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ARTICLES

AQUINAS'S PROHIBITION OF KILLING RECONSIDERED

JOHN MAKDISI[†]

INTRODUCTION

St. Thomas Aquinas speaks to the heart of what it means to be human in our relationship with God when he expounds the way of the moral life in his *Summa Theologiae*.¹ A classic example of the depth of his understanding is evident in his treatment of acts that knowingly kill. His style of writing is succinct and sometimes his ideas are distributed among several texts, but one can mine the riches of his thought with patient reading and reflection. This Article focuses exclusively on the extreme case where a person is certain to die if nothing is done and the only way to save that person is by one's act while knowing that it must result in the certain killing of another person. Most scholars using some version of the doctrine of double effect interpret Aquinas to permit such an act when it repulses the attack of an aggressor on someone's life. This Article rejects this conclusion as well as its justification in the doctrine of double effect and proposes a rule that more accurately reflects the texts of Aquinas as he distinguishes prohibited acts from permitted acts. Specifically, it argues that his rule is that, when a person (whether oneself or another) is certain to die if nothing is done and the only way to save that person is by one's act (as a private individual and not one acting under public authority) knowing that it must result in the certain killing of some other person (whether or not an aggressor), the act is prohibited unless one retains or removes a vital life support from the person killed² that belongs to the person saved (whether

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¹ See generally ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE* (1st ed. Benziger Brothers 1947) (1266–1273) [hereinafter *SUMMA THEOLOGIAE*].

² A vital life support consists of such things as food and water to sustain the body against hunger and thirst, air to sustain the body against suffocation, material

oneself or another), or unless one ducks, blocks or redirects a deadly force away from the person saved (whether oneself or another who is under one's charge). If the act does not fit within one of the two exceptions, then it is an attack on the vital life support of the person killed and is a prohibited killing. The first Part explains how and why Aquinas constructs this prohibitory rule and its exceptions. The second Part adds further clarity by applying the rule to several controversial modern-day cases.

I. THE DEFINITION OF A PROHIBITED KILLING

Among the texts of Aquinas there are six key statements which expound the core of his doctrine on killing. Three of them prohibit killing. Aquinas states that "it is altogether unlawful to kill oneself,"³ "it is in no way lawful to slay the innocent,"⁴ and "it is not lawful for a man to intend killing a man in self-defense, except for such as have public authority."⁵ Three of them provide a counter. Despite the unlawfulness of killing oneself, Aquinas states that "[i]t is clear that the sign of the greatest love is to lay down one's life for one's friends."⁶ Despite the unlawfulness of killing the innocent, he states that

if a man found himself in the presence of a case of urgency, and had merely sufficient to support himself and his children, or others under his charge, he would be throwing away his life and that of others if he were to give away in alms, what was then necessary to him.⁷

Finally, despite the unlawfulness of intentionally killing a man in self-defense, he states that "it [is not] necessary for salvation that a man omit the act of moderate self-defense in order to avoid killing the other man."⁸ This Part uses these six statements to

support to sustain the body against a fall or drowning, and even one's own body itself.

³ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 5, at 1469.

⁴ *Id.* pt. II-II, Q. 64, art. 6, at 1470.

⁵ *Id.* pt. II-II, Q. 64, art. 7, at 1471.

⁶ THOMAS AQUINAS, COMMENTARY ON THE GOSPEL OF JOHN, Chapters 9–21 (The Aquinas Institute ed., Fabian Larcher trans.), in 36 BIBLICAL COMMENTARIES 290 (C. 15, L. 2) (2013), commenting on John 15:13: "Greater love than this no man has, that a man lay down his life for his friends."

⁷ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 32, art. 6, at 1329.

⁸ *Id.* pt. II-II, Q. 64, art. 7, at 1471.

develop an understanding of Aquinas's prohibition against killing by one acting as a private individual⁹ even though that one knows it is the only way to save oneself or another person.

A. *Prohibition*

Aquinas's prohibition against killing by a private individual is based on our understanding that God retains authority over the life and death of a human person: "[L]ife is God's gift to man, and is subject to His power, Who kills and makes to live. . . . For it belongs to God alone to pronounce sentence of death and life, according to Deut. 32:39, *I will kill and I will make to live.*"¹⁰ God gives mankind the power of life and death over plants and animals,¹¹ but He does not give mankind dominion over death: "Man is made master of himself through his free-will: wherefore he can lawfully dispose of himself as to those matters which pertain to this life which is ruled by man's free-will," says Aquinas, "[b]ut the passage from this life to another and happier one is subject not to man's free-will but to the power of God."¹²

⁹ This Article does not examine acts by an individual acting under public authority. Aquinas permits killing for the common good by a person acting under public authority because "the care of the common good is entrusted to persons of rank having public authority: wherefore they alone, and not private individuals, can lawfully put evildoers to death." *Id.* pt. II-II, Q. 64, art. 3, at 1467. For example, a judge acts on the authority of the community when he sentences a man to death. *Id.* pt. II-II, Q. 64, art. 6, ad. 3, at 1470. Aquinas states in his COMMENTARY ON THE GOSPEL OF MATTHEW, CHAPTERS 1–12 (Jeremy Holmes and Beth Mortensen trans.), in 33 BIBLICAL COMMENTARIES 161 (C. 5, L. 7.483) (2013), that "it is permitted to those who kill by the command of God, for God is the one who does it. But every law is a command from God: *by me kings reign* (Prov 8:15); *he does not bear the sword in vain for his is God's minister* (Rom 13:4)." Therefore, it is permitted for secular judges to sentence people according to the laws ("*iudices seculares qui condemnant secundum leges*") but not for one to kill on one's own authority ("*auctoritate propria*"). The reason for permitting those with public authority to kill and prohibiting those with no such authority may reside in the parable of the wheat and the tares in Matthew 13:24–30. Aquinas uses this parable to show that the Lord justifies the killing of sinners, but not if they cannot be distinguished from the innocent. Aquinas states that "Our Lord commanded them to forbear from uprooting the cockle in order to spare the wheat, i.e. the good. . . . [W]hen the wicked cannot be slain without the good being killed with them," but when "the good incur no danger, but rather are protected and saved by the slaying of the wicked, then the latter may be lawfully put to death." *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 2, ad. 1, at 1467. The rule that only those with public authority can kill the sinner minimizes the chances that an innocent person will be killed by requiring an official determination before someone is determined to be a sinner.

¹⁰ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 5, at 1469.

¹¹ *Id.* pt. II-II, Q. 64, art. 1 & ad. 1, at 1466.

¹² *Id.* pt. II-II, Q. 64, art. 5, ad. 3, at 1469.

The reason that God retains authority over the life and death of human persons is that they are “made to God’s image, in so far as the image implies *an intelligent being endowed with free-will and self-movement*,”¹³ which enables them to become sons of God through the work of the Holy Spirit.¹⁴ Aquinas states that “filiation is found in relation to God, not in a perfect manner, since the Creator and the creature have not the same nature; but by way of a certain likeness, which is the more perfect the nearer we approach to the true idea of filiation.”¹⁵ Human persons as rational creatures have a more perfect likeness to God than irrational creatures because they have “the likeness of His image,” whereas irrational creatures have filiation “by reason only of a trace.”¹⁶ The difference is crucial because “[t]he likeness by way of trace does not confer the capacity for everlasting life, whereas the likeness of image does.”¹⁷ Aquinas states that “the life of animals and plants is preserved not for themselves but for man,”¹⁸ and therefore “it is lawful both to take life from plants for the use of animals, and from animals for the use of men.”¹⁹ The rational creature, on the other hand, is “competent, properly speaking, to possess good” and thus capable of the fellowship of friendship in charity which can attain everlasting happiness.²⁰

¹³ *Id.* pt. I-II, prologue, at 583 (quoting JOHN DAMASCENE, *DE FIDE ORTHODOXA* 2.12). The Catholic Church confirms that “[e]very human life, from the moment of conception until death, is sacred because the human person has been willed for its own sake in the image and likeness of the living and holy God.” CATECHISM OF THE CATHOLIC CHURCH ¶ 2319 (2d ed., 1997).

¹⁴ Aquinas states that “in matters directed to the supernatural end, to which man’s reason moves him, according as it is, in a manner, and imperfectly, informed by the theological virtues, the motion of reason does not suffice, unless it receive in addition the prompting or motion of the Holy Ghost, according to Rom. viii. 14, 17: *Whosoever are led by the Spirit of God, they are sons of God . . . and if sons, heirs also.*” *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 68, art. 2, at 879.

¹⁵ *Id.* pt. I, Q. 33, art. 3, at 175.

¹⁶ *Id.*

¹⁷ *Id.* pt. II-II, Q. 25, art. 3, ad. 2, at 1282.

¹⁸ *Id.* pt. II-II, Q. 64, art. 1, ad. 1, at 1460.

¹⁹ *Id.* Aquinas explains that “[d]umb animals and plants are devoid of the life of reason whereby to set themselves in motion; they are moved, as it were by another, by a kind of natural impulse, a sign of which is that they are naturally enslaved and accommodated to the uses of others.” *Id.* pt. II-II, Q. 64, art. 1, ad. 2, at 1460. “Man owes neither subjection nor honor to an irrational creature considered in itself, indeed all such creatures are naturally subject to man.” *Id.* pt. II-II, Q. 103, art. 4, ad. 3, at 1634.

²⁰ *Id.* pt. II-II, Q. 25, art. 3, at 1282. See also John Haldane & Patrick Lee, *Aquinas on Human Ensoulment, Abortion and the Value of Life*, 78 PHIL. 255, 276–78 (2003) (showing that Pope John Paul II and Aquinas are of one mind on the sacred reality of human life).

Therefore, “it is unlawful to kill any man [*nullum occidere licet*], since in every man though he be sinful, we ought to love the nature which God has made, and which is destroyed by slaying him.”²¹

The prohibition against killing applies to killing *any* person. Charitable love of one’s neighbor is love of all mankind, including sinners and enemies.²² *Neighbor* means one who is “nigh to us,” namely, “as to the natural image of God, and as to the capacity for glory,” and one “should love his neighbor for God’s sake, even as he loves himself for God’s sake, so that his love for his neighbor is a *holy* love.”²³ Humankind constitutes the body of the Church with Christ as the head and the Holy Spirit as the heart,²⁴ and no person may destroy any part of this body because no person has a nature distinct from any other person.²⁵ In the Sermon on the Mount, Christ elaborated on the nature of charitable love, the love that undergirds the commandment not to kill: Not only should one not kill, but one should not have animosity towards another,²⁶ one should answer an injustice with kindness and not with retaliation,²⁷ and one should love one’s enemies and pray for those who persecute one.²⁸ The virtue of charitable love lies in loving God so much that, as Aquinas explains, one loves all that is connected with Him, including one’s enemies.²⁹ This virtue must certainly have been what Aquinas

²¹ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 6, at 1470. It is true that an individual man may be considered in relation to the community and therefore, “the slaying of a sinner becomes lawful in relation to the common good, which is corrupted by sin.” *Id.* However, “the care of the common good is entrusted to persons of rank having public authority: wherefore they alone, and not private individuals, can lawfully put evildoers to death.” *Id.* pt. II-II, Q. 64, art. 3, at 1467.

²² *Id.* pt. II-II, Q. 11, art. 4, at 1227.

²³ *Id.* pt. II-II, Q. 44, art. 7, at 1378.

²⁴ *Id.* pt. III, Q. 8, art. 1, at 2076; pt. III, Q. 8, art. 3, at 2077; and pt. III, Q. 8, art. 1, ad. 3, at 2076.

²⁵ *See id.* pt. II-II, Q. 64, art. 3, ad. 2, at 1468 (“[A] man who has sinned is not by nature distinct from good men; hence a public authority is requisite in order to condemn him to death for the common good.”).

²⁶ *Matthew* 5:21–24 (New American).

²⁷ *Id.* 5:38–42.

²⁸ *Id.* 5:43–45.

²⁹ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 23, art. 1, ad. 2, at 1269–70 (“Friendship extends . . . to someone in respect of another, as, when a man has friendship for a certain person, for his sake he loves all belonging to him, be they children, servants, or connected with him in any way. Indeed so much do we love our friends, that for their sake we love all who belong to them, even if they hurt or hate us; so that, in this way, the friendship of charity extends even to our enemies, whom

had in mind when he stated that “it is not lawful for a man [in his private capacity] to intend killing a man in self-defense”³⁰

Therefore, in accord with this interpretation of Aquinas, one must overcome the inclination to attack the vital life support of an aggressor who is about to take one’s life because one’s love of God is at stake. The image of God resides in the aggressor and it is not merely that we destroy another human being but that we destroy God’s image within him.³¹ In doing so, we offend God whom we love more than anyone else in this world including ourselves.³² We must not destroy the nature that God has created in His own image, even if it means our own death or the death of our loved ones. This is difficult without the help of God, but we can expand our vision to see others through Christ’s eyes by accepting God’s gift of charity through which we can come to treat all people as gifts of God under his sovereignty.³³

we love out of charity in relation to God, to Whom the friendship of charity is chiefly directed.”).

³⁰ *Id.* pt. II-II, Q. 64, art. 7, at 1471. Note that the *sed contra* in this Article suggests that Aquinas would allow the intentional killing of a man in self-defense, because *Exodus* 22:2 allows the killing of a thief who breaks into one’s house. However, the *sed contra* does not represent Aquinas’s thought but merely an argument contrary to the objections. *Id.* pt. II-II, Q. 64, art. 7, *sed contra*, at 1471.

³¹ Aquinas states that “it is our duty to hate, in the sinner, his being a sinner, and to love in him, his being a man capable of bliss; and this is to love him truly, out of charity, for God’s sake.” *Id.* pt. II-II, Q. 25, art. 6, at 1290. We love our neighbor “that he may be in God. . . . [And thus,] it is specifically the same act whereby we love God, and whereby we love our neighbor.” *Id.* pt. II-II, Q. 25, art. 1, at 1286. The actual love of one’s “enemy for God’s sake, without it being necessary for [one] to do so, belongs to the perfection of charity.” *Id.* pt. II-II, Q. 25, art. 8, at 1292.

³² *Id.* pt. II-II, Q. 26, art. 3, at 1296 (“[T]he fellowship of natural goods bestowed on us by God is the foundation of natural love, in virtue of which . . . man, so long as his nature remains unimpaired, loves God above all things and more than himself . . .”).

³³ Aquinas states that “charity itself surpasses our natural faculties,” and is in us “by the infusion of the Holy Ghost, Who is the love of the Father and the Son, and the participation of Whom in us is created charity” *Id.* pt. II-II, Q. 24, art. 2, at 1276. It can increase in intensity by this infusion when one strives to dispose oneself to receiving it through acts of charity. *Id.* pt. II-II, Q. 24, art. 6, at 1279–80. Charity can be perfected in this life to the extent that a person “makes an earnest endeavor to give his time to God and Divine things, while scorning other things except in so far as the needs of the present life demand.” *Id.* pt. II-II, Q. 24, art. 8, at 1281. This perfection is reached by first avoiding sin and resisting one’s concupiscences, then by pursuing progress in the good so as to strengthen one’s charity, and then by aiming chiefly at union with and enjoyment of God, which “belongs to the perfect who *desire to be dissolved and to be with Christ.*” *Id.* pt. II-II, Q. 24, art. 9, at 1282.

The order of charitable love described by Aquinas does not detract from this prohibition on killing. One loves God more than oneself because He is the greatest good to Whom one is naturally drawn by one's own nature and even more by "the friendship of charity which is based on the fellowship of the gifts of grace."³⁴ Next, one loves oneself more than any other person "by reason of his being a partaker of the aforesaid good, and loves his neighbor by reason of his fellowship in that good."³⁵ However, this love of oneself more than neighbor does not allow one to kill one's neighbor to save oneself because it is in bearing bodily injury for one's friend's sake that one loves oneself by sharing in the Divine good.³⁶ Bodily injury includes one's own death when one is faced with the choice of suffering death or acting immorally by killing another. Aquinas affirms this when he says that one should defend oneself even at the risk of another's life, but "it is not lawful for a man [in his private capacity] to intend killing a man in self-defense."³⁷ In other words, one must not attack the vital life support of another person if it is certain to kill him, even when it is the only way to save oneself from an aggressor. To kill one's neighbor is to destroy the fellowship that gives one a share of the Divine good and, by this destruction, to reject the charitable love of God. We love ourselves more by suffering death than by rejecting God's love.

Contrary to this interpretation, a number of scholars have maintained that Aquinas does not prohibit killing if the alternative is one's own death at the hands of an aggressor.³⁸ In recent times many of these scholars have claimed that Aquinas permits such killing by what is now popularly known as the doctrine of double effect. The doctrine purports to derive from Aquinas's statement that "the act of self-defense may have two effects, one is the saving of one's life [intended], the other is the slaying of the aggressor [beside the intention]. . . . [So that] this act, since one's intention is to save one's own life, is not unlawful."³⁹ Joseph Boyle, who is a strong proponent of the doctrine, maintains that what Aquinas means by "intended" in

³⁴ *Id.* pt. II-II, Q. 26, art. 3, at 1297.

³⁵ *Id.* pt. II-II, Q. 26, art. 4, at 1297.

³⁶ *Id.* pt. II-II, Q. 26, art. 4 & ad. 2, at 1297.

³⁷ *Id.* pt. II-II, Q. 64, art. 7, at 1471.

³⁸ For a summary of the positions of several of these commentators, see generally Jose Rojas, *St. Thomas' Treatise on Self-Defense Revisited*, in *THOMISTICA* 89, 89–95 (E. Manning ed., 1995).

³⁹ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471.

this passage is what is sought and what he means by “beside the intention” is what is not sought even though it is foreseen.⁴⁰ So, in an intended killing, which is prohibited, the foreseen natural consequences are “chosen [in the sense of sought] in order to bring about the object,”⁴¹ whereas in a killing beside the intention, which is permissible, one seeks only to defend oneself and not to kill one’s attacker, although one knows that one’s attacker will be killed.⁴²

Boyle’s definition of what is intended may be exemplified in the case of an abused wife who kills her husband while he is sleeping in order that he not kill her when he awakes. The death of the husband would be sought specifically as the means to defend herself. She acts “insuring that the assailant, being dead, can threaten no more.”⁴³ On the other hand, Boyle’s definition of what is beside the intention may be exemplified in the case of an abused wife whose husband is strangling her and the only way to

⁴⁰ In other words,

[t]he doctrine of the double effect is based on a distinction between what a man foresees as a result of his voluntary action and what, in the strict sense, he intends. He intends in the strictest sense both those things that he aims at as ends and those that he aims at as means to his ends. The latter may be regretted in themselves but nevertheless desired for the sake of the end By contrast a man is said not strictly, or directly, to intend the foreseen consequences of his voluntary actions where these are neither the end at which he is aiming nor the means to this end.

Philippa Foot, *The Problem of Abortion and the Doctrine of Double Effect*, 5 OXFORD REV. 5, 5–6 (1967). These two different types of consequences have been called instrumental and incidental respectively. Alison McIntyre, *Doing Away with Double Effect*, 111 ETHICS 219, 219 (2001).

⁴¹ Joseph M. Boyle, Jr., *Praeter Intentionem in Aquinas*, 42 THOMIST 649, 664 (1978).

⁴² *Id.* at 660–62. This definition of intention has been adopted in some form or other by several commentators who seek to justify killing in self-defense. *See, e.g.*, GERMAIN GRISEZ & RUSSELL SHAW, *BEYOND THE NEW MORALITY: THE RESPONSIBILITIES OF FREEDOM* 141–50 (3d ed., 1988); Gareth B. Matthews, *Saint Thomas and the Principle of Double Effect*, in *AQUINAS’S MORAL THEORY: ESSAYS IN HONOR OF NORMAN KRETZMANN* 64, 70, 76 (Scott MacDonald & Eleonore Stump eds., 1999) (interpreting Aquinas as providing a “seed bed for the Principle of Double Effect”); Warren S. Quinn, *Actions, Intentions, and Consequences: The Doctrine of Double Effect*, 18 PHIL. & PUB. AFF. 334, 343–44 (1989) [hereinafter Quinn, *Actions*], critiqued by Joseph Boyle in *Who is Entitled to Double Effect?*, 16 J. MED. & PHIL. 475, 483–86 (1991), to which Quinn replied in *Reply to Boyle’s Who is Entitled to Double Effect?*, 16 J. MED. & PHIL. 511, 511–14 (1991). It has also been questioned by commentators who find it difficult to accept some of its conclusions. *See, e.g.*, PHILIPPA FOOT, *VIRTUES AND VICES AND OTHER ESSAYS IN MORAL PHILOSOPHY* 21–22 (2002), who thinks that some foreseen effects that are not sought as either an end or a means may still be too “close” to the act to be considered unintended.

