

TOWARD A CONSISTENT NATURAL-LAW  
ETHICS OF KILLING

*Germain G. Grisez*

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# TOWARD A CONSISTENT NATURAL-LAW ETHICS OF KILLING

*Germain G. Grisez*

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UTILITARIAN THEORIES OF MORALITY are able to take a consistent position with regard to moral problems that involve the killing of human beings. Utilitarians can hold that no human life is inviolable. The utilitarian moral standard is based on good consequences; a sufficiently important end can justify any necessary means. Thus a utilitarian can consistently deem it permissible and even obligatory to kill any person if a greater net good would result from the killing than from any possible alternative course of action.<sup>1</sup> I have criticized utilitarianism elsewhere<sup>2</sup> and shall assume in the present discussion that the theory is mistaken.

Various theological theories, grouped under the general name of "situation-ethics," also take a consistent view of killing. They hold that all killing of human beings is evil, but that sometimes this evil is necessary to avoid greater evil. The way is opened by such theories to justify war, capital punishment, abortion, euthanasia, and other forms of killing *in some circumstances*. It is characteristic of situation-ethics to refuse to specify the circumstances, and to leave the determination to individual conscience, which is conceived to be an intuitive capacity directly guided by divine inspiration.

For the purpose of this article, I set aside the problems of situation-ethics. These problems are more theological than philosophical. From a philosophical perspective, I think that proponents of situation-ethics really accept two different ethical systems. On the one hand, they take for granted an idealistic ethics which makes evil any action detrimental to any basic human good—such as life itself. On the other hand, given that the world is not ideal, where real moral problems are concerned they accept a form of utilitarianism as their working theory. Utilitarianism as a philosophical theory of moral judgment suffers from unworkability, chiefly because one can only decide which possible course of action will yield the greatest net good *after* one has taken a specific moral stand in regard to the "situation."<sup>3</sup> Systems of situation-ethics remedy the deficiencies that make philosophical utilitarianism unworkable by sub-

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<sup>1</sup> I assume that rule utilitarianism is not an important alternative to act utilitarianism. See David Lyons, *Forms and Limits of Utilitarianism* (Oxford: 1965).

<sup>2</sup> "Methods of Ethical Inquiry," *Proceedings of the American Catholic Philosophical Association*, XLI (1967), pp. 160-168.

<sup>3</sup> "Situations" themselves are defined by antecedent moral judgments, and therefore cannot be uncritically assumed as principles of moral judgments.

stituting a supernatural, theological principle for the impossible rational calculations demanded by utilitarian theory.

Historically, many natural-law theories have proceeded on a conviction that respect for human life is a primary moral principle. Each man by nature desires to preserve his own life, and no one can reasonably expect others to respect his life except on the basis of a universal principle that human life as such has a dignity in virtue of which it should be respected and protected. We can easily imagine a society in which only the lives of those strong enough to cause trouble would be respected, but such a society, based on exploitation of the weak, would necessarily fall short of the justice necessary for genuine community.

Although natural-law theories have generally assumed respect for life as a primary principle, there also has been a tradition of qualification or limitation of the general principle. Two types of qualification or limitation are most common. First, the lives of those who attack the common good are not always considered inviolable; thus there have been theories of justifiable capital punishment and of just war. Second, actions which have a deadly effect but which are primarily directed toward some other good purpose have sometimes been considered justifiable; thus killing in self-defense and indirect abortion have been justified.

Today anyone who tries to argue on natural-law grounds that abortion, infanticide, euthanasia, and suicide are immoral is likely to be attacked for lack of consistency. The critic will assert that even if it is granted that such actions destroy human lives, still human life is not as such sacred, as even natural-law theory admits by making qualifications or limitations of the principle that human life is to be respected and protected. This criticism is made especially by utilitarian critics of natural-law theory.

In this article I will not attempt to clarify and defend the basic principle of the inviolability of human life. Rather, assuming this principle, I will examine the two types of limitations natural-law theories have admitted. For the sake of simplicity, I will begin from the arguments of Aquinas, which I take to be typical of at least a large part of the natural-law tradition.

My argument will have three parts. First, I will examine and criticize Aquinas' arguments regarding capital punishment and his theory of just war. I do not believe these arguments to be convincing; I will try to suggest why Aquinas went wrong. Second, I will consider the question of indirect killing, which Aquinas discusses only in relation to the problem of self-defense, but which has since been generalized under the principle of twofold effect. I will argue that the concept of indirect killing is defensible, and that the principle of twofold effect should be conceived somewhat more broadly than it generally

has been. At the same time I will criticize two recent attacks on the usual understanding of the principle of double effect. Third, I will try to present a more adequate formulation of the principle of indirect killing, and I will apply the suggested new formulation to several problems, in an effort to sketch a consistent, but not excessively rigid, natural-law ethics of killing.

My position is that human life can never rightly be directly attacked, but that indirect killing covers more cases than has generally been supposed. Still, the concept of indirect killing cannot be extended indefinitely.

Of course, my argument will seem neither relevant nor convincing to anyone who rejects every sort of natural-law theory. I by no means think that the prior questions can be left unexamined. However, I think the considerations proposed here may be of some interest and help to those whose antecedent inquiries have led them to a general ethical framework more or less similar to my own.<sup>4</sup>

## I

Aquinas thinks that capital punishment is sometimes justified. It is not justified if the innocent will be harmed along with the guilty,<sup>5</sup> nor if the execution is without a proper legal process.<sup>6</sup> But if sinful persons are pernicious to others, Aquinas believes they may justly be tried and executed; those whose sinfulness poses no serious threat to others should be allowed to live, so that they may have the chance to repent.<sup>7</sup>

Aquinas' main argument for the morality of capital punishment rests on his conception that the imperfect is ordained to the perfect. On this ground, lower animals may be killed for the good of man. Also, Aquinas argues, the part is naturally directed to the good of the whole. That is why we rightly amputate a diseased part of the body for the health of the whole organism.

Now each individual person is related to the whole community as part to whole. And therefore if some man is a threat to the community and a corruption in it because of a certain offense, it is praiseworthy and wholesome to kill him, that the common good may be preserved.<sup>8</sup>

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<sup>4</sup> I have outlined my ethical theory in *Contraception and the Natural Law* (Milwaukee: 1964), pp. 46-75. A fuller presentation will be in *Abortion: the Myths, the Realities, and the Arguments* (Washington: 1970), chapter 6, which also will include another version of the argument of the present article.

<sup>5</sup> *Summa theologiae*, 2-2, question 64, article 2, ad 1.

<sup>6</sup> *Ibid.*, article 3.

<sup>7</sup> *Ibid.*, article 2, response and ad 1.

<sup>8</sup> *Ibid.*, response.

It seems to me this argument as it stands is unsatisfactory for at least three reasons.

First, if protection of the common good is, as such, sufficient justification for killing evildoers, why is the same purpose not sufficient justification for killing the innocent? For example, why should abortion, infanticide, and euthanasia be excluded as methods of limiting population, when such limitation is urgently demanded for the common good?

Aquinas argues against killing the innocent as follows:

Any man can be considered twice: once, in himself; again, in relation to something else. Viewing man in himself, no man may rightly be killed. In everyone, even the evildoer, we ought to cherish the nature God made, which is destroyed by killing. But as I argued before, the killing of the evildoer becomes legitimate by reference to the common good, which is corrupted by the offense. But the life of the upright maintains and promotes the common good, because they are the majority of the people. Therefore, it is never allowed to kill the innocent.<sup>9</sup>

This argument seems muddled. Aquinas is assuming that society on the whole is made up of good people; we may wonder whether this is necessarily true. Perhaps whole societies can be so seriously corrupt that they might be more threatened by an innocent and unselfish person than by a vicious one. Again, Aquinas ignores the possibility that the innocent can endanger the common good, but the diseased part of the body which threatens the life of the whole certainly need not be regarded as morally guilty.

Of course, one might argue in defense of Aquinas that innocent persons who *harm* the common good do not *corrupt* it. Wrongdoers spoil society by their immoral acts. However, Aquinas has argued that sinners who do not damage the common good should not be killed. The principle he goes on therefore does not seem to be the elimination of moral corruption as such, but the protection of society from actual damage instigated by those who are guilty of wrongdoing.

But this leads to a second difficulty in Aquinas' argument. Capital punishment is not really essential to protect the common good from injury by wicked persons. What may be necessary is their effective separation from society. Such separation often has been achieved by ostracism or banishment or by imprisonment. If diseased organs had a life of their own—*e.g.*, if the diseased part were an unborn child—one would perhaps be justified in separating the sick part from the healthy for the good of the whole, but one would

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<sup>9</sup> *Ibid.*, article 6, response.

hardly be justified in destroying the diseased part if lifesaving separation could be achieved without such destruction.

