

Chapter 5

The Double Failure of ‘Double Effect’

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The ‘doctrine of double effect’ claims that it is in some sense morally less problematic to bring about a negatively evaluated state of affairs as a ‘side effect’ of one’s pursuit of another, morally unobjectionable aim than it is to bring it about in order to achieve that aim. In a first step, this chapter discusses the descriptive difference on which the claim is built. That difference is shown to derive from the attitudinal distinction between intention and ‘acceptance’, a distinction that is in turn claimed to ground in a feature of the decisions that generate the attitudes in question. The resulting analysis is then plugged into two different normative principles that may each be thought to specify the intuitions behind the doctrine of double effect, but which have frequently been conflated. The first concerns the permissibility of bringing about the merely accepted state of affairs, the second its reduced attributability. It is argued that examination of the intuitions behind the two principles supports neither version of the doctrine. Rather, the intuitions are best captured in an attribution principle based on subjective probabilities and a principle of attitude evaluation, neither of which make explicit reference to the attitude of intending.

In the 1950s Elisabeth Anscombe claimed that there could be no substantial progress in moral philosophy until clarity had been established on the central concepts of philosophical psychology, in particular on the concept of intention (Anscombe 1958, 26). She believed that establishing such clarity would reveal much of modern moral philosophy, in particular utilitarianism, to be built on shaky attitudinal foundations and the Catholic ‘doctrine of double effect’, in contrast, to be well founded (Anscombe 1961, 58–9; 1982, 23–4). This chapter will illustrate one way in which Anscombe’s first claim is on the right lines: moral theory cannot get by without clarity on a whole set of issues that belong to philosophical psychology or action theory. Moreover, one such issue does indeed have consequences for the ‘doctrine of double effect’ and the intuitions it attempts to channel. However, I will be arguing against Anscombe that a precise understanding of the nature of intention reveals the doctrine to be without attitudinal foundation.

The discussion takes place in five steps. It begins by examining the form the doctrine is officially given within contemporary Catholic moral theology. The action theoretic resolution of a number of confusions and ambiguities permits the identification of a core normative claim. According to this claim, a particular

distinction in philosophical psychology is of such significance that it grounds an important difference in the moral evaluation of actions. The second step advocates a specific understanding of the relevant attitudinal distinction, between intending and ‘accepting’, an understanding provided by what I call the ‘upstream theory of intention’. Having clarified the principle’s psychological basis, the discussion then, thirdly, goes on to distinguish two ways in which the attitudinal distinction may be thought to be normatively significant, two forms of normative significance that have frequently been conflated by advocates of the doctrine. These are best articulated in two distinct principles. Sections four and five of the chapter discuss whether the psychological distinction can play either of the roles that it is assigned by the two principles. My answer will be negative. Nevertheless, I hope to show that a combination of attention to the psychological basis of the principle and careful consideration of its possible function in the structure of moral evaluation can disentangle the valid intuitions that are mistakenly thought to support it.

1. From the doctrine of double effect to the principle of collateral consequences

The so-called doctrine of double effect has been most frequently discussed in the context of ‘applied ethics’. In these discussions pairs of similar examples are juxtaposed in order to mobilize intuitions that the minimal descriptive difference between the cases grounds an important moral difference. Three such repeatedly discussed cases are the following:

(i) *Analgesia/euthanasia*

A doctor administers a dose of morphine in order to relieve pain, knowing that it will kill the suffering patient in the process. This is contrasted with an otherwise identical deliberate mercy killing by the same means.

(ii) *Hysterectomy/abortion*

A doctor saves the life of a pregnant woman, in the first case, by removing her cancerous womb, thus also killing the foetus, in the second case, by crushing the skull of the foetus trapped in the birth canal.

(iii) *Disarmament bombing/demoralization bombing*

Bombs are dropped on a munitions depot, in spite of the deaths of children in a nearby school this will inevitably cause; in the second, behaviourally identical case, the target is chosen in order to kill the children and thus demoralize the enemy.¹

1 For an early critical discussion of (i), see Hart 1968, 122–5. More recent discussions include Powers 1995, 341f. and Frey 2003, 465f. Example (ii) is given prominence in Jonathon Bennett’s *Tanner Lectures on Human Values* (1981), 106–9; Davis 1984, 109–16; Quinn 1989, 336–47 and Connell 2003, 880f. Bennett’s third *Tanner Lecture* focuses primarily on

In each of these pairings there is a descriptive difference between the two cases that grounds in the way in which the agents view the dual results of their behaviour. Put succinctly, in each of the former examples, the death brought about by the agent is an event he views as a 'mere side effect' of his action; in each of the latter examples it is an effect he aims to bring about in order to achieve some further goal: relieving the patient's pain, saving the woman's life, bringing the war to an end. That there is some such descriptive distinction to be drawn here seems clear. The 'doctrine of double effect' makes two claims about cases in which that difference is given. First, it claims that it is morally permissible to cause death as a 'mere side effect' in the pairings just described. Second, it offers a set of conditions whose satisfaction it claims is necessary and sufficient for permissibility in these kinds of cases. The conditions can be thought of both as specifying what we should understand by 'side effects' and as adding further conditions under which the descriptive difference thus made renders the agent's behaviour permissible.

According to the *New Catholic Encyclopedia*, there are four such conditions that have to be met conjunctively:

- 1) "The act itself" is either morally good or indifferent.
- 2) The bad effect is not "positively willed", but "merely permitted".
- 3) The bad effect is not a "means" to the good or indifferent end, i.e. the good or indifferent effect is "produced directly" by "the action", not by the bad effect.
- 4) There is a degree of proportionality, the good effect "compensating for" the bad one.²

Condition (4), according to which bad effects should only be considered allowable where they are compensated for by good effects, is uncontroversial. However, each of the other three conditions raises conceptual questions to which we need answers in order to isolate the claim at the heart of the doctrine that merits serious consideration.

1.1 On (1): "the act itself" and "double effect"

If we take literally talk of "double effect", then the two events that are up for comparative moral evaluation ought both to be caused by the agent's action. At first glance it might appear that it is this action that is designated by the phrase "the act itself". In (i) that would appear to be the injection of morphine and in (iii) the dropping of the bombs. Example (ii) pairs two different actions on the part of the

(iii) (1981, 95–116). Anscombe and Finnis both use the doctrine of double effect as a standard for the criticism of the "obliteration bombing" of cities, particularly as practised by the allies in the Second World War. See Anscombe 1961, 59 and Finnis 1991, 42f. The case also features in Powers 1995, 345–8; Quinn 1989, 336–47 and in Michael Bratman's application of his analysis of intention to the doctrine in Bratman 1987, 139–64.

² Connell 2003, 880. I have given the conditions a slight pruning. In particular, I have left out the distinction between "the order of causality" and "the order of time", by means of which the author attempts to clarify the notion of "means" employed in condition (3).

doctor. In the first of these it is the hysterectomy that has the two morally competing effects; in the second we seem constrained to pick out the mere bodily movements of the doctor – his ‘basic action’ – if we want to separate his action from the death of the foetus as well as from the woman’s survival. Construing things in this way would, however, make condition (1) redundant: actions under these descriptions are all morally neutral; ‘basic actions’ would seem to be necessarily so. Interpretative charity, therefore, demands a different construal. What the phrase “the act itself” is presumably meant to isolate is the action under the description provided by the content of the agent’s intention. In other words, it is the content of the agent’s intention that has to be either morally good or at least indifferent.

