

【논문】

Intending as a Means and Foreseeing with Certainty¹⁾

- On the Doctrine of Double Effect -

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【Abstract】 The main aim of this paper is to show that both the traditional doctrine of double effect (DDE) and Warren Quinn's revised version fail to capture the morally significant element accurately in the agent's fundamental attitude. First, against traditional DDE, I argue that acting with an intention of harming others as a means to accomplish one's own end is no more defective than acting with a clear foresight of the harm as an inevitable side effect of accomplishment of that end; i.e., the latter is no easier to justify than the former. Second, against Quinn's revised DDE, I argue that whether other people's harm contributes to achieving one's ends is not in itself relevant in evaluating the moral character of the agent's attitude; his distinction between direct and indirect agency fails to capture moral difference accurately.

1) I owe special thanks to Michael and anonymous judges for helpful comments on this essay.

I. Introduction

Intentions matter in the moral evaluation of human actions. But which aspects of intentions should be considered in making moral distinction is a complex issue. The Doctrine of Double Effect (for short, DDE)²⁾ has been a useful method, especially for deontologists, of making a subtle distinction in dilemma cases where the consequences are similar but seems to hold moral difference. According to traditional DDE, the pursuit of a good tends to be less acceptable where a resulting harm is *intended as a means* than where it is merely *foreseen as a side effect*.³⁾ However, whether and why such a distinction makes morally significant difference is a matter of constant controversy. Although making a psychological distinction between what is intended and what is merely foreseen might be possible, whether the distinction holds any moral significance is another question. Warren Quinn thought the traditional DDE is inadequate both descriptively and normatively, and suggested an alternative distinction between direct and indirect agency. Still, whether this revised version of DDE can serve as a reliable moral standard is debatable as well.

The main aim of this paper is to show that both approaches fail to accurately capture the morally significant element in the agent's fundamental attitude. First, against the traditional DDE, I argue that acting with an intention of harming others as a means to accomplish one's own end is not more defective than acting with a clear foresight of the harm as an inevitable side effect of

2) It is also called in other various names, such as the *rule*, *principle*, or *dogma* of double effect.

3) Some calls the latter "indirectly (or obliquely)" intended as opposed to "directly" intended. (e.g. Foot (1967) p. 20)

accomplishment of that end; i.e., the latter is no easier to justify than the former. Second, against Quinn's revised DDE, I argue that whether other people's harm contributes to achieving one's ends is not in itself relevant in evaluating the moral character of the agent's attitude. Quinn's distinction between direct and indirect agency fails to accurately capture moral difference.

II

1. Traditional DDE and Quinn's revision

DDE is traced back at least to Thomas Aquinas's *Summa Theologica* (II-II, Qu. 64, Art. 7), where he argues that killing one's assailant is justified, provided one does not intend to kill him.⁴⁾ However, there have been controversies over how to formulate DDE accurately. Joseph Mangan provided standard conditions for the application of DDE, which show what most proponents of this doctrine have shared:

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

1. that the action in itself from its very object be good or at least indifferent;
2. that the good effect and not the evil effect be intended;
3. that the good effect be not produced by means of the evil effect;
4. that there be a proportionately grave reason for permitting the evil effect".⁵⁾

4) Aquinas (1988)

5) Mangan (1949) p. 43

Each of these conditions, however, has been a matter of considerable controversy. For example, the first condition has been completely rejected by many consequentialist moral philosophers because it implies that there is some criterion other than an evaluation of the consequences for determining the moral character of the proposed action. Also, the fourth condition has been criticized as including consequentialist character, while the other three are apparently anti-consequential, in that it rests on the graveness of the consequences in judging moral character of an action. However, in this essay, I focus on only the second and third conditions which assign different moral value to intending evil effect as a means and to merely foreseeing it as side effect.⁶⁾

Warren Quinn, unsatisfied by the traditional conditions, argued that DDE is better formulated by using a distinction between direct and indirect agency:

[DDE] distinguishes between agency in which harm comes to some victims, at least in part, from the agent's deliberately involving them in something in order to further his purpose precisely by way of their being so involved (agency in which they figure as *intentional objects*), and harmful agency in which either nothing is in that way intended for the victims or what is so intended does not contribute to their harm.⁷⁾

However, from my point of view, traditional and Quinian DDE are both inadequate. The fact that an effect is not intended does not

6) Some philosophers (e.g. Boyle (1991) p. 476) have reduced four conditions into two: (1) the harms are not intended but brought about as side effects; and (2) there are sufficiently serious moral reasons for doing what bring about such harms. In such a case, I will focus only on the former.