A third, and more profound, difficulty with Aquinas' primary argument regarding capital punishment is that the individual person is not a part of the community in the way that members of a body are parts of the whole organism. "Wholeness," "common good," and "subordination of parts" are not univocal. Aquinas surely was aware that he was arguing by analogy, but he apparently did not carefully consider how weak the analogy is.

We might grant that the good of a citizen precisely as citizen is subordinate to the common good of society, but the role of citizen is only one dimension of one's whole personality, and the whole person cannot be rightly viewed as a mere part of the social whole. That is precisely why we reject totalitarianism and maintain that all persons have some fundamental rights that the society may not take away. Religious liberty, for instance, testifies to the conviction that man is not made merely for human society.

Aquinas surely was aware of this point, but he did not pay sufficient attention to its implications for the argument he proposed in defense of capital punishment. I think one reason why Aquinas overlooked the inadequacy of this analogy may have been his heavy reliance on the political theory outlined by Aristotle. For Aristotle, the fact that isolated individuals and families are not self-sufficient proves that the state is prior to them just as the whole organism is prior to its parts.<sup>10</sup> Consequently, although the individual and the state both have the same ultimate purpose—a fully and richly human life—individuals and families exist for the sake of the state which they compose, since the fullness of human life in the state as a whole can be greater than in any of its parts.<sup>11</sup> On this account Aristotle considers the good of the state more "godlike" than the good of the individual, for he conceives the divine nature to be one of life in isolated, self-sufficient completeness.<sup>12</sup>

Aristotle, of course, did not go so far as to divinize the state, as post-Christian totalitarians do, for he did not conceive the possibility of unity between the human and the divine, a possibility which can never be forgotten in a culture which once believed in the Incarnation and the Redemption. Nevertheless, Aristotle also lacked the conception of the dignity of the individual person which our culture, even if post-Christian, retains from the time when we believed that God elects and calls each person by name, and that each one must accept the divine election by a wholly personal act of faith or reject God's call with a wholly personal refusal of salvation.

<sup>10</sup> *Politics* i, 6 (1253a 19-28).

<sup>11</sup> *Nicomachean Ethics* i, 2 (1094b7-11).

<sup>12</sup> *Ibid.* x, 7-8 (1177b26-1178b23); *Metaphysics* xii, 9 (1074b15-34).

Aquinas, in following Aristotle, adopts the analogy between individual persons in relation to the common good and bodily parts in relation to the good of the whole organism. If the analogy held, society would surely be justified in acting to protect the common good by methods that would be immoral if used by individuals to protect themselves. However, if no human society is complete, if civil society is merely one form of community with limited concerns, then it is by no means clear that men associated in states may rightly kill wrongdoers to protect the common good if such killing would be morally forbidden to individuals.

Aquinas' argument for the justifiability of capital punishment has two other important aspects that must be examined.

Faced with the objection that it is evil in itself to kill human beings, and that the end does not justify the means, Aquinas responds:

When a man sins, he alienates himself from the order of reason, and so he loses his human dignity, by which he is free and exists for his own sake, and descends, as it were, to the servile condition of brute animals, so that he is disposed of in a way useful to others. . . . And so, though it is intrinsically evil to kill a man who maintains his own dignity, still it can be good to kill an offender, just as to kill a beast, for a bad man is worse and more harmful than a beast.<sup>13</sup>

The argument assumes that we can know which criminal is a sinner—an assumption less easily accepted today than in Aquinas' time. But even putting this difficulty aside, the argument is not satisfactory.

Of course, a person does in some sense degrade himself by his wrongdoing. Yet such self-degradation, even if it is conceived as a kind of existential suicide, cannot alter one's human nature or detract from one's inherent dignity as a human person. Our consensus today surely would be that if we treat even the worst criminals as if they were animals (or worse than animals) we brutalize ourselves and dishonor our own humanity.

Each good that is intrinsic to the human person participates in the dignity of the person, a dignity that is beyond calculable price and measurable worth. Goods *for* man can be priced; goods *in* man can only be prized.

An athletic accomplishment, an aesthetic experience, or a scientific discovery is a good intrinsic to a human person. Each has its dignity; none is a calculable or measurable value. The dignity of such goods is inalienable. No matter how wicked a man might be, his participation in such goods would remain inherently good.

<sup>13</sup> *Summa theologiae*, 2-2, question 64, article 2 ad 3.

Similarly, life itself is a good intrinsic to the person. For this reason, human life, simply by the fact that it is *human* life, shares in the dignity of the person. We may be right in feeling that a wrongdoer is not worthy of life, but such a feeling attests to the fact that life itself is a good of the personal order. If we attack the life of the wrongdoer, we destroy that which remains good—his human life. Perhaps we do so in order to indirectly attack in him the moral evil we hate and fear. If so, it seems we are willing to do an evil by destroying a good in order that we may achieve the good of destroying an evil.

The final aspect of Aquinas' defense of capital punishment is based on his conviction that public officials in the administration of justice share in divine providence; by punishing criminals public officials restore a balance of justice, which crime had upset.<sup>14</sup>

The trouble with this part of the argument is that even if we grant that public officials share in some special way in divine providence—an assumption that becomes problematic as soon as the absolute superiority of the common good is denied—it is not clear why the right way for public officials to exercise their special share in providence should be by executing criminals.

In many areas of law—for example, torts—the idea of a balance of justice makes clear sense: the law provides a remedy for injustice, a remedy actually effective in compensating for an evil unfairly suffered. But in criminal law, the whole idea of a balance of justice is questionable. Obviously, the death of an offender does not accomplish restitution, does not compensate for the evil his wrongdoing has caused. The victim of a murderer does not gain anything when the murderer is executed.

We do imagine and feel that the punishment of a criminal "settles his debt to society." But such an expression clearly is a metaphor which points to other areas of law in which the conception of justice as a balance is appropriate. Perhaps more significantly, we imagine and feel that punishment "evens the score." Society "gets even" with criminals by punishing them. But such a concept implies a balance of evil with evil. The relation of this balance to revenge is clear, but revenge hardly seems compatible with—much less, identical with—justice.

An argument Aquinas does not offer in defense of capital punishment is that it may provide a deterrent to other potential wrongdoers. Such an argument, and even a straightforward case based on the prevention of probable future misdeeds of the criminal himself, would obviously be utilitarian. If capital punishment is not otherwise justifiable, an argument for it based on its

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<sup>14</sup> *Ibid.*, ad 2; article 3, ad 1; *Summa contra gentiles*, III, 146.



eventual good consequences implies that a sufficiently good end justifies its necessary means. Aquinas, of course, rejects that position.

Aquinas' discussion of warfare does not add significantly to the arguments he offers in defense of capital punishment. In treating warfare, he does not so much try to prove such killing morally justified as to clarify necessary conditions without which it would surely be unjustifiable.

The conditions are three.<sup>15</sup> First, war must be waged under public authority, since private citizens can have recourse to higher authority. Here Aquinas compares the authority of public officials in waging war to their authority in executing capital punishment, since in both cases the protection of the community should be the objective. A second condition is that there be a just cause, that the enemy has done a wrong deserving opposition by force. The third condition is that the intention of those fighting must be upright.

The third condition is not mentioned in the discussion of capital punishment. Undoubtedly, at least in Aquinas' time, soldiers might fight for reasons of greed for booty or out of motives of personal vengeance. Such irrelevant and vitiating motives probably were not present—or at least, not obviously present—in law officers and judges enforcing the criminal law.

The second condition, which is that there be just cause, recalls Aquinas' position in the discussion of capital punishment that while it is always wrong to kill the innocent, the lives of those guilty of sin somehow lose inviolability. The difficulty with this view becomes clear if we recall Aquinas' admission that "it is intrinsically evil to kill a man who maintains his own dignity."<sup>16</sup> Even if we assume that we can discern the guilt of individual lawbreakers, we surely must admit that the matter is different with individual enemy soldiers.

Perhaps one side can know that the other has done an injustice worth fighting about, but no one using military force can be confident that the enemy personnel he kills are guilty of anything. In fact, one can be confident that many enemy personnel sincerely believe their side is just. Such individuals can hardly be viewed as criminals, abandoning (as it were) human dignity, and subjecting themselves to the condition of brute animals.

In fact, generally accepted standards for the treatment of prisoners of war imply clearly that we do not consider it reasonable to regard enemy military personnel as individually guilty of anything. It seems to follow that even if capital punishment were justifiable, killing in warfare would not be, since "it is intrinsically evil to kill a man who maintains his own dignity." Even if an enemy power as such is guilty of injustice and even if we can know it to be so, still only a fiction can distribute the guilt of injustice to each individual among

<sup>15</sup> *Summa theologiae*, 2-2, question 40, article 1, response.