This has two consequences: *first*, the two ‘effects’ at issue here are not caused by the ‘act itself’. Rather, the description that bequeaths us ‘the act itself’ is just the description of the agent’s behaviour as the cause of one of the ‘effects’, that effect that is morally good or indifferent. What, then, are the two ‘effects’ effects of? If they are indeed effects, then they will both be caused by some ‘basic action’ – an action characterized in a way that makes it clear that it was not performed by performing any other action. However, as a bit of rudimentary action theory makes clear, the relationship between ‘basic actions’ and the events that make broader action descriptions true need not be causal. For instance, doing something that alerts someone to a danger and thus saves her life may also *count as* an insult or as breaking a promise. In such cases, we do not have two effects, but rather two results or *consequences*, one of which is an effect, the other of which is not. For this reason, we are dealing, strictly, with a principle that concerns consequences or results, not necessarily effects. This is also a reason to avoid the everyday talk of ‘side effects’. Picking up the term beloved of certain military leaders, I shall instead talk here of *collateral consequences*.

The claim that the moral status of an action depends significantly on whether the content of the agent’s intention was morally good or indifferent may, *secondly*, seem to leave the advocate of the doctrine open to an objection that Pascal raised against its use by the Jesuits. According to Pascal, the permissibility of just about any action might appear obtainable by an agent’s merely redirecting her intention.³ This is indeed a problem in certain cases that have been seen as providing applications of the doctrine. Example (ii) is a case in point: what is supposed to be the criterion for claiming that it is the second doctor’s intention to kill the foetus, rather than simply to crush its skull? On the one hand, the causal connection between the realization of the latter intention and the former effect cannot be sufficient, otherwise the doctrinaire would also have to lumber the first doctor with the intention to kill the foetus. On the other hand, the problem is not solved by insisting on a conceptual connection, as there is little plausibility to the claim that skull crushing entails killing.⁴

3 Kenny 1973, 140f. A similar suspicion has been reiterated by John Harris, who has claimed that where permissibility or responsibility is at issue, “intention can be so narrowly defined as to yield any answer that is wanted”. See Harris 1980, 50.

4 This is the problem of ‘closeness’. On this point see Bennett 1981, 107–13; Anscombe 1982, 22f.; Davis 1984, 111–13; Quinn 1989, 336–41.

Nevertheless, other cases, for instance examples (i) and (iii), look to pose no real problem as to which consequence is intended and which is not. Rather, the obstetrics/abortion case seems simply to be a dubious application of the doctrine. In order to be clear on whether this is correct, that is, on whether identifying the contents of a person's intentions is indeed less criterially wobbly than Pascal assumed, we will need an analysis of the concept of intention.

1.2 On (2): "positive willing" and "permitting"

Condition (2) offers an attitudinal explanation of the notion of collateral consequences, which the negatively evaluated event has to instantiate: collateral consequences are not "positively willed" but "merely permitted". A word is in order about both expressions.

To begin with, the concepts of intention or aiming are to be preferred to the former, not only because they are more firmly grounded in everyday usage, but because talk of 'positive willing' as opposed to 'permitting' may encourage a confusion of the doctrine with a further controversial normative principle often cited by 'deontologists'. This is the claim that there is an important moral difference between acting to make some proposition the case and allowing it to become or continue to be the case. The important point for our purposes is that this latter difference is orthogonal to the distinction which the 'doctrine of double effect' claims is of moral significance. A person's non-action can, like her action, result from her intending to behave the way she does in order that some result may come about. Similarly, either an action or an omission can be performed in the face of the belief that that 'performance' will lead to some collateral consequences.

Talk of 'positive willing' thus should be replaced by talk of 'intending' or 'aiming'. However, although the term 'permitting' can be equally misleading, there is also something felicitous about it. If we keep in mind that talk of 'permitting' refers to a particular kind of attitude and not to a specifically non-active way of realizing an attitude, then it is certainly more appropriate than another characterization one frequently finds here, namely that of "merely foreseeing". Contrasting the action-guiding concept of intention with the merely epistemic notion of foreseeing is an unhelpful move because it appears to situate the objects of the latter attitude outside 'the action itself'. However, things are attitudinally more complicated. A minimally rational agent who intends to *A* in order to bring about *p*, whilst recognizing that doing so will (probably) also bring about *q*, cannot simply maintain a purely epistemic perspective towards her (basic) action's having these consequences.

If Gill knocks back a number of gins in order to get drunk, knowing that she is also risking an awful hangover, she must, in so far as she is minimally rational, be *accepting* that risk. Accepting a proposition is a species of opting for it, as is intending to bring it about. Both attitudes, one could say, are *optative*, being expressible by the locution "Let it be the case that *p*". Of course, under other circumstances Gill would not opt for the splitting headache she knows she is risking. But under other circumstances she would not opt to get drunk either. Such counterfactuals only tell us something about counterfactual opting; they do not change what the agent has opted for in the circumstances given. Agents such as Gill, like the agents in examples

(i) to (iii), opt strictly for what Gilbert Harman has aptly termed a “total package” (Harman 1986, 98; cf. Bratman 1987, 143), that is for a conjunctive state of affairs (p and q). One of the conjoints is aimed at, the other only accepted. The ‘doctrine of double effect’ tells us that in spite of the fact that both propositions are conjunctively opted for, the fact that one is only accepted, whereas the other is aimed at or intended, makes a significant normative difference.

An adequate discussion of the doctrine thus needs to take account of two attitudinal facts: one, that both sets of consequences are opted for in the circumstances and, two, that we nevertheless distinguish between the proposition aimed at and the proposition merely accepted. In order to work out whether a significant normative difference can really be built on this attitudinal distinction, we need an analysis that clarifies what it is about intending or aiming that distinguishes it from acceptance. This task is taken up in section 2.

1.3 On (3): “means”

If the first two conditions are given the suggested interpretations, then they provide a simple and coherent core doctrine, according to which there is some kind of significant normative difference between, on the one hand, bringing about some state of affairs because one aims to bring it about and, on the other hand, bringing it about because one accepts it in the light of its consequential relation to a state of affairs one aims to bring about. I shall call a slightly specified version of this core claim the *principle of collateral consequences* (PCC).

In the light of this characterization, it is not immediately clear what role the third condition is supposed to play. According to the most natural reading, it would appear to pick out a particularly salient case of the second condition: if (2) excludes the bad action being intended, (3) may simply seem to specify that it may not be intended as a means. We can say that taking some action A one is performing to be a means to some other action B involves A -ing because one intends to A , where the intention to A results from one’s belief that A -ing is an *antecedent causal condition* of one’s B -ing. A great number of our intentions come into being because we believe that, as a result of the causal structure of our environment, we can only achieve something else we intend by first A -ing. However, the reasons I gave for talking of ‘consequences’ rather than of ‘effects’ ought to make it clear that the causal relation cannot be what is normatively decisive. If breaking a promise is forbidden, but one can only help someone in need by deliberately doing something that counts as breaking a promise, then surely an advocate of the doctrine ought to find the behaviour of the promise breaker morally problematic in the same way that she takes causing physical harm as a means to helping to be morally problematic. Taking the bringing about of some morally problematic state of affairs to be a means or a *way* of bringing about a morally good or indifferent state of affairs ought, if the PCC is indeed the core of the doctrine, both involve the same kind of norm contravention.

Taken literally, however, condition (3) is not just a specification of a particular kind of reason for intending to bring about some bad state of affairs. As it stands, the condition does not stipulate that the bad ‘consequence’ not be *taken as* a means, that is, intended because it is believed to be an antecedent causal condition of the agent’s

aim. What it stipulates is that the bad effect not *be* a means. In other words, condition (3) is a purely causal matter, that is, a condition on the way the relevant events in the world relate to each other, not a requirement on the conception of those events on the part of the agent.⁵ Thus understood, a 'means' is an antecedent causal condition, irrespective of whether anyone knows this or not. Taken together with condition (2), we would now have the requirement that the bringing about of some negatively evaluated state of affairs neither be intended, for instance taken to be a means, nor be an antecedent causal condition of a positively evaluated end.

