

# Double Effect, Pacifism and Intentions: An Analysis of G.E.M. Anscombe's Philosophy of War

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**Abstract.** The permissibility of killing innocent people in war is not usually defended. However, Elizabeth Anscombe's defense of the application of double effect in warfare seems to allow for innocent civilians to be killed in special borderline cases such as the bombing of a munitions factory. This seems to rest on the proposition that the bomber does not intend to use the civilians' deaths as a means to an end, but merely foresees their deaths as a result of the destruction of the factory. In this article I challenge this idea and potentially expose a weakness in Anscombe's argumentation.

**Key words:** Anscombe, double effect, intention, pacifism, just war theory.

Anscombe's defense of the doctrine of double effect in application to warfare is the main topic of this article. More specifically, I am concerned with the question of whether someone could consistently argue that the killing of innocent civilians in war is sometimes morally permissible.

Firstly, a general presentation of the context is needed. In *War and Murder* she begins with the idea that the use of coercive force by states and rulers is legitimate (Anscombe 1961). According to her, there are two possible attitudes regarding the use of coercive power by the state. The first is that the world is entirely a jungle, merely a display of different forces, and that the use of force by states is only one of these. The second attitude is that the coercive power of the state is a necessary and legitimate form of power that maintains social order and makes the world be a lesser jungle than it could be (Anscombe 1961, 45).

She states that the use of force by the sovereign state as a legitimate form of violence is an idea commonly accepted. The state has the right to use violence against its external enemies and even against its civilians if they threaten the safety of the community or break the law. Anscombe states that the deliberate choice to kill people (as in *intending* to bring about their death) is a right reserved only to the state. She adds that it must be admitted that authorities do intend to kill their enemies as a means to ensure public safety (1961, 49-50).

Although Anscombe does not explicitly say so, the first attitude can be attributed to the advocates of extreme forms of pacifism: an *absolute pacifism*. It rejects the legitimacy of the use of force by the state and its rulers and condemns it as an injustice. It condemns any use of coercive power by the state and all the actions of the military during a war.

Anscombe takes pacifism as the view that it is morally wrong to participate in wars. War is an activity that involves killing people and killing people is always morally wrong. Therefore, to the absolute pacifist, war is inherently evil and so is the profession of being a soldier.

Pacifism is regarded by Anscombe as a false doctrine, because it makes no distinction between killing innocents (non-combatants) and killing combatants in war (1961, 52-56).

She does not condemn all the activities of the military or even war itself, because she claims that the state has a right or a duty to protect its population. However, what she does condemn is the *intentional* killing of innocent civilians. This killing is immoral if it is used as a means to an end or as an end in itself.

Something which pacifism also rejects is the doctrine of *double effect* which relies on the distinction between, on one hand, the *intended*, and, on the other, the *foreseen* consequences of an action. According to the doctrine, the intended consequences are morally relevant and the merely foreseen consequences are not. The foreseen effects of an action can either be unfortunate by-products of the intentional action or mere accidents.

Applying double effect to warfare, Anscombe would argue that the bombing of a military target located within a heavily populated area may be morally permissible as long as the intended effect is the destruction of the target and not the killing of innocent civilians (1958a, 4).

My aim is to challenge the idea that the bombing of a military target (say, a munitions factory) located in a populated area can be adequately described as unintentionally killing innocent civilians. I will argue that the doctrine of double effect fails to apply to the case in which the bomber knows for certain that civilians will be killed as a result of the bombing of the intended target. Here, contrary to what double effect would have us think, the bomber actually uses the civilians as a means.

If double effect fails, then either we end up arguing that in war it is sometimes morally permissible to intentionally kill innocent civilians (if no other means of attaining victory are available), or we have to side with the absolute pacifists and condemn war completely.<sup>1</sup>

### I. WHAT IS DOUBLE EFFECT?

What exactly is the doctrine of double effect? It is, as I have previously stated, a doctrine that assumes a morally significant distinction between the intended effects of an action and its foreseen effects. The origin of this doctrine lies in the work of Thomas Aquinas.

To the question of whether or not a private person may kill another person in self-defense Aquinas remarks:

Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental as explained above [...]. Accordingly the act of self-defense may have two effects, one is the saving of one's life, the other is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life, is not unlawful [...]. (Aquinas II, II, Q64, Art. 7)

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<sup>1</sup>] This conclusion has also been supported by Lichtenberg (1994).

In other words, I may not intend the death of my aggressor. The right to choose to kill may be reserved only to the state and its public authorities. My assailant's death must be only a consequence or accident of the measures I take to defend myself. Or as Anscombe states:

The plea of self-defense (or the defense of someone else) made by a private man who has killed someone else must in conscience - even if not in law - be a plea that the death of the other was not intended, but was a side effect of the measures taken to ward off the attack. (1961, 50)

Thus, a private person must never intend to bring about the death of his or her assailant. The death must merely be a by-product or an accident that results from the efforts of the private person to defend himself or herself. The private person must then not shoot to kill or lay any lethal traps for the aggressor. However, if the private person pushes his or her aggressor and the assailant falls down the stairs and dies, then the death of the aggressor (if not intended) is an effect that is beside the intention of defending oneself.

