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# Aristotle's Voluntary/Deliberate Distinction, Double-effect Reasoning, and Ethical Relevance

Thomas A. Cavanaugh

*University of San Francisco*, [cavanaugh@usfca.edu](mailto:cavanaugh@usfca.edu)

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T. A. Cavanaugh

Professor of Philosophy

University of San Francisco

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*Aristotle's Voluntary/Deliberate Distinction, Double Effect and Ethical Relevance*

*Abstract:* I articulate Aristotle's account of the voluntary with a view to weighing in on a contemporary ethical debate concerning the moral relevance of the intended/foreseen (i/f) distinction. Natural lawyers employ the i/f distinction to contrast consequentially comparable acts with different intentional structures. They propose that consequentially comparable acts of, for example, terror and tactical bombing morally differ based on their diverse structures of intention. Opponents of DER hold that one best captures the widely acknowledged intuitive appeal of the distinction by contrasting agents, not acts. These thinkers hold that the terror bomber differs from the tactical bomber while terror and tactical bombing do not differ ethically. Aristotle's accounts of the voluntary and the deliberately decided upon provide grounds for the ethical relevance of the i/f distinction as applied to both acts and agents.

## I.

*The debate concerning the ethical relevance of the intended/foreseen distinction.* G.E.M.

Anscombe inaugurated the ongoing debate concerning the ethical relevance of the intended/foreseen (henceforth i/f) distinction as employed by natural lawyers in double-effect reasoning (DER). Using DER, natural lawyers evaluate, e.g., terror bombing in which one intentionally targets civilians as impermissible while regarding as permissible consequentially comparable tactical bombing in which one foreseeably but without intent harms non-combatants while targeting a military installation. The i/f distinction generates much of the dispute concerning DER. With respect to the i/f distinction the disputants have paid attention – in decreasing order – to three allied topics: first, the distinction between intent and foresight; second, the application of the distinction to the disputed cases such as terror and tactical bombing; and, third and finally, the moral significance, or lack thereof, of the distinction.<sup>1</sup> This third topic – relatively neglected considering its importance – occupies our interest in this paper. In what follows I propose to address the resources provided by Aristotle in his account of the voluntary – focusing on the *Nicomachean Ethics* – for the ethical import of the disputed distinction.<sup>2</sup>

Before doing so, however, a question naturally arises. Namely, considering that DER originates with Thomas Aquinas, why look to Aristotle for the moral relevance of a distinction he himself neither makes nor employs?<sup>3</sup> Indeed, Aquinas addresses the nature of intent at some length while Aristotle – at least *prima facie* – does not employ the concept nor any obvious analog. Moreover, Thomas contrasts intent from foresight while Aristotle – *ultima facie* – does not indicate any concern for the question at issue. Is it not, at the very least, anachronistic and, more objectionably, willful to look towards Aristotle's account of the voluntary for the grounds

of a distinction proposed by Aquinas some sixteen centuries subsequently? If this paper succeeds, it will have answered this appropriately skeptical initial question. Allow me here to propose that the i/f distinction instances a ramification of a more basic action-theory distinction full of ethical import – namely, that made by Aristotle between the voluntary and the deliberately decided upon. Attention to Aristotle’s distinction between the voluntary and the decided upon shows the ethical import of the i/f distinction. Thus, I ask the doubting reader to suspend disbelief in order to entertain the exercise with some hope that it may prove fruitful. Before turning to Aristotle’s account, I will present the more salient contours of the current debate concerning the ethical significance of the i/f distinction.

Few advocates of DER bother to articulate the moral relevance of the i/f distinction.<sup>4</sup> Rather, given the widely recognized intuitive appeal of the distinction, most leave off argument once they establish that, for example, the deaths of non-combatants in terror bombing are intended while those in tactical bombing are foreseen but not intended.<sup>5</sup> For many intuit it as worse to intend to bring about a bad outcome than foreseeably to cause a comparable effect concomitant with an intended good one seeks to effect. Accordingly, advocates of DER typically do no more than establish the first two of the above-noted three disputed points. Namely, first, they distinguish intent from foresight; and, second, they show that the impermissible act incorporates intent while the permissible act does not. Of course, as opponents note, this is inadequate for at least two reasons.

