

The following written comments were delivered as part of a panel discussion of Larry Masek’s book *Intention, Character, and Double Effect* (Notre Dame, IN: University of Notre Dame Press, 2018). The panel took place at the 2019 conference of the American Catholic Philosophical Association, November 22nd, 2019. A version of these comments will be published as a book review by the *American Catholic Philosophical Quarterly*. I consider the position I advocate here a work in progress. I’ve been encouraged by the reception these comments have received, and hope that they will serve as good food for thought.

Larry Masek has written an excellent book on the principle of double effect. Masek has a way of cutting through confusion and irrelevancies and clearing the deck for the questions that matter. The book is really quite pleasant to read, accessible to the average reader and rewarding to the specialist.

Masek argues in favor of the principle of double effect, which he interprets as the thesis that the distinction between intention and foresight is relevant for the moral evaluation of human actions. The book’s most significant strength is its defense of why this distinction matters. Modern moral philosophy and public discourse have a strong tendency to focus on the goods or rights of others; with such a focus the principle of double effect must seem out of place. What does it matter whether one intends to harm another, or merely foresees that one’s action will cause him harm? The other suffers or has his rights violated just as much either way. But as Masek argues, the moral character of the *action itself* depends not just on how it affects others, but also on how it forms the agent’s own character. He calls this the “Socratic” view of morality. Masek’s focus on issues of parenting throughout the book nicely motivates this view; parents set

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rules for their children not only to prevent them from harming others, but also so as to form their characters for their own well-being. Clearly we all do believe that actions form characters for good or for ill. In one of his golden lines, Masek states that “there are no moral skeptics in the front seat of a minivan” (p. 9).

Other strengths of the book include its simultaneous embrace of the “Socratic” view and its openness to the view that the good of others serves as an independent criterion of moral evaluation. It is not an either/or. The principle that other persons should be treated as ends and not merely as means makes several helpful appearances in the book. Masek also makes a helpful distinction early on between the strictness of a rule and its seriousness, and this distinction prevents a great deal of unnecessary trouble. Masek also provides a very helpful history of trolley cases and other cases in the literature; the appendix can serve as useful reference to any moral philosopher.

I do, however, have one significant disagreement with Masek’s book, and that is with its account of intention. Since my job on this panel is to represent an old natural law position, I will present and defend what I take to be Aquinas’ account. I begin with Aquinas’ own presentation of the principle of double effect. In his question on killing in self-defense he says:

Nothing hinders one act from having two effects, only one of which is in the intention (*in intentione*), while the other is outside the intention (*praeter intentionem*). Now moral acts receive their species according to what is intended (*secundum id quod intenditur*), and not according to what is outside the intention (*praeter intentionem*), since this is accidental (*per accidens*) as explained above.¹

One bears a greater responsibility for the substance of one’s action, its “species,” than for what is accidentally connected to the action, its circumstances.² In the text quoted, Aquinas connects the species of the action to one’s intention, and states that what is outside the intention is accidental. He goes on to state that one may not intend to kill, even as a means to self-defense,

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but may perform defensive maneuvers that one foresees will result in the death of the assailant. In the later case, the death of the assailant is a circumstance of the action—that kind of circumstance which is called a “consequence”—rather than the substance of the act. One bears responsibility for foreseeable circumstances as well, but one’s obligations in regards to circumstances are less strict than they are in regards to the substance of the act.

I must, then, clarify what intention is and what circumstances are. I begin with intention. According to Aquinas, intention is an act of the will which bears upon an end. The end is the object of intention.³ But the particular character of intention, as opposed to other will-acts bearing upon the end, is that it is the will to obtain the end by some means. When one intends an end one chooses a means, but intention and choice are really the same act looked at from two different sides: intending to acquire the end by those means, and choosing those means to that end. Hence intention includes both the end and the means.⁴ To this extent, Masek’s understanding of intention is consistent with Aquinas’. According to Masek, intention includes the end and all the steps by which one plans to achieve that end.

