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Mixed Actions and Double Effect

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The goal of this chapter is to examine the account of ‘mixed’ or ‘necessitated’ actions in NE 3.1, to see whether Aristotle’s discussion there provides an analogue or anticipation of the so-called ‘doctrine of double effect’ (DE). This project will, I hope, prove illuminating as regards both mixed actions and DE.

1. Double effect

To fix ideas, we need a statement of DE. The precise way in which DE should be characterized, and the philosophical significance of the doctrine, are both controversial. Nonetheless, for our purposes a standard formulation will suffice, according to which there is a difference between the bad consequences that an agent directly brings about through his action and those that he brings about indirectly and in the manner of a by-product; and, given that certain conditions are satisfied, the agent is not to be faulted for the latter. Those conditions are thought to be the following:

(1) His action which has those bad consequences is not itself impermissible, unlawful, or ‘inherently wrong’: in particular, there is an identifiable action of the sort one is doing in this instance, which one might do in various other circumstances without reproach, and where there is no question of bad consequences following from it;

(2) He does not do his action in order to attain those bad consequences: in particular, if he could do his action in such a way that, or in circumstances such that, the bad consequences would not follow, then he would (and the best evidence that he would, is that reliably in other circumstances he does);

(3) There is a suitable ‘proportion’ (as it is said) between the good consequences of his action and the bad, such that it makes sense or seems reasonable that he
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would do the action for those good consequences, in spite of its unavoidable bad consequences;

(4) Although the bad consequences of his action are unavoidable in the circumstances, the agent does not exult in, take pleasure in, or otherwise ‘rest his will’ in the bad consequences.1

Three cases which are commonly taken to illustrate the doctrine would be: killing in self-defence; the administration of a life-shortening painkiller; and the ‘trolley problem’.2 Thus, an agent who kills in self-defence may not be held accountable for the death of the assailant, if he uses no more force than was necessary to defend himself (which is a sign that condition 2 was satisfied); and he takes no pleasure in the man’s death (satisfying condition 4); since he may rightfully prefer his own life to that of another, when he cannot act in such a way as to preserve both (that is, there is a suitable ‘proportion’ between the good which is his life, and the bad which is the assailant’s death, as per condition 3); and defensive actions, such as those someone is trained in when learning to use a weapon, are themselves not themselves inherently wrong (satisfying condition 1).3

It can be seen from this illustration that the articulation of conditions for DE results from the supposition that an action is to be faulted if anything significant about it is to be faulted. Conditions 1 and 3 are such that they can be determined in advance and articulated in law, for example, in jurisdictions which allow certain sorts of weapons to be carried for the purpose of self-defence, and which permit in law the use of such weapons even to the point of killing in self-defence. Condition 2, then, would be the main condition which it would be up to the agent to satisfy, and for which he could be faulted in court, if he acted hastily, recklessly, or otherwise with poor judgement in presuming that it was satisfied. In contrast, condition 4 seems a condition that applies to the interior thoughts and wishes of the agent, and which would therefore typically be relevant only for moral assessment (among friends, or in the confessional) rather than for the determination of criminal responsibility or civil liability in a court. Yet evidence that someone had an animus against his assailant, and delighted in his death, would conceivably be relevant to establish also that, in violation of condition 2, he acted hastily and presumed that lethal force was necessary when it was not.

Again, when a suitably qualified doctor administers an approved drug (condition 1) to a patient suffering severe pain, such that the drug controls the pain

1 For an example of such a formulation, see McIntyre (2009). For a good account of the development of the formulation in the tradition of casuistry, see Kaczor (1998).

2 The discussion of killing in self-defence by St Thomas Aquinas in Summa Theologiae, 2a2ae, q. 64, a. 7, is the first place in which something like DE is apparently invoked (and see Kaczor 1998). For additional, commonly considered cases, see McIntyre (2001).

3 If he uses a weapon which is unlawful to own or to carry, such as, in some jurisdictions, a gun, then of course he may be held responsible for killing in self-defence with a gun, since in that case defensive actions undertaken with a gun would be unlawful.
but has the side effect of shortening the patient’s life, then the doctor may not be held accountable for shortening the patient’s life—it is claimed by those who apply DE to such cases—if he does not ‘want’ the patient dead, and is not acting as an agent for someone who does (condition 4); if there is a suitable ‘proportion’ between the good gained (the control of pain) and the bad which results (the shortening of life) (condition 3); and if there are no other drugs available, which might have been administered instead, which lacked the life-shortening side effect and which would have controlled the pain equally well (which is a sign that condition 2 is satisfied). If in such cases the doctor is licensed, competent, ethical, and lawful, and euthanasia is illegal, then every condition except 3 will be satisfied as a matter of course. As regards condition 2, there are clear cases and borderline cases, not surprisingly. A clear case would be a terminally ill cancer patient on his deathbed, suffering from excruciating pain, where the only drug available controls the pain completely but shortens his life only slightly. Difficult cases can involve the choice of a drug among alternatives which offer different trade-offs between pain control and effects on the patient’s consciousness and life span.

The trolley problem as standardly conceived is sometimes also thought to exemplify DE: the agent who steers the trolley away from the track with five toward the track with one is sometimes said not to be responsible for the death of the one on the grounds that this person’s death was a by-product of his decision to steer away from the five. What he did (it is maintained) was to steer away from the five—an action which had the incidental effect of bringing about the death of the one. He acted permissibly and lawfully, since he had legal authority to steer the trolley and there is nothing immoral about directing a trolley from one track to another (condition 1); if there were a third track which had no persons standing on it, to which he could have steered the trolley, he would have taken that (relevant to condition 2); clearly it makes sense to prefer the lives of five over the life of one (condition 3); and we are assuming that the agent has normal regrets about the unfortunate death of the one (condition 4). Obviously, as the ‘trolley problem’ is a hypothetical and general case, one can imagine particular cases where conditions 2 through 4 would clearly be violated, as well as cases in which it would be difficult to judge.

4 It should be the case that simply to say that he is a licensed doctor is to declare him competent, ethical, and law-abiding—according to a sound conception of professionalism. Of course a ‘doctor qua doctor’ (see Rep. 340c) aims, through training, to promote and safeguard health, and to relieve pain, and so it is easy to establish, for him, both that administering the pain-relieving drug is something that he standardly does for the sake of relieving pain (not ending life), and that he does prescribe drugs which lack this side effect when he can.