<sup>16</sup> *Ibid.*, question 64, article 2, ad 3.

the enemy's military personnel, all of whom nevertheless are considered fair victims for deadly action until they are no longer able to fight.<sup>17</sup>

The first of Aquinas' three conditions for a just war—that it be properly authorized—also raises serious difficulties. Aquinas' comparison of warfare to the domestic institutions of law enforcement, including capital punishment, suggests that his conception of the common good also underlies his belief that wars can be justified. But if the enemy who is actually killed is not guilty, on the one hand, he is on the other not even a part of the community that authorizes killing him.

Once we strip away from the state the pretension of *suprapersonal* value, I do not see how warfare can be justified except on analogy with killing in individual self-defense. Aquinas offers a most interesting discussion of that topic, and we shall turn to it as our point of departure for the next section.

Before doing so, however, we may ask ourselves why Aquinas held such a weak ethical position on capital punishment and warfare. His reliance on Aristotle, already noted, was one factor. The nearly universal acceptance of these institutions in Aquinas' day was surely another factor inclining him toward a too easy justification of them.

The problem, however, is that working in a natural-law framework that assumes that human life is inherently a good to be protected and respected, Aquinas is precluded from defending capital punishment and killing in warfare on utilitarian grounds. Yet as a theologian, Aquinas was confronted with a tradition which justified capital punishment and took warfare for granted.

The Old Testament would be considerably reduced in size if we omitted all the passages dealing with the presumably justified wars of God's chosen people. And Aquinas cites Old Testament texts in defense of capital punishment: "You shall not suffer evildoers to live" (Ex. 22:18), and: "In the morning I will kill all sinners of the earth" (Ps. 100:8).

It is worth noticing that Aquinas does not use another Old Testament text, that from the Noachic covenant: "He who sheds man's blood shall have his blood shed by man, for in the image of God man was made" (Gn. 9:6). This text might seem to provide strong support for capital punishment, but it would not have been an adequate basis for the institution as Aquinas knew it, which certainly extended to many crimes besides murder.

Aquinas did not wholly ignore scriptural data which could have been used in a theological argument against publicly authorized killing. He notes

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<sup>17</sup> I do not raise the even more obvious difficulty of justifying the killing of innocent non-combatants, since traditional just-war theories held noncombatants immune to direct attack. Some today doubt that warfare in the nuclear age can be waged successfully if the rule of noncombatant immunity is respected. See William V. O'Brien, *Nuclear War, Deterrence and Morality* (Westminster, Md.: 1967), p. 60 and *passim*.

that the New Testament does not itself invoke the death penalty, and concludes that clerics, as ministers of the new covenant, should serve neither as soldiers nor as executioners.<sup>18</sup> Aquinas also cites sayings of Christ: "Everyone who takes up the sword will perish by the sword" (Mt. 26:52), and: "I say unto you, do not resist evil" (Mt. 5:39). But he explains these texts in accord with St. Augustine, who held that the first refers to those who take the sword by their own initiative, rather than by public authority or by zeal for justice—as it were, by the authority of God—while the second refers to nonresistance to injustice to oneself, and not to one's responsibility for the common good and the welfare of one's neighbor.<sup>19</sup>

I do not wish to enter into exegetical and theological arguments, but it may not be out of place to suggest that Aquinas could have viewed the Old Testament position on authorized killing in the same way he viewed the Old Testament position on divorce. In our day, Christian theologians could conveniently treat authorized killing as they now treat slavery, which was taken for granted in the Old Testament, not clearly condemned in the New, and accepted with misgivings and qualifications during much of the Christian era. I suspect that this possibility for reevaluating authorized killing has not generally been pursued, more because of the tendency of contemporary theologians to make concessions to "realism" than because of any insuperable theological obstacles.

## II

Apart from war and capital punishment, Aquinas discusses only one other situation in which he regards killing as justifiable. The question is: "Whether one may kill another in self-defense?" Aquinas answers:

Nothing keeps one act from having two effects, one of which is in the scope of the agent's intention while the other falls outside that scope. Now, moral actions are characterized by what is intended, not by what falls outside the scope of intention, for that is only incidental, as I explained previously.

Thus from the act of defending himself there can be two effects: self-preservation and the killing of the attacker. Therefore, this kind of act does not have the aspect of "wrong" on the basis that one intends to save his own life, because it is only natural to everything to preserve itself in existence as best it can. Still an action beginning from a good intention can become wrong if it is not proportionate to the end intended.

Consequently, if someone uses greater force than necessary to defend

<sup>18</sup> *Summa theologiae*, 2-2, question 40, article 2; question 64, article 4.

<sup>19</sup> *Ibid.*, question 40, article 1, ad 1 and ad 2.

his own life, that will be wrong. But if he repels the attack with measured force, the defense will not be wrong. The law permits force to be repelled with measured force by one who is attacked without offering provocation. It is not necessary to salvation that a man forego this act of measured defense in order to avoid the killing of another, since each person is more strongly bound to safeguard his own life than that of another.

But since it is wrong to take human life except for the common good by public authority, as I already explained, it is wrong for a man to *intend* to kill another man in order to defend himself. The only exception is when a person having public authority intends in the line of duty to kill another in self-defense, as when a soldier fights the enemy or a lawman fights robbers. However, even these would sin if they acted out of a private lust to kill.<sup>20</sup>

Several observations may be made about this complex text.

First, although Aquinas limits justifiable self-defense to situations in which the attack is unprovoked, he does not say the attack must be unjust. Someone attacked by an insane person might kill the attacker who could be incapable of moral responsibility for his action.

Second, the intention of the one defending himself is central to the argument. Aquinas had discussed capital punishment without mentioning intention; he required a right intention to justify war. In self-defense, the intention must be to preserve one's own life rather than to harm the attacker. This restriction of upright intention leads to the important concept of measured force or proportionate response to an attack. Behavior will be selected and limited to what is necessary to protect oneself, if the intention is really self-defense.

A third point to notice is that Aquinas does not rule out the use of self-defensive force such that one foresees, with practical certainty, that the attacker will be killed. The fact that a reasonable person would expect the death of the attacker does not mean that death is intended by one using measured force in self-defense. Intentions guide and shape performances; foreseen effects of behavior that do not guide and shape it fall outside the scope of intentions.

A fourth point is that Aquinas treats as an exception to his general position killing in self-defense by soldiers and lawmen. In general, one killing in self-defense may not intend the attacker's death, even when he knows that death will result from necessary defensive measures. The soldier and the lawman, however, may intend to kill, but only in their official capacities, when the intended killing is referred to the common good, not to a private interest.

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<sup>20</sup> *Ibid.*, question 64, article 7, response.

A fifth point to notice is that Aquinas rests the justification of killing in self-defense on the natural inclination toward self-preservation. Aquinas believes that individuals have a paramount obligation to take care of themselves: "each person is more strongly bound to safeguard his own life than that of another." The argument is *not* that an intention to kill is justified, but that a performance of self-defensive behavior which also kills can be intended as self-defensive and not as homicidal, because the intention of self-defense is possible (in virtue of natural inclination) and justifiable (in virtue of each person's responsibility for his own well being). If human beings did not naturally incline to preserve their lives, an intention to do so would only occur as a consequence of some more basic impulse; if there were no moral responsibility for oneself, an intention to preserve one's life by using force deadly to another could never be justified.

For those imbued with a utilitarian outlook, Aquinas' effort to justify killing in self-defense only if the intention is self-defensive—not if it is homicidal—will seem at least confused, if not dishonest. A utilitarian would urge that all the good and bad effects of one's performance must be weighed, and that the action is morally justified only if the net good of acting outweighs the net good of any alternative, such as allowing oneself to be attacked without offering resistance. For a utilitarian, in cases in which the very same behavior would be suited to the intention of measured self-defense and to the intention of homicide, which intention was effective subjectively would be irrelevant. Or, better, perhaps, a utilitarian would deny the possibility that one choosing a performance he foresees to have a deadly effect cannot help but intend what he foresees.

I am assuming in this paper, however, that utilitarianism is wrong in supposing that morality of action is calculated by a weighing of good and bad consequences. The foreseeable consequences that could in any manner be considered and weighed are only part—and not the most important part—of the reality in which man must orient himself as he takes moral responsibility for his self-determined action. Beyond foreseeable consequences lie the unknown, and thus incalculable, possibilities of human goodness, possibilities which are still to be realized in oneself and in other persons, possibilities that will become specific only through creative faithfulness to the "something more" of human life.

Man calculating his action by consequences and principles of value already known and accepted necessarily limits himself to being no more than he already is—unless by accident. Moral goodness, however, lies in being true to as is whom we are to be, but are not yet nor ever have been. Only if we are *first* faithful to as is whom we are to be, can this "something more," this better self, begin to

gain a comprehensible outline, an outline which we must nevertheless continuously revise and adapt as we seek to realize it.