Masek, however, interprets “end” and “means” strictly so as to include only those aspects of the act which are desired or contribute to one’s goal. So in the standard test case of craniotomy to treat obstructed labor, the reduction of the size of the child’s skull allows the woman to be delivered of her child and saves her life. The child inevitably dies but the death of the child does not contribute to the goal, for if the child somehow survived the procedure the reduction of head size would still accomplish the goal just as effectively. On Masek’s understanding, the child’s death is therefore outside the intention.

However, Aquinas has said that what is outside the intention does not determine the species of the action. Yet aspects of action that fall outside intention as defined by Masek do give

species to human actions. For example, a man who, for the sake of romance, has sex with someone else's wife commits an act whose moral species is adultery, even if the fact that she is someone else's wife does not contribute in any way to his goal, and even if he strongly wishes she were not. Aquinas' understanding of intention, then, is thicker than Masek's. Adultery is in the intention of the man who knowingly has sex with someone else's wife, even if he wishes the woman were not married to someone else and takes no pleasure in the fact that she is.

Consider now Aquinas' account of circumstances. He lists the following as the circumstances of an action: the end, the consequences, the agent, the object, the place, the time, the manner of acting, and the means or instrument.⁵ Aquinas, however, uses the word circumstance in three different ways. Each of the listed factors will sometimes determine the very species of the action, sometimes make an action better or worse without varying its species, and sometimes be totally irrelevant.⁶ When a circumstance is totally irrelevant it is not even really a circumstance in the moral philosopher's or theologian's sense.⁷ When a circumstance changes the species of an act, it loses the character of a circumstance and becomes part of the substance of the act.⁸ When a circumstance makes an action better or worse without determining its species, then it is a circumstance in the most proper sense; it is accidental to the act but worthy of the attention of the acting person or moral philosopher.⁹ Aquinas goes on to say that the two most important circumstances are the end and the object. This corresponds to his understanding of intention; when a human acts he intends to achieve an end by such and such an action performed on such and such an object. Some features of the object determine the moral species of the action; others are truly circumstantial.

Return to the case of adultery. Aquinas would say that if someone intends to perform an act of sexual intercourse, then the object of that action gives it its moral species. It may be truly

circumstantial whether the object of the act is a short woman or a tall woman, but it is not in the proper sense circumstantial whether the object of the act is or is not a woman married to another man. Just as certain differences in the genus animal are specific differences that constitute distinct natural species—for example, rational and irrational—while other differences among animals are accidental, so too in the case of the act of sexual intercourse “someone else’s wife” constitutes a specific difference that specifies the act as one of adultery.¹⁰ This is true even if the man prefers that the woman were not married to someone else, and the fact that she is does not contribute in any way to the achievement of his goal.

Now if other circumstances that do not contribute to an action’s desirability fall under the intention, then why not the act’s consequences? To be sure, these often are outside the intention, accidental, and fail to specify the action, as in Aquinas’ example of defending oneself in such a way that the assailant dies. However, consequences often do specify the act and fall under the intention, even if undesirable and not conducive to the end. For example, if someone eats excessively, he performs an act of gluttony. The action is immoral in large part due to its consequences: it is bad for one’s health and impedes rational activity by producing lethargy. These consequences are essentially connected to the action and so lose the character of circumstances and specify the action itself. So too, setting out to consume a bottle of fine scotch constitutes an intentional act of intoxication, even if one wishes only to enjoy its excellence.

But it is easy for us to misunderstand what it means for a feature to be essentially connected to an act, rather than accidentally connected. Essential connection is rather different than the concept of “closeness.” Masek quite convincingly criticizes the latter concept. What, then, does it mean for a feature to be essentially connected to an action? Following Aristotle,¹¹ Aquinas distinguishes four modes of *per se* predication. To be essentially connected to an act a

feature need not be part of its definition so that it be impossible to conceive of the act without the feature. Such conceptual necessity constitutes only the 1st and 2nd modes of *per se* predication. On the other hand, causal necessity does not automatically make a feature essential either, for causal necessity might be unusual, situational, and a result of extrinsic factors; in other words, a necessary causal connection might be accidental. This is the case in the standard hysterectomy example. Hysterectomy on a pregnant woman with uterine cancer prior to the baby's viability will inevitably result in the baby's death. Still the death is not essentially connected to the hysterectomy. There is nothing about hysterectomies *per se* that results in the death of a child.

