

Case Analyses, B&R Ch. 9

Review the material from Chapter 9, especially the 4 conditions of the Doctrine of Double Effect.

Below are 4 ethically-loaded cases. **For each case** (so, 4 times total):

1. In 1-3 sentences, describe **the act** being performed (in a little more detail than I have in 1.1-1.4), and determine whether or not the act **violates a moral principle or natural function**. Remember that the act is distinct from the good and bad effects (2) and the intentions (3), so don't talk about these yet.
 - 1.1. In case one, the act is giving morphine to an elderly cancer patient.
 - 1.2. In case two, the act is natural family planning.
 - 1.3. In case three, assume the act is the bombing of the Amiriya Shelter.
 - 1.4. In case four, the act is the removal of Terri Schiavo's feeding tube.
 - 1.5. "In the case of whatever, a student is skipping class on a whim. The student is a human being with a mind, and so has the natural function of learning and acquiring knowledge. The natural function of the mind is violated by skipping class on a whim."
2. In 3-5 sentences, describe the act's double effect, or **the good and the bad effects**. Then:
 - 2.1. Determine whether or not the good effect is "**at least as great as,**" or "greater than or equal to," the bad effect - does the good effect outweigh the bad effect?
 - 2.2. Determine whether or not the bad effect is **the means for, or cause of,** the good effect - was the bad effect necessary in order to have the good effect?
 - 2.3. "The good effect of skipping class on a whim is that it frees up the entire afternoon for more exciting activities. The bad effect of skipping class on a whim is that the student will miss learning the class content. The free afternoon does not seem as great or significant as the missed content because free afternoon activities (e.g., napping or gaming) are generally not at all productive. However, missing class content does not by itself cause the free afternoon - it's just an unfortunate side effect of skipping class.
3. In 1-3 sentences, describe **the intention** behind the act - why was the act being performed? If there isn't enough information to describe the intention, then tell me what you think the intention might have been. Then determine whether or not **the intention was only for the good effect and not for the bad effect**.
 - 3.1. "The intention behind skipping class on a whim is that the student simply did not want to be in class that afternoon. The student likely intended only to have a free afternoon, but did not necessarily intend to miss class content. They could have *expected* to miss class content by skipping class, but this does not mean that they *intended* or *wanted* to miss class content.
4. In 1-2 sentences, conclude by determining whether **the act is right or wrong** according to the doctrine of double effect.
 - 4.1. The act of skipping class on a whim is wrong according to the doctrine of double effect because the act itself violates the natural function of the mind to learn and acquire knowledge, and because the good effect of the free afternoon does not outweigh the bad effect of missing class content. For these two reasons, one should not skip class on a whim.

Remember that there is no single, correct way to interpret these scenarios. Describe the act, the good and bad effects, and the intention as best as you can. Aim for a reasonable response, not the single, correct response.

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Some tips for good writing (and a good grade):

- Address **all 3** aspects of the prompt.
- Pay attention to **grammar, spelling, sentence structure**, etc.
- Write as though you were **speaking** - be **conversational** as you analyze these cases, not wordy and formal.
- **Do not try to sound smart** - this will only make you sound silly and upset your grader.
- Be sure that you're expressing yourself clearly - **write the paper at the level of your peers**, not your professor.
- **Revise** your rough draft at least once before submitting it; do the same with your final version - "The first draft of anything is \$h!+" - Ernest Hemingway.
- **Assume ignorance** on the part of your audience (me).
- Avoid posing **rhetorical questions** - I don't want to have to think about whatever answer you have in mind. If you're going to raise rhetorical questions, give an answer.
- Be **concise**, but thorough. **Trim** the excess. **Organize** your thoughts.