5 See Foot (1967).

6 One might imagine cases in which even 1 were violated, because the trolley was being operated in a jurisdiction in which, for example, it was forbidden by law for the trolley operator to depart from some predetermined itinerary. In that case, the trolley operator must break the law to save the five, and it might at least be argued that, in that case, he becomes responsible for
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The four conditions in the standard formulation of DE might appear to be ad hoc and a hodge-podge, yet, as perhaps a consideration of the cases helps to make clear, they can be understood as corresponding to certain ordinary suppositions about human action, when an action is undertaken under conditions which involve some kind of necessitation. Suppose that typically an action may be understood as something done for a purpose: ‘I am lying on the bed to rest’; ‘He is driving the car to get to work’; and so forth. Then it may go wrong if either the action is itself in some way bad (condition 1) or the deliberate purpose is bad (condition 2)—both driving the car to get to the bank robbery and hijacking a taxi to get to work would be blameworthy—and also if the agent’s subjective response to his action is inappropriate (condition 4), say, if he is inappropriately grumbling about needing to work as he is driving there. When someone acts under conditions which unavoidably involve some kind of trade-off, then it may additionally be wondered whether in his willingness to trade the one good for the other, he has shown the right preference (condition 3).

The philosophical significance of DE will be considered in more detail later, once the comparison with mixed actions has been drawn. Here we might say that DE, although an old doctrine, in recent years has been thought interesting, first, as offering a framework for gaining greater clarity in deliberating about some kinds of ethical dilemmas, especially those that arise in relationship to the use of skill and technology (which typically involve trade-offs), as in medical ethics; and, second, as constituting a prima facie objection to consequentialism, which standardly holds that an agent may potentially be faulted for any effects which his actions brings about, and which would not allow that there are cases in which an agent may bring about both good and bad effects but not held open to fault for the bad effects.

2. Mixed actions

It might seem antecedently likely that there would be some kind of analogue of DE in Aristotle. After all, the origin of DE is traced to a passage of Aquinas in the Summa, in a discussion of the virtue of justice,\(^7\) but his treatment there of the death of the one—on the principle that a lawbreaker is responsible for the bad consequences that follow from an illegal action—whereas if he had let the trolley follow its predetermined course, then ‘the laws’ or ‘the state’, not he, would be responsible for the death of the five (perhaps especially if situations such as these were anticipated by lawmakers, and nonetheless no provision was made for them).

7 DE presupposes that the agent is free to take either end of the trade-off as his goal, and he acts well only if he takes the good end of it: killing in self-defence is a trade off—I cannot preserve both my life and the attacker’s—and if I take the preservation of my life as the goal of my defensive action, my action is licit, but if I take the attacker’s death as my goal, it is not.

8 See note 2 above.
the moral virtues is derived from and highly dependent upon the *Nicomachean Ethics*. Again, in recent years DE has been put forward as an interesting principle of responsibility for action by Elizabeth Anscombe (see for example 1982) and others whose theories of actions and approaches to moral philosophy have been inspired by Aristotle. Moreover, although DE is usually cited in connection with extraordinary dilemmas which are either hypothetical (like the trolley problem) or arise only infrequently (such as ectopic pregnancy, or pain control in terminally ill patients), in reality the issues it deals with seem bound up with nearly every action—namely, whether and when inadvertent or incidental consequences of actions are to be attributed to the agent, and how responsibility is to be divided between an agent and another person, when that other person aims to coerce or pressure, and the agent either refuses to cooperate or resists; and one would suppose that these issues would somewhere be addressed, or at least touched upon, in Aristotle’s discussions of action and responsibility.

Yet if one is looking for an analogue, the best candidate would seem to be Aristotle’s discussion of what he calls ‘mixed’ actions in NE 3.1. Four features of that discussion might lead one to think that what Aristotle is concerned about in his account of ‘mixed’ actions is at least similar to what has motivated moralists to articulate DE. This may be seen through briefly reviewing what Aristotle says there.

(1) He begins by picking out a class of actions which he identifies, it seems, largely by giving examples: cases, he says, such as when a ship is caught in a storm, and the only way to save the ship and its passengers is to jettison the cargo, which no one of sound mind would want to do in other circumstances; or such as when a dictator has arrested your family and threatens to abuse and kill them unless you do something which you regard as disgraceful and despicable. These are akin to cases in which one would naturally wish to bring in DE: in throwing cargo into the sea—which is itself neither immoral nor unlawful—one both saves the ship and incurs a monetary loss; it makes sense to prefer the ship’s safety over the money (not least because the loss will be incurred as well if the ship goes down); there is no other way to save the ship; and one takes no pleasure in the loss of the cargo. Again, if in the second case one refused to do the disgraceful thing, then one might wish to defend this by

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9 See the cases considered in St Augustine’s *Letter to Publicola*, which is the main source cited by Aquinas in his discussion.

10 Often it is supposed that Aristotle is presuming that the agent will act to save his family, and yet the passage gives no grounds for holding this. Actually, there is no need to suppose that Aristotle even meant to suggest a ‘right’ answer to the dilemma, which serves its purpose if both alternatives appear unpalatable. But suppose the dilemma was formulated in the Academy as an intensification of dilemmas that Socrates faced—its being wondered how Socrates would have acted in these more trying circumstances—then it is natural to think that Aristotle, if, as seems right, he took Socrates as a model of virtuous action, would at least have taken seriously that the
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an appeal to DE, claiming that the death of one's family, although foreseen, was not intended, and that the agent cannot be held responsible for the bad actions of others, when these are merely incidental to what he was aiming to do, that is, act always in an upright way: in avoiding the disgraceful action, one both gains an honourable good (the kalon) and incurs a loss (of philoi);\(^{11}\) it makes sense to prefer the one over the other;\(^{12}\) there is no third way out (ex hypothesi); and certainly one takes no pleasure in the death of one's spouse and children.