⁴³ Boyle, *Praeter Intentionem*, *supra* note 41, at 661.

make him stop is to shoot him in the heart. According to Boyle, the death of the husband is not sought as the means of self-defense. She acts “in such a way that the assailant’s death is not what ends the threat, but is rather a consequence of what stops the attack.”⁴⁴

The moral significance of this distinction between what is intended and what is beside the intention is that it is permissible for a person to “direct his intention to the good effect of his action and withhold it from the bad effect if the latter is not a means to the former.”⁴⁵ Of course, not all such acts are permissible. Otherwise, one could kill indiscriminately in the act of achieving a good effect so long as the killing is a side effect of the act. Boyle provides four conditions, considered classic conditions under the doctrine of double effect, that must be satisfied for the act to be permissible:

- (1) the agent’s end must be morally acceptable (*honestus*),
- (2) the cause must be good or at least indifferent, (3) the good effect must be immediate [in the sense that the bad effect is not a means to the good effect⁴⁶], and (4) there must be a grave reason for positing the cause.⁴⁷

In the example of the wife who shoots her husband as he is strangling her, Boyle would presumably say that (1) self-defense is a morally acceptable end, (2) the act of stopping the strangling is good or at least indifferent, (3) the death of the husband is not the means by which the wife defends herself but is rather a

⁴⁴ *Id.*

⁴⁵ *Id.* at 649–50.

⁴⁶ Joseph M. Boyle, Jr., *Toward Understanding the Principle of Double Effect*, 90 *ETHICS* 527, 531 (1980) (Boyle’s interpretation of the third condition).

⁴⁷ *Id.* at 528 (citing J.P. GURY, *COMPENDIUM THEOLOGIAE MORALIS* 8 (A. Ballerini ed., Rome, Giachetti, 2d ed., 1869)). A somewhat clearer expression of these conditions is:

- (1) *acceptable-end condition*: the bad effect must not be intended as the end or goal of the act; (2) *acceptable-act condition*: the act must not be bad in itself (independently of its causing the bad effect); (3) *acceptable-means condition*: the bad effect must not be intended as a means to the good effect; (4) *proportionate-reason condition*: the agent must have a proportionately serious moral reason for performing the act.

H.M. Giebel, *Ends, Means, and Character: Recent Critiques of the Intended-Versus-Foreseen Distinction and the Principle of Double-Effect*, 81 *AM. CATH. PHIL. Q.* 447, 447–48 (2007) (emphasis in original). For the cases examined in this Article, the first and second conditions are presumed to exist, and the fourth condition exists because the cases address only a life for a life. It is the third condition that causes problems by its inadequacy. As will be shown, Aquinas’s discussion of intention in self-defense includes what is foreseen when he states *tout court* that the bad effect (killing) must not be intended.

consequence of stopping the strangling, and (4) the loss of the wife's life that would otherwise result is a grave reason. Therefore, the act is morally permissible. On the other hand, the killing of the husband while he sleeps violates the third condition.

Boyle offers support for his understanding of intention in Aquinas's discussion of self-defense by referring to other contexts in which Aquinas uses the term. Boyle states that on the one hand "there is evidence that for Aquinas the object of an act which is chosen as a means very often becomes an end and as such the object of an intention"⁴⁸ when it is the means needed to achieve the ultimate end.⁴⁹ An example is the throwing overboard of merchandise in order to protect the safety of the passengers; "the choice of this means falls under the agent's intention" because it "is clearly a means of achieving safety."⁵⁰ On the other hand, it is possible for the consequence of a chosen act not to be an end but rather outside the intention because it is not needed to achieve the ultimate end. An example is the trampling underfoot of crops in order to commit fornication; it is an act which Aquinas says is foreseen but not intended.⁵¹ Boyle concludes that "what is [not] ordered to the intended end . . . does not fall within the intention," even if it is foreseen; rather, to be intended, the causal consequences of an act must be "part of what the will tries to realize by the choice of the means."⁵²

⁴⁸ Boyle, *Praeter Intentionem*, *supra* note 41, at 652–53 (citing *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 12, art. 2, at 640; pt. I-II, Q. 12, art. 3, at 641; pt. I-II, Q. 20, art. 4, at 682–83; pt. I-II, Q. 72, art. 3, ad. 2, at 904; pt. I-II, Q. 73, art. 3, ad. 1, at 912; pt. II-II, Q. 43, art. 3, at 1868–69; pt. II-II, Q. 110, art. 1, at 1664).

⁴⁹ *Id.* at 653–54. Boyle states that "[the] intention bears on the end insofar as it can be achieved by certain means." *Id.* at 653. What is outside intention "lacks an order to the end," whereas "[t]he means necessarily involve such an order." *Id.* at 654 (citing *Sentences* 4.4.1.1.ad2, and *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 102, art. 1, at 1055). Since "the end is the reason for willing the means," the willing of both the means and the end is one motion of the will. *Id.* (citing *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 12, art. 4, at 641–42 and *De Veritate* 22.14).

⁵⁰ *Id.* at 655–57 (referring to a case mentioned in SAINT THOMAS AQUINAS, *SUMMA CONTRA GENTILES*, BOOK THREE: PART VI (Vernon J. Bourke trans., Univ. of Notre Dame Press 1975) (1956)).

⁵¹ *Id.* at 662 (referring to a case mentioned by Aquinas in *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 73, art. 8, at 915–16).

⁵² *Id.* at 664. In this 1978 article, Boyle set aside the question why "the difference between what one intends and what one foresees but does not intend [should] be important for the definition and moral evaluation of kinds of human acts." *Id.* at 650. However, in two later articles he answered this question. In a 1980 article he stated that the doctrine of double effect is necessary in a world of exceptionless moral proscriptions because, when one acts to do some good, it

Boyle is correct that the throwing overboard is a means ordained to the end of safety while the trampling underfoot is a consequence ordained to fornication. As Aquinas would say, the former is an essential determination of the end and therefore contained within the species of the end,⁵³ whereas the latter is an accident which accrues to the act as an addition.⁵⁴ However, Boyle insists that for Aquinas “the throwing overboard of the merchandise is the object of an intention,”⁵⁵ when in fact Aquinas uses the term intention in a special way to refer only to “the ultimate end which someone wills on its own account.”⁵⁶ Aquinas does the same in the case of the trampling underfoot where he states that the trampler’s “intention is not to do this harm, but to commit fornication.”⁵⁷ This is intention *simpliciter* or intention *per se* and does not include any reference to the means (throwing overboard) by which the ultimate end (safety) is achieved or the consequence of another harm (trampling underfoot). What Aquinas is doing in the throwing overboard case is assimilating

“becomes an impossibility” not to bring about some unwanted state of affairs that is contrary to one or more basic goods. Boyle, *Toward Understanding the Principle of Double Effect*, *supra* note 46, at 537–38. Presumably, this is because “[w]hat one intends and what one permits are both voluntarily brought about, and thus *both* are imputable.” *Id.* at 530. In a 1991 article he stated that, with an absolute prohibition against killing, “there are situations in which, whatever one chooses to do, one will inflict the prohibited harm on someone,” and this makes for “a moral norm which literally cannot be followed.” Boyle, *Who is Entitled to Double Effect?*, *supra* note 42, at 486. In having made these statements, Boyle appears to characterize an omission to act to save a person as necessarily an infliction of prohibited harm. While this may be true for those cases in which there is a duty to save, Boyle does not appear to recognize that for Aquinas there may be no duty to save (and therefore no infliction of prohibited harm) if the very act of saving results in the foreseen death of another person. Aquinas does not accept that there are situations in which a moral norm cannot be followed. He says that “no virtue can be contrary to another virtue” because the good of virtue “depends on fittingness in relation to some one thing—i.e., the reason.” *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 31, art. 8, ad. 1, at 727. Therefore, as Rhonheimer affirms, “in certain circumstances, heroic sacrifices are demanded of the human person in order to preserve purity of heart.” MARTIN RHONHEIMER, *NATURAL LAW AND PRACTICAL REASON: A THOMIST VIEW OF MORAL AUTONOMY* 471 (Gerald Malsbury trans., 2000). It may be difficult to do what is good, especially when it involves losing one’s mortal life, but this is why we depend on God’s grace to see us through.

⁵³ See *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 18, art. 7, at 667–68.

⁵⁴ See *id.* pt. I-II, Q. 18, art. 3, at 664–65.

⁵⁵ Boyle, *Praeter Intentionem*, *supra* note 41, at 655.

⁵⁶ *Id.* at 654 (quoting AQUINAS, *supra* note 50, at 3.6). Aquinas explains that his use of intention here is a willing *simpliciter* and that the person throwing the merchandise overboard “does not will the throwing over *simpliciter* but for the sake of safety.” *Id.*

⁵⁷ *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 73, art. 8, at 916.

the means (throwing overboard) to the evil of an inordinate act; neither the means nor the evil is sought in the sense of desired, so both are outside intention.⁵⁸

Yet, in both the throwing overboard and the trampling underfoot cases, when intention refers to the last end it does not mean that what is outside intention in each of these acts is permissible. If that were true, then all acts would be permissible because evil itself is outside intention as Aquinas states in discussing the throwing overboard case.⁵⁹ Rather, Aquinas states that an act derives its goodness from its last end and its suitable object (means) and its circumstances (which add to the substance of the object), and “an action is not good simply, unless it is good in all those ways.”⁶⁰ Since goodness is an object of the will, it is the voluntariness of the act and not the intention of the end that gives the act its goodness. So the means, which is outside the intention of the end albeit good only as referred to the end,⁶¹ can be evil and thus make an act evil. In both the throwing overboard case and the trampling underfoot case, the agent is responsible for the evil of what is not the end—the means in the former and the circumstances in the latter. In the throwing overboard case, Aquinas states that when “a person wills to do a disorderly action for the sake of some sensory good to be attained, . . . [E]vil consequences and sins are called voluntary.”⁶² In the trampling underfoot case, he states that “the

⁵⁸ Boyle, *Praeter Intentionem*, *supra* note 41, at 654 (quoting AQUINAS, *supra* note 50, at 3.6). *See also* THOMAS AQUINAS, ON EVIL 1.3, at 70 (Richard Regan trans., 2003) [hereinafter AQUINAS, ON EVIL] (“[E]vil as such cannot be intended, nor in any way willed or desired, since being desirable has the nature of good, to which evil as such is contrary.”).

⁵⁹ *See also* *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 75, art. 1, at 927 (“[T]he will lacking the direction of the rule of reason and of the Divine law, and intent on some mutable good, causes the act of sin directly, and the inordinateness of the act, indirectly, and beside the intention: for the lack of order in the act results from the lack of direction in the will.”).

⁶⁰ *Id.* pt. I-II, Q. 18, art. 4 & ad. 3, at 665. Aquinas states that “the aspect of good, which is the object of the power of the will, may be found not only in the end, but also in the means.” *Id.* pt. I-II, Q. 8, art. 2, at 627. Insofar as Aquinas distinguishes between end and object, he refers to the object that is found in the means. Aquinas states that “whatever conditions are outside the substance of an act, and yet in some way touch the human act, are called circumstances,” and these are considered like the substance of an act for the goodness that derives from “their utility to the end.” *Id.* pt. I-II, Q. 7, art. 1, at 623 and art. 2, ad. 1, at 624.

⁶¹ *See id.* pt. I-II, Q. 8, art. 2, at 627 (“[T]he means are good and willed, not in themselves, but as referred to the end.”).

⁶² AQUINAS, *supra* note 50, at BOOK THREE: PART VI.

quantity of the harm done [by the trampling] aggravates the sin.”⁶³ So the circumstances being voluntary can cause the act to be prohibited if the circumstances are evil.⁶⁴

This brings us to the case of self-defense. Although Boyle tries to define intention for Aquinas in the case of self-defense in the manner Aquinas used it in the cases of throwing overboard and trampling underfoot, Aquinas cannot have used the term in the case of self-defense to refer only to the last end. Aquinas states that the “act [of killing], since one’s intention is to save one’s own life, is not unlawful.”⁶⁵ This statement justifies an act of killing when it is within the intention to save, but we have already seen that the fact that something is not within the intention of the end does not justify the means or the circumstances. Therefore, the intention to save in self-defense

⁶³ *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 73, art. 8, at 916.

⁶⁴ Warren Quinn states that Aquinas “seems to think that foreseeable harm that comes from action is automatically voluntary . . . [and] that foreseeable harm coming from inaction is voluntary only when the agent could and *should* have acted to prevent it.” Quinn, *Actions*, *supra* note 42, at 291–92. He then goes on to say that for Aquinas the pursuit of goods in such cases of foreseeable harm is not justified, whereas it is justified for “the foreseeably harmful inactions that could not or need not have been avoided.” *Id.* at 292. This is a fair assessment of Aquinas’s position. Aquinas states that “those things which have a knowledge of the end are said to move themselves because there is in them a principle by which they not only act but also act for an end . . . [and] the movements of such things are said to be voluntary.” *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 6, art. 1, at 616. In this case the end is foreseen. He also speaks of a foreseeable end when he states that “[i]f, on the other hand, harm follow directly from the sinful act, although it be neither foreseen nor intended, it aggravates the sin directly, because whatever is directly consequent to a sin, belongs, in a manner, to the very species of that sin.” *Id.* pt. I-II, Q. 73, art. 8, at 916. Furthermore, Aquinas states that “[w]e apply the word *voluntary* not only to that which proceeds from the will directly, as from its action; but also to that which proceeds from it indirectly as from its inaction,” although “the cause of what follows from want of action is not always the agent as not acting; but only then when the agent can and ought to act” as in the case of a helmsman who has a duty to steer the ship properly. *Id.* pt. I-II, Q. 6, art. 3 & ad. 1, at 618. However, Quinn does not accept Aquinas’s qualification of acts on this basis for two reasons. He thinks that Aquinas would be too rigid in keeping to the rules and that it violates Aquinas’s theory of causality. Quinn, *Actions*, *supra* note 42, at 293. Quinn’s reasons fail to appreciate Aquinas’s flexibility in the application of rules and mistake Aquinas’s concept of final causality with efficient causality. *See, e.g., SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 51, art. 4, at 1411 (giving an example of the virtue of *gnome* whereby one avoids the application of a common rule of action by judging a matter according to higher matters); *see also id.* pt. I-II, Q. 1, art. 1 & ad. 1, at 583 (stating that acts proceeding from the will, as they do, “are caused by that power in accordance with the nature of its object. . . [which] is the end and the good . . . [and the end] is first in the order of the agent’s intention . . . [and thus] a cause.”).

⁶⁵ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471.

must refer broadly to what is willed—not only as an end but also as a means and as circumstances—and nothing that is willed in justified self-defense can be evil in any of these three ways.

In what appears to be a move to solidify this broad understanding of intent for his treatment of self-defense, Aquinas proceeds immediately in the article after his article on self-defense to designate what is beside the intention as chance happenings. He states that, according to Aristotle, “*chance is a cause that acts beside one’s intention,*” and concludes that “[h]ence chance happenings, strictly speaking, are neither intended nor voluntary,” and “as such, are not sins.”⁶⁶ Aquinas defines chance happenings as what is not foreseen unless it “be either an invariable or a frequent consequence of what is intended, [in which case] it does not occur fortuitously or by chance.”⁶⁷ Therefore, what is intended in self-defense is what is willed and includes all that is foreseen as an end, a means, or a consequence.

Aquinas's definition of intention as what is willed also appears in his reference to intention of the means in addition to that of the end when he states that “it is not lawful for a man to *intend* killing a man in self-defense,”⁶⁸ and when he refers to “the case when one man *intends* to kill another to save himself from death.”⁶⁹ In other words, the “word *intention* indicates an act of

⁶⁶ *Id.* pt. II-II, Q. 64, art. 8, at 1472. In that same article, Aquinas adds that “what is not actually and directly voluntary and intended, [may be] voluntary and intended accidentally” if a person “does not remove something whence homicide results whereas he ought to remove it,” so that “if he be occupied with something unlawful, or even with something lawful, but without due care, he does not escape being guilty of murder, if his action results in someone’s death.” *Id.* This covers cases of felony murder and negligent homicide.

⁶⁷ SAINT THOMAS AQUINAS, *SUMMA CONTRA GENTILES*, BOOK THREE: PART I, at 45 (Vernon J. Bourke trans., Univ. of Notre Dame Press 1975) (1956); see also *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 20, art. 5, at 684 (where Aquinas states that if the consequences of an action are foreseen or “if the consequences are not foreseen, . . . [and] follow from the nature of the action and in the majority of cases, . . . the consequences increase the goodness or malice of that action, . . . [but] if the consequences follow by accident and seldom, then they do not increase the goodness or malice of the action: because we do not judge of a thing according to that which belongs to it by accident, but only according to that which belongs to it of itself”).

⁶⁸ See *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471 (emphasis added).

⁶⁹ See *id.* pt. II-II, Q. 64, art. 7, ad. 1, at 1471 (emphasis added). Aquinas adds that Augustine “says pointedly, *for the sake of these things*, whereby he indicates the intention.” *Id.* Joseph Mangan finds further support for this meaning in the way Aquinas treats killing in self-defense by public authority. He points out that

the will, presupposing the act whereby the reason orders something to the end,⁷⁰—an act of will that incorporates the end and the something ordered to the end. Aquinas states in his commentary on Aristotle that

if someone wills some cause from which he knows that a particular effect results, . . . although he may well not will that effect in itself, nevertheless he rather wills that effect to exist than that the cause not exist, . . . so it is unreasonable for someone to will to do unjust things and not will to be unjust.⁷¹

The willing of the end includes the willing of the means.

A small number of commentators on Aquinas are in accord with this interpretation of intention in Aquinas's discussion of self-defense.⁷² Elizabeth Anscombe states that the doctrine of

“according to St. Thomas' own use of the word in article seven, ‘to intend’ also signifies to intend as a means to an end; for he limits the lawfulness of killing by public authority to killing as a means, or as an intermediary end, or as a proximate end to that of the common good.” Joseph Mangan, *An Historical Analysis of the Principle of Double Effect*, 10 THEOLOGICAL STUD. 41, 49 (1949).

⁷⁰ See *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 12, art. 1, ad. 3, at 640.

⁷¹ See THOMAS AQUINAS, *SENTENTIA LIBRI ETHICORUM* lib. 3, lect. 12, n.6 (Roma: Commissio Leonina 1969), <http://www.corpusthomicum.org/ctc02.html> (“Si enim aliquis vult aliquam causam ex qua scit sequi talem effectum, . . . [q]uamvis forte non velit illum effectum secundum se, potius tamen vult illum effectum esse quam causa non sit. . . ergo irrationabile est quod aliquis velit iniusta facere et non velit esse iniustus . . .”).

⁷² There are also a number of ways, such as the following, which agree neither with this definition of intention nor one based on the doctrine of double effect:

One way to interpret “intention” is to refer it solely to the end desired and not the means. This interpretation has been refuted in the literature. See, e.g., the careful analysis of Jean Porter who states that “this line of analysis can justify almost anything” and that rather, according to Aquinas, “we can legitimately say that the agent intends an act that is chosen as a means towards, or a way of enjoying some more ultimate end.” Jean Porter, *Choice, Causality, and Relation: Aquinas's Analysis of the Moral Act and the Doctrine of Double Effect*, 89 AM. CATH. PHIL. Q. 479, 480 (2015). Nevertheless, Porter believes that Aquinas allows killing in self-defense when there is no other alternative possible. Consequently, the application of her excellent analysis of intention to Aquinas's discussion of self-defense is somewhat torturous and ultimately does not explain why Aquinas uses the term “intent” in his discussion of self-defense in the way he does. See *id.* at 497–501 (applying her analysis of intention).