First, while those who quarrel with double effect acknowledge the widely recognized intuitive basis for somehow distinguishing the intended from the foreseen but not intended causing of a bad outcome, they do not think this is best captured by drawing an ethical contrast between the relevant acts. Rather, (as will shortly become more evident) they think it best to

locate the moral relevance of the i/f distinction in agent-assessment, not in act-evaluation.

Second, even if one were to concede that the i/f distinction does have ethical significance in act-evaluation, why give it such great weight as to mark off the impermissible from the permissible?

Why not, rather, consider it as differentiating, for example, tactical from terror bombing as the better from the less good act, both of which remain permissible? Of course, the first question does come first. For if one misplaces the moral import of the i/f distinction in act-assessment when it properly belongs in agent-assessment, then the point concerning the permissibility of acts becomes moot. Accordingly, allow me to present the debate bearing on the first question, the proper place of the ethical import of the i/f distinction. Given limitations of space, this topic serves as my exclusive concern in this paper. This paper, however, does limn the outlines of a response to the above-noted second question.

Contemporary opponents of DER – both thinkers sympathetic to consequentialism such as Jonathan Bennett and deontologists such as Judith Jarvis Thomson and T. M. Scanlon – propose that the natural lawyer errs, not in giving the i/f distinction moral weight, but in locating its significance in act-evaluation.<sup>6</sup> These thinkers claim, rather, that one more appropriately places the ethical significance of the i/f distinction in agent-assessment. For example, the deontologist J. J. Thomson proposes that locating the moral import of the i/f distinction in act-assessment amounts to:

a failure to take seriously enough the fact – I think it is plainly a fact – that the question whether it is morally permissible for a person to do a thing is just not the same as the question whether the person who does it is thereby shown to be a bad person.<sup>7</sup>

Notably, Thomson and others who criticize DER assume without argument that the ethical significance of the i/f distinction is found either in act- or agent-assessment, but certainly not in

both. By contrast, the natural lawyer employing DER holds the i/f distinction to mark important moral differences within both act and agent-assessment. That is, other things being equal, terror bombing is impermissible and by that very act the terror bomber manifests a vicious character. Conversely, tactical bombing is permissible and the tactical bomber does not, qua tactical bomber, instantiate a vicious character. The opponents of DER such as Thomson and Scanlon think they adequately account for the intuitive appeal of the i/f distinction if they locate its moral import in agent-evaluation. The natural lawyer, of course, does not deny that the i/f distinction has ethical relevance in agent-evaluation. Rather, he asserts that it has import in both fora. Regardless, to respond to Thomson and allied thinkers such as Scanlon, one need show that the i/f distinction does have moral import in act-evaluation. As I hope will become evident from a close investigation of Aristotle's accounts of the voluntary and the deliberately decided upon, one finds ample grounds for its ethical import in act-evaluation. Accordingly, I first turn to Aristotle's account of the voluntary, as found in the *Nicomachean Ethics*. Relying upon the same work, I will then address his discussion of deliberate decision.

## II.

*The voluntary, the not voluntary and the counter-voluntary.* In Book III of the *Nicomachean Ethics*, Aristotle begins his consideration of the voluntary and the countervoluntary, as follows:

Now since virtue is concerned with feelings and actions [πράξεις], and praise and blame come about for voluntary actions [ἐκούσίοις], but for counter-voluntary actions [ἀκούσίοις] there is forgiveness and even pity, it is necessary for those who inquire about virtue to distinguish the voluntary and the countervoluntary.<sup>8</sup>

To put his point more generally, given that the ethicist evaluates acts and agents, he does well to

have an account of agency or the voluntary. Before one attends to what makes an act (or agent) good or bad, one must determine what makes an act an act (and an agent an agent). Namely, one must present an account of the voluntary.

As logic itself dictates, Aristotle takes all happenings around humans to be either voluntary [ἐκούσιον] or not voluntary [οὐχ ἐκούσιος]. The not voluntary – οὐχ ἐκούσιον – has a number of subclasses: the natural such as growing old and dying (1135b1-2), the necessary such as the solstices (1112a26), the fortuitous such as finding a treasure (1112a29), and the countervoluntary [ἀκούσιος] such as the wind blowing sailors off course (1110a4).<sup>9</sup> To the countervoluntary belong acts (subsequently regretted) done either through ignorance [δι' ἄγνοιαν] or by force [βία].

