

Per Se and Praeter Intentionem in Aquinas

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Abstract: This essay studies Thomas's uses of the concepts of *per se* (in itself) and *praeter intentionem* (outside or besides the intention) in his moral teaching, in the hope of contributing to a lively area of contemporary debate. It notes how *praeter intentionem* is used regarding evil, unforeseen or casual facts, and foreseen aspects of an action that are not intended. In addition to primary texts, it surveys the way Thomas's teaching is understood by both classical and more contemporary commentators. On this basis, it draws conclusions regarding a proper interpretation. The essay concludes that, for Aquinas, the evil collateral effects that necessarily derive (*per se* according to the *genus naturae*) from a human act are determinative for the moral evaluation of the act only if they are disproportionate in relation to a virtuous *finis proximus*, or if the act were to have a vicious *finis proximus*.¹

The concepts of willed *per se* and done *praeter intentionem* are used with some frequency by Aquinas, because they allow him to distinguish those aspects of an act which happen unintentionally from those that are desired in a way that is specifically voluntary. The contemporary debate on these topics is considerable, including various important points, especially concerning the principle of double effect. The debate concerns, for example, the moral specification of actions in which various goods of the human person come into play. Because a consensus on how some of St. Thomas's statements should be interpreted is far from being reached, the evaluation of disputed questions reflects a similar lack of consensus.

1. The Important Texts

In his moral discourse, St. Thomas uses the expression *praeter intentionem* with basically three different meanings: to point out that moral evil is not willed *per se*, to refer to unforeseen things that can affect a given action, and finally to

1. This essay was originally the tenth chapter of my doctoral dissertation, *A especificação moral dos actos humanos segundo são Tomás de Aquino*, (Rome: Edizioni Università Santa Croce, 2008). I offer special thanks to Dr. Joseph T. Papa for his excellent translation, and to Dr. William F. Murphy, Jr., who arranged for the translation.

refer to those effects that are foreseen but are not the reason for the action and therefore cannot affect the moral specification of the act. In the present study, our principal interest is in his use of the term when treating of the moral specification of the human act.

It is important from the outset to recognize that Aquinas frequently uses the expression *per accidens* as a synonym for *praeter intentionem*; that is, he often uses the contraposition between what is willed *per se* and what happens *praeter intentionem* as synonymous with the contraposition between what is willed *per se* and what occurs *per accidens*.

a) *Evil Is "Praeter Intentionem"*

A first sense in which he uses *praeter intentionem* is to describe the fact that the will does not tend directly to the moral evil as such, which, in fact, has the character of privation.² Thus he says that "every agent tends to the good. Evil is not therefore *per se* the cause of anything, but only *per accidens*."³ That is, moral evil is always an apparent good. In fact:

What is desirable is the perfection and the end, but the principle of the action is the form. However, when to a perfection or a form is joined a privation of another perfection or form, it happens that the privation or the evil is desired *per accidens*, being the principle of some action, not as evil, but for the sake of the good joined to it.⁴

Obviously:

No one destroys himself tending directly to that destruction, but it is not impossible that certain harm that is beside the intention (*praeter intentionem*) of the agent follows from a given action, and in this way a given thing is the cause of his own destruction. A sick person who eats harmful things that lead to his death intends to delight in food, but incurs death in addition to his pleasure. Similarly with one

2. Cf. *Super De divinis nominibus*, cap. 4, lect. 16: "adulterium corrumpit virtutem in quantum caret ordine debito, quod pertinet ad rationem mali; sed secundum quod est delectabile, quod pertinet ad rationem boni, delectat et multa alia bona facit. Sic igitur apparet quod malum secundum seipsum est corruptivum, sed generativum nonnisi per accidens, scilicet propter bonum." (Adultery destroys virtue in so far it lacks the due order, which pertains to the aspect of evil, but by searching for what is pleasant, which pertains to the aspect of good, it also loves many other pleasant things. Thus, therefore, it appears that evil is to be considered in itself as corruptive, but generative only accidentally, as for the sake of good.)

3. *Contra gentiles*, lib. 3, cap. 10, n. 4: "omne agens intendit bonum. Malum igitur per se non est causa alicuius, sed solum per accidens."

4. *Compendium theologiae*, lib. 1, cap. 117: "Desiderabile enim est perfectio et finis, principium autem actionis est forma. Quia vero uni perfectioni vel formae adiungitur privatio alterius perfectionis aut formae, contingit per accidens quod privatio seu malum desideratur, et est alicuius actionis principium, non in quantum est malum, sed propter bonum adiunctum."

who sins: he intends to delight in sinful deeds, but to these the destruction of his soul follows *praeter intentionem*.⁵

By this, obviously, Aquinas does not mean to deny the responsibility of the acting person who, deliberately tending to a particular good in an action, at the same time wrongly acts against another one.⁶

But in what sense, then, do we say that someone wills what is evil? For example:

One who throws cargo overboard to save himself, does not want the dumping of the cargo, but salvation; the dumping of the cargo is not wanted for itself, rather salvation is. Similarly, one who does a disordered action to attain some sensible good, does not want the disorder or desire it for itself, but in view of that sensible good. In this way, therefore, the evil and the sin are called voluntary, just as with throwing cargo into the sea.⁷

Aquinas further specifies this when he says that:

There are two reasons why evil occurs *per accidens*. The first is that the agent acts *per accidens* with respect to everything that happens *praeter intentionem*, because every agent acts in view of the end and tends toward the good that is the end, and therefore no privation is willed for itself, but derives from an introduced form that is added to

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5. *Super sent.*, lib. 2, d. 35, q. 1, a. 5, ad 4: “nihil agit ad suam corruptionem intendens illam; sed non est inconveniens ut per actionem alicujus sequatur corruptio ejus praeter intentionem agentis: et sic per accidens aliquid suae corruptionis causa est, sicut patet in infirmo, qui comedit nociva, ex quibus mortem incurrit; intendit enim delectationem in cibo; sed praeter delectationem sequitur mors: et similiter est in eo qui peccat; intendit enim delectari in opere peccati; sed corruptio animae praeter intentionem ejus sequitur.”
6. Cf. *Contra gentiles*, lib. 3, cap. 12, n. 5: “malum incidit praeter intentionem agentis, quod semper intendit aliquod bonum, ad quod sequitur exclusio alterius boni, quod est ei oppositum.” (Evil starts *praeter intentionem* of the agent, which always intends something good, to which follows the exclusion of other goods which are in opposition to it.) Cf. also *Summa theologiae* I, q. 19, a. 9, c.: “fornicator intendit delectationem, cui coniungitur deformitas culpae. Malum autem quod coniungitur alicui bono, est privatio alterius boni. Nunquam igitur appeteretur malum, nec per accidens, nisi bonum cui coniungitur malum, magis appeteretur quam bonum quod privatur per malum.” (The fornicator has merely pleasure for his object, and the deformity of sin is only an accompaniment. Now the evil that accompanies one good, is the privation of another good. Never therefore would evil be sought after, not even accidentally, unless the good that accompanies the evil were more desired than the good of which the evil is the privation.)
7. *Contra gentiles*, lib. 3, cap. 5, n. 13: “qui proicit merces in mari causa salutis, non intendit projectionem mercium, sed salutem, projectionem autem vult non simpliciter, sed causa salutis. Similiter propter aliquod bonum sensibile consequendum aliquis vult facere inordinatam actionem, non intendens inordinationem, neque volens eam simpliciter, sed propter hoc. Et ideo hoc modo malitia et peccatum dicuntur esse voluntaria, sicut proiectio mercium in mari.”

it. Fire does not *desire* to deprive matter of the form of air, rather it introduces its own form; introducing its own form, however, it takes away the form of air. Similarly the sinner tends to what is pleasurable, or rather to the good of some of his parts, and not to the privation of grace. The second way in which it is said that the agent [causes evil] accidentally, is when he removes a restraint. In fact, what restrains the privation is a particular form or thing and, therefore, it is said that what removes that thing causes the privation. One who puts out a candle or takes it out of the house, is said to cause darkness. Thus one can say that all that upholds the restraint – all that is, or is a principle or derives from a principle – is understood as really constituting a particular thing, but not the evil, which is a kind of privation and does not designate a specific nature in a positive sense.⁸

If this is true, it can also be said that “in some sinners the aversion to God is *praeter intentionem*, because evil cannot be willed directly, but only good,”⁹ and moreover, “the evil is not only *praeter intentionem*, but also outside the course of the action, since movement [of the will] does not intrinsically result in evil.”¹⁰ With these statements it could seem that Aquinas absolves the moral subject of responsibility, but this is not so. To stress that moral evil is the privation of a due end, and thus cannot be wanted *per se* but only *praeter intentionem*, does not imply a claim that the evil present in disordered actions cannot be imputed to the moral agent. St. Thomas is well aware of this, and to make this fact clear he says that:

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8. *Super Sent.*, lib. 2, d. 1, q. 1, a. 1, ad 2: “malum non habet causam nisi per accidens dupliciter. Primo modo scilicet, secundum quod agens per accidens dicitur respectu ejus quod accidit praeter intentionem agentis, quia omne agens agit propter finem, et intendit bonum quod est finis, et nulla privatio est intenta, sed sequitur ex forma inducta cui adjungitur: ignis enim non intendit a materia privare formam aeris, sed inducere formam propriam; sed inducendo formam propriam, privat formam aeris; similiter peccator intendit dulcedinem, quae est bonum alicujus partis ejus, scilicet concupiscibilis, et non intendit privationem gratiae. Secundo, sicut dicitur agens per accidens, removens prohibens: prohibens enim privationem est forma vel res aliqua. Unde qui removet illam rem, dicitur causare privationem; sicut qui extinguit candelam vel exportat ex domo, dicitur causare tenebras. Quod ergo dicitur, quod omne quod est, vel est principium vel a principio, intelligendum est de illis quae sunt aliquid in re; sed malum est privatio quaedam, et non nominat naturam aliquam positive.”
9. *Ibid.*, d. 5, q. 1, a. 2, ad 5: “in quolibet peccatore aversio a Deo est praeter intentionem: quia malum non potest esse intentum, sed semper bonum”; cf. *Super De divinis nominibus*, cap. 4, lect. 14: “nullus facit illa quae facit, respiciens ad rationem mali, etsi aliquando id ad quod respicit sit malum, sicut aliquis facit aliquid ut fornicetur, non respiciendo ad fornicationem in quantum est mala, sed in quantum est delectabilis. Ex quo patet quod nullum existens desiderat malum nisi per accidens et quod omne existens desiderat bonum.” (No one does that which he does considering the aspect of evil, although sometimes toward what he considers to be evil, just as when someone fornicates he doesn’t do it inasmuch as it is evil but but inasmuch as it is pleasant. From this it is clear that no thing desires evil unless *per accidens* and that all things desire good.)
10. *De malo*, q. 1, a. 3, ad 14: “malum non solum est praeter intentionem, sed etiam praeter viam, quia motus per se non terminatur ad malum.”

In voluntary agents the intention is directed to a given particular good, if an action is to follow, since universal things do not move [to action] but only particulars, to which the act is directed. If therefore the good that is desired is accompanied always or frequently by a privation of a good conformable to reason, then the moral evil follows, always or frequently, and not by chance. This is illustrated by the fact that in one who desires a woman for pleasure – a pleasure to which is added the disorder of adultery – the evil of adultery does not follow by chance. Conversely, the evil that is caused does follow by chance if, to the object to which one tends, a given “sin” follows rarely, as when someone, shooting at a bird, hits a person.¹¹

Which is to say, we are culpable for the moral evil that is inherent, always or frequently, in the practical goods to which we direct our voluntary acts.

b) Unforeseen or Casual Facts Are “Praeter Intentionem”

A second, distinct sense in which Aquinas uses *praeter intentionem* is to refer to those unforeseen and chance facts that can affect a given human act. He says:

In intellectual agents, or those endowed with another [faculty of] estimation, the intention follows apprehension, in fact the intention tends to that which is apprehended as an end. If therefore one arrives at something the species of which he had not apprehended, this is outside his intention, as when someone, intending to eat honey, instead eats bile thinking it is honey, it is outside his intention. But every intellectual agent tends to a particular thing according as it has, for him, the character of a good... If, therefore, it is not good but evil, that would be beside the intention. Therefore the intellectual agent does not do evil except outside of his intention. And as to tend to a good is common to the intellectual agent and the natural agent, evil does not derive from the intention of any agent, but is outside the intention.¹²

11. *Contra gentiles*, lib. 3, cap. 5, n. 11: “In agentibus autem voluntariis intentio est ad bonum aliquod particulare, si debet sequi actio: nam universalia non movent, sed particularia, in quibus est actus. Si igitur illud bonum quod intenditur, habeat coniunctam privationem boni secundum rationem vel semper vel frequenter, sequitur malum morale non casualiter, sed vel semper vel frequenter: sicut patet in eo qui vult uti femina propter delectationem, cui delectationi adiuncta est inordinatio adulterii; unde malum adulterii non sequitur casualiter. Esset autem casuale malum si ad id quod intendit, sequeretur aliquod peccatum ut in paucioribus: sicut cum quis, proiciens ad avem, interficit hominem.”