Note that as a purely extensional condition it would apply even if the negatively evaluated state of affairs should, *contrary to what the agent thought*, turn out to be an antecedent causal condition of the positively evaluated state of affairs. Think of the bombing example: in bombing the munitions depot, the collateral bomber accepts the deaths of the children because he sees the destruction of the arms depot as a means to bring the war to a speedy end. Imagine, however, that the enemy ends up surrendering, but only because of the deaths of the children, *in spite of* the fact that this was not the collateral bomber's plan. Extensionally understood, the deaths of the children turn out to be a means to the end of shortening the war. According to condition (3), that makes dropping the bomb impermissible, whatever happened to be going through the pilot's mind. Notice that this construction has the bizarre conclusion that the good outcome, the end of the war, makes the action impermissible, whereas the bomb dropping and the children's consequent deaths would have been permissible if the entire action had turned out to be completely ineffectual.

As an extensional reading of condition (3) would render it an absurd requirement,⁶ it is therefore most reasonable to read it intensionally. But, as that is to see it as merely picking out the most salient type of case already covered by (2), the condition can simply be dropped.

1.4 Abstracting from absolutism

There is one final feature of the 'doctrine of double effect' which should be mentioned and which should be recognized as extraneous to the core claim of the PCC. It is not explicitly stated in the four conditions, but presupposed in the claim that their satisfaction is necessary in order that certain actions may be permitted. The presupposition is that morality includes absolute prohibitions, that is, that it forbids certain actions, whatever competing reasons may be adduced for performing the action in the circumstances. Expressed in the language of means and ends: "there

5 On the ambiguity between extensional and intensional readings of the third condition, see Davis 1984, 114–16.

6 The article in the *New Catholic Encyclopedia*, on which I have based my own wording, suggests primarily an extensional interpretation. However, the formulation of Joannes P. Gury in his *Compendium Theologiae Moralis* (1850/1874), which, according to Mangan, provides the canonical version of all four conditions, is clearly meant to be intensional. Gury's explanation of the requirement "The evil effect must not be the means to the good effect" is that, if it were, "then the good [would be] *sought* by *willing* the evil" (my emphasis). See Mangan 1949, 59–61.

are no ends which justify every means, and ... there are some means which no end will justify” (Kenny 1995, 87). The function that the doctrine is supposed to fulfil can be made particularly clear by examining its role in absolutism. The absolutist presupposition is that certain actions, pre-eminent among which is killing, can under no circumstances ever be *justified*. However, as there can frequently be situations in which these absolute prohibitions would lead to undesirable normative paralysis, a principle that makes certain of their contraventions *non-reproachable, in spite of not being justified*, can save the absolutist from the predicament of having frequently to condemn agents whatever they do.⁷

Although this is one explanation of the attraction of the doctrine, it clearly cannot constitute its rationale. For one thing, it makes the doctrine’s plausibility depend on the validity of absolutism. Most important, the doctrine’s capacity to loosen absolutism’s hold depends itself on the independent plausibility of the PCC, that is, on the claim that the distinction between intending and merely accepting makes a decisive normative difference where we are evaluating actions. But if this attitudinal distinction really is able to fulfil this function in the case of absolute prohibitions, then it should result in the same sort of *normative relaxation* relative to non-absolute prohibitions, that is, with respect to prohibitions that can also, under other circumstances, be outweighed by stronger justifying reasons. It should thus make itself felt relative to norms that have no more than *pro tanto* character, for instance, the norm not to cause pain. Recent secular advocates of the doctrine, prominent among whom is Thomas Nagel, argue that precisely this is the case (cf. Nagel 1986, 176). An example pairing that illustrates the point can be provided by a couple of dentists, one of whom sees the pain he is inflicting as a side effect of his drilling, whereas his twin inflicts the same amount of pain in the course of the same operation on purpose. It seems clear that the attitudinal difference between the two dentists gives rise to exactly the same intuitions about the normative difference between the two cases, as do the attitudinal differences in examples (i) and (iii). For this reason, we not only can but should detach the core of the doctrine, that is, the PCC, from absolutism. The PCC’s plausibility does not depend on absolutism; rather, any plausibility absolutism is thought to have may very well depend on the validity of the PCC, without which the lack of a mechanism for restricting the dilemmas to which absolutism gives rise is likely to appear intolerable.⁸

1.5 Two questions

This preliminary analysis shows that the ‘doctrine of double effect’ depends on the core claim I have labelled the ‘principle of collateral consequences’. According to the PCC, *accepting rather than aiming at* some negatively evaluated *p* one is

7 Cf. Anscombe 1982, 19–22; Mackie 1977, 161f. The reason for the particular concentration on killing in the Catholic tradition is that the causation of death can result from deeds with other aims, whereas the contravention of other absolute norms – Anscombe names the prohibition of “sodomy” (!) – are hardly possible without corresponding intentions.

8 The other candidate for a dilemma-restricting mechanism is the doctrine of a normative distinction between doing and allowing.

bringing about brings with it some kind of *normative relaxation of the prohibition* on the action of bringing about *p*. If this is correct, then an investigation of the doctrine has two questions to answer. The *first* concerns the precise character of the descriptive difference between the two attitudes that is claimed to justify the normative relaxation. Only if we are clear what it is about intending that goes beyond accepting can we come to understand the idea that its absence might explain the peculiar normative relaxation of a prohibition that is supposed to result from that absence. The *second* question concerns the normative relaxation itself. How precisely are we to understand the idea of the normative relaxation of a prohibition where that prohibition is not cancelled by stronger counter-reasons? I shall argue that distinct intuitions feed into this idea. These, it seems, need to be taken apart and discussed separately in order for us to be able to appreciate their force. Note that there is nothing in the 'doctrine of double effect' that explains *why* its core principle is supposed to be valid. Anyone who accepts the principle ought to do so because she accepts its rationale or, at the very least, accepts an explanation of why no rationale of the principle can be provided. Let us begin with the first question.

2. Intending, aiming and accepting

How, then, is the attitudinal distinction that grounds the idea of collateral consequences to be analysed?

2.1 Commitment and irreducibility

The first step towards an answer consists in clarifying what it is that distinguishes intending from other optative attitudes, that is, wants in the general sense of pro-attitudes explicable by locutions of the form "Let it be the case that *p*". In the literature on intending, the central feature invoked here is that of *commitment* to bringing about the attitude's content (Harman 1986, 94f.; Bratman 1987, 4f., 16–20, 107–10; Mele 1992, 158–62). Commitment to some action goes beyond merely wanting to perform it, even where one believes oneself capable of performing it. The majority opinion on this component at the moment is that it is in some sense irreducible to beliefs and wants, even where the latter are supplemented by motivational specifications. Commitment to perform an action is something other than being most strongly motivated to do it, with or without supplementary doxastic conditions (Brand 1984, 123–7; Harman 1986, 78–95; Bratman 1987, 10, 100, 121; Mele 1992, 154–70; 2003, 28).