(2) Aristotle then raises the question of whether actions of that sort are hekousion or akousion. Later we shall consider how these terms are to be understood, and how they might best be rendered. For the moment we can use the common rendering and take Aristotle's question to be whether such actions are voluntary or involuntary. He maintains that they are voluntary, but that they have a 'mixed' character and that they are also in some way, or in some respect, involuntary (1110a11). Thus, someone who in the midst of a storm decides to throw the cargo into the sea is doing something which is voluntary but also, somehow, involuntary—presumably because he voluntarily throws the cargo into the sea to save the ship, but the cargo's loss is not something he voluntarily brings about. It is not necessary to settle here the character of this 'mixture'. We should observe only that one might naturally describe actions justified through DE in a similar way: for example, to kill in self-defence is a 'mixed' action which contains aspects of both the voluntary and the involuntary, since the person who acts in that way voluntarily kills to defend himself but (we are assuming) does not wish to kill the other. That is to say, for cases in which DE is applied, it looks as though what is done has a mixed or double character, which gets signalled by saying that the agent acts 'intentionally' or 'aims directly' at bringing about the good consequence but that the bad consequence is 'unintended' or 'inadvertent'. Again, just as in Aristotle there seems to be the suggestion that legislators can hold agents responsible for their voluntary actions only, or an action insofar as it is voluntary, so when DE is used to analyse an action it is held that agents are not to be held responsible just for the bad consequences of their action, but only for whether the good consequence was properly preferred.

(3) Aristotle's explanation of the way in which some actions are 'mixtures' of the voluntary and involuntary involves his drawing a distinction between an action which is contemplated or carried out 'just on its own', and the same or a agent should refuse to do the shameful thing. The two cases actually faced by Socrates were: the Thirty Tyrants commanded him to arrest an innocent man, and he refused; his friends tried to persuade him to escape from prison for the sake of caring for his family, and he refused. These dilemmas are intensified if one imagines that it is not Socrates but those he cares for who will suffer through his refusal to heed the Tyrants' command, or that the cost of his refusing to do something shameful, such as deliberately break the law in escaping from prison, was not merely that his family suffer from his absence, but also that they be tortured and killed.

\(^{11}\) It would seem that NE 9.8 would imply that the dilemma should be construed in this way.

\(^{12}\) Compare the principle magis amica veritas, NE 1.6, 1096a16–17.
similar action carried out in particular circumstances which necessitate it. (The
former is, or would be, involuntary, the latter voluntary.) But a similar distinc-
tion needs to be drawn for cases in which DE is thought to apply. In such cases it
looks as though one can distinguish between doing some action in a certain
context or for a certain purpose, and doing a similar action just on its own, such
that the description of the former involves some qualification, but the descrip-
tion of the latter is unqualified, viz.:

- Killing a man *in self-defence*; killing a man.
- A dose that shortens life *in controlling pain*; a dose that shortens life.

From ‘he killed a man in self-defence’ it seems that one cannot properly infer
‘he killed a man’; at least, it would appear misleading to claim the latter on the
basis of the former. This is puzzling because the former case seems to add
something to the fact that he killed—he killed, and it was in self-defence—
and from a complex predication one would appear to be licensed to affirm
either simple predication on its own (from ‘he is tall and fat’ it follows that
‘he is tall’). Again, from ‘the doctor administered a drug which controlled pain
and shortened the patient’s life’ one cannot properly infer ‘the doctor adminis-
tered a drug which shortened the patient’s life’,—at least, one cannot say this
without adding a qualification to rule out the natural implicature of the state-
ment, namely, that the doctor administered a drug to shorten the patient’s life,
or that ‘the doctor shortened the patient’s life with a drug’. If one thinks of
actions as complexes built up out of components, one would be tempted to say
that it looks as though what the agent does according to the qualified descrip-
tion (‘killed a man in self-defence’) does not contain as a component what the
agent does according to the unqualified description, even though it seems to
contain it (‘killed a man’). If ‘in self-defence’ describes a ‘context’ or ‘circum-
stance’, it seems as though the component is altered essentially by that circum-
stance—even though from the use of the same form of words it seems the same.

(4) Finally, after drawing a distinction to account for how the actions he is
concerned with are ‘mixed’, Aristotle seems to hold that an agent faced with
such an action is praised or blamed depending upon the preference which is
revealed in his choice (1111a19–26), and we saw that this was the appropriate
way of understanding the condition of proportionality in DE.

Thus, for the reasons given, it seems reasonable to look to Aristotle’s account
of mixed actions as the place where he discusses phenomena of human action
similar to those which other moralists have wished to consider in reference to
DE. Now this leads to two questions: first, does Aristotle himself endorse,
perhaps implicitly or indirectly, DE or something close to it?; second, if he
does, what would be his philosophical motivation?—since evidently he is
interested neither in esoteric difficulties arising from the application of
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technology nor in finding prima facie objections to consequentialism. To answer these questions, it is best to proceed to a careful reading of the relevant passage.

3. Mixed actions and necessitation

I shall discuss NE 3.1, 1110a2–b17 in relation to four questions: (1) Does Aristotle pick out satisfactorily the class of actions he is interested in? (2) What does he mean by a ‘mixed’ action? (3) How does he resolve the difficulty he raises? and (4) What does he mean by a ‘necessitated’ action?

(1) Does Aristotle pick out satisfactorily the class of actions he is interested in?

The relevant sentence is in the following passage:

[1110a] An action is ‘forced’ if its cause is from without, viz. the sort of cause for which nothing is contributed by the person acting, or the person being acted upon, for example if wind carries you somewhere, or men who have you in their power. But whatever actions are done on account of fear of greater evils, or on account of something noble, for example if a tyrant commands you to do something disgraceful, when he has your parents and children in his power, and says that if you do it they will be saved but if you don’t do it they will be put to death—there’s a difficulty as to whether these actions are akousion or hekousion. That’s the sort of thing that happens also when cargo is jettisoned in a storm: without qualification, no one [a10] throws cargo over gladly, but to save himself and the others, everyone with any sense will do so (emphases mine).

Aristotle picks out the class of actions he is interested in with the phrase ‘done on account of fear of greater evils, or on account of something noble’, and this looks too broad, insofar as it seems to include any action for which fear is a motive, and any virtuous action whatsoever, which, according to Aristotle, must always be done for the sake of the nobility or honour of it.13

But surely ‘on account of fear of greater evils’ means ‘only on account of fear of greater evils’, which implies that there is no other motive in doing the action and, in particular, there is nothing attractive about it (and perhaps even something repugnant); and, if that is the meaning, then by parallelism ‘on account of something noble’ means ‘only on account of something noble’, which again implies that there is nothing attractive about it (and perhaps even something repugnant). A definite subclass of virtuous actions is thereby circumscribed: for example, on this reading dying heroically in battle would fall within the intended class (see 1117b8–9), but giving a gift to one’s friend, which causes both of you delight, would not.