Andrew Jaspers states (correctly in my opinion) that Aquinas, in *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 12, art. 1, ad. 3, at 640, “implies that the criteria for determining the moral specification of the means to an end will be the same as those of the end.” Andrew Jaspers, *Intentio and Praeter Intentionem in the Constitution of the Moral Object in Thomas Aquinas*, 81 PROC. AM. CATH. PHIL. ASS'N 149, 152 (2007). However, he adds a caveat to his interpretation of *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471 (incorrectly in my opinion) that the circumstance of self-defense “fundamentally change[s] the constitution of the moral object so as to make an otherwise questionable end a legitimate one.” *Id.*

Steven Long includes the essential matter of an act, such as its lethality, in the moral object but derives the act's species from the end to which it is ordered, such as self-defense, so that one is permitted to use a lethal self-defense if necessary to survive. See Steven A. Long, *A Brief Disquisition Regarding the Nature of the Object of the Moral Act According to St. Thomas Aquinas*, 67 THOMIST 45, 70 (2003), critiqued by Steven Jensen in *A Long Discussion Regarding Steven A. Long's Interpretation of the Moral Species*, 67 THOMIST 623, 623–43 (2003) [hereinafter Jensen, *Long Discussion*], to which Long replied in *Response to Jensen on the Moral Object*, 3 NOVA ET VETERA 101, 101–08 (2005), to which Jensen replied in *The Role of Teleology in the Moral Species*, 63 REV. METAPHYSICS 3, 3–27 (2009), to which Long replied in *Engaging Thomist Interlocutors*, 9 NOVA ET VETERA 267, 267–95 (2011). See generally STEVEN A. LONG, THE TELEOLOGICAL GRAMMAR OF THE MORAL ACT 10–31 (2007) [hereinafter LONG, TELEOLOGICAL GRAMMAR], for Long's theory. Long justifies the lethality of an act of killing in self-defense (including the killing of a mentally incompetent aggressor) by its per se order to the end of self-defense, but he does not explain why the lethality of an act of killing to save the mother's life in a craniotomy (which he recognizes as an act with the same structure as self-defense) is not also justified by its per se order to the end of saving the mother—except to say that to “kill an innocent child [in a craniotomy] is under negative precept.” *Id.* at 104 n.1. Long leaves unexplained why killing an innocent child is under negative precept and killing a faultless aggressor is not.

Gregory Reichberg argues that Aquinas uses intention to refer to the purpose of avenging a wrong and qualifies that which refers to the purpose of defending oneself as outside intention. Claiming support from the work of Hugo Grotius and Francisco de Vitoria, he interprets Aquinas as saying that, when there is no other means of escape, it is permissible to have the purpose to kill without it being intended. See GREGORY M. REICHBERG, THOMAS AQUINAS ON WAR AND PEACE 174, 183–85 (2017). However, to support his thesis, Reichberg uses sources to which Aquinas does not refer, and he seemingly ignores the importance of Aquinas's reference to Augustine's *DE LIBERO ARBITRIO* which, as Reichberg acknowledges, denies the use of foreseen lethal force in self-defense. *Id.* at 185–92. He also uses the reference to Augustine's *Letter 47 to Publicola* apparently as support for the prohibition on revenge. *Id.* at 187–88. However, Reichberg omits to state that Augustine tells Publicola that he disagrees “with the opinion that one may kill a man lest one be killed by him.” *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, obj. 1 & ad. 1, at 1471 (quoting and approving AUGUSTINE, *LETTER 47 TO PUBLICOLA* (Ep. xlvii) ¶ 5 (398)). Although Reichberg may be right that there were some canonists who were willing to advocate a foreseen lethal defense in the absence of any other escape, there is no evidence that Aquinas adopted their point of view, especially given Aquinas's direct reference to Augustine's prohibition. Rather, it appears Aquinas defines intention precisely as what Reichberg rejects—“as a pure and simple synonym of *voluntas* (volition), which broadly designates a determination of the will (and hence is applicable both to the intention of the end and the choice of a means).” REICHBERG, *supra*, at 194. Reichberg rejects the case that Aquinas uses for what is outside intention, which is an accidental homicide where one takes the risk that his act will kill the aggressor but does not know it will. *Id.* at 177.

Daniel Weiss states that for Aquinas “an action that foreknowingly causes the death of innocents can never be legitimate, regardless of whether that action causes death ‘directly’ or ‘indirectly.’” Daniel H. Weiss, *Aquinas's Opposition to Killing the Innocent and its Distinctiveness Within the Christian Just War Tradition*, 45 J. REL. ETHICS 481, 486 (2017). In his discussion opposing the application of the intended/foreseen distinction of the double effect doctrine to cases of innocent deaths, Weiss makes two arguments that are notable. First, he points to the fact

double effect is incorrectly ascribed to Aquinas insofar as it excludes from an agent's intention the side effects of an act that are foreseen but not the purpose of the act.⁷³ Thomas Cavanaugh interprets Aquinas to define intention in self-defense as knowingly and willingly killing another as an inevitable consequence, and he states that what is beside intention is a risked killing which results from "knowingly and willingly endangering another's life and thereby killing."⁷⁴ He states that Aquinas does not allow intentional killing even if it is the only

that in *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 8, Aquinas distinguishes between a legitimate act, in which an agent who does not foresee the death his act will cause exercises due care, and an illegitimate act in which an agent who does not foresee the death his act will cause does not exercise due care. *Id.* at 489. Weiss then argues that "if liability holds even without presuming the agent's conscious awareness of the danger, an agent would be liable *a fortiori* in a situation in which she was consciously aware that the action could likely cause death, and yet engaged in the action nevertheless." *Id.* at 489–90 (citing DANIEL M. BELL JR., *JUST WAR AS CHRISTIAN DISCIPLESHIP: RECENTERING THE TRADITION IN THE CHURCH RATHER THAN THE STATE* 218 (2009)). Second, he points to Aquinas's discussion of the parable of the wheat and the tares (Matthew 13:24-30) on the basis of which

Aquinas says, if one has to choose between unintentionally killing the innocent while seeking justly to slay sinners, on the one hand, or refraining from slaying the wicked because doing so would unintentionally kill the innocent, on the other hand, one should choose the latter, even if it means letting the wicked go unpunished for the time being.

Id. at 494; accord BELL, *supra*, at 217. However, Weiss does not extend his argument to the aggressor in a case of self-defense. He interprets Aquinas in *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471, as addressing and legitimating the killing of an unjust and sinful attacker. He states, "Aquinas holds that in the case of self-defense a private individual is permitted to engage in actions that cause the death of the sinful attacker if that is the only way that the attack can be prevented" as long as "the individual intends simply to ward off the attack." *Id.* at 492. Weiss does not consider that the aggressor in *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471, need not be unjust or sinful and that Aquinas's opposition to the doctrine of double effect for private individuals in the case of those who are innocent also applies in the case of those who are unjust and sinful—in other words, that Aquinas opposes private acts that foresee the deaths of sinful as well as innocent people.

For an extended discussion of several other definitions of intention and the problems they present, see Joseph Shaw, *Intention in Ethics*, 36 *CAN. J. PHIL.* 187, 187–223 (2006).

⁷³ G.E.M. Anscombe, *Medalist's Address: Action, Intention and 'Double Effect'*, 56 *PROC. AM. CATH. PHIL. ASS'N* 12, 23–25 (1982).

⁷⁴ T.C. CAVANAUGH, *DOUBLE-EFFECT REASONING: DOING GOOD AND AVOIDING EVIL* 10 (2006) [hereinafter CAVANAUGH, *DOUBLE-EFFECT*]. For a good discussion of Aquinas's notion of risked killing, see Thomas A. Cavanaugh, *Aquinas's Account of Double Effect*, 61 *THOMIST* 107, 111–19 (1997) [hereinafter Cavanaugh, *Aquinas's Account*]. Cavanaugh also sees a third category of accidental killing to be distinguished from risked killing. CAVANAUGH, *DOUBLE-EFFECT*, *supra*, at 10. Aquinas treats accidental killing in *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 8, at 1472.

means to save one's life,⁷⁵ but "risking another's life is not intending the other's death,"⁷⁶ and "an action in which the defendant risks killing the assailant" is permitted.⁷⁷ Steven Jensen also interprets Aquinas to define intention in self-defense as knowingly and willingly killing another as an unavoidable consequence, and he states that Aquinas prohibits such intentional killing even when it is the only way to preserve one's life from attack.⁷⁸ He states that if the act is not a knowing and willing killing, such as an act to save oneself by deflecting an attack with a sword, the act is permitted even if the act results incidentally in the killing of the assailant.⁷⁹ Denis Sullivan introduces an interesting twist on Aquinas's use of intention in his discussion of self-defense. He interprets Aquinas to define intention as referring only to the final end and therefore as not relevant to the determination of which killings (as means or side

⁷⁵ Cavanaugh, *DOUBLE-EFFECT*, *supra* note 74, at 10.

⁷⁶ *Id.* at 11.

⁷⁷ Cavanaugh, *Aquinas's Account*, *supra* note 74, at 109. Drawing on the words of John Paul II, Cavanaugh states that "[t]hose who witness to justice by forgoing those acts by which they could save themselves [in situations where the only chance to save oneself is to knowingly kill an aggressor] merit recognition as martyrs," and the choice of martyrdom to do the just thing in this situation is not merely faith-based but also rational. Thomas A. Cavanaugh, *Double-Effect Reasoning, Craniotomy, and Vital Conflicts: A Case of Contemporary Catholic Casuistry*, 11 NAT'L CATH. BIOETHICS Q. 453, 462–63 (2011).

⁷⁸ Steven J. Jensen, *The Trouble with Secunda Secundae 64, 7: Self-Defense*, 83 MOD. SCHOOLMAN 143, 144 (2006) [hereinafter Jensen, *The Trouble*]. As for "actions in which we kill as a means to preserve our lives," Jensen states that "I think that such actions are justified, but then I also think that *STh* II-II, q. 64, a. 7 does not justify them." Jensen, *Long Discussion*, *supra* note 72, at 643.

⁷⁹ Jensen, *The Trouble*, *supra* note 78, at 143–44, 153–54. Jensen does suggest an alternative account based on his read of other passages in Aquinas that would permit a defender, in the absence of public officials who can help, to assume the role of a public official who is permitted to kill. *Id.* at 154. However, Jensen's support for this alternative account is weak. He cites to *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 40, art. 1, ad. 1, at 1360, which he says "recognizes that the private individual can sometimes be charged with public authority." Jensen, *The Trouble*, *supra* note 78, at 162 n.45. But this source states only that

to have recourse to the sword (as a private person) by the authority of the sovereign or judge, or (as a public person) through zeal for justice, and by the authority, so to speak, of God, is not to *take the sword*, but to use it as commissioned by another, wherefore it does not deserve punishment.

SUMMA THEOLOGIAE, *supra* note 1, pt. II-II, Q. 40, art. 1, ad. 1, at 1360. The focus is on a private individual being "commissioned by another," not on a private individual assuming the status on her own. Be that as it may, Jensen nevertheless emphasizes that one cannot derive such an interpretation legitimately from Aquinas's discussion of self-defense as many commentators attempt to do through the doctrine of double effect. Jensen, *The Trouble*, *supra* note 78, at 154–56.

effects) in self-defense are permitted.⁸⁰ According to Sullivan, Aquinas always prohibits killing as a means and sometimes prohibits killing as a side effect, but means and side effects are always outside intention. Sullivan then uses certain phrases in Aquinas's discussion of self-defense to show that, when a killing is a side effect, it is prohibited when it is foreseen as a certainty and permitted only when it is seen merely as a risk.⁸¹

The analysis in this Article argues for an interpretation of Aquinas that prohibits an act of self-defense in which one foresees another's death from an attack on the vital life support of that other, and that permits an act of self-defense in which there is only a risk of another's death. It does not restrict Aquinas's definition of intention only to the end as Sullivan does, but sees intention in Aquinas's discussion of self-defense as an act of will embracing any death that is foreseen to result from the act. Therefore, it rejects Boyle's doctrine of double effect. When Aquinas states that "it is not lawful for a man to intend killing a man in self-defense,"⁸² he means to include foreseen killings within the meaning of "intend." Thus, he prohibits the foreseen killing of an aggressor even if killing the aggressor is the only way in which one can save one's own life.

Most people today do not accept the moral soundness of this prohibition. The Catholic Church herself permits killing in self-defense when the only way to save one's life is by killing an aggressor.⁸³ Yet, as shown above, Aquinas maintains that God retains authority over the life and death of the human person, a person made in the image of God, and one should love one's neighbor for God's sake. Even though one's basic natural

⁸⁰ Denis F. Sullivan, *The Doctrine of Double Effect and the Domains of Moral Responsibility*, 64 THOMIST 423, 437 (2000).

⁸¹ *Id.* at 423–24, 435–37, 448.

⁸² *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471.

⁸³ The encyclical *EVANGELIUM VITAE* by Pope Saint John Paul II states that "it happens that the need to render the aggressor incapable of causing harm sometimes involves taking his life." JOHN PAUL II, ENCYCLICAL LETTER *EVANGELIUM VITAE* (*THE GOSPEL OF LIFE*) ¶ 55 (1995) [hereinafter *EVANGELIUM VITAE*]. The CATECHISM OF THE CATHOLIC CHURCH, *supra* note 13, at ¶ 2264, states that "[s]omeone who defends his life is not guilty of murder even if he is forced to deal his aggressor a lethal blow." Both sources cite to *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471, Aquinas's discussion of self-defense, as authority for this position. See *id.* at n.66; *EVANGELIUM VITAE*, *supra*, at n.45. I do not oppose the teaching of the Catholic Church. I do interpret *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471, differently to mandate a prohibition against killing even in the case where one will lose one's life and the lives of one's loved ones to an aggressor if the aggressor is not killed.

inclination is to preserve oneself and one's loved ones,⁸⁴ this inclination should be governed by one's charitable love of God. We are created to love God⁸⁵ and have our being in God.⁸⁶ This is what makes us human. Therefore, one finds the real preservation of self in loving God and not in turning away from Him in sin. Aquinas notes that "nobody may lawfully commit simple fornication or adultery or any other mortal sin in order to save his own life; since the spiritual life is to be preferred to the life of the body."⁸⁷ Likewise, in the case of killing, which is a more serious offense,⁸⁸ one must rise above the natural desire to kill in self-defense to the charitable desire to preserve one's spiritual life through loving God in fellowship with one's neighbor.

Aquinas is not alone in advocating a prohibition of killing in self-defense. Augustine likewise condemns self-defensive killing when he says that to arm oneself against one's neighbor may arise from "a warmth of spirit capable of good" or from a "hatred of the injustice of others," but this "carnal love" is nevertheless a sin.⁸⁹ Aquinas affirms Augustine by quoting two passages from

⁸⁴ Aquinas himself affirms that "in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature." *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 94, art. 2, at 1009.

⁸⁵ *Id.* pt. I, Q. 60, art. 5, at 301.

⁸⁶ *Id.* pt. I, Q. 18, art. 4 & ad. 1, at 102.

⁸⁷ *Id.* pt. II-II, Q. 64, art. 7, obj. 4, at 1471, which Aquinas implicitly affirms in his answer to this objection. The objector has suggested that since one cannot fornicate or commit adultery to save one's own life, "no man may lawfully take another's life in self-defense in order to save his own life." *Id.* Aquinas replies that "[t]he act of fornication or adultery is not necessarily directed to the preservation of one's own life, as is the act whence sometimes results the taking of a man's life." *Id.* pt. II-II, Q. 64, art. 7, ad. 4, at 1472. In other words, since one can defend oneself with moderation even if it might (but not necessarily will) kill the other person, there will be times when the aggressor will be killed.

⁸⁸ Aquinas states that "it is evident that fornication and adultery are less grievous sins than taking a man's, especially one's own, life: since the latter is most grievous, because one injures oneself, to whom one owes the greatest love." *Id.* pt. II-II, Q. 64, art. 5, ad. 3, at 1469.

⁸⁹ Augustine states that:

[H]e uses the sword, who, without the command or sanction of any superior, or legitimate authority, arms himself against man's life. For truly the Lord had given commandment to His disciples to take the sword, but not to smite with the sword. Was it then at all unbeseeming that Peter after this sin [his move to cut off the servant's ear in the Garden of Gethsemane] should become ruler of the Church, as Moses after smiting the Egyptian was made ruler and chief of the Synagogue? For both transgressed the rule not through hardened ferocity, but through a warmth of spirit capable of good; both through hatred of the injustice of others; both

his work. In one, Augustine tells Publicola that he disagrees “with the opinion that one may kill a man lest one be killed by him.”⁹⁰ In the other, Augustine approves Evodius who questions how men can be “free from sin in sight of Divine providence, who are guilty of taking a man’s life for the sake of these contemptible things [that is, one’s own life].”⁹¹ Aquinas notes that “[t]he words

sinned through love, the one for his brother, the other for his Lord, though a carnal love.

AUGUSTINE, *REPLY TO FAUSTUS THE MANICHEAN* 22.70, in THOMAS AQUINAS, CATENA AUREA: GOSPEL OF MATTHEW 26.51–54 (John Henry Parker trans., London 1842). Ambrose refers to the same passage in Matthew 26:52 and states that “when [a Christian, a just and a wise man] meets with an armed robber he cannot return his blow, lest in defending his life he should stain his love toward his neighbor.” AMBROSE, ON THE DUTIES OF THE CLERGY III, 4.27 (H. de Romestin trans.), in 10 NICENE AND POST-NICENE FATHERS, SECOND SERIES 71 (Philip Schaff and Henry Wace eds. 2004) (1896) [hereinafter 10 NICENE AND POST-NICENE FATHERS].

⁹⁰ AUGUSTINE, *LETTER 47 TO PUBLICOLA* (Ep. xlvii) ¶ 5 (398), as quoted and approved by Aquinas in *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, obj. 1 & ad. 1, at 1471. Augustine’s letter to Publicola mentions cases that are not killings when one’s instruments are used by others, such as when a man is killed by one’s wall falling upon that man when that man is throwing it down, or when one’s ox may gore or one’s horse may kick a man to death, and he confirms the liceity of owning these instruments despite their being used in an act that results in death because the act does not intend the death. AUGUSTINE, *LETTER XLVII OF LETTERS OF ST. AUGUSTINE*, in 1 NICENE AND POST-NICENE FATHERS, FIRST SERIES 293–94 (Philip Schaff ed., 2004) (1886). Augustine states that the passage in the Sermon on the Mount in which Christ teaches to *resist not evil* is “not to make us neglect the duty of restraining men from sin,” but “[a]s to killing others [in one’s private capacity] in order to defend one’s own life, I do not approve of this.” *Id.* at 293, referring to the passage in Matthew 5:39.

⁹¹ AUGUSTINE, *DE LIBERO ARBITRIO* 1.5, as quoted and approved by Aquinas in *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, obj. 2 & ad. 1, at 1471. In this same passage Augustine states that “the law is not just which grants a traveler the power to kill a highway robber so that he himself may not be killed.” ST. AUGUSTINE, ON FREE CHOICE OF THE WILL I, ¶ 33 (Anna S. Benjamin and L.H. Hackstaff trans. 1964, The Bobbs-Merrill Company, Inc. 2d Prtg. 1964). There is nothing to suggest that either Augustine or Aquinas are thinking of a premeditated situation such as Kevin Flannery suggests when he uses the example of “a man [who] has a neighbor whom he thinks could very well attack him someday, so he eliminates that threat in advance by means of a private execution.” Kevin L. Flannery, *The Division of Action in Thomas Aquinas*, 83 AM. CATH. PHIL. Q. 421, 433 (2009). Rather, the mention of a highway robber indicates that Augustine, and Aquinas who agrees with him, are thinking of an immediate threat that one will be killed unless one kills one’s assailant, and it is not a just act to take the assailant’s life in order to save one’s own. On another note, in anticipation of Ghandi who will be discussed shortly in note 107, *infra*, it is interesting that Bonaventure cites to Augustine’s *DE LIBERO ARBITRIO* to maintain that a perfect person is not allowed to kill in order to save oneself from death but that such a killing is excusable in an imperfect person. BONAVENTURE, COLLATIONS ON THE TEN COMMANDMENTS 87–88 (F. Edward Coughlin ed., Paul Spaeth trans. 1995). Aquinas does not address this last point.

quoted from Augustine [in each of these texts] refer to the case when one man intends to kill another to save himself from death.”⁹²

There is also a history of support for the prohibition against a private individual’s foreseen killing behind Aquinas’s reference to the jurists in his discussion of self-defense, according to whom “it is lawful to repel force by force, provided one does not exceed the limits of a blameless defense.”⁹³ There is no indication in this passage that, if the force is foreseen to kill, the killing constitutes a blameless defense. Rather, as one commentator states, “the prerogative to use force to repel force [in this passage] seems to be restricted to public authority alone.”⁹⁴ The early Church Fathers’ doctrine supports this restriction. Origen speaks of the Christians as “adopt[ing] laws of so exceedingly mild a character as not to allow them, when it was their fate to be slain as sheep, on any occasion to resist their persecutors.”⁹⁵ Cyprian mentions the soldiers of Christ in battle who “do not in turn assail their assailants, since it is not lawful for the innocent even to kill the guilty.”⁹⁶ Lactantius states that “if any violence is offered to us, we must endure it with equanimity, since the death of an innocent person cannot be unavenged, and since we have a great Judge who alone always has the power of taking vengeance in His hands.”⁹⁷ This doctrine extended beyond personal defense

⁹² *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, ad. 1, at 1471.

