion of formal cause.

In this paper, I want to explore the claim that some of the explanation of the PDE that McIntyre and others seek may be provided by closer attention to what the notion of an act-type involves. Doing so will require paying attention to the distinction between acting intentionally and acting with an intention.

### III

Standard accounts of the PDE include two versions which are worth comparing.<sup>18</sup> *The New Catholic Encyclopedia* states the first two conditions thus:

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<sup>17</sup> Kieran Setiya, "Intention", *The Stanford Encyclopedia of Philosophy (Spring 2010 Edition)*, Edward N. Zalta, ed., URL = <<http://plato.stanford.edu/archives/spr2010/entries/intention/>>.

<sup>18</sup> McIntyre, "Doctrine of Double Effect" cites both. She also appears to think that the element of intention is missing altogether from the *NCE* version.

1. The act itself must be morally good or at least indifferent.
2. The agent may not positively will the bad effect but may 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.<sup>19</sup>

Joseph Mangan's version is as follows:

A person may licitly perform an action that he foresees will produce a good effect and a bad effect provided that four conditions are verified at one and the same time:

1. that the action in itself from its very object be good or at least indifferent;
2. that the good effect and not the evil effect be intended.<sup>20</sup>

At first glance, the difference does not seem great. However, Mangan's version is open to an interpretation less obviously available to the other version.

Mangan gives extra specification to condition 1 by indicating that moral evaluation of the "action in itself" involves consideration of the "object" of the action. Talk about the moral nature of an act, as distinct from the motive behind it, the intention driving it, and the consequences resulting from it, can be mysterious to many modern philosophers. It needs clarification.

The most significant difference is in the way condition 2 is presented. The NCE says the agent may permit but not positively will the bad effect, whereas Mangan says the good effect must be intended and the evil effect not intended. The former is more subjective and psychological in tone, focusing on the agent's willing, which is close to

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<sup>19</sup> *New Catholic Encyclopedia*. (New York: McGraw-Hill, 1967). Vol. 4: 1020-22. In the 2<sup>nd</sup> ed, 2003, the wording is unchanged.

<sup>20</sup> Joseph Mangan, "An Historical Analysis of the Principle of Double Effect", *Theological Studies* 10 (1949), p. 43.

desiring, whereas Mangan's version, talking of intention, is more open to focusing on the action, or, more precisely, the agent-intending-action.

The NCE version of condition 2 is ambiguous. It could mean that the agent should not desire or should regret the bad effect; or it could mean that the agent should not will any action that would bring about the bad effect. The former is indistinguishable from the mistaken idea (referred to above) that the agent's desire, will or intention, where these concern only outcomes and never the means to attain particular outcomes, is what is meant or involved here. The latter takes willing to involve action. It would mean that, since the agent ought not will the bad effect, she may not act in such a way as to cause or bring about the bad effect. As Marquis notes, that interpretation would entail rejecting the traditional Catholic view that the PDE permits hysterectomy for a pregnant woman, since the death of the foetus is a foreseeable effect of the hysterectomy. It would imply that in war any action known to be liable to lead to the deaths of non-combatants would be morally unacceptable, regardless of whether it involved bombing population centers or bombing military installations.

But such a stance would be too restrictive with respect to moral action, since it would imply that, if with respect to a proposed action one foresees any probable bad effects, no matter how tangential or incidental, one may not perform that action, no matter how great the benefits. It would undermine the rationale of the PDE, which is based on the idea that some actions with negative consequences might be morally permissible. Such an interpretation of condition 2 can't be correct.

The NCE version does not do justice to the fact that, in performing an action that the agent foresees will have a negative effect, she is responsible for the negative effect and

hence has willed it as part of what her action involves. She is responsible for its coming about, even if (as the PDE seeks to argue) she is morally permitted to bring it about. Whether she regrets or is indifferent to it is irrelevant. In speaking of “willing” with respect to the two effects, it is easily misinterpreted as desiring or wanting.