7) Quinn (1989) p. 343

necessarily mean that the agent is less responsible for it than when it is intended. For, as John Searle correctly points out, “we hold people responsible for many things they do not intend and we do not hold them responsible for many things they do intend.”⁸⁾ Even though we might be able to make a psychological distinction between directly and indirectly intending harm, whether the distinction reveals moral difference is another problem. Moreover, sometimes, an agent is no less responsible for the effect when it was merely foreseen than when it was intended as a means. I will explain my point primarily using Quinn’s example:

In the Case of the Strategic Bomber (SB), a pilot bombs an enemy factory in order to destroy its productive capacity. But in doing this he foresees that he will kill innocent civilians who live nearby...[and] the Case of the Terror Bomber (TB), who deliberately kills innocent civilians in order to demoralize the enemy.⁹⁾

2. Intending as a Means and Foreseeing with Certainty

1) Intention, Plan, and Responsibility

After forming an intention, in order to act on it, we form a plan. Ian Smith defines a plan as follows:

A plan is a method of achieving an agent’s purpose that is developed to a sufficiently specified extent *prior to* the agent’s

8) Searle (1983) p. 103

9) Quinn (1989) p. 336 Quinn assumes that the morally relevant consequences (e.g. the number of victims) in each case are about the same, in order to avoid other moral controversies such as ‘proportionality condition.’ I am following his line in this paper. Thus, I am not committed to whether an agent’s intending to kill innocent people is a sufficient reason to morally blame her.

carrying out her purpose. A plan is sufficiently specified if the implementation of it can be expected to successfully achieve the agent's purpose, given the *anticipated* environmental conditions within which the plan is to be implemented.¹⁰⁾

It is a decent explanation of what a plan is. One problem with this notion of plan, however, is that Smith seems to think of the process of forming a plan as done independently of other possible plans in one's mind. We do not make plans in such a simple and separated way; for the most time, we weigh one plan against another before we decide to act on it. If the goal in plan *A* conflicts with the more important one in plan *B*, for example, we would modify or even totally give up the former. Suppose that John aims at achieving the goal of plan *A*, but still enforce this plan even knowing that it will frustrate plan *B*. If so, we can justifiably say that he *values* what is achieved through plan *A* *over* that of *B*. Take SB's plan *S*, which is defeating the enemy by bombing their munitions factory. In this simplified version, which has only means-end structure, the plan does not include 'causing civilians to die.' Next, take TB's plan *T*, which is defeating the enemy by killing civilians and thus demoralizing the enemy. Plan *T*, unlike plan *S*, includes 'causing civilians to die' in its means-end structure. If the strategic bomber were too obsessed by the mission of bombing the factory, and thus failed to foresee the following death of innocent people around it, then it might be at least a little bit easier to justify his action than the terror bomber's action. However, in our example, the strategic bomber foresees with high probability (probability of 1, perhaps) that many people will die as a consequence of the bombing. Even if he wishes he could destroy the factory without harming any people, it is

10) Smith (2007) p. 351

just a wish, and not a realistic possibility in his mind; that is, he clearly expects that, say, without a miracle, people will die due to his bombing. Is there any moral difference between the terror bomber and the strategic bomber?

One possible answer to this question is that the terror bomber's action is morally worse than the strategic bomber, because the former's plan includes killing civilians while the latter's does not. However, such an answer is a result of misunderstanding how we actually make plans. Before we decide the plan to act on, we weigh various possible plans and choose one over another. For example, consider how you deliberate when you decide whether to take a pill. If you feel so much pain in your head, you would consider various means to alleviate the pain. Suppose that plan *M* is just to massage your head and take some rest, while plan *P* is to take a pill on the shelf. You know the second plan is more efficient when it comes to stopping your pain than the first. However, the pill's efficacy is not the sole factor that you should take into consideration when choosing a plan to act on. Suppose that, when you are about to take the pill, you find a warning message about the side effect on its case: "it will *certainly* cause serious damage to your eyesight".¹¹⁾ (Note that the expected damage to eyesight does not make any contribution to alleviating the headache, like people's sacrifice in SB.) Now, would you still be willing to enforce plan *P*? You would not, unless you place much less value on your sight than ordinary people do. If you carry out this plan even after clearly foreseeing the side effect, it means you *value* alleviation of your present headache *over* your future eyesight.¹²⁾ Or, if you think keeping your eyesight intact is more important

11) Let's assume that you firmly believe these words.

than relieving the temporary pain on your head, you would give up the plan *P* and act on alternative plans available-here, the plan *M*. Even though your current short-term end is to relieve the headache, from a larger perspective, keeping your health would be a more important end for you.