13 See for example 9.8.1169a3–12, and presumably acting for the sake of the nobility or honour of it is included in the second condition of virtuous action stated at 2.4, 1105a32.

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There is an interesting parallelism of sentence structure in the above passage, highlighted by underlining. In two successive sentences, Aristotle gives a definition including a disjunction, which is followed by the word ‘for example’ (Gk: hoion), which then introduces two examples. It is not unusual in Aristotle to find him employing a turn of phrase or device that occurs rarely in the corpus as a whole, but which, when it is used once, gets repeated within a relatively short span, as though when he finds something suitable he likes to use it several times, stereotypically, before moving on. If that is the case here, then for help with construing the force of the qualification, ‘or on account of something noble’, we might turn to the disjunct in the preceding sentence, ‘or the person being acted upon’.

It seems possible to identify the force of that qualification. Note that Aristotle states the definition of ‘forced’ action in two other places in the chapter, and in neither place is the qualification added (b1–3, 15–17). Thus we should naturally interpret ‘of the person being acted upon’ as something which serves to emphasize or strengthen, but which is not necessary for the definition. Thus, similarly, ‘or on account of something noble’ would serve to highlight something, and there is a ready explanation of what this might be. In some cases in which someone acts to avoid the greater evil, the evils are of the same type—for instance, someone accepts the amputation of his limb to remove a risk to his life—and yet in the cases that Aristotle seems more interested in, the evil which the agent accepts is pain or suffering, which is conceived of as the only alternative to doing something disgraceful or dishonourable, such as running away in battle. These truly are cases of choosing the lesser of two evils, by Aristotle’s lights, since, he thinks, the disgrace would be worse than the physical pain. Yet to signify that the greater evil is different in kind, in the realm of the noble...

14 The examples are similar also: one involving being under the control of strong men, the other involving being influenced by the wind. Note the cases are reversed in chiasmus—wind/strongmen//strongman/wind—precisely, it seems, to invite the reader to make the connection.

15 This assessment of the weight of the qualification in the sentence cannot be settled, however, without settling what Aristotle is referring to with the phrase. For example, suppose that ‘or the person being acted upon’ is supposed to refer to spontaneous or reflex phenomena, for instance, someone who jumps when in a quiet room someone else shouts. This would be a matter of someone’s being forced in how he reacts (it is claimed), not in how he acts. If this were the meaning of the phrase, it would actually be introducing additional cases, rather than merely emphasizing something about a class of cases already well enough identified. He would mention these other cases only here, and not in the two subsequent statements of the definition, because these are unusual and secondary cases. However, this interpretation may safely be put aside. The class of cases is so unusual, that they could not easily be suggested by a single word, nor is it reasonable to suppose that Aristotle expected that they could, and the class which is meant on the hypothesis is so interesting, that if Aristotle were to consider it at all, he would likely give it fuller attention. Moreover, it is not clear why for Aristotle the agent would not be doing something when he reacts spontaneously and by ‘animal instinct’, as it were, or if he is not doing something, then why he would not be contributing something—especially when a burden of the chapter is to argue that what someone does through ‘animal’ motives such as thumos and epithumia are actions which qualify as hekousion.
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(kalon) and disgraceful (aischron), it would be useful to say ‘or on account of something noble’, that is, on account of something of that different sort.16

So then, it seems that Aristotle does pick out a definite class of cases here. He is interested in actions that we do even though they are repugnant, which is an interesting class on the supposition that we act through attraction—that, if left alone, we do what we want to do (see b12). If someone ‘of his own accord’ and on his own does what he wants to do, then, it might be thought, someone does something other than this only when, as in the case of ‘forced’ actions, something or someone from the outside deflects or constrains his activity. For Aristotle, action explained by appeal to fear, a kind of repulsion, is inherently problematic; action is not satisfactorily explained until one can appeal to something within the agent which is drawn to something achieved or possessed in the action. To the extent that repulsion is responsible for an action, to that extent it is as if the agent is not acting. From these considerations we see, too, that what Aristotle means by akousion (usually rendered ‘involuntary’) is ‘against the grain’ or ‘contrary to what the agent wants to do’, and likewise hekousion means not so much voluntary as ‘done of its own accord’ or even, as we would most naturally say in English, ‘gladly’ or ‘happily’ done.

(2) What does he mean by a ‘mixed’ action?

Aristotle does not explain what he means in calling these sorts of actions ‘mixed’ (1110a11).17 But since his discussion of forced actions seems to follow the lines of his account of forced or violent action in the Physics (8.4), and since he is presuming, as in his natural philosophy, that a natural agent moves primarily through attraction to its natural end, then it seems plausible to construe ‘mixed’ as meaning something like a mixture of forces, of which the action is a result, as for instance water that wants to go down but takes a curvilinear path in following a pipe: its motion is a mixture of its natural inclination and something which constrains and influences it externally.

The mixture he describes as: the action is ‘without qualification akousion, but hekousion for this purpose (or, in exchange for this)’, (see, for example, 1110a9–10). Now in this connection there are two important points to be made about the Greek word haplōs, the term that is rendered as ‘without qualification’, (or sometimes ‘absolutely’ or ‘unconditionally’): (i) haplōs generally belongs to the formal rather than the material mode of speech; that is, it signals how we should appropriately speak about something. ‘Jettisoning cargo is haplōs

16 The phrase also opens up the possibility that in some cases pain and suffering can result not merely from ‘doing what one is bound to do’ but also from the opportunity to act heroically, in a supererogatory manner.

17 In particular, his introduction of the term is not followed by a gar clause (‘for’), as we might wish for and expect.
akousion' means that it is proper to say, simply, that 'Jettisoning cargo is akousion', that is, that no qualifications need to be supplied in order for this statement not to be misleading. (ii) Aristotle tells us what it is which makes this statement proper, namely, that 'Jettisoning the cargo' is not the sort of action that someone would do on its own (kath’auto), that this is what we would strongly avoid doing ('for no reason' at all). What underwrites the claim haplōs is a truth about our motives with regard to doing the action kath’auto.