Cases (Identify the case you're writing about by these titles):

1. Relieving Pain in a Dying Patient (B&R pgs. 190-191)
2. Birth Control (B&R pgs. 191-192)
3. Just War Theory and the Killing of Noncombatants (B&R pgs. 193-195)
4. Permanent Vegetative State: The Case of Terri Schiavo (B&R pgs. 195-197)

Relieving Pain in a Dying Patient¹¹

For some time now, Nicolas has had stomach pains. They usually appear when he's under stress, but lately he's had them almost constantly. Finally, he decides to go to the doctor to have them checked out. It turns out that Nicolas has stomach cancer and that he must be operated on immediately. After waking up from the operation, Nicolas receives more devastating news. The cancer has spread so far through his system that it is considered inoperable. There is nothing more the doctors can do.

Nicolas is eighty years old, and cancer grows more slowly in the elderly. He is thus sent home to spend his last months with his family. When the time comes,

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¹¹This case reports a true story.

Nicolas will be able to die at home. A visiting nurse service will provide help to the family.

In the meantime, Nicolas will often be in pain. This pain will only worsen as he gets nearer to the end. He is therefore put on pain medication. As the months go by, the pain grows worse, until Nicolas is mostly confined to his bed. He requests that his doctor give him something stronger to control the pain.

The doctors tell him that a stronger pain medication will have its price. The pain reliever given most often in these cases is morphine. This can have significant side effects. For one, morphine is highly addictive so once he begins to use it, there will be no turning back. In addition, the morphine will often make him too drowsy to experience his surroundings lucidly. Most important, the morphine could hasten Nicolas's death. Morphine is a very strong drug and is mostly prescribed in cases that are medically futile, since it suppresses respiration. Nicolas is such a case, and he urgently needs pain relief. But as the amount of morphine is raised, it will increase the chances of his dying sooner as well.¹²

Birth Control¹³

A controversial example of the implications of natural law theory appears in former Pope John Paul II's arguments against the use of birth control. Peter Simpson, in his book about the Pope's philosophy, explains: "Sex is not something a couple may use as they wish. On the contrary they may only use it according to what it naturally is."¹⁴ Simpson is saying that when sex is used in a way that violates its essential nature or function, that works against nature and so is morally wrong. But what is the nature or function of human sexuality? The sexual act is an act of creation that brings with it the possibility of new life. The use of birth control deliberately

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obstructs this natural function. As Simpson colorfully puts it, to use birth control is effectively "to de-sex sex," to change the sexual act into an *unnatural* act. This holds true for all *artificial* methods of birth control, including the use of condoms, intrauterine devices (IUDs), spermicides, and "the pill."

An important exception is natural family planning, sometimes called the "rhythm method" (a little misleadingly). The idea is to abstain from sexual intercourse during the woman's periods of fertility. If done properly (which requires instruction by a doctor), natural family planning is held to be more than 90% effective and thus compares very favorably with artificial methods. Unlike the pill and IUDs in particular, natural family planning also poses no risks of undesirable medical side effects.¹⁵

Why is natural family planning acceptable for natural law theory when artificial methods are not? The answer is that natural family planning doesn't interfere with the sex act *per se*. First, Simpson explains that "[t]o use nature's order is very different from breaking nature's order." Here, the distinction is on working *with* nature, rather than *against* it. After all, a woman's fertility cycles are part of how nature functions, so it's perfectly permissible for rational agents to make use of these cycles to achieve other natural purposes such as placing manageable time intervals between births. By contrast, birth control pills directly interfere with this natural cycle. Condoms, meanwhile, work against the very design of the sexual organs by blocking the union of sperm to the egg. Thus, neither method can be considered "using nature's order"; rather, both directly oppose natural processes. Simpson also observes, "It would be absurdly strict, even unnatural, to demand that every sexual act be actually procreative, or to say that intercourse is only permissible if the couple hope to have a child as a result of it." If it must always be used exclusively to conceive a child, then sex would have to be restricted to just those few days each month when the woman is fertile. Such a stringent limitation on sexual activity doesn't seem to be in accordance with nature. Indeed, it is worth emphasizing that the sexual act need not always be intended solely for procreation (i.e., it need not be reserved solely to "make babies"); its pleasurable aspects are legitimate and natural as well. Nevertheless, *never* intending to have children does conflict with a primary natural function of sexuality. Thus, it cannot be right for a married couple to intend never to have children. Rather, the purpose of natural family planning should be to space out births and even control the number of births - which can both reflect a couple's financial concerns as well. Again, this all follows from the fact that the sexual act is, by nature, an act of creation - a component that should never be separated from it entirely.¹⁶