Aristotle inquires into voluntary action beginning with an account of countervoluntary [ἀκούσιος] occurrences. He does so because in human agency he understands voluntariness to obtain unless excluded by countervoluntariness. As noted, countervoluntary happenings are so either by force [βία] or through ignorance [δι' ἄγνοιαν] of the particulars of which an action consists (1111a23-24). At the beginning of his inquiry into the countervoluntary (1110a4-1110b10), Aristotle considers actions done because of, “fear of greater evils” such as an action in which an agent throws the cargo of a ship overboard in order, “to save himself and the others” (1110a5). With such acts in mind, Aristotle distinguishes between what is forced conditionally and what is forced unconditionally (and corresponding to these distinctions, what is conditionally voluntary and what is unconditionally countervoluntary).

An action is conditionally forced when the circumstances in which the action occurs are countervoluntary, yet the circumstances still permit the agent to act. The agent cannot be characterized solely as a victim, but as a victim of circumstances in which he can and does act.

This conditionally forced action Aristotle calls “mixed”; it is “more like voluntary” action (1110a12 and 1110b6). He says that:

an action is forced without qualification when its cause is external and the agent contributes nothing. Other actions are countervoluntary in themselves, but now choiceworthy and for these [goods], and their origin is in the agent (1110b3-5).

This distinction governs Aristotle’s discussion of the voluntary and the countervoluntary. He concerns himself with the unconditionally voluntary and the unconditionally countervoluntary in his definitions of both. (It would seem that the mixed act approximates the context within which one relies on double effect. For example, both the terror and tactical bombers act voluntarily in circumstances that are not themselves voluntary. Both their acts may be characterized as mixed; done out of fear of greater evils. Accordingly, while notable, it does not serve to contrast the two acts, or for that matter, the agents.)<sup>10</sup>

Putting mixed acts to the side, an unconditionally forced happening has an origin external to the one forced, yet not external as a motive for or goal of action (as the sweetness of the strawberries moves one to pick and eat them (1111a25-33)), but as exerting an agency which affects and controls the individual from beginning to end as kidnappers blindfold, gag, and handcuff a wealthy industrialist’s daughter and in so doing preclude her agency. We cannot speak of her as the agent of the kidnaping, but as the victim. She effects nothing; rather, the agency of others affects her (1110a2). If she were to assist her abductors in eluding the security force guarding her residence, we would characterize her, not as the victim of a countervoluntary occurrence, but as an agent of her own kidnaping. The one who suffers from force does so to the extent to which she does not contribute to what comes about. Nor would we say that she were abducted countervoluntarily if she found her kidnaping enjoyable: the victims of force



experience the actions affecting them with occurrent pain and subsequent regret (1110b12, 1110b19, 1111a22 and 1111a32). The girl must be handcuffed, gagged, and carried out of her home because she resists being kidnaped and contributes nothing to an event which she presently finds painful and subsequently worthy of regret. In an event countervoluntary by force, an individual (most properly spoken of as a victim) suffers due to an external agency which causes an outcome she regrets while neither contributing to nor desiring it.

Just as an event countervoluntary by force causes occurrent pain and subsequent regret, so does what comes about countervoluntarily by ignorance. Regret characterizes the attitude of the individual who suffers countervoluntarily. An agent does not bring something about countervoluntarily *by* ignorance when she acts in *her* ignorance, but when she brings something about *in* ignorance that she has not caused.<sup>11</sup> Such blameless ignorance is of the particulars of which an action consists. As in what is countervoluntary by force, the agent who brings something regrettable about from blameless ignorance is spoken of as a victim of such ignorance. Thus, countervoluntary occurrences result in a painful and regrettable consequence and are caused either by force to which the agent does not contribute or by blameless ignorance of the particulars of which the action consists. In both cases, the individual is a victim.<sup>12</sup>

With the countervoluntary adequately defined, Aristotle has all the elements in place to define the voluntary. A voluntary action occurs neither by force nor by blameless ignorance, but originates within the agent as the principal contributor to and source of the action the particulars of which said agent knows. In contrast to the aforementioned causes comprising the not voluntary – the natural, the necessary, the fortuitous, and the countervoluntary, Aristotle classifies voluntary human action as in the category of what is “up to us” (ἐφ’ ἡμῖν).<sup>13</sup>

Animals, children, and adult humans all have things that are up to them. Accordingly,

animals, children and mature humans act voluntarily. Thus, *ἐκούσιος* is said of adults, children, and animals (1111a25 and 1111b8). Accordingly, after presenting his account of the voluntary, Aristotle discusses decision [*προαίρεσις*] and deliberation [*βούλευσις*], themselves voluntary acts reserved to adult, mature humans.<sup>14</sup> It is here, in a consideration of Aristotle's account of acts that, in addition to being voluntary, are also deliberated about and decided upon that we see the grounds for ethically distinguishing acts incorporating the intention of a bad effect from those including only foresight of the same. To that discussion, I now turn.