⁹³ *Id.* pt. II-II, Q. 64, art. 7, at 1471 (citing Pope Gregory IX, *DECRETAL SIGNIFICASTI in DE HOMICIDIO* c. XVIII, in *DECRETALES GREGORII P. IX* lib. V, tit. XII). The summary quote by Aquinas is “*vim vi repellere licet cum moderamine inculpatae tutelae.*” ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, pt. II-II, Q. 64, art. 7, at 12 (Leonine ed., 1897), <http://www.corpusthomicum.org/sth3061.html>. The full passage reads: “all laws and rights permit the repulsion of force by force; except that it should be within the limits of a blameless defense, not to take vengeance, but to repulse injury (*vim vi repellere omnes leges et omnia iura permittant; quia tamen id debet fieri cum moderamine inculpatae tutelae, non ad sumendam vindictam, sed ad iniuriam propulsandam.*)” *DECRETALIU COLLECTIONES, in 2 CORPUS JURIS CANONICI* 801 (Aemilius Ludwig Richter ed., 2nd ed., Leipzig, Tauchnitz 1881) (my translation).

⁹⁴ Rojas, *supra* note 38, at 99.

⁹⁵ ORIGEN, *AGAINST CELSUS* III.6, in 4 ANTE-NICENE FATHERS 467 (Alexander Roberts and James Donaldson eds., 2008) (1885) [hereinafter ANTE-NICENE FATHERS].

⁹⁶ CYPRIAN, *EPISTLE LVI TO CORNELIUS IN EXILE, CONCERNING HIS CONFESSION*, in 5 ANTE-NICENE FATHERS, *supra* note 95, at 351.

⁹⁷ LACTANTIUS, *THE DIVINE INSTITUTES* III, 18, in 7 ANTE-NICENE FATHERS, *supra* note 95, at 89. For these and other examples of the prohibition by the early Church Fathers of foreseen lethal defenses, see generally THE EARLY CHURCH ON

even to war and the administration of justice.⁹⁸ With the Edict of Milan, which established the religious toleration of Christianity in the Roman Empire in 313, the prohibition against killing by those with public responsibility was relaxed, but the prohibition against killing in self-defense by a private individual remained a doctrine of the Church for several centuries thereafter, even up to the time of Gratian less than a century before Aquinas's reference to the jurists.⁹⁹

In modern times a number of important voices have condemned self-defensive killing. Mahatma Ghandi understood all too well the difficulty in this restraint, but he advocated non-violence (*ahimsa*) in the face of death from an aggressor. He stated that “[a] non-violent man or woman will and should die without retaliation, anger or malice, in self-defense or in defending the honor of his women folk.¹⁰⁰ He called it “the highest form of bravery”¹⁰¹ because it is not easy to attain this spirit of non-violence. It requires “as complete self-purification as is humanly possible,” which “is a matter of long training in self-denial and appreciation of the hidden forces within ourselves.”¹⁰² Ghandi remarked that “[n]on-violence is impossible

KILLING: A COMPREHENSIVE SOURCEBOOK ON WAR, ABORTION, AND CAPITAL PUNISHMENT (Ronald J. Sider ed., 2012).

⁹⁸ C. John Cadoux states:

that in the third century the conviction that Christianity was incompatible with the shedding of blood, either in war or in the administration of justice, was not only maintained and vigorously defended by eminent individuals like Tertullianus of Carthago, Hippolutos of Rome, and Origenes of Palestine and Egypt, but was widely held and acted on in the Churches up and down Christendom.

C. JOHN CADOUX, *THE EARLY CHRISTIAN ATTITUDE TO WAR: A CONTRIBUTION TO THE HISTORY OF CHRISTIAN ETHICS* 128 (1919).

⁹⁹ See ALBERT R. JONSEN & STEPHEN TOULMIN, *THE ABUSE OF CASUISTRY: A HISTORY OF MORAL REASONING* 218, 220–21 (1988) (citing Ambrose and Augustine in the fourth century and the *Decretum* of Gratian in the twelfth century). Gratian discusses self-defense and killing in Cause 23 of the *Decretum*. See, e.g., *Decreti Secunda Pars C. 23 q. 5 c. 8 of Decretum Magistri Gratiani*, in 1 *CORPUS JURIS CANONICI* 932 (Aemilius Ludwig Richter ed., 2d ed., Leipzig, Tauchnitz, 1879). Rojas translates this passage as, “it is prohibited by this precept [against killing] that anyone on his own authority be armed to murder anyone, not that the accused be put to death by command of the law.” Rojas, *supra* note 38, at 98.

¹⁰⁰ MOHANDAS GHANDI, *GHANDI ON NON-VIOLENCE: SELECTED TEXTS FROM MOHANDAS K. GHANDI'S NON-VIOLENCE IN PEACE AND WAR* 46 (Thomas Merton ed., 1965).

¹⁰¹ *Id.* at 46.

¹⁰² *Id.* at 36. Thomas Merton captured the essence of Ghandi's spirit of non-violence when he said that it “sprang from an inner realization of spiritual unity in himself”; it was not “a means of achieving unity” but rather “the fruit of inner unity

without humility” and can only be sustained “by the higher promptings of an unseen power.”¹⁰³ It requires “a living belief in God.”¹⁰⁴ Ghandi said that Jesus gives us a good example.¹⁰⁵ Only if God instills within one the charity by which one feels one with one’s opponent—so that “it is better that you should die at his hands than that he, your ignorant brother, should die at yours”—can one practice non-violence.¹⁰⁶ Ghandi recognized that not all can practice this bravery based on charity. He continues on to say that “[i]f the people are not ready for the exercise of the non-violence of the brave, they must be ready for the use of force in self-defense” because “[t]here is nothing more demoralizing than fake non-violence of the weak and impotent.”¹⁰⁷

As Thomas Merton remarks, Ghandi’s non-violence is “not a sentimental evasion or denial of the reality of evil,” but rather “a clear-sighted acceptance of the necessity to use the force and the presence of evil as a fulcrum for good and for liberation.”¹⁰⁸ It is the refusal to cooperate with evil and the determination to overcome evil by the mercy of forgiving the oppressor and “assum[ing] the common burden of evil which weighs both on

already achieved.” Thomas Merton, *Introduction to GHANDI ON NON-VIOLENCE*, *supra* note 100, at 10. Merton adds:

Indeed this is the explanation for Gandhi’s apparent failure (which became evident to him at the end of his own life). He saw that his followers had not reached the inner unity that he had realized in himself, and that their *satyagraha* was to a great extent a pretense, since they believed it to be a means to achieve unity and freedom, while he saw that it must necessarily be the *fruit of inner freedom*.

Id.

¹⁰³ GHANDI ON NON-VIOLENCE, *supra* note 100, at 50. Ghandi adds that if it had been through his own will, he “should have miserably failed.” *Id.*

¹⁰⁴ *Id.* at 63.

¹⁰⁵ *Id.* at 55 (“Jesus was the most active resister known perhaps to history. This was non-violence par excellence.”).

¹⁰⁶ *Id.* at 82–83.

¹⁰⁷ *Id.* at 56. Ghandi explained that

[i]f an individual or group of people are unable or unwilling to follow this great law of life, retaliation or resistance unto death is the second best though a long way off from the first. Cowardice is impotence worse than violence. The coward desires revenge but being afraid to die, he looks to others, maybe to the government of the day, to do the work of defense for him.

Id. at 46–47. Ghandi’s position is reminiscent of that of Bonaventure who cites to Augustine’s *DE LIBERO ARBITRIO* to maintain that a perfect person is not allowed to kill in order to save oneself from death but that such a killing is excusable in an imperfect person. BONAVENTURE, *supra* note 91, at 87–88.

¹⁰⁸ Merton, *supra* note 102, at 18.

oneself and one's adversary."¹⁰⁹ Gandhi recognized that the difficulty that one has in achieving this state of *ahimsa* (non-violence) leads many to fail. In fact, at the end of his life he felt that he himself had failed to attain "sufficient detachment and control over [his] temper and emotions" so as to bring non-violence to India.¹¹⁰ What he thought was *ahimsa* among his followers turned out merely to be the "passive resistance . . . of the weak."¹¹¹ Nevertheless, he continued to proclaim that there was "no hope for the aching world except through the narrow and straight path of non-violence."¹¹²

Dorothy Day, a journalist and Catholic convert who co-founded the Catholic Worker movement in the United States, and Johannes Ude, a Catholic priest and theologian in Austria, both lived in the early twentieth century and actively advocated restraint from killing in self-defense. Dorothy Day states:

It is a natural right, as taught by the Church, and it is only because of the life of grace, opened to us by the coming of Jesus, that we hold to our pacifist stand throughout race war, class war and every other type of war. As a pacifist, and my pacifism is based on the teachings of the Sermon on the Mount, I must accept the supernatural point of view and the idea that absolute pacifism is to be aimed at.¹¹³

Johannes Ude maintains that "those Christian moral philosophers and theologians who approve of self-defense grant the right of killing one's aggressor if one cannot otherwise defend oneself," but "Christ demands exactly the opposite . . ."¹¹⁴ Quoting from the Sermon on the Mount, he reminds us that "Christ says, 'Do not resist evil,'" and this means that "the advocates of self-defense are wrong in saying one may kill an attacker if it is necessary."¹¹⁵ Thus both these great advocates

¹⁰⁹ *Id.* at 18–19, 22–23. Non-violence is love "lived in the face of untruth and hatred, the persistent and flagrant denial of love." *Id.* at 17.

¹¹⁰ GHANDI ON NON-VIOLENCE, *supra* note 100, at 92.

¹¹¹ *Id.* at 93.

¹¹² *Id.* at 92.

¹¹³ Dave Dellinger, Robert Franklin Williams, Martin Luther King, Jr., & Dorothy Day, *Are Pacifists Willing to Be Negroes? A 1950s Dialogue on Fighting Racism and Militarism, Using Nonviolence and Armed Struggle*, in WE HAVE NOT BEEN MOVED: RESISTING RACISM AND MILITARISM IN 21ST CENTURY AMERICA 21, 32 (Elizabeth Martínez et al. eds., 2012).

¹¹⁴ JOHANNES UDE, YOU SHALL NOT KILL 47 (Ingrid M. Leder trans., 2016).

¹¹⁵ *Id.*

support Aquinas's position that when it is a choice between an individual's killing in self-defense or accepting death, one should aim at absolute pacifism.

Leo Tolstoy, who greatly influenced Ghandi in his thinking, was himself greatly influenced by the passage in the Sermon on the Mount where Christ taught that one must not resist evil. In one of his letters, Tolstoy asks "[h]ow (to use the stock example) is a man to act when he sees a criminal killing or outraging a child, and he can only save the child by killing the criminal?": His answer is that

[i]f a man be a Christian, and consequently acknowledges God, and sees the meaning of life in fulfilling His will, then, however ferocious the assailant, however innocent or lovely the child, he has even less ground to abandon the God-given law, and to do to the criminal as the criminal wishes to do to the child."¹¹⁶

Aquinas is not a pacifist insofar as he allows killing by one acting under public authority¹¹⁷ and insofar as he allows acts of self-defense that put an aggressor at risk of death¹¹⁸ even when

¹¹⁶ Letter from Leo Tolstoy to Ernest Howard Crosby (Jan. 12, 1896), in *THE COMPLETE WORKS OF LYOF N. TOLSTOI: ESSAYS, LETTER, MISCELLANIES* 324, 330–31 (1899). For an elaboration of Tolstoy's doctrine, see generally LEO TOLSTOY, *THE KINGDOM OF GOD IS WITHIN YOU: CHRISTIANITY NOT AS A MYSTIC RELIGION BUT AS A NEW THEORY OF LIFE* 1–48, 184–208 (Constance Garnett trans., William Heinemann, London 1894).

¹¹⁷ See *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471, where Aquinas says that

it is not lawful for a man to intend killing a man in self-defense, except for such as have public authority, who while intending to kill a man in self-defense, refer this to the public good, as in the case of a soldier fighting against the foe, and in the minister of the judge struggling with robbers, although even these sin if they be moved by private animosity.

This relegation of killing for the common good to only those who have public authority is reiterated in other parts of his discussion of murder. See *id.* pt. II-II, Q. 64, art. 3, at 1467–1468 (“[T]he care of the common good is entrusted to persons of rank having public authority: wherefore they alone, and not private individuals, can lawfully put evildoers to death.”); *id.* pt. II-II, Q. 64, art. 5, ad. 3, at 1469 (“[I]t is not lawful to slay an evildoer except by the sentence of the public authority.”). Therefore, when an individual acts on his own authority, it is in no way lawful to kill any person, innocent or otherwise. See *id.*

¹¹⁸ Aquinas states that it is not “necessary for salvation that a man omit the act of moderate self-defense in order to avoid killing the other man, since one is bound to take more care of one's own life than of another's.” *Id.* pt. II-II, Q. 64, art. 7, at 1471. In other words, there is no unlawfulness in the killing of another as long as one does not know that he will take the other's life by his act. One can defend up to the point that one becomes certain that the other will be killed, but at that point the defender must refrain because the killing becomes foreseen and therefore a matter of intention and “it is not lawful for a man to intend killing a man in self-defense . . .” *Id.* pt. II-II, Q. 64, art. 7, at 1471. Short of the point of killing, moderate self-defense

the aggressor is an innocent person.¹¹⁹ He understands the passage in Matthew 5:39 where Christ admonishes “not to resist evil” in two ways. One may forgive the wrong done to oneself, which is a good interpretation, or one can tolerate the wrongs done to others, which is a bad interpretation “if one be able to resist the wrongdoer in a becoming manner.”¹²⁰ He then quotes from Ambrose to explain that a becoming manner is full justice— “[t]he courage whereby a man in battle defends his country against barbarians, or protects the weak at home, or his friends against robbers”¹²¹ What are not becoming are acts of foreseen killings.¹²²

There are some saving acts in which the death of another may be foreseen and could be prevented, but they are not killings. Aquinas permits, or arguably permits, these saving acts and even praises them when they result in the sacrifice of oneself out of charity. The next Section examines these situations.

can take the risk that the other’s life may be taken, as long as the defense is in “proportion to the end” in the sense that it does not use “more than necessary violence” or require killing the other person. *Id.* pt. II-II, Q. 64, art. 7, at 1471. Aquinas confirms in another passage that “if his sole intention be to withstand the injury done to him, and he defend himself with due moderation, it is no sin,” *Id.* pt. II-II, Q. 41, art. 1, at 1363.

¹¹⁹ In his discussion of self-defense, Aquinas uses the term *aggressor*, not *unjust aggressor*, to refer to a person against whom one acts in self-defense. *See id.* pt. II-II, Q. 64, art. 7, at 1471. By defining *aggressor* broadly, Aquinas includes an insane aggressor to whom no fault can be attributed, thereby including an innocent person within the term.

¹²⁰ *Id.* pt. II-II, Q. 188, art. 3, ad. 1, at 1995.

¹²¹ *Id.* (quoting from AMBROSE, *DE OFFICIIS MINISTRORUM* 1.27). The idea of resistance here places an emphasis on removing harm, not on harming, just as Aquinas states: “Man resists harm by defending himself against wrongs, lest they be inflicted on him, or he avenges those which have already been inflicted on him, with the intention, not of harming, but of removing the harm done.” *Id.* pt. II-II, Q. 108, art. 2, at 1657.

¹²² This interpretation of the phrase “do not resist the evil one” is in accord with John L. McKenzie, *The Gospel According to Matthew*, in 2 THE JEROME BIBLICAL COMMENTARY 62, 72 (1968), who remarks on its highly controversial nature:

The customary principle of self-defense is rejected by this saying of Jesus; and the customary principle is not replaced by another principle of self-defense. The saying is probably the most paradoxical of all the sayings of the passage and has certainly been the object of more rationalization than any other.

B. *Permission*

There are four situations where Aquinas permits, or arguably permits, an act that involves the death of a person: (1) If a killing is not foreseen¹²³ and is not a natural and frequent consequence of an act¹²⁴ and is not a consequence of an unlawful or negligent act,¹²⁵ the act that results in the killing is not an act of killing because the killing is not voluntary. (2) If one sacrifices oneself in an act of charitable love, the act that results in killing is not an act of killing because the self-sacrifice does not take one's life but rather offers it to God in charitable love.¹²⁶ (3) If the only way to save oneself or another is by retaining or removing a vital life support from a person who one knows will be killed as a result but the vital life support belongs to the person saved (whether oneself or another), the act that results in killing is not an act of killing because one may prefer oneself in the use of one's own vital life support.¹²⁷ (4) If the only way to save oneself or those under one's charge is by ducking, blocking, or redirecting a deadly force even though one knows that someone will be killed as a result, the act that results in killing is not an act of killing because one may prefer oneself and those under one's charge in avoiding the deadly force.¹²⁸ Each of these situations is explained more fully below.

¹²³ See *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 8, at 1472 (regarding unforeseen chance happenings).

¹²⁴ See *id.* pt. I-II, Q. 20, art. 5, at 684 (“[I]f the consequences are not foreseen [but] follow from the nature of the action and in the majority of cases, . . . the consequences increase the goodness or malice of that action.”).

¹²⁵ See *id.* pt. II-II, Q. 64, art. 8, at 1472 (asserting that unforeseen consequences of a killing resulting from an unlawful or negligent act makes the person guilty of murder).

¹²⁶ Aquinas states that, despite the unlawfulness of killing oneself, “[i]t is clear that the sign of the greatest love is to lay down one's life for one's friends.” AQUINAS, *supra* note 6, at 290 (C. 15, L. 2), in commenting on John 15:13: “Greater love than this no man has, that a man lay down his life for his friends.”

¹²⁷ Aquinas states that, despite the unlawfulness of killing the innocent, if a man found himself in the presence of a case of urgency, and had merely sufficient to support himself and his children, or others under his charge, he would be throwing away his life and that of others if he were to give away in alms, what was then necessary to him.

SUMMA THEOLOGIAE, *supra* note 1, pt. II-II, Q. 32, art. 6, at 1329.

¹²⁸ This permission derives from an analogy to the permission to retain one's own life support. *Cf. id.* pt. II-II, Q. 32, art. 6, at 1329.

(1) If a killing is not foreseen¹²⁹ and is not a natural and frequent consequence of an act¹³⁰ and is not a consequence of an unlawful or negligent act,¹³¹ the act that results in the killing is not an act of killing because the killing is not voluntary.¹³² In other words, there are two situations. The killing is willed, and therefore intended, if the agent either knows that the killing will occur or should know that it is a natural and frequent consequence of his act or knows that he is committing an unlawful or negligent act. In such a case the agent is morally at fault. The killing is not willed, and therefore accidental, if it is outside this knowledge of the agent. In such a case the agent is not morally at fault.

It bears emphasis that the term accidental in this context is not what is outside one's purpose but rather outside one's knowledge. It is true that in another context, Aquinas states that "everything that results in addition to what the cause aims to bring about is an accidental, not an intrinsic, effect."¹³³ In this sense of what one causes, an evil effect is always an accidental effect because one never has an aim or purpose to do anything but good.¹³⁴ However, in the sense of what one intends, a known evil effect is not accidental whether one knows it will happen as an end or as a means or as a circumstance. Intention includes

¹²⁹ See *id.* pt. II-II, Q. 64, art. 8, at 1472 (regarding unforeseen chance happenings).

¹³⁰ See *id.* pt. I-II, Q. 20, art. 5, at 684 ("[I]f the consequences are not foreseen [but] follow from the nature of the action and in the majority of cases, . . . the consequences increase the goodness or malice of that action.")