In this way, we weigh our values from a broad perspective in making plans. What is more valuable from a broader perspective serves as a kind of *constraint* in choosing a plan. This is why our candidate plans are not equal in their value. Due to this difference in value, as our deliberation process goes on, some of them fade out while others rise on the surface of our consciousness. The plans that an agent makes often involve complex causal paths. If she foresees a horribly bad event on the path with a high probability, there is a reason not to choose that plan; she would be at least *prima facie* blameworthy if she chooses it. Therefore, giving up some plans and choosing others are kinds of planning from a larger perspective and this sort of planning is one important way of exercising one's agency.

Now, let's go back to our case of TB and SB. As we have seen above, plan *S* does not include 'causing civilians to die', while plan *T* does. Is it more justified than what TB pilot has done? I do not think so. Although the plan *S* itself does not include it, the strategic bomber did not give up this plan even if he has clearly foreseen the death of innocent people. In other words, the strategic bomber enforced the plan *S* with clear foresight of the horrible side effect. It indicates that he *valued* destroying the factory *over* keeping

12) Given that there is no weakness of will or other kinds of irrationality.

I owe this point to Michael Michael, who is a professor in Underwood International College, Yonsei University. (c.f. "Seeing is not Believing (2008)")

people around it alive. The fact that the sacrifice of the victims was just a side effect, not an intended means does not make it any easier to justify the bombing. For the strategic bomber's consideration about the horrible side effect failed to serve as a sufficient reason to refrain from bombing the factory. The strategic bomber cannot escape or even reduce his moral responsibility merely by saying "I only acted on plan *S* (that is, defeating the enemy by bombing their munitions factory). I didn't mean to kill the civilians!" If he did not know that his bombing will cause innocent civilians to die, it might be considered as an extenuating circumstance and he would be held responsible for his negligence, not for his evil attitude. By contrast, if he enforced plan *S*, even clearly foreseeing their death, because he thought it was inevitable for his purpose, he should bear *at least as much responsibility* for their sacrifice as the terror bomber.

The strategic bomber might try to avoid the responsibility by saying "It broke my heart! I wished I could accomplish my end without causing them to die!" But the terror bomber can make exactly the same kind of excuse as well. As Jonathan Bennett argues, "the terror bomber does not...need the civilians actually to be dead. He only need needs them to be as good as dead and to seem dead until the war ends. If by some miracle they "came back to life" after the war was over, he would not object."¹³) It might be the case that he takes this miracle as a good fortune for him, as well as for them. In this sense, the terror bomber, like the strategic bomber, can say the same words: "It broke my heart! I wished I could accomplish my end without causing them to die!" But in reality, such a miracle does not happen in TB or SB and both

13) See Bennett (1981) p. 111; recited from Quinn (1989) p. 337

bombers clearly know it. And both foresee that their bombing will cause many innocent civilians' death, and both know that, in actuality, there is no other way to achieve their own ends. But still, both enforce their bombing even clearly foreseeing the horrible consequences of their actions.

What makes the moral difference between these cases? If one of them should bear moral responsibility, then the other, *ceteris paribus*, should bear it to the same extent. Also, if one of them should get punished, then the punishment inflicted on the other should be equally heavy. In short, they are equal in the moral character of their fundamental attitudes toward the victims.¹⁴⁾

2) Subjective Probability versus 'Closeness'

Note that I am not appealing to the notion of 'closeness' of the connection between what is intended in a strict sense and the foreseen harm. Philosophers who depend on this notion in capturing moral difference in 'double effect' cases claim that, if the connection is close enough, DDE should treat the harm as if it were strictly intended. Herbert L.A. Hart gives us an example of shattering a glass. Suppose that someone violently strikes a glass in order to hear the sound of the initial impact. Hart says that making the sound and shattering the glass are "so immediately and invariably" connected with each other that the connection seems conceptual rather than contingent.¹⁵⁾ However, this notion of 'closeness' has

14) Someone might try to differentiate TB and SB by saying that the terror bomber relishes carrying out his plan, while the strategic bomber does not. If the case is modified in such a way, however, it would not be *'ceteris paribus'* any more. And in that case, I am willing to admit that the former's moral attitude is more defective than the latter.