As Aristotle makes clear in book II of the *Physics*, what something *tends* towards, just in virtue of what it is, is natural and essential to that thing, even when that towards which it tends can be prevented by an outside factor. Such features are *per se* in the 4th mode. For example, the acquisition of language is natural and essential to every human being, even though a person might never acquire language due to severe disabilities or premature death. Thomists must consider the fourth mode of *per se* predication when making moral evaluations. A hysterectomy does not, just in virtue of what it is, result in the death of a child. On the other hand, a craniotomy does result, just in virtue of what it is, in the death of a child, even though it is conceivable that a child have its skull crushed and somehow survive.

Essential consequences specify an action in a way that accidental consequences do not.¹² To be sure, foreseeable accidental consequences must be taken into account by a responsible agent. To cause certain effects, even accidentally, can be an act of moral negligence. But according to the principle of double effect foreseen accidental consequences can be legitimately caused for sufficiently weighty reasons, as in the case of self-defense. But when the

consequences are essentially connected to the action intended, they fall under the intention and specify the action. In such cases, the *dictum* that the end does not justify the means applies.

That this is Aquinas' position can be seen as follows. In the question on killing in self-defense, he states that "moral acts receive their species according to what is intended, and not according to what is outside the intention (*praeter intentionem*), since this is accidental, as explained above." Now the first two uses of the phrase *praeter intentionem* in the second part of the *Summa*¹³ include explicit references to book II of Aristotle's *Physics*. The second text, mirroring the previously quoted passage, runs as follows: "That which is accidental never constitutes the species. That, however, which is outside the intention of the agent is accidental, as is clear from *Physics* II." To understand Aquinas' meaning, then, it is quite reasonable and helpful to turn to his commentary on book two of the *Physics*, as O'Brien and Koons have done. Here is the relevant passage from Aquinas' commentary:

The effect of a deliberate agent (*causae agentis a proposito*) is that which happens due to the agent's intention. Hence whatever comes about in the effect that is outside the intention (*praeter intentionem*) is accidental. And I say this if that which is outside the intention follows infrequently, for what either always or frequently is joined to the effect falls under the same intention (*cadit sub eadem intentione*). For it is foolish to say that someone intends something and does not will (*velit*) that which is conjoined to it frequently or always.¹⁴

In book II of the *Physics* Aristotle uses "always or for the most part" as a sign of essentiality, and "infrequently" as a sign of accidentality. In the quoted text Aquinas signals that whatever is connected *per se* and not *per accidens* to that which is intended as a means falls under the intention, and, if it is relevant to the moral order, can give species to the action. This applies to essential consequences.

But why should it make a difference whether consequences are essential or accidental, if both are foreseen? Because what one chooses to do forms one's character more than what one

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allows to happen. Choosing to perform an act whose essence is harmful forms one's character negatively. Allowing certain consequences to follow from a good act due to extrinsic factors does not form one's character negatively, as long as one is not negligent in weighing such consequences.

It is time to apply all this to some important disputed cases. A doctor performing a craniotomy chooses to crush the baby's skull. It is not accidental that this act kills the baby. Hence the death of the child is not merely foreseen, but also intended. Masek, however, argues that a craniotomy is just as needful and effective whether the child in obstructed labor is already dead or still alive. He might argue that the act does not essentially involve killing and that it is just a circumstance that the child is alive rather than dead when the act is performed. In that case, it is just a circumstance that death is a consequence of the act. Circumstances must always be taken into account lest someone be treated unfairly, but foreseen harm can be acceptable for sufficiently weighty reasons. According to this argument, craniotomy is not essentially an act of abortion, and since the child will die anyways, saving the life of the mother justifies the harm.