Mangan’s version of condition 2 uses different terminology. It introduces the crucial notion of intention. It requires that the bad effect not be intended. Fulfillment of this condition cannot be identified with or reduced to the agent’s desire that the good effect and not the bad effect result, since the notion of intention is not assimilable to the notion of desire. Rather, the nature of the intention-in-act must be such that it is not oriented or designed to bring about the bad effect. This is the key, I submit, to addressing Alison McIntyre’s difficulty with the claim that there is a meaningful distinction between an effect intended and an effect foreseen.

#### IV

Condition 1 requires that the object of the act or the act-in-itself be not evil. Talk about the “act in itself” is similar in meaning to what Aquinas meant by the term “the species of the act” or what we would nowadays name “the act-type.”<sup>21</sup>

Gerry Hughes sees two problems with it. First, it is difficult to see how act-types can be morally assessed. A second difficulty is that of identifying the morally relevant act-type embodied in the act-token or particular instance of behavior.<sup>22</sup> Hughes’s difficulty, if sustainable, has wider implications for moral theory.

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<sup>21</sup> Hughes, p. 219; Aquinas, *Summa Theologiae* Ia-IIae, q. 18, a. 2.

<sup>22</sup> Hughes, pp. 219-20.

The PDE is often applied to cases where the moral nature of the act-type may be uncertain. In addition, discussion of such cases may be clouded by the fact, noted earlier, that some ethicists may think that the PDE is meant to demonstrate or prove that certain act-types are intrinsically evil. The PDE cannot do this. Rather, the PDE assumes that there are such act-types. Condition 1 states that the act itself or the object of the act must be good or indifferent. If there are act-types that are evil, their token instances will also be evil. However, the PDE does not provide a means for determining the act-type's moral character. The identification of act-types and their moral quality falls outside the scope of PDE application.

The first problem raised by Hughes challenges any claim that a type or kind or species of act could have a moral quality. In particular, it apparently rejects the claim that certain act-types are intrinsically evil.<sup>23</sup> If this line of thought were correct, it would weaken the PDE's foundations, since condition 1 assumes that such act-types are identifiable. Condition 1's intelligibility depends on a background of moral considerations and intuitions where at least some morally wrong act-types are clearly identifiable. Since the PDE is typically applied to hard cases, involving act-types where moral intuitions are uncertain or are shifting as a result of cultural changes, it is not surprising that identifying act-types with distinctive moral natures should be difficult. But that is not sufficient to warrant Hughes's claim that moral assessment of act-types is not possible.

To address Hughes's objection, consider act-types where our moral intuitions are clearer: raping, torturing, enslaving, sexual trafficking, lying, committing adultery, and committing genocide. It would take considerable argument to cast serious doubt on the

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<sup>23</sup> This is the claim that some authors refer to as "moral absolutism".

claim that (a) rape is always wrong, and (b) wrong by virtue of its nature or the type of act that it is, i.e. wrong independent of contextual factors.<sup>24</sup> I know of no argument that casts serious doubt on that claim. When a particular act has been identified as rape, we take it for granted that it is wrong. There may be difficulties with respect to particular cases, but from deontological, Kantian and Aristotelian perspectives these types of act are always immoral. The moral gravity of most of the items on that list is a separate matter and may vary with context, even though consciousness of such moral gravity may also incline us to think of them as intrinsically wrong. But there seems to be no reason (and Hughes provides none) why we cannot say that rape is a *type* of act that is wrong regardless of context or agent motives, or that enslaving is wrong by nature. Much the same reasoning applies to the other instances.

At this point, Hughes's second objection can be addressed. My argument does not deny that identifying the act-type is sometimes far from simple.<sup>25</sup> However, it does not seem generally impossible. Besides, if it is a genuine difficulty, it is a difficulty for any moral statements about act-types, and not only those where the PDE might apply. If the act-type of sexual trafficking is morally wrong, the fact that we cannot tie it to one and only one precise kind of physical behavior constitutes no objection to the claim that the act-type is inherently wrong. Just as there is more than one way to commit murder, so there is more than one way to perpetrate sexual trafficking. In contrast (perhaps) to the act-type of raping, there may be many ways in which to commit genocide; but none of

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<sup>24</sup> See John Gardner and Stephen Shute, "The Wrongness of Rape", ed. Jeremy Horder, *Oxford Studies in Jurisprudence* (Oxford: Oxford University Press, 2000), pp.193-217 where they argue for the wrongness of rape even where it is (conceivably) harmless, or for the wrongness of the act-type independent of particular contexts.