### III

*The voluntary, decision and deliberation.* Having defined the voluntary, Aristotle goes on to consider decision which, in turn, requires a discussion of deliberation. He does so, in part, because, “decision seems to be most proper to virtue” (111b7). Indeed, readers will recall that decision figures in the very definition of virtue found in Book II. There, virtue consists in a deciding state [*ἡ ἀρετὴ ἐξίς προαιρετική*] (1103b21). Thus, in order fully to understand virtue (and vice), one must understand decision [*προαίρεσις*].

In his initial consideration of decision, he proposes that:

Decision [*προαίρεσις*], then, is apparently voluntary, but not the same as what is voluntary, which extends more widely. For children and the other animals share in what is voluntary, but not in decision; and the actions we do on the spur of the moment are said to be voluntary, but not to express decision.<sup>15</sup>

Here we see a distinction amongst voluntary acts. Some are simply voluntary; others, in addition to being voluntary, have the added characteristic of being decided upon which, as we will see, in turn, also implicates their being deliberate. Given that decision is voluntary, how may it be further characterized?

In defining decision, Aristotle (characteristically) notes common opinions while finding them deficient: 1) it is not desire, for irrational animals desire, but do not decide (1111b12); 2) nor is it passion, for what we do from passion seems to be least decided upon (1111b19); 3) although intimately related to wish – [ἡ βούλησις], it is not wish, for wish concerns the impossible while decision concerns what is up to us; finally, and for similar reasons, 4) neither is it belief, for belief concerns, amongst other things, the eternal while decision, again, concerns only what is up to us.

Manifestly, Aristotle asserts, decision is a voluntary act, but not every voluntary act is decided upon (1112a15). He proposes that what differentiates decision from the simply voluntary is its relation to deliberation [βούλευσις]. As its name suggests [προ αἵρεσις], it is chosen before other things [πρὸ ἐτέρων αἰρετόν] (1112a17). Aristotle sees this etymology as intimating a relation to prior deliberation. Accordingly, he interprets “chosen before” in the sense of “in preference to” and, therefore, after deliberation concerning what is preferable to what (1112a17). That is, decision consists in that branch of voluntary action that characteristically occurs after deliberation. Accordingly, Aristotle’s inquiry into decision requires a discussion of deliberation.

Deliberation [βούλευσις], like decision, is itself voluntary. It concerns what is up to us, specifically, what is towards or for the ends we seek [τῶν πρὸς τὰ τέλη] (1112b13, 1113a15), not the ends themselves. Famously, Aristotle comments that a, “doctor does not deliberate about healing, nor an orator about persuading, nor a statesman about making good legislation” (1112b13-15). Duly noting that Aristotle consistently uses the phrase, “of those things towards or for the end,” we may speak of deliberation as concerning the means in contrast to the end. Deliberation is an inquiry or investigation [ἡ ζήτησις] (1112b24) that seeks to discover the

action originating from and controlled by us that best promotes the end we want. Discovering such means via deliberation, we decide upon them and execute the contemplated act.

Accordingly, with his account of deliberation in place, Aristotle defines decision as,

“deliberative desire [βουλευτικὴ ὄρεξις] for (or about) what is up to us [τῶν ἐφ’ ἡμῖν]”

(1113a11). The resulting act is at once voluntary and deliberately decided upon. With this

account in place, let us turn to our ultimate quarry; namely, the ethical import of the distinction between intent and foresight.