Just War Theory and the Killing of Noncombatants

After the September 11 2001 attacks and multiple military interventions, there has been a renewed interest in what qualifies as a *just war*. In the United States, the debate mostly refers to principles of “just war theory,” which originated in the natural law writings of St. Augustine and St. Thomas Aquinas.

Just war theory deals with *when*—under what *conditions*—war is justified (*Jus ad Bellum*) as well as *how* a war may justly be fought (*Jus in Bello*). Naturally, there are disagreements about the details of what constitutes just wars and just ways of waging war. Nevertheless, most discussants agree on several general principles. Let’s first examine *when* a war is justified. Such a war must, first, be fought for *just cause*. One has just cause, for instance, when there is an imminent threat, when one is protecting basic human rights, or when one is protecting the innocent.¹⁷ A just war must also be declared by the *right authority* such as a recognized government and not just by some small group. It must be fought with the *right intention*, namely, the intention of obtaining the goal that *just cause* provides (e.g., eliminating the imminent threat). One must enter a war only as a *last resort*, once all other options have been exhausted. There must be a sufficient *probability of success*. Finally, the outcome must be *proportionate*; that is, the good of the intended goal must exceed the amount of damage that the war is expected to cause.

Once it has been determined that a given war is just, we must consider *how* the war may be fought. The two basic principles to be considered here are the principles of *discrimination* and of *proportionality*. The first principle requires that war be waged only against *combatants*—for example, against enemy soldiers and not against *noncombatants* or innocent civilians. The principle of *proportionality* tells us *how much force* is justified in a war. One is allowed to apply only as much force as is necessary to meet the goal of the war, which, again, is determined by the principle of *just cause*. To illustrate how these conditions work, most philosophers agree that the dropping of atomic bombs on Hiroshima and Nagasaki during World War II was *not* justified: combatants and noncombatants were killed indiscriminately, and the deaths and injuries of millions of people appear out of proportion to the war’s outlined goal.

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Nevertheless, the killing of innocent civilians can at times be unavoidable. During World War II, for instance, it was difficult to hit a military target with precision. As a result, deaths occurred that were not intended. Also, many bombs destroyed a much larger area than just the target itself. Of course, today's missiles and drones can hit targets much more precisely. However, an enemy can exploit the presence of innocent civilians by hiding military personnel and equipment in hospitals, churches, schools, and mosques. This makes it virtually impossible to attack such targets without killing the innocent. Saddam Hussein, for instance, employed "human shields," as have many other regimes and armies since. Muddying things further, it is increasingly difficult to determine who is in fact a combatant. Soldiers may pose as civilians, and civilians may aid in fighting the war.

How can we decide whether, or when, the unintended killing of innocents is justified (the military calls this *collateral damage*). The first requirement, again, is that the war is being waged on just grounds; otherwise, no killing can be justified. Once this is settled, DDE can be used to distinguish military actions that are permissible from those that are not.

First, the act must be defined as destroying a military target, for instance, and not as the killing of innocent civilians. Otherwise, the act violates a moral principle and so is simply wrong. Second, innocent deaths cannot be the means to achieve one's goal (e.g., destroying the target); rather, their deaths may only be a secondary effect. Third, one must not *intend* to kill any innocent civilians. Finally, the good effect—destroying the target—must outweigh the bad effect—the deaths of innocents.

With this background, we can now consider some actual situations.