In this nonutilitarian moral outlook, whether or not another person's death is admitted within the scope of our intention is extremely important. A difference of intention can relate identical behavior in quite different ways to our moral attitude, and to the self being created through our moral attitude. If one intends to kill another, he accepts the identity of killer as an aspect of his moral self. If he is to be a killer through his own self-determination, he must regard himself in any situation as the lord of life and of death. The good of life must be rated as a measurable value, not as an immeasurable dignity. Others' natural attitudes toward their own lives must be regarded as an irrational fact, not as a starting point for reasonable community. However, if one intends not the death of another but only the safety of his own life, then one need not identify himself as a killer. One's attitude toward human life itself and toward everything related to it can remain that of a person unwilling to take human life.

Still, it may be argued that the scope of intention cannot in reality exclude killing if one purposely performs a deadly deed, knowing it to be so, even though one's objective is his own safety rather than the other's harm. If one intends a certain objective, does he not also intend the means that are necessary for it?

I think the proper answer is "yes" if one refers to the *means* in a strict sense—that is, to that which is conducive to one's objective in a positive way, considered precisely insofar as it is conducive. A hired assassin whose objective is the pay he will earn only if the victim dies intends to kill the victim, even though that death considered by itself would be indifferent, or even repugnant, to him.

However, a rule to the effect that he who intends the end intends the means does not imply that one who kills in self-defense intends the assailant's death. For the other's death does not as such contribute anything directly to the objective of self-defense. The means considered strictly—a degree of counterforce sufficient to halt the attack or render it harmless—may happen to be deadly to the attacker. But if so, that is only a contingent fact. The death of the attacker is not the means of self-defense; rather, the means of self-defense happens to involve the attacker's death. The distinction is not vacuous, as is illustrated by a case in which the attacker happens to be put out of commission without his expected death occurring. If the intention is self-defense, the attacker's life is spared; if the intention is the death of the attacker, he is finished off.

Some authors seem to suppose that all foreseen effects of one's behavior

are intended so long as they are accepted, however reluctantly, as the concomitants of the execution of one's objective. But this position conflicts with our ordinary-language use of the word "intentional."<sup>21</sup> There may be reasons for the law to regard as intentional what ordinary moral discourse does not conceive to be such. But I think even law would not go so far as to regard all the foreseen effects of an intended act as themselves intended.

I foresee that the paragraph I am now writing will be misunderstood by some readers, but I do not intend their misunderstanding. I foresee that as a result of writing this paragraph, my pen will run out of ink sooner than if I did not write this paragraph, but I do not intend my pen's running out of ink.

When I go to the dentist, I foresee that I shall suffer pain, but I do not intend the pain. I intend to keep my teeth in working order and I intend to have them repaired, but the pain contributes nothing to my objective or to the process of its realization. Pain is merely an unavoidable concomitant. True, I bring the pain upon myself by going to the dentist. But I "bring it upon" myself, I do not seek it or use it.

A human being as a moral agent is not placed within a framework of already determinate situations, as a puppet is placed upon a stage created beforehand for it. The various environments in which we live are filled with facts somehow or other related to us and to our action, but our actual life-worlds are shaped by our interests and by the ways we select to satisfy our interests. Many effects of our behavior fall outside the scope of our intentions; some effects of our behavior have no significant reference to any human concern that we know of. Consequently, we certainly do not *intend* all the foreseen effects of our purposeful behavior.

Yet it might be argued that we do intend foreseen effects of our purposeful behavior if these effects are relevant to human interests, particularly when such effects are necessary concomitants of the objectives we seek or the means we choose. By this criterion the death of the attacker would be intentional, even if the purpose were self-defense and the force used were strictly proportionate to the purpose. If a householder, believing an intruder is about to shoot, shoots first in self-defense, it would seem odd to say the intruder was killed unintentionally by a bullet that found its target in the intruder's brain.

This example indicates that "intentional" may be used in contrast with "accidental." The killing of the intruder is no accident, and in that sense the householder kills intentionally. Legally such killing would perhaps be classed as excusable homicide, not as an accident. For legal purposes, also, it is

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<sup>21</sup> See Anthony Kenny, "Intention and Purpose," *Journal of Philosophy*, LXIII (October 27, 1966), pp. 642-651; G. E. M. Anscombe, *Intention*, 2 ed. (Oxford: 1963).

perhaps useful to regard as intentional any reasonably foreseeable effect of action if the action is illegal and the effect harmful, or if the harmful effect is avoidable, or if the intentional bringing about of the effect would be illegal.

Ethically, however, even if an attacker killed by defensive action is not killed unintentionally—*i.e.*, accidentally—one defending himself with a proportionate response that will in fact be deadly need not turn against life, need not regard death (even the attacker's) as if it were any sort of good. In this sense one who kills in self-defense need not *in-tend* (tend toward) the attacker's death. By contrast, one who seeks anyone's death either as an objective or as a means—the hired gunman—does regard death as a good, for death as such will be at least useful if not itself a source of satisfaction.

Catholic theologians, especially around the beginning of the seventeenth century, used Aquinas' justification of killing in self-defense, along with other elements of his teaching, to develop a general principle of casuistry: the principle of twofold effect. The history of the development has been traced by others.<sup>22</sup> The product of the development may be summarized as follows.

A person may guiltlessly do an act having two effects, one good and the other bad, if four requirements are fulfilled simultaneously:

1) If one prescinds from the bad effect, the act must not be evil on another ground. (There is no point in discussing the justifiability of permitting the bad effects of an act which is admitted from the outset to be murder, quite apart from those effects.)

2) The person acting must have a right intention. (Here Aquinas' analysis, which we have examined, had its influence.)

3) The evil effect may not be the means to the good effect. (One may not kill someone to inherit his wealth with a view to putting it to good use.)

4) There must be a proportionately grave reason for doing the act. (One may not use a possibly deadly drug if a safer one is available and will do.)

The first two requirements introduce no new problems. The third raises problems which we will have to consider carefully. The fourth requirement can be understood in two ways, and this ambiguity is worth a brief remark.

If we understand the fourth requirement as a demand that the good and bad effects be weighed against one another, then a limited field is being opened for a utilitarian conception of moral judgment. Since I do not believe utilitarian calculation to be feasible, I do not think any direction to engage

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<sup>22</sup> J. Ghoois, "L'Acte à Double Effet: Étude de Théologie Positive," *Ephemerides Theologiae Lovaniensis*, XXVII (1951), pp. 30-52, and sources cited by him. Ghoois tends to be exclusivistic in his treatment of others. He does not show that Mangan's study is incorrect, though Ghoois adds material useful for a further insight into the history. I think Ghoois is mistaken in brushing aside as insignificant references of authors he himself cites to *Summa theologiae*, 2-2, question 64, article 7.



in it can be an element in a sound ethical principle. However, the fourth requirement may be taken as a mere reminder that even if the evil effect is not our direct responsibility, we still may have an obligation to avoid it under the general principle that we should avoid and prevent evil whenever we can, unless we have some reason not to do so. One would incur a guilt similar to that of an omission if he neglected to avoid an evil effect without a good reason.

Heavy criticism has focused on the third requirement. Taken in one sense, of course, that requirement agrees with Aquinas' analysis of justified killing in self-defense, as I have explained it. A chosen means is as much intended as is one's objective. But in another sense, the third requirement would exclude killing in self-defense, because the force used as a means of self-defense is effective to that end only in virtue of the fact that it first harms the attacker. If the required form and level of defensive force will be in fact deadly, then the one defending himself is safe only when the attacker has suffered a death-dealing counterattack. Reasoning thus, many who hold the principle of double effect do not apply it to the case of killing in self-defense. Instead they say that in such cases the intentional killing of an unjust assailant is justified.<sup>23</sup>

One notable effort to criticize and broaden the third requirement was made in an article by Peter Knauer, S.J., published in the 1967 *Natural Law Forum*.<sup>24</sup> According to Knauer, the evil effect may licitly be intended psychologically as a means to a good end, provided there is a *commensurate reason* for the act. Even though the good effect is in fact achieved only through the evil, Knauer claims that from the moral (as against the psychological) point of view, the evil in such a case will be "indirectly" intended. In other words, no means for the use of which there is a *commensurate reason* can be intrinsically evil.

This theory cannot be understood without a clarification of the expression "commensurate reason." By this technical expression Knauer means more than "a good reason"; in other words, he means more than what I have taken to be the acceptable meaning of the fourth requirement of the principle of double effect. At the same time, Knauer does not mean to introduce a utilitarian theory of morality. He is aware that the sort of calculations required by utilitarian theory are impossible.

Knauer suggests that the notion of commensurate reason is derived from

<sup>23</sup> Joseph T. Mangan, S.J., "An Historical Analysis of the Principle of Double Effect," *Theological Studies*, X (1949), p. 45.

