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Title: Abuses of Double Effect, Anscombe’s Principle of Side Effects, and A (Sound) Account of *Duplex Effectus*¹

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Gertrude Elizabeth Margaret Anscombe single-handedly inaugurated the contemporary study of moral psychology with her magisterial *Intention* of 1957 and *Modern Moral Philosophy* of 1958 (*MMP*).² While doing so she focused attention on double-effect reasoning (DER) and its Intended/Foreseen (or, I/F) distinction, the exclusive purview up to that point of Catholic moral theologians.³ Here she is in *MMP*:

[t]he denial of any distinction between foreseen and intended consequences, as far as responsibility is concerned, was not made by Sidgwick in developing any one ‘method of ethics’; he made this important move on behalf of everybody and just on its own account; and I think it plausible to suggest that this move on the part of

Sidgwick explains the difference between old-fashioned utilitarianism and that consequentialism, as I name it, which marks him and every English academic philosopher since him. By it, the kind of consideration which formerly would have been regarded as a temptation, the kind of considerations urged upon men by wives and flattering friends, was given a status by moral philosophers in their theories.⁴

In *MMP*, Anscombe holds that absent acknowledgment of the I/F distinction's ethical relevance, one ineluctably descends into that brand of ethics whose now-standard name she coins in the above passage, Consequentialism. She goes on to say, “[i]t is a necessary feature of consequentialism that it is a shallow philosophy.” (I will later argue that consequentialism is shallow, indeed. For, due in part to its denial of the I/F distinction, its act-evaluations remain entirely on the surface of ethics.)

Subsequently, Anscombe defends disputed aspects of double effect.⁵ While solely responsible for the attention given to DER outside of Catholic circles, Anscombe herself proposes in its stead (or, perhaps more accurately, instead of the prominent corruptions of double effect familiar to her) what she refers to as the, “principle of side effects.” In what follows, I will present: first, the salient abuses of double effect that incline Anscombe to offer her, “principle of side effects”; second, her principle; third, a sound account of double effect (taking Aquinas' original treatment as a model); fourth and finally, a response to the concern that leads Anscombe to employ her principle in lieu of double effect.

I. Corruptions of Double Effect: Cartesianism and Proportionalism.

a. Cartesianism.

In her advocacy of double effect, Anscombe herself always retains a healthy skepticism concerning accounts of double effect. Indeed, she regards it as a source of corrupt moral thinking:

[n]ow, to make an epigram, the corruption of non-Catholic moral thought has consisted in the denial of this doctrine, and the corruption of Catholic thought in the abuse of it.⁶

[and,]

we are touching on the principle of “double effect”. The denial of this has been the corruption of non-Catholic thought, and its abuse the corruption of Catholic thought.⁷

As evident in the earlier quote from *MMP*, Anscombe regards the denial of the I/F distinction as at the heart of Consequentialism. Hence, she links the denial of double effect to this specific decline in moral thought. As for the abuse of double effect, she has at least two culprits in mind, an old one (Cartesianism) and a new one (Proportionalism, the dominant account of Catholic moral theology regnant from the late 1960's up to the papal encyclical *Veritatis Splendor* of 1993 which condemns the account). Let us consider the older first.

In her rediscovery of practical knowledge's distinctiveness, Anscombe constantly battles a Cartesian conception of mind as entirely speculative:

[c]an it be that there is something that modern philosophy has blankly misunderstood: namely what ancient and

medieval philosophers meant by *practical knowledge*?
Certainly in modern philosophy we have an incorrigibly
contemplative conception of knowledge. Knowledge must
be something that is judged as such by being in accordance
with the facts. The facts, reality, are prior and dictate what
is to be said, if it is knowledge. And this is the explanation
of the utter darkness in which we found ourselves [at the
outset of the investigation of intention]. For if there are two
knowledges – one by observation, the other in intention –
then it looks as if there must be two objects of knowledge;
but if one says the objects are the same, one looks
hopelessly for the different *mode of contemplative
knowledge* in acting, as if there were a very queer and
special sort of seeing eye in the middle of acting.⁸

The, “very queer and special sort of seeing eye,” is, of course, the subject of Descartes’, “*cogito ergo sum*,” (“I think, therefore, I am”) the, “*res cogitans*,” (“thing thinking”). This Cartesian subjectivism leads to the (erroneous) position that Anscombe (wo)manfully argues against in

Intention:

that if we wish to understand what intention is, we must be
investigating something whose existence is purely in the
sphere of the mind; and that although intention issues in
actions, and the way this happens also presents interesting

questions, still what physically takes place, i.e., what a man actually does, is the very last thing we need consider in our enquiry. Whereas I wish to say it is the first.⁹

The conception of the acting subject as uniquely authoritative concerning his intent leads to one (apparently chronic) abuse of double effect.¹⁰ Three centuries before Anscombe, Pascal lampoons it as the, “*grande méthode de diriger l’intention.*”¹¹ Anscombe calls this abuse, “absurd,” and, “ludicrous.” One finds her most famous reference to this error in *Intention*:

it would appear that we can choose to have a certain intention and not another, just by e.g. saying within ourselves: ‘What I *mean* to be doing is earning my living, and *not* poisoning the household’; or ‘what I *mean* to be doing is helping those good men into power; I withdraw my intention from the act of poisoning the household, which I prefer to think goes on without my intention being in it’.

The idea that one can determine one’s intentions by making such a little speech to oneself is obvious bosh. (original emphases)¹²

To put paid to the error and to redeem her claim of, “bosh,” Anscombe presents an argument:

[i]s there ever a place for an interior act of intention? I suppose that the man I imagined, who said ‘I was only doing my usual job’, might find this formula and administer it to himself in the present tense at some stage of his

activities. However, if he does this, we notice that the question immediately arises: with what intention does he do it? This question would always arise about anything which was deliberately performed as an ‘act of intending’.¹³

An intention concerning one’s intention (a second-order intention – of course, we have such intentions, in fact, ethics generally and moral reform specifically would seem to depend upon them) does not escape scrutiny; rather, it gives rise to it. That is, why does one employ the grand method? “To elude the constraints of morality,” or (less objectionably, but still problematic), “to render my otherwise impermissible act permissible,” hardly exemplifies the troubled consciences that have legitimate recourse to casuistry. (Now largely a pejorative term, but one that originates in the Latin *casus conscientiae*, or “case of conscience.”)¹⁴

The Cartesian emphasis upon the special authority of the acting subject (conceived of as entirely mental and “inside” – yet utterly distinct from – the body) seems to give rise to the grand method.¹⁵ Why would this be so? Perhaps the unquestioned or privileged authority of the agent leads to the idea that the agent need only express, as it were, an alternative intention and, *voilà*, that would be his intent. This account conceives of intent as if it were simply a sentence, or something the agent says to himself as he acts instead of the embodied form practical thinking (including intending) takes, namely, doing something, acting. One’s doings are typically accurately described by those, as Anscombe says, “grown to the age of reason in the same world.”¹⁶

To sum up, Cartesianism’s direction of intention is a non-starter. For, one naturally asks, “with what intent does one direct one’s intent?” Moreover, the underlying view of mind as

entirely speculative simply cannot serve as a sound moral psychology. For it fails as a psychology (especially of action). Rather, it is a false theory that threatens to undermine our (self-) understanding of the very real phenomenon that prompted recourse to it: embodied psyche. Let us now turn to Anscombe's second culprit.

