

THE DOCTRINE OF DOUBLE EFFECT IN ETHICS EDUCATION

A DOCTRINA DO DUPLO EFEITO NA EDUCAÇÃO ÉTICA

LA DOCTRINA DEL DOBLE EFECTO EN LA EDUCACIÓN ÉTICA

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ABSTRACT: Ethics education is a vast term for learning experiences aimed to assist students in developing ethically, whether in terms of increased ethical awareness and understanding or greater motivation to act ethically in the world. The article discusses the doctrine of double effect in the context of ethical education between deontology and consequentialism. The authors note that it is impossible to agree the doctrine of double effect with contrarian normative positions. In the first part of the article, authors argue in favor of the doctrine of the double effect as an independent ethical principle. In the second part of the article, authors consider the doctrine of double effect by using the example of an armed conflict situation in the terms of international humanitarian law. The main thesis of the article is that the doctrine of double effect should be considered as a universal presupposition of both ethical and educational regulation.

KEYWORDS: The double effect. Normative ethics. Ethics education. Consequentialism. International law.

RESUMO: Educação ética é um termo vasto para experiências de aprendizagem que visam auxiliar os alunos a se desenvolverem de forma ética, seja em termos de maior consciência e compreensão ética ou maior motivação para agir com ética no mundo. O artigo discute a doutrina do duplo efeito no contexto da educação ética entre a deontologia e o consequencialismo. Os autores observam que é impossível concordar com a doutrina do duplo efeito com posições normativas contrárias. Na primeira parte do artigo, os autores defendem a doutrina do duplo efeito como princípio ético independente. Na segunda parte do artigo, os autores consideram a doutrina do duplo efeito usando o exemplo de uma situação de conflito armado nos termos do Direito Internacional Humanitário. A tese central do artigo é que a doutrina do duplo efeito deve ser considerada como um pressuposto universal da regulamentação ética e educacional.

PALAVRAS-CHAVE: O duplo efeito. Ética normativa. Educação ética. Consequencialismo. Direito internacional.

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RESUMEN: *La educación ética es un término amplio para las experiencias de aprendizaje destinadas a ayudar a los estudiantes a desarrollarse éticamente, ya sea en términos de una mayor conciencia y comprensión éticas o una mayor motivación para actuar éticamente en el mundo. El artículo discute la doctrina del doble efecto en el contexto de la educación ética entre deontología y consecuencialismo. Los autores señalan que es imposible concordar la doctrina del doble efecto con posiciones normativas contrarias. En la primera parte del artículo, los autores defienden la doctrina del doble efecto como principio ético independiente. En la segunda parte del artículo, los autores consideran la doctrina del doble efecto utilizando el ejemplo de una situación de conflicto armado en los términos del derecho internacional humanitario. La tesis principal del artículo es que la doctrina del doble efecto debe ser considerada como un presupuesto universal de la regulación tanto ética como educativa.*

PALABRAS CLAVE: *El doble efecto. Ética normativa. Educación ética. Consecuencialismo. Derecho internacional.*

Introduction

Issues involving behaviors considered ethical are highly complex, yet still present in everyone's daily lives. The basis for an understanding, however minimal, of the concepts and functioning of ethical principles in society becomes relevant to understand the attitudes and paths taken, thus, educating in order to help students understand and develop ethically becomes a valuable task for people to be able to act in the world in a way that can be considered ethical. To present this point, the analysis in the article shows two doctrines and works on the understandings of each one and how they can be related.

Most people refrain from drinking strong coffee in the evening, as caffeine can interfere with sleep. But suppose you intend to write a philosophy paper the day before deadline. In that case, it is acceptable that you decide to have coffee as you intend to stay awake for as long as possible. On the other hand, you assume that coffee will make you nervous, which is a negative consequence of its consumption. With these two effects in mind, you still decide to drink coffee.

