

Comments on Gregory M. Reichberg’s “Restrictive versus Permissive Double Effect: Interpreting Aquinas”

In his paper professor Reichberg argues for two theses. The first is that Aquinas does not make use of a doctrine of double effect in his famous question on killing in self-defense in the *Summa*.¹ The second is that Aquinas does have a doctrine of double effect, but one that is restrictive rather than permissive, and one that endorses the idea of “closeness” as that idea is found in recent literature. I am sympathetic with some aspects of professor Reichberg’s second thesis, although I would parse things out differently. As for his first thesis, I don’t think professor Reichberg’s interpretation can be correct.

Recall that in his question on killing in self-defense, Aquinas states that while one may not *intend* to kill in self-defense, one may morally engage in an action which has two effects, namely, the death of one’s assailant and the preservation of one’s own life, as long as one does not use more force than is necessary to defend oneself. Professor Reichberg maintains, in opposition to the standard interpretation, that Aquinas does not rule out a deliberate *choice* to kill another human being in order to save one’s life. Note the difference between the phrases “choose to kill” and “intend to kill.” In his treatise on human acts Aquinas identifies intention as an act of the will directed at the end, while choice concerns the means. Professor Reichberg maintains that Aquinas only disallows killing as an end—either as constitutive of justice or as revenge—whereas killing as a necessary but regrettable means of self-defense is morally acceptable for a private individual.

This interpretation, however, will simply not square with the text itself. But before diving into it, notice the following text from Aquinas’ treatise on human acts (*Prima Secundae*, question

¹ *ST* II-II, q. 64, a. 7.

12, article 4): “A movement which is one as to the subject may differ according to our way of looking at it, as to its beginning and end, as in the case of ascent and descent. Accordingly, insofar as the movement of the will is to the means as ordained to the end, it is called *choice*. But the movement of the will to the end as acquired by the means is called *intention*.” *Intentio* is distinct from *voluntas simplex*. To intend an end is more than simply to want it at the level of the will. It is to decide to acquire it by some means. The intention of the end may precede in time the choice of *determinate* means, but once that choice occurs it completes the substance of the act of intention. One then intends to acquire *this* end by *that* means. Choice and intention are just two sides of the same coin, two aspects of the same act. So not much can be made out of the fact that Aquinas says in his question on self-defense that one cannot intend to kill, but does not use the language of not choosing to kill. Since an intention is an act of willing an end through a means, to say that killing the assailant is outside the intention (*praeter intentionem*) may mean that it is not the end of the will-act, or it may mean that it is not part of the end-means complex constituting the whole act of intention. Only context will tell which is the case.

Turning then to the text of Aquinas’ account of killing in self-defense, there is clear indication that Aquinas means to exclude the willing of the assailant’s death both as an end and as a means. I call attention to the two most telling passages. First, near the end of the body of the article, Aquinas states that “it is not licit that a human intend to kill a human in order to defend himself, except for someone with public authority who, intending to kill a human for self-defense, refers this to the public good, as is clear in the case of a soldier fighting against enemies and in the case of a minister of the judge fighting against robbers.” The public personage *intends to kill in self-defense*—which means that he deliberately kills a person as a means to the end of self-defense—and this killing in self-defense is referred to the further end of the common good.

Aquinas seems to have in mind such situations as a soldier fighting for his life while also knowing that his country needs him. Aquinas clearly uses the word intention in this passage to refer to the act of choosing to kill as a means. And he states that this very act of intending to kill as a means to self-defense is licit for a public personage but not for a private individual.

Secondly, the first objection quotes Augustine as opposed to private persons killing in self-defense. In response Aquinas states that “the authority of Augustine is to be understood as applying to that case in which someone intends to kill a human in order to deliver himself from death.” Here once again the verb intend is used to target a means-end complex as a whole: killing for self-preservation. Aquinas thus informs us that Augustine is correct if he means that it is wrong for a private individual to deliberately kill for self-preservation, but that it is incorrect to condemn someone who defends himself and in the process kills his assailant as an unintended side-effect.