15) Hart (1968) p. 120

many defects as a standard of distinguishing what is strictly intended from what is merely foreseen. Let me point out the problems with Hart's notion of closeness and argue that agent's *subjective probability* about the connection can better reflect the moral difference in attitudes than 'closeness.'

First, the (harmful) outcome does not have to follow the intended result 'immediately.' Suppose that the strategic bomber destroy the factory with atomic bomb, which will cause the civilians to die several years later. In this case, he still should be held responsible for their 'late' death. Second, the connection does not have to be 'invariable' in general. For example, in SB, the action type of bombing a munitions factory does not have to generally cause the event of civilians' death. Quinn worries about the notion of closeness and says, "if we try to get round [closeness's relativity] problem by saying that the doctrine discriminates against a choice in which anything that is strictly intended is also closely connected with death or harm, the doctrine will make uninviting moral distinctions."¹⁶ He worries that, according to the 'closeness' standard, a strategic bomber bombing an automobile factory should be evaluated as better than one who bombs a munitions factory just because "no automobile factories have ever existed completely apart from civilian populations"¹⁷-that is, just because bombing automobile factories *generally* cause civilians to die-while bombing munitions factories does not. From my view, however, we do not have to care about the general effect of bombing automobile factory or that of bombing munitions factory. Admittedly, some tokens of bombing a munitions factory would not cause people's death while others

16) Quinn (1989) p. 339

17) *Ibid.*

would. But what really matters in evaluating intention is whether the intended result causes the harm in the *particular* case in which the agent is involved. Considering these problems, what we should consider in evaluating intention is the agent's *subjective probability*, not objective probability or 'closeness'. Intending includes foreseeing, because we cannot intend to do something that the agent does not foresee as will be caused by her action. If we human beings were omniscient, there would be no difference between what is foreseen and what actually happens. But in reality, we do not know all the actual causal connections, and this is why we have to rely on our imperfect subjective probability in realizing our intention in the world. Strictly speaking, not being omniscient God, we cannot literally 'know' what effect our action will actually cause in the future; all we can do is to attempt to make the most accurate expectation about the future. As such limited creatures, when an agent did not foresee a bad effect will be caused by her action, we take it into consideration in moral evaluation of her. Thus, the actual closeness between the events does not matter at least in evaluating *intention*. What is important is the agent's subjective probability about the causal connection between achieving the end and other events.

However, there are many things we expect to happen in the future *with certainty*. If you intend to shatter a glass, you expect with certainty that it will make at least some sound. It is possible, in principle, that when you shatter a glass, for some reason, it happen to make no sound. Still, this fact does not matter in evaluating your intention. What matters is your subjective probability. The more certain your subjective probability about the outcome of your action is, the more responsible you are for that

outcome. The only requirement for an agent's foreseeing the resulted harm with certainty is her firm belief about the close connection between them. There are various candidates for such subjective connection:

- 1) Conceptual necessity: "If I kill this bachelor, a man will die."
- 2) Physical necessity: "If I jump from a height of one hundred meters, I shall be dead."
- 3) Empirical probability: "If I slap Jane on her cheek, she will cry."

No matter what kind of connection an agent holds in her mind, she is foreseeing the harm with certainty, only if she *firmly believes* that there is a close connection between the antecedent and the consequent.

The commonsensical moral intuition that intending harm as a means is worse than 'merely' foreseeing it can be explained with the notion of subjective probability. It is because we are often uncertain about the future that merely foreseeing harm seems less defective than intending it as a means. This means that the degree of subjective certainty can oftentimes reveal moral difference. In forming a plan to act on, the agent considers the subjective probability that the event will actually follow her action. Suppose that the pilot in SB foresee the death of civilians with probability of 1, while the pilot in SB* with probability of 10%. It seems to be harder, *ceteris paribus*, to justify SB than SB*. Let us suppose that the pilot in SB* would give up the plan *S* if his subjective probability is 1, but would push it through if 10%; and suppose that one in SB would push his plan through no matter how high his subjective probability of the harm. Doesn't the attitude of the former seem at least better, *ceteris paribus*, than the latter? It shows

that a counterfactual test differentiating the degree of subjective probability can help us see moral difference.