This example illustrates the difference between two phenomena (intentions and foreseen) embedded in the structure of any action with two or more conflicting consequences. In the case of coffee, your intention is to overcome sleepiness, but you foresee that, among other things, you are likely to become nervous. Thus, you can talk about two effects caused by performing a single action. This example is unlikely to generate debate, but everything changes if the situation in question is ethical, and the consequences of the committed action are morally ambiguous.

Such situations include the following:

- Is it permissible to bomb military facilities in the expectation that civilians will be affected?
- Is it possible to conduct an operation to save a woman's life by foreseeing that it will kill a child in her womb?
- Is it moral to give painkillers to a deadly patient, knowing that the same painkiller speeds up his death?

In considering these issues, we're doing what T. Cavanaugh called “double-effect reasoning” (CAVANAUGH, 2006). We can distinguish two levels of double effect reasoning – practical and theoretical. On the first level, we seek to obtain a specific rule, a guide to action, and on the second level, to reconcile the idea of the inevitability of negative consequences with existing good intentions. If we finally accept that good intent makes action good, even with negative foreseen consequences, then we find ourselves in a camp of advocates of the double-effect doctrine.

This doctrine is most often explained through four theses. In J. Bennett's version, they are formulated as following: “(1) The behavior is not bad in itself. (2) The agent’s intentions are good. (3) The good does not flow from the bad and/or the agent does not intend the bad as a means to the good. (4) The good is good enough compared to the bad, and there is no better route to the former” (BENNETT, 1966).

In this paper we do not intend to review the double-effect doctrine in terms of its internal consistency. Our task is to show how the doctrine relates to the ethical theories of moral action. So, let’s consider two similar theories, deontology and consequentialism.

Methods

In this work the authors intend to use methods traditional for analytical philosophy.

First, it is a conceptual analysis method. This method involves identifying the conceptual core of a term by comparing different contexts of its use.

Second, this is an extrapolation method. This method involves the extension of the methods of analysis of some types of discourse to other types of discourse.

Results and Discussion

Consequentialists argue that the assessment of an act should be based on the consequences of the action and its results. A typical example of this kind of concept is

utilitarianism, which links morality to maximizing the benefits. For a utilitarian, an act is morally correct when it leads to the maximum number of benefits for the maximum number of people. On the contrary, deontologists argue that the assessment of an act should be based on what the agent was guided by when he/she performed a certain act. Therefore, deontology does not touch upon the consequences to which the action has led, but upon the motivation that underlay the action. Kant's moral philosophy, religious ethics and the like are often cited as an example of deontology in ethics. Both consequentialism and deontology are theories of moral action. People need them to evaluate actions as right and wrong and be guided by the revealed principle in everyday life. Since consequentialism and deontology cover the whole sphere of practical moral regulation, we may ask ourselves which of the directions the double-effect doctrine belongs to?

The argument in favor of the deontological nature of the doctrine is its relationship to motivation as a condition for ethical action. Given the Catholic roots of the double-effect doctrine, it is sometimes even considered synonymous with religious deontology. However, there are several important differences. In this regard, let us consider several challenges faced by deontology and ask ourselves whether this is also a challenge to the double-effect doctrine.

Let us look at the case of the deontological theory, which puts forward the rule “lying is bad” as a universal one. Then in the specific case of choosing between lies and truth, the deontologist adhering to this theory, in order to be infallible in his/her logic, must point the murderer to the location of the victim in case the first one asks for it. This example seems to be a typical illustration of the double-effect doctrine. But what happens if we introduce a condition of moral disagreement over the universal rule? How does the one who gives the victim to the rapist, observing the principle of honesty, determine which of the moral norms (honesty or rescue of the victim) is preferable? Such a question is fatal for any universal rule, which on a practical level often does not correspond to our moral intuitions. At the same time, if a deontologist introduces the rule “lying is bad, but in exceptional cases it is acceptable”, it will be an *ad hoc* assumption, making his/her theory much less stable. In the case of introducing a hierarchy between the rules (for example, “lying is bad, but telling the murderer the location of the victim is worse”), the deontologist finally breaks with his/her theory, because such a hierarchy of rules implies an additional assessment in terms of consequences, i.e., makes the deontologist a consequentialist. Besides, deontology leads to ethical skepticism, because, firstly, we can endlessly question the ways of correlation of universal rules with real practice, and secondly, we can endlessly question the very universality of these or those norms. Thus, the double-effect doctrine is not a deontological principle since it does not require such

additional assumptions and is related to practical moral regulation without building a hierarchy of values.