#### IV

*The ethical relevance of the i/f distinction in Aristotelian terms.* To name, as is customary, the disputed distinction as one between intent and foresight is to suggest a contrast between volitional and epistemic states, as if foresight of an outcome implies only that the agent has a belief concerning the effect in question. One errs who so understands the difference at issue. The i/f distinction does not differentiate the volitional from the epistemic. Rather, it contrasts diverse volitional dispositions. Indeed, were the name not so well established, we would probably best speak of the intended/voluntary distinction. For the agent knowingly and willingly, in short, voluntarily effects the foreseen outcome in question. The foreseen outcome does not figure, however, as a means towards the end the agent seeks. Accordingly, the agent does not intend the foreseen effect. Nonetheless, the agent does have a volitional disposition towards the effect. He wills it as a concomitant of what he does intend. Thus, for example, the tactical bomber has a volitional disposition towards the terror and deaths of the civilians. He wills them as concomitant effects of destroying the military installation. In conditions not themselves voluntary, he voluntarily (knowingly and by his own agency, albeit not intentionally) terrorizes, maims, and kills civilians.

As noted previously, Aristotle speaks of acting in such circumstances as a “mixed” act, or a voluntary act performed in circumstances one would not choose. Similarly, the terror bomber acts in mixed circumstances. For, presumably, just as, absent constraint, no one would elect to bomb a military installation with civilians present, so, too, absent constraint, no one would choose to terror bomb. As Aristotle says, apart from circumstances, “no one would choose any such act for itself” (1110a19). Accordingly, terror and tactical bombing share the character of being voluntary acts performed in circumstances themselves not voluntary. Thus, the acts do not differ in this respect. Both instance the voluntary terrorizing, killing, and maiming of civilians. How, then, do they differ?

They differ, not as the simply voluntary differs from the deliberate, but, rather, in terms of which aspects of each act are deliberate. When one contrasts those simply voluntary aspects of each act from its deliberate elements, one sees the ethical import of the i/f distinction by which one ethically evaluates terror bombing as differing from tactical bombing.<sup>16</sup>

Consider the deliberate elements found in terror bombing. As uniformly presented in the literature, one terror bombs in order to lower civilian morale, thereby undermine support for the war, and, thereby, achieve victory. The terrorization of civilians serves as the proximate goal of terror bombing. To terrorize civilians one deliberates about and decides upon means proportioned to that end. So, for example, if one determines that incendiary bombs best maim, kill, terrorize, and demoralize civilians, then one decides upon them as one’s means. Terror bombing instantiates deliberately decided upon terrorization of harmless (innocent), non-combatants including infants, children, women, the elderly, the disabled, and the mentally incompetent.

By contrast, picture the deliberate elements in tactical bombing. One has recourse to

tactical bombing in order to destroy a military installation, and, thereby, advance the cause of victory. The destruction of a military installation, say an artillery battery, serves as the proximate goal of tactical bombing. So, for example, if one determines that incendiary bombs best destroy the battery, then one decides upon them as one's means. Tactical bombing instances the deliberately decided upon destruction of a military target concomitantly harming the above-described non-combatant populace.

As is customary in the debate concerning double effect and the i/f distinction waged between, on the one hand, natural lawyers and, on the other, consequentialists and deontologists, in contrasting terror and tactical bombing, one stipulates comparable consequences. Accordingly, imagine the above acts of terror and tactical bombing as effecting comparable consequences. Both do terrorize, kill and maim civilians (to the same extent and with the same magnitude) while destroying the artillery battery. In turn, both do undermine support for the war and impede the enemy's military. Similarly, both do advance the cause of victory. Why, then, contrast the two acts in question? Why not simply claim, as opponents of double effect and the i/f distinction do claim, that while terror bombing does not differ from consequentially comparable tactical bombing, the terror bomber is a worse agent than the tactical bomber and leave it at that? Two responses come to mind. First, to do so is to employ superficial, inadequate, indeed childish (in the sense of "fit for children, not adults") criteria for act-evaluation. Second, and more importantly, to do so is entirely to ignore the salient and multifarious viciousness of terror bombing in contrast to the absence of the same in tactical bombing.