I.b. Proportionalism.

The much more novel (and, correspondingly, both less chronic and much easier to counter) corruption of double effect arises out of (ironically) a Consequentialist reading of Aquinas' original account of double effect. Anscombe refers to this as the, "package Doctrine of Double Effect."¹⁷

In the article inaugurating this most recent abuse of double effect (and corruption of Catholic moral theology), the Jesuit theologian Peter Knauer considers St. Thomas' discussion of double effect (*S.t.*, IIaIIae, q. 64, a. 7) as the paradigm of what will come to be called, "Proportionalism." In the relevant passage, Aquinas straightforwardly notes that:

some act arising from a good intention can be made
unlawful if it is not proportionate to the end
(*proportionatus fini*). And, therefore, if someone defending
his own life uses more force than necessary, it would be
illicit.¹⁸

Thomas here makes a standard stipulation concerning justified force; namely, more than necessary force undermines permissibility.¹⁹ Aquinas proposes (and does so clearly) that the disproportion vitiates the otherwise good act (otherwise good in part due to the – still – good intent), rendering it illicit. Here, by contrast, is Knauer:

[i]n sinning a man seeks a real good, but his act in its total existential entirety is not proportioned to this good. Then the evil arising thereby, whether it is desired or not, belongs objectively to the act and is objectively what is “intended.”²⁰

Knauer misunderstands Thomas to hold that if an act lacks the noted proportion, the agent thereby intends the bad at issue. Aquinas does not assert, however, that lack of proportion alters the good intention. (Indeed, his focus upon object, end, and circumstances in act-evaluation prevents exactly such a reductive account. For the lack of proportion (a circumstance) obtains independently of the object and end – upon which intent bears). Rather, and to reiterate, Thomas notes a perennial commonplace: disproportionate force renders an otherwise permissible act impermissible. In effect, Knauer employs a gross Consequentialist approach to eliminate the role of intent; he reduces intent to a function of the balance of good over evil. Anscombe understandably rejects such a confused account.²¹ The, “package Doctrine of Double Effect,” or Proportionalism amounts to a consequentialist corruption of the correct moral insight found in the I/F distinction. Let us turn now to her, “principle of side effects.”

II. Anscombe’s Principle of Side Effects.

In 1982 on the occasion of her receipt of the Aquinas Medal, Anscombe delivered a paper entitled, “Medalist’s Address: Action, Intention and ‘Double Effect’”. In it she proposes her, “principle of side-effects”:

I will call it the ‘principle of side-effects’ that the prohibition on murder does not cover *all* bringing about of

deaths which are not intended. Not that such deaths aren't often murder. But the quite clear and certain prohibition on intentional killing (with the relevant 'public' exceptions) does not catch you when your action brings about an unintended death. (original emphasis)²²

By "murder", Anscombe means wrongful killing of the innocent, intentional or otherwise:

there can be borderline cases arising because murder is not committed only where there was an intention to kill. The arsonist who burns down a house, not caring that there are people there, is as much a murderer if they are burned to death by his action, as if he had aimed to kill them. This action falls squarely within a penumbra surrounding the hard-core part of the concept of murder, which contains only intentional killing. The penumbra is fuzzy at the outer edges – that is, there are borderline cases. But that fact does not mean that an absolute prohibition on murder makes no sense.²³

Given the reasonableness of an absolute prohibition against murder, the principle of side-effects (or something like it) becomes necessary.²⁴ For, otherwise, as Anscombe illustrates the point:

you can't build roads and fast vehicles, you can't have various sports and races, you can't have ships voyaging over the seas, without its being predictable that there will

be deaths resulting.²⁵

So, the principle of side effects defines the set of cases that are not necessarily wrong (as intentional killings of the innocent). As she notes, “the principle is modest: it says ‘where you must not aim at someone’s death, causing it does not *necessarily* incur guilt’” (original emphasis).²⁶

Anscombe goes on, saying:

[t]he principle is unexceptionably illustrated by some examples of dangerous surgery, by some closings of doors to contain fire or water; or by having ships and airlines. In these we are helped by thinking of the deaths as either remote or uncertain.²⁷

Anscombe notes that the principle of side effects, “does not say *when* you may foreseeably cause death” (original emphasis).²⁸ However, the above-mentioned unexceptionable cases with reference to the remoteness or uncertainty of the outcomes suggest that we have two features to focus upon: the remoteness of the foreseen bad outcome or its uncertainty.

Take remoteness first. Consider flood doors in a submarine. When closed to prevent the deaths of the entire crew (and the submarine’s sinking), the deaths of the submariners in the flooded section, although certain, are remote. For one closes the doors and at some remove (causally and temporally, subsequent to the compartment’s filling with water), the submariners die.

Now, take uncertainty. To consider examples Anscombe herself proposes, we legitimately fly airplanes, launch ships, build roads, and manufacture cars although we know that

doing so will result in the deaths of innocents. For while those deaths are foreseen with statistical certitude they are not individually foreseen as certain. For example, we know with (statistical) certitude that given a certain number of flights, a certain number of deaths due to crashes will occur. This certitude does not make flying planes a violation of the absolute prohibition against murder. Were we, however, to fly a specific plane knowing with certitude that its flying would result in the deaths of innocents, we would apparently be culpable of murder, regardless of our not intending that result.

Again, we have Anscombe's proposal that:

[h]aving accepted the principle of side effects, we need some further principle or principles on which to judge the unintended causing of death. There is one which both seems obvious and covers a good many cases. The intrinsic certainty of the death of the victim, or its great likelihood from the nature of the case, would exclude moving the rock [in the famous cave-explorer case]. Here is a reasonable principle. Surgery would be thought murderous, even though it was not done to kill, but, say, to get an organ for someone else, if the death of the subject were expected as a near consequence, pretty certain from the nature of the operation.²⁹

From the above, it appears as if the principle of side effects complemented by the remoteness (not a, "near consequence,") or lack of certainty of the foreseen outcome secures permissibility

of the contemplated action. This appears to me to be the import of Professor Anscombe's principle of side effects.

I want to propose, apparently in contrast to her account (I am loathe to admit), that while proximity (if I may use that as opposed to remoteness) and certitude of an innocent's death as a foreseen but not intended consequence of what one does often constitute murder (as, for example in the arsonist and organ-transplantation cases Professor Anscombe mentions), they need not (as she herself elsewhere acknowledges in a case of terminal sedation which I take to instance both proximate and certain death).³⁰

In her rejection of the, "package Doctrine of Double Effect," (or, Proportionalism), Anscombe says:

[t]he Principle of Side Effects says no more than that moving the rock is not excluded by the prohibition on intentional killing. For, as I have explained it, that principle is not a package deal and it does not say what circumstances or needs excuse unintended causing of death. Some principle or principles are needed, and if we adopt that one principle, of the balance of good over evil in the expected upshot, then it becomes obscure why we could not do this where the causation of death was perfectly intentional. And that seems to be the principal ground on which some thinkers throw the whole package out of the window, and talk about a deliberate killing, for example, as

so far a ‘pre-moral’ evil’. ... the nerve of the rejection of former doctrine is here.(original emphasis)³¹

In order to determine permissibility in a case where one foresees death as a concomitant of one’s act, with what does one complement the I/F distinction? Anscombe suggests that complementing the I/F distinction with quasi-consequentialist considerations (the balance of good over evil) makes it difficult to argue that one could not have recourse to the balance of good over evil in a case involving an outright intent to kill. Or, as she says, “it becomes obscure why we could not do this where the causation of death was perfectly intentional.”