I think Aquinas would respond that if the doctor plans to resize the head, he cannot fail to notice the circumstance that his means of doing so is to crush the skull. Presuming that there is no indication that the child has in fact died, he cannot be unaware of the circumstance that the object of his act of crushing must reasonably be presumed to be the skull of a living child. If he is aware of that circumstance, then he cannot be unaware of the circumstance of the consequence: crushing the skull is essentially an act of killing a person; this proposition is *per se* in the 4th mode. These circumstances are so relevant to moral evaluation that they constitute the very species of the action, making it an act of abortion. Hence if the doctor intends to resize the

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head he must accept that his intention is also to kill the child, otherwise he is acting in bad faith or is in pathological denial. In any case, the action deforms his character and is immoral.

The same is true of the Phoenix abortion case. The “placentectomy” was an act of abortion. The placenta is, scientifically and philosophically speaking, one of the unborn baby’s vital organs. Destroying it and removing the baby from the womb by means of a D & C is an act that essentially kills the child, rather than as a truly circumstantial consequence. Hence the act was an abortion.

Masek, however, brings up two kinds of challenging counter-examples against the broader Thomistic sense of intention that I have outlined and in favor of his narrower sense. The first concerns children who could act in harmful ways without intending any harm, by playing with knives, for example. As he says, this is why they must be prevented from playing with such objects. I grant Masek that a young child could intend to cut someone with a knife without intending to harm him. Although harm is connected essentially to such an act, a young child might not know this and at a young enough age could not reasonably be expected to know it. The Thomistic view of intention does not abandon the perspective of the acting person. An agent cannot intend what he does not and cannot know. The Thomistic view of intention is based on essential facts about the physical world to the extent that these facts are known or should be known by the agent, and this is because acting persons act in the physical world and bear responsibility for that world. An adult cannot intend to cut someone with a knife in that way without intending to harm him.

Masek also challenges the Thomistic view of intention by means of examples in which the agent dislikes an effect of his action and tries to counteract it. For example, a man with a stutter could testify on behalf of his father and try hard not to stutter since this will diminish the

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efficacy of his testimony. He might even rub a good-luck charm to try and prevent the stutter. Must he intend to stutter, just because this is intimately connected to his intended action of testifying on behalf of his father? It depends on whether he is in a condition of psychological denial or not. If he is, he can certainly intend to testify without intending to stutter, but that intention is irrational. If he is not in denial he knows that for him stuttering is essential to the act of speaking, for he always or usually stutters when he speaks. Given his condition, he must accept the facts and choose either to testify with a stutter or not to testify at all. Now he may reasonably intend to testify with as little stuttering as possible, but that does not mean that he does not intend to stutter. Furthermore, there is nothing irrational about intending to perform an action that one intends to partially undo later, if that is the only way to achieve one's goal. So a weight-lifter intends to burn calories because he intends to work-out; he also intends to consume calories so as not to drop into a lower weight-class.

Despite our important disagreement, I found Masek's book really quite helpful in clarifying and defending the principle of double effect. I expect to use many of his examples, especially the ones about parenting, in my own classes. I also appreciated his defense of the use of contrived cases in moral philosophy. To quote Masek: "The link between these cases and real choices is indirect, like the link between an athlete's weight training and a game. Basketball players lift weights to build muscles, not to be ready in case they need to lie down and lift other players off their chests. The point of contrived cases is to analyze moral rules and definitions of terms, not to be ready when a trolley comes speeding down a hill" (p. 3). I found this explanation quite helpful given my own scruples about contrived cases, and I would note that in the 21st century the craniotomy case is a contrived one, at least where Western medicine is available, and yet it is accepted for discussion by all parties.

I want to thank Larry for his book, and to say that I am honored to be on this panel.