12. *Ibid.*, cap. 4, n. 5: “In agentibus per intellectum et aestimationem quamcumque, intentio sequitur apprehensionem: in illud enim tendit intentio quod apprehenditur ut finis. Si igitur perveniatur ad aliquid quod non habet speciem apprehensam, erit praeter intentionem: sicut, si aliquis intendat comedere mel, et comedat fel credens illud esse mel, hoc erit praeter intentionem. Sed omne agens per intellectum tendit ad aliquid

In these cases the *praeter intentionem* result seems to be imputable exclusively to a failure of the cognitive dimension of the human act, and in this sense the expression “unforeseen consequence” applies well, in the proper sense of a result not foreseen and consequently not willed by the agent. Thus it can be said that “what derives from the action of an agent that is beside his intention (*praeter intentionem*) is said to happen by chance or accidentally,”¹³ and therefore “what in fact derives from the action, is different from what was intentionally desired by the agent; [in these cases] it is evident that [that result] is outside the intention” of the agent.¹⁴

As an example, it can be said that “what is *praeter intentionem* is accidental. Thus one who, wanting to choose honey, in fact chooses bile *praeter intentionem*, obviously *per se* chooses honey but accidentally bile,”¹⁵ and thus “what is caused outside the intention (*praeter intentionem*) of the agent does not have a cause *per se* but happens accidentally, as when someone finds a treasure as he plants a field.”¹⁶ The will, as we have seen, follows the object proposed to it by the reason, and thus:

The will sometimes causes something *per se* and sometimes *per accidens*. The will certainly causes *per se* when it acts *per intentionem* to produce such an effect (e.g., if one seeking to find treasure, should find some in the course of digging). The will causes *per accidens*, when the effect is *praeter intentionem* (e.g., if one wanting to dig a grave should find treasure).¹⁷

It is thus clear that “what derives from the action but is different from that to which the agent tended, clearly happens *praeter intentionem*.”¹⁸ In summary, regarding this second sense of *praeter intentionem*, it can be said that:

secundum quod accipit illud sub ratione boni, sicut ex superioribus patet. Si ergo illud non sit bonum, sed malum, hoc erit praeter intentionem. Agens igitur per intellectum non operatur malum nisi praeter intentionem. Cum igitur tendere ad bonum sit commune agenti per intellectum et per naturam, malum non consequitur ex intentione alicuius agentis nisi praeter intentionem.”

13. Ibid., cap. 3, n. 9: “Quod provenit ex alicuius agentis actione praeter intentionem ipsius, dicitur a casu vel fortuna accidere.”
14. Ibid., cap. 4, n. 2: “Quod enim ex actione consequitur diversum ab eo quod erat intentum ab agente, manifestum est praeter intentionem accidere.”
15. *Sententia Ethic.*, lib. 7, lect. 9, n. 4: “Illud autem quod est praeter intentionem, est per accidens. Unde ille qui intendit eligere mel et eligit fel praeter intentionem, per se quidem eligit mel, sed per accidens fel.”
16. *Contra gentiles*, lib. 2, cap. 41, n. 8: “educitur praeter intentionem agentis, non habet causam per se, sed incidit per accidens: sicut cum quis invenit thesaurum fodiens ad plantandum.”
17. *De malo*, q. 2, a. 1, c.: “voluntas est causa alicuius quandoque quidem per se, quandoque autem per accidens; per se quidem, sicut quando per intentionem agit ad talem effectum, puta si aliquis volens invenire thesaurum, fodiens inveniatur; per accidens autem, sicut quando praeter intentionem, puta si aliquis volens fodere sepulcrum, fodiendo inveniatur thesaurum.”
18. *Contra gentiles*, lib. 3, cap. 4, n. 2: “Quod enim ex actione consequitur diversum ab eo quod erat intentum ab agente, manifestum est praeter intentionem accidere.”

In intellectual agents, or those that follow some sort of estimation, intention follows apprehension, since the intention tends to what has been apprehended as an end. If in fact something is arrived at that had not been specifically apprehended, that thing is done *praeter intentionem*, as when someone, wanting to eat honey, eats bile thinking it is honey, he does so *praeter intentionem*.¹⁹

It is in this sense that it is said that “accidental things are *praeter intentionem*.”²⁰

c) *Foreseen Aspects of the Action That Are Not Intended Are “Praeter Intentionem”*

Finally, there is a third sense in which St. Thomas uses the expression *praeter intentionem*; that is, when he considers the elements that determine the moral species of the human act. In article 4 of question 64 of the *Secunda secundae*, he treats of the question of the morality of legitimate defense and its moral specification. From this passage, the moral tradition later formulated the doctrine of an action with double effect. Here is St. Thomas’s famous response:

I answer that, 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. 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, *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, 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

19. *Ibid.*, n. 5: “In agentibus per intellectum et aestimationem quamcumque, intentio sequitur apprehensionem: in illud enim tendit intentio quod apprehenditur ut finis. Si igitur perveniatur ad aliquid quod non habet speciem apprehensam, erit praeter intentionem: sicut, si aliquis intendat comedere mel, et comedat fel credens illud esse mel, hoc erit praeter intentionem.”

20. *Ibid.*, cap. 92, n. 10: “fortuita sint praeter intentionem.”

soldier fighting against the foe, and in that of the minister of the judge struggling with robbers, although even these sin if they be moved by private animosity.²¹

This is a particularly rich and illuminating passage, though its interpretation, even among contemporary authors, is far from agreed upon. At this point it is important only to highlight the principal ideas that Aquinas defends most explicitly. Undoubtedly the most important of these is that the act does not receive its moral species from all the foreseen effects, but from what is intentionally willed.²² Aquinas rejects what would today be the proportionalist proposal when he says that it is illicit to choose the death of another person with the end (*finis operantis*) of defending one's own life, but at the same time it is not immoral that an act in defense of one's own life could *praeter intentionem* cause the death of the aggressor. This is possible because *in this case* the act of causing the death of an aggressor is proportionate to being animated by choices (*finis proximus*) that are specifically different from the moral perspective.²³

Elsewhere he says:

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21. *Summa theologiae*, II-II, q. 64, a. 7, c.: "Respondeo dicendum quod nihil prohibet unius actus esse duos effectus, quorum alter solum sit in intentione, alius vero sit praeter intentionem. Morales autem actus recipiunt speciem secundum id quod intenditur, non autem ab eo quod est praeter intentionem, cum sit per accidens, ut ex supradictis patet. Ex actu igitur alicuius seipsum defendentis duplex effectus sequi potest, unus quidem conservatio propriae vitae; alius autem occisio invadentis. Actus igitur huiusmodi ex hoc quod intenditur conservatio propriae vitae, non habet rationem illiciti, cum hoc sit cuilibet naturale quod se conservet in esse quantum potest. Potest tamen aliquis actus ex bona intentione proveniens illicitus reddi si non sit proportionatus fini. Et ideo si aliquis ad defendendum propriam vitam utatur maiori violentia quam oporteat, erit illicitum. Si vero moderate violentiam repellat, erit licita defensio, nam secundum iura, *vim vi repellere licet cum moderamine inculpatae tutelae*. Nec est necessarium ad salutem ut homo actum moderatae tutelae praetermittat ad evitandum occisionem alterius, quia plus tenetur homo vitae suae providere quam vitae alienae. Sed quia occidere hominem non licet nisi publica auctoritate propter bonum commune, ut ex supradictis patet; illicitum est quod homo intendat occidere hominem ut seipsum defendat, nisi ei qui habet publicam auctoritatem, qui, intendens hominem occidere ad sui defensionem, refert hoc ad publicum bonum, ut patet in milite pugnante contra hostes, et in ministro iudicis pugnante contra latrones. Quamvis et isti etiam peccent si privata libidine moveantur." Emphasis added.
22. Cf. *Ibid.*, ad 3: "irregularitas consequitur actum homicidii etiam si sit absque peccato, ut patet in iudice qui iuste aliquem condemnat ad mortem. Et propter hoc clericus, etiam si se defendendo interficiat aliquem, irregularis est, quamvis non intendat occidere, sed seipsum defendere." (Irregularity results from the act though sinless of taking a man's life, as appears in the case of a judge who justly condemns a man to death. For this reason a cleric, though he kill a man in self-defense, is irregular, albeit he intends not to kill him, but to defend himself.)
23. Cf. *Ibid.*, ad 4: "actus fornicationis vel adulterii non ordinatur ad conservationem propriae vitae ex necessitate, sicut actus ex quo quandoque sequitur homicidium." (The 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.)

It is possible, however, that an act which is one in respect of its natural species, be ordained to several ends of the will: thus this act “to kill a man,” which is but one act in respect of its natural species, can be ordained, as to an end, to the safeguarding of justice, and to the satisfying of anger: the result being that there would be several acts in different species of morality: since in one way there will be an act of virtue, in another, an act of vice. For a movement does not receive its species from that which is its terminus accidentally, but only from that which is its *per se* terminus. Now moral ends are accidental to a natural thing, and conversely the relation to a natural end is accidental to morality. Consequently there is no reason why acts which are the same considered in their natural species, should not be diverse, considered in their moral species, and conversely.²⁴

Indeed “human acts and movements are said to be direct when they are according to one’s intention... The accidental in human acts is that which occurs beside the intention,”²⁵ and “what is accidental never constitutes a species; and what is outside the agent’s intention (*praeter intentionem*) is accidental.”²⁶

It thus becomes clear that “in the moral, as in the physical order, the species is not constituted by that which is accidental. Now, in the moral order, the essential is that which is intended, and that which results beside the intention (*praeter intentionem*) is, as it were, accidental,”²⁷ and “a species is not constituted by that which is accidental.”²⁸ Thus “morals take their species not from things that occur accidentally and beside the intention, but from that which is directly intended.”²⁹ Aquinas emphasizes the same idea regarding habits when he says “a habit is specified by its object in its direct and formal acceptance, not in its material and indi-

24. Ibid., I-II, q. 1, a. 3, ad 3: “Possibile tamen est quod unus actus secundum speciem naturae, ordinetur ad diversos fines voluntatis, sicut hoc ipsum quod est occidere hominem, quod est idem secundum speciem naturae, potest ordinari sicut in finem ad conservationem iustitiae, et ad satisfaciendum irae. Et ex hoc erunt diversi actus secundum speciem moris, quia uno modo erit actus virtutis, alio modo erit actus vitii. Non enim motus recipit speciem ab eo quod est terminus per accidens, sed solum ab eo quod est terminus per se. Fines autem morales accidunt rei naturali; et e converso ratio naturalis finis accidit morali. Et ideo nihil prohibet actus qui sunt iidem secundum speciem naturae, esse diversos secundum speciem moris, et e converso.”

25. Ibid., II-II, q. 37, a. 1, c.: “Per se quidem in humanis actibus et motibus dicitur esse id quod est secundum intentionem... Per accidens autem in humanis actibus consideratur ex hoc quod aliquid est praeter intentionem.”

26. Ibid., I-II, q. 72, a. 5, c.: “Nunquam enim id quod est per accidens, constituit speciem. Id autem quod est praeter intentionem agentis, est per accidens.”

27. Ibid., II-II, q. 39, a. 1, c.: “sicut enim in rebus naturalibus id quod est per accidens non constituit speciem, ita etiam nec in rebus moralibus. In quibus id quod est intentum est per se, quod autem sequitur praeter intentionem est quasi per accidens.”