¹³¹ See *id.* pt. II-II, Q. 64, art. 8, at 1472 (asserting that unforeseen consequences of a killing resulting from an unlawful or negligent act makes the person guilty of murder).

¹³² *Id.* pt. I-II, Q. 20, art. 5, at 684; pt. II-II, Q. 64, art. 8, at 1472; see also *id.* pt. II-II, Q. 64, art. 7, at 1471 ("[M]oral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental . . ."); *id.* pt. II-II, Q. 43, art. 3, at 1368 ("[S]candal is accidental when it is beside the agent's intention, as when a man does not intend, by his inordinate deed or word, to occasion another's spiritual downfall, but merely to satisfy his own will."); *id.* pt. I-II, Q. 72, art. 1, at 902 (asserting that the voluntary act "is referred essentially to the sinner, who intends such and such an act in such and such matter").

¹³³ AQUINAS, ON EVIL, *supra* note 58, at 70. Aquinas states that evil as such cannot be intended, nor in any way willed or desired, since being desirable has the nature of good, to which evil as such is contrary [Wherefore] no person does any evil except intending something that seems good to the person [And thus] it seems good to the adulterer that he enjoy sense pleasure, and he commits adultery for that reason, even though one knows that adultery is wrong. *Id.*

¹³⁴ *Id.* at 70–71.

not only what one aims to do but also what one knows will happen as the means by which or the circumstances in which that end is accomplished.

As for means, Aquinas states that “the movement of the will to the end and its movement to the means are one and the same thing.”¹³⁵ Thus, Aquinas can say that “it is not lawful for a man to intend killing [referring to means] a man in self-defense [referring to purpose].”¹³⁶ It is possible that the killing may not be intended directly but rather indirectly inasmuch as intending an act which is unlawful or negligent incorporates the killing within the intention of the act even without one knowing that the killing will happen. Such cases include what today in human law we would call felony murder (unlawful act) and drunk driving homicide (negligent act). In such cases, the killing is unlawful because what is intended (i.e., the felony and the driving while drunk) is unlawful, and the killing is subsumed within the intention of these unlawful acts.¹³⁷

As for consequences, Aquinas states that “if [the consequences of an action] are foreseen, it is evident that they increase the goodness or malice,” and “if the consequences are not foreseen . . . [but] they follow from the nature of the action and in the majority of cases, in this respect, the consequences increase the goodness or malice of that action.”¹³⁸ In the latter case, an agent may not foresee these consequences of his action but they follow from its nature and should be known. In this respect, their evil is attributed to the agent’s intention. Elizabeth Anscombe correctly comments that if Aquinas does have a doctrine on responsibility for evil consequences of actions, it is to this passage and not to his discussion of self-defense that one should look.¹³⁹

(2) If one sacrifices oneself in an act of charitable love, the act that results in killing is not an act of killing because the self-sacrifice does not take one’s life but rather offers it to God in charitable love. Self-sacrifice is not only permitted but is praiseworthy because it is the perfection of charity. Aquinas

¹³⁵ *SUMMA THEOLOGIAE*, *supra* note 1, pt. I-II, Q. 12, art. 4, at 641–42.

¹³⁶ *Id.* pt. II-II, Q. 64, art. 7, at 1471.

¹³⁷ *Id.* pt. II-II, Q. 64, art. 8, at 1472.

¹³⁸ *Id.* pt. I-II, Q. 20, art. 5, at 684.

¹³⁹ Anscombe, *supra* note 73, at 24–25; *see also* AQUINAS, ON EVIL, *supra* note 58, at 74 (“[I]f evil is always or in most cases associated with the good intrinsically intended, the will is not excused from sin, although the will does not intrinsically intend the evil.”).

quotes John 15:13 that “Greater love than this no man hath, that a man lay down his life for his friends.”¹⁴⁰ Killing derogates from the gift of life that God gives to each person by taking life when it is only God’s to take, but God gives us the example of His Son’s love through His passion and death to teach us how to give our lives to God in a way that is the direct opposite of killing. One cannot take one’s own life by one’s own hand, but one can submit to death caused by another person or force in order to promote the common good. Aquinas states that right reason in accord with charity “judges the common good to be better than the good of the individual.”¹⁴¹ Charity “*seeketh not her own* (1 Cor. xiii. 5): wherefore the Apostle says of himself (*ibid.* x. 33): *Not seeking that which is profitable to myself, but to many, that they may be saved.*”¹⁴² Aquinas states that the perfection of the love of neighbor “is shown by the things which man despises for his neighbor’s sake, through his despising not only external goods for the sake of his neighbor, but also bodily hardships and even death.”¹⁴³ The perfection of the love of God is martyrdom, which “is the most perfect of human acts in respect of its genus, as being the sign of the greatest charity.”¹⁴⁴ On the other hand, suicide “is contrary to the inclination of nature and to charity whereby every man should love himself,” and therefore it is always a mortal sin.¹⁴⁵ An example of suicide is when a soldier

¹⁴⁰ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 184, art. 2, ad. 3, at 1952. See also *id.* pt. II-II, Q. 31, art. 3, ad. 2, at 1322 (“The common good of many is more Godlike than the good of an individual” and therefore “it is a virtuous action for a man to endanger even his own life, either for the spiritual or for the temporal common good of his country.”); *id.* pt. II-II, Q. 26, art. 5, ad. 3, at 1298. (“[I]f a man of his own accord offer himself for [his neighbor’s welfare in a case of urgency], this belongs to the perfection of charity.”). Aquinas explains the meaning of laying down one’s life for one’s friends in his commentary on John:

It is clear that the sign of the greatest love is to lay down one’s life for one’s friends. This is so because there are four lovable things to be put in order: God, our soul, our neighbor, and our body. We should love God more than ourselves and our neighbor, so that for the sake of God we ought to give ourselves, body and soul, and our neighbor. We should lay down our body, but not give it, for the sake of our soul. For our neighbor, we should expose our body and our physical life for his salvation.

AQUINAS, *supra* note 6, at 290 (C. 15, L. 2).

¹⁴¹ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 47, art. 10, at 1395.

¹⁴² *Id.*

¹⁴³ *Id.* pt. II-II, Q. 184, art. 2, ad. 3, at 1952.

¹⁴⁴ *Id.* pt. II-II, Q. 124, art. 3, at 1717.

¹⁴⁵ *Id.* pt. II-II, Q. 64, art. 5, at 1469. Suicide is a selfish act, oftentimes committed in order to avoid what one mistakenly considers a greater evil, such as an

kills himself by his own hand even if it is to save the lives of his comrades, such as in a suicide bombing. A good example of self-sacrifice is when a soldier jumps on a grenade to save the lives of his comrades—an act that belongs to the perfection of charity.¹⁴⁶

(3) If the only way to save oneself or another is by retaining or removing a vital life support from a person who one knows will be killed as a result, but the vital life support belongs to the person saved (whether oneself or another), the act that results in killing is not an act of killing because one may prefer oneself in the use of one's own vital life support. A vital life support consists of such things as food and water to sustain the body against hunger and thirst, air to sustain the body against suffocation, material support to sustain the body against a fall or drowning, and even one's own body itself. The key to understanding this permission lies in the passage in which Aquinas states that

it is altogether wrong to give alms out of what is necessary. . . . [so that] if a man found himself in the presence of a case of urgency, and had merely sufficient to support himself and his children, or others under his charge, he would be throwing away his life and that of others if he were to give away in alms, what was then necessary to him.¹⁴⁷

This passage must be read in the context of the duty to give alms to understand its full meaning.

There is a duty to give alms. It exists

on the part of the recipient when we see that his need is evident and urgent, and that he is not likely to be succored otherwise—on the part of the giver, when he has superfluous goods, which he does not need for the time being, as far as he can judge with probability.¹⁴⁸

Aquinas states that “[t]he temporal goods which God grants us, are ours as to the ownership, but as to the use of them, they belong not to us alone but also to such others as we are able to succor out of what we have over and above our needs.”¹⁴⁹ Thus, if

unhappy life, the shame of sin, or the fear of consenting to sin. *Id.* pt. II-II, Q. 64, art. 5, ad. 3, at 1469.

¹⁴⁶ See LONG, TELEOLOGICAL GRAMMAR, *supra* note 72, at 73–80 for a discussion of the difference between these two cases, although Long ascribes the difference to a difference in teleological order.

¹⁴⁷ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 32, art. 6, at 1329.

¹⁴⁸ *Id.* pt. II-II, Q. 32, art. 5, ad. 3, at 1328.

¹⁴⁹ *Id.* pt. II-II, Q. 32, art. 5, at 1328. Aquinas maintains that “it is lawful for man to possess property” although “as common, so that, to wit, he is ready to

one owns a vital life support that one does not need but another does need, the owner should help out the other by giving the support. In fact, if the other's need is a matter of life or death, the other is even permitted to take the support without it being considered a theft and the owner has no right to a return.¹⁵⁰ Aquinas is quite adamant about this duty. He warns that "in such cases the words of Ambrose apply, *Feed him that dies of hunger: if thou hast not fed him, thou hast slain him.*"¹⁵¹

In the context of this duty to give alms, the passage that states that "it is altogether wrong to give alms out of what is necessary" puts a priority on saving oneself over saving another when only one can be saved. There is no duty to give one's own vital life support to another if it is needed for one's survival, even if the other will die as a result. Aquinas confirms this priority by stating that "each one must first of all look after himself and then after those over whom he has charge, and afterwards with what remains relieve the needs of others."¹⁵² There is one caveat; Aquinas allows for self-sacrifice out of charitable love. He states that the duty to look after oneself and those under one's charge is

without prejudice to such a case as might happen, supposing that by depriving himself of necessities a man might help a great personage, and a support of the Church or State, since it would be a praiseworthy act to endanger one's life and the lives of those who are under our charge for the delivery of such a person, since the common good is to be preferred to one's own.¹⁵³

Other than this caveat, a person may save himself and his family without the act being a killing. The act differs from a killing since one retains one's own vital life support as opposed to taking the other's vital life support away.

An extension of this case occurs when two people are in vital need of food to survive, and one of them owns only enough food for her own survival, and the other steals this food from her. This is not a case of inaction where the owner of the food refrains

communicate [external things] to others in their need." *Id.* pt. II-II, Q. 66, art. 2, at 1477. This communication is due from what people have "in superabundance" and not from what they need for themselves. *Id.* pt. II-II, Q. 66, art. 7, at 1480.

¹⁵⁰ *Id.* pt. II-II, Q. 66, art. 7, at 1480–81.

¹⁵¹ *Id.* pt. II-II, Q. 32, art. 5, at 1328.

¹⁵² *Id.*

¹⁵³ *Id.* pt. II-II, Q. 32, art. 6, at 1329. This passage should be read for what it says. The praiseworthy act is endangering oneself and those under one's charge in this situation; it is not laying down the lives of those under one's charge, although it may rise to the level of laying down one's own life.

from giving the food to the other person, as in the last case. In this case, the owner of the food acts to take her food back. Aquinas indicates that the owner of the food may take her food back in this case, even though the other's death is foreseen as a result of the act. Aquinas states that the other person "ought to pay what he owes, . . . unless perchance the case be so urgent that it would be lawful for him to take another's property in order to relieve the one who is in need," but then he adds that "this would not apply if the creditor were in equal distress."¹⁵⁴ The creditor, who is the owner of the food, is in equal distress in this case, and therefore the taking back of the food is not a killing of the other person. This is an act of commutative justice whereby the return of the food is due in justice in order to correct the imbalance of the thief retaining what is the property of the other.¹⁵⁵ In one sense this case ultimately becomes one of inaction after the imbalance is corrected because the death of the other person results from the owner of the food keeping her food.

So far, the discussion of vital life support has focused on support that is owned by one person as against another. In a situation where the vital life support is not owned by either person, Aquinas indicates that it may be allocated to one person as against the other if a fair method is used to determine who gets it. Aquinas quotes Augustine to say:

If thou aboundest in that which it behooves thee to give to him who hath not, and which cannot be given to two; should two come to you, neither of whom surpasses the other either in need or in some claim on thee, thou couldst not act more justly than in choosing by lot to whom thou shalt give that which thou canst not give to both.¹⁵⁶

¹⁵⁴ *Id.* pt. II-II, Q. 31, art. 3, ad. 3, at 1322.

¹⁵⁵ *Id.* pt. II-II, Q. 62, art. 1, at 1455-56.

¹⁵⁶ *Id.* pt. II-II, Q. 95, art. 8, at 1608 (quoting AUGUSTINE, *DE DOCTRINA CHRISTIANA* I, xxviii (397)). A modern example of this case is that of two patients, each of whom needs a respirator to survive toxic fumes, but only one respirator is available. Neither patient owns the respirator; it is owned by the hospital. Furthermore, it is impossible to save both patients with the one respirator. Assuming that the hospital uses a fair procedure to allocate the respirator to one of the patients, the allocation is permissible without the act being a killing. Aquinas states that "no man is bound to the impossible: wherefore no man sins by omission, if he does not do what he cannot." *Id.* pt. II-II, Q. 79, art. 3, ad. 2, at 1525. Likewise, if a father is holding onto his two children who have slipped off a balcony of a high-rise apartment building but only has the strength to hold onto one of them before help arrives, he may let one of the children slip to maintain his grasp on the other as long as his choice is fair. See John Makdisi, *Justification in the Killing of an Innocent Person*, 38 CLEV. ST. L. REV. 85, 85-86 (1990).

Likewise, if two people own the vital life support in common and both need it for survival, they could not act more justly than in choosing by lot who shall have the vital life support that can only support one of them. Making a fair choice by an agreement that will transfer one's commonly owned share to the other is a prudent method for making the best of a bad situation. However, if the two people who need the vital life support for survival are not able to agree on how to make this choice, one cannot make the determination on one's own because it would be attacking a vital life support not yet transferred and therefore still owned by the other.

In some situations, although the vital life support is owned by one person as against another, Aquinas indicates that the owner may be under an obligation to give this support to the other, in which case the support is no longer one's own to retain. Aquinas states that in cases of urgency "charity does not necessarily require a man to imperil his own body for his neighbor's welfare, except in a case where he is under obligation to do so; and if a man of his own accord offer himself for that purpose, this belongs to the perfection of charity."¹⁵⁷ Thus, self-sacrifice is permitted as a charitable act, but it is not required unless one is under an obligation to do so, in which case one must lay down one's own life for another. One example of such an obligation is that of a pastor for his flock. Aquinas states that

when the salvation of his subjects demands the personal presence of the pastor, the pastor should not withdraw his personal presence from his flock, neither for the sake of some temporal advantage, nor even on account of some impending danger to his person, since the good shepherd is bound to lay down his life for his sheep.¹⁵⁸

Further on in this passage, Aquinas refers to a helmsman immediately after quoting Augustine to say that "[w]hen, however, the same danger threatens all, those who stand in need of others must not be abandoned by those whom they need."¹⁵⁹ It is not clear here that Aquinas is saying that a helmsman owes the duty to lay down his life for the people on his vessel, but the suggestion is there.

¹⁵⁷ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 26, art. 5, ad. 3, at 1298.

¹⁵⁸ *Id.* pt. II-II, Q. 185, art. 5, at 1966.

¹⁵⁹ *Id.* (quoting AUGUSTINE, *LETTER 228 TO HONORATUS* (Ep. ccxxviii) (circa 428)).

Does a mother owe a similar duty of care to the baby in her womb which requires her to lay down her life for her baby?¹⁶⁰ There is again no clear answer in Aquinas's work. A parent does have a duty to care for one's children.¹⁶¹ The duty arises from the natural relationship whereby the child "is not distinct from its parents as to its body, so long as it is enfolded within its mother's womb,"¹⁶² and the "parents love their children as being part of themselves."¹⁶³ This duty can be analogized to the duty of a pastor for his flock, although it is not certain how much the pastor's duty stems from his embrace of the state of perfection.¹⁶⁴ It would appear that the duty of a mother should be no less than the duty of a helmsman,¹⁶⁵ although it is not certain that Aquinas would extend the duty of a helmsman beyond mere self-endangerment to the ultimate sacrifice of his life for the lives of his passengers when this extreme situation is a certainty. On the other hand, Aquinas does seem to indicate that the mother's duty of care does not require that she sacrifice her life for the life of her child when he states that "each one must first of all look after himself and then after those over whom he has charge."¹⁶⁶ He immediately follows this statement with an analogy to nature by stating that "nature first, by its nutritive power, takes what it requires for the upkeep of one's own body, and afterwards yields

¹⁶⁰ Judith Jarvis Thomson raises this question when she states that "[o]pponents of abortion . . . have tended to overlook the possible support they might gain from making out that the fetus is *dependent* on the mother, in order to establish that she has a special kind of responsibility for it." Judith Jarvis Thomson, *A Defense of Abortion*, 1 PHIL. & PUB. AFF. 47, 58 (1971).

¹⁶¹ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 26, art. 9, ad. 1, at 1301 (the duty "of parents to their children is especially one of care"); *id.* pt. II-II, Q. 26, art. 8, ad. 2, at 1966 (a man is "bound to support in bodily sustenance" the sons of his body).

¹⁶² *Id.* pt. II-II, Q. 10, art. 12, at 1223.

¹⁶³ *Id.* pt. II-II, Q. 26, art. 9, at 1301.

¹⁶⁴ *See id.* pt. II-II, Q. 185, art. 5, ad. 3, at 1966 ("When a man is appointed to a bishopric, he embraces the state of perfection.").

¹⁶⁵ Aquinas states that "we ought out of charity to love those who are more closely united to us more, both because our love for them is more intense, and because there are more reasons for loving them." *Id.* pt. II-II, Q. 26, art. 8, at 1300.

¹⁶⁶ *Id.* pt. II-II, Q. 32, art. 5, at 1328. Rhonheimer refers to Aquinas's words in *SUMMA THEOLOGIAE*, pt. II-II, Q. 64, art. 7, at 1471, that "one is bound to take more care of one's own life than of another's," and affirms that "the natural and morally legitimate drive for self-preservation [and] the similarly natural and morally indisputable love for self [is such] that no maternal obligation and indeed no duty at all can ever render [these] simply morally insignificant." MARTIN RHONHEIMER, *VITAL CONFLICTS IN MEDICAL ETHICS: A VIRTUE APPROACH TO CRANIOTOMY AND TUBAL PREGNANCIES* 117 (William F. Murphy, Jr., ed., 2009).

the residue for the formation of another by the power of generation.”¹⁶⁷ Therefore, it is an open question whether Aquinas sees a duty by the mother to give the vital life support of her body to her baby when her body can support only one of them. If he sees a duty, then the mother cannot remove the baby from her body if the baby’s death is foreseen. If he sees no duty, then the mother can remove the baby from her body when the foreseen death of the baby results from the lack of support from the mother’s body, but not when the foreseen death of the baby results from an attack on a vital life support belonging to the baby.¹⁶⁸

On the other hand, the duty of the pastor for his flock, the possible duty of the helmsman for his passengers, and the possible duty of the mother for her baby exists only as long as the fulfillment of that duty is possible. Aquinas states that “no man is bound to the impossible: wherefore no man sins by omission, if he does not do what he cannot.”¹⁶⁹ By way of example, he states that “a priest is not bound to say Mass, except he have a suitable opportunity, and if this be lacking, there is no omission.”¹⁷⁰ Similarly, if a person who is obligated to save another person does not have an opportunity to do so, then it would appear that the person is not bound to the impossible. In the case of a pastor, Aquinas addressed the question whether a pastor is a hireling and not a shepherd “if, on account of the persecution of a tyrant, a bishop withdraws his bodily presence from the flock entrusted to his care.”¹⁷¹ Aquinas answers that “he who, in order to avoid danger, leaves the flock without endangering the flock, does not flee as a hireling.”¹⁷² If the flock is going to be killed with or without his help and there is no other benefit for the flock’s salvation that can be accomplished by his staying (such as moral

¹⁶⁷ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 32, art. 5, at 1327.

¹⁶⁸ I am aware that the Catholic Church through The Holy Office has disallowed such a removal. See HENRY DENZINGER, *THE SOURCES OF CATHOLIC DOGMA* No. 1890a (Roy J. Deferrari trans., 30th ed., 2002), providing the reply in the negative of the Holy Office, approved by Pope Leo XIII, to the Archbishop of Cambrésis, July 24, 25, 1895, to the question whether a doctor could remove a fetus to save a mother from certain and imminent death due to the presence of the fetus in her womb. I do not oppose the Church; I accept its teaching. However, the project here is to determine what Aquinas would have said if he had been presented with such a case. The text is not clear on this issue.