Now, an irreducibility claim is a claim that there is, for some reason, a point beyond which analysis is impossible. Were this to be the case with the commitment component of intention, then it might appear that the descriptive mystery facing us here grounds the normative mystery that is the unjustified normative relaxation of a prohibition. Commitment, so it might be thought, is just something special and when it is absent from the causation of certain consequences, then we should relax those normative strictures that only come into play where the commitment component essential to intention is at work. Adapting a move central to Michael Bratman's

normative functionalist theory of intention, someone might argue that one of the functional roles definitive of commitment is precisely its requirement if moral norms relative to an agent's action are to be strictly applicable. According to Bratman, commitment is partly defined by its normative role, although in his conception the relevant role is one within norms of prudential rationality, not morality: someone who intends to do something ought to deliberate so as to form subordinate intentions, refrain from forming conflicting intentions and endeavour to bring about the intention's content (Bratman 1987, 16–18; 140–41). What makes Bratman's theory irreducibilist is the idea that intention, in particular its commitment component, is in part defined as whatever attitudinal feature it is that makes it rational for its bearer to adhere to such practical norms. This strategy leaves open a question that one would certainly like a theory of intention to answer: namely, *in virtue of what* does being 'committed' to some action make it rational to adhere to those norms? Normative functionalism effectively tells us that this question cannot be answered. An adherent of the PCC might very well respond in a parallel manner to the question as to what it is about intending in virtue of which norms contravened in its absence suffer a kind of normative debilitation: the question just cannot be answered. Nevertheless, part of intending's essence, so it might seem, is visible in the normative role it plays in morality, as expressed in the PCC.

What is important here is not that an advocate of the doctrine might see the role of intention in the PCC as part-definitive of intention, but the fact that an irreducibilist conception of intending confers plausibility on the principle. Our inability to provide an analysis of intention in descriptive terms would explain why we are unable to say with any clarity what it is about intention that explains its particular normative role in morality. For this reason a discussion of the PCC requires a discussion of the irreducibility thesis.

The obvious way to challenge an irreducibility thesis is to offer an analysis of the concept in question. The general line an analysis of intention should take seems to involve focusing criterially not on the characteristic normative or motivational results, but on the genetic conditions of its instantiation. Schematically put: we should be looking not downstream, but upstream.⁹ Briefly, the optative attitudes we primarily pick out by means of the term 'intention' are, quite simply, the products of decisions. Alongside these primary intentions there is a second set of wants picked out by the term, namely spontaneously generated wants that are qualified by sufficient motivational strength for them to directly control unreflective action. The idea of commitment that gives rise to characteristic motivational consequences and grounds norms of prudential rationality is, according to such an analysis, bipartite.¹⁰ In our context, however, for reasons to be mentioned in a moment, we can focus entirely on the first, paradigmatic sort of intention.

If this is correct, then the criteria we require here are going to be criteria for the concept of decision. Decisions are optative stands that bring to a close episodes of what can be called 'minimal practical deliberation'. Minimal practical deliberation

9 This symmetry in the accounts thus characterized was pointed out by Michael Bratman. The account that I offer is argued for in detail in Roughley (forthcoming).

10 In this point I agree with David Velleman (cf. Velleman 1989, 112).

is the mental process set in motion by the desire of the agent to resolve an optative uncertainty as to what to do. Deliberation that is more than minimal, as it usually is, involves the weighing of pro- and contra-considerations with the same end in view, but the resolution of optative uncertainty that is definitive of deciding is not tied to the prior weighing of reasons. Sometimes we 'just decide'. But whatever it is that leads an agent to take that particular stand, her paradigmatic intentions are those optative attitudes distinguished by having terminated optative uncertainty and the (minimal) practical deliberation she initiated in order to do so. According to this perspective, it is our having decided to *A* that tends to motivate us to make further attitudinal moves to ensure that we *A* and which makes it rational to do so.

2.2 Opting for a package

Returning to the specific kinds of examples that are relevant for the PCC, it ought to be clear why only decisional intentions are relevant: opting for a conjunctive package, the conjoins of which have been weighed against each other, is obviously a postdeliberative matter. For this reason we can ignore secondary, spontaneously formed intentions. However, the fact that, in the cases we are concerned with, the agent decides to realize a complex proposition only one conjoin of which is aimed at would appear to throw doubts on the genetic analysis: if deciding to bring about *p* is definitive of intending to bring about *p*, then that seems to make an agent in such a case intend to bring about *both* consequences of his action. This would appear to deny the descriptive premise on which the PCC is built, a premise I have claimed is enshrined in everyday psychology. If the genetic analysis really does force us to this conclusion, then we should surely reject it.

Bratman rejects such an analysis because of what he sees as the falsity of the "choice-intention principle", according to which choosing to do *A* and *B* necessarily involves intending to *A* and to *B* (Bratman 1987, 145). The principle, Bratman argues, is false because choosing a package does not commit one to forming further intentions conducive to the realization of both conjoins and to endeavouring to realize both. Rather, these characteristic downstream roles of intending only need come into play with respect to one of the conjoins. If the other is only accepted, then nothing of the sort need be true of it (*ibid.*, 154f.).

The upstreamist reply to this is to insist on a clear distinction between the agent's attitude to the package and his attitude to its components. It is true that choosing or deciding to (*A* and *B*) does not necessarily involve intending to *A* and intending to *B*. What it does necessarily involve, the upstreamist claims, is intending to (*A* and *B*). This is because we do not have to intend singularly to bring about every consequence we take it we will be bringing about when we realize a package we intend to realize. Bratman's arguments against this claim beg the question. The collateral bomber, he argues, does not intend to kill the children even as part of a conjunctive intention because he is not disposed to reason about how to kill them or to endeavour to kill them should doing so be separable from the destruction of the munitions depot (*ibid.*, 148).¹¹ But were such separability to be possible, then the bomber could drop the

11 This is his argument against what he calls "the principle of intention division".

conjunctive intention. He only intends the package because of what he takes to be the inseparability of the conjoins.¹² Given that they cannot be taken apart, he intends both of them together.

2.3 Aiming

This defence of the upstream analysis has only so far shown why downstreamist arguments do not falsify the claim that paradigmatic intentions concern what the agent has decided to do. It has done nothing to solve the problem we set out to solve, namely how to distinguish between what is individually intended and what is individually accepted within the content of a complex intention. How can the upstreamist make sense of this distinction?

The answer involves saying something more about the agent's view of the relationship between the proposition aimed at and the overall package. The point is simply this: an agent intends to bring about that singular state of affairs as part of a conjunctively intended package the prospect of which she takes to provide *the reason for* her decision to go for the whole package.¹³ Where she opts for (*p* and *q*), she intends or aims to bring about *p* and not *q* if she sees her overall stand as *justified* in the light of the prospect of bringing about *p*.

It is important to note that this relationship between aiming and accepting within an intended package is by no means exclusive to intention. It is, on the contrary, a perfectly general phenomenon in the optative sphere and is, for instance, to be found in cases of wanting where no action on the part of the want's bearer is at issue. Take the case of Polly, who is observing with interest the political developments in some far-off country. She considers the possible outcomes of approaching elections there. In doing so she acquires the want that the *x*-party win the election because she believes their economic policy is the one most likely to put an end to the country's poverty. However, this want is not formed wholeheartedly, because Polly also believes that the *x*-party will implement certain forms of unpalatable social repression. Nevertheless, compared with the alternatives on offer, she certainly wants the *x*-party to win.

This is an optative package deal scenario, in which the relevant attitudes are non-action wants. We would normally describe Polly's optative state as one in which she *hopes* that the *x*-party wins. In doing so she *accepts* that this outcome will bring with it certain forms of repression to which she is averse. The decisive point of comparison is that Polly's acceptance of the unpalatable consequences does not lead us to ascribe to her the hope that they take place. Note further that the optative terms of which this is true can be extended. If Polly happens to believe that a victory of the *x*-party is a certainty, then we might say that she *is looking forward to* their winning the election. But we would not say that she is looking forward to them carrying out the repressive measures she takes to be unavoidable. Note finally that we can also reverse the polarities: take someone who is, on balance, *afraid of* the package deal being offered by his rapidly approaching old age. Although he can also see

¹² Cf. my remarks about counterfactual opting under 1.2.