In the next step, we can try to classify the double-effect doctrine as consequentialism. But consequentialists are criticized for the opposite of what deontology is criticized for: by focusing on goals, they overlook universal rules. Classical publications on the double-effect doctrine have traditionally been devoted to critique of utilitarian interpretations of the doctrine and attempts to refute consequentialism itself. As an example, if a doctor is guided by utilitarian consequentialism in his/her work, it should be morally justified for him/her to kill one healthy person to transplant his/her organs to five patients and thus save them. This does not correlate with our moral intuition in the same way as it does not correlate with surrendering the victim to the rapist to those who have accepted the rule of reprehensibility of lies. In this case it is only possible to save consequentialism in the same way that was used to save deontology – by introducing additional assumptions that would postulate universal norms and make the theory deontological. But the double-effect doctrine does not require such assumptions, therefore, it is neither deontological nor consequentialistic. Therefore, we can talk about the double-effect doctrine as an independent ethical principle that is not related to the main directions of moral philosophy. This feature makes the double-effect doctrine an extremely mobile theoretical construct that allows us to point out the criteria of “right” and “wrong” without reference to specific moral attitudes. As a result, the double-effect doctrine is widely applied in practical ethics. But we believe that this doctrine can also serve as an ethical foundation of international law, where value differences in relation to cultural diversity are a major challenge. Let us turn to an analysis of specific rules of international law to show their relationship to the double-effect doctrine.

If the consequentialists and deontologists are basing their reasoning on the different concepts of determining the content of moral law, then the lawyers lay down the content of double-effect reasoning in a strict form of international treaties. Let’s consider how our theoretical reasoning correlates with a double-effect reasoning and works in specific situations in international humanitarian law.

The conduct of participants in armed conflict is governed by international humanitarian law, which regulates the means and methods of warfare. The purpose of international humanitarian law is to provide protection to persons who are not or are no longer involved in hostilities based on a balance between military necessity and humanity.

The principle of military necessity stems from the legitimate goal of war, first articulated in the St. Petersburg Declaration on the prohibition the use of explosive projectiles in 1868,

which noted that “the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy” (RUSSIA, 1868). It permits only that degree and kind of force required to achieve the legitimate purpose of a conflict. According to this principle, only military objectives can be the target of attacks and the force should be used only to the extent that it allows to take military advantage over the enemy.

The principle of humanity forbids the infliction of all suffering, injury or destruction not necessary for achieving the legitimate purpose of a conflict. It protects civilians and other persons which are not taking part in hostilities.

The balance between the two principles is ensured by the principle of proportionality, according to which infliction of incidental harm to civilians or civilian objects is strictly forbidden if it would be excessive in relation to the military advantage that is thus intended to be obtained.

These principles have been enshrined in the norms of international humanitarian law. Thus, the principle of military necessity is enshrined in Article 52 of Additional Protocol I to the Geneva Conventions (GENEVA CONVENTION, 1977), the principle of humanity is enshrined in Article 100 of the Geneva Convention IV (GENEVA CONVENTION, 1949), and the principle of proportionality in Article 57 (2 (b)) of Additional Protocol I (GENEVA CONVENTION, 1977) and in other norms. In addition, the principle of proportionality is recognized as a Rule 14 of customary international humanitarian law (HENCKAERTS *et al.*, 2005) and its willful violation is considered to be a serious violation.

After we have given the most general provisions of international humanitarian law, let us consider a concrete example, so often used by the consequentialists: Is it permissible to bomb military objectives, anticipating that civilians will suffer?