If we view Aristotle’s discussion as a standard aporia (the stating of a difficulty by posing what seems to be a contradiction, in giving two sides of a question) followed by a lysis (some way of making both sides of the contradiction turn out true, by assigning an appropriate sense to each which makes it possible that both be true), we may find it difficult to see the force in the ‘pro-akousion’ side of the difficulty. But Aristotle surely finds it powerful for both ‘logical’ and ethical reasons. The logical reason is that typically the unqualified use of a term gives its proper and strict sense, so if jettisoning the cargo is haplōs akousion, one would think that the dilemma should be resolved by saying that the captain’s jettisoning of the cargo in the storm was (after all) akousion.18 The ethical reason is that evaluation of actions is typically relative to character, yet what one finds appealing or repulsive considered just on its own (kath’auto) seems the best indication of character—this reveals to us what the agent will go after, just insofar as things are up to him—so it looks strange to suggest that appeal to the agent’s motives as regards the action, insofar as these spring from his character, is somehow to be overridden. Given ‘this is the kind of thing that someone with his character finds highly repugnant’, it seems odd to maintain ‘he is gladly doing something like that—doing it of his own accord’.

Note that kath’auto does not mean ‘in abstraction’, ‘considered abstractly’, or even ‘considered in anticipation, apart from its context’, because as later examples show, Aristotle thinks that ‘enduring pain’ is something which is kath’auto akousion, and someone who endures pain rather than do something disgraceful (as a soldier holding his position in battle) is not finding repugnant anything especially abstract (see 1117b8). (We might say that pain is the sort of thing that, because of physical or automatic reaction to it, we cannot but regard as isolated from whatever good follows from our enduring it.) Note also that there is apparently no need to pick just one way in which an agent would show a mixture of motives. We can imagine several: for example, in advance of jettisoning he hesitates and is upset, but when the moment comes he does so gleefully (here the action’s being akousion is manifested only in anticipation; compare Aristotle’s emphasis on changes in motives over time at 1115b29–1116a4); or while jettisoning he grumbles and acts reluctantly (the akousion as

18 Suppose one were to pose the difficulty, ‘Is a cardinal a red or a black bird? After all, it has black markings.’ The resolution, that the cardinal is red, would follow from its being red haplōs but black only in certain respects.
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shown now in the quality of his action). Or perhaps the mixture is established simply by inference from other actions, as for example that in less serious circumstances he never jettisons (whereas there are feckless crew members who sometimes as a prank just throw stuff overboard), without much worry over what should be identified as occurrent psychological signs. Again, neither does ‘mixed’ mean merely ‘from mixed motives’, as should be clear; the problem Aristotle is concerned about does not arise unless one can pick out a class of actions which the agent in advance finds repugnant for reasons that have something to do with his nature or second nature (sc. his character).

(3) How does Aristotle resolve the difficulty he raises?

He resolves the difficulty in favor of mixed actions being hekousion: they appear to be mixtures of akousion and hekousion, but, he says, they are mallon hekousion (1110a12). The term mallon might mean here either: ‘rather’; ‘more’ in degree; or ‘prior’, in ranking. One would presume the first alternative, for three reasons: Aristotle’s conclusion gets repeated once without that term at all, at a18; none of the reasons he gives for the conclusion involves comparisons of intensity or rank, and so neither can his conclusion without being invalid; and Aristotle is not disposed to qualify his general view about what makes an action akousion in light of these cases, yet he would need to do so if there were some sense, at least, in which mixed actions were akousion.

There seem to be three distinct reasons for his conclusion:

[1] 1110a12–15. To act involves choosing for a purpose: but a choice takes place at a certain time; and the end governing the action is what we are aiming at, at that time (compare: ‘His contract was constituted by his understanding of it in the act of consenting to undertake it’). Thus whether an agent is doing what he wants or not depends upon whether, at the time he acts, he wants to do what he is doing; and clearly in the cases imagined he does.

19 Note also there is no need for people or societies to continue to remain conflicted about something that they at one time are conflicted about: it would seem possible that deliberation, and ethical training, could be refined in the manner of a law code, such that the rationale for certain actions otherwise undesirable becomes so clear, that these actions lose their repugnant aspect. For instance, suppose that as someone’s seamanship develops he acquires much experience of cases of jettisoning cargo under necessity and marks them out clearly as a different kind of case (‘oh, that’s not jettisoning cargo—which no sensible person would ever want to do—that’s a tactic for lightening ships in a storm’). This kind of reclassification might not affect feelings after the fact (the man who loses his gangrenous leg through medical amputation will regret its loss just as much as the one who lost a healthy leg in an accident); also, again, it will probably not affect how we experience physical pain (‘pain in battle’ will not easily become something other than repugnant—although it can be, as with athletes who are happy when their muscles feel sore, because that means they will make faster progress in training).

20 They can be identified as distinct, because each is offered independently of the others. [2] is independent of [1] at b4 (besides, it is introduced with kai gar); [1] is independent of both others at b6; and [3] is first introduced as independent, and that it is meant as a reason for the conclusion is shown by b3 and by the repetition (twice) of similar phrases.
[2] a15–19. This seems a reinforcing reason—if it were doubted that he wanted
do the action, then one could reply: he did not refrain from doing it; yet he
could have; and (understand) if he did not want to do it, then he would have.
His acting when it was up to him not to act shows that he wanted to act. Here
we should understand Aristotle’s language about how the archê is within the
agent to be a reference to Aristotle’s notion of a living thing as a natural
substance, and which therefore has an internal principle of motion and change (Phys. 2.1), but which is also a self-mover (Phys. 8.4), insofar as it has a
soul which makes use of instruments for accomplishing its purposes: the
language spells that out, while indicating that the determination of
movement or rest hinges on principles within the agent.

[3] a19–29. If the action is going to be counted as hekousion, then (it is
presumed) we need to make it intelligible that the agent would be inclined to
do it (since, as we have seen, hekousion means that the agent is seeking it of his
own accord); but, whereas the undesirable action on its own would not
intelligibly be sought by this agent, nonetheless the content of the choice
may be given in terms of an ordering or preference, ‘this instead of that’. That
the content can be given in this way explains the grounds on which agents are
praised or blamed for their actions: in circumstances not involving necessitation
(it is presumed) they are praised if their choice and goal are good and blamed
otherwise; but here in contrast they are praised or blamed for (one might say) the
‘relative good’ attained in their action, not whether they are seeking something
good absolutely, but something good relative to the alternative. Note that
Aristotle is supposing that nothing can be praised or blamed unless it is
hekousion; thus, the possibility and intelligibility of praise and blame for these
sorts of actions confirms that they are hekousion.