It is not hard to see why this idea has been of interest to moral philosophers. If the difference between the intended effects and the foreseen effects of an action is a morally relevant distinction, then one can be responsible only for the intended consequences of one's action but not for the accidental effects of the action, even if those consequences are foreseen.<sup>2</sup> This idea is not exempt from abuses, of course, and Anscombe is aware of it.

## II. WHY THE DOCTRINE IS USEFUL

Anscombe's uses and defenses of double effect are present in a number of her works including *War and Murder* (1961), *Mr. Truman's Degree* (1958a) and *Modern Moral Philosophy* (1958b). The justification for keeping the doctrine of double effect can be distinguished quite easily.

Firstly, Anscombe considers that the morally significant distinction between intended consequences and foreseen consequences is an essential part of Christianity. She states:

For Christianity forbids a number of things as being bad in themselves. But if I am answerable for the foreseen consequences of an action or refusal, as much as for the action itself, then these prohibitions will break down. If someone innocent will die unless I do a wicked thing, then on this view I am his murderer in refusing: so all that is left to me is to weigh up evils. (1961, 57)

If the distinction between the intended and the foreseen is not a moral distinction, then it seems one could consider that I am responsible for any consequences that follow from my actions. Anscombe also offers a similar justification for double effect when writing about Henry Sidgwick's consequentialism.

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<sup>2</sup>For revisions of the doctrine, see Quinn (1989) and McMahan (1994). For defenses of the distinction between intended and foreseen consequences, see Bratman (1987) and Hills (2007). A defense of the moral significance of the distinction can be found in Hills (2003).

Her reading of Sidgwick's consequentialism amounts to the thesis that "it does not make any difference to a man's responsibility for an effect of his action which he can foresee, that he does not intend it." (1958b, 11)

This elimination of intention from moral discourse is problematic, according to her, because I may be responsible for effects of my actions that I clearly did not intend. For example, I may be put in a situation in which I am forced to either do something incredibly evil or leave the country. If I leave the country, I lose my job. I am aware of this, but it's unreasonable to say that I intended to lose my job because I chose to leave my country rather than do something incredibly evil.<sup>3</sup> Losing my job, in this case, is thus an unfortunate, unintended, but foreseen effect of my refusal to do something incredibly evil.

### III. THE ABUSE OF THE DOCTRINE AND ANSCOMBE'S ARGUMENT

One need not stretch one's imagination too much in order to realize how the doctrine of double effect might be abused. If the intention is that which gives an action its moral value, then one can redirect the intention behind an action however he or she sees fit before acting. According to Anscombe, due to Cartesian psychology, someone can view the intention as an "interior act of the mind" and thus use double effect in order to justify any heinous crime (1961, 58).

Before the bombs are released on a city, the pilot of the aircraft could always mutter to oneself that what he or she means to be doing is follow the orders the superiors. The executioner, before administering the lethal injection, could say that he or she is not intending to kill the inmate, but to do his or her job. The president of a country, after ordering a nuclear attack on a city, could even claim that it was not his or her intention to kill civilians, but to force that country into surrendering.

The final example is exactly the kind of event that motivated Anscombe to write her 1958 pamphlet *Mr. Truman's Degree*. In the pamphlet she argued against the proposal from Oxford to grant president Truman an honorary degree. President Truman was known at the time to have ordered the atomic bombing of the cities of Hiroshima and Nagasaki in order to force Japan into surrendering. Anscombe thought Truman to be a murderer, because choosing to kill innocent civilians either as a means to an end or as an end in itself is to commit murder.

The idea that Japan's capitulation may have saved the lives of many soldiers of the Allies did not impress her. To Anscombe, this was rendered irrelevant, because the bombing of Japan was unnecessary by itself (1958a, 3). The bombings of Hiroshima and Nagasaki were unnecessary, in her view, because Japan was already open to negotiating

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3] Variations of this hypothetical case are to be found in "War and Murder" (1961, 51) and "Modern Moral Philosophy" (1958b, 11).

peace before the bombings. Furthermore, a case can be made that the causes of Japan's surrender were not even the atomic bombings themselves.<sup>4</sup>

However, the relevant part to this article is Anscombe's argument against the bombing of cities and the way in which she saves the doctrine of double effect from its abuses.<sup>5</sup>

Anscombe sustains two distinct propositions:

(i) It is nonsense to say that someone does not intend the means to a chosen end. We, necessarily, intend the means that we use in order to achieve our chosen ends (1961, 59).

(ii) Intentionally killing innocent civilians as a means to an end is *always* murder (1958, 4).

As stated above, Anscombe uses these two propositions in order to defend double effect from abuses and to claim that the atomic bombings ordered by president Truman were war crimes.