<sup>25</sup> See Alvin I. Goldman, *A Theory of Human Action* (New Jersey: Prentice-Hall, 1970), pp. 10-15.

them could be morally acceptable. There may be more than one kind of physical behavior that embodies intentional genocide, so that there is no neat one-to-one relationship between physical behavior and act-type. There may also be a variety of possible descriptions of the act-token, placing it in different categories or under different headings, thereby instantiating a variety of act-types. But one presumes that there is some level of action-description, some act-typing, such that, in answer to the question “What are they doing?” the answer is “Carrying out genocide.” It seems hard to allow such a presumption as defeasible without opening the door to doubting that genocide has ever been intended or implemented in human history, a doubt that lacks plausibility. In addition, we can identify a diversity of ways in which sexual trafficking or genocide might be carried out, and we are generally capable of determining which instances might possibly be unwitting or accidental. Even if there could be instances where somebody innocently co-operates in sexual trafficking or genocide, ignorance of what is being done seems the only possible ground for pleading innocence.

It suffices that such act-types are, under some description, morally wrong. To say that the act-type of rape is wrong is not precisely the same as saying (although it does imply) that the intention to rape is wrong, or that its consequences are invariably bad. One cannot always get wrongness of the act-type from the evil of the consequences, since there might possibly be, in some consequentialist scenario, a net gain of good consequences over evil consequences in a given instance of rape. Nor will wrong intention on the part of the agent necessarily yield wrongness of the act-type, since the intention may vary from case from case. Besides, we would be more inclined to hold that in such instances wrongness of intention follows from the wrongness of the act-type: it is

wrong to intend to rape or to intend an end that encompasses rape because rape is a type of act that is wrong to commit.

The claim is that certain act-types are wrong regardless of the agent's intention or context, even though in the act-token these may mitigate or exacerbate the agent's guilt. Moral absolutism of this kind may be unpalatable for some philosophers, and it has been one of the reasons why the PDE has been rejected. If moral absolutism about certain act-types is unacceptable, then the PDE must either be abandoned or radically revised. But the case against such moral absolutism, if it can be made out, cannot be based on difficulties with the PDE. There is little point in seeking to argue against it by taking as examples cases such as killing people, since moral absolutism doesn't apply to such act-types, or by taking as examples act-types condemned by Catholic moral teaching but widely viewed by contemporary society as not wrong, e.g. contracepting. The case against moral absolutism has to address itself to act-types such as raping and enslaving where our moral intuitions incline to the view that their act-tokens are always wrong.<sup>26</sup> In those cases, it seems that, *pace* Hughes, we have instances where we can speak of the species of the act, as such abstracted from motive, outcome, and other contextual circumstances, as having a moral character.

It is against the backdrop of such moral absolutism about certain act-types that the PDE has to be understood. Torturing or enslaving are act-types none of whose instances could be candidates for PDE justification, since their inherent evil means they fail

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<sup>26</sup> Even if we had to accept that act-types were ontologically trivial or that they had no moral character as such, the mere fact that every instance or act-token of rape or torture is wrong would suffice to justify continued use of the PDE. It would simply require an appropriate rewording of condition 1.

condition 1.<sup>27</sup> Thus, we have cases in which the act-type has a negative moral nature that can be identified prior to any consideration of the agent's intention.

It cannot be claimed that the wrongness of the act-type is illusory, on the grounds that a proposition such as "Enslaving people is wrong" is analytic, so that the wrongness of enslaving is simply a kind of definitional or conceptual necessity. While "Murder is wrong" is analytic, since the concept of wrongness is contained in the concept of murder, propositions such as "Raping is wrong" and "Torturing is wrong" are not analytic, since the concepts of rape and torture do not contain an explicitly moral concept. The wrongness of rape is not definitional.<sup>28</sup>

## V

To hold that an act-type is wrong is, in the language of the PDE's condition 1, to hold that the object of the act is morally wrong. The discussion in the previous section showed that it concerns something distinct from the agent's intention as intention is understood in condition 2 (Mangan's version), since the act-type is independent of, or abstracted from, the goal or intention of the agent in the act-token, just as it is independent of any particular set of consequences.<sup>29</sup>