In what follows, I hope to clear up this obscurity and show the reasonableness of a standard account of double effect in which the I/F distinction functions in conjunction with unobjectionable quasi-consequentialist considerations. I will do so in broadly Aristotelian-Thomistic (and Anscombian) terms. I will begin with a brief presentation of Aquinas’ account of double effect, subsequently moving on to focus on the ethical relevance of the I/F distinction.

III. A (Sound) Account of Double Effect.

In the *locus classicus* of double effect (*Summa theologiae*, IIaIIae, q. 64, a.7), the great Dominican friar considers the (Natural Law) licitness of a private individual’s homicidal act of self-defense. He says:

[n]othing prevents one act from having two effects, of which only one is intended, the other being besides the intention (*praeter intentionem*). Now moral acts receive their character according to that which is intended, not, however, from that which is *praeter intentionem*, since this

is accidental, as is evident from what has been said earlier [S.t., IIa-IIae, q. 43, a. 3, c.]. Thus, from the act of self-defense, two effects may follow: one, the conservation of one's own life; the other, the death of the attacker (*invadentis*). Since what is intended is the conservation of one's own life, such an act is not illicit: it is natural for each thing to preserve itself in existence for as long as it is able. Nevertheless, some act proceeding from a good intention may be rendered illicit if it is not proportioned to the end (*proportionatus fini*). Thus, it would not be licit if someone defending his own life were to use more force than necessary. But, if he repels force with moderation, his defensive act will be licit: for, according to the jurists, "it is licit to repel force by force, with the moderation of a blameless defense."³² Nor is it necessary for salvation that a man forego an act of moderate force in order to avoid the death of another: since one is more responsible to care for one's own life than someone else's. But, since to kill a man is not licit except for the public authority acting for the sake of the common good (as is evident from what was previously said [S.t., IIa-IIae, q.64, a.3, c.]), it is not licit for a man to intend to kill (*intendat occidere*) in order to

defend himself, except for those who have public authority.

These, intending to kill a man in self-defense, refer this to the public good. This is evident in the case of a soldier fighting an enemy, and in the case of a minister of the judge fighting against thieves. Nevertheless, even these would sin if they were moved by private animosity.³³

To avoid initial confusion about St. Thomas' account, a number of points bear notice. First, as he says here, Aquinas considers it legitimate for one having public authority to intend to kill in self-defense. (Notably, in the aside at the end of the corpus he rejects officers of the polity killing with Dirty-Harry-“make-my-day” private animosity.) Thus, in the article, he addresses the case of a private individual whose act of self-defense results in the assailant's death. Second (and an allied point), Aquinas considers this case assuming that the relevant polity has not granted a private individual the authority to intend to kill in self-defense. He does so while clearly indicating that a polity could grant that authority. Indeed, it has authorized soldiers and its officers in need of such authority to intend to kill in self-defense. Thus, absent a polity legalizing intentional killing in self-defense, the natural law defaults to prohibiting a private individual from intending to kill an aggressor in self-defense. A polity, however, may deputize, as it were, its citizens to intend to kill in defense of self (and others).³⁴ Third, we must avoid imagining the defense Aquinas has in mind anachronistically, involving exclusively offensive and determinatively lethal weapons such as pistols. Needless to say, Aquinas does not have such weapons in mind. Rather, as the *sed contra* taken from *Exodus 22:2* suggests, Thomas imagines an assailant suffering injury that proves fatal, e.g., a physical struggle, perhaps involving a knife,

sword or item at hand, not the shooting of an aggressor.³⁵ Fourth and finally, to understand Aquinas' account, we must keep in mind the Dionysian dictum: "the good arises from causal integrity; the bad from any single defect."³⁶ As St. Thomas tells us elsewhere, the good act will be wholly good, particularly with respect to what is done (object/deed), why it is done (end), and in what circumstances it is done.³⁷ The bad act will fall short in any of these respects.

With the above caveats in mind, let us consider St. Thomas' inaugural double-effect analysis. Most prominently, he employs the *intentionem/praeter intentionem* (intended/beside the intention) distinction. We customarily speak of what is *praeter intentionem* as foreseen but not intended or, simply, foreseen. While not Aquinas' terminology, I think it accurately conveys what he has in mind, although the contrast might be more accurately spoken of as the intended/voluntary distinction. As Aquinas' discussion of the case indicates, what is *praeter intentionem* is voluntary (knowingly willingly brought about), yet not intended. As voluntary, the agent is fully responsible for what he causes *praeter intentionem*. Were the *praeter intentionem* not voluntary, Aquinas would have nothing further to say concerning the (*praeter intentionem*) death of the assailant. What is beside the intention has relevance in act-evaluation as a circumstance of the act (circum-stare, something standing around); however, it does not define the act as intent does.

Intent, like an act, is complex, bearing on means and end. We will the end, choose the means, and intend the end-through-means. To employ Thomas' example, we will health, choose medicine, and intend health-through-medicine.³⁸ Our act is one of taking aspirin to be healthy. As Anscombe notes, it answers "how?" (taking aspirin) and "why?" (for health) questions.³⁹ The means answers "how?"; the end answers "why?". As intent includes both, it plays a crucial role in act-analysis. Of course, as Anscombe memorably puts it, "an object is not what what is aimed

at *is*; the description *under which* it is aimed at is that under which it is *called* the object” (original emphasis).⁴⁰ Moreover, as Miss Anscombe says, “to call an action intentional is to say it is intentional under some description.”⁴¹ This description is the verbal form the agent’s intent takes. Thus, “swallowing a little white thing,” although a true description, does not get at the intentional act, “taking an aspirin for my health.”

With these distinctions in mind, consider Thomas’ specific case. The intent is, “defend oneself to preserve one’s life.” In this intent, we find: first, the answer to “how?”, the means or object of self-defense (*tutela*); and, second, the answer to “why?”, the end of self-preservation (*conservatio propriae vitae*). If we are correct in our act-analysis, we have the object and the end to be evaluated. What of this end? Is it ethically legitimate? As St. Thomas notes, it is natural for each thing to keep itself in existence. Indeed, we here recall Aquinas’ ordering of the precepts of the natural law’s first principle: “do and pursue good; avoid evil.”⁴² To the first order of precepts belong those bearing on the, “preservation of human life and preventing of the contrary.”⁴³ Thus, the intended end, self-preservation, is eminently licit.