28. Ibid., q. 43, a. 3, c.: “quod est per accidens non constituit speciem.”

29. Ibid., q. 150, a. 2, c.: “moralia recipiunt speciem non ab his quae per accidens eveniunt praeter intentionem, sed ab eo quod est per se intentum.”

rect acceptance,³⁰ and thus “the habits of virtue and vice take their species from what is directly intended, and not from that which is accidental and beside the intention.”³¹ In fact, “what is *praeter intentionem* is accidental, and what is extrinsic and accidental does not give the species, but the species of the habit derives from the object to which it tends *per se*.”³²

It must be borne in mind that “to will evil things is an evil, but to understand evil things is not an evil.”³³ It is only by the will that the human person orders himself, or not, to his due end (*debitum*). To know of evil does not imply to desire evil. Accordingly, it must be admitted that it is possible to will a good thing that could indirectly cause a foreseen undesired effect, but according to Aquinas “nothing accidental constitutes a species, but only that which is essential,”³⁴ and therefore “everything that results in addition to what the [agent] aims to bring about (*praeter intentionem*) is an accidental, not a *per se* effect.”³⁵ Nevertheless:

When something added distinguishes *per se* the thing to which it is added, it constitutes a species of the latter, and when it is related *per accidens* to the thing to which it is added, it indeed has its own species. But this species is not a species of that to which it is added, since what comes *per accidens* to something does not become *per se* one with that thing...³⁶

Thus:

It is not necessary that everything that is a circumstance of a more general act constitute a species of acts; only something *per se* belonging to the act does so. And I have already said that something *per se* belongs to moral acts insofar as it is related to reason as concordant or discordant. Therefore, if a circumstance added to an act introduces no special repugnance to reason, it does not specify the act.³⁷

30. Ibid., q. 59, a. 2, ad 1: “obiectum per se et formaliter acceptum specificat habitum, non autem prout accipitur materialiter et per accidens.”

31. Ibid., q. 109, a. 2, ad 2: “habitus virtutum et vitiorum sortiuntur speciem ex eo quod est per se intentum, non autem ab eo quod est per accidens et praeter intentionem.”

32. *Sententia Ethic.*, lib. 2, lect. 7, n. 9: “Quod autem est praeter intentionem est per accidens: id autem quod est extrinsecum et per accidens non constituit speciem, sed species habitus sumitur secundum obiectum in quod per se tendit.”

33. *Super Sent.*, lib. 2, d. 39, q. 1, a. 2, c.: “velle enim mala, malum est; sed intelligere mala, non est malum.”

34. *Summa theologiae*, I-II, q. 18, a. 5, c.: “nihil quod est per accidens, constituit speciem, sed solum quod est per se.”

35. *De malo*, q. 1, a. 3, c.: “quod enim provenit praeter intentionem agentis, non est effectus per se, sed per accidens.”

36. Ibid., q. 2, a. 6, c.: “quia cum id quod additur, est per se divisivum eius cui additur, facit speciem eius; cum autem per accidens se habet ad ipsum, habet quidem speciem suam, quae tamen non est species eius cui additur, quia quod advenit per accidens, non fit unum per se cum eo cui advenit.”

37. Ibid.: “non oportet quod omne quod est circumstantia communioris actus, constituat speciem aliquam in actibus, sed illud tantum quod per se pertinet ad actum. Iam autem

Summarizing, “it is evident that a thing derives its species from that which is essential (*per se*) and not from that which is accidental: because what is accidental is outside the specific nature.”³⁸

In addition to this collection of more theoretical statements, there are also examples by which St. Thomas illustrates more clearly the implications of his positions. In question 9 of the *Secunda secundae*, he addresses the problem of knowing whether the commission of acts of injustice is proper to the unjust, or not necessarily. His response:

I answer that, even as the object of justice is something equal in external things, so too the object of injustice is something unequal, through more or less being assigned to some person than is due to him. To this object the habit of injustice is compared by means of its proper act which is called an injustice. Accordingly it may happen in two ways that a man who does an unjust thing, is not unjust. First, on account of a lack of correspondence between the operation and its proper object. For the operation takes its species and name from its direct (*per se*) and not from its indirect object (*per accidens*), and in things directed to an end the direct is that which is intended, and the indirect is what is beside the intention (*praeter intentionem*). Hence if a man do that which is unjust, without intending to do an unjust thing, for instance if he do it through ignorance, being unaware that it is unjust, properly speaking he does an unjust thing, not directly, but only indirectly, and, as it were, doing materially that which is unjust: hence such an operation is not called an injustice. Secondly, this may happen on account of a lack of proportion between the operation and the habit. For an injustice may sometimes arise from a passion, for instance, anger or desire, and sometimes from choice, for instance when the injustice itself is the direct object of one’s complacency. In the latter case properly speaking it arises from a habit, because whenever a man has a habit, whatever befits that habit is, of itself, pleasant to him. Accordingly, to do what is unjust intentionally and by choice is proper to the unjust man, in which sense the unjust man is one who has the habit of injustice: but a man may do what is unjust, unintentionally or through passion, without having the habit of injustice.³⁹

dictum est, quod ad actum moralem aliquid per se pertinet, secundum quod comparatur ad rationem ut conveniens et repugnans. Si ergo circumstantia addita nullam specialem repugnantiam ad rationem importet, non dat speciem actui.”

38. *Summa theologiae*, II-II, q. 72, a. 1, c.: “Manifestum est autem quod unumquodque, consequitur speciem secundum illud quod est per se, non autem secundum id quod est per accidens, quia ea quae sunt per accidens, sunt extra rationem speciei.”

39. *Ibid.*, II-II, q. 59, a. 2, c.: “Respondeo dicendum quod sicut obiectum iustitiae est aliquid aequale in rebus exterioribus, ita etiam obiectum iniustitiae est aliquid inaequale, prout scilicet alicui attribuitur plus vel minus quam sibi competat. Ad hoc autem obiectum comparatur habitus iniustitiae mediante proprio actu, qui vocatur iniustificatio. Potest ergo contingere quod qui facit iniustum non est iniustus, dupliciter. Uno modo, propter

Regarding the sin of omission, Aquinas says:

For the omission of a duty to be a sin, it is required that a voluntary act cause the omission. But the will indeed sometimes causes something *per se* and sometimes *per accidens*. The will causes *per se* when it intentionally acts to produce such an effect (e.g., if one seeking to find treasure, should find some in the course of digging). The will causes *per accidens* when the effect is outside one's intention (*praeter intentionem*) (e.g., if one wanting to dig a grave should find treasure). Therefore, a voluntary act is sometimes the *per se* cause of omitting a duty but not in such a way that the will is directly borne to the omission... Rather, the will is indirectly borne to something positive when one foresees the resulting omission. For example, one wills to play games, knowing that doing so means not going to church... A voluntary act is sometimes *per accidens* the cause of omitting a duty, as when a person occupied in some activity does not recall something that the person is obliged to do.⁴⁰

These examples would seem to refer to cases in which the omission is morally imputable, but Aquinas also says that "if we were to grant that a particular act could

defectum comparationis operationis ad proprium obiectum, quae quidem recipit speciem et nomen a per se obiecto, non autem ab obiecto per accidens. In his autem quae sunt propter finem, per se dicitur aliquid quod est intentum, per accidens autem quod est praeter intentionem. Et ideo si aliquis faciat aliquid quod est iniustum non intendens iniustum facere, puta cum hoc facit per ignorantiam, non existimans se iniustum facere; tunc non facit iniustum per se et formaliter loquendo, sed solum per accidens, et quasi materialiter faciens id quod est iniustum. Et talis operatio non denominatur iniustificatio. Alio modo potest contingere propter defectum comparationis ipsius operationis ad habitum. Potest enim iniustificatio procedere quandoque quidem ex aliqua passione, puta irae vel concupiscentiae, quandoque autem ex electione, quando scilicet ipsa iniustificatio per se placet; et tunc proprie procedit ab habitu, quia unicuique habenti aliquem habitum est secundum se acceptum quod convenit illi habitui. Facere ergo iniustum ex intentione et electione est proprium iniusti, secundum quod iniustus dicitur qui habet iniustitiae habitum. Sed facere iniustum praeter intentionem, vel ex passione, potest aliquis absque habitu iniustitiae."

40. *De malo*, q. 2, a. 1, c.: "Ad hoc ergo quod omissio sit peccatum, requiritur quod omissio causetur ex aliquo actu voluntario. Sed voluntas est causa alicuius quandoque quidem per se, quandoque autem per accidens; per se quidem, sicut quando per intentionem agit ad talem effectum, puta si aliquis volens invenire thesaurum, fodiens inveniat; per accidens autem, sicut quando praeter intentionem, puta si aliquis volens fodere sepulcrum, fodiendo inveniat thesaurum. Sic ergo actus voluntarius quandoque est per se causa omissionis, non tamen ita quod voluntas directe feratur in omissionem, quia non ens et malum est praeter intentionem, et voluntatem, ut Dionysius dicit IV capite de Divin. Nomin., voluntatis autem obiectum est ens et bonum; sed indirecte fertur in aliquid positivum cum praevisione omissionis consequentis, sicut cum aliquis vult ludere, sciens quod ad hoc concomitatur non ire ad Ecclesiam; sicut et in transgressionibus dicimus, quod fur vult aurum non refugiens iniustitiae deformitatem. Quandoque vero actus voluntarius est causa per accidens omissionis; sicut cum alicui occupato circa aliquem actum non venit in mentem id quod facere tenetur."

not be an evil deed, it would nevertheless not be improper for it to be *per accidens* the cause of a sinful omission, since good can cause evil *per accidens*.⁴¹ Which is to say, in doing a good action one could *praeter intentionem* cause the omission of another.

Elsewhere St. Thomas says that:

Properly speaking, a person commits a sin when he acts intentionally, and not when he realizes the sin *praeter intentionem*, as is evident in accidental homicide; and therefore a person commits scandal, properly speaking, when he intentionally tries to ruin his neighbor.⁴²

Thus:

When someone says or does something wrong with the intention of causing his neighbor's ruin, he commits a special sin of scandal, but if that happens beside his intention (*praeter intentionem*), it is not a special sin of active scandal, but a particular circumstance of the sin.⁴³

In conclusion, he says that "moral acts take their species from the end. And when a thing is done contrary to a precept, not in contempt of the precept, but with some other purpose, it is not a sin of disobedience except materially, and belongs formally to another species of sin."⁴⁴

As we have already seen:

The habits of virtue and vice take their species from what is directly intended, and not from that which is accidental and beside the intention. Now that a man states that which concerns himself, belongs to the virtue of truth, as something directly intended: although it may belong to other virtues consequently and beside his principal intention. For

41. Ibid., ad s.c. 7: "Si tamen daretur quod aliquis actus non posset male fieri, non esset inconueniens, si esset causa per accidens omissionis; quia bonum potest esse per accidens causa mali."

42. *Super Sent.*, lib. 4, d. 38, q. 2, a. 1, ad 2: "tunc aliquis per se loquendo peccatum aliquod facit, quando ex intentione operatur, et non quando praeter intentionem ejus peccatum accidit, sicut patet in homicidio casuali; et ideo tunc proprie aliquis scandalum facit quando ruinam proximi procurare intendit."

43. Ibid., a. 2, qc. 2, c.: "quando aliquis dictum vel factum minus rectum facit intendens occasionem ruinae proximo praestare, speciale peccatum scandalizando committit. Si autem praeter intentionem suam accidat, non erit scandalum activum speciale peccatum; tamen erit circumstantia quaedam peccati."

