Law and morality both view intention as an important determinant of the quality of a person’s action. Oliver Wendell Holmes, Jr., wrote, famously, “[e]ven a dog distinguishes between being stumbled over and being kicked.”

Perhaps nowhere is this matter of intention more significant than when it comes to death.

It is precisely this difference between unintended consequences and intentional acts that grounds the Catholic moral principle of double effect. St. Thomas Aquinas defended killing in self-defense as an unintended consequence of saving oneself, and thus no violation of the prohibition against murdering the innocent: “The act of self-defense can have a double effect: the preservation of one’s own life; and the killing of the aggressor .... The one is intended, the other is not.”

This essay will explore the application of the principle of double effect to the relief of pain in the sick and suffering. Some would claim, for example, that Jack Kevorkian kills his patients not for the sake of killing them, but in order to relieve pain and suffering. Would that be an appropriate application of the principle?

Since he currently sits in jail for murder, evidently not. But how does the principle work? As summarized by Germain Grisez, the principle allows one to

... perform an act having two effects, one good and the other bad, if four conditions are fulfilled simultaneously: 1) [t]he act must not be wrong in itself, even apart from consideration of the bad effect … 2) [t]he agent’s intention

\footnote{1}{\textit{The Common Law} 7 (Mark DeWulf Howe ed. 1963).}

\footnote{2}{\textit{Summa theologiae}, II–II, 64, 7, as quoted in \textit{Catechism of the Catholic Church} (2d ed. 2000), n. 2263.}
must be right … 3) [t]he evil effect must not be a means to the good effect … 4) [t]here must be a proportionately grave reason to justify the act.3

Kevorkian administers, say, carbon monoxide to a person. The act results in two effects, one good, the elimination of pain, and the other bad, the death of the person. Is the act wrong in itself, apart from the resulting death? The question hardly even makes sense. For to kill an innocent person is intrinsically immoral, regardless of any good effect that might result from it. What is the act of the agent if it is not to kill the person in order to relieve the pain? If we say instead, that the action of a Kevorkian is not to kill the person, but to alleviate the pain, then it is still the case that he administers a poison without a known therapeutic use. If the drug were morphine, which is a known analgesic, and it were administered in appropriate dosages, then the act need not be wrong in itself. But if a drug is used to kill a patient, then regardless of whether we say he acts to kill or to relieve pain, the act fails the first condition of justified use of the principle of the double effect.

What about the second condition, that the agent’s intention be upright? Again Kevorkian seems to flunk. For surely he intends the death of the patient and not just the alleviation of pain, since the administration of a poison whose only direct effect is to cause death necessarily includes the intent to kill. At best, his intent is the alleviation of pain by means of killing the patient.

He also runs afoul of the third condition required by the principle: that the evil effect not be a means to the good effect. His action, in fact, meets Pope John Paul II’s definition of euthanasia in the Gospel of Life, “an action or omission which of itself and by intention causes death, with the purpose of eliminating all suffering.”4

Nor is the fourth condition apparently satisfied: a proportionately grave reason for the act. In the context of palliative care, treatments that might result in shortening a patient’s life or even in a suppressing of consciousness are permitted in order to alleviate suffering so that the patient might prepare for death in as comfortable a manner as possible. The use of a drug to kill a patient cannot be a part of compassionate medical or palliative care.5 As Pope Paul VI taught in Humanae vitae:

Though it is true that sometimes it is lawful to tolerate a lesser moral evil in order to avoid a greater evil or in order to promote a greater good, it is never lawful, even for the gravest reasons, to do evil that good may come of it (cf. Rom 3:8)—in other words, to intend directly something which of its very nature contradicts the moral order, and which must therefore be judged unworthy of man, even though the intention is to protect or promote the welfare of an individual, of a family or of society in general.6

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6 Humanae vitae (July 25, 1968), n. 14: AAS 60 (1968), 490–91.
Killing someone to prevent suffering is a clear case of doing evil so that good might come of it and thus a violation of the objective moral order.

The principle of double effect depends upon the distinction between what is intended in human actions and what is merely permitted or accepted as an unintended side effect. John Finnis explains:

If we decide to kill our child or our aged aunt to collect on the insurance or the will, we may then settle on doing it with a pillow or a needle, or on achieving the same end simply by omitting to supply food. Either way, we have chosen an act of murder; bringing about death was built into the proposal, as the means we adopted in adopting that proposal by choice. Conversely, states of affairs which are connected, perhaps even very closely and directly, with the carrying out and the outcome of one’s action, but which are neither needed nor wanted as part of one’s way of bringing about what one proposes to do and bring about are unintended effects, side effects. Though they are caused by one’s choice and action, they are not chosen, that is, are not intended, even if they are foreseen (even foreseen as certain). Rather, they are permitted, that is, (as I shall say), accepted. Certainly one has moral responsibility for what one thus knowingly and ‘deliberately’ causes or brings about. But that responsibility is not the same as one’s responsibility for what one chooses (intends) as part (whether as end or means) of one’s proposal.7

To intentionally kill someone in order to relieve suffering is the moral opposite of an act that relieves suffering but that unintentionally results in the shortening of a human life.

