

Response to Jensen on the Moral Object

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STEVEN JENSEN’S recent criticism of my treatment of the nature of moral species and object in the October 2003 issue of *The Thomist* is instructive and helpful in raising certain foundational queries. However, there are definitory points whose character—owing both to the native complexity of the question and to certain logicist presuppositions—he fails to render sufficiently. I should like to focus attention on the controverted proposition of St. Thomas that “what is outside intention does not give species.” In doing so, the root difficulties with the analysis proffered by Jensen—and with the common logicist interpretation of Aquinas’s teaching—become clearer. Further, these points distinctively illumine important aspects of the nature of and distinction between defense and the death penalty.

About this proposition of Aquinas that the moral act does not receive species from what is outside intention,¹ there are three salient and definitory points to make. *The first point* cuts to the heart of moral action theory, because it establishes the primary sense of the human act. It is quite clear that for Thomas, the unit of currency of his analysis of human acts is the case wherein the moral object is naturally ordered to the end. Cases where the moral object *is not* naturally ordered to the end—complex acts—are, in fact, cases in which the putative moral object is actually a separate act with its own distinct moral species. For example, the thief who pursues illicit sexual intimacies with a woman primarily to get free access to her rooms, her safe, her jewels, papers, and other valuables, can be viewed as performing one complex act in which adultery is

¹ ST II-II, q. 64, a. 7, resp. “*Morales autem actus recipiunt speciem secundum id quod intenditur, non autem ab eo quod est praeter intentionem, cum sit per accidens.*”

further ordered to theft. Aquinas would say of such an instance² that this individual is more thief than adulterer. Nonetheless, it is accidental to adultery that it should be ordered to theft, as adultery is in no way definitively related to theft. So, in the complex act there are really two different acts with two different moral species. One act is more formal than the other (in this case, theft), but the point is that the unit of analysis is the case in which the object is naturally ordered to the end. If we do not understand acts in which the object is naturally ordered to the end, then we cannot hope to understand the nature of a complex act. This emphasis of Thomas upon the natural ordering of object to end establishes the necessary role of natural teleology with respect to the determination of the moral species.³ Hence it is a point about Thomas's writing that all proponents of a logicist reading of the moral act have tended to under-emphasize or depreciate. So, to repeat the first point: The primary sense of the human act for Thomas is unequivocally that of a human act in which the moral object is naturally ordered to the end.

This leads to *the second point*. In saying that "what is outside intention does not give the species," the species referred to by Thomas is the definitive and containing species, which is—in all cases wherein the object is naturally ordered to the end—*derived from the end*. Assuredly this does not mean that the species derived from the object is not contained within the species derived from the end, but rather it does mean that the species derived from the object is *essentially defined* by the species derived from the end, *and not the other way around*. To stress the definitive moral species is not to be an Abelardian, or to refuse to acknowledge that there is, in the primary sense of the human act, a species derived from the object. Rather, it is to stress that which is definitorily primary and origivative rather than that which is secondary and derivative. And, where the object is naturally ordered to the end, the species that is primary and definitive—which is most formal, and containing⁴—is that derived from the end. One notes that Thomas expressly argues that "The end is last in execution, but first in the intention of the reason, *according to which moral actions receive their species*" (my emphasis) in responding to the objection that the difference that derives from the end seems to come after the difference derived from the

² Thomas's example is of one who steals so as to commit adultery. Thomas clearly describes as "more adulterer than thief" the very same logic as applies here, where the individual is more thief than adulterer.

³ For this whole analysis, see *ST* I-II, q. 18 a. 7. Note also *ST* I-II, q. 18, a. 4, ad 2, where Thomas notes that a due proportion and relation to the end are inherent in action.

⁴ Again, cf. *ST* I-II, q. 18, a. 7.

object.⁵ To reiterate: *In cases wherein the object is naturally ordered to the end, the defining and containing species is derived from the end.* This is not a mere ad hoc point, to be conglomerated with other texts, but rather a foundational teaching without which the other texts will be misunderstood. It fits the first point above (about the natural unit of the human act) like a glove: because if one does not know what, properly speaking, the natural unit of the human action is, one will be lost in considering species, complex acts, and so on. *Not to know the natural unit of the human act is to fail to know what a human act is; and not to know the second point is not to know how the moral species of this natural unit of the human act is determined.* Complex acts are, as it were, per accidens unities, inasmuch as in their case the object is not naturally ordered to the end. But the per se is prior to the per accidens. Thus the natural unit of the human act—the case wherein the object is naturally ordered to the end—is prior to the case of complex acts that conjoin disparate actions such that one is per accidens ordered to the other.