44. *Summa theologiae*, II-II, q. 105, a. 1, ad 1: "ex fine morales actus speciem habent. Cum autem facit aliquid contra praeceptum non propter praecepti contemptum, sed propter aliquid aliud, est inobedientia materialiter tantum, sed pertinet formaliter ad aliam speciem peccati."

the brave man intends to act bravely: and that he shows his fortitude by acting bravely is a consequence beside his principal intention.⁴⁵

Similarly:

If one says what is false, thinking it to be true, it is false materially, but not formally, because the falseness is beside the intention of the speaker so that it is not a perfect lie, since what is beside the speaker's intention is accidental for which reason it cannot be a specific difference. If, on the other hand, one utters falsehood formally, through having the will to deceive, even if what one says be true, yet inasmuch as this is a voluntary and moral act, it contains falseness essentially and truth accidentally, and attains the specific nature of a lie.⁴⁶

2. The Interpretation of Thomas's Words

a) *The Classical Commentators*

Commenting on question 64, article 7, Cardinal Cajetan says that in the case of legitimate defense "the private individual does not intentionally will to kill to save himself, but he intentionally wills to save himself, not desisting from his defense if the death of the other necessarily follows from that defense. In this case he kills only accidentally."⁴⁷ In fact:

To cause another's death could be related in two ways to the preservation of one's own life: first, as a means in view of the end; second, as a necessary consequence of the end. The text says that it is very important to know which of these is the case, because either the end

45. Ibid., q. 109, a. 2, ad 2: "habitus virtutum et vitiorum sortiuntur speciem ex eo quod est per se intentum, non autem ab eo quod est per accidens et praeter intentionem. Quod autem aliquis manifestat quod circa ipsum est, pertinet quidem ad virtutem veritatis sicut per se intentum, ad alias autem virtutes potest pertinere ex consequenti, praeter principalem intentionem. Fortis enim intendit fortiter agere, quod autem fortiter agendo aliquis manifestet fortitudinem quam habet, hoc consequitur praeter eius principalem intentionem."

46. Ibid., q. 110, a. 1, c.: "si quis falsum enuntiet credens illud verum esse, est quidem falsum materialiter, sed non formaliter, quia falsitas est praeter intentionem dicentis. Unde non habet perfectam rationem mendacii, id enim quod praeter intentionem est, per accidens est; unde non potest esse specifica differentia. Si vero formaliter aliquis falsum dicat, habens voluntatem falsum dicendi, licet sit verum id quod dicitur, in quantum tamen huiusmodi actus est voluntarius et moralis, habet per se falsitatem, et per accidens veritatem. Unde ad speciem mendacii pertingit."

47. Thomas Cajetan, *Comentário à "Summa theologiae,"* II-II, q. 64, a. 7, in *Sancti Thomae Aquinatis Opera Omnia*, Leonine ed. (Rome, 1882-), Vol. 9, 74: "persona autem privata non intendit occidere ut seipsum salvet, sed intendit salvare seipsum, non destitutus a sui defensione etiam si alterius mortem ex sua defensione oporteat sequi. Et sic iste non occidit nisi per accidens."

or the means in view of the end falls under the intention – as one sees with a physician, who wills health by means of either a treatment or diet. But what necessarily follows from the end does not fall under the intention, but arises and exists *praeter intentionem*, as is clear when the weakness of convalescence follows on treatment.⁴⁸

With these statements Cajetan, in continuity with Aquinas, distinguishes between two different behaviors, morally speaking: that in which someone intentionally wills to cause the death of an aggressor as a means of saving himself, and that in which someone intentionally wills to defend himself from the attack of an unjust aggressor, and as a result causes his death *praeter intentionem*. It is interesting to note that for Cajetan, the death *praeter intentionem* in the second case could be accompanied by an awareness on the part of the acting person of its necessary connection to his defensive act. In other words, the agent knows well that the death of the aggressor will follow on his defensive act, but he does not will it intentionally.

The Dominican cardinal makes some analogous considerations regarding the defense of one's material goods; for example:

When it happens that the intruder openly takes my things, if I can recover the things being stolen through judicial means, I cannot, defending my things, kill the thief. If I cannot recover my things that are being stolen by judicial means, then I can licitly cause death defending my things. And no other motive may be at work except that it is licit to defend one's possessions.⁴⁹

That is, the will that animates such an act must be only a defensive will. Regarding other goods of the person:

It is licit to cause death in repelling the violence of rape, of adultery, of sodomy and the like. Because when one can escape in no other way than by using force against the person, one can licitly defend the freedom of his bodily members by causing death. This defense is as much more licit than the defense of external things as the things being

48. Ibid.: “dupliciter potest referri occisio alterius ad conservationem vitae propriae: primo, ut medium ad finem; secundo, ut consequens ex necessitate finis. Et ut in littera dicitur, multum interest altero modo se habere. Nam et finis et medium ad finem cadunt sub intentione: ut patet in medico, qui intendit sanitatem per potionem vel dietam. Id autem quod consequitur ex necessitate finis non cadit sub intentione, sed praeter intentionem existens emergit: ut patet de debilitatione aegroti quae sequitur ex medicina sanante.”

49. Ibid., 75: “quando accidit quod inuasor auferre nititur res meas, si ergo possum res meas etiam si auferentur, recuperare per viam iudicis, non possum, defendendo res, occidere raptorem. Si autem non possem per viam iudicis recuperare res meas si auferuntur, possum, defendendo res meas, licite occidere. Nec alia affertur ratio nisi quia defensio rerum est licita.”

attacked are more important, and the danger of consent to such things is as much nearer as is their contrariness to the good of virtue.⁵⁰

According to Francisco Suárez “only what is directly and perfectly voluntary is called murder.”⁵¹ Therefore:

A homicide that results from an action that was not conceived of as a murder, nor willed as such, cannot be called *per se* directly voluntary, because the will did not lead to that degree directly and *per se* to the homicide itself, and hence such a homicide is not voluntary in an absolute sense. It is confirmed, on the other hand, that it is voluntary only in its cause, it is only indirectly voluntary, even if the effect follows necessarily (*per se*) from that cause: in that case it is actually contrary to what is voluntary to the highest degree; but on the other hand if the effect follows merely accidentally, only with difficulty could it be voluntary... But in this case the homicide is voluntary only in its cause, i.e., in the aggression, because in itself it was not desired.⁵²

It is interesting to note that Suárez shows well that a homicide *praeter intentionem*, even if it is not willed *per se*, is voluntary in its cause which is the defensive act, given that the subject is aware of the causal link between the two. Here he makes some important distinctions:

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50. Ibid.: “liceat, repellendo violentiam stupri, adulterii, sodomiae et huiusmodi, occidere. Quoniam quando non potes aliter evadere quae tunc ad hoc infertur actualiter vim, licite potest tuendo suorum membrorum libertatem, occidere. Et tanto plus licet in defensione hac quam in defensione in rerum exteriorum, quanto vis haec magis aestimatis rebus infertur, et periculum consensus magnum ex hoc imminet, qui virtutis bono contrariatur.”
51. Francisco Suárez, *Censuris in communi in Opera omnia* (Paris: Vivès, 1867), vol. 23, 426: “solum dicitur homicidium voluntarium, quod directe ac perfecte voluntarium est.” Suárez’s speech often seems to reflect a different vocabulary regarding intention, which has become common in some later authors, mainly from the Jesuit tradition. It reflects some innovations beyond Thomas’s language, a neglect of the *finis proximus* and this talk of being voluntary (“directly and perfectly,” “indirectly,” etc.), and seeing these in terms of “cause” (voluntary in its cause). Suárez seems to be introducing language that for him can generally be aligned with that of Aquinas (except, arguably, “indirectly voluntary”) but for his followers becomes a morality of caused effects.
52. Ibid., 426: “homicidium quod sequitur ex actione quae non fuit cognita ut occisiva, neque ut talis fuit volita, non posse dici per se directe voluntarium, quia voluntas tunc non fertur directe et per se in ipsum homicidium; ergo tale homicidium non erit simpliciter voluntarium. Et confirmatur, nam id, quod est voluntarium tantum in causa, est solum indirecte voluntarium, etiamsi effectus sequatur per se ex tali causa; imo tunc maxime intercedit hoc voluntarium; nam, si effectus sequatur mere per accidens, vix potest esse voluntarius, ut sentit D. Thom. supra, et I-II, q. 20, a. 5. Sed in eo casu homicidium tantum est voluntarium in causa, scilicet, in percussione, cum in se non fuerit intentum.”

There are two ways of killing, one unjust and the other just, and the first can be voluntary and direct, or only indirect. That which is unjust and proceeds directly from the will is given the name voluntary homicide; but what is not voluntary is called accidental, and it has a certain quality of homicide if it is in some way indirectly voluntary; by the same logic, if it happens to be completely involuntary, it is simply said that the homicide of the person was merely accidental, in contrast with homicide in the absolute sense, which normally denotes the sinful act. In fact, the voluntary homicide of a person can be just for two reasons, viz., for reasons of defense, and by public authority and concern.⁵³

From this Suarez derives four ways of causing the death of a person, that is, of material homicide: “voluntarily, accidentally, defensively, [and] punitively.”⁵⁴ Thus “a homicide done with the will to kill is called a homicide done on purpose,”⁵⁵ and “when someone directly wounds another with the will to attack or wound, but with the intention not to kill, even if death results, strictly speaking that is not a voluntary homicide,”⁵⁶ since “in this matter, only a homicide which is done on purpose is called voluntary homicide in an absolute sense.”⁵⁷ With these ideas in mind, Suárez says that “it is licit to repel force with force and defend oneself even to the point of the death of the aggressor, if the legitimate defense be done with moderation.”⁵⁸

Can someone act in legitimate defense of his neighbor? Suárez claims that “what can be done to defend oneself, can also be done for another,”⁵⁹ and if the death of the aggressor results from the act, it must be said that “that homicide is not

53. Ibid., 425: “Duplex est hominis occisio, una injusta, altera justa, et prior esse potest voluntaria vel directe, vel indirecte tantum. Illa ergo quae et injusta, et directa voluntate fit, retinuit nomen voluntarii homicidii; quae autem non ita voluntaria est dicitur casualis, habetque aliquam rationem homicidii, si indirecte saltem voluntaria sit; quod si contingat esse omnino involuntariam, dicitur simplex occisio hominis mere casualis, nam homicidium absolute, peccaminosum actum significare solet. Voluntaria vero hominis occisio duplici titulo potest esse justa, scilicet, ratione defensionis, aut publicae potestatis et causae.”

54. Ibid.: “Unde quadruplex consurgit hominis occisio seu materiale homicidium, scilicet, voluntarium, casuale, defensivum, punitivum.”

55. Ibid., 426: “dicitur autem homicidium factum ex proposito, quod fit ex voluntate occidendi.”

56. Ibid., 427: “quando aliquis vulnerat alium directa voluntate percutiendi seu vulnerandi, tamen cum proposito non occidendi, quamvis mors sequatur, illud non esse homicidium voluntarium in rigore.”

57. Ibid., 426: “absolute illud solum dicendum esse in praesenti materia homicidium voluntarium, quod ex proposito occidendi fit.”

58. Ibid., 471: “licitum esse vim vi repellere et se defendere etiam usque ad mortem aggressoris, dummodo fiat *cum moderatione inculpatae tutelae*.”

59. Ibid., 482: “qui potest se defendere per seipsum, potest etiam per alium.”

culpable, as is supposed, nor is it morally voluntary... because it is not intentionally willed, but follows accidentally on the act of defense"⁶⁰ of the neighbor.

For St. Alphonsus Liguori "it is licit to kill an unjust aggressor for one's own defense, if the defense be done with due moderation, that is, if one does not cause the neighbor a greater damage than what is necessary to avoid harm to oneself. This is permitted by all divine and human law, as St. Thomas, the Roman Catechism and all the doctors say."⁶¹ At the same time, the great Neopolitan recognizes that:

A certain author, a friend of rigorism, says that St. Augustine and St. Thomas consider it illicit to kill a man, even when defending one's own life, but he is completely mistaken, because St. Thomas, in the cited passage [II-II, q. 64, a. 7], expressly teaches various times that this is licit, if one does not intentionally will the homicide but only one's own defense.⁶²

For St. Alphonsus, then, a defensive act that does not intentionally will the death of the aggressor, but only one's own defense, is licit. Along these same lines, Alphonsus interprets Aquinas:

The holy Doctor in II-II, q. 64, a. 7, writes that a given act can have various effects, one willed intentionally and the other *praeter intentionem*. From the act of self-defense can follow two effects, the preservation of one's own life, and the death of the aggressor; in this case St. Thomas says that an act which is done in the defense of one's life is certainly licit, but it could become illicit if it becomes disproportionate relative to the end of defending one's life, to the degree that one uses in his defense more force than that which the defensive act requires.⁶³

60. Ibid., 481: "tale homicidio [defendendum proximum] nec culpabile est, ut supponitur, nec moraliter voluntarium, ex duplici capite. Primo, quia non est intentum, sed per accidens sequutum ex tali defensione."