Proposition (i) prevents agents from justifying their immoral actions by redirecting their intentions just before performing the action. The pilot, before releasing the bombs on a city, could not say that he or she only intended to follow orders, because to follow those orders (the end) he or she had to bomb the city (the means). Likewise, the executioner cannot say that he or she did not intend to kill the inmate on death row, but only to do his or her job. In order to do the job, the executioner has to kill the inmate on death row.

Similarly, president Truman could not say that he issued the order to bomb Hiroshima and Nagasaki, but did not intend to kill civilians. All these abuses of the principle of double effect are prohibited by (i).

Thus, Anscombe's argument for the immorality of the nuclear bombardments is the following:

(ii) Intentionally killing innocent civilians as a means to an end is *always* murder.

(iii) The atomic bombings of Hiroshima and Nagasaki were intentional killings of innocent civilians that were chosen as a means to an end (the capitulation of Japan).

Therefore,

(iv) The atomic bombings of Hiroshima and Nagasaki are murders.

The crucial part of premise (ii) is the term "intentional". One must intentionally, as in deliberately, kill innocent civilians in order to commit murder. In order for an action to count as murder one must choose to kill innocent civilians as a means to an end or as an end in itself. This would imply that an unintentional killing of innocent civilians does not, therefore, count as murder. Anscombe states:

I intend my formulation to be taken strictly; each term in it is necessary. For killing the innocent, even if you know as a matter of statistical certainty that the things you do

4] See Ward Wilson, "The Bomb Didn't Beat Japan. Stalin Did." (2013)

5] This argument, I believe, can be adequately stated if one combines the relevant parts from "War and Murder" and "Mr. Truman's Degree".

involve it, is not necessarily murder. I mean that if you attack a lot of military targets, such as munitions factories or naval dockyards, as carefully as you can, you will be certain to kill a number of innocent people, but that is not murder. On the other hand, unscrupulousness in considering the possibilities, turns it into murder. (1958a, 4)

Prima facie, this would seem inconsistent with what had been said beforehand about murder. Anscombe implies that even if the bomber knows that he or she will probably bomb civilians, the deaths of the people are unintentional in this case, because the intention behind the action is to bomb the military target. The fact that civilians will likely die during the bombing is something, as Aquinas would put it, beside the intention. The effect of killing the innocents is here but a by-product of the action and not the means to the end.

It is in this borderline case that I believe that the principle of double effect breaks down. If the doctrine fails to apply to this case, then what Anscombe has stated in the above passage is inconsistent with proposition (ii), that it is always murder to choose to kill innocent civilians as a means to an end.

#### IV. TWO FORMS OF PACIFISM

One of the most famous defenders of *just war* theory, Michael Walzer, reintroduced the Medieval terminology of *jus ad bellum* and *jus in bello* into the philosophy of war. *Jus ad bellum* is used to refer to the justice of war, as in the causes of a war or the reasons for starting a war. *Jus in bello* is meant to refer to the justice in war, as in how the war is fought. The first presupposes a class of adjectival judgments such as: This war is just/unjust. The second presupposes a class of adverbial judgments: This war is being fought justly/unjustly (Walzer 1977, 21).

Absolute pacifism rejects the idea of a just war from the very start. War is an activity that necessarily involves the killing of people, and since absolute pacifism does not make a distinction between killing combatants and killing non-combatants, no war can ever be justifiable. Thus, the thesis of just war theory is the contradictory of this judgment. It is the thesis that some wars are justifiable. As Lee (2004) notes, this is a fundamental assumption of just war theory.

Recounting Anscombe's understanding of pacifism, we may state that absolute pacifism sustains the following two propositions:

(v) No use of coercive force by the state is justifiable.

(vi) No war is justifiable.

However, there are many other forms of pacifism which are more moderate. I am concerned only with one of these, namely *contingent pacifism*. In one of its versions, it does allow some wars to be justifiable in so far as no innocent civilians are harmed or killed. This would mean that contingent pacifism is interested in *jus in bello*, in the way in which the war is being fought (Fiala 2018).

Therefore, if contingent pacifism allows some wars to be justifiable just in case no innocent civilians are killed in them, then it rejects (vi) on the ground that if some wars are possible without the taking of innocent lives, then those wars are justifiable. It could also reject (v) on the ground that there are obviously uses of coercive force by the state that do not end up in a killing or even presuppose a killing. Thus, only those uses of force that do not harm or kill civilians would be permissible.

Roughly, contingent pacifism would argue:

(vii) If some wars can be carried out without civilians being harmed or killed, then some wars are justifiable.

(viii) Some wars can be carried out without civilians being harmed or killed.

