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Applying double effect in armed conflicts : a crisis of legitimacy / Bradley Gershel

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Title:	Applying double effect in armed conflicts : a crisis of legitimacy
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Abstract:	Both just-war theory and post-war lex scripta affirm the doctrine of military necessity, which permits the loss of innocent life that is "incidentally unavoidable by the armed conflicts of the war." This qualification is informed by the doctrine of double effect ("DDE"), a product of Catholic theology that serves to legitimize an attack causing "incidental" or "unintended" civilian casualties, provided certain conditions are met. This Article presents an indictment of the DDE as praxis in positive law. Specifically, it challenges whether the DDE as a legal rule is sufficient to legitimize the loss of innocent life, given the didactic presumptions upon which the doctrine rests, its historical development, and the environment within which it is now applied. First, it briefly discusses the DDE's development as a principle of natural law. Second, it discusses the principle's positive development in the law of armed conflict ("LOAC"). Third, it presents a number of significant critiques and responses to the application of the DDE as both a means of moral accountability and its use in armed conflicts. Fourth, it presents the arguments against the DDE as a means of moral assessment of civilian casualties.
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