Allow me to frame the first charge of superficiality. As Aristotle's account indicates, amongst our acts we can readily contrast those that are simply voluntary (knowing-willing in the sense of aware or conscious-willing), say the act of walking, and those that in addition to being

voluntary are deliberately decided upon, say the act of bicycling. Insofar as deliberately decided upon acts more intimately and deeply involve wanting-thinking, they more fully instance a human act (knowing-willing). They are more fully, more completely, more thoroughly human acts. For this reason, they belong exclusively to adult, mature humans. For only such humans robustly plan, order, and design their acts fully exercising their capacities as thinkers and willers. While children and animals act voluntarily, only 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 special prominence to those elements of the act which render it deliberately decided. Otherwise, our assessments lack proportionality to the object evaluated. That is, we would be evaluating an act as if it were merely voluntary and not also decided upon deliberately. We would employ a standard fit only for a child's or beast's act to an adult's action. Moreover, and this brings me to my second above-enunciated claim, we would fail to capture the most salient and important ethical difference between the acts of adults and those of children and animals; namely, virtue and vice. 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) [ἡ ἀρετὴ ἔξιν προαιρετικῆ] (1103b21).

With respect to vice, consider the acts of terror and tactical bombing. Indeed, terror bombing is while tactical bombing is not, "murderous, bloody, savage, extreme, rude, cruel" (Shakespeare, Sonnet 129. 3-4). 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 unjust, for it is not due them. It is murderous: purposefully to kill the innocent *qua* 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 instance the killing of the innocent as innocent, but, rather, as 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 the violent, 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, 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* distinction illustrated in terms of Aristotle's account of the voluntary and the deliberately decided upon indicates, terror bombing necessarily exemplifies a variously vicious (barbarous, murderous, unjust, and cowardly) deed while tactical bombing need not.

In conclusion, I propose that the *i/f* distinction does capture salient ethically relevant differences between the acts considered by double effect. The distinction ramifies the contrast between the voluntary and the deliberately decided upon. As recourse to Aristotle's thought



indicates, the deliberately decided upon aspects of an act bear special significance in act- (and agent-) evaluation insofar as they index both what is uniquely human and what is (correspondingly) virtuous or vicious about the act. Ethicists who do not acknowledge the import of the i/f distinction inevitably make immature, superficial, inadequate act-evaluations. Moreover, they lack the resources by which to assess an act's exemplification of virtue or vice. I submit that the above serves as a response to those critics of the i/f distinction who do not grant it ethical import in act-evaluation.

At the outset of this paper, I noted that in addition to showing that the distinction has moral relevance in act-assessment (which I take myself to have done) one must also show that it correctly marks the division between impermissible and permissible acts (which I do not take myself to have adequately established). In pointing towards the latter task, I recall G. E. M. Anscombe's magisterial admonition:

[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.<sup>17</sup>

I hope in the arguments I have presented above (although falling short of being, "clear at once") to have made some contribution towards that much-to-be-hoped for, "great improvement".

## ENDNOTES

<sup>1</sup>For a representative collection of articles on either side of the debate, see Paul Woodward, ed., *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle* (South Bend IN: University of Notre Dame Press, 2001). For an extended consideration of double effect, see T. A. Cavanaugh, *Double-effect Reasoning: Doing Good and Avoiding Evil* (Oxford: Clarendon, 2006).

<sup>2</sup>References to Aristotle's *Nicomachean Ethics* will be cited within the text with the Bekker numbers. Unless otherwise noted, the translation is the author's made with recourse to Terence Irwin's (Indianapolis IN: Hackett Publishing Co., 1999) and H. Rackham's (Cambridge MA: Harvard University Press, 1990). The Greek text employed is that found in Rackham.

<sup>3</sup>Historically, DER arises out of Aquinas' accounts of natural law and human action. One finds the *locus classicus* in Thomas' *Summa theologiae* IIaIIae, q. 64, a.7. There, St. Thomas presents double effect (albeit in inchoate form) while considering the natural-law licitness of a private individual's act of self-defense that results in the aggressor's death.

<sup>4</sup>To consider one account of its relevance, see Cavanaugh, pp. 134-63.

<sup>5</sup>Experiments attest to the widely held character of the intuition that intent has moral relevance in act-assessment. Subjects differentiate consequentially comparable acts along lines similar to double effect. For an extensive consideration of the experimental evidence, see, for example, John Mikhail, *Elements of Moral Cognition: Rawls' Linguistic Analogy and the Cognitive Science of Moral and Legal Judgment* (New York NY: Cambridge University Press, 2011).