Now, let's turn our attention to TB. If the terror bomber's subjective probability of the civilians' death is 1, he would decidedly carry out plan *T*. What if the probability is only 10%? It might be the case that he give up plan *T* if the probability is that low, but for different reason from the pilot in SB*, say, because he thought it would be a waste of bombs.¹⁸⁾ This terror bomber reveals a morally defective attitude, whether or not he cares about the subjective probability, because he is ready to kill innocents in order to achieve his end. However, the strategic bomber who enforces plan *S* with subjective probability of 1 seems no less defective than the terror bomber in this respect. Both are the same in that they did not count the sacrifice of the victims as a sufficient reason not to bomb their target; both regard winning the war as a countervailing consideration that justifies harming people; both show equally defective attitudes in that they regard their end as so important that they are willing to enforce the original plan, *whatever it takes*; and both *value* their ends *over* the civilians'

18) M. Michael argues as follows (in his unpublished comment):

TB may carry out his plan even though he thinks the probability of success is only 10%. But in doing so, he seems so much morally worse than SB in the case where he too thinks there is only a 10% chance of deaths (even though he would do the same if the chance were 100%). This seems to count against your explanation, as it is further evidence that our intuition that there is a moral difference between the two cases is independent of subjective probability.

However, what makes a moral difference between TB and SB in this case is the *reason* for bombing, not subjective probability about people's death. Even though subjective probability matters in evaluating the intention of SB and SB*, it is not the only factor making a moral difference. Therefore, the intuition that TB seems morally worse than SB even though their subjectivity probability is the same does not go against my explanation.

lives. According to Tim Scanlon, intention of an agent provides us with three kinds of information about the agent and the action:

- 1) how she expects to move her body and to affect the world around her
- 2) what she believes about her situation and the likely effects of her action
- 3) how she evaluate these factors-which she sees as reasons for acting the way she plans to act, which as costs to be avoided if possible, which as costs to be borne, which as inconsequential.¹⁹⁾

We can see that both the strategic and terror bombers expected their bombing will cause civilians to die. And we can see that both have no morally significant difference in evaluating relevant factors: both regarded the civilians' death as 'costs to be borne.' Hence, there is no moral difference between intending harm as a means and foreseeing it with certainty.

3. Not treating as an end in itself *versus* Treating as a means

It is time to deal with Quinn's revised version of DDE. As mentioned above, unlike traditional DDE, his version distinguishes *direct* and *indirect* agency. However, I think his version of DDE makes an uninviting moral distinction. Let me explain my point with TB and SB again.

The pilots in both cases are the same in failing to treat a person as an end in itself in both cases. But Quinn wants to make a further distinction. He "draws a sharp moral line between adversely

19) Scanlon (2008) p. 11

affecting someone in the pursuit of an end that he does not share (not treating him as an end in itself) and adversely affecting someone because his being so affected is strategically important to achieving an end that he does not share (very roughly, treating him as a means).”²⁰⁾ And he concludes the terror bomber’s action is more defective than the strategic bomber on the ground that “only the former treats them as something like means.”²¹⁾ In this sense, he goes beyond Kant, who focuses on the alleged status of people as ends in themselves, although his rationale for this distinction is still quite Kantian. He says as follows:

What seems especially amiss in relations of direct harmful agency is the particular way in which victims enter into an agent’s strategic thinking. An indirect agent may be certain that his pursuit of a goal will leave victims in its wake. But this is not because their involvement in what he does or does not do will be useful to his end. The agent of direct harm, on the other hand, has something in mind for his victims—he proposes to involve them in some circumstance that will be useful to him precisely because it involves them. He sees them as *material* to be strategically shaped or framed by his agency.²²⁾

And he goes on:

Someone who harms by direct agency must therefore take up a distinctive attitude toward his victims. He must treat them as if they were then and there *for* his purposes. But indirect harming is different. Those who simply stand unwillingly to be harmed by a strategy—those who will be incidentally rather than usefully affected—are not viewed strategically at all and therefore not treated as for