What of the means, the object, self-defense (absent intent to kill)? As we have seen, the deed of self-defense could lack proportion towards the licit end of self-preservation were one to use more force than necessary. The use of more than necessary force would be one of those defects that could render an otherwise licit object illicit. Here we encounter the good friar’s common sense. As St. Thomas notes at the outset of q.64, homicide is, “the greatest harm to one’s neighbor.”⁴⁴ Indeed, because it is the greatest of harms, it belongs – as Thomas notes, again in the *proemium* to q. 64 – amongst those that are inflicted on our neighbor *against his will*. Accordingly, just as inflicting harm at all when none is necessary would render the object of self-defense illicit (say one could easily cross the street), so, too, does using more than necessary

force. Moderate self-defense, however, does not suffer this defect of disproportion. Thus far, we have assessed the act of moderate self-defense undertaken for self-preservation resulting in the assailant's (not intended) death as licit. Yet, if the assailant's death has the character of *malum*, or something to be avoided (*evitandum occisionem alterius*) as it no doubt does, why not absolutely avoid it?

St. Thomas answers this reasonable question by noting that a man is more bound to care for his own life than that of another.⁴⁵ That is, one has a greater responsibility to preserve one's own life than one has to preserve another's. Accordingly, it is licit for a private individual moderately to defend his own life absent the intent to kill. How may we state the criteria discernible in Aquinas' account more generally?

Notably, St. Thomas does not set forth a general account to deal with double-effect cases.⁴⁶ I propose the following as a more general account of double effect. An otherwise licit act effecting good and bad is licit if the agent:

- 1) intends the good while not intending the bad (either as an end or as a means),
- 2) effects the least bad practically necessary (*proportionatus fini*), and
- 3) has a greater or comparable obligation to pursue the good than to avoid effecting the bad at issue.⁴⁷

The above conditions are each necessary and together suffice to render licit an act of double effect.

Here, we find our final quarry. Anscombe as well as opponents of an intention-sensitive ethic (e.g., her nemesis, the Consequentialist) raise a difficulty concerning the fourth condition:

if we adopt that one principle, of the balance of good over evil in the expected upshot, then it becomes obscure why we could not do this where the causation of death was perfectly intentional.⁴⁸

Of course, there are diverse (Consequentialist, or Deontological, or Natural Law) construals of, “greater or comparable obligation.” Not all concur with the more straightforwardly Consequentialist, “balance of good over evil,” way of putting the point. I will put this difference to the side. For it is not the current source of disagreement. Rather, the difficulty Anscombe shares with the Consequentialist goes to the heart of the I/F distinction and to DER, also. How can intent have moral relevance such that were the agent to intend the bad, the act would be ruled out of bounds, while absent such intent, the bad still counts against the act but not so as to render it illicit? This is the obscurity I hope to illuminate. I will do so by considering the moral import of the difference between the intended and the foreseen but not intended (or what I will call the simply voluntary).⁴⁹

IV. The Intended/Simply Voluntary Distinction.

Paraphrasing Aristotle, those who evaluate agents and acts as virtuous or vicious must first determine what makes an agent an agent and an act an act.⁵⁰ One errs who considers this need unique to a Eudaimonistic account. E.g., the Consequentialist also must first articulate what makes action action. Indeed, every investigation faces this requirement of an account concerning what is being looked into, its subject matter. Biologists demarcate the living from the non-living; zoologists, the animal from the non-animal; ornithologists, birds from other animals; and so on. Ethics is no different. It, too, must give an account of its subject matter. Accordingly, we must first delimit our field of study: the voluntary.

Here, it would be difficult to improve on Aristotle's account. Aristotle (logically) contrasts the voluntary (*ἐκούσίοις*) from the not voluntary. Amongst the not voluntary (along with necessary occurrences such as solstices, natural occurrences such as growing old and dying, and chance occurrences such as finding a treasure) belongs the counter-voluntary (*ἀκούσιοις*) such as the wind blowing sailors off course. To the countervoluntary belong acts (subsequently regretted) done either by ignorance (*δι' ἄγνοιαν*) of the particulars of which an action consists or by force (*βία*). Aristotle notes (non-controversially) that ignorance does not always constitute the counter-voluntary. In determining which types of ignorance cause actions to be countervoluntary *by* ignorance (the preposition indicates the ignorance as causal), Aristotle excludes ignorance of which the agent is culpable as that of the drunk who acts *in* the ignorance which she voluntarily caused by her drunkenness. He also excludes ignorance of what is actually virtuous or vicious for which ignorance the agent is responsible (as joint cause of her character). Excluding what occurs by ignorance or by force (counter-voluntarily), by nature, by necessity, or by chance, we have the voluntary. More positively, the voluntary is a knowing-wanting.

The voluntary constitutes the subject matter of ethics. As Anscombe (following Aquinas following Aristotle) notes, one need add no further characteristic to a human action (other than its voluntariness by which it is a human action) in virtue of which it becomes subject to moral evaluation.⁵¹ Rather, one need merely note its voluntary, knowing-willing character. I.e., that it was, indeed, an action. Immediately, it thereby becomes subject to ethical evaluation as either integrally good or defectively bad. Correspondingly, one need only establish that a happening involving one was not knowingly-willingly brought about by one's self ("I tripped, was pushed, blown by the wind, ..."), and the happening (and oneself) are not subject to ethical appraisal.

This is a remarkable commonplace. Moreover, it is full of import for our purposes. Remarkable, because it emphatically points towards our psychological nature. A commonplace; for children readily recognize its truth on the playground (“he shoved me into you”) while all criminal law abides by it in the venerable, “*actus non facit reum, nisi mens sit rea,*” or, simply, *mens rea*.⁵² It is full of import because it points us towards what has the most basic ethical relevance; namely, states of knowing-willing mind. E.g., were one without knowledge or will to function as a crucial link in a catastrophic causal chain, there would be no subject matter for ethical evaluation – no matter how dire the consequences. Conversely, (paraphrasing Kant) an unlucky Mother Theresa who through no fault of her own fails to relieve human suffering remains good as do her fruitless acts. Before moving on to consider the difference between the simply voluntary and the deliberate, chosen, and intended, I want to delimit and offer a few examples of what I have in mind when I speak of the simply voluntary.

Many of our doings are simply voluntary, things we do knowingly and willingly, yet without further epistemic or volitional features concerning them. By the simply voluntary I do not mean what we once deliberated about but now do by habit, for example, driving a car. The simply voluntary refers to those acts that do not rise to the level of requiring deliberation, just being instances of knowing and willing, period. Moreover, by the simply voluntary I do not mean an act that cannot be done deliberately. (I doubt that there are such acts.) Perhaps more importantly, by the phrase, “concerning them,” (speaking of elements belonging to one act) I mean to indicate that the simply voluntary could be an element of a deliberate act, but not in virtue of itself being deliberate. E. g., while I deliberately swim in a pool, I simply voluntarily displace water from the pool. Notably, many acts of young children (toddlers) are simply voluntary, not involving anything more than knowing-willing. Keeping such caveats in mind,

one knowingly and willingly eats, drinks, walks, sits, stands, looks at, listens to, talks to, runs one's fingers through one's hair, and so on.