¹³ Cf. Scanlon's proposal: "one's intention ... is an aspect of one's action that is crucial to the reason one takes oneself to have to do it." See Scanlon 2000, 306f.

certain benefits that it may bring, he is not for that reason afraid of those prospective benefits. Where someone desires singularly the consequences of the prospect that furnishes the reason for a package deal she opts for, we can say that she *welcomes* them. Welcoming is the positive variant of acceptance.

In all these cases, some proposition is the content of what one might call a 'focal optative stand': a singular want the content of which furnishes the reason for the overall optative stand on the package deal. In the case of effective intentions, it will also be the reason for which the agent acts. In the case of such intentions, we can say both metaphorically and literally, it furnishes the *decisive reason*: it is the consideration that makes the difference and the consideration on the basis of which the agent takes his decision. The relationship between aiming and accepting, then, involves a *taking-as-justifying* on the part of the agent. This will turn out to be important as we turn to the way in which the normative relaxation specified by the PCC is supposed to work.

3. Two versions of the principle of collateral consequences

In order to clarify the form of normative relaxation that might plausibly supervene on the descriptive distinction, there is a distinction between types of normative principles that need to be made explicit. This is necessary because of an ambiguity in the intuitions that are adduced in the literature to support the doctrine. The ambiguity can, for instance, be seen in two claims made by Thomas Nagel within a short space. Although the two points are clearly distinct, Nagel obviously does not think it necessary to distinguish them, let alone to argue for them separately.

The first is this: "Intention", he asserts, "appears to magnify the importance of evil aims by comparison with evil side effects"; intended evil is "lit up" by the "intensifying beam" of intention (Nagel 1986, 180f.). The claim behind these metaphors seems to be that the bringing about of a negatively evaluated state of affairs as a result of an intention constitutes a *worse offence* than doing so as a result of a mere acceptance. In other words, this is the de-absolutized variant of the original Catholic doctrine, according to which the latter may well be permitted where the former is forbidden. Now compare Nagel's second claim: according to this, "we consider ourselves *far more responsible* for what we do (or permit) intentionally than for consequences of action that we foresee and decide to accept but that do not form part of our aims" (*ibid.*, 180, my emphasis). This is a different matter and can be rephrased in the following way: where it is forbidden to bring about a certain state of affairs, the fact that someone brings it about as the result of an acceptance, rather than an intention, makes doing so in an important sense less fully the agent's action and thus *exculpates* him, at least to some degree, from having contravened the relevant norm.¹⁴ Here, as in many other discussions of the doctrine, it appears that intuitions as to the principles of assignment of responsibility for the contravention of norms contribute to the plausibility of a claim about the contents of the norms

¹⁴ Timothy Chappell sees this latter claim as the core of the doctrine of double effect (Chappell 2002, 223–5). David Chan also sees (his version of) the doctrine as a principle for the evaluation of the blameworthiness of agents (Chan 2000, 405–34).

contravened. But these are two different claims and we can only attain clarity on the strength of reasons that thus cluster around the cases in question if we take them apart.

The ambiguity at work here derives from the failure to distinguish between two different kinds of principles at work in systems of moral evaluation. The *first* kinds are moral norms in the narrow sense of the word, norms whose primary function is to *guide the prospective action of agents*. Where these norms are employed in their secondary function, that is as standards for the retrospective evaluation of actions, they are complemented by principles of a *second* sort, principles that *regulate the assignment of responsibility* for the contravention of the norms. The fact that a person has violated some norm does not in itself decide the question as to how strongly that violation is to be attributed to her. That depends on whether there are further factors to be taken into account that should count as excusing her for what she has done. Considerations of both sorts combine to justify judgements as to the level of culpability of the agent: how guilty she is depends both on how important the norm is that she has violated and how strongly the violation is to be attributed to her. The two points are, however, clearly distinguishable and are distinguished by modern legal systems (Fletcher 2000, 454–9, 576–9).

In our context, the important point is that the moral significance of the intention/acceptance distinction could be expressed in a principle of either sort, that is, its function could be thought to be either normative in the narrow sense or responsibility-theoretic. As a result we can give the PCC two different formulations:

PCC(N)

Where an agent *A* brings about a state of affairs *p* the bringing about of which is morally problematic, *p*'s being merely accepted, rather than aimed at, necessarily counts in favour of the permissibility of *A*'s action token.

PCC(R)

Where an agent *A* brings about a state of affairs *p* the bringing about of which is morally prohibited, *p*'s being merely accepted, rather than aimed at, necessarily counts as reducing *A*'s responsibility for having contravened the relevant norm.

We should reject both variants. Dealing with them separately will, on the one hand, prevent independent intuitions from interfering with each other. That will make it easier to see that there are no arguments that give adequate support to either version of the principle. On the other hand, it will also enable us to see that there are indeed cogent arguments that support claims which are *related* to the two versions of the PCC in one way or another. There are, it turns out, important normative and responsibility-theoretic principles at work in the background. However, these neither derive from the intention/acceptance distinction nor justify judgements that are coextensive with those to which either version of the PCC would commit us.

4. Acceptance and responsibility

Let us begin with the claim that the distinction between intention and acceptance grounds a distinction in the assignment of responsibility.

4.1 Responsibility and criminal homicide

The role that the PCC(R) ascribes to the distinction can be characterized effectively by means of a comparison with legal practices. The US Model Penal Code, for instance, distinguishes what it calls four “kinds of culpability”: “purpose”, “knowledge”, “recklessness” and “negligence”. The Criminal Code for England and Wales establishes similar distinctions among “degrees of fault”, preferring to talk of “intention”, rather than “purpose” (American Law Institute 2001, sect. 2.02(2), 94f.; Law Commission 1989, sect. 18, 51f.). The most important threshold in both systems is the one that separates recklessness on the one hand from ‘knowledge’ and ‘intention’ or ‘purpose’ on the other. An agent is taken to be less responsible for breaking a law as a result of taking an unacceptable risk of producing some result than for either producing it purposely *or* for acting in the knowledge that what she is doing will have such a result. In Anglo-American law, the chief difference between murder and manslaughter is drawn by this means (American Law Institute 2001, sects 210.2–3, 305–71; Law Commission 1989, sects 54–5, 66–7). The PCC(R) is best understood as proposing that the difference between acceptance – which covers ‘knowledge’ – on the one hand and ‘purpose’ or ‘intention’ on the other should be seen as marking a responsibility threshold with a similar status.

It may appear at first glance that there are features of our legal systems that support this view. The definition of murder provided by the British Law Commission does in fact require an ‘intention’ either to cause death or to cause serious personal harm (Law Commission 1989, sects 54, 66–7). Certain philosophers, notably Anthony Kenny and John Finnis, have argued that the content of this requirement should be understood as the agent’s aiming at occurrences of either of those kinds, in the everyday sense of ‘aiming’ (Kenny 1977, 172f.; Finnis 1991, 49). However, that has not been the view of the British Law Lords. On the contrary, comments made by the Lords in various cases demonstrate that the Criminal Code’s distinction between ‘intention’ and ‘knowledge’ is not disjunctive, indeed that the notion of ‘intention’ employed in the definition of murder clearly extends beyond the everyday concept.