<sup>24</sup> "The Hermeneutic Function of the Principle of Double Effect," *Natural Law Forum*, 12 (1967), pp. 132-162.

the requirement Aquinas laid down, in his discussion of killing in self-defense, that force be measured, since an action beginning from a good end can become evil if it is "not proportionate to the end intended." If action achieves the good at which it aims as efficiently as possible, then that good is a commensurate reason, according to Knauer. If one settles for a partial, or short-run, or otherwise more limited realization of some value, whereas he might have sought a fuller realization of it if he had organized his action more intelligently, then his action is evil. Knauer considers evil action to involve a sort of inner contradiction: one wants the good he intends as his objective, but one fails to pursue it as efficiently as he might.

Reading Knauer's explanation, we naturally wonder how he distinguishes between ethics and any art or technique. The distinction is based on levels of generality. Arts and techniques criticize or guide action so that it will be commensurate to specific objectives. Ethics includes the whole of life. For Knauer, moral theory finds behavior immoral by considering its lack of proportion to the value to which it is directed as an ultimate end.

Undoubtedly, Knauer is expressing some aspect of what is required of action in order that it be morally good. The question is whether the presence of a commensurate reason, as Knauer understands it, is a sufficient criterion of morality. We might criticize Knauer's theory both as an interpretation of Aquinas and on its own account.

As an interpretation of Aquinas, I do not think Knauer's theory is at all plausible. If Aquinas' whole discussion of the justifiability of killing in self-defense amounted to nothing more than the statement that such killing is justified if it is the only efficient way to preserve one's life, then the whole idea of intention could just as well have been omitted. In fact, Aquinas uses the notion of intention as the pivot of his discussion. Moreover, "intention" in Aquinas' discussion has not a special meaning completely cut off from the meanings it has in ordinary language.

A sign of Knauer's confusion on this matter is his use of the post-Thomistic expression, "indirectly intended," as equivalent to Aquinas' "what falls outside the scope of intention, for that is only incidental" to the action.<sup>25</sup> The upshot is that Knauer lumps together, as justified by commensurate reason, two classes of situations involving killing<sup>26</sup> which, as we have seen, Aquinas viewed quite differently—intentional official killings justified by the common good and killing in private self-defense justified by exclusion (which is objectively grounded) of the attacker's death from the intention that guides and shapes behavior.

<sup>25</sup> *Ibid.*, pp. 136-137.

<sup>26</sup> *Ibid.*, p. 138.

Knauer is right, I think, in urging that the “effects” of which Aquinas speaks are not extrinsic consequences of the human act but intrinsic aspects of it. Certainly, self-defense is intrinsic to an act done in self-defense and immediately realizing that purpose. Knauer also is right in insisting that human action should not be split into a purely “mental” meaning and an “external” behavior. He also assumes a realistic theory of values, which he takes to be constitutive aspects of human perfection.

But despite the virtues of his essay, and apart from its failure as an interpretation of Aquinas, Knauer seems to me to have made the serious error of confusing a *necessary* condition of morality—commensurate reason, in his sense—with the sufficient criterion of moral goodness. The insufficiency of Knauer’s criterion can be brought out in several ways.

For one thing, the requirement of commensurate reason does not show why there is a moral obligation to commit oneself to any good in the first place. Knauer assumes that action commensurate or not to a value is already going on, but this assumption sets aside several very fundamental issues in ethics. Again, the requirement of commensurate reason does not explain why we have a *prima facie* obligation to fulfill the duties we have in the various communities to which we belong.

More important, perhaps, is that the requirement of commensurate reason does not show what is wrong with an exclusive and fanatical dedication to any single human value. Truth, for instance, is a human good valuable apart from its consequences. On Knauer’s theory it would follow that so long as a scientist pursues truth as effectively as possible, nothing he does can be immoral. The means, for Knauer, cannot be prejudged until they are specified by the end. Suppose our scientist pursues inquiries in human psychology which can only succeed if the subjects are kept in ignorance, and which involve a serious risk of permanent psychological damage? Suppose these investigations seek experimentally to determine the conditions under which commitments such as those involved in religious or marital fidelity are most likely maintained or broken?

The knowledge pursued in such cases could be of genuine value, and the means could be proportionate to the end. Are such experiments therefore justified? If Knauer says “yes,” he opens himself to justifying every sort of fanaticism, and the violation of every value but the one to which action happens to be directed. If he says “no,” then he must admit that a truly commensurate reason must be proportionate not merely to one or another human good, but simultaneously to the whole ambit of fundamental human values. But how can a reason be judged commensurate to many incommensurable values? If Knauer is not to fall into utilitarianism after all, by

declaring all human values to be commensurable, he will have to bring into account differences in the agent's attitude toward the circle of values. This consideration would lead back to distinctions based on intention in the sense that Knauer has tried to supersede with his simple, and oversimplified, concept of commensurate reason.

A remarkably clear example of the inadequacy of Knauer's position is furnished by a concluding footnote to his article in which he deals with some difficult questions. May a woman commit adultery to rescue her children from a concentration camp? May she engage in prostitution to avoid starvation? Knauer answers:

I would reply first that the difficulty is by no means special to the sexual area. We have the same problem in every kind of extortion or blackmail. For example, someone may be threatened with death if he refuses to take part in the falsification of a document.

The question must be answered in relation to the whole context. Does life or freedom have any value if in the end one is forced to give up all human rights and in principle be exposed to every extortion? This would be in contradiction to the very values of life and freedom. For extortion always works after the pattern of the salami, one slice of which is taken after the other; it is a menace not only for a part but also for the whole.

As for the woman who believes that prostitution is the only way to keep from starving, she is in reality also the victim of extortion. By acceding to an unjust extortion one can never really save anything in the long run.<sup>27</sup>

It seems to me this reply is evasive. The question does not necessarily imply that the situation involves extortion; Knauer imports that idea. The woman who is trying to free her children is not giving up all human rights ("rights," of course, begs the question) nor is she in principle subjecting herself to every extortion. The hungry prostitute is not violating the value she is acting for—namely, staying alive. If she has no other way to get food, she is acting with a commensurate reason in Knauer's sense. Perhaps she would be better off on the whole chaste and dead, but for Knauer to hold that position is arbitrary.

Of course, if one wants to make "life and freedom" or something similarly vague be the value sought in every action, it will always be possible to say vacuously that any act generally agreed to be immoral beforehand lacks a commensurate reason. That is like saying that sin will never make one *truly* happy, where "truly" begs the question. A woman engaging in prostitution to avoid starvation is surely staying alive, and may have no less compromising

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<sup>27</sup> *Ibid.*, p. 162.

alternative. If she "can never really save anything in the long run," that is only because we all die sooner or later. On that score, I suppose Knauer might hold that mere human life is no value that could ever be a commensurate reason for acting.

Another criticism of the principle of double effect—one even more radical than Knauer's—has been proposed by W. Van der Marck, O.P.<sup>28</sup> This author believes that the whole principle of double effect rests on an error. Like Knauer, Van der Marck also wishes to claim Aquinas' support for his view.

Van der Marck's position is very simple. He holds that a human act consists of an indivisible unity of outward behavior and human signification. The outward behavior or performance is the *means*; the human signification or intention is the *end*. Neither by itself has moral quality. To consider the means in isolation is to consider what is not as such a human act, what is not as such morally good or bad.

Van der Marck holds that a human signification accrues to the act which it constitutes in virtue of the relevance of the performance to community-forming or community-breaking. In other words, human acts are not at all to be defined by their material, physical reality except insofar as that reality grounds and limits the impact of what is done on actual human community. If the overall impact is beneficial, the act will be defined in a morally positive way; so defined, the act will be a good one, the performance becoming a good means to a good end. On the other hand, if the overall impact is harmful to community, the act will be defined in a pejorative way; so defined, the act will be a bad one, perhaps the very same outward performance previously considered good becoming a bad means to a bad end. It follows there can be no problem about good ends being pursued by morally evil means.<sup>29</sup>

On the basis of this simple theory of human action, Van der Marck rejects the principle of double effect. He believes it rests on the mistake of assuming that the external performance by itself is the human act, and that different relationships of that performance to community are separate from the act but related to it as effects to a cause. From this supposed confusion, Van der Marck thinks, has arisen the mistaken requirement that the good effect not result from the evil one. For Van der Marck, there simply is no morally evil effect if the overall significance of the act is community-building.<sup>30</sup>

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<sup>28</sup> Probably most clearly expressed in *Love and Fertility: Contemporary Questions about Birth Regulation* (London, Melbourne, New York: 1965), pp. 35-63.

<sup>29</sup> *Ibid.*, p. 57.

<sup>30</sup> *Ibid.*, pp. 49-57.

