Response to Kuhse

R M Perkin, D B Resnik

Kuhse criticises our application of the doctrine of double effect to the problem of agonal respiration. She points out that we encounter a problem with describing the act in question—that is, the administration of muscle relaxants during agonal respiration. We could describe the act in any number of ways, some of which would imply that it is an act of killing. She is correct to point out that killing is not a basic action and we must appeal to the agent’s intentions to determine whether the act in question is killing or something else. But this same problem occurs when we are talking about other actions, such as taking a patient off a respirator or not resuscitating a patient. In some cases, these actions would constitute killing by an act of commission or an act of omission. We justify these actions by appealing to the intentions of the actors. We can infer a person’s intentions from his or her circumstances, behaviour, and communications. If a physician weans a terminally ill patient from a respirator, we do not call this action “killing” because we infer that the physician’s intention is to reduce the patient’s suffering, not to kill the patient. We can make the same sort of inference in the agonal respiration case; we infer that the physician’s intention is to relieve suffering not to kill the patient. Obviously, intentions are subjective and therefore epistemologically problematic—how can we ever know what anyone intends to do? On the other hand, end-of-life decision making and ethics would make no sense at all if we did not assume that we can ascribe intentions to physicians, patients, family members, and other health care professionals. One does not need to subscribe to the doctrine of double effect in order to grasp this basic point. Even the well accepted practices of withholding and withdrawing care cannot be morally justified without ascribing humane intentions to the actors. So, we admit that one needs a theory of human intentions in order to apply the doctrine of double effect to the problem of agonal respiration, but this is not a fatal flaw in our approach, since one needs a theory of human intentions to make moral distinctions between using neuromuscular blocking drugs to palliate versus using neuromuscular blocking drugs to kill. Although this difficulty does exist we maintain that the intentions of the physician must matter when providing end-of-life care.

In this short paper, we respond to critics of our original paper, The agony of agonal respiration: is the last gasp necessary? A common thread in both Hawryluck’s and Kuhse’s responses is the difficulties encountered when using the agent’s intentions to make moral distinctions between using neuromuscular blocking drugs to palliate versus using neuromuscular blocking drugs to kill. Although this difficulty does not exist we maintain that the intentions of the physician must matter when providing end-of-life care.
these subjective states of mind. In ethics, one’s mental state can make the difference between euthanasia/murder and palliation.

Finally, Hawryluck asks if our families were prepared for what was going to happen. In both of our case examples, the families received a very clear description of what the end of life would look like. The relationship was so honest that when they asked if “there was anything else we could give their children to stop the gasping” we answered “yes, but we cannot use that category of drugs”. Both families pleaded that we use the neuromuscular blocking drugs; we did not, but rather continued to escalate our already high level of sedation. One of us (RMP) is haunted by the memory of the syringe of medicine being given, which he knew would not effectively end the gasping. These families are not comforted by the fact that we acted in an “ethically permissible” manner.

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REFERENCES

COMMENTARY

After agreeing that the doctrine of double effect (DDE) cannot settle the question of how actions ought to be described, Perkin and Resnik suggest that this is not an in surmountable problem since “we justify these actions by appealing to the intentions of the agents”.

This response misses the point. It rests on a confusion between the permissibility and the justifiability of actions. Under condition (1) of the DDE, an action is permissible if “the goal of the action is itself good”. Hence, if I describe my action of administering a lethal drug as “relieving suffering”, rather than “killing”, it is in principle permissible. Whether a permissible action is also justified is determined by condition (4), which states that there must be a proportionately good reason. Under the DDE, it would, other things being equal, be permissible to cause the death of a patient, to relieve her (temporary) suffering, but the action might well be unjustified under condition (4). On the other hand, bringing about the death of a terminally ill and suffering patient might be justifiable under condition (4), but would be impermissible if the agent were (to admit that she was) “directly intending” the patient’s death. In short, the justifiability of actions is one thing, their permissibility is quite another.

This conclusion underlines my earlier point. Because the DDE cannot set limits to the description of actions, it will sometimes allow caring physicians to rig the descriptions of end-of-life decisions they believe to be justified in such a way as to make them also permissible.

Perkin and Resnik claim that ethics in general and end-of-life decision making in particular presuppose that we can ascribe intentions to agents. This claim is either ambiguous, or false. Intentional actions presuppose deliberate and voluntary choice. This is not the same as claiming that there is a morally relevant distinction between what agents directly intend and what they merely foresee. Ethics presupposes the former, but many philosophers, ethicists, and lawyers deny the latter, holding that moral agents are responsible for all the foreseen consequences of their actions.

While rejecting the DDE, I have suggested that it might sometimes be morally justifiable to bring about the death of a patient by administering muscle relaxants. Contrary to Perkin and Resnik, this does not presuppose a distinction between intention and foresight. One might, for example, describe any medical end-of-life decision (regardless of whether it involves the administration of a lethal drug, or the foregoing of life-sustaining treatment) as a wrongful killing if it were to lack the consent of a competent patient, or if it is, say, contrary to an incompetent patient’s best interests. If, on the other hand, a dying competent patient seeks help from a doctor to end her life, we might agree to describe this action not as “killing” but as “helping to die”.

Traditional morality and the law prohibit killing. In light of this, Perkin and Resnik state that they prefer to describe the administration of muscle relaxants not as justifiable killing, but as “as something other than killing—that is, as relieving suffering”. As a pragmatic response this is perhaps understandable. But it comes at a price; it rests not only on the deeply flawed doctrine of double effect, but also on some dubious thinking surrounding the notion of intentional action and the distinction between the moral permissibility and justifiability of actions.

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