The precise understanding of the ‘mental element’ necessary for murder has been the subject of considerable debate among judges and legal commentators. As has been repeatedly remarked (Williams 1983, 249–54; Smith and Hogan 1978, 47–52, 285–91; Fletcher 2000, 269–74; Kenny 1977, 161–74; Duff 1990, 1–37), the case of Mrs Hyam (1974) motivated the Lords to engage in extensive exercises of conceptual analysis. The defendant had poured petrol through a letter box and set light to it with the purpose of frightening her rival, but with the effect of killing the latter’s daughters. There was considerable disagreement amongst the Lords as to how the relevant notion of intention is precisely to be understood and as to whether the mental state thus identified is indeed required for murder. However, there was no dissent in the question as to whether *the conscious taking of a certain degree of risk as*

to causing death could be sufficient for murder, even if death had not been aimed at. Two of the Lords made this point in terms of the everyday notion of intention, adding that either such an everyday intention or a specific degree of subjective probability is required. Others insisted on the necessity of an ‘intention’ in a technical sense that incorporates the additional doxastic criteria into the concept.¹⁵

Either way, the consensus in both British and American law is that murder requires either an everyday intention or the acceptance of consequences believed to have a certain probability. This requirement can be terminologically clothed either in line with this everyday distinction, as the US Model Penal Code does (American Law Institute 2001, sect. 210.2(1), 305), or can be specified in terms of a misleading technical notion of intention, as incorporated into the Criminal Code for England and Wales. Here an ‘intention’ is said to be in play where the agent “acts either in order to bring about [a result] or being aware that it will occur in the ordinary course of events” (Law Commission 1989, sect. 18(b)(ii), 51). The important point for our purposes is that, where the law does see an ‘intention’ as necessary for murder, the operative concept is an expanded variant of the everyday notion. To avoid misunderstanding, we can refer to the technical notion of intention in use here as a ‘British legal intention’ or a *blintention*.¹⁶

Note that although in these cases British law builds the requirement of a blintention into the description of the offence – using it, for instance, to establish the primary distinction between murder and manslaughter – that does not entail that the object of the operative prohibition is killing-as-a-result-of-a-blintention, a norm that might be thought to exist alongside another, independent norm prohibiting killing-as-a-result-of-recklessness. Rather, the ‘offences’ of murder and manslaughter are both contraventions of the same norm, but are distinguished according to the extent to which the agent is responsible for those contraventions. In such cases it is the degree of attributability that is seen as justifying differences in sentencing – a difference that can be minimal in England where homicide is concerned, but is considerable for the distinct offences of ‘intended serious personal harm’ (life imprisonment) and ‘reckless serious personal harm’ (five years) (Law Commission 1989, 123). These latter two offences are again contraventions of the same norm (causing serious personal harm), but are distinguished by the extent to which they are attributed to their agents. Such offences are importantly different in structure from prohibitions whose *contents* are the bringing about of a certain level of probability of some undesirable event, as in the offence of ‘reckless driving’. The superficial appearance that the concept of recklessness has the same function in the two offences ‘reckless serious personal harm’ and ‘reckless driving’ is illusory. In the former its fulfilment indicates that the

15 Even Lord Hailsham, whose ruling Kenny sees as pointing the way to a definition of murder that requires aiming on the part of the defendant, actually stipulated that what are taken to be “inseparable consequences of the end” are also ‘intended’. See Smith and Hogan 1978, 50.

16 Whether commentators approve or disapprove, there is little dispute that we are dealing here with a “term of art”. See Fletcher 2000, 443; Williams 1983, 250; Finnis 1991, 50. Blintentions are closely related to German “*Vorsätze*”, which come in three grades, the lowest, ‘*dolus eventualis*’ involving being ‘reconciled’ to producing the relevant harm. See Lackner and Kuhl 1999, sects 15, 108–24; Fletcher 2000, 446–8.

agent was less responsible for contravening the prohibition than he would have been had he done so as a result of a blintention. In the second case recklessness is part of the content of the prohibition itself: the norm forbids a certain level of risk-taking whilst driving.¹⁷ Where, as in such cases, recklessness is a genuine part of the norm's content, no one thinks that the activity whose reckless performance is forbidden (driving) is itself morally problematic and that the agent would have committed a worse crime if he had performed it as a result of a blintention.

4.2 Control and subjective probabilities

Unlike what first appearances may suggest, then, our legal practices do not work with anything comparable to a responsibility-theoretic distinction between intention and acceptance. Rather, the decisive threshold remains that drawn by the orthogonal distinction between blintention and recklessness. The distinction is orthogonal because it is primarily a matter of the subjective probabilities opted for.¹⁸ Of course, the fact that this is the way the US and British legal systems assign responsibility for homicide is no proof that this is the reasonable way to view things. However, we do not have to look far to see why it is. The decisive point is the contribution that an increase in subjective probabilities, unlike the move from acceptance to intention, makes to the factor that grounds responsibility, namely the *control* exercised by the agent.

An agent's control over the production of states of affairs is, as Aristotle argued, dependent on the two criteria of knowledge and lack of compulsion (Aristotle, NE 1109b35–1110a1; cf. Hart 1968, 121f.). On the one hand, law or morality can see responsibility as diminished where the agent is subject to duress, to pathologically compulsive inner states or where he is provoked so severely that any reasonable person would be expected to lose control over himself. On the other hand, an agent's (non-culpable) lack of knowledge of the results he is bringing about exculpates him from any harm he causes as a result of that ignorance. Moreover, it is equally reasonable to see the gradability of doxastic states as grounding degrees of culpability. Now, there is clearly a highly stipulative element to decisions as to where exactly thresholds are to be set and, indeed, as to how many such thresholds are appropriate. The important point here is that it is some contrast of this kind that we need, because it is the kind that concerns our capacities for control. The greater the probability we ascribe to some result of a 'basic action' of ours, the more we see that result as dependent on us and correspondingly the more we take on responsibility for bringing it about. This only changes once our control over the performance of the 'basic action' is diminished as a result of one or another form of compulsion. In contrast, the fact that the prospect of some state of affairs is *not the reason* for the agent deciding to bring

17 On the relationship between norms requiring the bringing about of bare states of affairs and norms whose contents are the creations of probabilities of states of affairs, see Seebass 1994, 381–97.

18 This is the primary, although not the entire basis of the distinction because liability is also seen as dependent on the social acceptability of the risks taken. Cf. Fletcher 2000, 259–62.

it about – in spite of his having it in his optative purview – is quite simply *irrelevant for the question of control*.

Although the legal distinction between blintention and recklessness is orthogonal to the everyday distinction between intention and acceptance, there is, nevertheless, a simple connection between the two that helps to explain the responsibility-theoretic intuitions expressed in the PCC(R). This is that everyday intentions tend to be associated with a fairly high level of subjective probability. There is no necessity to this: if a person fires a machine gun at a moving car in order to bring it to a halt, he may be well aware that doing so makes the death of one of the passengers highly likely. Nevertheless, that does not entail that he intends to kill anyone. However, there is clearly a strong tendency for aims and high subjective probabilities to correlate.