The Catechism of the Catholic Church applies this distinction to the situation of alleviating the sufferings of the dying in this way:

The use of painkillers … even at the risk of shortening their days, can be morally in conformity with human dignity if death is not willed as either an end or a means, but only foreseen and tolerated as inevitable. Palliative care is a special form of disinterested charity. As such it should be encouraged.8

The use of double effect, therefore, permits death as a foreseen but unintended side effect. Palliative care should not be withheld for fear that pain relief might lead to an earlier death of the patient.

Leading cases involving the unfortunately named “right to die” employ the principle of double effect, giving it a certain legal recognition. In a 1976 case, the father of Karen Ann Quinlan, a woman in a comatose condition who was being kept alive on a respirator, sought permission to disconnect his daughter from a respirator. The New Jersey Supreme Court noted that the father’s request was supported by his parish priest and Catholic hospital chaplain, and indeed by Bishop Lawrence B. Casey, as the termination of an extraordinary means of treatment not required by Church teaching:

The interruption of attempts at resuscitation, even when it causes the arrest of circulation, is not more than an indirect cause of the cessation of life, and we must apply in this case the principle of double effect.9


8 Catechism of the Catholic Church, n. 2279.
The Court noted that the Catholic view was considered “only in the aspect of its impact upon the conscience, motivation and purpose of the intending guardian, Joseph Quinlan, and not as a precedent in terms of the civil law.”

Ten years later, in the 1986 case of *Brophy v. New England Sinai Hospital, Inc.*, the Massachusetts Supreme Judicial Court approved the disconnection of Mr. Brophy’s feeding tube because he was in a persistent vegetative state. Justice Joseph Nolan issued a ringing dissent, claiming with some plausibility, that

> [t]he process of feeding is simply not medical treatment and is not invasive, as that word is used in this context. Food and water are basic human needs. They are not medicines and feeding them to a patient is just not medical treatment. Because of this faulty premise, the court’s conclusions must inevitably fall under the weight of logic. In the forum of ethics, despite the opinion’s high-blown language to the contrary, the court today has endorsed euthanasia and suicide. Suicide is direct self-destruction and is intrinsically evil. No set of circumstances can make it moral. Paul Brophy will die as a direct result of the cessation of feeding. The ethical principle of double effect is totally inapplicable here … He will die as a direct result of the refusal to feed him. He will starve to death, and the court approves his death.

In 1997 the United States Supreme Court rejected claims of a constitutional right to physician-assisted suicide. Lower federal appeals courts on the east and west coast had asserted such a right on various bases: the equal protection provision or the due process provision of the Fourteenth Amendment to the U.S. Constitution. In doing so, these courts had invoked a questionable version of the principle of the double effect, effectively endorsing Kevorkian’s twisted logic, at least as far as assisted suicide goes, that there is no difference between effective pain relief without intending to kill, and intending to kill to bring about pain relief. Judge Kleinfeld, a Circuit Judge on the Ninth Circuit, dissented as follows:

> [T]he majority says there is ‘little, if any, difference for constitutional or ethical purposes’ between providing pain killing medication for the purpose of relieving pain, knowing that it will at some dosage cause death, and providing medication for the sole purpose of causing death … I think the majority’s proposition is exactly wrong. When General Eisenhower ordered American soldiers onto the beaches of Normandy, he knew that he was sending many American soldiers to certain death, despite his best efforts to minimize casualties. His purpose, though, was to liberate the beaches, liberate France, and liberate Europe from the Nazis. The majority’s theory of ethics would imply that this purpose was legally and ethically indistinguishable from a purpose of killing American soldiers. Knowledge of an undesired consequence does not imply that the actor intends that consequence. A physician who administers pain medication

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10 Id. at 659.
with the purpose of relieving pain, doing his best to avert death, is no murderer, despite his knowledge that as the necessary dosage rises, it will produce the undesired consequence of death.\textsuperscript{13}

Once again, the dissent proved more plausible than the majority opinion, as was demonstrated when the Supreme Court reversed the lower court decision.

Pope John Paul II summarized the Catholic teaching on pain relief in the \textit{Gospel of Life} as follows:

Pius XII affirmed that it is licit to relieve pain by narcotics, even when the result is decreased consciousness and a shortening of life, ‘if no other means exist, and if, in the given circumstances, this does not prevent the carrying out of other religious and moral duties.’ In such a case, death is not willed or sought, even though for reasonable motives one runs the risk of it: there is simply a desire to ease pain effectively by using the analgesics which medicine provides. All the same, ‘it is not right to deprive the dying person of consciousness without a serious reason’: as they approach death people ought to be able to satisfy their moral and family duties, and above all they ought to be able to prepare in a fully conscious way for their definitive meeting with God.\textsuperscript{14}

The Catholic position on death is that it may never be directly intended, though it may be accepted as an unintended side effect of sufficiently worthwhile projects like the relief of pain or witnessing to the truth of faith. In such a case, death is a double effect of the voluntary action, but is not part of the intention, even when death is foreseen as inevitable. As Abraham Lincoln noted, in the course of his campaign for Senate in 1858, “I have often expressed an expectation to die, but I have never expressed a \textit{wish} to die.”\textsuperscript{15}


\textsuperscript{14} \textit{Evangelium vitae}, n. 65 (internal citations omitted).

\textsuperscript{15} Speech at Springfield, Illinois, July 17, 1858, \textit{Abraham Lincoln: Speeches and Writings, 1832–1848} (Library of America, 1989), 470.