¹⁶⁹ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 79, art. 3, ad. 2, at 1523.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* pt. II-II, Q. 185, art. 5, obj. 1, at 1965.

¹⁷² *Id.* pt. II-II, Q. 185, art. 5, ad. 1, at 1966.

support against despair), the duty disappears. Likewise, in the case of a helmsman and a mother, where the passengers and the baby are certain to die with or without their help, the duty to safeguard, if it exists, should disappear. The helmsman should be able to remove himself from steering the vessel and the mother should be able to remove herself from sustaining her baby, although in no case can either of them attack the vital life support belonging to the other in the process.

(4) If the only way to save oneself or those under one's charge is by ducking, blocking, or redirecting a deadly force even though one knows that someone will be killed as a result, the act that results in killing is not an act of killing because one may prefer oneself and those under one's charge in avoiding the deadly force. This situation is derived by analogy from the passage¹⁷³ that permits the retention of one's own life support even though it results in the death of another. Both the retaining action and the ducking/blocking/redirecting action uses one's own resources to survive against a destructive force. In the former, the resource is the vital life support and the destructive force is hunger, drowning, etc.; in the latter, the resource is the guarding of one's life and the destructive force is a moving object. With both the action of retention and the action of ducking/blocking/redirecting, another person will die who would not die without the action, but the death of the other person is the result of the destructive force and not one's self-initiated action of attack. Thus, it appears appropriate to analogize the case of the one who avoids the deadly moving force to the case of the one who retains the vital life support and to conclude that both individuals are permitted to act despite their knowledge that another will be killed.

Assuming that the analogy is one that Aquinas would condone, a potential objection may still arise from Aquinas's statement that, even if a private individual wants to do something for the common good, if it "be harmful to some other, it cannot be done, except by virtue of the judgment of the person to whom it pertains to decide what is to be taken from the parts for the welfare of the whole."¹⁷⁴ The action for the common good that redirects a deadly moving force to people it would not otherwise have harmed appears to be harmful to these other

¹⁷³ *Id.* pt. II-II, Q. 32, art. 6, at 1328.

¹⁷⁴ *Id.* pt. II-II, Q. 64, art. 3, ad. 3, at 1467. The person to whom it pertains to decide what is to be taken from the parts for the welfare of the whole is the person under public authority.

people. However, by treating this redirection in the same way as the retention of one's own vital life support, Aquinas would not attribute the deaths of these other people to the one who controls the deadly force but rather to the deadly force itself, since he attributes the death that results from retaining one's food to hunger and not to the act of the one retaining the food. Aquinas refuses to attribute causation to one who acts rightfully in managing an essential cause of harm. This is evident when he states elsewhere that the death of an innocent person is not imputable to a judge in a case where his duty is to pronounce a sentence of death in accordance with the evidence (the evidence of a guilty verdict) "for it is not he that puts the innocent man to death, but they who stated him to be guilty."¹⁷⁵

In a case where a deadly moving force threatens others' lives and one can control the force to kill fewer people,¹⁷⁶ the situation is again analogous to one involving a vital life support. Just as a vital life support such as a respirator can be allocated fairly to one person even though another will die without it,¹⁷⁷ one should be able to direct a deadly moving force fairly away from one or more persons even though others will die as a result. Aquinas speaks directly to how this should be done when he quotes Augustine to say:

*If, at a time of persecution, the ministers of God do not agree as to which of them is to remain at his post lest all should flee, and which of them is to flee, lest all die and the Church be forsaken, should there be no other means of coming to an agreement, so far as I can see, they must be chosen by lot.*¹⁷⁸

The ministers of God have a duty to remain at their post in order not to forsake the Church, but not all of them are needed to fulfill this duty. They all face death by persecution unless they flee. In order to determine who goes and who stays, the fair method is to draw lots. Similarly, one should employ a fair method in determining how to direct the deadly force so that fewer are killed.¹⁷⁹ All other things being equal, Aquinas would probably

¹⁷⁵ See *id.* pt. II-II, Q. 64, art. 6, ad. 3, at 1470.

¹⁷⁶ One may have control as the designated driver or as a bystander who assumes control when the designated driver is incapacitated.

¹⁷⁷ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 95, art. 8, at 1607 (quoting AUGUSTINE, *DE DOCTRINA CHRISTIANA* I xxviii (397)).

¹⁷⁸ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 95, art. 8, at 1607 (quoting AUGUSTINE, *LETTER 228 TO HONORATUS* (Ep. ccxxviii) (circa 428)).

¹⁷⁹ What is fair depends on the case. Aquinas states that one must use prudent judgment when one must decide who to succor from among one's family and

agree that one should direct the deadly moving force to kill as few people as possible.¹⁸⁰

In the case where one's own life is threatened but one has an obligation to safeguard another with his life, the case of ducking/blocking/redirecting is yet again analogous to the case of retaining a vital life support. In this case, an obligation to safeguard another with one's life transforms one's own vital life support into a life support belonging to the other. Thus, if one has a duty to save another and is faced with death from a moving deadly force, one does not have a right to duck, block, or redirect that moving deadly force if sacrificing oneself will save the person he has a duty to save. In the example of the pastor above,¹⁸¹ Aquinas specifically states that

when the salvation of his subjects demands the personal presence of the pastor, the pastor should not withdraw his personal presence from his flock, neither for the sake of some temporal advantage, nor even on account of some impending danger to his person, since the good shepherd is bound to lay down his life for his sheep.¹⁸²

However, as also noted above, this duty should exist only as long as the fulfillment of the duty is possible because, as Aquinas states, "no man is bound to the impossible: wherefore no man sins by omission, if he does not do what he cannot."¹⁸³ When the duty disappears, the person in the way of the deadly moving force has a right to duck, block, or redirect it in order to survive, even with the result of the other person's death, but in no case may the person who avoids the deadly moving force attack the vital life support of the other person or remove that other person's ability to duck, block, or redirect the deadly force himself.

strangers because "we ought in preference to bestow on each one such benefits as pertain to the matter in which, speaking simply, he is most closely connected with us," but "this may vary according to the various requirements of time, place, or matter in hand." *Id.* pt. II-II, Q. 31, art. 3, at 1322. Aquinas adds that "if of two, one be more closely connected, and the other in greater want, it is not possible to decide, by any general rule, which of them we ought to help rather than the other, since there are various degrees of want as well as of connection: and the matter requires the judgment of a prudent man." *Id.* pt. II-II, Q. 31, art. 3, ad. 1, at 1322.

¹⁸⁰ When speaking of an injury that one causes to another, Aquinas states that "[o]ther things being equal, an injury is a more grievous sin according as it affects more persons." *Id.* pt. II-II, Q. 65, art. 4, at 1475.

¹⁸¹ *Id.* pt. II-II, Q. 185, art. 5, at 1966.

¹⁸² *Id.*

¹⁸³ *Id.* pt. II-II, Q. 79, art. 3, ad. 2, at 1525.

II. CASE APPLICATIONS

The first Part of this Article examined how and why Aquinas prohibits a private individual's attack on the vital life support of some person who he knows will be killed as a result, even though it is the only way to save himself or another from death, but permits that individual (a) to retain or remove from the person killed the vital life support if it belongs to himself or the other person saved, and (b) to duck, block, or redirect a deadly force away from himself or those under his charge even though another person will die as a result of that act. This second Part introduces a number of controversial modern-day cases and applies Aquinas's concept of killing to their solution as a way to clarify and enhance understanding of his concept. It is important to keep in mind that this Article addresses only the extreme case where one cannot save one's own life or the life of those under one's charge without another person dying who would otherwise have lived. Therefore, this approach avoids the issue of proportionality, concerning which Aquinas states that "though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end."¹⁸⁴ Also, this Article assumes that the death of one or the other person is a certainty. Uncertainty can change a prohibition into a permission, such as when Aquinas states that "it [is not] necessary for salvation that a man omit the act of moderate self-defense in order to avoid killing the other man," meaning that one can defend oneself with moderate actions that have a chance of killing the other man but cannot "intend[] to kill a man in self-defense."¹⁸⁵

A. *Case of the Craniotomy*

A craniotomy or cutting of the cranium

is an operation that, at least at some times in the past, was thought to be medically indicated when a baby's head was too large to allow normal delivery: instruments could be used to crush the baby's head (perhaps after emptying its skull) so as to

¹⁸⁴ *Id.* pt. II-II, Q. 64, art. 7, at 1471. For example, one cannot let another die of starvation if one's own life is not at stake and one has surplus food. *Id.* pt. II-II, Q. 32, art. 5, at 1327–28.

¹⁸⁵ *Id.* pt. II-II, Q. 64, art. 7, at 1471.

allow the child's removal from the birth canal and the survival of the mother who would otherwise perish in childbirth along with her child.¹⁸⁶

This is an act that attacks the vital life support of the baby's body and falls squarely within the definition of a prohibited killing for Aquinas. However, John Finnis, Germain Grisez and Joseph Boyle argue that the permissibility of bringing about the lethal damage to the baby, which is foreseen and voluntarily accepted, depends on "whether the killing is brought about as an end sought (obviously not) or *as a chosen means*."¹⁸⁷ Their position adopts Boyle's way of treating a killing in self-defense and extends it to a case of non-aggression. Since the killing is not sought as an end, "a doctor could do a craniotomy, even one involving the emptying the baby's skull, without intending to kill the baby"¹⁸⁸

Finnis, Grisez and Boyle attempt to provide a justification in Aquinas's work for defining an intended means as one that is sought rather than one foreseen by citing to his discussions on discord and drunkenness.¹⁸⁹ However, Aquinas does not make a distinction in these discussions between a foreseen effect that is sought and one that is not; rather, Aquinas distinguishes between what is foreseen and what is not. The sin of discord consists in "knowingly and intentionally dissent[ing] from the Divine good and [one's] neighbor's good, to which [one] ought to consent."¹⁹⁰ Yet, "when several intend a good pertaining to God's honor, or our neighbor's profit, while one deems a certain thing good, and another thinks contrariwise, the discord is in this case accidentally contrary to the Divine good or that of our neighbor."¹⁹¹ The accidental and therefore unintended aspect of the act, which removes sin from the act (barring error or undue obstinacy), arises from the fact that it is not foreseen. Likewise, the sin of drunkenness consists in "willingly and knowingly

¹⁸⁶ John Finnis, Germain Grisez & Joseph Boyle, "Direct" and "Indirect": A Reply to Critics of Our Action Theory, 65 THOMIST 1, 21 (2001). These operations are no longer necessary in most medical environments because a caesarean section can be performed to save both mother and child.

¹⁸⁷ *Id.* at 24 (emphasis in the original).

¹⁸⁸ *Id.* at 27; accord WILLIAM E. MAY, CATHOLIC BIOETHICS AND THE GIFT OF HUMAN LIFE 191–94 (3d ed., 2013).

¹⁸⁹ See Finnis, Grisez & Boyle, *supra* note 186, at 19 n.29 (citing *SUMMA THEOLOGIAE*, *supra* note 1, pt II-II, Q. 37, art. 1, at 1352 (discord) and pt. II-II, Q. 150, art. 2, at 1800 (drunkenness)).

¹⁹⁰ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 37, art. 1, at 1352.

¹⁹¹ *Id.*

depriv[ing] [one]self of the use of reason.”¹⁹² Yet, when one “knows not the drink to be immoderate and intoxicating,” the drunkenness occurs “accidentally and beside the intention.”¹⁹³ The accidental and therefore unintended aspect of the act, which removes the sin from the act, arises from the fact that it is not foreseen. Therefore, Aquinas indicates a contrary conclusion to that of Finnis, Grisez and Boyle. A craniotomy, which is the knowing—and therefore intended—killing of an innocent person as a means to saving the life of the mother, is wrongful because “it is in no way lawful to slay the innocent.”¹⁹⁴

Rhonheimer offers another perspective on the moral quality of the act of craniotomy. He justifies the crushing of the child’s skull on the basis that “the obstetric intervention with the consequence of the direct death of the fetus cannot be described as an act of killing that infringes on justice.”¹⁹⁵ The reason is that “[o]ne cannot ‘take away’ a life for which it is already clear that it will never even be born.”¹⁹⁶ In saying this, Rhonheimer does not deny the sacredness of life after conception; his point is that one is not taking away a life in this situation when it is on the verge of dying.¹⁹⁷ Rhonheimer recognizes that there is still a very short time span in which the child would otherwise live, but he finds this morally insignificant.¹⁹⁸ Thus, according to

¹⁹² See *id.* pt. II-II, Q. 150, art. 2, at 1800.

¹⁹³ See *id.*

¹⁹⁴ See *id.* pt. II-II, Q. 64, art. 6, at 1470. Aquinas does not speak directly to the prohibition of killing a fetus to save the mother, but he does speak directly to the prohibition of killing a mother to save the child. In an article where he affirms that one cannot baptize a child while it is still in the womb, he considers whether, in the case of a child who will die in the womb and cannot be baptized, “it would be better for the mother to be opened, and the child to be taken out by force and baptized, than that the child should be eternally damned through dying without Baptism.” See *id.* pt. III, Q. 68, art. 11, obj. 3, at 2407. Aquinas answers that “it is wrong to kill a mother that her child may be baptized.” See *id.* pt. III, Q. 68, art. 11, ad. 3, at 2407.

¹⁹⁵ RHONHEIMER, *supra* note 166, at 123.

¹⁹⁶ *Id.*

¹⁹⁷ He claims that the “[k]illing as a morally reprehensible act—i.e., more precisely as a violation of justice—is not even an issue,” and the act “can be described and judged to be morally right as an act of saving a life . . .” *Id.* at 13.

¹⁹⁸ Rhonheimer states that “by the craniotomy the baby’s life will be somewhat (but insignificantly) abbreviated.” Martin Rhonheimer, *Vital Conflicts, Direct Killing, and Justice: A Response to Rev. Benedict Guevin and Other Critics*, 11 NAT’L CATH. BIOETHICS Q. 519, 532 (2011).

Rhonheimer, the killing of the child is beside the intention inasmuch as the killing does not have the moral quality of injustice.¹⁹⁹

Rhonheimer's perspective on the moral quality of the act of craniotomy fails to appreciate that for Aquinas the act of injustice in taking a life is not affected by the quality of that life but rather by the fact that one exercises dominion over the life of a human person—a dominion that lies only in God's authority. To usurp this authority is an act of injustice against God no matter what the state of the life of the person killed. It is not the fact that the fetus has only a short time to live, but the fact that the fetus is a living person, that is relevant when the act of crushing its skull removes that life. To illustrate that there is no injustice, Rhonheimer states that, if the child could think and send a message to its mother, he thinks that the fetus would ask her to let the physician perform the craniotomy.²⁰⁰ However, this act by the fetus to take its own life would itself be suicide, the taking of one's own life to produce a good. The physician may not act on this request any more than on the request of a son who asks the physician to remove his heart at the cost of his own life so that his mother may receive it as a transplant to save hers. This is not an act of self-sacrifice by the fetus whereby it dies in the act of saving by a force other than his own hand, but even if it were, the mother cannot make this decision for the fetus since the act of self-sacrifice is a purely gratuitous act which can be accomplished only by the consent of the giver. A fetus does not have the ability to give such consent. Therefore, contrary to Rhonheimer's argument, the killing of the child is intended and does have the quality of injustice so as to make it a prohibited act.²⁰¹

¹⁹⁹ Rhonheimer makes a similar argument for the case where "the only exit from a cave in which a group of spelunkers are trapped is a small passageway in which an obese participant in the expedition has become stuck." RHONHEIMER, *supra* note 166, at 43. The spelunkers are in danger of drowning as the water level rises unless they leave the cave, and the only way to leave the cave is to dynamite the passageway, killing the obese participant in the process. Rhonheimer says that in this situation "it makes little sense to say that those who blew open the passageway—along with the obese participant who was stuck in it—assumed the role of judge over life and death . . ." Therefore, it is a permitted act since it falls outside the ethical framework of justice. *Id.*

²⁰⁰ Rhonheimer, *supra* note 198, at 528.

²⁰¹ Likewise, *pace* Rhonheimer, the spelunkers who killed an obese participant when they dynamited a wall to escape death did assume "the role of judge over life and death," and the killing is prohibited as a violation of justice.

B. Case of the Cancerous Uterus

In contrast to the illicit act of craniotomy, a hysterectomy that removes a cancerous uterus from a pregnant mother who would otherwise die, appears to be a permitted act for Aquinas even though the fetus within the uterus should die from lack of sustenance. In this case, if the mother does not owe a duty to lay down her life for her baby's life, she does not kill the fetus any more than when one retains one's own food for survival instead of giving it to another who needs it for survival.²⁰² The mother retains the vital life support of her own body by the removal of the diseased uterus. The act is permissible even though a necessary result of this act is the death of the fetus from the loss of the vital life support of the mother's body. The reason is that, barring a duty to lay down her life for her baby, a mother's vital life support belongs to her and, when it can save only one of two people, she has a right to prefer herself.²⁰³ Contrary to the case of the craniotomy, the killing does not occur by attacking the integrity of the body of the fetus; it occurs by withdrawing the support of the mother's body as her own vital life support from the baby. In the absence of a duty to save, this act is permitted. In the presence of a duty to save, the mother cannot withdraw this support unless the baby is going to die anyway, in which case the fulfillment of her duty is impossible, and the duty disappears.²⁰⁴

²⁰² See *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 32, art. 5, at 1328, where Aquinas states that "each one must first of all look after himself and then after those over whom he has charge, and afterwards with what remains relieve the needs of others."

²⁰³ Note that one cannot make the argument that the fetus is treated as a member of the mother's body in this regard. The uterus corrupts the mother's body threatening death, and, if the mother were not pregnant, it would be "lawful with the consent of the owner of the member, to cut away the member for the welfare of the whole body, since each one is entrusted with the care of his own welfare." *See id.* pt. II-II, Q. 65, art. 1, at 1473. Furthermore, Aquinas states that a child "is not distinct from its parents as to its body, so long as it is enfolded within its mother's womb." *See id.* pt. II-II, Q. 10, art. 12, at 1223. However, a child is distinct as to its personhood, since a person is the result of the union of body and soul whereby the soul animates the body while it is in the womb of the mother. *See id.* pt. I, Q. 3, art. 1, at 16; pt. I, Q. 118, art. 2, ad. 2, at 575; *id.* pt. III, Q. 2, art. 5, ad. 1, at 2037-38. Therefore, while the fetus can be compared to a member of the mother's body insofar as the mother has control over it, it cannot be destroyed in the way that the mother can destroy a decaying member of her body.

²⁰⁴ On a side note, the Catholic Church has approved the removal of a cancerous uterus even if a fetus dies as a result. ODILE M. LIEBARD, *LOVE AND SEXUALITY* 126 (1978) (quoting POPE PIUS XII, *ADDRESS OF POPE PIUS XII TO THE ASSOCIATIONS OF THE LARGE FAMILIES* (Nov. 26, 1951)), states that if

The removal of a cancerous uterus is not the same as radiation therapy to treat cancer in the uterus. Radiation therapy attacks the bodily integrity of the fetus. If it is foreseen to cause the death of the fetus, then it is prohibited because it would be an act of killing the fetus. Radiation therapy stands in contrast to the hysterectomy, which does not attack the bodily integrity of the fetus but rather removes the fetus from the support of the mother's body over which the mother has mastery (in the absence of a duty to the fetus) and which the mother can use to save herself.²⁰⁵

the safety of the future mother, independently of her state of pregnancy, might call for an urgent surgical operation, or any other therapeutic application, which would have as an accessory consequence, in no way desired or intended, but *inevitable*, the death of the foetus, such an act could not be called a *direct* attempt on the innocent life.

In such a case, the Pope says, "the operation can be lawful, as can other similar medical interventions, provided that it be a matter of great importance, such as life, and that it is not possible to postpone it till the birth of the child, or to have recourse to any other efficacious remedy." *Id.* at 126–27.