<sup>6</sup>See, e.g., Jonathan Bennett, *The Act Itself* (Oxford: Clarendon, 1995), p. 225; 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 MA:

Harvard University Press, 2008), p. 58. Of these three, Bennett accords the i/f distinction the least ethical significance even when limited only to agent-evaluation. He understands an agent who foresees an upshot of his act without intending the same as conceptually capable of trying to avoid that upshot, an option unavailable to the agent who intends the effect in question as a means. Thus, Bennett thinks the agent who foresees without intent, “has a certain moral advantage” over the agent who intends a consequentially comparable bad effect (Bennett, p. 225). Thomson and Scanlon grant the i/f distinction full moral import in agent-evaluation. They hold, as does the natural lawyer, that the terror bomber, for example, is a vicious agent in virtue of his intent to terrorize non-combatants. Of course, while the tactical bomber qua tactical bomber can by no means thereby be deemed virtuous, neither can he thereby be evaluated as vicious.

<sup>7</sup>Thomson, p. 517. Scanlon concurs with Thomson regarding the natural lawyer’s error in placing the ethical significance in act-evaluation. See Scanlon, pp. 21-4.

<sup>8</sup>Aristotle, *Nicomachean Ethics*, III, i., 1109b30-33. “Involuntary” is the common translation of ἀκούσιος. “Countervoluntary”, proposed by Sarah Broadie (in *Ethics with Aristotle* (New York NY: Oxford University Press, 1991), p. 126) is preferable insofar as it more precisely reflects the sense which Aristotle has in mind of ἀκούσιος as what goes against or counter to ἐκούσιος.

<sup>9</sup>Some find the example of growing old and dying jarring. Surely, this is countervoluntary?

Indeed, numerous translators and commentators find Aristotle’s proposal that growing old and dying is neither voluntary nor counter-voluntary so clearly mistaken that they propose a corrupt text, for no other reason but their certainty that one must counter-voluntarily grow old and die.

So, for example, we have Rackham saying, “‘Involuntary’ is certainly corrupt; perhaps Aristotle wrote ‘in our control’”, (Rackham, p. 300, note a.). While it is true that most of us do not want to

grow old and die, simply not wanting some outcome does not make it countervoluntary. It must also be under our control, up to us, the kind of thing that we can effect or affect. Insofar as whether we grow old and die is not up to us, when we do so, we do so neither voluntarily nor countervoluntarily. Of course, we might kill ourselves; would this not be a voluntary dying? No doubt, such a dying would be voluntary; still, this does not render the dyings of those who do not kill themselves up to us. Thus, growing old and dying is neither voluntary nor countervoluntary. It is not voluntary. Both the voluntary and the countervoluntary share the underlying similarity of being up to us and excluding what occurs naturally, fortuitously or necessarily.

<sup>10</sup>For an extended treatment of the relation between Aristotle's consideration of mixed acts and double effect, see Michael Pakaluk, "Mixed Actions and Double Effect," in Michael Pakaluk and Giles Pearson, eds., *Moral Psychology and Human Action in Aristotle* (New York NY: Oxford University Press, 2011), pp. 211-31.

<sup>11</sup>In determining which types of ignorance cause actions to be countervoluntary *by* ignorance, 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, and that of the agent ignorant of what is actually virtuous or vicious for which ignorance the agent, as joint cause of her character, is responsible.

<sup>12</sup>Yet, what of something that occurs countervoluntary by ignorance that the agent does not subsequently regret? Here, Aristotle proposes that the agent requires a distinct name, for he differs from the agent involved in a countervoluntary act attended by regret. He calls nonvoluntary [οὐχ ἐκών] the agent who through ignorance performs an act which he does not find painful and subsequently regretful (1110b23). Aristotle clearly names the agent in contrast to the act as distinct in this instance, saying "since he is different." Putting that subtlety aside,

Irwin translates οὐχ ἐκούσιον as “nonvoluntary” and οὐχ ἐκῶν as “nonwilling” (Irwin, 1110b18-23, p. 32). Rackham translates οὐχ ἐκούσιον as “not voluntary” and οὐχ ἐκῶν as “non-voluntary” (Rackham, 1110b18-23, p.123). I follow Rackham and translate οὐχ ἐκούσιον as “not voluntary” and οὐχ ἐκῶν as “non-voluntary” in order to note that οὐχ ἐκούσιον includes both actions countervoluntary by ignorance, ἀκούσιον, and actions which are “not voluntary” by ignorance yet are not regretted; namely, οὐχ ἐκῶν.