20) Quinn (1989) p. 350, note 25

21) *Ibid.*

22) Quinn (1989) p. 348 (My emphasis)

the agent's purposes rather than their own.²³⁾

I agree with Quinn insofar as treating a person as a *mere material* is to show unacceptable disrespect to her. I do not see, however, why treating a person as a *useful material* is *more* disrespectful than treating her as just a material. I believe, following Kant, that the point of disrespectful attitude is *not* treating a person as an *end in itself*. If a person is already degraded to the status of non-person, the fact that she is used as a means does not add more disrespect to it. Suppose that Amy and Bob have their own chairs. Amy breaks the chair and uses it as a means to warm the room by putting it in a fireplace. On the other hand, Bob merely foresees that the chair will be broken down when he climb on it in order to take candy from the shelf. Does Amy show more disrespect to the chair than Bob? The answer is 'No', since both are the same in that they are already treating it as a mere material. Being a material, using it in a way advantageous to one's end does not add any negative element to it.

The fact that the terror bomber uses the victims' sacrifice as a means to achieve his end without their agreement shows that he does not respect their autonomy. But the fact that the strategic bomber enforces plan *S*, even foreseeing innocent civilians' death with certainty, can also be a clear sign of his treating the victims not as ends in themselves but as a mere material. As I have emphasized repeatedly, the strategic bomber's attitude is as defective as the terror bomber in bombing the factory, because he is, like the latter, ready to cause innocents to die in order to accomplish his end. But should we consider whether the harm is conducive to his

23) *Ibid.*

end in evaluating the attitude in action? I do not think so. It is true that the victims' sacrifice in SB did not contribute to achieving the strategic bomber's purpose, but whether it contributes to the end or not is no more than a contingent matter. The counterfactual test Ian Smith suggested would be useful in evaluating agent's attitude in acting at this point. Smith says as follows:

In discussing whether the bomber's agency is IHA [indirect harmful agency] or DHA [direct harmful agency], we ask whether her *original* plan would need to be modified based on changing circumstances concerning the victim, not what her plan might have been, independently of what the original plan actually is.²⁴⁾

This is the test Smith suggests to sort out Quinn's direct and indirect agency in a more accurate way. The terror bomber would change his original plan if the victims find out shelters near the bombing spot, while the strategic bomber would not. Thus, according to this test, the former shows direct harming agency and the latter indirect one. Ironically, this test, which is introduced for the purpose of providing a new support for Quinn's descriptive direct/indirect agency distinction, is also useful for criticizing Quinn's rationale for the normativity of this distinction. Suppose that the strategic bomber's original plan was to bomb the munitions factory, expecting that no civilians will be sacrificed. And suppose that the circumstance has changed and he now foresees that bombing the factory will take a heavy toll of innocent lives. If he modify his plan based on this changed circumstances concerning the victim, then his attitude would be, *ceteris paribus*, at least a little bit better than the terror bomber's attitude. By contrast, if he force

24) Smith (2007) p. 352

his original plan through, despite the circumstantial change, then his attitude is as defective as the terror bomber's; for it means that the latter kind of strategic bomber is ready to kill innocents in order to achieve his end. In other words, he *values* his end *over* innocent people's lives. Whether the victims' death is an advantage or a difficulty in achieving his end is no more than a contingent circumstantial matter, since he is ready to carry out his original plan anyway. The strategic bomber in Quinn's case was clearly aware of the side effect that his bombing will cause, and thus his attitude is no better than the terror bomber's.

The crucial point of Kantian rationale is whether one treats others as ends in themselves or not; whether the harming occurs as a means or side effects achieving the end does not matter. Quinn claims that what is especially wrong about using the harm as a means is harmful involvement of others in one's plan without their consent. I concede that using a person merely as a means in achieving one's own end on which she does not agree is wrong in itself. However, I don't see why doing harm to a person without her consent to suffer it should be less objectionable than using it. In my view, both show equal amount of disrespect toward the victim. That is, using a person as a means without consent is objectionable, but harming a person without consent is no less objectionable. Quinn, who claims that there is an additional negative element in the former, might not agree with this view.²⁵⁾ His ground for this claim is that the former shows "a shocking failure of respect for the persons who are harmed."²⁶⁾ The negative element in using them as means in his mind seems to be the disrespect to

25) Quinn (1989) p. 348

26) *Ibid.*

other autonomy or agency. However, I see no difference between the two cases in being disrespectful.