²⁰⁵ This difference is emphasized by John Di Camillo who considers the case of a six-week pregnant woman diagnosed with a life-threatening condition of peripartum cardiomyopathy complicated by pregnancy. The threat comes from the interaction of a normal functioning placenta with the mother's weakened heart. The threat is not present without the placenta-derived hormones, and it subsides with the separation of the placenta from the uterus, which stops the flow of hormones to the mother. Di Camillo quotes with approval the following statement from A Colloquium Organized by Ascension Health, *Medical Intervention in Cases of Maternal-Fetal Vital Conflicts: A Statement of Consensus*, 14 NAT'L CATH. BIOETHICS Q. 477, 488 (2014), to which he is one of the signatories:

'[M]edical induction of labor prior to fetal viability, when necessary to eliminate a grave and present danger posed by a pathological and life-threatening condition resulting from the interaction of a normally functioning placenta with the diseased and weakened heart of the mother, is consistent with Directive 47, with Church teaching, and with the Catholic moral tradition' . . . even though there is moral certitude that the child will die immediately upon delivery or shortly thereafter.

John A. Di Camillo, Commentary, *Induction of Labor and Vital Conflicts*, 40 ETHICS & MEDICS 1 (2015). Di Camillo points out that the induction is not a direct destruction of the life of the fetus, which would be a prohibited abortion. *Id.* at 2. However, he does not argue, as does this Article, that the liceity of the mother's act derives from the mastery she has over her own body allowing her to remove the fetus from its support when it is a matter of saving her own life. Rather, he adopts the reasoning of the Consensus that

the principle of double effect, as it has been taught in the Catholic moral tradition, provides the appropriate framework of moral reasoning to assess the moral status of interventions in PPCM+P . . . Thus, interventions for PPCM+P in which the death of the child is not the chosen end or the means for causing the good effect of saving the mother's life, but is rather a foreseen but unintended side effect of an action that of itself is immediately

C. *Case of the Ectopic Pregnancy*

An ectopic pregnancy is one in which the embryo implants itself outside the uterus, usually in the fallopian tube. The embryo cannot survive this situation, and usually if there is no treatment, the mother will die upon the rupture of the fallopian tube. There are various methods for treating an ectopic pregnancy to save the life of the mother. In a salpingectomy, the part of the tube containing the embryo is removed; in a salpingotomy (or salpingostomy), the embryo is removed from the tube; and in a drug treatment with methotrexate, a chemical treatment of the trophoblast surrounding the embryo causes the death and expulsion of the embryo.²⁰⁶

The moral permissibility of these treatments depends on much the same reasoning from Aquinas's texts as that given above for the hysterectomy and the cancerous uterus. If the act of killing does not occur by one's attacking the integrity of the embryo but rather by one's removing one's own body from the support of the embryo in order to save oneself, the act should be licit. Even if the mother has a duty to save the embryo, it is impossible to do so and the duty disappears. One can prefer oneself to others in the use of one's resources and one's body. Therefore, the salpingectomy should be licit as long as the

directed at curing the mother, would be consistent with directive 47 and therefore permissible.

Medical Intervention in Cases of Maternal-Fetal Vital Conflicts, supra, at 484-85.

The Phoenix Hospital case of a pregnant woman with severe pulmonary hypertension who underwent a dilation and curettage procedure that ended her pregnancy to save her life in November 2009 is similar to the case discussed above, but it is not clear that the procedure in the Phoenix case avoided harming the child directly and thereby killing the fetus. See M. Therese Lysaught, *Moral Analysis of Procedure at Phoenix Hospital*, 40 ORIGINS 537, 547 (2011), for this ambiguity. The National Catholic Bioethics Center properly rejects such a procedure insofar as it involves "the destruction of the child by crushing or dismembering it." National Catholic Bioethics Center, *Commentary on the Phoenix Hospital Situation*, 40 ORIGINS 549, 550 (2011). Nicanor Pier Giorgio Austriaco states that in the Phoenix Hospital case "the deliberate removal of the unborn child's healthy placenta prior to viability was an act that directly led to the death of the child in the same way as the deliberate removal of any adult's healthy heart without any cardiac replacement directly leads to his death." Nicanor, Pier Giorgio Austriaco, *Abortion in a Case of Pulmonary Arterial Hypertension: A Test Case for Two Rival Theories of Human Action*, 11 NAT'L CATH. BIOETHICS Q. 503, 508 (2011). Austriaco believes that the placentectomy was "a direct attack upon the vital organs of the fetus that is ordered toward his death." *Id.* at 509.

²⁰⁶ RHONHEIMER, *supra* note 166, at 90-91. A salpingotomy is similar to a salpingostomy with the distinction that the incision is sewn up in the former and not in the latter. *Id.* at 90 n.7.

procedure results in the death of the embryo from a lack of sustenance from the mother's body and not from an attack on the embryo's bodily integrity. The salpingotomy is problematic because in the direct removal of the embryo it is possible that the instruments of removal could attack the integrity of the body of the embryo causing its death before it dies from lack of sustenance.²⁰⁷ However, if the intent is to remove the embryo in such a way that its bodily integrity is not impaired and there is a good chance that this can be done, the operation should be licit.²⁰⁸ The treatment by methotrexate should be prohibited because it "interferes with the nucleic acid synthesis (DNA and RNA) of rapidly multiplying cells such as trophoblastic cells and also the blastomeres, the cells of the embryo proper which are also rapidly dividing by mitosis."²⁰⁹ Not only do the blastomeres belong to the embryo, but the trophoblastic cells appear to belong to the embryo as well.²¹⁰ Therefore, an interference with these cells, which itself causes the death of the embryo, should be illicit.²¹¹

²⁰⁷ See Samuel E. Hager, *Against Salpingostomy as a Treatment for Ectopic Pregnancy*, 16 NAT'L CATH. BIOETHICS Q. 39, 43 (2016) (arguing that a salpingostomy often involves an invasion of the bodily integrity of the embryo with laparoscopic tools and, at best, is a cutting of the trophoblast). If the cutting of the trophoblast is what causes the death of the embryo and not the stopping of life support from the mother, then this cutting would be an invasion of the bodily integrity of the embryo that would constitute a prohibited killing.

²⁰⁸ In 1980, an embryo was even successfully removed and implanted in the uterus where it went to term and was delivered as a normal infant. Christopher Kaczor, *The Ethics of Ectopic Pregnancy: A Critical Reconsideration of Salpingostomy and Methotrexate*, 76 LINACRE Q. 265, 268 (2009) (quoting Landrum B. Shettles, *Tubal Embryo Successfully Transferred in Utero*, 163 AM. J. OBSTETRICS & GYNECOLOGY 1771, 2026 (1990)). Of course, if implantation in the uterus is possible to save the life of the fetus, then one must do so to avoid killing the fetus. For arguments in favor of "abortion as removal" as opposed to "abortion as killing" in the case of a salpingostomy, see *id.* at 267–72; MAY, *supra*, note 188, at 196.

²⁰⁹ Marie Anderson et al., *Ectopic Pregnancy and Catholic Morality: A Response to Recent Arguments in Favor of Salpingostomy and Methotrexate*, 11 NAT'L CATH. BIOETHICS Q. 65, 69 (2011).

²¹⁰ "The trophoblast is a layer covering the blastocyst that erodes the uterine mucosa and through which the embryo receives nourishment from the mother. The trophoblast differentiates into an outer layer called a syncytiotrophoblast and an inner layer called the cytotrophoblast. The origin of the DNA within the cells of the trophoblast is the embryo—not the mother." *Id.* at 671 n.22. See Maria T. DeGoede, *An Argument Against the Use of Methotrexate in Ectopic Pregnancies*, 14 NAT'L CATH. BIOETHICS Q. 625, 630–32 (2014), for an argument that the trophoblast should be considered an organ of the embryo.

²¹¹ Helen Watt maintains that "however short the child's life will be, to invade the child's body (including the placenta and amniotic sac) in a foreseeably, seriously, and exclusively harmful way seems incompatible with respect for the bodily

D. Case of the Violinist

The cases of hysterectomy and ectopic pregnancy illustrate situations where the mother withdraws the use of her body from the embryo in order to save herself. The case of the violinist illustrates a similar situation where one withdraws the use of one's body in order to save oneself, but in this case, there is clearly no duty to safeguard. The case was originally described by Judith Jarvis Thomson in a scenario that did not include any threat to one's life. As she described it, a violinist with a fatal kidney ailment is hooked up to your body for nine months as the only way to cure him, and to unplug him before the nine months has elapsed would be to kill him. Thomson asks whether it is "morally incumbent on you to accede to this situation."²¹² If one adds to this fact situation that the hookup will cause your own death, the case falls within the category of extreme cases examined in this Article. In accord with Aquinas's texts, you can withdraw the violinist from the use of the vital life support of your body, just as a mother (without a duty) can withdraw a cancerous uterus containing a fetus from hers. The only difference is that the violinist is a trespasser as opposed to the fetus; therefore, there clearly is no duty to lay down one's life for the violinist. This does not mean that you can kill the violinist by an attack on his bodily integrity, but it is permissible to deprive him of the support of your body, which is needed to save your own, even if the lack of that support results in his foreseen death.²¹³

integrity of that child." Helen Watt, *Bodily Invasions: When Side Effects Are Morally Conclusive*, 11 NAT'L CATH. BIOETHICS Q. 49, 51 (2011). See Kaczor, *supra* note 208, at 272–79 (discussing the debate among several ethicists over the moral implications of the use of methotrexate in ectopic pregnancies).

²¹² Thomson, *supra* note 160, at 49.

²¹³ See *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 32, art. 6, at 1328 (justifying keeping one's own support when it is a necessity). Thomson makes the point that a woman should be able to abort her baby to save her own life because it is her body. Thomson, *supra* note 160, at 52–54. However, she makes no distinction between an abortion procedure that attacks and kills the baby itself and an abortion procedure that merely removes the baby from the womb. This distinction makes all the difference for Aquinas when he justifies keeping one's own support.

E. Case of the Overloaded Boat

In the case of *Holmes v. United States*,²¹⁴ the court instructed the jury that, in the case of a life or death situation, a seaman who is charged with the safety of passengers in a boat has a duty not to sacrifice his passengers by throwing them off an overloaded boat even if it means that he loses his own life. The jury subsequently found that the seaman on trial who threw a passenger overboard to prevent the boat from sinking was guilty of manslaughter.²¹⁵ The issue for the court involved the duty of an individual to control a deadly force under the human law of the jurisdiction; however, the seaman's obligation as determined by the court may also be his obligation morally according to Aquinas. Aquinas states that "charity does not necessarily require a man to imperil his own body for his neighbor's welfare, except in a case where he is under obligation to do so."²¹⁶ Some evidence that the obligation to imperil himself is the same as that determined by the court appears in Aquinas's reference to a helmsman when he quotes Augustine to say that "[w]hen, however, the same danger threatens all, those who stand in need of others must not be abandoned by those whom they need."²¹⁷ If it is such an obligation, Aquinas would reach the same conclusion morally as the court did legally—namely, that the seaman was obliged to put the lives of his passengers above his own and to sacrifice himself before he sacrificed their lives.

The court's instructions in *Holmes* also discuss the situation of people on a boat who are on equal terms with no duty to save each other. The court states that some of these people can be cast off the boat to save the rest from drowning, but it must be done fairly, such as by drawing lots.²¹⁸ Aquinas would agree with this approach.²¹⁹ Likewise, in this case, where the people who

²¹⁴ *Holmes v. United States*, 26 F. Cas. 360, 366–67 (C.C.E.D. Pa. 1842) (No. 15,383).

²¹⁵ *Id.* at 368.

²¹⁶ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 26, art. 5, ad. 3, at 1298.

²¹⁷ *Id.* pt. II-II, Q. 185, art. 5, at 1966 (quoting AUGUSTINE, *LETTER 228 TO HONORATUS* (Ep. ccxxviii) (circa 428)).

²¹⁸ *Holmes*, 26 F. Cas. at 367. The court supported its position by stating that "all writers have prescribed the same rule" that "[w]hen the ship is in no danger of sinking, but all sustenance is exhausted, and a sacrifice of one person is necessary to appease the hunger of others, the selection is by lot . . . as the fairest mode." *Id.* However, to kill a person to eat him in appeasement of one's hunger is an attack on the bodily integrity of the victim and thus a prohibited killing.

²¹⁹ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 95, art. 8, at 1608 (quoting AUGUSTINE, *DE DOCTRINA CHRISTIANA* I, xxviii (397)).

need the boat for survival have an equal claim on it, they could not act more justly than in choosing by lot who shall have the vital life support that can only support some of them.²²⁰ Once the determination is made, those who win the choice should be able to use the boat to the exclusion of the others even if it means casting them overboard to their death by drowning. The act is not an attack on the integrity of their persons²²¹ by taking their vital life support because the determination by lots transfers their vital life support to the winners of the lottery.²²²

²²⁰ If all the passengers on the boat are equal in their claim to the support of the boat, the only way a lottery will work is if a sufficient number are willing to participate in it because one cannot be forced to give up one's right to stay on the boat. On the other hand, if the boat is owned by the captain and the passengers enjoy only a license to be on the boat, the captain has a right to determine who will stay and who will be thrown off—in much the same way as a hospital may determine who will get a respirator. The decision must still be fair, but it does not depend on the consent of the passengers. Such a case might be that of a submarine that is owned by the captain and about to be bombed. There is a crew member still on deck who needs time to make it back inside the submarine before it submerges, or he will die by drowning. However, the time needed for the crew member to make it back is the time during which the submarine would be bombed and destroyed. The captain would have a right to withdraw the life support of the submarine he owns to save himself and the rest of the crew. This example is discussed in LONG, TELEOLOGICAL GRAMMAR, *supra* note 72, at 93–95, where Steven Long argues for the legitimacy of an immediate dive, although his reasoning is based on the teleological order of the act to its end of saving rather than on the right of the owner to withdraw the vital life support of the boat.

²²¹ This case should be distinguished from that of a man and child in a small horse-drawn vehicle whose driver is trying to elude ferocious beasts that he cannot outdistance unless one of the passengers is fed to the beasts to slow them down. Rollin M. Perkins, *Impelled Perpetration Restated*, 33 HASTINGS L.J. 403, 406 (1981). Perkins states that “the saving of two at the expense of one, all else being equal, would be morally right,” except for the fact that the man could have sacrificed himself, and therefore by his choice to kill the child “he has no excuse at common law.” *Id.* Aquinas would accept the man's self-sacrifice as a charitable act of love, but, even if the man were not able to sacrifice himself because he was stuck in the vehicle, Aquinas would not permit him to throw the child out. This is not a case of retaining a vital life support but rather of using another person to stop the deadly force. As such, it is an attack on the integrity of the person and constitutes a prohibited killing. Similarly, if one's survival on a boat required killing a person to eat him, the act would be an attack on the integrity of the person and a prohibited killing. A little over forty years after *Holmes*, an English court considered such a case when a seaman killed and, together with his comrades, ate a young boy as they all faced death from a lack of food and water on a boat at sea. The court judged the act to be murder. *See generally* R v. Dudley and Stephens, (1884) 14 QBD 273 (DC) (Eng.).

²²² Of course, one may act with charitable love and sacrifice oneself to save another from being cast overboard. This is the perfection of charity by despising death for one's neighbor's sake. According to John 15:13, “Greater love than this no man hath, that a man lay down his life for his friends.” *SUMMA THEOLOGIAE, supra* note 1, pt. II-II, Q. 184, art. 2, ad. 3, at 1946.

In contrast to the case of the overloaded boat, if one is stranded at sea on one's own boat,²²³ which can only support one person, and another person is drowning beside the boat, the right to support of the boat is already in the hands of the boat owner. No lots need be drawn to determine the ownership. The owner does not kill by letting the other die if the only way to save that other person will result in the owner's own death. It is wrong for the person in the water to take the boat away from its owner,²²⁴ and, if he does take it away, the boat owner may take back the boat as may the owner of the food in Aquinas's example.²²⁵ The act of return, which is due in commutative justice, returns the situation rightly to what it was before, and the death of the person in the water is not a killing because it results from the retention of the owner's vital life support.²²⁶

²²³ The boat owner may have obtained ownership by title or by prior possession. In other words, even if a person merely found a boat in the water and took possession of it, he would be considered the owner as against all others except the true owner. Aquinas states that "if the thing found appears to be unappropriated, and if the finder believes it to be so, although he keep it, he does not commit a theft." *Id.* pt. II-II, Q. 66, art. 5, ad. 2, at 1473.

²²⁴ As early as the beginning of the fourth century, one of the early Church Fathers remarks on the injustice of the drowning person taking a plank from one who has already seized it. Lactantius advocates the just act even when it appears foolish and states:

What, then, will the just man do, if he shall happen to have suffered shipwreck, and some one weaker than himself shall have seized a plank? . . . [I]f he choose rather to die than to inflict violence upon another, in this case he is just, but foolish, in not sparing his own life while he spares the life of another.

LACTANTIUS, *supra* note 97, at V, 17, in 7 ANTE-NICENE FATHERS, *supra* note 95, at 152. Likewise in that same century, Ambrose answers the question "whether a wise man ought in case of a shipwreck to take away a plank from an ignorant sailor" by saying that "[a]lthough it seems better for the common good that a wise man rather than a fool should escape from shipwreck, yet I do not think that a Christian, a just and a wise man, ought to save his own life by the death of another." AMBROSE, *supra* note 89, at III, 4.27, in 10 NICENE AND POST-NICENE FATHERS, *supra* note 89, at 71.

²²⁵ See *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 32, art. 6, at 1328, for the food case.

²²⁶ Of course, if the owner of the boat cannot get the trespasser off the boat except by attacking his vital life support, such as killing him with a gun, he has a problem. He is not permitted to attack the vital life support of another person, even a trespasser, and must suffer the result of death, if need be, just as in the case of self-defense against an aggressor.

F. Case of the Avoider

If one ducks an oncoming deadly force, the act is permitted even if the ducker knows that a person behind him will be killed as a result. By analogy to Aquinas's passage²²⁷ where one may retain one's own food for survival even if the retention results in the death of another, one may avoid a deadly moving force by ducking it. The death of the other person is the result of the destructive force and not the removal of oneself from its path. Alison McIntyre offers an interesting variation on this case.²²⁸ Arnold and Bill are on a trolley track in a tunnel with a runaway trolley bearing down on them. They cannot jump aside because the tunnel is too narrow, and they cannot outrun the trolley. If the trolley hits one of them, it will stop, but there is no other way to stop it. Bill can outrun Arnold. McIntyre explains that Bill's outrunning Arnold is a case of negative agency (allowing the trolley to hit Arnold as opposed to causing the trolley to hit Arnold) and it is "allowable because the cost of preventing it—self-sacrifice—would be too high."²²⁹ By analogy to Aquinas's case²³⁰ of the retention of one's own food for survival, one might rather explain that a person is not obliged to give up one's own right to protect oneself from a deadly force when that protection is needed for one's survival even though another will die from that force because one has a right to prefer oneself.²³¹

Likewise, if one deflects an oncoming deadly force, the act is permitted even if the deflector knows that a person in the path of the deflection will be killed as a result. As in the case of ducking, one is not obliged to give up one's own right to protect oneself when that protection is needed for one's survival; the death of the other person is the result of the destructive force and not of the removal of oneself from its path. For example, if a person falling from a cliff towards your deck will kill you by his fall even though he will be saved, it is permissible to deflect his fall by shifting the position of your awning even though you know he will be killed

²²⁷ See *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 32, art. 6, at 1328.

²²⁸ McIntyre, *supra* note 40, at 252–54

²²⁹ *Id.* The names, Arnold and Bill, have been added. McIntyre gives this as one of several examples where the doctrine of double effect does not solve the problem.

²³⁰ See *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 32, art. 6, at 1328.

²³¹ This case should be distinguished from one who ducks behind another to avoid a heat-seeking missile, because such an act uses the other as a shield, thus attacking the integrity of that person and constituting a prohibited killing.

as a result.²³² On the other hand, if you are holding a flagpole on your deck and look up to see a person falling towards you who will be impaled on the pole if you do not move it (saving you and killing him) but will be saved if you do move it (killing you), it is not permissible to continue holding the pole.²³³ In the flagpole case the act of self-defense is not a deflection resulting in the death of the other person by the force of the fall, but rather an attack on the integrity of the falling person's life by impaling him on the pole.