With this (rough) sense of the simply voluntary in place, consider the deliberate, chosen, and intended in contrast to the simply voluntary.⁵³ To deliberate about how to achieve one's end, to choose means, and to intend one's end through those means are each themselves simply voluntary. Unlike the simply voluntary that we share broadly with young children and many animals (e.g., dogs) adult humans paradigmatically act with choice, deliberation, and intent. Accordingly, because such acts originate from a deliberated will (*ex voluntate deliberata*) Aquinas speaks of them as, "properly human."⁵⁴ Moreover, these actions concerning our own actions (choosing, deliberating, and intending) instance the human tendency to rise above our own activity and take it as our object. Just as we know that we know and will that we will, so we act (deliberate, choose, and intend) concerning our own actions. We deliberate about how to achieve our willed end; upon discovery via deliberation we choose our own deeds as means; and, finally, we intend those deeds as means and the effects we produce by them as ends.

Now, since knowing-willing demarcates that which is subject to moral evaluation from that which is not, further differences within the knowing-willing have further ethical relevance. For these further differences ramify, articulate, develop, and unfold within ethics implications of the first morally important distinction (between the voluntary and the not voluntary). At this point, however, instead of contrasting what has ethical import from what does not, the contrast at issue is within the voluntary and, thereby, within the ethical. Thus, only within the voluntary do we find properly ethical distinctions between, for example, the licit and illicit, the virtuous and the vicious, the just and unjust, the right and wrong, and so on. Following our very first distinction (between what is duly associated with the mental states of knowing and willing and,

thereby, subject to moral evaluation and what is not, and, thereby, not subject to such evaluation), we look initially at diverse mental states in making these properly ethical distinctions.

To illustrate the moral difference between the intended and the simply voluntary (the I/F distinction), allow me to employ a standard pair of contrasted cases: terror and tactical bombing. Consider the intended elements found in terror bombing. To terrorize civilians one deliberates about and chooses means productive of that end. So, for example, if one determines that fire bombs best maim, kill, terrorize, and demoralize civilians, then one chooses them. One tactically bombs to destroy a military installation (say an arms-depot), and, thereby, advance the cause of victory. The destruction of the depot is the proximate end. So, for example, if one determines that fire bombs best destroy it, then one decides upon them as one's means. Tactical bombing instances the deliberately decided upon destruction of a military target concomitantly harming (in the double-effect cases) the non-combatant populace.

Now, to consider the two acts, stipulate comparable consequences. Thus, both acts do terrorize, kill, and maim civilians (comparably) while destroying the depot; both undermine support for the war and impede the enemy's military. Similarly, both advance the cause of victory. Why, then, contrast the two acts in question? (Here is our obscurity.)

First, not to contrast the two acts is to employ superficial (as Anscombe suggests, "shallow,") inadequate, and childish (in the sense of, "fit for children, not adults,") criteria for act-evaluation. Second, to do so is entirely to ignore the prominent varied viciousness of terror bombing in contrast to the absence of the same in tactical bombing.

Consider the first charge of superficiality. Amongst our acts we can readily contrast those that are simply voluntary (walking) from those that in addition to being voluntary are

deliberately decided upon (teaching). Insofar as deliberately decided upon acts more intimately and deeply involve thinking-wanting, they more fully instance a human act (knowing-willing). They are more fully, more completely, more deeply human acts. For this reason, they belong characteristically to adult, mature humans. For such humans robustly plan, order, and design their acts fully exercising their capacities as thinkers and willers. While children and animals act voluntarily, adult humans in their capacity as adult humans act with deliberate decision, or complete, full thinking-willing. Accordingly, when we evaluate deliberately decided upon acts, we must do so giving due prominence to those elements of the act which render it deliberately decided upon. Otherwise, our assessments lack depth. That is, we would be evaluating an act as if it were simply voluntary and not also decided upon deliberately. We would employ a standard fit only for a child's or (and I say this with no disparagement to the child) a dog's act to an adult's action. (To revise Gertrude Stein's dictum, "There is more there there." Thus, one needs more in one's act-evaluation to capture the more that is there.)

Moreover, and this brings me to my second claim, we would fail to get at the act as vicious (or virtuous). For, as Aristotle says, decision best instances virtue (and vice). Indeed, as the very definition of virtue indicates, deliberate decision exemplifies the essence of virtue (and vice).⁵⁵

Now, consider our two consequentially comparable acts in terms of virtue and vice. With respect to vice, terror bombing is while tactical bombing is not, "murderous, bloody, savage, extreme, rude, cruel."⁵⁶ Terror bombing targets the innocent, the harmless, those who do not threaten (*in nocere*), the defense-less with a view to inflicting pain, suffering, despair, and terror upon them. Thereby, it is unjust, murderous and cowardly. It is unjust: for only the violent merit violence; to render violence upon the harmless is not due. It is murderous: purposefully to kill

the innocent, as terror bombing does, is to murder. It is cowardly bullying: it targets the defenseless who do not threaten. It is savage, extreme, rude, and cruel: for it exemplifies the abandonment of that high civility by which the strong and powerful direct lethal fury only upon those who might do likewise to them. Indeed, to call it lupine is to insult the wolf who is better to wolf than man is to man in countenancing the various vices exemplified in terror bombing.

By contrast, tactical bombing targets sources and agents of violence such as an artillery installation and those who man it. Thereby, it is just. For violence is due the violent. Nor do the deaths of the innocent render it murderous. For it does not aim at the innocent; rather, they are (unfortunately) proximate to the (just) violence it does instance. Nor need tactical bombing incorporate cowardice. For a military target typically poses a threat to those who seek to destroy it. Nor is tactical bombing barbarous, extreme, rude, or cruel. For by it one does not seek out civilians as targets and thereby betray a venerable achievement of civilization. Namely, that by which the awful violence of war be directed against those who bear arms. Of course, one would go too far were one not to note room for criticism of tactical bombing. It may instance callousness and indifference to the suffering of others. Certainly, one would err if one were positively to recommend it. For while it need not incorporate malice towards the non-combatants, it is certainly not a benevolent act; indeed, it does nothing but harm to them. Nonetheless, as the I/F (or, more precisely, the Intended/Simply Voluntary) distinction indicates, terror bombing necessarily exemplifies a variously vicious (barbarous, murderous, unjust, and cowardly) deed while tactical bombing need not.

In summation, the I/F distinction captures ethically relevant differences between consequentially comparable acts. It ramifies (the morally relevant side of) ethic's founding distinction between the voluntary and the not voluntary. The intended aspects of an act bear

profoundly on act-evaluation insofar as they index the depth of the voluntary. Ethicists who do not acknowledge the import of the I/F distinction inevitably make shallow act-evaluations.

Moreover, they lack the resources by which to assess an act's exemplification of virtue or vice.