In international humanitarian law, military objectives are defined as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage” (GENEVA CONVENTION, 1977). The word “definite” indicates that the advantage must be concrete and perceptible as a result of destruction of the objective, rather than hypothetical or speculative (MELZER, 2019). In other words, the destruction of the objective should be expedient and the choice of a military objective as the target of an attack is always justified due to an already conducted evaluation of the advantage that will be obtained after its destruction.

The bombing of military objective is a morally neutral act, even if such it can contain the military forces of the enemy. The goal of the pilot will not be the death or suffering of these

military forces, but the weakening of them and the strengthening of the military advantage in armed conflict. Such an act would be, for example, the bombing of a military ammunition depot. However, the situation is complicated if the military objective is not in an open field, but, say, within the city. Such an object can be, for example, a bridge, a railway or an airport. In this case, if such civilian object makes an “effective contribution” to the enemy's military actions and its destruction gives a definite and significant military advantage, then it is qualified as a military object, regardless of its simultaneous use for civilian purposes.

In order not to cross the fine line between proportionate and excessive harm, the parties of an armed conflict must respect international humanitarian law before, during and after the attack on the military objectives. In assessing the excessive nature of damage, consideration is given to the possibility of damaging civilian targets, potential civilian casualties, and the possible detrimental effects on the functioning of public and health services.

Before the bombing of such a military objective, it is necessary to determine the amount of military advantage which will be obtained after a successful attack and possibilities to avoid excessive civilian casualties, injuries and accidental damage to civilian objects. Does the potential military advantage justify the damage to civilians and would not be such damage excessive to the obtained military advantage? The proportionality principle comes to the revenue. More important military objectives justify a higher level of incidental damage than the objectives of little value.

In order to minimize civilian casualties, international humanitarian law establishes norms that oblige the parties to make effective advance warning of their attack (Rule 20 (HENCKAERTS *et al.*, 2005)), to ensure the protection of civilians lives and civilian objects from the consequences of attacks (Rule 21 (HENCKAERTS *et al.*, 2005)) and the obligation of the parties to eliminate civilians and objects under its control from the military objectives' vicinity (Rule 24 (HENCKAERTS *et al.*, 2005)).

Given the conditions under consideration, is it permissible, in the context of double-effect reasoning, to bomb the civilians if it contradicts the “moral” norm to not bring on harm to the civilians? International humanitarian law responds yes, if the harm is not enormous and disproportionate to the military benefit. Military necessity will justify such an action.

Conclusions

The authors conclude that the double effect doctrine is neither deontology nor consequentialism. From the perspective of deontology, the doctrine of double effect is not

applicable, since the evaluation of the actions of the subject is carried out without considering the consequences that were caused by these actions, as a result of which the subject initially does not face moral choice. In the interpretation of the consequentialists, the application of the double effect doctrine is also impossible, since in this case the premise of the act does not play a role if it eventually leads to the maximum good for many people. In situations of armed conflict, ethical principles are relegated to the background, and the principles of military necessity, humanity and proportionality are introduced, and international humanitarian law is put into effect. Action or inaction is committed by the participants of armed conflict based on a preliminary assessment of the result, taking into account military necessity and potential adverse consequences, which affects the final decision about committing action or refraining from acting. Consequently, by applying the double effect doctrine to the situations of armed conflict in the context of international humanitarian law, participants are not likely to commit a "wrong" act.

ACKNOWLEDGEMENTS: This survey is conducted based on the Russian Government Program of Competitive Growth of Kazan Federal University.

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How to reference this article

KHORT, M. G.; KARIMOV, A. R.; SINYAVSKIY, A. A. The doctrine of double effect in ethics education. **Revista on line de Política e Gestão Educacional**, Araraquara, v. 25, n. esp. 6, p. 3507-3515, Dec. 2021. e-ISSN:1519-9029. DOI: <https://doi.org/10.22633/rpge.v25iesp.6.16112>

Submitted: 05/04/2021

Required revisions: 10/08/2021

Approved: 20/11/2021

Published: 30/12/2021

Processing and publication by the Editora Ibero-Americana de Educação.

Correction, formatting, standardization and translation.