It is clear that Van der Marck actually has adopted the methodology of utilitarianism. His theory is not hedonistic in its conception of human good, but still judges the rightness of acts by their expected actual consequences for human goods—the latter included all together under the vague concept of “community.” Van der Marck discusses a number of topics, among them capital punishment, the use of the atomic bombs in 1945, therapeutic abortion, organ transplantation, and sterilization by drugs. In each case he holds that the best possible compromise as measured by the overall good of community is “humanly acceptable” and morally good. In reaching this conclusion, Van der Marck obviously is working on the implicit assumption of all utilitarianism—that the values to be achieved through human action can be determinately known in advance, reduced to a least common denominator, and weighed on a single scale:

In short, the reality of concrete living makes it clear that we must choose, that is, make sacrifices and take risks, but often it is not at all clear on which side the scale should turn. It is clear that what is at stake is man and his human community, but all the “principles” which are involved here all too seldom solve practical questions. These involve concrete evaluations in an effort to find the most acceptable compromise, for compromise is in a way an essential part of our physical human society.<sup>31</sup>

Considering Van der Marck’s position, one naturally wonders how he can imagine it to represent the thought of Aquinas. Mainly responsible is Van der Marck’s misinterpretation of one text in which Aquinas states that acts classed together in natural species can be classed differently in moral species. Killing a human being, for instance, is the same natural kind of act whatever the end of the will to which it is directed; but justice and revenge morally specify capital punishment and murder, respectively.<sup>32</sup>

Curiously, in referring to this passage, Van der Marck also refers<sup>33</sup> to Aquinas’ discussion of non-intentional killing in self-defense. As we have seen, capital punishment and killing in self-defense are ethically distinct for Aquinas, since the former may justifiably involve *intent* to kill, but the latter not. On Van der Marck’s theory of intention, such a distinction would be confused. Van der Marck erroneously assumes that Aquinas’ distinction between natural and moral classification corresponds to the distinction Van der Marck himself makes between the material or external act (the performance) and the formal determinant of the act (the intention). Actually, however, Aquinas is contrasting the classification system of natural philosophy

<sup>31</sup> *Ibid.*, p. 62.

<sup>32</sup> *Summa theologiae*, 1-2, question 1, article 3, ad 3.

<sup>33</sup> *Op. cit.*, note 28, p. 45.

with that of ethics. The natural philosopher defines a process by its *outcome*; the moral philosopher introduces ends of the will.

The difference between Aquinas' position and Van der Marck's is brought into focus by two simple facts.

First, Aquinas distinguishes clearly between acts of the will bearing upon ends (simple volition, enjoyment, and intention in the narrow sense) and acts of the will bearing upon means (choice, consent, and use).<sup>34</sup> This distinction of acts of the will pertains to what Aquinas calls the "interior act." Van der Marck is therefore overly simple in dividing intention of the end as the inner human meaning of the act against execution of the means, since this approach leaves no place for Aquinas' distinctions.

Another fact about Aquinas' treatise on human acts that Van der Marck ignores is Aquinas' position that the entire goodness or malice of the external act does not depend on the goodness of the will.<sup>35</sup> Aquinas is very careful not to separate the aspects of human action into two independent acts, but he is also at pains to stress the distinct moral contribution of the behavioral performance itself. Van der Marck is so intent on overcoming the dualism of external *versus* internal that he falls into a monism that obliterates the distinctions necessary for sound analysis.

Quite apart from issues of accuracy of interpretation of Aquinas, Van der Marck's theory fails through defects in his analysis of human action. Consideration of a few obvious distinctions and simple examples will prove the need for a more adequate analysis. There are, for example, two distinct ways in which means are related to ends in human action. Van der Marck's analysis misrepresents both structures of action.

In one set of cases, the means is a performance that leads to a specific goal ulterior to the performance itself. For example, a child does his homework (means) so that he can get good marks (end). A boy cuts grass (means) to earn enough money to buy a bicycle (end). A farmer sows (means) in order to reap (end). One makes a tool (means) in order to use it (end). As has often been observed, ends in this sense can become means to further ends. In none of these cases does the means include the behavior alone and the end its human meaning. Rather, contrary to Van der Marck, both means and end have a behavioral aspect (Aquinas' external act) and an aspect of human meaning (Aquinas' interior act).

In another set of cases, the means is a meaningful performance that partially actualizes a larger purpose. This larger purpose, which is the end, is not

<sup>34</sup> *Summa theologiae*, 1-2, questions 8-16.

<sup>35</sup> *Ibid.*, question 20, article 2.

only on the side of human *meaning*, but also involves human *existence*. For example, one lives hygienically for the sake of health — the means participates in the end. One watches a drama for the sake of esthetic experience; one studies in order to learn; one gives something valuable to another for the sake of friendship; one prays for holiness. In each of these cases the means is a performance with an immanent meaning by reference to the end, which is an aspect of human *being*, a participation in a value which is achieved in man as he acts to fulfill his commitment, to realize his own identity. In this structure of action, contrary to Van der Marck, both means and end involve an aspect of human meaning; the means involves a performance of some sort and the end a way of being.

Van der Marck is correct in observing that a performance that is one from the point of view of natural science can be many distinct moral acts. A performance is a human act only when its human meaning is taken into account. However, Van der Marck is mistaken in drawing the conclusion that there cannot be a morally bad means to a good end. The means is not merely the performance given meaning directly by the end. The meaning of a human act as means *depends* on the end, but *is not identical* with the end. There are other factors in determining the morality of the means.

Thus, a child doing his homework (means) in order to get good marks (end) might instead cheat in examinations (bad means) for the same end. A boy who cuts grass (means) to get money for a bicycle (end) might instead sell heroin (bad means) for the same end. A farmer who sows (means) in order to reap (end) might instead allow others to cultivate the crop and then kill them (bad means) in order to reap. One who makes a tool (means) in order to use it (end) can exploit slave labor to make the tool (bad means) in order to use it.

Similarly, one who lives hygienically (means) for the sake of health (end) might avoid contact with a sick person for whose care he is responsible (bad means) for the same end. One who watches a drama (means) for the sake of esthetic experience (end) might try dangerous drugs (bad means) for the same purpose. One who studies (means) in order to learn (end) might do permanently destructive experiments on human beings (bad means) in order to learn. One who gives something valuable to another (means) for the sake of friendship (end) might give up his religious faith (bad means) for friendship (*e.g.*, marriage) with a nonbeliever. One who prays (means) for holiness (end) may subject himself to an inhuman asceticism (bad means) for the same end.

I do not rest my case against Van der Marck's position on one or another particular example. The examples merely illustrate the abstract analysis. If



anyone is not satisfied with these examples, it should not be difficult to find some he will accept. Means and end in human actions are closely related, but not related as Van der Marck says. The means is not merely a performance that gets its whole human meaning from the end. Contrary to Van der Marck's dictum, there certainly can be bad means.<sup>36</sup>

Other efforts have been made to overturn or radically reinterpret the principle of double effect.<sup>37</sup> However, such efforts seem to me to fall into errors similar to those into which Knauer and Van der Marck fall. It is therefore necessary for us to reconsider the principle of double effect, to see how it might be revised without abandoning the nonutilitarian theory that makes it significant and without assuming some oversimplified analysis of human action.

### III

I think that we must distinguish between cause and effect in the order of nature, on the one hand, and, on the other, means and end in the order of human action. The preceding argument shows that in human action a means is not so exclusively determined by the end that the means might not be bad while the end is good. The means in human action therefore must be morally evaluated in itself—that is, in view of all the factors which determine its morality. The question is: if an effect in the order of nature contributes to the fulfillment of a human purpose, must the natural cause of that effect be viewed as a means in the order of human action?

The third requirement of the principle of double effect—that the evil effect may not be the means to the good effect—usually is interpreted in a way that assumes an affirmative answer to this question. Sometimes, indeed, the requirement is stated as follows:

It is permissible to set a cause in motion, in spite of its foreseen evil effect, provided . . . , secondly, that a good effect also issue from the act, at least as immediately and directly as the evil effect, *that is to say, provided that the evil effect does not first arise and from it the good effect; . . .* [italics added]<sup>38</sup>

This interpretation of the requirement seems to me mistaken.

My reason is as follows. A means in the order of human action must be a single, complete human act (or a complex of such acts). The means *cannot*

<sup>36</sup> *Op. cit.*, note 28, pp. 57-58.

<sup>37</sup> One drawing on both Knauer and Van der Marck is Cornelius J. Van der Poel, "The Principle of Double Effect," in Charles Curran, ed., *Absolutes in Moral Theology?* (Washington, Cleveland: 1968), pp. 186-210.

<sup>38</sup> Henry Davis, S.J., *Moral and Pastoral Theology*, 5 ed. (London: 1946), vol. 1, p. 14.

be a mere part of a human act. Now a human action derives its unity from two sources. One source is the unity of one's intention. ("Intention" here refers not merely to intention of the end, but also to the meaning one understands his act to have when he chooses it as a means to an intended end.) The other source of unity in a human act is the indivisibility of the performance. Both principles of unity deserve close scrutiny.