To conclude, recall Anscombe's exhortation:

[i]t would be a great improvement if, instead of "morally wrong," one always names a genus such as "untruthful," "unchaste," "unjust." We should no longer ask whether doing something was "wrong," passing directly from some description of an action to this notion; we should ask whether, e.g., it was unjust; and the answer would sometimes be clear at once.⁵⁷

1. I thank the University of Notre Dame's Jacques Maritain Center and its Director Professor John O'Callaghan as well as the Social Trends Institute and its President Professor Emeritus Carlos Cavallé for their generous sponsorship of and invitation to the compelling conference from which this paper arose. I count myself indeed fortunate to have the professional privilege of discussing these important matters with and learning from such fine scholars as were gathered for the Double Effect Conference. I express gratitude to my fellow participants for their thoughtful comments on an earlier version of this paper. I particularly thank Professor Cyrille Michon of the *Université de Nantes* for his generously extensive and helpful comments on an

earlier draft. I, of course, bear full responsibility for the defects of this paper. Finally, thanks to Craig Iffland for his insuperable handling of conference details.

2.G. E. M. Anscombe, *Intention* (Oxford: Basil Blackwell, 1957);
Anscombe, "Modern Moral Philosophy," *Philosophy* 33:124 (1958):
1-19 (also available in Anscombe, *Human Life, Action and Ethics: Essays by G.E.M. Anscombe*, eds. Mary Geach and Luke Gormally (Exeter: St. Andrews Studies in Philosophy and Public Affairs; Imprint Academic, 2005), 169-94.

3.For a variety of reasons, "double-effect reasoning" proves preferable to the alternative names such as "principle", "rule", or "doctrine" of double effect. "Principle" and "rule" (albeit less so than "principle") both suggest one criterion while double effect comprises a set of criteria for evaluating acts. Thus, both incline thinkers to suppose (erroneously, of course,) that double effect amounts to the I/F distinction. This then leads them to think (again, incorrectly) that the advocate of double effect proposes that act-evaluation ought to give no consideration to foreseen outcomes, only regarding the intended as having moral relevance. As an instance of this misunderstanding, consider, for example: "the doctrine underlying all forms of the theory of double effect is that what lies outside the scope of a man's

intentions in acting does not belong to his action, and so is not subject to moral judgement.” Alan Donagan, *A Theory of Morality* (Chicago: University of Chicago Press, 1977), 164. “Doctrine” suggests double effect is an authoritative, perhaps religious teaching, particularly given its origin in the thought of St. Thomas Aquinas and its continuous association with Catholic moral theology. In philosophical circles, “doctrine” has pejorative connotations, suggesting that double effect lacks sound philosophical grounds. Anscombe herself refers to the, “doctrine,” of double effect in her review of Glanville Williams’ *The Sanctity of Life and the Criminal Law* (London: Faber and Faber, 1958). For the review, see Anscombe, “Glanville Williams’ The Sanctity of Life and the Criminal Law: A Review,” in *Human Life, Action and Ethics: Essays by G.E.M. Anscombe*, eds. Mary Geach and Luke Gormally (Exeter: St. Andrews Studies in Philosophy and Public Affairs; Imprint Academic, 2005), 243-8. Presumably she employs “doctrine” in part because Williams so refers to double effect. As Anscombe (correctly) notes in her - scathing - review of the book, “an extraordinary amount of space is given up to attacks on the Catholic Church; this is not well done,” at 245. Williams appears to mean the term “doctrine” – which he introduces – pejoratively. At times it seems as if Anscombe herself uses the phrase “doctrine of double effect” pejoratively: “At this point the Doctrine of Double Effect helps itself

to an absurd device, of choosing a description under which the action is intentional,” Anscombe, “Medalist’s Address: Action, Intention and ‘Double Effect’,” *Proceedings of the American Catholic Philosophical Association*, LVI (1982): 12-25, at 21 (also available in Anscombe, *Human Life*, 207-26, at 223). In manuals of Catholic moral theology, “principle” is standard, perhaps due to the Jesuit Jeanne Pierre Gury’s modern formulation beginning with the Latin “*Principium*.” See Jeanne Pierre Gury, S.J., *Compendium Theologiae Moralis* (Regensburg: *Georgii Josephi Manz*, 1874 edn.), 5. Unfortunately, “doctrine” persists.

4. Anscombe, “Modern Moral Philosophy,” 12; also available in Anscombe, *Human Life*, 169-94, at 184-5.

5. The most recent occasion of which I am aware is her (characteristically brief), “A Comment on Coughlan’s ‘Using People’,” *Bioethics* 4, no.1 (1990): 62. She also responds, again very briefly, to criticisms by both Jonathan Bennett, “Whatever the Consequences,” *Analysis* 26 (1966): 83-112 and Philippa Foot, “The Problem of Abortion and the Doctrine of Double Effect,” *The Oxford Review* 5 (1967): 5-15. She does so in, “A Note on Mr Bennett,” *Analysis* 26 (1966): 208 and “Who is Wronged? Philippa Foot on Double Effect: One Point,” *The Oxford Review* 5 (1967): 16-17.

Bennett remains a critic of double effect as seen in his, *The Act Itself* (Clarendon: Oxford, 1995). Few note that Foot rescinds her 1967 criticism of double effect and endorses the need for the I/F distinction in her, “Morality, Action and Outcome,” in *Morality and Objectivity*, ed. Ted Honderich (London: Routledge and Kegan Paul, 1985), 23-38.

6. Anscombe, “Glanville Williams’,” in *Human Life*, 247.

7. Anscombe, “War and Murder,” in *Ethics, Religion and Politics, The Collected Philosophical Papers*, Vol. III, (Oxford: Basil Blackwell, 1981) 51-61, at 54.

8. Anscombe, *Intention*, second ed., (Cambridge: Harvard University Press, 2000) section 32, 57.

9. *Ibid.*, section 4, 9.

10. “Apparently chronic” because we seem still to encounter both the 1) Cartesian notion of the acting-subject as having highly privileged authority regarding intent in contrast to spectators and 2) the direction of intention via the agent’s speaking to himself in recent claims.

Consider the following: “[A] surgeon who performed a craniotomy and could soundly analyze the action, resisting the undue influence of physical and causal factors that would dominate the perception of observers, could rightly say “No way do I intend to kill the baby” and

“it is no part of my purpose to kill the baby.”” John Finnis, Germain Grisez, and Joseph Boyle, “‘Direct’ and ‘Indirect’: A Reply to Critics of Our Action Theory,” *The Thomist* 65 (2001): 1-44, at 24.

11. Pascal, *Les Provinciales, Septième Lettre*, in *Œuvres Complètes* (Paris: Lang, 1963), 397.

12. Anscombe, *Intention*, section 25, 42.

13. *Ibid.*, section 27, 47.

14. In contrast to the well-formed conscience recurring to double effect, Anscombe memorably speaks – in this case concerning the corrupt practice of Catholic priests charging to baptize – of those employing the direction of intention as, “leathery”: “[s]o far as any theoretical considerations have gone into the formation of the leathery consciences of these simoniacs, I suspect that they are connected with this ludicrous application of a doctrine of the ‘direction of intention’.” Anscombe, “Simony in Africa,” in *Faith in a Hard Ground: Essays on Religion, Philosophy and Ethics by G. E. M. Anscombe*, eds. Mary Geach and Luke Gormally (Exeter: St. Andrews Studies in Philosophy and Public Affairs; Imprint Academic, 2008) 239-46, at 243.