There are two reasons why this is so. First, people only tend to aim at things they think there is a fair likelihood of them being able to attain, whereas there is no characteristic level of subjective probability a person assigns to a proposition he merely accepts as a possible consequence of his action. Second, there are structural reasons why cases in which the proposition accepted is thought to have a higher probability than that aimed at are going to in the minority. We can see this if we distinguish two kinds of example, which can be labelled ‘branching cases’ and ‘knock-on cases’. In *branching cases* an agent brings about *p* because doing so tends to bring about consequence *q* and in spite of the fact that bringing about *p* tends, for entirely independent reasons, also to bring about *r*. In *knock-on cases* the agent brings about *p* because of *p*’s tendency to lead to *q* and in spite of *q*’s tendency to lead to *r*. In branching cases it is an open question whether *q* or *r* is more probable. In knock-on cases it is not: because the instantiation of the proposition accepted is structurally dependent on the instantiation of the proposition aimed at, the agent’s bringing about of the latter *cannot*, for obvious reasons, be more probable than his bringing about of the former. Put concisely: although there are no structural determinants of the relative probabilities of an end and the consequences of ways or means of achieving that end, the consequences of an end are necessarily no more probable than is the achievement of that end.

For these reasons, we may frequently be justified in seeing the agent as less culpable for bringing about some merely accepted consequences of what he is aiming at than for achieving his aim. However, any lessening in culpability here depends entirely on the agent’s subjective probabilities, not on any intrinsic features of the two optative attitudes themselves. This is only brought out by considering cases in which the agent assigns exactly the same likelihood to both results, a condition that is most obviously fulfilled where the agent assigns the coming into being of *r*, if *q* comes about, a probability of one. For instance, only when the deaths of the schoolchildren are taken to be strictly unavoidable if the munitions depot is bombed does the contrast between the two bombers get to the attitudinal heart of the matter. As long as the example allows some probability of the children escaping death when the bomb is dropped, we have a difference in subjective probabilities that can mobilize justifiable responsibility-theoretic intuitions. Subtract these, however, and the case for the PCC(R) dissolves.

5. Acceptance and justification

In spite of the fact that the 'doctrine of double effect' is officially formulated in terms of permissibility, many of the intuitions that give it force are best understood in terms of the PCC(R). However, once the responsibility-theoretic variant of the principle has been rejected, we are left with a claim that really just is about permissibility. In order to evaluate this claim, shorn of considerations of attribution, we need to return to the structure characterized in 1.4: the idea of a prohibition's normative relaxation independent of the justification of that relaxation by other moral norms that override the prohibition. If this is indeed the structure for which we are seeking an explanation, the question we are faced with is whether there is plausibly any room for such non-justificatory normative relaxation within an acceptable morality.

5.1 Normative relaxation and justification

This question appears particularly acute once absolutism is rejected. If it is not postulated that there are certain actions that could under no circumstances be justified, then it seems a reasonable hypothesis that the judgements that appear to be explained by the PCC(N) might be reconstructed in terms of the justified overriding of strong prohibitions in the light of other moral norms. A non-absolutist morality plausibly contains a strong prohibition on killing. Nevertheless, an agent is both morally and legally permitted to cause another person's death where doing so is required for self-defence. Similarly, for any morality that is not strictly pacifist, certain forms of killing are permitted in war. And medical practitioners are also permitted under certain circumstances to cause their patient's deaths. In a non-absolutist morality, the reasons for these permissions are naturally seen as grounding in *norms that justify the causation of death under another description*: as defending oneself, waging war under certain circumstances and relieving a patient's pain.

In order to make clear the lines of the debate, it is important to note that a view of this kind does not necessarily depend on 'consequentialism', if consequentialism is the doctrine that valid norms are justified in terms of the consequences of their being obeyed. The rejection of absolutism is perfectly compatible with the justification of norms taking other forms, for instance, Kantian universalization. Whether, for instance, there are valid norms of fairness that are not justifiable in terms of their consequences is a question that is completely independent of whether such norms are necessarily to be accorded lexical priority. This point is obscured by Anscombe's original characterization of consequentialism as encompassing any moral theory that rejects absolutism (Anscombe 1958, 34–6).¹⁹

Put in the easily misleading terms of 'ends': the absolutist defender of the PCC(N) claims that there are some actions that no ends can justify, whereas the PCC(N)'s non-absolutist advocate claims that there are some actions that, in the contexts under scrutiny, no ends justify. In both claims the relevant 'ends' encompass the realization of competing moral norms, however these are themselves justified. Both defenders of the PCC(N) claim that the actions in question can nevertheless be morally acceptable

¹⁹ It is also easily obscured by Kant's own absolutism.

under specific attitudinal conditions. If this is correct, then the challenge that has to be met by the defender of the PCC(N) therefore does not concern the acceptability of non-consequentialist reasons for moral norms, but the acceptability of a relaxation of normative stringency in spite of the lack of an appropriate justification by reference to further moral norms.

But once one subtracts the idea that the relevant relaxation could be a consequence of the reduced attributability of the action's prohibited result, the challenge, when characterized in this way, looks to be unmeetable. Why should we relax a prohibition if there is no justification for doing so? Moreover, taking this claim together with our analysis of what it is to aim at one component of a package leads to absurd results. Remember that, in such a case, intending to bring about p rather than q is a matter of taking the prospect of bringing about the former proposition as the reason for one's overall stand, that is, it is a matter of seeing the prospect of p as justifying opting for (p and q). But if the PCC(N) does indeed spell out a principle of non-justified relaxation of a prohibition, then the following must be true: seeing the prospect of p as justifying also opting to bring about q must relax the prohibition on bringing about q without justifying bringing about q . That is, the normative relaxation would have to result from the falsity of the agent's perspective, according to which the prospect of p justifies also opting to bring about q . This would make the normative relaxation specified by the PCC(N) dependent on the agent's false belief in the existence of a justificatory relation. This would be a bizarre construction indeed.

Of course, it might be thought that this result is an artefact of a tendentious characterization of the central idea of the PCC(N). Perhaps what it aims to establish is incorrectly characterized as moral acceptability minus justifiability. The PCC(N) is, after all, a normative principle and ought perhaps therefore to be understood as itself providing a kind of justification, if a somewhat unusual one. Thus understood, it would stipulate that a person's opting for a compound proposition because she takes the prospect of one of its components to justify opting thus, functions as a justification for bringing about a second, otherwise forbidden component of her optative attitude's content.

There are two reasons why this cannot be right. One, it is implausible that an action's justifiability might be determined by the agent's taking it to be justified. Of course, where someone contravenes a norm in good faith, believing wrongly that there are considerations which justify that contravention, we may well hold the person less responsible for doing so than if the offence is a result of purely egoistic motives. But this would be an application of a mitigating principle of attribution, not of a justificatory principle.

Two, the doctrine thus understood would appear to be systematically dependent on moral agents adopting the very perspective it rejects. Where an agent takes the prospect of bringing about p to justify his opting for (p and q), in spite of the problematic character of bringing about q , he must have some reason for seeing things this way. Where we are dealing with examples that fall under conflicting moral norms, it is natural to assume that that reason refers to what the agent sees as the stronger justificatory power of a norm prescribing the bringing about of p than one condemning the bringing about of q . For instance, it appears that the reason why the collateral bomber pilot opts to bring about the children's deaths as part of the

package would have to be his belief that the prescription to end the war outweighs the prohibition on killing the children. But it is beliefs of this kind that the PCC(N) is supposed to be rejecting. In other words, if the PCC(N) is a correct justificatory principle, the justifiability of the agent's resolution of the moral dilemma looks like it would have to be dependent on him being wrong about the justifiability issue.

A theory that claimed this would not be self-contradictory. However, it would demand contradictory normative stances from moral agents and the moral theorist. Ironically, this is the very dissociation of practical and theoretical perspectives that 'deontologists' have frequently, and not implausibly, objected to in two-level utilitarian theories.