61. Alphonsus Maria de Liguori, *Homo apostolicus*, in *Opere morali di S. Alfonso Maria di Liguori* (Turin: Marietti, 1880), Vol. 3, 163: "ob propriam defensionem licet iniustum aggressorem interficere, modo fiat cum moderazione inculpatae tutelae, nempe si non inferatur proximo damnum maius illo, quod necesse est ad vitandum proprium. Hoc omni lege humana et divina permissum est, ut dicunt s. Thomas, Catechism. Roman. et dd. omnes."

62. Ibid., 163: "Quidam auctor rigorismi amicus asserit, s. Augustinum, et s. Thomam tenuisse non licere hominem occidere, neque ob defensionem propriae vitae; sed prorsus errat, nam s. Thomas *loco citato* [II-II, q. 64, a. 7] pluries expresse docet id esse licitum, dummodo (ait) non intendatur homicidium; sed tantum propria defensio."

63. Ibid., 163-64: "S. Doctor II-II, q. 64, a. 7, scribit, aliquem actum plures effectus habere posse, unum in intentione, alium praeter intentionem. Ex actu autem propriae defensionis duo possunt effectus sequi, conservatio propriae vitae, et occisio aggressoris: hinc autem s. Thomas dicit quod actus, qui fit ad vitam servandam, licitus quidem est; sed potest illicitus reddi, si improporionatus sit ad finem tuendae vitae, prout esset, si quis pro sua defensione maiorem vim adhiberet, quam opus esset."

Alphonsus recognizes Thomas's teaching that the excess of legitimate defense, in fact, manifests that one did not have *only* a defensive will:

St. Thomas teaches that the person must keep within the limits of legitimate defense, and that he must not have in himself the least will to kill the aggressor, even if this be necessary to the preservation of his own life. He thus concludes that, as such, the homicide is inculpable on the part of one who defends himself; it happens by mere accident, even if the aggressor would have died, without that defensive will having a part in his death.⁶⁴

To know that a defensive act leads necessarily to the death of the aggressor does not make it morally illicit: "one should note that St. Thomas does not say that it is illicit for a private person to kill a person, but to *intentionally will to kill*" a person.⁶⁵ Therefore "to use a sword only to repel the enemy with a blow, though clearly with the danger that he would be stabbed and die, is not to kill or to wound, but only to permit or provide the occasion that the enemy would wound himself and die."⁶⁶

To sum up, St. Alphonsus is aware of the position that "some say that it is never licit to will to kill unjust invaders, even if this be necessary for the preservation of one's own life, and in this way this very rigid, irrational opinion confuses consciences."⁶⁷ These authors seem to reject the possibility of causing death with a defensive and not murderous will. However:

Both Scripture and the holy Doctor admit that it is licit to injure and kill an enemy so as to defend one's own life, but only if such an attack in no way [intentionally] wounds the invader, and therefore the homicide happens accidentally: it is the invader himself who causes his own death by directing himself toward the sword of the one who defends himself, who is considered neither a murderer nor an aggressor.⁶⁸

64. Ibid., 164: "s. Thomam docere quod homo ita se continere debet intra limites iustae defensionis, ut nullam ipse nec minimam voluntatem habeat interficiendi aggressorem, quamvis ad propriam vitam servandam id oporteret. Unde concludit quod, ut tale homicidium sit inculpabile ex parte petiti, illud contingere deberet per merum accidens, ita ut invasor maneret occisus, quin ulla voluntas petiti in occisionem illam partem haberet."

65. Ibid., 165: "Attamen advertendum quod s. Thomas non dicit illicitum esse viro privato hominem occidere sed quod *intendat occidere*."

66. Ibid.: "ensem tantum agere ad ictus hostis repellendos, cum solo periculo quod ipse invasor se transfigat esse petiti, non est occidere, neque ferire, sed tantum permittere, vel occasionem praebere, quod inimicus ex seipso se feriat et occidat."

67. Ibid., 167: "aliud dicere, numquam esse licitum iniustos invasores velle occidere, quamvis id esse necessarium ad propriam vitam tuendam, nam huiusmodi nimis rigida et irrationabilis opinio illaquearet conscientias."

68. Ibid., 165: "tam Scriptura, quam s. Doctor admittunt esse licitum *percutere et occidere* inimicum pro tutela vitae: at si petitus nullo modo laedat invasorem, et homicidium per

Therefore, “for private persons it is never licit to intentionally will the death of an aggressor, but it is only permitted them to kill the aggressor in the case where it is necessary for the defense of their own life; in that case they do not intentionally will the death of the aggressor, but only their own defense.”⁶⁹

b) *The Contemporary Debate*

The commentaries on Aquinas’s words concerning legitimate defense gradually led to the formulation of the doctrine of the principle of double effect. Contemporary discussion on these questions has remained lively. At the heart of the discussion is the problem of knowing in what way the will “wills” the foreseen negative effects of a given act that is morally good by reason of its object. Indeed, “Many modern philosophers regard the difference between what is intended and what is foreseen and ‘permitted,’ but not intended, as a merely verbal difference,” and therefore tend to equate willing *per se* with willing *praeter intentionem*.⁷⁰ Other authors maintain, with various arguments, that a willing *per se* and a willing *praeter intentionem* must be treated as distinct realities.

merum accidens evenit, eo quod invasor ipsemet sibi mortem infert, se impellens in ensem defensoris, tunc nequit dici *occisor*, aut *percussor*.”

69. Ibid.: “Privatis autem nunquam licitum est intendere occisionem aggressoris, sed tantum eis permissum est aggressorem occidere in necessitate propriae vitae servandae, quo casu non mortem hostis, sed tantum suam defensionem intendunt”; cf. Liguori, *Theologia moralis* (Graz: Akademische Druck - Verlagsanstalt Graz, 1953), 631: “Jus naturale permittit, ut vim vi repellas, et aggressorem, qui inique eripere tibi conatur vitam, aut quae ad eam honeste agendam tibi sunt necessaria (ut bona temporalia, honores, pudicitiam, membrorum integritatem), praevenias et occidas. Ita tamen, ut id fiat animo te defendendi, et cum moderamine tutelae inculpatae: hoc est, non inferendo majus damnum, nec utendo majore vi, quam necessarium est ad arcendam injuriam. – Ita communiter S. Thomas, Molina, etc., Lessius.

Nota hic errare nuperum auctorem libri, cui titulus: *Exposizione della dottrina cristiana*, dicendo quod S. Thomas cum S. Augustino negat licitum esse occidere aggressorem ad defensionem propriae vitae. – Nam Angelicus esprese oppositum docet, inquit: *Nec est necessarium ad salutem, ut hunc actum moderatae tutelae praetermittat, ad evitandam occisionem alterius*. Addit tantum, et ibi explicat doctrinam S. Augustini; et ait quod occidendo, non potest intendi mors alterius, sed sola propria defensio.” (The natural law permits that you repel an aggression by force, and [allows] that you anticipate and kill the aggressor that with evil tries by force to take your life, or [who tries to take] some of those things that are necessary to live honestly, like temporal goods, honor, purity or physical integrity. [It also requires] also that such action should be done with the intention of defending yourself with the necessary moderation, i.e. not causing a greater damage, or using a greater force than the one which is necessary to repel the injury. This is a common thesis of St. Thomas, Molina, etc. Lessius. On this topic, the authors of the book *Exposizione della dottrina cristiana* are mistaken in saying that St. Thomas, with St. Augustine, denies that it is legitimate to kill the aggressor to defend one’s own life. Instead the Angelic Doctor explicitly teaches the opposite: “it is not necessary to salvation to avoid the killing of another when defending oneself.” He adds only, explaining the doctrine of St. Augustine that, in killing, he cannot intend the death of the other but only the self defense.)

70. Joseph M. Boyle, “Toward Understanding the Principle of Double Effect,” *Ethics* 90 (1980): 533.

Louis Janssens criticizes one of the principles formulated by the moral tradition based on Aquinas's texts for facilitating the moral evaluation of actions with various effects. He says:

According to another principle (the most important) of the moral evaluation of acts with several effects, the act must be good in itself or at least indifferent; in other words, the use of a bad means to attain a good end is never permissible. This principle supposes that the external action (means) can be morally evaluated in itself without any consideration of the end or the effects. Our analysis [i.e., Janssens's] of the structure and the morality of a human action has led us to firm claims that this position is one of the currents of thought contested by Thomas. According to Thomas a moral evaluation is only possible about a concrete action, considered as a whole.⁷¹

Janssens thinks this principle contradicts the authentic thought of Aquinas, meaning that nearly all of Thomas's interpreters have been wrong on this point. In fact – according to the Belgian theologian – “Thomas says, *under certain conditions*, it can be right to intend an ontic evil as end of the inner act of the will, if that end is not willed as a final end, but only as *finis medius et proximus* to a higher end.”⁷²

For Joseph Boyle, “There are many different types of voluntary acts; in fact, the notion of ‘voluntariness’ is equivocal. There is, however, an order in these senses such that one could say with the medievals that voluntariness is an ‘analogous’ notion.”⁷³ There are therefore different ways of “willing” that must be distinguished. Along these lines he says, “the agent in acting has a fundamentally different attitude toward what he intends and toward what he foresees and consents to or accepts but does not intend.”⁷⁴ Clearly:

The foreseen consequences of one's potential performances are no doubt a part of what is considered in the deliberation leading to choices. But they are included in this deliberative process in a unique way... The foreseen consequences of one's bringing about an intended state of affairs are often considered in deliberating, but not as reasons *for* the action – rather, they are sometimes conditions *in spite of which* one acts. It is not for the sake of such conditions that one

71. Louis Janssens, “Ontic Evil and Moral Evil,” *Louvain Studies* 4 (1972): 140. As I discuss in the fourth chapter of my dissertation, Janssens tries to find proportionalism in Thomas's writings and ends up arguing that only the object of the *intentio* (the *finis operantis*) is willed *per se*, and depriving from its moral connotation the object the *electio* (the *finis proximus*) considered a pre-moral fact. With this perspective it becomes impossible to consider the moral goodness of a choice *as such*, and this is why he criticises one of the principles formulated by the moral tradition based on Aquinas's texts for facilitating the moral evaluation of actions with various effects.

72. *Ibid.*, 141.

73. Boyle, “Toward Understanding the Principle of Double Effect,” 533.

74. *Ibid.*, 535.

selects an option; it is not these effects to which one is committed in acting.⁷⁵

To cause a good effect, therefore, willing it intentionally, is different than to cause an undesired evil effect *praeter intentionem*. In this sense Boyle says that “what is *praeter intentionem* lacks an order to the end.”⁷⁶ Obviously, “evil cannot be intended for its own sake by anyone,”⁷⁷ and therefore “the evil effect may not be a *means* to the good effect.”⁷⁸ “If the good effect is intended and the evil effect is not intended, the act will be, morally speaking, a good act. It will be specified by the good effect as a morally good act.”⁷⁹ With Finnis and Grisez, Boyle says:

As Aquinas regularly puts it, the species of the human act, which (when measured by reason’s requirements) settles the moral character of the act as good or bad, right or wrong, is not its species *in genere naturae* (in the order of nature) but its species *in genere moris* (in the order of human deliberating and choosing).⁸⁰

For these authors, in the moral evaluation of the act one must always remember that “intentions are constituted by acting persons’ reasons for making their choices and by precisely what they choose to do, not by what they feel, or would like, or are reluctant or eager to do, or regret the ‘necessity’ of doing.”⁸¹

Regarding legitimate defense Boyle asserts that, “Such an act [of self-defense] is justified under certain circumstances only if the assailant’s death is *praeter intentionem*.”⁸² Also: “According to Saint Thomas, one intends only one’s self-defence, the aggressor’s death being outside the agent’s intention – an effect of one’s defensive act and not a means to one’s defense.”⁸³ Is it possible to speak of *praeter intentionem*, even when death follows necessarily from the defensive act? Boyle thinks yes; in fact, “death is a foreseen causal consequence of the act of self-defence; in many cases it is an immediate and natural consequence; but it is *praeter intentionem*,”⁸⁴ given that it is not intentionally willed.

Another important reading is that of Elizabeth Anscombe, of a clear Aristotelian-Thomistic inspiration. In a famous article she says:

75. Ibid.

76. Boyle, “*Praeter Intentionem* in Aquinas,” *The Thomist* 42 (1978), 654.

77. Ibid., 656.

78. Boyle, “Toward Understanding the Principle of Double Effect,” 528.

79. Ibid., 531.

80. John Finnis, Germain Grisez, and Joseph Boyle, “‘Direct’ and ‘Indirect’: A Reply to Critics of our Action Theory,” *The Thomist* 65 (2001): 23. I dedicate the fifth chapter of my dissertation to the important distinction that Thomas uses frequently, between the *genus naturae* and *genus moris*.