15. “But ever since the seventeenth century a false and absurd conception of intention has prevailed, which derives from Cartesian

psychology; according to this conception an intention is a secret mental act which is producible at will. In the event, theologians often treated the 'direction of intention' as something that could be accomplished by telling oneself at the time of action 'What I really mean to be doing is...'" Anscombe, "Glanville Williams'," 247-8.

16. Anscombe, *Intention*, section 4, 8.

17. Anscombe, "Medalist's Address," 24; also available in *Human Life*, 225. As Anscombe uses the phrase, the "package Doctrine of Double Effect" refers to what she regards as an ultimately untenable account of double effect having two elements: 1) the (in itself) tenable principle of side effects and 2) the untenable, "balance of good over evil." As she understands it, the package doctrine either amounts to, or, at the very least, results in Proportionalism. For this reason, in what follows, I equate the package Doctrine of Double Effect with Proportionalism.

18. "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 violentiam quam oporteat, erit illicitum."

19. To take but one of countless examples of the "no more than necessary force is justifiable" condition, consider element 3, below, in

the State of California's Instructions to Jurors in cases of justifiable homicide in defense of self or another: "The defendant is not guilty of (murder/ [or] manslaughter/attempted murder/ [or] attempted voluntary manslaughter) if (he/she) was justified in (killing/attempting to kill) someone in (self-defense/ [or] defense of another). The defendant acted in lawful (self-defense/ [or] defense of another) if: [1] The defendant reasonably believed that (he/she/ [or] someone else/ [or] {insert name or description of third party}) was in imminent danger of being killed or suffering great bodily injury [or was in imminent danger of being (raped/maimed/robbed/ {insert other forcible and atrocious crime})]; [2] The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and [3] The defendant used *no more force than was reasonably necessary* to defend against that danger." (emphasis added) Judicial Council of California Criminal Jury Instruction (2013) CALCRIM No. 505, 215.

20. Peter Knauer, "The Hermeneutic Function of the Principle of Double Effect," *Natural Law Forum* 12 (1967): 132-62, at 134.

21. Anscombe correctly understands Proportionalism originally proposed by Catholic theologians in the late 1960's to both 1) amount to Consequentialism and 2) arise out of a corruption of double effect.

For a thorough consideration of how Proportionalism arises from St. Thomas' account of double effect, see T. A. Cavanaugh, "Aquinas and the Historical Roots of Proportionalism," *Aquinas Review* I, no. 2 (1995): 31-44. For accounts of the history of proportionalism, see Bernard Hoose, *Proportionalism: The American Debate and its European Roots* (Washington, DC: Georgetown University Press, 1987) and Christopher Kaczor, *Proportionalism and the Natural Law Tradition* (Washington, DC: Catholic University Press, 2002).

22. Anscombe, "Medalist's Address," 21; also found in *Human Life*, 220.

23. Ibid., at 20 and 219 in the above-referenced two sources for the article, respectively.

24. In the final draft of Anscombe's contribution to *Euthanasia and Clinical Practice: Trends, Principles and Alternatives* (London: Linacre Centre for Healthcare Ethics, 1982), she writes:

we cannot offer a sharp and simple definition of murder. But there is a central part of its extension which can be reasonably well-defined, namely, the intentional killing of the innocent. Whenever this is done by rulers, soldiers, terrorists or other violent men, reference is made, in

reporting it, to the murder of innocent victims. This gives us one of our paradigms of the murderer, and constitutes the hard core of the concept of murder. We shall see it is surrounded by a relatively fuzzy penumbra.

This draft entitled, “Murder and the Morality of Euthanasia,” can be found in *Human Life*, 261-277, at 262. See also, Anscombe, “War and Murder,” 51-61; there, we have, “murder is the deliberate killing of the innocent, whether for its own sake or as a means to some further end,” at 53. Thus, the hard core is the intentional killing of the innocent (not simply intentional killing). Anscombe found it worth noting (as do I by quoting her) that officers of the polity licitly intend to kill: “[t]he idea that they [rulers and their subordinates] may lawfully do what they do, but should not *intend* the death of those they attack, has been put forward and, when suitably expressed, may seem high-minded. But someone who can fool himself into this twist of thought will fool himself into justifying anything, however atrocious, by means of it.” Anscombe, “War and Murder,” 54, note 2, (original emphasis).

25. Anscombe, “Medalist’s Address,” 20; also found in *Human Life*, 219.

26. *Ibid.*, 21 and 220.

27. *Ibid.*, 21 and 220-1.

28. Ibid., 22 and 222.

29. Ibid., 24 and 225.

30. “And in the case of the administration of a pain-relieving drug in mortal illness, where the doctor knows the drug may very well kill the patient if the illness does not do so first, the [I/F] distinction is evident; the lack of it has led an English judge to talk nonsense about the administration of the drug’s not having *really* been the cause of death in such a case, even though a post mortem shows it was.” (original emphasis) Anscombe, “War and Murder,” 54-5. Here we have both proximity and certitude allied with permissibility. Indeed, the case (of terminal or palliative sedation) paradigmatically illustrates DER.

31. Anscombe, “Medalist’s Address,” 24; *Human Life*, 224.

32. The relevant principle (that force may be repelled by force or *vim vi repellere*) has an intriguing provenance. Aquinas himself quotes Pope Gregory IX’s *Decretals*. St. Thomas’s fellow Dominican St. Raymond of Pennafort compiled (from 1230-1234) these *dicta* from various legal decrees. This one comes to Aquinas via Pope Innocent III (1209) through the late Roman jurist Ulpian (ca. 217) ultimately to be traced back to the Roman jurist Caius Cassius Longinus (fl. mid-first century A.D.). Nero banished Caius to Sardinia in 65 for showing too much

admiration for his ancestor of the same name, the chief conspirator against Julius Caesar. As Ulpian notes, Cassius holds that one may also repel arms by arms.

33. 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. *S.t.*, IIaIIae, q.64, a.7, c..

34.Indeed, I take it to be the case that many U.S. jurisdictions have so deputized their citizens. Absent such authorization, however, Aquinas' account holds. (While I do not attribute this position to Anscombe, I note that she may endorse something similar: “[w]hen a private man struggles with an enemy he has no right to aim to kill him, unless in the circumstances of the attack on him he can be *considered as endowed with the authority of the law* and the struggle comes to that point.” (emphasis added) Anscombe, “War and Murder,” 54.