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<sup>27</sup> The wrongness of lying may present a problem. What about the hypothetical case where the Gestapo demand to know whether there are Jews in the house, and one can tell the truth and betray the Jews to their deaths, or lie and save them? In such an instance it would clearly be wrong to tell the truth. If there is no other way to protect the Jews, one may lie. However, what justifies doing so is not the PDE, but the principle of the lesser evil. This is not a matter of the end justifying the means: the principle is applicable only when there is no third choice. Lying is not good, but neither is betraying the innocent to their deaths. Since there was no viable third option, the liar has not acted wrongly and is not blameworthy.

<sup>28</sup> See John Finnis, *Moral Absolutes* (Washington DC: Catholic University of America Press, 1991), pp. 31-37 for clarification of this point.

<sup>29</sup> It should be noted that this leaves open the possibility that it may sometimes not be possible to specify an act-type without reference to a range of typical consequences.

At the same time, acts are intentional: they cannot be understood as acts in abstraction from intention. We distinguish acts from mere behavior by attributing some deliberation or intentionality to acts.<sup>30</sup> It is here that Anscombe's distinction between acting intentionally and acting with an intention can usefully be adopted.

As regards acting intentionally, all acting is intentional in the sense that it involves some kind of cognitive operation, no matter how absent-minded or inattentive or semi-conscious, and some kind of choice to do so. There is an intentionality embedded in, or more accurately, embodied in, the act performed. If I bring a sledgehammer crashing down upon a windowpane in order to kill a wasp that is crawling along the windowpane, the window (assuming it is an ordinary non-reinforced glass pane) will be shattered. I might claim, in some parody of PDE reasoning, that I intended only to kill the wasp and did not intend to break the window, and since the breaking of the window was an undesired (though foreseeable) effect of my action and hence an indirect effect of my action, I am therefore not guilty of an act of vandalism. The reply which should be made to that piece of sophistry is that, whether I like it or not, striking a window forcefully with a sledgehammer is the type of act designed to break it, regardless of my psychological intentions or desires. The intention embodied in my act, because of the type of act of which it is an instance, is to break it: I have committed an intentional action of shattering a window with a sledge-hammer, even though I may claim that I did not intend that to happen.

To act with an intention is rather different. Here we can consider the intention as primarily specified by a particular goal the agent desires to achieve or state of affairs she

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<sup>30</sup> In Aquinas's language, an act is *actus humanus* as distinct from merely human behavior, *actus hominis*.

wants to bring about through the act-token, with a particular means or range of possible means to be utilized to achieve it.

The intentional act and acting with an intention usually move in tandem or in parallel. That does not mean that the distinction is merely a matter of perspectival emphasis, depending on whether one focuses on the behavior or the goal. It is possible to have intentional action where the agent is not acting with an intention or acting for a reason.<sup>31</sup> One might do something idly, like drumming one's fingers on the table, aware of what one was doing but not doing it for any reason. One might do something just for the sheer fun of doing it, like playing chess, but with no goal to be achieved or purpose to be accomplished that went beyond the doing of the act. So, while such an act is intentional, since it is conscious, deliberate, and one has some control over it, nevertheless it is not done with an intention to bring about some state of affairs.

I suggest that we think of the PDE's condition 1 as concerned with intentional acts, while condition 2 is oriented to action done with an intention. There is an intentionality inherent in or embodied in anything we call action, that is distinct from the uses that can be made of it to accomplish some purpose.

This distinction is significant with respect to how to understand condition 2, which (in Mangan's version) requires that the good effect and not the evil effect be intended. To that I now turn. There are a number of points to address in distinguishing what is involved in condition 1 from what is involved in condition 2.

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<sup>31</sup> See Maria Alvarez, "Acting Intentionally and Acting for a Reason", *Inquiry* 52 (2009): 293-305. See Aristotle, *Nicomachean Ethics*, trans. Terence Irwin (Indianapolis: Hackett, 1999), 1094a2: "the ends [that are sought] appear to differ: some are activities, and some are products apart from the activities."