Therefore,

(ix) Some wars are justifiable.<sup>6</sup>

Premise (viii) seems to be the crucial point regarding just war theory. Taking into account the many cases in which civilian casualties occur in warfare, we could come to think that innocent people being killed in war is inevitable and unavoidable. Thus, according to Steven Lee, just war theory presents us with the following trilemma of mutually inconsistent propositions:

A. Some wars are justifiable.

B. Civilians should not be harmed or killed by combatants.

C. No war can be carried out without civilians being harmed or killed (Lee 2004, 234).

Lee remarks that we can obtain the following implications from these propositions:

(x)  $(B \ \& \ C) \rightarrow \sim A$

Obviously, if civilians should not be harmed or killed in wars and if no wars can be fought without killing civilians, then no wars are justifiable. If we form a modus ponens here, the conclusion would be proposition (vi), the second thesis of *absolute pacifism*.

(xi)  $(A \ \& \ C) \rightarrow \sim B$

Indeed, if we accept, as just war theory does, that some wars are justifiable, but that wars generally cannot be fought without civilian casualties occurring, then we should accept cynically that it is not the case that civilians should not be harmed. This is, rightly so, an unacceptable conclusion for both the just war theorist and for the pacifists, because it would justify any kind of atrocities done to civilians.

(xii)  $C \rightarrow (A \vee B)$

If we assume that it is true that no wars can be carried out without harming civilians, then it would seem that we would have to reject either that some wars are justifiable or that

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6] For the sake of simplicity, I will assume here that civilians not being killed is a necessary and sufficient condition for a war to be justifiable. The better conclusion (and consequent) would be "Some wars are justly fought", because avoiding harm to civilians is a part of *jus in bello* (the justice in war), not of *jus ad bellum* (justice of war). However, a contingent pacifist, I believe, would not see a problem with the conclusion "Some wars are justifiable" if it is tacitly assumed that the wars carried out without harming civilians are started on just reasons.

civilians shouldn't be harmed in war by combatants. As Lee notes, one of the disjuncts must be false. (2004, 234)

Keeping these considerations in mind, it would seem that the absolute pacifist must accept B and C, deny A and, as a result, sustain proposition (x). The just war theorist, it would seem, must accept A and B, but reject C, thereby sustaining:

(xiii)  $(A \ \& \ B) \rightarrow \sim C$

The just war theorist would therefore, sustain proposition (viii) just like the contingent pacifist would. In the context of this trilemma, the contingent pacifist would sustain the implication (xiii) exactly like the just war theorist. But then where exactly do the just war theorist and the contingent pacifist differ?

#### V. CONTINGENT PACIFISM VS. JUST WAR THEORY

The difference between just war theory and contingent pacifism lies in, I believe, one's acceptance of the doctrine of double effect. The contingent pacifist seems to not allow the application of double effect because of an *absolute restriction* on the killing or harming of civilians. It is irrelevant whether the civilian killings are intentional or not. The contingent pacifist would judge that any military operation that results in killing civilians or harming them is a murderous one. It is worth noting that even if civilian deaths would result because of a mistake on the part of the military, the contingent pacifist would judge that murder was committed.

In this sense, a contingent pacifist would be somebody such as Thomas Nagel who presented two sets of restrictions that may be respected in war:

I have said that there are two types of absolutist restrictions on the conduct of war: those that limit the legitimate targets of hostility and those that limit its character, even when the target is acceptable. (1972, 138)

In other words, there should be rules that differentiate between legitimate and illegitimate targets, and rules that restrict what may be done to legitimate targets. It would be immoral to kill innocent civilians. Combatants are the ones that are the legitimate targets if war is to be justifiable.

The distinction between combatants and non-combatants is not a sharp one and it is obviously not one of the goals of this article to attempt to clarify it. However, some broad considerations are necessary. Firstly, as Paul W. Kahn stated, war does not differentiate between the innocent and the guilty, but between combatants and non-combatants (2002, 2).

As Nagel said, in war, non-combatants are the ones that are "innocent". However, this innocence is not moral innocence. Civilians are not "innocent" in the sense that they may have done nothing wrong and soldiers are not "guilty" in the sense that they are doing something wrong. Rather, the non-combatants are innocent in the sense that they are

*harmless* or not contributing to the threat. Combatants are then *harmful* or in the process of harming (Nagel 1972, 139).

Anscombe supports a similar view that the innocents in war are “all those who are not fighting and not engaged in supply to those who are with the means of fighting.” (1958a, 5) Combatants would then be the ones that are fighting and helping those who are fighting. Thus, as Nagel remarks, “we must distinguish between combatants and non-combatants on the basis of their immediate threat or harmfulness.” (1972, 140)

The application of this would allow farmers and medics to be non-combatants, because their work does not contribute to the threat posed by the military. However, munitions factory workers and truck drivers transporting weapons and ammunitions could be considered legitimate targets, because their work contributes directly to the threat and power of the military.

Returning to the difference between contingent pacifist and just war theorists, it is worth reiterating that contingent pacifists consider that harming or killing non-combatants in war is not permissible under any circumstances. On the other hand, just war theorists could allow such killings to occur if they accept the doctrine of double effect.