81. Ibid., 8.

82. Boyle, “*Praeter Intentionem* in Aquinas,” 657.

83. Boyle, “Toward Understanding the Principle of Double Effect,” 529.

84. Boyle, “*Praeter Intentionem* in Aquinas,” 662.

The most important thing about Sidgwick was his definition of intention. He defines intention in such a way that one must be said to intend any foreseen consequences of one's voluntary action. This definition is obviously incorrect... He uses it to put forward an ethical thesis which would now be accepted by many people: the thesis that it does not make any difference to a man's responsibility for something that he foresaw, that he felt no desire for it, either as an end or a means to an end. Using the language of intention more correctly, and avoiding Sidgwick's faulty conception, we may state the thesis thus: it does not make any difference to a man's responsibility for an effect of his action which he can foresee, that he does not intend it. Now this sounds rather edifying; it is I think quite characteristic of very bad degenerations of thought on such questions that they sound quite edifying.⁸⁵

Defending her position, Anscombe claims that "the *human act* has not got something wrong with it *qua* human act from being an involuntary cause of some evil. That respect of badness does not belong to it as a human act. For being the involuntary cause of something does not belong to it as a human act."⁸⁶ What I cause with my action is one thing, and what I will with my action is another. It is thus clear that:

From considering good and bad, we see that the extension of "human action" is wider than that of "intentional human action." That is to say: something may be a human action under a description under which it is not an intentional action. Acts of carelessness, negligence and omission may be of this character. For though they can be intentional, they may not be so, but their not being intentional does not take the character of human action away from them.⁸⁷

It is I who directly cause a glass of wine to be spilled at table, but that act may not be willed intentionally – the meaning of the words must be made precise: "Direct' and 'indirect' are dodgy terms; sometimes they relate to off-shoots, as it were, from a given sequence of causes, and sometimes to immediacy or remoteness, and sometimes to what is intended or not."⁸⁸ It is therefore not a contradiction to say that one can cause a given effect "directly," in the sense of physical causality, and at the same time to say that the effect was caused indirectly (*praeter intentionem*), morally speaking.

85. G. E. M. Anscombe, "Modern Moral Philosophy," in *Human Life, Action and Ethics*, ed. Mary Geach and Luke Gormally (Exeter, U.K.: Imprint Academic, 2005), 183.

86. Anscombe, "Action, Intention and 'Double Effect,'" in *Proceedings of the American Catholic Philosophical Association* 57 (1983): 212.

87. *Ibid.*, 213.

88. *Ibid.*, 221.

Anscombe recognizes this:

The fact that there is a murder where death foreseeably results from one's action, without the actual intention of killing, naturally leads to a problem. One cannot say that *no* action may be done which foreseeably or probably leads to some death, or that all such actions are murderous.⁸⁹

Steven Brock seems to go in a different direction:

Something "principally intended," or what I would call a *per se* object of intention, is something intended *simpliciter*, taken by itself; something whose achievement *constitutes* the fulfillment of an intention; something around which the agent's action is designed or formed. This may or may not be something sought just for its own sake. The difference being noted here is not between intermediate and ultimate ends, but between ends and their accompaniments. What marks the difference is whether or not it is possible to say of the thing, taken without any addition or qualification, that it is aimed at. I may intend to take the medicine only because I want the health, but it is still true that the taking of the medicine, just as such, is something I aim at, something according to which some movement of mine is formed. This does not necessarily mean some movement of mine other than the very taking of the medicine. It may mean simply that the form of my movement *is* that of a taking of medicine.⁹⁰

Brock asserts that "only what is intended by the agent is an object of the action *per se*, that is, in virtue of the action itself *qua* action, *qua* initiated by the agent. Only what is intended by the agent enters into the 'form' or 'substance' of his action, or 'specifies' it, in Aquinas's sense,"⁹¹ but at the same time he says, "for Aquinas... everything that naturally or generally accompanies what an agent intends, falls under his intention. It does not matter whether he considered it, or even whether he knew of it. [See I-II, q. 20, a. 5; q. 73, a. 8],"⁹² and therefore "it would be wrong to treat all indirect effects as merely incidental to the agent's inclination or intention."⁹³ On a text of Aquinas which says that everything that follows *per se* on a sin in some way belongs to the species of that sin,⁹⁴ he comments:

89. *Ibid.*, 219.

90. Stephen L. Brock, *Action and Conduct. Thomas Aquinas and the Theory of Action* (Edinburgh: T&T Clark, 1998), 201.

91. *Ibid.*, 89.

92. *Ibid.*, 215.

93. *Ibid.*, 129.

94. Cf. *Summa theologiae*, I-II, q. 73, a. 8, c.: "quaecumque per se consequuntur ad peccatum, pertinent quodammodo ad ipsam peccati speciem." (Whatever is directly consequent to a sin, belongs, in a manner, to the very species of that sin.)

Evidently, then, he [St. Thomas] does mean that such [foreseen but unintended] effects *constitute* the action's species; the species is taken from the intention's direct object. But they follow from the action in accordance with its species. This would seem to mean that, if not the effect itself, at least some principle of it *is* included in the intention's direct object.⁹⁵

It is therefore in some way willed by the agent. Along these lines he defends the principle of diffusiveness of intention, but is aware that "many authors disagree with the diffusiveness of intention principle,"⁹⁶ namely, "that all foreseeable results of what one intends to do are in some way included in one's intention."⁹⁷

Regarding the medicine example, Brock says:

What is impossible, and foolish to say, is that while intending to take the medicine, and knowing that this involves the discomfort, I intend to avoid the discomfort. My intention to take the medicine *prevents* me from having the intention of avoiding the discomfort: I cannot be fully unwilling to suffer it.⁹⁸

Thus in some way I will it.

Brock also says, "There are... two very different senses of 'indirectly intended'. One refers to a foreseen and non-causal accompaniment of what someone intends... The other refers to what someone fails to intend to prevent when he could and should."⁹⁹ The first would not be morally imputable, because there is no causal link in the natural order, whereas the second would be morally imputable, since there is a causal link that the agent could have and should have known about.

Martin Rhonheimer touches the heart of the question when, speaking of legitimate defense, he says that "the (physical) act of self-defense must be proportioned to what one is doing with the action of 'self-defense'; if not, the act would be intentional, and this means that it would not objectively be an act of self-defense, but the intentional action of 'killing the aggressor' with the purpose of saving one's

95. Brock, *Action and Conduct*, 204.

96. *Ibid.*, 209.

97. *Ibid.*, 219. In a later article, arguing against Martin Rhonheimer's reading of Aquinas on these issues, Brock states: "Where I think I differ from Rhonheimer is on exactly how far a physical nature can enter into the constitution of a moral act and its object. I wish to say that it can play a *formal* role. I do not see how to say otherwise without consigning everything physical about what we do to the domain of the praeter-intentional, and so, ultimately, to the 'merely pre-moral' domain." See "*Veritatis Splendor* §78, St. Thomas, and (Not Merely) Physical Objects of Moral Acts," *Nova et Vetera*, English Edition, 6, no. 1 (2008): 15.

98. *Ibid.*, 203.

99. *Ibid.*, 223.

own life.”¹⁰⁰ In fact, not every *materia ex qua*¹⁰¹ is capable of being informed with the intentional proposal of “defending oneself from an unjust aggression,” but only those that are proportioned to being *animated* by a defensive will. The excess of legitimate defense is the external manifestation of the existence of another intentional proposal pursued by the agent.

Angel Rodríguez Luño acknowledges that “in practice, the distinction between the direct object and the indirect object of the will can at times be difficult to establish.”¹⁰² It is clear on the one hand that “every effect that is seen and willed as a causal link between the subject and his end is willed directly as a means, i.e., as a finalized good,”¹⁰³ and on the other hand that “the indirect effect is not willed, but permitted, tolerated or suffered.”¹⁰⁴ That is, there is a difference in the way the will is oriented. It is one thing to will a given effect intentionally, and another to tolerate a foreseen negative effect that is not intentionally willed. Problems arise because “in more complex actions, in which various goods are at play, doubt can arise as to which elements enter into the essence of the commanded act, and consequently which elements would be considered the *object* that gives the choice its moral species.”¹⁰⁵ Which is to say, at times it is not easy to distinguish that to which the will is directed *per se* from what the will tolerates *praeter intentionem*. Someone could say that if the action under consideration is good, it would not even be neces-

100. Martin Rhonheimer, *La prospettiva della morale: Fondamenti dell'etica filosofica* (Rome: Armando Editore, 1994), 317: “L'atto (fisico) dell'auto difesa dev'essere *proporzionato* (*proportionatus*) all' 'a che pro?' dell'azione 'autodifesa'; altrimenti l'atto sarebbe intenzionale, e ciò significa che non sarebbe oggettivamente un atto di autodifesa, ma l'azione intenzionale 'ucidere l'aggressore' *al fine di* salvare la propria vita.”

101. Literally, “matter out of which.” In chapter 6 of my dissertation I distinguish the concepts of *materia ex qua* and *materia circa quam*. I argue that, for St. Thomas, the *materia circa quam* (literally, the matter concerning which) corresponds to the proximate end and to the moral object of the act – that is, to the object of the *electio*. In the moral context, Thomas does not use *materia circa quam* to refer to *only* the material element of the object – which is the *materia ex qua* – but to the material element of the human act that is the object chosen in view of the realization of further intention of the agent. In my reading of Aquinas, the *materia circa quam* joins, as it were, the concept of *materia ex qua* (the “body” of the act) to its “soul,” i.e., the *finis proximus* to which the deliberate will directs itself. Therefore, the *materia circa quam* always corresponds to an act which proceeds from the reason and the will, which is to say that it always corresponds to a human act. It already includes a formal element, a *ratio boni* capable of moving the will.

102. Enrique Colom and Angel Rodríguez Luño, *Scelti in Cristo per essere santi: Elementi di Teologia Morale Fondamentale* (Rome: Edizioni Università della Santa Croce, 2003), 184: “in pratica, la distinzione tra oggetto diretto e indiretto della volontà può essere a volte difficile da stabilire.”

103. *Ibid.*, 184: “ogni effetto che è visto e voluto come anello causale tra il soggetto e il suo fine è voluto direttamente come mezzo, cioè come bene finalizzato.”

104. A. Rodríguez Luño, *Ética General* (Pamplona: Eunsa, 2004), 195: “el efecto indirecto no es querido, sino permitido, tolerado o sufrido.”

105. Colom and Rodríguez Luño, *Scelti in Cristo per essere santi*, 192: “nelle azioni più complesse, in cui ci sono diversi beni in gioco, può emergere il dubbio su quali siano gli elementi che entrano nell'essenza dell'azione imperata, e quindi su quali siano gli elementi da considerare oggetto che dà alla scelta la sua specie morale.”

sary to consider the foreseen negative effects that might result from it. This is not true. Rodríguez Luño says that “one cannot tolerate a gravely negative effect for a light reason.”¹⁰⁶

According to Thomas Cavanaugh, “Aquinas holds that a private individual may not intentionally kill an aggressor, while he may intend self-defense from which the assailant’s death results *praeter intentionem*. Aquinas places great emphasis upon the agent’s intent.”¹⁰⁷ He then asks:

What does Thomas mean by *praeter intentionem*? In his use of *praeter intentionem* Aquinas refers his reader to an earlier article, where he maintains that, “active scandal is accidental when it is *praeter intentionem* of the agent: as when a man by his inordinate deed or word does not intend to give another an occasion of downfall, but only to satisfy his will” (II-II, q. 43, a. 3, c.). Clearly, Aquinas does not use *praeter intentionem* to refer to what one does intend.¹⁰⁸

It is clear for the American philosopher, therefore, that “Aquinas does not use *praeter intentionem* to refer to a mode of intending, nor does he articulate such a position. Aquinas does say that what is *praeter intentionem* is *per accidens*. Some interpret him to mean accidental in the sense of accidental consequence... Yet, in II-II, q. 64, a.7, Aquinas twice explicitly denies the justifiability of a private individual’s intentional killing of an aggressor.”¹⁰⁹ Along these lines Cavanaugh says, “Aquinas does not use *praeter intentionem* to refer to what one directs one’s intention away from, nor to what one intends, nor to an accidental consequence.”¹¹⁰

It would not be correct to say that what is *praeter intentionem* is indifferent or almost irrelevant. In fact for Cavanaugh, “what is *praeter intentionem* is not essential (as an intention is) in establishing the agent’s action as good or as bad. Of course, this does not mean that what is *praeter intentionem* does not enter into the analysis of the act. To see this, one need only note Aquinas’s consideration of self-defence.”¹¹¹ There are thus *praeter intentionem* effects, such as that of causing the death of an unjust aggressor, which are morally relevant: “In the case of a private individual’s justified homicidal self-defence, Thomas permits the slaying of the assailant when it results from the use of force proportioned to self-defence and is not intentional.”¹¹²

Exemplifying, Cavanaugh says: “I (a private individual) and my assailant have swords. We begin to fight. I realize that my aggressor has far greater endurance; the only way I can preserve my life is to kill him. According to Thomas, I may not

106. Rodríguez Luño, *Ética General*, 196: “No se puede tolerar un efecto negativo grave por una causa leve.”

107. T. A. Cavanaugh, *Double-Effect Reasoning* (Oxford: Clarendon Press, 2006), 4.

108. *Ibid.*, 6.