First, the agent's intention has to be understood to include the means as well as the end. To take it to refer only to the end would be to confuse intention with desire or motive. One can desire an end or goal, without desiring the means. That does not apply in the case of intention. While desire refers to the state of affairs one would like to obtain, regardless of whether one does anything to bring it about, intention concerns what one seeks to do to bring about a particular state of affairs. What is intended is an-act-and-its-effect, or an-end-and-a-means-thereto.

Second, while condition 1 concerns the act-type and its embodied intentionality irrespective of any agent, condition 2 concerns the act-token-and-its-end as something intended by a particular agent. In some cases, there may well be little difference between them, since identification of the act-type will necessarily indicate a particular end or outcome that typically follows. If one wants to make apple-pie, there is a range of ways to do it; that is to say, there is a finite range of act-types whose design or structure or intentionality is aimed at apple-pie production. Any one of these may be instantiated as a particular act-token by an agent intending to make an apple-pie. The agent acts intentionally in acting, and does so with the intention of producing a pie. In such a case, there is only a theoretical distinction between the nature of the act (as mentioned in condition 1) and the agent's intention (condition 2).

It can happen that the agent intends something too fine-grained to be embodied in the means chosen. Consider the case of a terrorist (or freedom-fighter) who wants to assassinate a judge, and has decided to do so by means of a car-bomb. Normally the judge drives alone, but on this occasion there are others with him. The bomber detonates the device, killing the judge and two of his family. If the assassin were to say that his

intention was to kill the judge and only the judge, we could allow that his motive and desire referred only to the judge. We could not accept without qualification what he says about his intention. Attaching a car-bomb and detonating it is an act-type designed (regardless of the agent's desire) to kill or seriously injure whoever is in the car at the time of the detonation. The killing of the others is not accidental. Such an act-type is not capable of embodying or carrying the fine-grained discrimination of intention that the agent desired.

It can be inferred from this and similar examples that the intention with which the agent acts is constrained by the structure or design or nature of the act-type.<sup>32</sup> To put it differently, the intention with which one acts is governed or shaped (or even nullified) by the means chosen. To be able to act with an intention requires a certain practical rationality. In the case given, there is significant misfit between the meaning or embodied intention of the act-type, and the agent's desire or wish in the individual instance.

There is a parallel with propositional meaning in speech-acts. When Dr. John Spooner said "Let us toast the queer old dean", people laughed, because they realized that what he meant to say (utterer's meaning) was not the same as what he actually said (utterance meaning). The meaning he had in mind or the intention with which he made his speech-act can be expressed by "Let us toast the dear old queen." The meaning of his speech-act, or the intentionality embodied in his speech-act, was different. No more than Humpty Dumpty could he make words mean what he wanted them to mean, and his use of those words did not change their meaning.

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<sup>32</sup> This has some relation with the Aristotelian point that a particular form can be embodied or instantiated only within the range of suitable matter.

As with speech-acts, so with ordinary actions: they have a public, objective, or intersubjective meaning that is not alterable by the individual's will. The meaning of an utterance and the intention of an action are derived, not immediately or exclusively from the agent's psychological state, but from the objective character of each, connected to the type of act it is. If that were not so, we would not be able to understand each others' words or actions. To borrow a metaphor from philosophy of language, the rational agent is one who can embody the meaning-in-the-head or narrow content, the intentional desire, in the appropriate act with its broad content.

Third, the agent may act with an intention that goes beyond the intention embodied in the act itself. The pie-making agent may also intend, by making the pie, to implement a promise to his wife that he would start pulling his weight in the kitchen, and not leave all the cooking to her. Or, he may intend, by making the pie, to dominate her by making a better pie than she can make and to show her that she is not indispensable to him. It's safe to assume here that the former intention would be morally good and the latter intention morally obnoxious. The fact that the means, making a pie, is morally not bad makes no difference to the evaluation of the intentions with which he acts. However, in the latter case, where his making a pie, in the context of his relationship with his wife, has the meaning of seeking dominance and putting his wife down, a meaning that his wife recognizes, his action will be morally wrong.