Double effect presupposes, of course, the morally significant distinction between the intended effects and the foreseen effects of an action. One must not intend the killing of non-combatants. Killing non-combatants deliberately is murder, as Anscombe states. However, according to my reading of Anscombe’s understanding of double effect, if the killing of non-combatants is neither intended as a means to an end or intended as an end in itself, but is only a by-product or a foreseen consequence of a certain permissible action, then the killing is not murder.

Contingent pacifists and just war theorists thus differ in a more fundamental way. The first think that killing civilians is always murder and the second judge the morality of killing civilians with respect to whether the killing was intentional or unintentional.

How does one use double effect to judge whether a killing is intentional or not?

## VI. TACTICAL VS. TERROR

Anscombe’s case in which killing non-combatants in war may not be murder was presented in one of the previous sections. This passage is of importance:

For killing the innocent, even if you know as a matter of statistical certainty that the things you do involve it, is not necessarily murder. (Anscombe 1958a, 4)

The example she gives is that of bombing a munitions factory which is located in an area populated by civilians. No matter how careful that bomber could be, he or she is almost guaranteed to kill a number of civilians as a result of unleashing the bombs on the factory. It is in this type of case that the principle of double effect is supposed to excuse the deaths of the civilians on the ground that they were unintentional. They were mere by-products of the bombings.

In the defenses of double effect, this type of case is often contrasted with the case of the *terror bomber*: the one who kills a large number of civilians in order to lower the morale of the enemy army. Jonathan Bennett (1980) argued, however, that these two cases are not so morally different if we examine them closely.

The bomber who destroys the military target but does not intend the deaths of the civilians nearby has come to be called the *tactical bomber*. In comparison to the terror bomber, double effect would dictate that the tactical bomber *intends as a means* the destruction of the target and the civilian deaths would only be by-products or accidents of the intended action. The terror bomber, of course, intends to use the civilian deaths as a means to an end.

It must first be remarked that neither the tactical bomber nor the terror bomber intends to kill civilians as an end in itself. The first one's end is to reduce the strength of the enemy army by destroying, say, one of its munitions factories, while the second's is to use civilian deaths as a means to lower the enemy army's morale.

If we follow the double effect application here, we would say that it is always wrong to kill non-combatants as a means to an end and it is sometimes right to destroy a military target while knowing (but not intending!) that some civilians will die in the process (Bennett 1980, 95).

So the moral difference between the two cases is that the terror bomber intends the killings and the tactical merely foresees them, but why exactly is the tactical bomber's action sometimes morally permissible? Someone might say that the terror bomber kills the civilians directly, while the tactical bomber does not. Bennett rightly says that this is not true. In neither case are there intermediate events between the bombings and the killings. It might also be downright absurd to say that the tactical bomber does not directly kill the civilians on which he or she releases the bombs (1980, 96).

Although neither of the bombers necessarily wants civilian deaths, both would rather allow civilians to die than not carry out their missions. So how do their intentions differ? Bennett believed that the difference between the two bombers should lie in their answer to this question:

Q: If you believed that no civilian deaths would occur, then would you have been less likely to carry out your mission? (1980, 100)

Although, as Bennett remarks, there is more than one interpretation to this question, I believe that it would be useful to interpret it as meaning: If no civilians would die, in conjunction with whatever you believe would follow causally from that, then would you have been less likely to carry out your mission?

Bennett believed that both bombers would answer affirmatively here. In the case of the terror bomber, if no civilians die, then surely the morale of the enemy army would not be lowered. In the case of the tactical, if no civilians die, then it means that the bombs were ineffective and did not destroy the factory.

However, I think that this is not quite correct. The terror bomber will surely answer 'Yes', because the deaths of the civilians are clearly the means to lowering the enemy's

morale. This is not so in the case of the tactical bomber. He or she might answer ‘No’ if the bomber believed that the deaths of the civilians were unnecessary as to whether the military target would be destroyed or not. After all, the civilians might not even be in the area at the moment of the bombing and the bomber could still fulfill the goal of the mission, while the terror bomber could not achieve his or her goal without civilian deaths.

To sum up, the terror bomber could have the belief that if no civilians would die, then the enemy’s morale will not be lowered. The tactical bomber could have the belief that it is not the case that if no civilians would die, then the target would not be destroyed. The civilian deaths are not necessarily linked to the success of the tactical bomber’s mission. There could be a chance that actually no civilians are near the military target at the moment of the bombing.

Bennett states that this difference is not morally significant either, because the distinction between intending something as a means to an end and foreseeing something as an effect is not “linked to a difference in probability.” (1980, 103) It would seem that there are not actually good reasons for believing that the two cases are morally different. In fact, a case can be made that the two are morally equivalent. As stated earlier, both bombers would rather have civilians die, than not carry out their missions.

Lichtenberg’s approach to this issue is more insightful, I believe. She puts forward the idea that we ought to conceive the bomber’s choices as packaged deals (1993, 352-53). The package would consist of the immediate foreseeable causal sequence of the bomber’s actions. The terror bomber’s end is to lower the enemy’s morale and this can be done only if civilians are killed. The tactical bomber’s end is to reduce the enemy’s strength by destroying one of its munitions factories, but he or she must also accept the fact that there is a very high probability that civilians will die. These are the two package deals of each case.