¹ *ST II-II*, q. 64, a. 7, c. Full text of the *respondeo*: “Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental as explained above (*II-II*:43:3; *I-II*:12:1). Accordingly the act of self-defense may have two effects, one is the saving of one's life, the other is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life, is not unlawful, seeing that it is natural to everything to keep itself in ‘being,’ as far as possible. And yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end. Wherefore if a man, in self-defense, uses more than necessary violence, it will be unlawful: whereas if he repel force with moderation his defense will be lawful, because according to the jurists [*Cap. Significasti, De Homicid. volunt. vel casual.*], ‘it is lawful to repel force by force, provided one does not exceed the limits of a blameless defense.’ Nor is it 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. But as it is unlawful to take a man's life, except for the public authority acting for the common good, as stated above (Article 3), 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.” (Trans. Fathers of the English Dominican Province, as digitized by Kevin McKnight, newadvent.org/summa.)

² *ST I-II*, q. 7, a. 1: “Accordingly, whatever conditions are outside the substance of an act, and yet in some way touch the human act, are called circumstances. Now what is outside a thing's substance, while it belongs to that thing, is called its accident. Wherefore the circumstances of human acts should be called their accidents.” (c.)

³ *ST I-II*, q. 12, a. 2, c.: “), ‘Intention regards the end as a terminus of the movement of the will. Now a terminus of movement may be taken in two ways. First, the very last terminus, when the movement comes to a stop; this is the terminus of the whole movement. Secondly, some point midway, which is the beginning of one part of the movement, and the end or terminus of the other. Thus in the movement from A to C through B, C is the last terminus, while B is a terminus, but not the last. And intention can be both. Consequently though intention is always of the end, it need not be always of the last end.’”

⁴ *ST I-II*, q. 12, a. 4, ad 3: “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 (*Phys. iii, 3*). Accordingly, in so far 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, it is called ‘intention.’” See also c.

⁵ *ST I-II*, q. 7, a. 3: Tully, in his *Rhetoric* (*De Invent. Rhetor. i*), gives seven circumstances, which are contained in this verse: ‘*Quis, quid, ubi, quibus auxiliis, cur, quomodo, quando*—Who, what, where, by what aids, why, how, and when.’ For in acts we must take note of ‘who’ did it, ‘by what aids’ or ‘instruments’ he did it, ‘what’ he did, ‘where’ he did it, ‘why’ he did it, ‘how’ and ‘when’ he did it. But Aristotle in *Ethic. iii, 1* adds yet another, to wit, ‘about what,’ which Tully includes in the circumstance ‘what.’ The reason of this enumeration may be set down as follows. For a circumstance is described as something outside the substance of the act, and yet in a way touching it. Now this happens in three ways: first, inasmuch as it touches the act itself; secondly, inasmuch as it touches the cause of the act; thirdly, inasmuch as it touches the effect. It touches the act itself, either by way of measure, as ‘time’ and ‘place’; or by qualifying the act as the ‘mode of acting.’ It touches the effect when we consider ‘what’ is done. It touches the cause of the act, as to the final cause, by the circumstance ‘why’; as to the material cause, or object, in the circumstance ‘about what’; as to the principal efficient cause, in the circumstance ‘who’; and as to the instrumental efficient cause, in the circumstance ‘by what aids.’” (c.)

⁶ *De Malo*, q. 2, a. 7: “A circumstance is related to a sinful action in a threefold way. Sometimes it neither changes the species nor makes the sin worse, for example to strike a man wearing a white or red coat. But sometimes it does constitute a species of sin, whether the act to which the circumstance is added is indifferent by reason of its genus, as when someone picks up a straw from the ground in contempt of another, or the act is good by reason of its genus, as when someone gives an alms for the sake of human praise, or the act is bad by reason of its genus and another species of malice is added from the circumstance, as when someone steals a sacred object. Yet sometimes a circumstance increases the gravity of the sin but does not constitute a species of sin, as when someone steals a large amount.” (c., trans. Oesterle & Oesterle.)