The principle of double effect is, then, clearly present in this article.

Professor Reichberg, however, objects to this standard reading on the grounds that if it were right Aquinas would not be making good philosophical sense. For the principle of double effect restricts the choice to means that are not in themselves evil, even if they lead to an unintended evil effect. But, according to Reichberg, who refers us to the immediately following question in the *Summa*, striking a person is itself *prima facie* immoral for those not in a position of authority. According to double effect it could not be chosen as a means to self-defense any more than killing could. But in the article professor Reichberg refers to, Aquinas identifies striking (*verberatio*) as the infliction of pain on another as punishment, and restricts this to parents and others in positions of authority. Aquinas never says that the use of defensive force is even *prima facie* immoral. Hence it is a perfectly acceptable means to choose for the legitimate

end of self-preservation, even if harm for the assailant follows as an unintended side-effect. Beating (*verberatio*) and brawling (*rixa*) are human acts of a different species than physically defending oneself, even more than amputation and mutilation are acts of different species although physically quite similar.²

I turn now to the more general issue of Aquinas' principle of double-effect. Here I believe that professor Reichberg is correct to assert that Aquinas' version of double-effect is restrictive. Yet it is also permissive. The principle as classically formulated is both. For all other things being equal, it is wrong to perform an action from which an evil consequence follows, even if it is unintended. But the principle of double effect states that if I perform this act intending a different effect, and if the goodness of that effect is significant enough to outweigh the evil effect, then the act is moral. Thus the principle of double effect is permissive. On the other hand, all other things being equal, performing a morally good or neutral act for a good purpose is itself good. But if an evil effect is foreseeable in a certain case, and that evil effect outweighs the intended good effect, the original action becomes morally bad. Hence the principle is restrictive. Professor Reichberg might agree with this analysis. But in any case he is quite right to remind us that the principle of double effect does make demands on us, holding us to a higher standard than we might have thought, and is not just a moral get-out-of-jail-free card.

Perhaps some light might be shed on this by turning to the issue of "closeness." Professor Reichberg maintains that Aquinas' view is that negative effects that are so closely tied to an action that they will inevitably follow from it necessarily render the action itself immoral; the principle of double effect cannot justify such actions. On the other hand, if the negative effects

² Consider *ST* I-II, q. 1, a. 3, ad 3.

are not inevitable, but only a serious risk, then the principle of double effect comes into play; if the risk is proportionate to the benefit, and the means chosen are otherwise legitimate, then the action is moral. Otherwise, it is not.

I think there is some truth to this, but effects can be closely connected to an act in at least two senses. On the one hand, serious negative effects may inevitably and foreseeably follow from an action in the concrete circumstances in which the act is performed. This would not automatically rule out a course of action on Aquinas' view, although it sets a high bar for its justification. For example, hysterectomy to treat uterine cancer in a woman 3-months pregnant inevitably kills the child, but is permissible on the principle of double effect. On the other hand, serious negative effects may be part of the very nature of an act in general. The very species of the act is affected by these negative effects. For example, performing craniotomy on an infant during a distressed delivery to save the life of the mother cannot be justified on the principle of double effect. The act itself is an act of harming an innocent life, and the principle of double effect cannot be used as a wedge to get between the act and its negative effects. Perhaps in this sense Aquinas might endorse something related to closeness. But what most calls for study in this regards is not Aquinas' principle of double-effect, but his rich yet difficult investigation of the object and species of the moral act. Aquinas would assert, I believe, that not every external act is fit matter for a given intentional form.

In conclusion, the primary merit of professor Reichberg's paper is that it calls attention to the need not to use the principle of double-effect as a catch-all excuse for justifying questionable actions. One cannot intentionally spear someone's heart and not intend to kill him. And so I thank professor Reichberg for this and for calling attention to Aquinas' understudied sources in canon law.