Lichtenberg’s argument, as I understand it, would be the following:

(xiv) If both bombers choose to carry out their respective missions, then they choose their respective package deals.

(xv) If they choose their respective packages, then they also choose the contents of the package.

(xvi) If they choose the contents of the package, then they also choose to kill civilians (If, obviously, killing civilians is part of the package deal.)

Therefore,

(xvii) If both bombers choose to carry out their respective missions, then they choose to kill civilians.

This argument would have us conclude that even the tactical bomber chooses to kill non-combatants. If that is so, then he or she uses the civilian deaths as a means to an end, just like the terror bomber does. Lichtenberg writes:

Doesn’t the choice of a package that harms or kills people come to the same thing morally as using them as a means? It’s not that the tactical bomber wants them to

die, it's just that he would rather destroy the factory than not, and civilian deaths are a necessary concomitant of that. But similarly, it's not that the terror bomber wants civilians to die, it's just he would rather lower enemy morale than not, and their deaths are required for that to happen." (1993, 353)

It would thus seem that in the end, both cases are morally the same. The tactical bomber actually intends to have civilians killed as a means to his or her chosen end. However, I believe that Lichtenberg's argument is not very convincing in this regard. Consider again an example of double effect used in many of Anscombe's works: I am put into the situation of choosing to do something incredibly evil or leave the country. I do not intend to do the evil thing and I choose to leave the country, but if I leave the country I lose my job. Does it follow that I chose or intended to lose my job, because I knew I would lose it? It would rather be the case that my boss fired me and not that I voluntarily quit my job.

Lichtenberg anticipated this difficulty and made the distinction between mediated and unmediated consequences. She gives the following interesting example: If I am a teacher and my student threatens to do something terrible if I give him or her a bad grade, then if I give the student a bad grade did I intend him or her to do the terrible thing? Or, even better, am I responsible for the student's action? (Lichtenberg 1993, 357)

This example would suffice to show that when the foreseen effects are mediated by the choices of other people then our responsibility towards those effects decreases. If an effect is contingent upon another person's decisions, then it would seem that we did not intend those effects as we would have if those effects had been unmediated.

However, this is still not a strong enough argument in order to show that the tactical bomber actually intends the deaths of civilians as means to the end. If I intend to quit my job and know that there is a high probability to starve in a month, does it follow that I intended to starve?

This, in my view, is analogous (although obviously not the same thing) to the fact that if I assert a conditional, it doesn't follow that I have asserted the consequent. In the next and final section, I hope to give a more convincing argument that the tactical bomber intends the civilian deaths as means.

## VII. INTENTIONAL UNDER THIS DESCRIPTION

The starting question for this section is: What makes an action intentional? Anscombe's famous work *Intention* provides a simple criterion for distinguishing between intentional and unintentional actions. The intentional actions are those actions to which the question "Why?" can apply. This "Why?" is evidently not a causal "why", but a justificatory "why". The person who is questioned must give a reason for the action and not a cause for the action (Anscombe 1963, 9-10). If I cross the room to open the window and if someone were to ask me at that moment "Why are you opening the window?" I

may answer “Because it’s hot in here and I prefer the room to be chilly.” This is a reason for opening the window and not a cause of the opening of the window.

What are then unintentional actions? Anscombe answers that actions are unintentional if the question “Why?” fails to apply to them. The question is refused application when the subject answers either “I did not know I was doing that.” or “It was something involuntary.” (Anscombe 1963, 11-12) I may be pouring coffee into a cup and not know that the cup was made of porcelain. Someone might ask me “Why are you pouring coffee into that cup of porcelain? It’s not for individual use!” and I could reply “I did not know I was using the porcelain cup.” This would also be the case if I was unaware of standing in someone’s sunlight at a beach and the person would ask me “Why are you standing in my sun?” If I was unaware of it, I would, of course, reply “I did not know I was doing that.” As for involuntary actions, I could be moving my legs while sitting on a chair and be asked “Why are you moving your legs?” I could answer “It’s involuntary. I have restless leg syndrome.”

Anscombe remarks that because an action can have different descriptions, actions can be intentional under certain descriptions and unintentional under others (1963, 11-12). For example, I am aware that I am pouring coffee into a cup, but I may not be aware of the fact that it is a porcelain cup or that it is a cup intended for a particular person or that it is a cracked cup and I end up spilling coffee on the table. Thus, if I am asked “Why are you pouring coffee into the cup?” I may answer “Because it’s morning,” but if I am asked “Why are you pouring coffee in my personal cup?” I will answer “I did not know I was doing that.”