35.*S.t.*, IIaIIae, q.64, a.7, s.c.: “But against is what is said in *Exodus* 22: 2, “if a thief breaking or digging into a house is found and, being wounded, dies, the one who dwelt the blows would not be guilty of his blood.” But it is much more licit to defend one’s own life than one’s own home. Therefore, also, if someone kills another in order to defend his own life, he will not be guilty of wrongful homicide.” “Sed contra est quod *Exod.* XXII dicitur, si effringens fur domum sive suffodiens fuerit inventus, et, accepto vulnere, mortuus fuerit, percussor non erit

reus sanguinis. Sed multo magis licitum est defendere propriam vitam quam propriam domum. Ergo etiam si aliquis occidat aliquem pro defensione vitae suae, non erit reus homicidii.” (The relevant houses were made of earth; thus, breaking in often involved digging into the structure.) In the *Vulgate* (which Thomas here uses) the third verse goes on to say: “[q]uod si orto sole hoc fecerit, homicidium perpetravit, et ipse morietur.” “[b]ut if he did this while the sun was risen, he perpetrated wrongful killing, and he himself shall die.” The relevance of the sun being risen generates debate, understandably. One sensible interpretation is that the householder at night who encounters a thief reasonably regards his life (and perhaps those of others in the household) as threatened. For he cannot discern as easily at night as he can during the day the nature of the threat (theft or grievous bodily harm). Moreover, during the day he can more easily secure assistance from neighbors. Although this interpretation of the text slightly differs from St. Thomas’ suggestion that what we here find justified is homicide in defense of one’s house, it vindicates his use of it. For the crucial point he makes stands. Namely, the Scriptural authority grounds the licitness of a private individual’s act of self-defense that results in the (at night-time, presumed) assailant’s death. In fact, the text is even more to his point than St. Thomas’ construal of it. For as the text itself endorses self-defense (not defense of one’s house) no a

fortiori argument (as employed by Aquinas) is necessary.

36.*S.t.*, IaIIae, q.19, a.6, ad 1, “sicut Dionysius dicit in IV cap. *de Div. Nom.*, bonum causatur ex integra causa, malum autem ex singularibus defectibus.”

37.*S.t.*, IaIIae, q.18, a.4, c..

38.*S.t.*, IaIIae, q. 12, a. 1, ad 4.

39.Anscombe, *Intention*, section 26, 46-7.

40.*Ibid.*, section 35, 66.

41.*Ibid.*, section 19, 29.

42.*S.t.*, IIaIIae, q.94, a.2, c., “Hoc est ergo primum praeceptum legis, quod bonum est faciendum et prosequendum, et malum vitandum.”

43.*Ibid.*, “quaelibet substantia appetit conservationem sui esse secundum suam naturam. Et secundum hanc inclinationem, pertinet ad legem naturalem ea per quae vita hominis conservatur, et contrarium impeditur.”

44.*S.t.*, IIaIIae, q. 64, proemium, “homicidio, per quod maxime nocetur proximo.”

45.*S.t.*, IIaIIae, q.64, a.7, c.: “plus tenetur homo vitae suae providere

quam vitae alienae.”

46. He does, however, earlier present something very much like his account of licit private self-defense in his consideration of passive scandal. *S.t.*, IIaIIae, q.43; see, for example, article 7 where he holds that since, “a man ought to love his own salvation more than another’s,” (interestingly parallel to his *S.t.*, IIaIIae, q.64, a.7, c., “one is bound to take more care of one’s own life than that of another,”) he ought not forego spiritual goods necessary for his salvation to avoid (*praeter intentionem*) scandal.

47. “Or comparable” departs from St. Thomas’, “is more bound (*plus tenetur*).” When the obligation concerning the good at issue is greater than the obligation to avoid the evil, it would be obligatory to engage in the contemplated act. Although Aquinas does not extend his account to such cases, I think it licit to act if the obligations are comparable in gravity. Of course, in such cases, acting would not be obligatory. In short, a reasonable person might remain ambivalent about what he ought to do. For example, a terminally ill patient might correctly judge it licit to forego or undergo terminal sedation (the aforementioned pain-relieving and death-dealing drug).

48. Anscombe, “Medalist’s Address,” 24; also found in *Human Life*, 224.

49. Anscombe describes the foreseen but not intended as voluntary:

[s]omething is voluntary though not intentional if it is the antecedently known concomitant result of one's intentional action, so that one could have prevented it if one would have given up the action; but it is not intentional; one rejects the question 'Why?' in its connection (*Intention*, section 49, 89).

50. To anticipate an objection that itself merits an entire paper, I differ with those critics of the I/F distinction who would draw an almost dichotomous distinction between the morally salient aspects we attend to in our evaluations of acts and those we rely on in our assessments of agents. Certainly, act and agent-assessment differ; the one is not the other. This truth, however, does not ground a typical charge against DER: that it erroneously takes an ethically important matter in agent-evaluation (the agent's intent or lack thereof) as an ethically relevant matter in act-evaluation. Many critics of DER typically have recourse to this move to accommodate the widely shared intuition (captured by DER) that intent morally differs from foresight of comparable bad consequences. They propose that intent matters in agent, but not in act-evaluation. So, for example, such thinkers might hold that the terror bomber is a worse agent than the tactical bomber, but an act of terror

bombing does not morally differ from a consequentially comparable act of tactical bombing. (See, for example, Judith Jarvis Thomson, “Physician-Assisted Suicide: Two Moral Arguments,” *Ethics* 109 (1999): 497-518, at 517 and T. M. Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge: Harvard University Press, 2008), 20-36). As an attempt to make a place for the ubiquitous intuition, however, the move fails. For the intuition concerns both act and agent, as one who proposes the I/F distinction would expect. There is, of course, much to be said concerning the relation between act-evaluation (sometimes referred to as first-order morality), agent-evaluation (sometimes spoken of as second-order morality), and DER. For further consideration of the topic, see T. A. Cavanaugh, *Double-Effect Reasoning: Doing Good and Avoiding Evil* (Oxford: Clarendon Press, 2006), 122-34; see also, T. A. Cavanaugh, “Double-effect Reasoning Defended: A Response to Scanlon,” *Proceedings of the American Catholic Philosophical Association*, 86 (2012): 267-79.

51. See Aristotle at *Nicomachean Ethics* III.1; Aquinas at *S.t.* IaIIae, q. 18, a. 9; and Anscombe in “Medalist’s Address,” 13-20 (also found in *Human Life*, 209 *et passim*).

52. We are told (by Frederick Pollock and Frederic Maitland in *The History of English Law Before the Time of Edward I*, second edition, 2

vols. (Cambridge: Cambridge University Press, 1952), 2:476) that the phrase can be traced back at least to Augustine's comment on perjury: "[r]eam linguam non facit mens rea," "[p]erjury does not exist absent the mental element" (Augustine, *Sermones*, No. 180, c.2., Migne, Patrol. Vol. 38, col. 974). In other words, simply saying something under oath that is false does not constitute perjury; one must also intend, thereby, to deceive those to whom one speaks.

53. I am not going to develop the differences between deliberation, choice, and intention. Briefly, I note the following. Intent concerns end-via-means and issues from deliberation. Choice concerns means and also issues from deliberation. Deliberation issues from the willing of an end. Given the willed end, deliberation determines the means by which one achieves one's end. One might abandon deliberation and thus not choose means and thus not intend end and means. The intended (end-through-means) is chosen (in respect of its means) and deliberate (in respect of both).

54. Aquinas, *S.t.*, IaIIae, q.1., a.1, c..

55. Aristotle, *Nicomachean Ethics*, "virtue is a habit of deciding," "ἡ ἀρετὴ ἐξίς προαιρετική," (1106b36).

56. Shakespeare, *Sonnet* 129, 3-4. (This paragraph relies on my,

“Aristotle’s Voluntary/Deliberate Distinction, Double Effect and Ethical Relevance,” *International Philosophical Quarterly*, forthcoming.

57. Anscombe, “Modern Moral Philosophy,” 8-9; also available in *Human Life*, 180.