The speech-act analogy can be extended here. The proposition "We should not speak ill of our friends" has a definite meaning, arising from the syntax and the meanings of the individual words, that is independent of the meaning an utterer may have in mind. But, within the constraint of that meaning, the speaker may convey a range of further possible

meanings. If her utterance emphasizes “we”, she may communicate her conviction that, while others might speak ill of their friends, the group she is addressing should refrain from doing so. If she emphasizes “speak”, she may communicate the tolerability of thinking evil of our friends, provided we refrain from speaking ill of them. Other meaning nuances may be generated, depending on whether one emphasizes “ill”, “our”, or “friends”. As propositional meaning and contextual utterance meaning can be distinguished, with the former setting limits to the range of possibilities of the latter, so the intentionality of the act itself is distinguishable from the intentions of the agent. In that respect, it can accommodate a range of possible agential intentions, and at the same time set limits to that range.

Consider condition 1 again. A particular act-token can have more than one effect. At least one of those effects will be such that it is the type of effect that the act-type is designed to produce, so that the act-token will either necessarily have that effect or have it with a very high degree of probability. The PDE is applicable where the act-token has at least one other effect, and where one effect is good and the other evil. For the action to pass condition 1 of the PDE, the evil effect must not be the necessary or natural result of the act-token. In other words, the evil effect must not arise from the act-type, but only from the act-token taking place in a particular context. It can also be reasonably held that the evil effect must also not have a high probability of resulting from the act, unless that high probability is generated partly by some contextual factor. In other words, there must be a plausible description of the act-with-typical-outcome that identifies the good outcome alone.

An example might be the giving of morphine by a doctor to a seriously ill patient in great pain. The morphine might have the foreseen effect of shortening the patient's life, but where the quantity of morphine is proportionate to the good of relieving the pain a plausible description of the intention as giving-morphine-to-relieve-pain can be provided. The doctor's desires and motives are, as such, irrelevant. Whether the doctor desires the patient to live for the next twenty years or to die soon, or whether she is indifferent to how long the patient lives, is irrelevant to a description of the intention embodied in her act.

When we turn to condition 2, the issue is more complex. Here we are concerned with the intention with which the doctor acts. It would be odd for a doctor to give morphine to relieve pain without having some intention in this matter. Perhaps her intention may be no more than to relieve the patient's pain, in which case it is not distinguishable from the intention embodied in her act. If the realization of the intention with which she acted required that the patient's life be shortened, perhaps because she wanted to hasten his death for some reason, her action becomes morally problematic under condition 2.

Condition 2 is relevant where the act-type is morally acceptable (meeting condition 1), but the act is a means to some further end that is evil. One might save somebody's life in order to exploit or rob that person later; in such a case one has acted rightly in saving the person's life but done so with an evil intention. To use Aquinas's terminology, the external act is morally acceptable, but not the inner act of will, so the act as a whole is morally tainted.<sup>33</sup> Condition 2 concerns the end intended or the intention with which one

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<sup>33</sup> See Aquinas, *Summa Theologiae* I-II, qq. 19-20.

acts, and its relevance has to do with cases where the end goes beyond or is other than the end embodied in the act.

## VI

At the outset of this paper, I cited Alison McIntyre's challenges to the PDE: first, it is difficult to distinguish between harm intended as part of the agent's means, and harm foreseen as side-effect; second, that distinction does not explain the permissibility of killing people in self-defense, hysterectomy that leads to fetal death, or use of pain-relieving medication that shortens a terminally ill person's life. In the light of my discussion of intention, my response has two elements. First, the notions of act-type and intention have not been well understood in some applications of the PDE; this is apparent in cases to do with military action and hysterectomy. Second, in some cases, the PDE is not the relevant principle that captures our moral intuitions.

In the case of aerial bombing of a military installation close to a school, it can be argued that the deaths of children arising from such bombing are collateral damage. It would not follow that those responsible for the aerial bombing were thereby morally guiltless of killing the children, for that would depend also on how much care they took to minimize collateral damage. But at least they would not have carried out an action whose type was such that it was designed to destroy the school or kill the children. On the other hand, if the kind of bomb used to destroy the military installation was such that it was designed to destroy anything within a radius of two miles of the installation, then the deaths of anybody within that radius is part of the intention embodied in that act-type.