G. *Case of the Mountain Climber*

In the case of ectopic pregnancy where both the mother and the embryo face death, the mother is permitted to remove the vital support of her body from the embryo to save herself. A somewhat similar case is that of two mountain climbers using the same rope to climb the side of a cliff. The lower climber loses his footing and is now dangling in a way that he cannot pull himself up nor be pulled up. The stay that is supporting both of them is giving way and it is certain that both will fall to their deaths if the weight of the lower climber is not removed from the rope.²³⁴ Yet despite their similarity, Aquinas would treat them differently. In the ectopic pregnancy case, the mother is permitted to remove the support of her own body as a vital life support belonging to her; in the mountain climber case, both climbers share ownership of the vital support of the rope. Therefore, if the lower climber is unwilling to sacrifice himself at this point even though he sees that the result will be the death of both climbers when the stay gives way, the higher climber is not permitted to cut the rope. If he does so, he attacks the integrity of the life of the lower climber by attacking his vital life support. Note that in this case it makes no sense for the two climbers to bargain for the vital support as in the case of the overloaded boat

²³² See Judith Jarvis Thomson, *Self-Defense*, 20 PHIL. & PUB. AFF. 283, 287 (1991), for the example.

²³³ See Whitley Kaufman, *Self-Defense, Innocent Aggressors, and the Duty of Martyrdom*, 91 PAC. PHIL. Q. 78, 80 (2010), for the example.

²³⁴ This classic case appears often in the literature. See, e.g., LONG, TELEOLOGICAL GRAMMAR, *supra* note 72, at 72-73; Perkins, *supra* note 221, at 406.

because the lower climber would not benefit from such a bargain. The only way that the higher climber will be saved is if the lower climber is willing to sacrifice himself.²³⁵

H. Case of the Conjoined Twins

In some situations, it is difficult to determine who has a right to that which gives needed life support. Consider the case where twins, Amy and Barbara, are born conjoined at the abdomen.²³⁶ Amy, whose body does not have a heart, shares a common artery with Barbara, which enables her blood to be oxygenated through the heart in Barbara's body. Neither will survive if the two are not separated, but if they are separated Amy will die. If the heart in Barbara's body belongs to Barbara, she may withdraw the support of her own heart from Amy without killing her because, according to Aquinas, one can prefer oneself to another in the use of one's body.²³⁷ However, why should the location of the heart within Barbara's body make it Barbara's heart? The twins were formed from the same fertilized egg and developed with the same heart providing life support for both.²³⁸ If the heart belongs to both, then Barbara may not unilaterally withdraw the support of the heart from Amy without killing her because the heart is not hers to withdraw. If Amy is

²³⁵ The prohibition against cutting the rope would also exist if the lower climber were unconscious, unless before he became unconscious he expressed his desire to be cut off the rope either expressly or by consent to an implicit code of mountain climbers that permits cutting the rope. See Kaufman, *supra* note 233, at 91.

²³⁶ This hypothetical case is based on Re A (Children) (Conjoined Twins: Medical Treatment) No.1, [2000] H.R.L.R. 721, 726 (U.K.).

²³⁷ Steven Long makes a similar argument where he comments on the same hypothetical case, using the actual children's pseudonyms, Jodie and Mary, to say that "since the heart and lungs belong to Jodie, and since they are needed by Jodie to live, and no other being has a naturally just claim on their use, the confinement of their use to Jodie and no one else need involve no positive choice to harm another." LONG, TELEOLOGICAL GRAMMAR, *supra* note 72, at 118. Grisez thinks the surgery to separate the twins "could be morally acceptable in a case in which, without it, both children probably would soon die, while with it one of them probably would survive indefinitely." GERMAIN GRISEZ, *Difficult Moral Questions*, in THE WAY OF THE LORD JESUS 3, 292 (1997). However, his reasoning is based on the doctrine of double effect, which teaches that there is no intentional killing of the weaker baby because "her death was an effect of chosen means that in no way contributed to the end sought." *Id.* at 291.

²³⁸ One argument that might be made for Barbara's ownership of the heart is that the heart within her body is like a fixture. A fixture is owned by the owner of the land to which it is affixed, and the heart could be considered analogously to be affixed to and thus owned by the person whose body contains it. However, Aquinas does not address this issue.

old enough to understand, she may sacrifice herself in charitable love to save her sister by giving up the vital life support of the heart to her sister.²³⁹ Otherwise, there is no recourse to save Barbara.

I. Case of the Human Obstacle

If an aggressor uses another person to shield himself and the only way to stop the aggressor is by knowingly killing the human shield, the act is prohibited for the same reason that Aquinas prohibits killing the aggressor himself. One may not attack the vital life support of another person. Likewise, if a person is stuck in the mouth of a cave, trapping others in the cave behind him as rising water is about to drown them all, no one may use dynamite to create an escape route if one knows that the dynamite will kill the person who is stuck, even if this is the only way to save the people who cannot otherwise escape.²⁴⁰ The dynamite attacks the integrity of the person who is stuck. Even the person stuck in the cave cannot blow himself up because it is not an act of charitable love to attack one's own integrity of life. To blow oneself up is suicide, as in the case of a suicide bomber. Suicide differs from the case of the conjoined twin who separates herself from a heart belonging to her sister because in the conjoined sister case the death that ensues is caused by the lack of a vital support belonging to the sister, whereas in the suicide case the death that ensues is caused by one's own self-initiated destruction of one's own vital life support.

Similar to this case is the case where five patients are each dying from organ failure and the only way to save their lives is to kill a sixth person who can supply all their organs. This act is prohibited even if the sixth person consents to being killed. Similarly, if an aggressor holds several people hostage and claims convincingly that he will kill all of them unless one of them kills himself or one of the other hostages, a hostage is

²³⁹ If Amy is not old enough to understand, her guardian cannot make this decision for her. A decision to sacrifice oneself can never be made by another person because it is an act of love, which springs from the heart of the lover, not from a surrogate. This is in contrast to the decision of a guardian to have a minor in her charge participate in a lottery as in the case of the overloaded boat. In the case of the lottery, one bargains for a chance to stay on the boat by offering a chance to be cast off. This is essentially a bargain beneficial to the minor for an exchange of ownership, and the guardian may act in the best interest of her charge.

²⁴⁰ See Foot, *supra* note 40, at 6 (presenting this problem).

prohibited from killing himself or another hostage.²⁴¹ It is the act of killing by attacking the vital life support of oneself or another that is evil and not the suffering of the act of being killed. Aquinas states that a woman “commits no sin in being violated by force, provided she does not consent, since *without consent of the mind there is no stain on the body*, as the Blessed Lucy declared,” and “it is evident that fornication and adultery are less grievous sins than taking a man’s, especially one’s own, life.”²⁴² Therefore, it is better to be killed than to kill; “[i]t belongs to fortitude that a man does not shrink from being slain by another, for the sake of the good of virtue, and that he may avoid sin.”²⁴³

On the other hand, if the aggressor holds several people hostage and claims convincingly that he will kill all of them but will refrain if one of them surrenders himself to be killed by the aggressor, one is not obliged to surrender but it is permitted to sacrifice oneself out of charitable love in order to save the rest of the hostages. To lay down one’s life for one’s friends is a supererogatory act that is the perfection of charity. Saint Maximilian Kolbe did just this when he suffered a martyr’s death in the Nazi death camp of Auschwitz in 1941.²⁴⁴

J. Case of the Trolley

Trolleyology has presented a conundrum ever since it was first introduced by Philippa Foot in 1967.²⁴⁵ She considers the case of a trolley whose brakes have failed.²⁴⁶ It is heading toward five people who will not be able to get off the track in time. There is a spur leading off to one side, but there is one person on it who will be killed if the driver turns the trolley onto the spur. There

²⁴¹ Philippa Foot reaches the same conclusion in a similar case where a judge faces “rioters demanding that a culprit be found for a certain crime and threatening otherwise” to kill others. *Id.* at 7. The judge is in a position to execute an innocent person for the crime to prevent the others from being killed. Foot rejects this act, saying that “most of us would be appalled at the idea that the innocent man could be framed.” *Id.* Alison McIntyre remarks that this particular moral problem is not solved by the doctrine of double effect, but rather “[t]he contrast between what you foresee as a result of the agency of others and what you intend as a result of your own agency is doing all of the explanatory work here.” McIntyre, *supra* note 40, at 232.

²⁴² *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 5, ad. 3, at 1469.

²⁴³ *Id.* pt. II-II, Q. 64, art. 5, ad. 5, at 1470.

²⁴⁴ For a biography of Saint Maximilian Kolbe’s life see ELAINE MURRAY STONE, *MAXIMILIAN KOLBE: SAINT OF AUSCHWITZ* (1997).

²⁴⁵ *See* Foot, *supra* note 40, at 7.

²⁴⁶ *Id.* Foot also gives an example “in which a pilot whose aeroplane is about to crash is deciding whether to steer from a more to a less inhabited area.” *Id.*

is no other alternative. Foot concludes that the driver should turn the trolley onto the spur and kill the one person instead of allowing the five to be killed. Her justification is mainly intuitive.²⁴⁷ The case can be justified further by an analogy to Aquinas's almsgiving case. In the same way that a man who has "merely sufficient to support himself and his children, or others under his charge," throws "away his life and that of others if he were to give away in alms, what was then necessary to him,"²⁴⁸ the man throws away his life or the lives of others under his charge if he does not duck, block, or redirect a moving force that will kill himself or those others, even when that action results in the death of another who would not otherwise have died. In this case, the driver of the trolley²⁴⁹ has a duty of due care to drive the trolley so that it does not harm others. To use Aquinas's words, these others are under his charge. The duty extends not only to passengers on his trolley, but also to those outside the trolley, such as the five people on the main track and the one person on the spur who can be hurt by the trolley's operation. In this case, the driver cannot prevent the trolley from harming at least one person. He must choose between the five and the one. Aquinas

²⁴⁷ Philippa Foot believes that one would "say, without hesitation, that the driver should steer for the less occupied track." *Id.* Thomson describes Foot's answer to this problem as one that characterizes the problem as "a conflict between a negative duty to refrain from killing five and a negative duty to refrain from killing one," from which Foot concludes that "a negative duty to refrain from killing five is surely more stringent than a negative duty to refrain from killing one." Judith Jarvis Thomson, *Killing, Letting Die, and the Trolley Problem*, 59 *MONIST* 204, 206–07 (1976) (citing Foot, *supra* note 40). In her 1976 article, Thomson disagrees with Foot that one must turn the trolley to kill only one and states that her intuition tells her "only that it is permissible for him to do so." *Id.* at 207. In an article nine years later, while addressing the case of a bystander in control of the trolley, Thomson adds that the permissibility stems from the fact that he "does not merely minimize the number of deaths which get caused: He minimizes the number of deaths which get caused by something that already threatens people, and that will cause deaths whatever the bystander does." Judith Jarvis Thomson, *The Trolley Problem*, 94 *YALE L.J.* 1395, 1408 (1985). Thomson calls this "a 'distributive exemption,' which permits arranging that something that will do harm anyway shall be better distributed than it otherwise would be." *Id.* Thomson points out that this exemption is the redirection of a lethal force and not the use of other lethal means to accomplish one's purpose of saving the five. For example, one cannot throw a fat man onto the tracks to stop the trolley from killing the five at the cost of the life of the fat man. *Id.* at 1409. For further discussion of this problem, see DAVID EDMONDS, *WOULD YOU KILL THE FAT MAN? THE TROLLEY PROBLEM AND WHAT YOUR ANSWER TELLS US ABOUT RIGHT AND WRONG* 35–43 (2014).

²⁴⁸ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 32, art. 6, at 1329.

²⁴⁹ The driver may be the designated driver or a bystander who assumes control when the designated driver is incapacitated.

would probably agree that, other things being equal, it is better to redirect the trolley to kill one rather than letting it kill five.²⁵⁰ The killing of the one is not attributable to the driver because it is impossible for the driver to save everyone, and Aquinas states that “no man is bound to the impossible: wherefore no man sins by omission, if he does not do what he cannot.”²⁵¹

If the trolley has no driver and is proceeding down the main track towards a person who is inescapably bound on the track and this person can reach a trolley switch to redirect the trolley to a spur where one or more other people are inescapably bound, things are not equal here because one’s own life is at stake. The principle of self-protection derived from the passage²⁵² permitting the retention of food as a necessary vital life support applies by analogy to permit the person on the main track to redirect the trolley to the spur to save himself from death, even though the person or persons on the spur will be killed as a result.²⁵³ On the other hand, if the person on the main track is not able to redirect the trolley, but can block it by causing another person to fall in front of the trolley with the foreseen result that the other person will die, the blocking act is prohibited because it does not merely block, but also attacks the integrity of the other person’s life.

If the trolley has no driver and is proceeding down the main track towards a person who is inescapably bound to the track, and if another person, who is inescapably bound to the track on a spur, is able to reach a trolley switch to redirect the trolley to the spur, it is permissible for the person on the spur to do nothing. Yet it may be praiseworthy as an act of charitable love to redirect the trolley to the spur in self-sacrifice, much as when a soldier jumps on a grenade to save the lives of his comrades. However, if the person on the spur is bound along with another person to that track, it is prohibited to redirect the trolley to the spur as an act of charitable love. Although a person may lay down his life for his friends, Aquinas never indicates that he may lay down the life of another. By redirecting the trolley, the person on the spur attacks the integrity of the other person’s life. This would be

²⁵⁰ When speaking of an injury that one causes to another, Aquinas states that “[o]ther things being equal, an injury is a more grievous sin according as it affects more persons.” *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 65, art. 4, at 1475.

²⁵¹ *Id.* pt. II-II, Q. 79, art. 3, ad. 2, at 1525.

²⁵² *Id.* pt. II-II, Q. 32, art. 6, at 1328–29.

²⁵³ This does not prevent the person from sacrificing himself in an act of charitable love.

true even if there were ten people bound on the main track and the person on the spur wants to further the common good by having the trolley kill fewer people, namely himself and the other person on the spur with him. Aquinas states that if a private individual wants to do something for the common good but it “be harmful to some other, it cannot be done, except by virtue of the judgment of the person to whom it pertains to decide what is to be taken from the parts for the welfare of the whole,” that is, a person with public authority.²⁵⁴ This situation is not analogous to the case of the trolley driver who directs the trolley to the spur with the fewer people on it. The driver in that case has a duty of due care to all the people who could be harmed by the trolley and the redirection is an act of protection of those under his charge. The person bound to the track on the spur is not redirecting the trolley to protect those under his charge because he is not responsible for the people bound on the main track.²⁵⁵

²⁵⁴ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 3, ad. 3, at 1468. Alon Harel and Assaf Sharon reach the opposite conclusion. They believe that Aquinas can be interpreted to allow a private individual to kill an innocent person if the number to be saved is large enough. Alon Harel & Assaf Sharon, *Necessity Knows No Law: On Extreme Cases and Uncodifiable Necessities*, 61 U. TORONTO L.J. 845, 853 (2011). Aquinas states that “if a case arise wherein the observance of that law would be injurious to the general welfare, it should not be observed . . . [and if] the peril be so sudden as not to allow of the delay involved in referring the matter to authority, the necessity itself carries with it a dispensation, since necessity knows no law.” *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 96, art. 6, at 798. In other words, according to Harel and Sharon, in cases of sudden emergency a private individual on his own authority may avoid observance of the law when it is hurtful to the general welfare, and, since the failure to rescue many lives at the cost of one innocent life is hurtful to the general welfare, it is permissible to save the many despite this cost. Harel & Sharon, *supra*, at 857–60. However, there is no indication in Aquinas that the failure by a private individual to rescue many lives at the cost of one innocent life is hurtful to the general welfare rather than promotes it. On the contrary, Aquinas does state that when a private individual acts for the common good, that individual may not harm another person. *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 3, ad. 3, at 1468. Even an individual acting under public authority may not harm an innocent person. *See id.* pt. II-II, Q. 64, art. 6, at 1470. A private individual acting on his own authority must not presume upon God’s authority over life and death; this presumption, which is evil in itself, exists even in a situation where the common good of saving lives is at stake. In support of the prohibition based on intuition, Thomson reverses an earlier position of hers and states that “A must let five die if saving them requires killing B.” Judith Jarvis Thomson, *Turning the Trolley*, 36 PHIL. & PUB. AFF. 359, 367 (2008). *But see* William J. FitzPatrick, *Thomson’s Turnabout on the Trolley*, 69 ANALYSIS 636, 636–43 (2009) (opposing Thomson’s reasoning).

²⁵⁵ An interesting question to consider is whether Aquinas would accept the idea that the person on the spur could act like a bystander who has taken over the direction of the trolley in the absence of the driver by controlling the train switch. If

CONCLUSION

This study of Aquinas's texts on acts resulting in death has been directed to understanding which are prohibited and which are permitted in one extreme situation—when a person (whether oneself or another) is certain to die if nothing is done and the only way to save that person is by one's act (as a private individual and not one acting under public authority) knowing that it must result in the certain killing of some other person. Based on an analysis of Aquinas's use of the term intention to include foreseen deaths, it rejects the doctrine of double effect as an interpretation of Aquinas's discussion of self-defense,²⁵⁶ as well as the conclusion from this doctrine that Aquinas permits killing in self-defense that attacks another's vital life support when there is no other alternative to save oneself. Instead it argues that Aquinas prohibits any act by a private individual to save a person (whether oneself or another) knowing that it must result in the certain killing of some other person, unless one retains or removes from the person killed a vital life support belonging to the person saved, or unless one ducks, blocks, or redirects a deadly force away from the person saved (whether oneself or another who is under one's charge).

Few people have accepted such a strict interpretation of Aquinas's prohibition against killing. Yet the prohibition is inherent in Aquinas's understanding of humankind's relation to God. God retains authority over the life and death of a human person because He made humankind in His own image enabling humankind to become sons of God. Therefore, in every person, including aggressors, we ought to love the God-like nature which God has made. Those who understand this relationship between humankind and God and have prohibited all killing by a private individual include a number of the early Church Fathers, Mahatma Ghandi, Dorothy Day, and Leo Tolstoy.

On the other hand, Aquinas permits certain acts that result in the death of another person because he allows a person to protect herself with her own resources. A review of the extant literature shows no discussion that develops this idea on the

so, then an argument can be made for the person on the spur that he is protecting the people threatened by the deadly force as people under his assumed charge and that his directing the trolley towards himself and the other person on the spur is a permitted act as choosing the lesser harm when the avoidance of all harm is impossible.

²⁵⁶ *SUMMA THEOLOGIAE*, *supra* note 1, pt. II-II, Q. 64, art. 7, at 1471.

basis of the passage concerning self-support in a case of urgency.²⁵⁷ Yet by this passage, Aquinas permits one to retain or remove from another a vital life support belonging to oneself or those one is saving if it is the only way to save, and by an analogy to this text Aquinas permits one to duck, block, or redirect a deadly force away from oneself or those under one's charge if it is the only way to save. There are times when one transfers one's vital life support to another by taking on a duty to protect that other with one's life, although Aquinas is not always clear as to when that duty exists. In such a case one must be prepared to lay down one's life for the other. On the other hand, although no duty exists to sacrifice oneself in charitable love to save another, such an act is praiseworthy as reaching to the perfection of love of God.

Aquinas's prohibition against killing and his permission of certain acts that result in the death of another are applicable to several modern-day controversial cases, even though Aquinas did not have occasion to consider them. For example, a craniotomy and radiation therapy, which kill a fetus, are prohibited killings, whereas a salpingectomy and a hysterectomy are not, although there is some question in the latter case dependent on Aquinas's understanding of the duty of the mother. A conjoined twin or anyone attached to a person's body can be removed from that person's body to save the person's life, although it may be difficult to determine who is attached to whom in the former case. People who share a vital life support such as a boat may agree to a fair way to allocate ownership of the support of the boat in a case where the boat will not support everyone, but in a case where such agreement is not possible, such as two mountain climbers on a rope, the only way to save one of them depends on the other's willingness to sacrifice himself before the stay gives way. One may duck, block, or redirect an oncoming deadly force to avoid it even if another will die as a result, but one may not use another to block the deadly force nor initiate a force deadly to another to escape it.

Hopefully, from this analysis, the reader may appreciate that Saint Thomas Aquinas provides a deeper meaning to the value of human life by considering it in relation to its Creator and Savior. He challenges each of us to raise our thoughts to Him who lovingly shows us the way to our ultimate fulfillment.

²⁵⁷ *Id.* pt. II-II, Q. 32, art. 6, at 1328–29.