This is not to say that because a person’s action can have different descriptions, then that person is performing multiple actions or more than one action. The presence of many descriptions of an action does not imply multiple actions. This is similar to how multiple descriptions of a single particular person do not imply multiple persons. One might then be tempted to ask: What is *the* action behind all these multiple descriptions? Anscombe replied that this question does not have a clear sense and that ultimately any accurate description of an action is just as legitimate as any other accurate description of that action (1979, 220).

In what follows, I will apply this criterion to the case of the tactical bomber. This would call for an analogous case presented by Anscombe herself. Let us imagine that a person is hired by somebody to pump poisoned water into the water supply of a house. This act of pumping poisoned water into the house supply would certainly poison the inhabitants of the house. If the person *knows* that the hirer hired them to pump poisoned water into the house supply, then, Anscombe states, the person cannot argue that they did not intend to poison the inhabitants (1963, 44).

If someone were to ask “Why are you pumping water?” the person could answer “To get the money promised by my hirer.” This is an acceptable reply that shows that the action is intentional. However, if someone were to ask “Why are you pumping poisoned water into the house supply?” the person cannot say “I did not know I was doing that.” In

our case it is stipulated that the person knows what he or she was hired for. Furthermore, answering "I am only doing this to get the job done, but I don't intend to poison the inhabitants." would be inappropriate. In order to achieve the end of the action (to get the money) the person has to pump poisoned water into the house supply. As Anscombe says: "[...] he cannot profess not to have had the intention of doing the thing that was a means to an end of his." (1963, 44)

This, in effect, is a restatement of (i): It is nonsense to say that someone does not intend the means to a chosen end. We, necessarily, intend the means that we use in order to achieve our chosen ends.

Then, in order to show that the tactical bomber uses the civilian deaths as means to an end, we must show that the action of killing non-combatants is intentional and not merely foreseen. Let us recall the case: The tactical bomber is given the mission to bomb a munitions factory located in a heavily populated area. The tactical knows as "a matter of statistical certainty" as Anscombe put it, that bombarding the factory will kill civilians nearby.<sup>7</sup>

Furthermore, Lichtenberg stresses that "[...] in the example as it is given to us the tactical bomber *knows* that in carrying out his raid he will kill civilians; there is no way of prising apart this effect from the one he intends". (1993, 354)

Now let us apply Anscombe's criterion for distinguishing between intentional and unintentional actions. If the tactical bomber were to be asked while releasing the bombs the question "Why are you bombing the munitions factory?" he or she could say "I am bombing the factory, because I was ordered to do so and because we need to reduce the enemy's military strength." Bombing the factory is obviously the intended means to the end.

Now, what if someone would ask then "Why are you bombing these innocent civilians?" and the bomber would reply with "I did not know I was doing that." This would be a lie, because, again, in the imagined case, the bomber either knows for sure that civilians will die or knows that there is a high chance that there will be casualties. The same would go for the reply: "I am not doing that." This is false, because the description of the action is an accurate one. Bombs are actually being dropped on the heads of non-combatants that are unfortunate enough to be too close to the target of attack.

The defense that the bomber doesn't kill them directly, because he or she is not aiming at them would be tempting to endorse here. However, we must recall Bennett's statement that it is absurd to say that the bombs do not directly kill the civilians. There are no intermediate steps between the explosions and the killings and, even if there were, the bombs would still be the cause of the innocent civilians' deaths.

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<sup>7</sup> It might be worth saying that in this imagined case, the innocent civilians (the non-combatants) are the people that happen to be near the factory. For the purposes of this argument, I will not be concerned with settling the issue of whether a munitions factory worker is a combatant or not. I will be concerned only with the civilians that just happen to be near the factory at the moment of the bombings.

Furthermore, one could argue that “bombing innocent civilians” and “killing innocent civilians” would be interchangeable descriptions. They accurately describe the tactical bomber’s action just as well as the description “bombing the munitions factory” does. Given Anscombe’s criterion, it does not help to argue that bombing the factory is the intended means, while killing the non-combatants in the area is not. The bomber’s action is intentional under *both* descriptions.

This would amount to say that the tactical bomber intends bombing the civilians as a means to an end just as much as he or she intends bombing the factory as a means to an end. Since the bombs that are dropped destroy the factory and kill the civilians nearby, and the bomber knows of these consequences it would not be the case that his or her actions are unintentional under any of the two descriptions. Therefore, we cannot say that the distinction between intended consequences and foreseen effects holds. Thus, we obtain the following:

(xviii) The Doctrine of Double Effect can be applied only to cases where we can distinguish between intended means and foreseen effects.

(xix) The tactical bomber example is not a case where we can distinguish between intended means and foreseen effects.

Therefore,

(xx) The tactical bomber example is not a case to which the Doctrine of Double Effect can be applied.

It would seem that double effect cannot justify the permissibility of the tactical bomber’s action. Unless the bomber does not make efforts in order to avoid killing or harming the civilians, then he or she cannot say that the deaths were not intended. If this is so, then the bomber’s actions could be excused only if he or she didn’t know beforehand that civilians would be killed. If the bomber didn’t know, then the answer “I was not aware I was killing innocent people.” could be adequately given to the question “Why are you bombing non-combatants?”