That the bomber did not desire or seek the deaths of the children does not alter the fact that his action was designed to kill everybody in the two-mile zone.

Donald Marquis raises difficulties in identifying the act-type as regards two of the standard cases discussed in PDE literature, namely, craniotomy and hysterectomy in response to ectopic pregnancy, each concerning a risk to a pregnant woman. In both types of case, the fetus dies in consequence of the craniotomy or of the hysterectomy. Marquis argues that the traditional distinction made by PDE defenders between craniotomy and hysterectomy, where craniotomy is wrong and hysterectomy permissible, won't stand up to scrutiny. Thus, he notes that the claim that the death of the child is not part of the means of saving the mother in the case of hysterectomy and hence not intended can apply also to craniotomy, in that the death of the child is not part of the means of saving the mother.<sup>34</sup> He continues: "Hence, strictly speaking, crushing the child's skull is in itself wrong only because the action can .. be redescribed as killing the child. But, of course, we can describe the hysterectomy ... in the same way."<sup>35</sup>

Marquis is correct that there is a sense in which we can say that in a craniotomy what is required is the downsizing of the child's skull, not its death, so that it can be said that its death is not part of the means of saving the mother. But it is a distinction in name only. Not merely can a craniotomy not be carried out without leading to the death of the baby, the procedure is such that it necessarily kills the baby. The act of crushing a baby's skull is designed to kill the baby, in the same way that the acts of stabbing an adult through the heart, firing a bullet into her brain, putting arsenic in her tea, and cutting off her head are all designed to kill the adult. It would seem odd to suggest that doing any of

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<sup>34</sup> Marquis, pp. 163-4.

<sup>35</sup> Marquis, p. 164.

these things would be wrong only because the action could be redescribed as killing. If human physiology were different, crushing a skull might not necessarily kill a fetus; but given the physical structure of the human body, it is accurate not merely to say that it causes death but also to say that it kills the human target. Thus, the act of skull-crushing embodies the intention to kill the baby, regardless of whether the agent desires to kill the baby.

By contrast, the removal of the fetus in the case of an ectopic pregnancy, while inevitably leading to its death, does so only in conjunction with the circumstance that medical science is not at present able to save its life after it has been removed from the woman's body. It can be envisaged that medical science will develop to the point of being able to save the life of the fetus endangered by a hysterectomy. When that point is reached, it will no longer be the case that hysterectomy necessarily causes the death of the fetus. Marquis states that "a hysterectomy on a woman pregnant with a non-viable fetus is inevitably connected with the death of an innocent child."<sup>36</sup> What he ignores is that the inevitability in question depends crucially on contextually contingent factors, and contextual factors do not determine the nature of the act-type. When condition 1 states that the act in itself must not be morally evil, it is abstracting from contextual factors to consider the object of the act.

Crushing a fetus's skull kills it: given human physiology, the craniotomy constitutes a sufficient condition for the fetus's death, regardless of contextual factors. Carrying out a hysterectomy does not in itself kill the fetus, since medical technological advances could be such that the fetus could be saved in such cases. Accordingly, hysterectomy, while

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<sup>36</sup> Marquis, p. 165. I agree with Marquis (ibid, pp. 165-6) that appeal to a logical necessity is irrelevant here. The proposition "The child is dead" is entailed neither by "The uterus is removed" nor by "The skull is crushed".

being a causal factor leading to the fetus's death, is an act-type no more designed to kill the fetus than is the act-type of inducing premature labor for medical reasons, the only difference between them being that current medical technology can usually save the prematurely born baby but not save the fetus. If current medical technology could save the fetus, and that technology was not used following a hysterectomy, we would attribute the death of the fetus to the failure to avail of that technology, rather than to the hysterectomy. In that case, the act-type designed to bring about its death would be the deliberate omission of employing that technology, and not its previous removal from the woman's body.