There is one last possibility open to the advocate of a justificatory understanding of the PCC(N). This would be to treat the justificatory path recommended by the principle as self-referential. In this version, the agent opting for (p and q), in spite of the prohibition of bringing about q , would do so not because he takes some norm recommending p to outweigh a norm proscribing q . Instead, he would opt as he does because he takes his opting for that reason to justify his action, including its various unpalatable consequences. The action would be justified by the attitudinal stance according to which it is justified by that same attitudinal stance.

This suggestion would avoid the inconsistency of the previous proposal. But in doing so, it would be all the more obviously subject to the objection that taking some behaviour to be justified does nothing to guarantee its justification. A moral norm which prescribed intentions that are about themselves would be directing agents to take what they take to be justificatory, rather than properties of their actions, as justificatory. It is difficult to see how what is called 'justification' here could be recognized as a form of justification at all.

5.2 Attitude evaluation

Throughout this discussion I have assumed that moral norms prescribe, prohibit or permit actions, that is, intentional bringings about of (static or dynamic) states of affairs.²⁰ The investigation of the 'doctrine of double effect' concerns the question of whether we have reason to accept permissions of actions – or a principle of diminished responsibility for norm contraventions – on the basis of a specific attitudinal constellation on the part of the action's agent. The result of this investigation is that we do not. However, this does not entail that we have no reason to accept moral norms for the evaluation of agent's attitudes. We certainly do so and there is a simple reason why we should: our understanding of a person's attitudinal constitution, in particular of her motivational constitution, is the decisive factor in our estimation of how she is likely to act in morally relevant contexts.²¹

20 "Intentional" is here, of course, not equivalent to "intended".

21 There is also a logical reason why motive evaluation is necessarily secondary relative to action evaluation: a motive is necessarily a motive to perform a specific type of action, that is, we need to specify an action type in order to individuate a motive in the first place. *A fortiori*, we need to specify a morally problematic action type in order to individuate a morally problematic motive.

What is of particular significance for our topic is the possibility of a gap opening up between our normative stance towards an agent's action and our stance towards the attitudinal constellation responsible for that action. There are cases in which, although someone has adhered faultlessly to the moral norms relevant for her action, we may nevertheless, in spite of condoning her action, also criticize the motives behind it. Under such circumstances, the positive evaluation of what the person does is tempered by the negative evaluation of an attitudinal set which disposes her, under conditions close to the one under scrutiny, to morally unacceptable behaviour.²²

In such cases the PCC(N) picks out a particular kind of attitudinal constellation for condemnation and conflates this attitudinal evaluation with the evaluation of the action it causes. It registers, for instance, that the attitudes of the 'teleological' bomber are at least *prima facie* more dubious than those of his 'collateralist' counterpart. It then moves illicitly from this judgement about the agents' attitudes to a judgement about their respective actions. However, not only should the conflation of the two levels of evaluation be avoided. Differentiation among the attitudinal features of agents that may merit moral criticism reveals that the distinction between intention and acceptance has no special status on this level either.²³

In order to see this it is important to compare cases in which the difference between intention and acceptance is not manifested in – however minimal – differences in the agent's actions. Particularly where we are dealing with complex, temporally extended actions, such cases may be difficult to describe plausibly. Someone who intends to bring about *p* will, as is emphasized by downstream conceptions of intention, typically (if not necessarily) devise ways of bringing about *p* and endeavour to do so. If this leads to fine adjustments in the action of the teleological bomber that are not present in the case of his collateral counterpart, then we are judging different actions and we do not need the PCC(N) to tell us what is wrong.

If, on the other hand, we restrict the objects of moral evaluation to agents' attitudinal constellations, there is no intrinsic reason for seeing intentions to contravene norms as morally worse than acceptances of one's doing so. Certainly, if someone has thought things through and opted to go for a morally problematic action, that tells more strongly against him than if he is merely the bearer of a corresponding desire, which he may be able to resist. Moreover, if he opts for a package deal, only *reluctantly* accepting certain morally prohibited consequences, then we will generally find his attitudinal configuration less morally unpalatable than if he takes the prospect of those consequences as the reason for his action. Nevertheless, we need to bear in mind that the acceptance of collateral consequences need by no means be reluctant. The fact that someone does not see the prospect of certain morally problematic consequences as the decisive reason for his action in some situation s_1 is perfectly compatible with his being disposed to take their prospect as such a decisive reason in closely related situations $s_2, s_3 \dots s_n$. Where an acceptance is a *welcoming* of collateral consequences, or derives from *indifference* to them, it may express a more dubious overall attitudinal constellation than an intention. The fact that the collateral

22 David McCarthy calls this a "mismatch" between first- and second-order morality. See McCarthy 2002, 629, 634–9.

23 This point is made forcefully by McCarthy in the aforementioned article.

bomber acts as he does because he happens to believe that destroying the munitions depot is the best military option does not exclude his readiness to intend to kill as many children as might turn out to be necessary. He may not care about the children in the slightest. In fact, there is nothing in scenario (iii) that excludes him being a sadist who acts for military reasons, whilst positively revelling in the destruction of innocent lives he also happens to be causing. His teleological counterpart, on the other hand, may only have decided to kill the children after agonizing about how to reconcile his belief that this is the only way to end the war with his moral aversion to doing such a deed.²⁴ Thus it may be the case that there are far more circumstances under which the collateral bomber would be prepared to kill the children than there are circumstances under which this is true of his teleological counterpart.

Because taking some consideration as the decisive reason for action in one situation is frequently an indication of the propensity to do so in similar situations, intentions are important objects of the moral evaluation of agents' attitudinal sets. However, as indicators of such counterfactual tendencies, they are not necessarily superior to acceptances. Clearly then, although the PCC(N) draws on valid intuitions concerning the moral importance of agents' attitudinal sets, it not only conflates the primary norms of action evaluation with the secondary norms for the evaluation of attitudes, it also misrepresents the latter.

6. The double failure

The principle of collateral consequences, the attitudinally based core principle of the so-called doctrine of double effect, should, I conclude, be rejected: no intrinsic moral significance attaches to the distinction between intending and accepting. The reconstruction of the intuitions that invest it with moral import suggests that they may be given form by one of two versions of the principle, where the first is responsibility-theoretic and the second, closer to the official wording of the 'doctrine', normative in the narrow sense. In the light of the upstream analysis of the distinction between intending and accepting the conjoins of a compound intention, the PCC fails to convince in both variants.

The intuitions behind the PCC(R) are not difficult to articulate: where an agent takes the prospect of bringing about p to justify his opting to bring about (p and q), this tends to correlate with a lower subjective probability of his bringing about the collateral consequence q . This fact, not its dependence on the intention/acceptance distinction, may justify seeing some norm contravention on the part of the agent as less attributable to him.

In contrast, when the PCC is construed in terms of permissibility, its status and rationale become considerably more difficult to fathom. In an attempt to do so, two interpretations of the normative version of the principle were discussed. According to the first, the principle stipulates the normative relaxation of a prohibition in spite of the lack of a justification of the action thus allowed; according to the second, the

²⁴ Indeed, acquiring the intention to kill the children is compatible with failing to carry it out as a result of weakness of will.

PCC(N) is a normative principle that justifies the action in the standard manner. The first reading makes the relaxation of the prohibition dependent on a false justificatory perspective on the part of the agent. The second either makes the exception to the prohibition dependent on the validity of justificatory mechanisms the PCC(N) is supposed to supplant, or else makes the agent's justificatory perspective self-referential. In the former variant the PCC(N) becomes redundant; in the latter it loses all appearance of being an account of justification. The most plausible explanation of the PCC(N) seems to lie in a conflation of action evaluations and attitude evaluations. Even here, however, the distinction between intention and acceptance need not be morally decisive.²⁵

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