Where does this leave us now? What does this argument imply for the just war theorist? It would imply that double effect is not applicable once the bomber knows with certainty that his or her action will result in civilian casualties. Intentional civilian deaths would be murders. Unintentional civilian deaths would be the excusable ones. These would be the ones that the combatants in war are not aware of or did not realize would occur. Or in other words, the ones that happen due to mistakes.

If the application of double effect breaks down in the case of tactical bombers, then the question would be: In what other cases in warfare could double effect be adequately applied to? If the doctrine is to be abandoned completely, then the just war theorist, and Anscombe for that matter, can excuse the killing of non-combatants only when these killings are unintentional and committed by mistake. The just war theorist could make this claim if he wishes to keep the morally significant distinction between intentional killings and unintentional killings.

The contingent pacifist, on the other hand, couldn't care less about double effect. If innocent civilians are killed in a war (whether intentionally or not), then that war is immoral. However, the problem of civilian casualties in war affects contingent pacifists just as much as it affects Anscombe's argumentation. Proposition (viii) (Some wars can be carried out without civilians being harmed or killed.) rests on shaky ground. Miscalculations, bad leaderships, bad decisions, insufficiently trained combatants or, in other words, the very possibility of human error, is present in wars just as it is present in any other human activity. This increases the probability of innocent casualties. If no war can be carried out without inevitably harming or killing at least some civilians due to errors on the part of the army, then it has to be conceded that all wars are unjust. Assuming that civilian deaths are an unavoidable part of war, contingent pacifism collapses into absolute pacifism.

Thus, if double effect were to be rejected from just war theory due to my above criticism and if we concede that no war is possible without civilian deaths, then either the just war theorist would have to argue that some intentional killings of non-combatants are permissible in war or else conclude that all wars are immoral and succumb to absolute pacifism.

#### VIII. CONCLUSION

In this article I aimed to show that Anscombe's use of double effect cannot be adequately applied to the case of the tactical bomber. This is so because the doctrine of double effect presupposes a morally significant distinction between intended consequences and foreseen consequences. If we use Anscombe's criterion for distinguishing intentional actions from unintentional actions and apply it to the tactical bomber's action, we observe that the action is actually intentional under the description "is bombing the innocent civilians". This is so because, in the imagined case, the bomber knows that if he or she bombs the military target, then the innocent civilians nearby will be killed.

While releasing the bombs on the military target, the bomber could be asked "Why are you bombing this munitions factory?" and the reply could be "I am doing this in order to reduce the enemy army's strength." This shows that the bombing is intended as a means to an end. If, however, the bomber were asked "Why are you bombing these innocent civilians?" the reply "I did not know I was doing that." would be a lie. In the imagined case, the bomber knows of this effect and chooses to carry out the mission anyway. Thus, it seems that killing the innocent civilians is also intentional and if this is so then there is no distinction between intended consequences and foreseen consequences in the tactical bomber's case. The principle of double effect fails here.

Anscombe sustained proposition (ii) Intentionally killing innocent civilians as a means to an end is *always* murder. This implies, as she explicitly stated in her pamphlet against president Truman, that simply killing innocent civilians is not necessarily

murder. In order to be murders, the killings must be intended either as means to an end or as ends in themselves. Thus, it would follow that unintentional killings of innocent civilians are not murders.

Anscombe believed that civilian casualties that result from bombing a military target aren't necessarily murders, because the deaths of civilians can be foreseen effects rather than intended effects. I argued that Anscombe's argumentation is weak here and that double effect actually cannot be applied to the imagined case. If I am right, then it remains for the just war theorist to prove the necessity and usefulness of double effect by appealing to other cases in warfare in which the doctrine works.

If double effect is to be rejected altogether from just war theory, then it seems that the theorist can only excuse those killings of innocent civilians which are done by mistake. However, one might argue that some military operations that involve inevitable civilian casualties are themselves inevitable and necessary. If this is the case, then the just war theorist must either argue that sometimes intentionally killing innocent civilians is justifiable (which begs the question of when exactly it is justifiable to do that and when it is not) or admit that no wars are justifiable and become an absolute pacifist.

Without the doctrine of double effect, it seems that the problem of innocent civilians dying in war would force us into a dilemma of extremes, in a Scylla and Charybdis situation. As Lichtenberg (1993) remarked, rejecting double effect altogether could leave us torn between absolute pacifism and unrestrained warfare.

Perhaps as a final remark, it must be added that this proposed analysis of the distinction between intended effects and foreseen effects could have applications in the ethics of drone warfare. Similar to the tactical bomber, the operator of the drone could not say that his or her drone strike that resulted in civilian deaths was an unintended side-effect of the strike if he or she knew beforehand that civilians would be killed as a result of the bombardments. This, of course, obtains if my understanding of Anscombe's distinction between the intended and the unintended is correct.

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