I turn now to cases where the relevant principle underlying common moral intuitions cannot be the PDE but must rather be some other moral principle. The following two cases are sometimes cited in the PDE literature.<sup>37</sup>

Take the case where the railway technician controlling the points can re-route the runaway train so that it proceeds along a track where it will kill only one person instead of killing ten people by proceeding along the first track. The common moral intuition is that the technician acts rightly in thus re-routing the train, and even that he is not just permitted but morally required to do so. The technician of course does not intend (in the sense of desire) the death of anybody; nevertheless, he is consciously adopting a course of action that he knows will cause the death of an innocent person. His act is designed to produce that effect with some degree of probability. Such a type of act would appear to fall foul of the PDE's condition 1 which requires that the proposed act be not evil in

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<sup>37</sup> Both examples are cited in McIntyre, "Doctrine of Double Effect", as cases that come under the PDE.

itself.<sup>38</sup> (But it would not violate condition 2 which requires that the agent not intend evil: he may intend what he knows will harm, but he does not intend evil and is “good-willed”.)

The fact that our moral intuition is that the technician acts rightly suggests that the intuition cannot be grounded by the PDE. What permits the technician’s choice to reroute the train is the fact that, since he is responsible for controlling the points and hence cannot refuse to choose and act, he has no third choice, and can choose only between letting the train continue on a route where it is likely to kill ten or rerouting it so that it will kill at most one. In his position, a refusal to touch the controls would not count as a refusal to act and hence get him out of the moral dilemma. In such a case, it would be right to choose the lesser of the two harms. By contrast, the PDE, applicable only when an agent has a choice about whether to act in a certain way, would not permit choosing the lesser of two harms because the choice of an unnecessary harm would involve intending an evil, either as means or outcome.

The second case is that of the soldier who throws herself on a grenade to save her comrades. It seems clear that while she does not want to kill or injure herself her intention embraces a means that will do just that.<sup>39</sup> The PDE will rule that out as a violation of condition 1. If somebody else pushed the soldier on top of the grenade, it would be seen as intentionally killing or injuring the soldier and thus morally wrong. Is not the soldier’s self-sacrifice just as wrong, since she does intend (as part of her means) to do something that will kill or injure herself?

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<sup>38</sup> I recognize that the example may not be as sharply inconsistent with the PDE as I present it here.

<sup>39</sup> Shelly Kagan, *The Limits of Morality* (New York: Oxford University Press, 1999), p.145. Kagan cites the example as showing problems with the PDE.

Our moral intuitions are (1) we would regard the person who pushed the soldier on top of the grenade as acting wrongly, and (2) we would regard the soldier who sacrificed herself as acting, not just rightly, but admirably, requiring only that the soldier not intend her death as an end. The PDE does not capture the second intuition, and hence would not provide permission for it. If we hold to the second intuition, we must conclude that the PDE is not applicable in this instance. Perhaps a Christian idea of the moral nobility of self-sacrificing love, a Kantian view of the importance of the wellbeing of others and the categorical imperative's permitting the action, or a general deontological approval of acts of supererogation may come closer to expressing our moral intuitions in this case.

However, it might be argued that my claim that principles other than the PDE apply in those cases is simply an *ad hoc* evasion; for surely, since neither action can be justified by the PDE, it follows either that they are immoral or that the PDE is seriously flawed as a theory.

Not so. The PDE does not determine that certain acts are wrong. It offers us nothing to help us determine the morality of particular act-types. All it offers is a set of criteria to determine whether one may perform an action that has a good effect and a bad effect, but not whether one is in principle prohibited from performing that action. As Sophie Botros has persuasively argued, it is a mistake to regard the PDE primarily as a source of condemnation of actions; it rather concerns their permissibility.<sup>40</sup> Her argument is supported by the fact that our moral intuitions may endorse a particular action, even though it would not be justifiable under the PDE. If it is justifiable on the basis of some other moral principle, then it is clearly preferable to have an interpretation of the PDE

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<sup>40</sup> Botros, "An Error about the Doctrine of Double Effect."

that does not contradict other moral principles. The PDE may indicate that a proposed action cannot be justified by means of its criteria; it does not follow that the action is thereby prohibited or that it cannot be justified at all.

In view of the foregoing, part of the answer to McIntyre's challenges is that the PDE must not be expected to fit all cases. Where the PDE seems to give the wrong answer (wrong relative to our intuitions), it may be because it is the wrong principle to apply. The fact that there may be cases of permissible actions causing death does not imply that they must be permissible on the basis of the PDE.

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