(4) What does Aristotle mean by a necessitated action?

A necessitated action seems to be simply a mixed action, although it gets the label
‘necessitated’ with a view to how the action would be justified or defended, since
if in a mixed action we do what we would otherwise would not want to do,
and which we would get blamed for seeking and doing if we proposed to act that
way, or did so act, gratuitously or ‘just on its own’, then a certain burden of
argument falls on the agent, when he seems to do that sort of action, to show why
if he had acted otherwise he would have done something worse, that is, that he
‘had’ to act that way or was ‘bound’ or ‘necessitated’ to do so. That this is what
Aristotle means by the term is clear from the cases he gives at a19–29, where the
term is introduced. As regards these cases, it looks as though there are three:
a case of evident praiseworthiness (a19–23); a case of evident blameworthiness
(a23–24); and a case where, although the reckoning was correct, the person could
not endure the bad thing he resolved to endure (a24–26). Perhaps the last case is
chosen as the extreme form which calls attention to two dimensions of
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evaluation mentioned by Aristotle: whether the reckoning was correct, and whether the correct reckoning was carried out (see a32).

If so, then the remark about ‘not being possible to be necessitated’ (a27) makes a point distinct from this triad and is not, as is sometimes thought, a continuation of the third case. That is, ‘not possible to be necessitated’ means that the action cannot plausibly be defended by an appeal to that sort of account. The claim is not the psychological one, that there are some actions one cannot be compelled to do, no matter what torture is applied (obviously not, because Aristotle gives an example of just such an action, which someone did when under far less pressure than from torture), but rather that any kind of action, which is such that nothing is conceivably worse (he has in mind, ‘more disgraceful’), could not be justified as necessitated, because it could never be the lesser of evils. An action such as matricide, which would obviously and for everyone be an extreme evil of that sort, could never be justified on grounds of necessitation, and thus never ‘necessitated’ in the relevant sense.

Perhaps another aspect of the ridiculousness of the claim that one ‘had’ to kill one’s mother derives not from its evident falseness but also from a kind of practical contradiction in the claim, in the sense that one thinks that if one found killing one’s mother repugnant at all, then one would find it so completely repugnant as never to regard oneself necessitated to do it; thus someone who claims necessitation is ridiculous as claiming that he appreciates the action’s repugnance while acting in a way which suggests no appreciation.

This is the spirit in which Aristotle’s ‘people are praised or blamed as regards whether they are necessitated or not’ (a33–b1), that is, people vary in how well they appreciate the badness of acting dishonourably, and the measure of this is their repugnance at acting that way, as shown in how severe the sufferings and pains they are willing to endure to avoid it are. What the courageous person is praised for is his doing what, through his sense of honour, he regards himself as necessitated to do. The coward is not necessitated at all in what he does, because he is not doing anything he regards as repugnant.

4. Some conclusions

The relationship between the two cases. The class of actions which Aristotle would describe as ‘necessitated’ is evidently the very same class to which a DE analysis

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21 By far the most common statement made about their own actions by soldiers awarded the US Congressional Medal of Honor, ostensibly for ‘gallantry and intrepidity above and beyond the call of duty’ is that they ‘had no choice’ but to do what they did (see <http:www.cmohs.org>, the website of the Congressional Medal of Honor Society, for accounts and testimonies).

22 If a coward claimed to soldiers who had withstood the hardships of the battle that ‘I simply had to flee; I could not do otherwise, although I found that deeply repugnant’, he would be ridiculed as much as Euripides’ Alcmaeon.
would apply. Both involve acting so as to bring about (or not acting to prevent) something bad, in circumstances of constraint such that this could not be done except by being responsible for something taken to be worse. Suppose there are two goods such that each is reasonably wanted but one is correctly preferred to the other, and suppose that circumstances are such that the goods have become so bound together that the only action which suffices to preserve the one is something which destroys the other; then we may say either that in the circumstances the agent is necessitated, by fear of losing the greater good, to act so as to destroy what he usually would want to preserve, or that in the circumstances the only action by which the agent may, as usual, preserve the greater good happens also to destroy the lesser good.

An upshot is that DE applies to a much broader range of actions than is typically thought. As we have seen, Aristotle evidently wishes to regard suffering pain and death in battle as necessitated, and the moral character of the act depends upon the nature of the necessitation: whether the evil regarded as worse than death is the dishonour of cowardly action; the poor opinion of one's peers; or the certain as opposed to probable loss of life, when one fights only because a commander has given orders to kill anyone who retreats. Similarly, DE applies to these actions, although it would not be so applied, because it is thought obvious that such actions are justifiable. Even so, a soldier might be asked, 'Suicide is forbidden, so why do you act in battle so as to die?' To which it might be replied that what is intended is the carrying out of the (lawful and honourable) command; one's own death is incidental to that intention; it is a lesser evil; and there is no alternative.

Plato apparently had already seen the need to think about human action in such a way as to demarcate clearly heroism from suicide. Crito argues that Socrates will be harming his children if he does not escape, and Socrates' reply in effect is that he is not responsible for that, because he is intending to be lawful. Again, the *Phaedo* testifies to Plato's implicit acceptance of the fourth condition of DE, because parts of the dialogue are motivated by Plato's recognition that the difference between suicide and Socrates' behaviour is harder to explain if one holds that Socrates earnestly desires his own death. Plato's reply to this problem, in line with DE, is to make Socrates' desire for his death once sentenced incidental to a planned and purposive seeking of death through the practice of philosophy during his life—the philosopher conceives of the desire for death as a way of life, with respect to which his actual death, when it arrives, is something merely incidental.