A performance may be divisible by thought or divisible in the sense that under some other conditions it could be divided, yet remain practically indivisible for a given agent here and now. Obviously, so far as the performance affects the unity of a human act, the indivisibility that is relevant is that which is defined in terms of the actual power of the agent. If I cannot here and now divide my performance, then no sort of complexity within it can in and of itself determine my action to a multiplicity corresponding to that complexity.

Now, a performance considered as a process of causation in the order of nature includes not only the bodily movements of the agent but also the inevitable physical effects which naturally follow from those movements. For example, the performance of lighting a match includes the match igniting; the performance of eating includes eliminating hunger; the performance of speaking to someone includes being heard. Insofar as the performance determines the unity of action, allowances must be made for ignorance of effects or error about their inevitability, since the immediate principle of action is judgment, into which facts enter only insofar as they are known.

It follows that when a human agent through his causality initiates a process in nature, all effects expected inevitably to follow belong within the unity of his performance insofar as that unity is a principle of the unity of action. Of course, a unified performance can belong to two or more actions in virtue of the divisive effect of intention, which is the other necessary principle of the unity of action. The point here is simply that a human act *need not* cease to be unified as a single act merely because there is a foreseen, inevitable complexity in the natural process of cause and effect.

For example, the distinction between moving one's fingers and a match's igniting *does not necessitate* the restriction of the human act, which is a means, to the movement of one's fingers. The reason is that one *cannot choose* to move one's fingers in that way without also choosing the igniting of the match.

If one uses the lighted match to light a cigarette, the two actions may be characterized together as "lighting a cigarette," no mention made of the match and its ignition. Here, however, the process of behavior is divisible by the agent—he may use a lighter, or use the match to light a stove instead of a cigarette, or change his mind and blow the match out without using it, or light the match for illumination, or merely to watch it burn. Because of this

complexity, the performance of striking a match to light a cigarette does introduce division into action. The division is apt to be overlooked when the action becomes habitual. However, at some point the habitual smoker chose not only to smoke, but also to use matches.

When we consider the other source of the unity of action, the agent's intention, we notice that a multiplicity of non-subordinated intentions always determines a multiplicity of acts, regardless of the unity of performance. That is the point Aquinas makes when he argues that the same act in the order of nature can belong to two distinct moral categories.

Another important point is that an agent intending one aspect of a performance that is complex and known to him to be divisible may be responsible for an omission if he fails to divide it, even though he never chose the elements of the complex separately. For this reason, one who does something that might cause preventable harm to others may be responsible if he fails to divide his performance by preventing that harm. Even though only one choice was actually made—to do what causes the harm—there are two moral acts, one determined by that choice and the other determined by the negligent omission.

Similarly, although a performance may be actually indivisible, a duality of action may arise from the fact that an alternative performance could have been chosen that would have served one's purpose without a foreseen harm. For example, a physician who has a choice between two equally effective drugs, one of which may in a given case have a dangerous side effect, would do two human acts if he negligently prescribed the less safe drug: he would both prescribe medication and negligently omit due care in treating the patient.

If, in fact, the agent has only a single intention (that is, a single choice made with a unified meaning, even if several harmonious purposes are served at the same time) and if there is not a related omission, then the action will be a single unit so far as its unity is determined by intention.

An act that is one both from the point of view of intention and from the point of view of the performance is one absolutely. What specific action it is, will be determined by the scope of intention, not by parts of the performance that remains a whole indivisible by the agent. The concepts of intention and scope of intention have been discussed above in reference to Aquinas' position on killing in self-defense.<sup>39</sup>

My conclusion is that a good effect which in the order of nature is preceded in the performance by an evil effect need not be regarded as a good end achieved by an evil means, provided that the act is a unity and only the

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<sup>39</sup> *Supra*, notes 20 and 21, and accompanying text.

good is within the scope of intention. Means and end in the order of human action do not necessarily correspond to cause and effect in the order of nature, because a means must be an integral human act. If the unity of action is preserved and the intention specifying the action is good, whether the good or evil effect is prior in the order of nature is morally irrelevant. From the ethical point of view, all of the events in the indivisible performance of a unitary human act are equally immediate to the agent; none is prior (a means) to another.

According to this understanding of the principle of double effect, a woman might interpose herself between her child and an attacking animal, since the unitary act would save the child as well as unintentionally damage the agent. She could not commit adultery to obtain the release of her child, because the good effect would be through a distinct human act, and she would have to consent to the adulterous act as a means to the good end.

Again, a starving party of explorers might divide available food among the stronger members, allowing the weaker to die, since the same act would benefit the one group and harm the others. But if the stronger killed one of the weaker to cannibalize him, the killing would be a bad means, chosen in a distinct act, since killing and eating are divisible and the act is therefore not unitary.

The biblical story of Abraham's sacrifice of Isaac provides an interesting example. According to my interpretation of the principle of double effect, Abraham would have been justified in sacrificing Isaac, since the very same act which killed Isaac would have been specified by Abraham's religious obedience as an act of worship. By the same token, however, Abraham would have been *ethically* justified in refusing to kill Isaac, since the very same omission would have protected Isaac's life and left the divine command unfulfilled. But if Sarah had hid the boy, Abraham would not have been justified in torturing her in order to force her to produce him, since the good effect would have been in another human act, and the choice of torture would have been a bad means, even if the end were good.

One may expose another's shameful act to clear an innocent party; the good and bad effects are indivisible, although the bad comes first in time. But one may not cause the same harm as an example to others, since the good effect is then in a distinct act, and the evil must be chosen as a means.

As I stated at the beginning of this article, I am assuming here the unviolable dignity of human life as a natural-law principle. My purpose is the limited one of trying to work out a consistent ethics of human life by resolving difficulties that seem to be raised by limitations or exceptions that tradition has grafted upon the basic principle that life should be respected and

preserved. Thus far I have argued against justification of intentional killing; I have rejected Aquinas' defense of capital punishment and warfare. I have also accepted Aquinas' argument in favor of the justifiability of killing in self-defense, but I have rejected radical revisions of the principle of double effect and instead proposed a clarification that will allow a limited extension of its power to justify acts hitherto regarded as evil.

It remains to consider in which cases we may be justified in doing the deadly deed. How much killing is permissible under my interpretation of double effect?

In the first place, killing in self-defense, as Aquinas explains it, fits under the principle of double effect as I interpret it.

As for capital punishment, I think Aquinas was right in holding that such killing is intentional. The good effects, if any, are in other acts. Since I do not accept the justifiability of intentional killing, I do not see how capital punishment can be justified. Only if capital punishment could be viewed in some cases as community self-defense against an immediate threat could it be justified. Such might have been the case in some situations in the past, for example, when a criminal was given a choice between banishment and death.

Warfare also, it seems to me, can be justified only to the extent that the deadly deeds done in it constitute a form of community self-defense. What this means is that each act of warfare that kills must in and of itself have a good effect which is alone intended. That good effect might be defined as *impeding the unjust use of force by the enemy*.

Justifiable warfare thus must be defensive. But force is used unjustly not only when an attack is launched, but also when power is maintained as an instrument of oppression. Moreover, the unjust use of force is impeded when the preparation at any stage is prevented. At the same time, justifiable defensive warfare can only be a last resort, and the other conditions of double effect must be observed.

Acts of war will be justifiable only if they are effective against the means of force being unjustly used. To demand unconditional surrender is unjust. To seek by force to overcome evil that is not using force unjustly is itself unjust. To attack noncombatants is unjust. The use of terror, torture, and reprisals is unjustifiable; the good effects, if any, are in ulterior acts.

As in self-defense, a soldier on a battlefield can shoot straight at an enemy soldier, intending to lessen the enemy force by one gun, while not intending to kill. Similarly a military camp or a factory producing military goods can be bombed. But an enemy hospital or non-military area cannot be justly

attacked. The enemy soldier may not be killed if he can be inactivated otherwise, or if he has surrendered.

If criteria such as these are applied to World War II, the conclusion must be that if the United States' role in the war could be justified, still it certainly was not conducted in an altogether justifiable manner. The demand for unconditional surrender and the use of strategic bombing were certainly indefensible. On the other hand, measured force might have been justifiable had it been used merely to impede and destroy the force unjustly employed by the Axis powers.

The Vietnam war is much more questionable from an ethical viewpoint. Are the enemy forces really acting unjustly, or have they provocation? Are allied objectives as limited as we claim, or are we not more interested in preventing future consequences (the "domino" theory) than in repelling present force? Is the war a necessary and an effective means to the immediate purpose? Are U. S. forces limiting their attack to legitimate military objectives, or are they trying to gain indirect military advantages by all sorts of acts that in themselves do not lessen enemy power—acts of terror, torture, reprisal, execution of civilian suspects, bombing of non-military targets, and so forth?