109. *Ibid.*, 7.

110. *Ibid.*, 8.

111. *Ibid.*, 9.

112. *Ibid.*, 10.

do so because I may not intend his death.”¹¹³ Here Cavanaugh seems to implicitly suppose that the physical act of stabbing the aggressor with a sword is only proportionate with the intention of intentionally willing to cause death, something that does not seem so clear to us:

What does Thomas permit to the private individual? When one uses a sword, one risks the attacker’s life. This is significant for two reasons. First, although the one defending himself with a sword need not intend to take the life of the aggressor, he does knowingly and willingly risk the aggressor’s life. Second (as I shall argue), if intentionally or accidentally killing differs from knowingly and willingly endangering another’s life and thereby killing, then there exists a third possibility other than intentional or accidental killing. Namely, there is the assailant’s death resulting as a risked consequence.¹¹⁴

It is this third possibility that he considers to be Aquinas’s thought in the question of legitimate defense:

He [Aquinas] proposes that while a private individual may not intend to take the life of an assailant, he may risk killing the aggressor by defending himself with such a force that the aggressor’s death is a foreseeable consequence. This interpretation accords with what Aquinas himself implies when he asserts that “the act of fornication or of adultery is not ordered to the conservation of one’s own life out of necessity, as is the act from which sometimes (*quandoque*) follows homicide” (II-II, q. 64, a. 7, ad 4). As he uses it in q. 64, a. 7, Aquinas restricts *praeter intentionem* to what occurs sometimes. He does not consider the foresight of an inevitable consequence.¹¹⁵

A similar interpretation, though with some differences, is that of Kevin Flannery. He acknowledges that, “in Thomas Aquinas the ethical significance of the phrase *praeter intentionem* is difficult to fix,”¹¹⁶ because “unfortunately the phrase [*praeter intentionem*] turns up in a number of disparate contexts in order to say quite disparate things.”¹¹⁷

Flannery emphasizes persistently that the materiality of the action conditions the concrete intention of the agent. Thus he says that “what counts... in determining intention is not so much the thoughts that go through the agent’s mind regarding the possibility of killing (‘what he had time to *think* of’), but rather the whole

113. Ibid.

114. Ibid.

115. Ibid., 11.

116. Kevin L. Flannery SJ, “The Field of Moral Action According to Thomas Aquinas,” in *The Thomist* 69 (2005): 30.

117. Ibid., 25.

analysis of the situation within which he acts.”¹¹⁸ Likewise, “It is here that any analysis of human action must begin: i.e., by attending to the intelligible structure of the physical motion.”¹¹⁹ The American philosopher stresses the proportion or compatibility that must necessarily exist between what is physically realized and one’s intention.

He gives an example:

If a person who might keep a weapon sufficient to incapacitate but not certain to kill purchases instead a large-caliber gun and loads it with “dumdum bullets” (such as tear up a large radius of flesh upon leaving the body), this is enough to determine in almost all cases that the second effect is not “beside his intention” – or *praeter intentionem*.¹²⁰

That is, one who deliberately uses dumdum bullets cannot sincerely say that he has *only* a defensive will: the fact of the externally observable behavior is incompatible with that intentional proposal. Along these same lines, Flannery says that “the man who kills an attacker in self-defense can truthfully say that he was just seeking to preserve his life. The man who dynamites the potholer cannot say the same,” since the physical dimension of his act precludes him from having that intention.¹²¹ In the same way, “if in the craniotomy case, the killing of the fetus cannot be separated from the crushing of its skull, then it must be included in the agent’s intention.”¹²² For him “the practice of medicine has as its sole legitimate object... the health of the individuals it turns its attention to. But in the craniotomy case this is not its object: the fetus, who is clearly the object of the operation, is killed.”¹²³

Flannery thus asserts that the *genus naturae* conditions and in some way determines the *genus moris* of an action. With this position he reacts against an excessive weight attributed exclusively to the intention of the agent by many of Aquinas’s interpreters. In justifying *praeter intentionem* effects foreseen by the agent he opts for a solution that he sees to be based in Aristotle:

The answer, then, to the question, what foreseeable evil consequences of an action are not morally attributable to the agent whose action brings them about, is the following: those which particular (and justly constituted) responsibilities oblige – or, at least, permit – one to bring about.¹²⁴

118. Flannery, “Acts Amid Precepts. The Aristolelian Structure of Thomas Aquinas’s Moral Theory” (Washington DC: The Catholic University of America Press, 2001), 170.

119. *Ibid.*, 192.

120. *Ibid.*, 170.

121. *Ibid.*, 187.

122. Flannery, “What Is Included in a Means to an End?” *Gregorianum* 74 (1993), 505.

123. *Ibid.*, 512.

124. Flannery, “The Field of Moral Action According to Thomas Aquinas,” 29.

To restate this more directly, Flannery thinks the agent is not morally responsible for those foreseeable evil consequences that he has the responsibility to bring about. These responsibilities would vary from person to person (e.g., doctor, police, judge, private person, etc.).

It seems to us that Edward Krasevac does not entirely agree with Flannery's reading. For the Dominican, "the tradition of double-effect reasoning after Aquinas too often allowed a subtle 'physicalism' that confused the *genus naturae* with the *genus moris*,"¹²⁵ and "this [physicalist] tradition of the PDE [Principle of Double Effect] often understood 'directly' at the level of the *genus naturae* to necessarily imply 'directly' at the level of the *genus moris*."¹²⁶ With this mistaken association:

Too often, the mistake of the PDE tradition was to define the moral object as that which, in some kind of direct physical way, resulted from an agent's action... rather than from the agent's intention, as determined not only by what the agent wanted through his or her commanded acts, but by whether or not those acts bore a due proportion to that intention and accomplished as little harm as possible.¹²⁷

He describes the basic problem here:

"Physicalism" detaches certain physical actions that are necessary to realize the intention of an agent *from* the intention of the agent, and allows them to take on a moral life of their own... In Aquinas's terms, what had been happening was a tendency to equate the *genus naturae* (physical happening) with the *genus moris* (moral meaning) of the human act. Certain physical actions, in and of themselves, were seen to have moral meaning *apart from* the intentions that directed them.¹²⁸

This tendency – according to Krasevac – does not truly reflect St. Thomas's thought. "Intentionality seems key for Aquinas, in a way that it did not for much of the PDE tradition."¹²⁹

Again:

The terms "direct" and "indirect" as used by Aquinas and in the best of the PDE tradition, refer to intentionality, not to what is "touched" physically. To forget this is to reduce intentionality to "what hap-

125. Edward L. Krasevac, "Can Effects That Are Inevitable and Instrumental Be *Praeter Intentionem*? Another Look at Aquinas' Understanding of 'Sit Proportionatus Fini,'" *Angelicum* 82 (2005), 77.

126. *Ibid.*, 79, n. 4.

127. *Ibid.*, 83.

128. Krasevac, "The Good That We Intend, and the Evil That We Do. A New Look at *Praeter Intentionem* in Aquinas," *Angelicum* 79 (2002), 844.

129. Krasevac, "Can Effects That Are Inevitable and Instrumental Be *Praeter Intentionem*?" 83.

pened,” rather than to what is willed as the object of choice; it is to reduce the moral act to its physical structure; it is to let moral reasoning be dominated by “physicalism.”¹³⁰

According to the American theologian:

In some ways, Proportionalist theologians reacted against the very narrow definition of objects in the PDE tradition (narrow because based primarily on what happened in the *genus naturae*) by substituting an extremely broad definition of the object (which includes all consequences and remote ends). Neither took Aquinas’s notion of intention seriously enough.¹³¹

For the Dominican:

What was important for Aquinas was the relation of means to end, which determined whether or not the meaning of the means was subsumed by the intention of the end (being an essential determination of it; it was, if duly proportioned to it), or was itself a separate object of an intention, and hence a separate act in the *genus moris* (which it was if it was not duly proportioned to the end).¹³²

Thus the real question is “how does one determine in any particular case whether a given series of commanded acts are ‘proportioned’ to the object of the intention, and thus are ‘essentially determined’ by it (or subsumed under it), or whether they themselves form a separate moral object?”¹³³ In his view “the relationship of proportionality between means and end determines whether or not the means shares in the specification of the end (whether it is ‘essentially determined’ by it), or whether it has its own, separate moral species.”¹³⁴

In the case of legitimate defense, for example, he says that “the use of force is the means that immediately realizes the intention of self-defense,”¹³⁵ which implies the recognition that “there is an essential moral difference between a decision to kill, and a decision to save or protect life through acts that, in the very process of saving life, may or will result in death.”¹³⁶ The problem is that “‘what’ I am doing objectively is sometimes notoriously difficult to determine.”¹³⁷ It is important to bear

130. Krasevac, “The Good That We Intend, and the Evil That We Do,” 850.

131. Krasevac, “Can Effects That Are Inevitable and Instrumental Be *Praeter Intentionem*?” 83, note 12.

132. Krasevac, “The Good That We Intend, and the Evil That We Do,” 847.

133. Krasevac, “Can Effects That Are Inevitable and Instrumental Be *Praeter Intentionem*?” 81.

134. *Ibid.*, 77.

135. Krasevac, “The Good That We Intend, and the Evil That We Do,” 843.

136. Krasevac, “Can Effects That Are Inevitable and Instrumental Be *Praeter Intentionem*?” 87.

137. *Ibid.*, 84.

in mind that for St. Thomas “the moral species of the act is not taken from what happens on the level of the *genus naturae*, but rather on the level of intention.”¹³⁸ This is because “the moral object always involves a *ratio* under which physical actions (commanded acts) are chosen,”¹³⁹ and thus “the *end* gives moral species, not the various happenings on the physical level.”¹⁴⁰ It is consequently very important not to equate the *genus naturae* with the *genus moris*: “The *genus moris* is specifically the *ratio* under which an event in the *genus naturae* is intended; it is not the material event abstracted from its *ratio*.”¹⁴¹

In summary, for Krasevac, “the crucial issue for Aquinas was whether or not the actual physical means (the happening in the *genus naturae*) was duly proportioned (or *per se* ordered) to the end of the intention.”¹⁴² If so, then it receives the species of the end willed *per se*, and the other effects will be *praeter intentionem*. If not, then these commanded acts are willed *per se* under a specifically different *ratio* than the *ratio* of the end, and they therefore cannot be said to be *praeter intentionem*. In fact:

Those who hold the importance of the direct/indirect distinction believe, with Aquinas, that there is a crucial difference between choosing to do something evil as a means to achieving something good, on the one hand, and choosing something good and allowing something evil to result from it, on the other.¹⁴³