Let me explain this point. Quinn seems to assume that ‘merely’ harming a person without consent is *less disrespectful* than using the harm as a means to one’s purpose without consent because it does not reveal additional disrespect to her autonomy. If we regard a person as an autonomous rational being who can make her own free choice, then we should respect his choice. Asking for a persons’ consent is a way of showing such respect. And this is why treating a person as a means of achieving an end to which she does not consent is objectionable. Then, what about harming a person as a consequence of achieving one’s end? Unless a person’s harm contributes to achieving her own end, she would not agree to suffer the harm. That is, no one would want to get harmed unless there is a reason to justify the harm. For example, if an injury on your right hand can save your mother’s life, you would be willing to suffer the harm. Without such a reason, however, suffering harm is in itself objectionable.

If you respect other persons and want to do something that might bring about harms to them, you should ask for their consent.²⁷⁾ Suppose, for example, you want to listen to heavy metal music in your room but foresee that it will bother your neighbor. If you politely ask her whether she would allow you to turn on the music, she might be willing to suffer the noise from your room. By

27) Of course, there are some exceptional cases. Suppose that you find that a cobra is approaching to your friend sleeping in the cave and that the only means to save her is to slap her cheek. And suppose that there is no time or way to ask her assent and you judge that she *would* agree with being slapped if she were informed about the urgent situation. In such a case, your inflicting harm without consent does not show disrespect to your friend.

contrast, if you push your plan through and turn on the music without her consent, then you are showing disrespect to your neighbor's autonomy. Note that the harm she suffers does not contribute to your end. But still, you are depriving her of chance to choose whether to listen to the music or not. Moreover, oftentimes, harming others causes serious damage to their ability to exercise their autonomy. And this point gets clearer in the case where a person or persons are killed without consent, since depriving a person's life amounts to taking away the whole chances of using her agency at all. In this sense, harming a person without consent is in itself objectionable and it shows no less disrespect toward her agency or autonomy than using her without consent. Therefore, Quinn's direct/indirect agency distinction fails to accurately capture moral difference.

III. Conclusion

DDE seems to have its origin in the Pauline principle: "One should never do evil *so that* good may come." (*Romans* 3: 8) I think many philosophers have mistaken in interpreting the meaning of '*so that*' in this maxim too narrowly: the proponents of traditional DDE considered this principle as a prohibition to intending evil as a means to achieve good; and Quinn considered it as involving evil in something in order to further his good precisely by way of their being so involved. What is important in evaluating an intention in human action in double effect cases is neither whether evil is intended or foreseen, nor whether the evil contributes to the end or not. Rather, what is fundamental in

distinguishing moral difference in subtle cases is the attitude reflected in the agent's intentional structure. One forces one's original plan even foreseeing others' harm shows morally as defective attitude as that of one who involve the harm as a means. And harming others without consent shows the same amount of disrespect to their autonomy as using it as a means to one's purpose. Whether the harm contributes to achieving one's purpose is no more than just a contingent circumstantial matter. In order to evaluate the moral character of her attitude in action properly, we should examine the structure of the agent's motivational states and her belief about causal structure of the situation.

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요약

수단으로 이용하려는 의도와 확실한 예견

- 이중효과의 원리에 관하여 -

엄 성 우

본 논문의 목적은 전통적인 이중효과 원리와 퀴(Warren Quinn)의 수정된 버전이 모두 행위자의 근본적인 태도에서 도덕적으로 중요한 요소를 포착하는 데 실패함을 밝히는 데 있다. 우선 전통적인 이중효과 원리 입장에 반대해서, 자신의 목적을 이루는 데 있어 남의 피해가 불가피한 부작용으로 뒤따를 것임을 분명히 예견하고 행위하는 것은 남의 피해를 자기 자신의 목적을 실현하기 위한 수단으로 삼을 의도로 행위하는 것만큼 도덕적 결함을 가짐을 주장할 것이다. 즉, 전자는 후자만큼이나 정당화하기 힘들다는 것이다. 그리고 퀴의 수정된 이중효과 원리에 반대해서, 남의 피해가 자신의 목적을 이루는 데 기여하는지 여부가 그 자체로는 행위자의 태도에 드러난 도덕적 성품을 평가하는 데 있어 무관함을 주장할 것이다. 즉, 그의 직접 행위능력과 간접 행위능력 사이의 구분은 도덕적 차이를 정확히 포착하는 데 실패함을 보일 것이다.

주제분류: 규범 윤리학

주요어: 이중효과 원리, 의도, 예견, 주관적 확률, 워렌 퀴