⁷ *ST I-II*, q. 7, a. 2, ad 2: “Accidents which are altogether accidental are neglected by every art, by reason of their uncertainty and infinity. But such like accidents are not what we call circumstances; because circumstances

although, as stated above (Article 1), they are extrinsic to the act, nevertheless are in a kind of contact with it, by being related to it. Proper accidents, however, come under the consideration of art.”

⁸ *ST I-II*, q. 18, a. 10: “A circumstance, so long as it is but a circumstance, does not specify an action, since thus it is a mere accident: but when it becomes a principal condition of the object, then it does specify the action.” (ad 2.)

⁹ *ST I-II*, q. 18, a. 11: “Not every circumstance that makes a moral action better or worse, changes its species.” (c.); q. 7, a. 2, c.; q. 73, a. 7, c & ad 1: “Some circumstances do specify a moral act, as stated above (I-II:18:10).

Nevertheless a circumstance which does not give the species, may aggravate a sin; because, even as the goodness of a thing is weighed, not only in reference to its species, but also in reference to an accident, so the malice of an act is measured, not only according to the species of that act, but also according to a circumstance.” (ad 1.)

¹⁰ *ST I-II*, q. 18, a. 10: “Just as the species of natural things are constituted by their natural forms, so the species of moral actions are constituted by forms as conceived by the reason, as is evident from what was said above (Article 5). But since nature is determinate to one thing, nor can a process of nature go on to infinity, there must needs be some ultimate form, giving a specific difference, after which no further specific difference is possible. Hence it is that in natural things, that which is accidental to a thing, cannot be taken as a difference constituting the species. But the process of reason is not fixed to one particular term, for at any point it can still proceed further. And consequently that which, in one action, is taken as a circumstance added to the object that specifies the action, can again be taken by the directing reason, as the principal condition of the object that determines the action's species. Thus to appropriate another's property is specified by reason of the property being “another's,” and in this respect it is placed in the species of theft; and if we consider that action also in its bearing on place or time, then this will be an additional circumstance. But since the reason can direct as to place, time, and the like, it may happen that the condition as to place, in relation to the object, is considered as being in disaccord with reason: for instance, reason forbids damage to be done to a holy place. Consequently to steal from a holy place has an additional repugnance to the order of reason. And thus place, which was first of all considered as a circumstance, is considered here as the principal condition of the object, and as itself repugnant to reason. And in this way, whenever a circumstance has a special relation to reason, either for or against, it must needs specify the moral action whether good or bad.” (c.)

¹¹ Aristotle, *Posterior Analytics* I.4.

¹² That it matters whether consequences are essential or accidental is stated by Aquinas at *ST I-II*, q. 20, a. 5: “But if the consequences are not foreseen, we must make a distinction. Because if 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: for it is evident that *an action is specifically better, if better results can follow from it; and specifically worse, if it is of a nature to produce worse results*. On the other hand, 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.” (c., emphasis added.) Although Aquinas speaks here of *unforeseen* consequences, the reasoning seems to apply to foreseen consequences as well. See also *ST I-II*, q. 73, a. 8: “Sometimes, however, the harm is neither foreseen nor intended: and then if this harm is *connected with the sin accidentally*, it does not aggravate the sin directly; but, on account of his neglecting to consider the harm that might ensue, a man is deemed punishable for the evil results of his action if it be unlawful. If, on the other hand, the 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*: for instance, if a man is a notorious fornicator, the result is that many are scandalized; and although such was not his intention, nor was it perhaps foreseen by him, yet it aggravates his sin directly.” (c., emphasis added.)

¹³ *ST I-II*, q. 71, a. 5 & I-II, q. 72, a. 5. The second passage is quoted in my text above, the first passage is as follows: “That which is outside the intention (*praeter intentionem*) is said to be accidental (*Phys. ii*).” (c.)

¹⁴ *In II Phys.*, l. 8, n. 214. Passage quoted in my text above.