3. Final Considerations

The first consideration is, as some authors note, that it is important not to confuse *per se* according to the *genus naturae* with *per se* according to the *genus moris*, or if we prefer, the “direct” according to the *genus naturae* with the “direct” according to the *genus moris*. To cause physically is not the same thing as to will intentionally. According to the *genus naturae*, an aspirin equally causes *per se* both the lowering of a fever and an increase in stomach acid. According to the *genus moris*, however, it is different to will *per se* (intentionally) one of the effects, tolerating the other *praeter intentionem*, than, for example, to will both effects *per se* (intentionally). This does not mean that the two realities are not in some way related. In fact, a knowledge of the *per se* causal link between various effects according to the *genus naturae* is part of that collection of relevant practical pieces of information based on which practical reason conceives of the various alternative plans of action during the deliberative process. This means that in some

138. Krasevac, “The Good That We Intend, and the Evil That We Do,” 848.

139. Krasevac, “Can Effects That Are Inevitable and Instrumental Be *Praeter Intentionem*?” 84.

140. Krasevac, “The Good That We Intend, and the Evil That We Do,” 848.

141. Krasevac, “Can Effects That Are Inevitable and Instrumental Be *Praeter Intentionem*?” 84.

142. Krasevac, “The Good That We Intend, and the Evil That We Do,” 846.

143. *Ibid.*, 841.

way the nature of things according to the *genus naturae* is not completely irrelevant from the perspective of the intentional dynamic of the human person. This “nature of things” objectively involves practical restrictions when it comes to conceiving a specific intentional plan: for example, I cannot realistically want to fly by flapping my arms. In this sense Aquinas says “just as not every matter is adequate to receive any form, nor every tool adequate to any effect, nor every middle term to any conclusion, so also not every act to any end.”¹⁴⁴

A second observation can be added to this last point. The *materia ex qua* in the *genus naturae* has a limited flexibility, a finite potentiality of being “animated” by different intentional proposals (*finis proximus*).¹⁴⁵ This is in essence the crucial question of the *proportio ad finem proximum*, which some authors correctly emphasize. In II-II, q. 64, a. 7, Aquinas makes it clear that a single act according to the *genus naturae*, that is, a single *materia ex qua*, can give origin to two specifically different acts according to the *genus moris*, that is, to two different *materia circa quam*: “to will to defend oneself” and “to will to murder.” To use a different example, it can be said that the *materia ex qua* “sexual union” has the *debita proportio* of being “animated” only by three types of intentional proposals (*finis proximus*): “to will to carry out the conjugal act,” “to will to fornicate,” or “to will to commit adultery.” There are other cases, however, in which it is not immediately evident whether the *finis* sought by the agent is a *finis proximus* which informs a given *materia ex qua*, or if in fact we have a *finis operantis* in view of which one acts. When, for example, we consider the act of someone who steals an apple to satisfy his hunger, beyond showing that this *finis intentus* of preserving one’s life is in itself according to the *ordo virtutis*, it is also necessary to show that we are dealing with an immediately realizable *finis*; that is, whether he is “satisfying his hunger (*finis proximus*) and causing an injustice *praeter intentionem*,” or “deliberately robbing

144. *Super Sent.*, lib. 2, d. 38, q. 1, a. 5, c.: “sicut enim non quaelibet materia est disposita ad quamlibet formam, nec quodlibet instrumentum ad quemlibet effectum, nec quodlibet medium ad quamlibet conclusionem; ita nec quilibet actus ad quemlibet finem.”

145. We see the interesting distinction Aquinas makes in *Summa theologiae*, II-II, q. 43, a. 1, ad 2: “minus rectum hic non dicitur quod ab aliquo alio superatur in rectitudine, sed quod habet aliquem rectitudinis defectum, vel quia est secundum se malum, sicut peccata; vel quia habet speciem mali, sicut cum aliquis recumbit in idolo. Quamvis enim hoc secundum se non sit peccatum, si aliquis hoc non corrupta intentione faciat; tamen quia habet quandam speciem vel similitudinem venerationis idoli, potest alteri praebere occasionem ruinae.” (A thing is said to be less right, not because something else surpasses it in rectitude, but because it has some lack of rectitude, either through being evil in itself, such as sin, or through having an appearance of evil. Thus, for instance, if a man were to “sit at meat in the idol’s temple,” though this is not sinful in itself, provided it be done with no evil intention, yet, since it has a certain appearance of evil, and a semblance of worshipping the idol, it might occasion another man’s spiritual downfall.) Emphasis added. Once again one sees the need for adopting the perspective of the first person when discerning the object of the human act. In this case one who lies down in a pagan temple could be realizing specifically distinct acts: he could simply be resting, he could be praying to an idol, or he could even be trying to scandalize someone he knows.

someone (*finis proximus*) to satisfy his hunger (*finis operantis*).¹⁴⁶ Stealing so as to satisfy hunger is obviously an immoral action, but satisfying hunger in a situation of grave necessity, thus causing an injustice *praeter intentionem*, is not. Analogous examples can be found with the *falsiloquium*¹⁴⁷ or with fraternal correction.¹⁴⁸

146. Obviously for Aquinas, if the *electio* is opposed to the *ordo virtutis*, the entire act becomes disordered. Cf. *Super Sent.*, lib. 2, d. 38, q. 1, a. 5, c.: “actus malus non est proportionatus ad finem bonum.” (An evil act is not proportionate to a good end.) At times the question is precisely this, to adequately discern what is the object of the *electio*; cf. *Summa theologiae*, II-II, q. 66, a. 7, c.: “Si tamen adeo sit urgens et evidens necessitas ut manifestum sit instanti necessitati de rebus occurrentibus esse subveniendum, puta cum imminet personae periculum et aliter subveniri non potest; tunc licite potest aliquis ex rebus alienis suae necessitati subvenire, sive manifeste sive occulte sublatis. *Nec hoc proprie habet rationem furti vel rapinae.*” (If the need be so manifest and urgent, that it is evident that the present need must be remedied by whatever means be at hand, for instance when a person is in some imminent danger, and there is no other possible remedy, then it is lawful for a man to succor his own need by means of another’s property by taking it either openly or secretly; *nor is this properly speaking theft or robbery.*) Emphasis added.

147. Cf. *ibid.*: I-II, q. 72, a. 8, ad 2: “quandoque ille qui dicit falsum, intendit veritatem occultare, unde quantum ad hoc, non refert utrum dicat vel plus vel minus. Si tamen recedere a veritate sit praeter intentionem, tunc manifestum est quod ex diversis causis aliquis movetur ad dicendum plus vel minus, et secundum hoc diversa est ratio falsitatis. Sicut patet de iactatore, qui superexcedit dicendo falsum, quaerens gloriam; et de deceptore, qui diminuit, evadens debiti solutionem. Unde et quaedam falsae opiniones sunt sibi invicem contrariae.” (Sometimes he who utters a falsehood, intends to hide the truth, wherefore in this respect, it matters not whether he tells more or less. If, however, departure from the truth be not outside the intention, it is evident that then one is moved by different causes to tell more or less; and in this respect there are different kinds of falsehood, as is evident of the “boaster,” who exceeds in telling untruths for the sake of fame, and the “cheat,” who tells less than the truth, in order to escape from paying his debts. This also explains how some false opinions are contrary to one another.) Cf. also *ibid.*, II-II, q. 110, a. 3, ad 3: “Abraham tamen, ut Augustinus dicit, in quaest. Genes. Dicens Saram esse suam sororem, veritatem voluit celari, non mendacium dici, soror enim dicitur quia filia fratris erat. Unde et ipse Abraham dicit, Gen. XX, *vere soror mea est, filia patris mei, et non matris meae filia*, quia scilicet ex parte patris ei attinebat. Iacob vero mystice dixit se esse Esau, primogenitum Isaac, quia videlicet primogenita illius de iure ei debebantur. Usus autem est hoc modo loquendi per spiritum prophetiae, ad designandum mysterium, quia videlicet minor populus, scilicet gentilium, substituentus erat in locum primogeniti, scilicet in locum Iudaeorum.” (As to Abraham “when he said that Sara was his sister, he wished to hide the truth, not to tell a lie, for she is called his sister since she was the daughter of his father,” Augustine says (QQ. Super. Gen. xxvi; Contra Mend. x; Contra Faust. xxii). Wherefore Abraham himself said (Gn 20:12): “She is truly my sister, the daughter of my father, and not the daughter of my mother,” being related to him on his father’s side. Jacob’s assertion that he was Esau, Isaac’s first-born, was spoken in a mystical sense, because, to wit, the latter’s birthright was due to him by right: and he made use of this mode of speech being moved by the spirit of prophecy, in order to signify a mystery, namely, that the younger people, i.e. the Gentiles, should supplant the first-born, i.e. the Jews.)

148. Cf. *ibid.*, II-II, q. 76, a. 1, c.: “Si autem aliquis imperet vel optet malum alterius sub ratione boni, sic est licitum.” (If a man commands or desires another’s evil under the aspect of good, it is lawful.)

At the same time it is correct to acknowledge that in various cases the *materia ex qua* has little “elasticity”; that is, it is proportionate to few, or only to one, specific type of intentional proposal. For example, in the case of someone who takes a remedy for a headache that exclusively has that physiological effect, the *materia ex qua* of his act only seems to be proportionate to being informed by a therapeutic purpose. In these cases where the *materia ex qua* seems to be more “rigid” and hence less ambiguous, it becomes possible from the perspective of the external observer (the third-person perspective) to infer the *materia circa quam*, the *finis proximus* towards which the agent deliberately tends. Even in cases in which the *materia ex qua* is more “flexible,” it continues, though with a greater possibility of error, to be possible to ascertain what is the *materia circa quam* in question. We are convinced that it is this frequent success that the judgment of the external observer has – a judgment made based on the *materia ex qua* – that prevents some scholars from recognizing the capital importance of the first-person perspective for discerning the object that morally specifies the human act.

It seems we have arrived at the moment for attempting to answer the question of which elements specify human action according to St. Thomas; i.e. whether it is only those that are willed *per se*, or also those that are *praeter intentionem*. From all that has been said thus far, it seems clear to us that for St. Thomas the human act is morally specified, i.e. according to the *genus moris*, only by that which is willed *per se*, and not by that which is *praeter intentionem* and is therefore *per accidens*¹⁴⁹ relative to the proximate end (*finis proximus*) of the movement of the will.¹⁵⁰ But does this then mean that evil *collateral effects* are completely irrelevant to the moral specification of the human act? Here we think Aquinas makes an important distinction. If the *finis proximus* willed *per se* is morally good, then an evil collateral effect that is caused according to the *genus naturae* does not specify the act if the famous proportionality exists between the good realized by the action and the tolerated evil that derives from the action, as we saw above in the question of legitimate defense, which later gave origin to the doctrine of double effect. The crucial point in this case is to recognize that, if and only if such a proportionality exists, for St. Thomas there is no disorder in the will because the will does not “will” the disorder intentionally (*per se* according to the *genus moris*), even if it may derive necessarily (*per se* according to the *genus naturae*) from the realized act. If the act in question has a morally disordered object – that is, if it is a sin – then Aquinas holds that all of the evil *collateral effects* that necessarily derive from it, i.e., all those things that derive *per se* according to the *genus naturae* from the sin, independently of whether they are willed or not, aggravate the evil of the sin.¹⁵¹

149. Cf. *ibid.*, I-II, q. 18, a. 5, c.: “nihil quod est per accidens, constituit speciem, sed solum quod est per se.” (Nothing accidental constitutes a species, but only that which is essential.)

150. Cf. *ibid.*, q. 1, a. 3, ad 3: “Non enim motus recipit speciem ab eo quod est terminus per accidens, sed solum ab eo quod est terminus per se.” (For a movement does not receive its species from that which is its terminus accidentally, but only from that which is its *per se* terminus.)

151. Cf. *ibid.*, q. 73, a. 8, c.: “Si vero nocumentum per se sequatur ex actu peccati, licet non sit intentum nec praevisum, directe peccatum aggravat, quia quaecumque per se consequuntur ad peccatum, pertinent quodammodo ad ipsam peccati speciem. Puta si aliquis

In summary we can say that for Aquinas the evil *collateral effects* that necessarily derive (*per se* according to the *genus naturae*) from a human act are determinative for the moral evaluation of the act only if they are disproportionate in relation to a virtuous *finis proximus*, or if the act has a vicious *finis proximus*. ■

publice fornicetur, sequitur scandalum plurimorum, quod quamvis ipse non intendat, nec forte praevideat, directe per hoc aggravatur peccatum.” (If... 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.) Here it is very important to bear in mind that the expression *per se* is used according to the *genus naturae* to refer to the effects that are necessarily caused by a given sin.