Consider an example of the nonvoluntary, imagine a departmental barbeque hosted by the Chair. Present at the barbeque is Nemesis who over the years has frustrated the Chair. The Chair resents Nemesis, indeed, bears malice against him, wishing he were dead. Unbeknownst to the Chair (indeed, even to Nemesis), Nemesis has a lethal allergy to swordfish which, as it turns out, the Chair – due to his own delight in swordfish – has chosen to serve. As you, reader, no doubt by now anticipate, Nemesis eats the fatal swordfish, goes into anaphylactic shock and dies. The Chair has killed Nemesis through ignorance. Following Aristotle, we would consider this an act countervoluntary by ignorance but for one thing: the Chair not only does not regret this outcome and find it painful, he positively delights in it. For now his long years of frustration are over. With Nemesis’ demise, all is possible, now those longed for hires may occur, those graduate students of a certain stamp may be admitted, and so on. Clearly, Aristotle proposes, the Chair requires a different name from the countervoluntary agent, for he differs. Accordingly, we call him a nonvoluntary agent.

What ought we say of the act corresponding to the nonvoluntary agent? Is it to be spoken of as countervoluntary by ignorance or as nonvoluntary? I would suggest that we speak of it as nonvoluntary. For, paraphrasing Aristotle, it differs. The nonvoluntary category shows the, at times, contingent relation between ignorance, on the one hand, and, on the other, pain and

subsequent regret. What of force; how does it relate to pain and regret? For example, could there be an act countervoluntary by force that the agent does not find painful and regretful?

Presumably not, for the force suggests that the agent does currently find the act painful and will subsequently find it regretful and, thus, must now be forced.

<sup>13</sup>At 1112a31-33, Aristotle clearly identifies everything which operates through human agency with what is “up to us” (ἐφ’ ἡμῶν), what can be done by human agents. At 1113b 5-6, he identifies what is “up to us” (ἐφ’ ἡμῶν) with the voluntary (ἐκούσιος). In other passages (e.g., 1135a24-27), Aristotle regards the voluntary and what is “up to us” as distinct: the voluntary is what is “up to us” when the countervoluntary is excluded. Thus, Aristotle oscillates between identifying ἐφ’ ἡμῶν with ἐκούσιος and denoting it as one of the conditions of voluntary action. By identifying what is “up to us” with what is voluntary, Aristotle notes the core character of the voluntary; namely, ourselves as the primary source of agency. When Aristotle distinguishes what is “up to us” from the voluntary, he does so to reiterate the exclusion of force and ignorance from what is voluntary. “Up to us” excludes the not voluntary caused neither by ignorance nor by force, but by nature (becoming hungry: 1113b28), necessity, or fortune (finding a treasure: 1112a33). These are not voluntary, yet they do not vitiate voluntariness. Thus, it is reasonable that Aristotle does not explicitly exclude them from the voluntary in his definition.

<sup>14</sup>I translate προαίρεσις as “decision”; I do so because Aristotle clearly understands προαίρεσις as depending upon and occurring after deliberation. To the extent to which “decision” connotes a picking after deliberation while “choice” need not, the former remains preferable.

<sup>15</sup>*N.E.*, 1111b7-10, Irwin’s translation.

<sup>16</sup>Of course, I assume that not all elements of a deliberately decided upon act are, thereby,

imbued with the character of being decided upon deliberately. I propose that, within a given deliberate act one may distinguish its deliberate elements from its simply voluntary aspects. In proposing to do this, I do not attribute such a move to Aristotle, except implicitly. For he, in his discussion of the voluntary and the deliberate, explicitly contrasts only acts that are simply voluntary (such as, for example, the adult human's spontaneous act of spelling a word 1112b2) on the one hand and deliberate acts on the other. I do think, however, that without violence to his account of the voluntary and the deliberate, one may within an act incorporating decision discern elements of it that are simply voluntary. For Aristotle clearly means us to understand acts as deliberate and decided upon in terms of their incorporation of means ordered towards the wished for end. Not all aspects of an act have this means-end character. Accordingly, I understand myself as making explicit an implicit element in his account.

<sup>17</sup>G. E. M Anscombe, "Modern Moral Philosophy," *Philosophy* 33 (1958): 1-19, pp. 8-9.