23 See the discussion of the five types of false courage in 3.7.
24 Aristotle, too, is prepared to explain death in battle as incidental to courageous action: see 1094b18.
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Needless to say, another upshot is that DE is not some sectarian principle of reasoning, specifically ‘Thomist’ or ‘Catholic’, or something that has plausibility primarily within a narrow casuistic tradition, because it represents an attempt to make explicit—for the purposes of guiding deliberation about difficult cases—principles that we all automatically rely upon when we would say that we ‘have to’ do something that we ‘don’t want to do’. These cases are different from doing what we straightforwardly want to do, and DE gives simply a framework for evaluating praiseworthiness or blameworthiness in those non-standard cases.26

On the difference in approach between DE and Aristotle’s discussion. Aristotle’s first presumption is that agents are good and do what they want; therefore it needs to be explained how they do things that bring about something bad. This is because in ethics he tends to suppose he is dealing with a virtuous person, since he thinks ‘a good person is the standard’ for fixing the meaning of terms used in ethics,27 and it is a deep methodological presumption for him that one talks most accurately about ethics by referring principally to the central cases. He therefore conceives of mixed actions as a deflection from what a virtuous agent was wanting to do—although not a deflection toward doing bad, since he still does what is best in the circumstances. Proponents of DE, by contrast, typically presume that an agent is liable to act badly and therefore are typically concerned with identifying what someone should do (when he might not succeed in doing that). Hence DE functions more as a framework for deliberation and justification rather than a type of explanation. At the same time it is presupposed that in principle an agent ought to be able to act perfectly innocently and blamelessly; therefore they conceive of a situation in which DE applies as one in which we are pursuing something that is unconditionally good, and the repugnant thing we must do or endure is understood as something which is, in a sense, irrelevant to what we are doing, and therefore it can be dismissed and plays no role in changing the good character of the good thing the agent is pursuing.28 Compare the following cases. Case 1: you are driving a school bus; a squirrel runs in front of the bus before you have chance to react; and you run it over but cannot blame yourself (because you could not have done otherwise). Case 2: you are driving the bus; a squirrel runs in front of the bus; you could react, but at the cost of possibly causing injury to your

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26 It should be clear that the interpretation proposed here is entirely different in spirit from that offered by Hughes (2004), which draws an invidious comparison between Aristotelian practical wisdom, which he favors, and casuistry using DE, which he disdains.


28 Clearly both of these presumptions—which change how the class of necessitated actions is viewed and approached, and do not touch upon the substance—derive from specifically Christian doctrines, viz. the doctrine of the Fall, according to which acting rightly is inevitably problematic, and the doctrine of Providence, according to which it is always possible to preserve innocence in action.
passengers; so you run it over. In the latter case as much as the former you write off the squirrel’s death: in the former it cannot affect your actions; in the latter you should not let it. Or, again, you take prudent measures to defend yourself, such as putting up walls around your house and carrying a sword, which you are trained to use, and you are not swayed from your course of keeping yourself alive because someone tries to take your life: that someone makes this attempt is irrelevant; it changes nothing.

The appearance of a difference in the scope of mixed action in contrast with DE arises from the fact that Aristotle’s discussion takes place in a context in which he is developing the thought that moral virtue involves the shaping of epithumia and thumos so that they habitually aim at what upon consideration one would regard as good. In his consideration of mixed actions, then, he is as much concerned with what is repugnant to thumos (because feared) and epithumia (because painful) as with what is repugnant to boule¯sis (because shameful). Hence he also rejects the views that a person simply is his mind (and thus not responsible for how his thumos and epithumia respond29), or that what we would not want in ideal circumstances is not what we do not in any sense want, or that we are responsible only for what we deliberately choose. In contrast, DE was originally articulated in the context of a discussion of the virtue of particular justice, where considerations of how an emotion, or a faculty of desire, is rationally shaped play little or no role; and it continues to get invoked in casuistical contexts, which appeal only to deliberation and choice.

Significance of the appeal to ‘inherently wrong’ actions. It is sometimes thought that DE depends in some special way upon a notion of ‘inherently wrong’ actions which is, moreover, so strong (‘wrong whatever the consequences’) that it could not be endorsed by a ‘secularist’ outside of a religious context30—because the applicability of DE, it is supposed, requires that one first identify something that the agent is doing which is not ‘inherently wrong’. But it would be better to say that, for those who hold that some actions are ‘inherently wrong’ and never to be done whatever the consequences, then, clearly, those could not be the sorts of actions that could get justified by some kind of DE reasoning. But in just the same way, the class of potentially necessitated actions would be limited to those that were not ‘inherently wrong’. As we have seen, Aristotle accepts that there is such a limitation—actions which it would be absurd to justify as necessitated—and the difference between him and

29 See the discussion later in 3.1, at 1111a24–b3. For a complementary account, which casts a similar point by contending that in his account of mixed actions Aristotle is broadening his notion of ‘force’, see Flannery (2007).
30 So McIntyre refers indifferently to a ‘non-absolutist’ and ‘secular’ version of DE (2001: 220, 223 n8). And yet there is nothing particularly ‘non-secular’ about adherence to moral absolutes: see Denyer (1997), who refers to Plato, Rep. 442d–443a and Horace, Odes 3.3.1–8, among other authorities, to make the point.
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those who have favoured DE would seem to consist solely in how broad this class of actions is.

For someone who conceived of morality as largely a matter of lawfulness, that is, as identifying the rightful authority in some domain of action (the father in the household, the employer at work, the legislator in the city, etc.), and correctly discerning the scope of that authority (e.g. when the authority of the father may, and may not, be overridden by the authority of the employer), then an ‘inherently wrong’ action would be the sort of thing ruled out by the highest authority, whether the authority was divine or human. Thus we see in one context suicide ruled out by Socrates on the grounds that the gods would forbid it; and in another context escape from prison is ruled out on the grounds that the laws forbid it. Aristotle shows sympathy, at least, with conceiving of morality in this way, since he thinks that justice ‘in general’ is equivalent to lawfulness, and he thinks that practical wisdom when applied to the deliberations involving associations of persons is equivalent to virtue in legislating and governing (1129b11–24, 1141b23–25). This is just to say that necessitation and DE alike presuppose some framework of lawful action and should not be interpreted as capable of supplying or justifying such a framework.