The facts are not easy to assess, but it is difficult to avoid the impression that the objective of the U. S. is not so much the destruction of enemy power as it is the gaining of a better negotiating position. If means proportionate to the latter purpose necessarily include some that are not directly effective toward any strictly military objective, then the killing and other destruction involved in the war are a chosen means to an ulterior end. Here the evil has entered the scope of intention.

The nuclear deterrent strategy is probably the most important subject for ethical evaluation by the principles considered here.

As I understand the deterrent strategy, the last stage would have no military function at the time it would be done.<sup>40</sup> Yet only the definite intention to act at the last (countervalue) stage can make the threat effective. The deterrent thus involves the choice of an evil as a means to a good—the good realized in another act, the enemy's present choice not to attack. The destruction of life at the countervalue stage thus cannot lie outside the scope of intention.

Of course, the deterrent involves a *wish* that it not be used. The intention to obliterate enemy non-military objectives is conditional: we will act only if forced to, and we will act at the last stage only when we have nothing more to lose. Yet this condition does not limit the moral commitment to evil

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<sup>40</sup> See General Curtis E. LeMay, with Major General Dale O. Smith, *America Is In Danger* (N.Y.: 1968), pp. 49-118, especially p. 116.

embodied in the deterrent strategy, for the fulfillment or nonfulfillment of the condition is not in our power. The condition does not restrict our willingness to do evil, although it does limit our execution of this willingness.

Perhaps the United States could design a deterrent that threatened only the military capability of potential enemies. If the intention to obliterate non-military objectives were not necessary for an effective deterrent, such a threat could be justified. The problem with the deterrent strategy as it exists is not that it inhibits the unjust use of force by our readiness to oppose it, but that we are ready to destroy non-military targets. But I doubt that a pure counterforce deterrent would be effective.

Utilitarians will respond to this evaluation of the nuclear deterrent by saying that it is unrealistic. The deterrent is necessary, they will argue; therefore, it is justified. But the cumulative risks inherent in the continuous existence of the deterrent over a long period of time are omitted from this simple defense of the strategy. No end is in sight. Eventually, the worst will probably happen, for when men are ready and willing to do something when the situation indicates, the situation usually eventually indicates. The utilitarian argument will certainly seem hollow to the survivors, if any, of a large-scale nuclear war. Meanwhile, a huge share of the world's wealth that is needed for very basic human goods is being spent on weapons systems we hope we shall never have to use.

Situation-ethics will accept a negative evaluation of the deterrent as an ideal, but will join utilitarian thinking in practice. If one really believes that God needs man's sins to get His will done in this world, then he is entitled to hold a situationist view. Personally, I do not believe it. I think the deterrent is a sign and an occasion of much current public and private moral corruption. When I say that the deterrent is morally evil, I do not mean that we ought to try to dismantle it if and when world amity is established. I mean that we ought to dismantle the deterrent immediately, regardless of consequences. The end simply does not justify the means.

Communism, despite its rejection of the title, is a utopianism. Nothing would destroy it as surely and as swiftly as its success. Communism without its antithesis would be forced to admit its own inadequacy, for it would no longer have an excuse for its incapacity to create heaven on earth. The United States provides Communism with the excuses without which it could not exist. As the people of the Third World realize, in many ways there is not much difference between the U.S.A. and the U.S.S.R.

Of course, the world's problems would not all be solved if the nuclear deterrent were renounced by us and if Communist ideology were falsified by its subsequent inevitable failure. However, those who have reached economic

self-sufficiency might more readily face the challenge of poverty if our attitudes were not thoroughly corrupted by the antilife commitment inherent in the deterrent strategy. At present, our effort to deal with poverty is being directed increasingly into the suppression of human life in its beginnings. Both at home and abroad, more programs of contraception, sterilization, and abortion are replacing constructive programs of development. The policy of the United States is increasingly clear: to eliminate poverty by eliminating poor people.

This observation brings us to another issue in which the revised formula of the principle of double effect may be tested—the problem of abortion. In treating this topic I shall assume that the unborn are persons, and that killing unborn persons must be evaluated on the same basis we use in evaluating the killing of any other human beings.<sup>41</sup>

The usual formulation of the principle of double effect justifies certain operations in which the death of the unborn is an inevitable consequence. Examples are the removal of a cancerous, gravid uterus and removal of a fallopian tube damaged by the presence in it of an ectopic pregnancy.

By my reformulation of the principle of double effect, some additional operations involving the removable of a nonviable fetus could be justified. An example would be when the pregnancy itself was dangerously overloading an ill mother's heart and kidneys. In such a case, I think the fetus may be removed, because although it will certainly die, the very same act (through a humanly indivisible process) lessens the strain on the mother and contributes to the mother's safety, which alone need be intended by an upright agent.

Another example would be the crushing of a baby stuck in the birth canal. The very act of crushing and removing the baby, an act in fact destructive of its life, saves the mother from otherwise perhaps inevitable death. On the same principle, one would be equally justified in cutting away the mother to rescue the baby. Of course, if the baby is crushed more than necessary to relieve the mother or if the mother is cut more than necessary to release the baby, the excess damage would lie within the scope of intention and the act would be evil.

If abortion can be extended to some cases such as these, the next question, of course, is where the line can be drawn. Is abortion to be considered justifiable for any woman who wants one, on the ground that the intent is not to kill the child but only to avoid a "compulsory pregnancy" or to contribute to solving the "population explosion"?

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<sup>41</sup> My: *Abortion: the Myths, the Realities, and the Arguments* (Washington: 1970) will deal with this point and others assumed in the present article.



If we bear in mind the point assumed in this discussion—that the same rules must apply to killing the unborn as to killing any other persons—a negative answer is not difficult to sustain. If a person is killed because he is unwanted or because he is considered surplus, clearly the precise intention is to kill. The motive for the killing is to get rid of the one killed; getting the victim out of the way is not an intention other than the intent to kill him, but a formulation of the end for which killing is the chosen means.

This conclusion may become more evident if one considers what would be done in such cases of abortion if there existed an artificial uterus into which the publicly or privately unwanted baby might be transferred. Such a device might be used in cases of genuinely therapeutic abortion. But the unwanted baby would hardly be cared for in this manner. To do so would frustrate the whole point of aborting him—which is, of course, to get rid of him in order that he may not live to make his claim upon his parents and society.

Interesting problems are presented by certain intermediate cases. If an abortion is not directly lifesaving but does have a true therapeutic aspect, need the child's death be intended? Can the abortion be justified? Similar is the case of abortion resulting from rape. In both cases, the fetus might well be placed in an artificial uterus, if one were available. What is desired is not that the baby be disposed of, but that the mother not continue to be pregnant.

I think this distinction is sufficient to establish the possibility that the baby's death would be outside the scope of intention. But this fact does not by itself show that abortion in such cases is justified. A person does not reasonably prefer his own health to his own life; one does not reasonably kill himself to avoid embarrassment, discomfort, and inconvenience. To kill the baby for such reasons, therefore, indicates quite clearly that what is at stake in the action is not human goods as such, but the good of some people (pregnant women) in preference to the good of others (unborn babies). Such a preference is a form of invidious discrimination, based on a prejudice against the unborn. Abortion in such cases lacks a proportionate reason.

Prospective defect seems to me a wholly unjustifiable excuse for abortion. If the benefit is to others, the abortion is chosen as a bad means to a good end. The benefit can hardly be to the unborn child itself. Where there is life, there is hope: no one is healthier dead. The argument for abortion in such cases seems to me to gain what little plausibility it has from the supposition that the unborn child is like a product coming along a production line. If the product does not meet all specifications, it is put into scrap by an inspector.

Of course, this concept assumes that we know just what is required for a good human life, that we have a simple check list to determine whether or not an individual is an adequate person. This simple-minded assumption, which also underlies utilitarianism generally, happens to be false. Human goodness is composed of many incommensurable aspects. Some of the most important are not available for inspection. Many "defective" persons have added new facets to our ideals of human goodness and greatness.

Many other examples of acts involving the destruction of human life could be analyzed. However, the preceding applications of the revised principle of double effect to warfare and to abortion ought to be sufficient to suggest the way in which I propose to work out a consistent ethics of killing on the basis of the natural-law principle that human life as such is to be respected and preserved.

Roman Catholic readers will notice that my conclusions diverge from common Catholic teaching. They should note that I do not justify intentional killing, although I somewhat broaden the range of cases in which killing would be called "indirect." At the same time, I deny that any good end can justify the direct killing of a human being.

As a philosopher, I cannot subordinate my inquiry to theological principles. As a Catholic, however, I propose my philosophic conclusions for consideration in the light of faith. I do not propose philosophy as a substitute for the magisterium of the Church. In my view anyone who genuinely believes that the Catholic Church is what it claims to be would be foolish to adopt in preference to its moral teaching any other practical norm whatsoever. Human reason cannot compare with divine wisdom. Still, human reason must not be despised—I speak still as a believer—for the exemplar is dishonored when the image is despised.