

SUMMARY OF DOCTORAL DISSERTATION
“DOUBLE-EFFECT REASONING IN LEGAL DISCOURSE”

The issue of actions resulting in double effect has received unflagging attention from contemporary ethicists. Although the beginning of the discussion in ethical literature can be traced back to the 13th century, there are still disputes as to whether and under what conditions actions resulting in double effect can be justified. Providing ethical reasons for actions that, in addition to their intended good effect, cause foreseen harm and interfere with someone else's rights and interests is the domain of “Double-Effect Reasoning” (“DER”). The object of this dissertation is to analyze this reasoning and evaluate its role in legal discourse. On the ground of legal discourse, the issue of legitimizing some practices resulting in double effect might have a great significance, given the formal nature of the argumentation. Making the legal discourse a point of reference for the present dissertation, it should be noted that it constitutes one of the cases of practical argumentative discourse, within the framework of which the conditions of permissibility of an action resulting in double effect may be considered.

The main purpose of this dissertation is: to reconstruct the models of reasoning in favor of the permissibility of actions resulting in double effect in the light of ethical literature, to relate them to legal issues and to indicate their role in legal discourse. An additional aim is to reconstruct the state of the debate on DER in contemporary philosophy of law. I put forward a thesis that DER is part of well-established ways of legal reasoning and has a relationship with the constitutional principle of proportionality. In the Polish legal system, it is the principle of proportionality that provides a legal basis for interfering with other people's rights and freedoms. In order to verify this thesis, in this dissertation I analyze the dogmatic-legal understanding of the principle of proportionality and compare the constitutional test of proportionality with the DER test. In conclusion, the principle of proportionality is presented as a theoretical construct based entirely on DER but adapted to the needs of legal science and jurisprudence.

The dissertation is divided into two parts (theoretical and practical) and it consists of the introduction, six chapters and the conclusion.

The first chapter provides an explanation of the key concepts for this dissertation that appear in ethical discourse in the context of actions resulting in double effect. In particular,

the findings regarding the act, the intention, and the effects foreseen as accidental or inevitable consequences are relevant. In the second chapter, I examine ethical argumentative schemes regarding actions resulting in double effect beginning with St. Thomas Aquinas' classical account of DER and the popular neo-Thomistic formulation of DER and concluding with a discussion of Anglo-Saxon reinterpretations of DER in analytic philosophy. A key insight that will be developed later in the dissertation is that it is not possible to consistently combine Aquinas' teaching on unconditional obedience to moral precepts with the teleological concept of a "strong reason" for action and the justification of foreseeable, inevitable evil with incommensurable nature (e.g., causing another's death). The task of the third chapter is to reconstruct the discussion on the subject of DER that takes place in the contemporary philosophy of law and involves representatives of competing trends: legal positivism (Herbert Hart), non-positivism (Ronald Dworkin), and above all, the contemporary school of natural law (John Finnis). The presented voices of philosophers of law "for" or "against" the usefulness of DER constitute a consistent reflection on moral philosophy yet set in the context of legal problems. I consider the basic objections to DER, as well as the theses formulated by legal philosophers regarding the role of DER in law. The analysis of ethical and philosophical-legal thought leads to the identification of DER types in the fourth chapter. The chapter closes the theoretical part with a reflection on the characteristics of DER as a practical legal reasoning, combining the elements of evaluative argumentation (topical-rhetorical) and empirical analysis (assessment of the degree of probability of an effect and cause-effect relations). The review of different positions and approaches to DER in ethics allows us to distinguish two argumentative models (deontological and teleological).

The second part of the dissertation opens with a chapter devoted to the analysis of normatively appropriate ways of justifying statutory legal interference. In the fifth chapter, I pose the question whether it is possible to read the constitutional principle of proportionality as a kind of legal DER. The performed characterization of the status of the principle of proportionality in the constitutional dogmatic-legal discourse has a "meta-report" character, relativized to the examination of the connections between the types of practical argumentation (the constitutional proportionality test with the deontological and teleological ways of justifying the permissibility of actions resulting in double effect). In the last, sixth chapter I analyse selected regulations of administrative, civil and criminal law. The subject of consideration involves legislative actions and actions of legal subjects, assuming a complex structure of actions resulting in double effect. As a result of the analysis I answer the question whether the deontological and teleological way of legitimising actions resulting in double

effect can be determined by the legislator at the level of norming the action (it is inscribed in the structure of certain legislative solutions), or it is the result of subsequent interpretations based on the beliefs of the participants of legal discourse.

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