Bundling. In both necessitation and DE, the two relevant goods must be bundled together by circumstances in such a way that the only action which saves the one implies the loss of the other—that is, it is impossible to preserve both—and this is what enables the agent to claim that what he is choosing is not the loss of the one (full stop) but rather the gain of the one ‘at the price of’ the loss of the other. Now it may be wondered whether only physical circumstances can bundle goods in this way (a storm and laws of buoyancy; a fixed track with a switching mechanism) or whether someone’s choice, command, or threat may also bundle. Some cases of the latter we clearly do not count as creating a bundling. Augustine gives an example31 of a man who threatens a woman that he will hang himself if she does not sleep with him: Augustine deals with this by allowing that the man’s threat really does make his life and her chastity goods that she cannot simultaneously preserve, but he holds that she clearly should prefer the latter to the former. However, one might just as well say that, unless the man is deranged, his threat implies no necessity, since after she refuses he might still just walk away. On the other hand a sovereign’s decree would seem indeed to bundle—which is why we think that Socrates, even though he took the hemlock and drank it, was necessitated to accept his own death and did not commit suicide. In this connection it is valuable to remember that when someone claims necessitation he is not thereby excused; rather, the claim is an invitation to examine whether the goods really were bundled, and whether he really did prefer the greater good: thus, the soldier

31 On Lying, 9.
who defends his action by saying he ‘had no choice’ because he was under orders may still be faulted on either of these two grounds.

The two standard objections to DE. It is useful to examine two standard objections to DE, to see whether they hold when the choice is described as necessitation, since, if not, then the objections are spurious.

Perhaps the most common objection to DE is that it conceals the true character of the agent’s action, because there is nothing indirect or not intended about the agent’s acting in such a way as to destroy the lesser good. Take killing in self-defence as the clearest example: if the aggressor is so big and powerful that only stopping his heart will stop him, and someone skilled in the use of a gun, realizing this, takes aim and shoots him in his heart, there seems to be nothing indirect or incidental about this killing at all. The action itself seems indistinguishable from someone who shoots to kill someone he hates. So DE may be faulted for trying to make it seem as if the agent is innocently and blamelessly doing nothing bad at all, whereas he is in fact deliberately doing something bad, and intellectual honesty requires that he reckon with that.

The second objection arises from the first, namely, that DE conceals the consequentialist reasoning that really explains the nature of the choice. If killing in self-defence is (or may be) deliberate killing, then what makes it permissible is simply that we regard the good which this preserves as weighty enough so as to justify the killing. The correct way of describing what is going on, then, is not that there is some class of actions (‘direct’ or ‘deliberate’ killing) which is always wrong, but rather that in ordinary circumstances killing someone does not lead to weighty enough benefits to justify it, yet there are extraordinary circumstances in which it does.

The first objection, as we have seen, is weak even when directed at a DE type justification: to say that something bad is brought about ‘apart from one’s intention’, is not to say something about the psychological state of the agent, but rather that we can identify some good that the agent is seeking to preserve and typically does so seek, which is so valuable that he should not refrain from doing so when his continued seeking of it implies the loss of some good which is to be preferred less. But the point is even clearer when we account for his action with a necessitation-type justification, since then nothing needs to be said about the agent’s psychological state in sacrificing the lesser good, except that he finds doing so repugnant: the cargo is deliberately and (in any ordinary sense) intentionally thrown into the sea.

So the comparison of necessitation and DE allows us to say that the first objection is in a sense correct, yet in such a way that it loses its force. What makes it licit that the agent act so as to sacrifice the lesser good is not something about his psychological state in aiming at it or not, but rather the availability of another good, to be preferred over the one he sacrifices, and the availability, too, of some regular means of preserving it, such that he can say that he sacrifices the lesser good in taking the regular means of preserving the greater
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good. A proponent of DE might then say that there is a greater good to which his will can advert that makes it possible for his action in sacrificing the lesser to be ‘incidental’, but this is a remark about the structure of the justification of his action, not his individual psychology (although his ‘psychology,’ as we have seen, may be relevant to condition 4 of DE).

In reply to the second objection, it would seem that one should say that in both necessitation and DE goods are weighed, but only in the sense that one is judged to be rightly preferred to another, where ‘rightly preferred’ means merely something like ‘it makes sense, and would be praiseworthy, to prefer it’, not that any rational agent must prefer it. Moreover, the weighing and preference are conceived of as internal to the action: the action itself displays a preference for the one good, since both goods cannot be preserved in that action. That is why the action, although it sacrifices a good, is itself good through and through: what is properly evaluated in ethics are motives and actions, and both the action (displaying a preference) and the motives (mixed, and displaying a proper repugnance) are good. What we have called ‘bundling’ is what makes it possible for the weighing of goods to be displayed in a single action. When there is no bundling and no necessitation, then there are two actions; that is to say, we first complete doing something bad, and the will ‘rests in this’, and then the other is realized, in which case the former is blameworthy both as an action and with respect to its motive.

There may be two final doubts, which may be referred to as that of the ‘Pacifist’ and that of the ‘Consequentialist’. The Pacifist may worry that if one holds that killing in self-defence is permissible, then one encourages killing in other circumstances, since some killing has been allowed: wouldn’t it be at least safer, then, to stay away from all killing, by ruling it out tout court? To this it may be replied that we always need to distinguish between actions which are alike from those that merely seem alike (to distinguish, for example, surgery from mutilation); and that DE presupposes discernment and understanding in ethical reasoning and cannot be taken to replace it. It may be wondered, too, whether practically speaking pacificism is indeed ‘safer’, since it is arguably not possible for people to persevere as pacifists, and if when they reject pacificism they have no means of distinguishing legitimate from illegitimate use of force, they will inevitably lapse into barbarism.

The Consequentialist, finally, may wonder why, if it is agreed to be licit and even reasonable to weigh and balance goods ‘within the scope of a single action’, then why not also ‘outside’ the action as well; and if this is allowed at

32 Obviously it does not imply that there is a metric underlying the preference on the basis of which all goods might be commensurate (see Pakaluk 1992).
33 That is why Aristotle uses throughout his discussion of necessitated actions the idiom of market exchanges (‘X in exchange for (anti) Y’, not ‘X for the sake of [heneka] Y’).
34 See Anscombe (1981c) for a development of this last point.
all, would not some form of consequentialism be the most reasonable way of accomplishing it? To this a proponent of DE might reply that consequences of actions can and should be taken into account, but through deliberation and law, and not in such a way as to permit individual actions to be corrupted—which should be good through and through if they are to serve as sound components in a life or in social activity, just as the individual sentences in a speech or discussion need to be true.35

35 Many thanks to Richard Bett, Pierre Destrée, Kevin Flannery, Matthew O’Brien, and Giles Pearson for comments on earlier drafts of this chapter.