1. During the 1990 Gulf War against Iraq and Saddam Hussein, the Amiriya Shelter was destroyed by the United States using two "smart bomb" missiles. Many in the U.S. military believed the building was a military command center, basing their assessment on satellite reconnaissance and the detection of radio signals. It also appeared that it might be being used as a military personnel bunker. If the latter, then it could be assumed to have family members present but not a large number of civilians. At the same time, there was also some evidence that the building was being used as a major civil-defense shelter; it had previously been used this way in the Iraq-Iran war. The bombing killed up to 408 people, mainly women and children.¹⁸

Permanent Vegetative State: The Case of Terri Schiavo²⁰

In 1990, at the age of twenty-six, Terri Schiavo suffered a heart attack and permanently lost consciousness. After three years in a coma, she was diagnosed as being in a permanent vegetative state (PVS). A patient is considered in a PVS when one

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or both of the cerebral hemispheres are irreversibly damaged and the patient is completely unaware of her surroundings. There is no hope for recovery.

It can take up to a couple of years to conclusively determine that a patient is in a PVS. The diagnosis rests on an electroencephalogram as well as long-term observation of the patient. PVS must be distinguished from brain death, in which the patient's entire brain including the brain stem has lost function. (A brain-dead patient is considered medically and legally dead in most of the world.) PVS must also be distinguished from a minimally conscious state, in which the patient is still minimally aware of his or her surroundings.

In Terri Schiavo's case, several physicians made the determination that Terri would not wake up. In 1998, her husband, Michael, requested permission from the courts to disconnect her feeding tube. Although Terry no longer swallowed automatically, she was still breathing on her own. This is common with PVS patients because the brain stem, which controls respiration, is still intact. In contrast, whole brain death requires life support to keep respiratory function going (which may be done, for instance, so the patient's organs can be donated).

Although Terri Schiavo did not have a living will stating whether she would want to be kept alive as a PVS patient, her husband testified that he was certain Terri would not want to be kept alive in those circumstances.

Terri's parents opposed Michael's request. They thought that they had seen Terri react to certain external stimuli (e.g., she would periodically open her eyes and her pupils would contract in light). She would also occasionally moan or cry. Behaviors like these are not uncommon in PVS patients, although the current medical consensus is that PVS patients are not aware of anything. Since some degree of consciousness is necessary to experience pain, PVS patients presumably cannot feel pain either.

In court, Terri's parents denied Michael's claim that Terri would not want to be kept alive. As a Roman Catholic, they said, Terri would consider it unethical to have a feeding tube disconnected. In fact, the Catholic Church had no official position on the matter of feeding tubes for PVS patients until 2004, when Pope John Paul II released a statement saying that providing basic nutrition to a PVS patient is a moral obligation. Here's an excerpt from what he wrote:

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The sick person in a vegetative state ... still has the right to basic health care (nutrition, hydration, cleanliness, warmth, etc.), and to the prevention of complications related to his confinement to bed. ... I should like particularly to underline how the administration of water and food, even when provided by artificial means, always represents a *natural means* of preserving life, not a *medical act*. Its use, furthermore, should be considered, in principle, *ordinary* and *proportionate*, and as such morally obligatory, insofar as and until it is seen to have attained its proper finality, which in the present case consists in providing nourishment to the patient and alleviation of his suffering.²¹

As the pope acknowledges, feeding tubes are an artificial means of providing a patient with nutrition. But natural law theory implies that receiving food and water is a natural part of keeping a person alive. Keeping someone breathing by using a

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mechanical ventilator, on the other hand, is not a natural means of preserving life. There is no moral obligation to keep a PVS patient alive by non-natural or "*extraordinary*" means.

The fight over Terri Schiavo's life lasted over seven years. During this time, Terri's feeding tube was disconnected three times and twice reconnected by court order. The third time it was permanently removed because Terry's parents lost their battle in court. Terri Schiavo died on March 3, 2005, at the age of forty-one. An autopsy confirmed the diagnosis of PVS.