The third point is that “intention” is primarily used by St. Thomas, throughout his corpus, to refer to the end, whereas “choice” is used by St. Thomas to refer to the means. When intention is used by Thomas of the means, as of an intermediate term, this is clearly not the primary sense of “intention” but rather a secondary and analogical sense. How is this clear? It is clear because the intermediate term is only an intermediate term vis-à-vis the finality that defines it. Indeed, the means as intermediate term is “intended” in a secondary sense precisely *because and insofar as the means is chosen; and the means is chosen at all only because of its order to the end, which is the primary object of intention.* One may, as Thomas points out, intend the end even prior to any deliberation of the means—whereas, clearly, this is impossible with regard to the means, which are defined as means vis-à-vis the intended end. It follows that *intention* is used of the means only secondarily and derivatively, and that primarily and most formally it pertains to the end that is the proper object of intention, as Thomas everywhere states.⁶ That there is a secondary and analogous use of “intention” hardly undercuts this point.

Jensen stresses that one act may be further ordered to an ultimate end as though this established that intention is not primarily of the end. But

⁵ ST I–II, q. 18, a. 7, ad 2. “Dicendum quod finis est postremum in executione, sed est primum in intentione rationis, secundum quam accipiuntur moralium actuum species”.

⁶ E.g., ST I–II, q. 13, a. 4, resp., which clearly teaches that “Just as intention regards the end, so choice regards the means.” That in complex acts one act is a “means” toward the end of a further and morally distinct act, *is only intelligible at all insofar as the individual acts are first defined and placed in moral species by their ends.*

the fact that one *act* may be further ordered to *another act* and so on, all the way to the ultimate end, *does not alter the natural and proper unit of human action: Namely, the case wherein the object is naturally ordered to the end.* Jensen is thus taking the case of a complex act (where one whole act may be ordered to another) as establishing that intention is not primarily of the end. Whereas, complex acts are only intelligible at all insofar as their *separate component individual acts* are first defined and placed in their separate moral species derived in relation to *their separate ends*. In treating complex act and act properly speaking indiscriminately, Jensen fails to see that no complex act is properly understood apart from prior understanding of the separate acts with their own ends and moral species. *It is not merely rhetoric to point out that this exhibits a failure to understand what a human act properly is.* The fact that one act can be further ordered to another *does not relativize what a human act is, nor alter the datum that intention properly regards the end of a moral object naturally ordered thereto, and that it is extended to complex acts by analogy with the proper instance of human action.* Hence it is pure hocus pocus to use complex acts to wave away Thomas's teaching about the primary and proper natural structure of the human act.

Now, the fact is that with these three strategic points in firm possession, the text of *Summa theologiae* II–II, q. 64, a. 7 is clearly coherent and consistent.⁷ And at this point I will make only a few references to Jensen's argument. He points out that St. Thomas's line regarding "the act of defense, from which sometimes homicide follows"⁸ treats homicide as different

⁷ ST II–II, q. 64, a. 7. Of course, strictly speaking, there is a fourth: The proposition that the moral object always includes not only its most formal component, but the integral matter of the act, in a manner analogous to the fashion in which the *abstractio totius* while formal with respect to the individual nonetheless always must contain the common matter of the definition. This is to say that the moral object is not purely a proposal or logical entity, but necessarily contains a natural element—the integral matter of the act—which cannot be neglected. So, e.g., we are free to give morphine in pain relief even knowing it will significantly attrite life, because such attrition is not a *malum in se*. But we are not free, merely because we seek pain relief, to give any quantum of morphine whatsoever—e.g., we are not free to administer a ten-gallon drum of morphine knowably sufficient in its nature directly to stop the heart. For this, by reason of its nature and not merely by reason of that aspect of the act (pain relief) that is attractive, renders the moral object of the act (wrongfully) homicidal. I do not go further into this aspect of the issue, because Jensen does not seem directly to challenge it, and also because there is growing awareness that logicist accounts of the moral object treat seem, in a certain respect, to derealize the object.

⁸ ST II–II, q. 64, a. 7, ad 4: "Dicendum quod actus fornicationis vel adulterii non ordinatur ad conservationem propriae vitae ex necessitate, sicut actus ex quo quandoque sequitur homicidium."

from an act of defense. But the completed act of defense that one *intends* is prior to the means *whereby* that completed act shall occur. And it is wholly intelligible that we commonly speak about action in this way, contrasting the sort of completed act we wish to perform with the means *whereby* this sort of act may be attainable. In the weave of the particular action, of course, these are conjoined: But it makes perfect sense to contrast the end (*which is not essentially defined by the means* when the object is naturally ordered to it) with the means (*which will be essentially defined by the end* when the object is naturally ordered to the end). Although moderate defense may require killing in some instance, the end of moderate defense is not essentially defined by killing. So we may speak of the act of defense from which killing sometimes follows, even intending thereby to cover distinct cases: The case where killing follows from its proportion to the end of defense *as means*, and the case where killing follows from the end of defense by way of *consequence*. But even where some act of defense requires lethal means, defense as such is not defined by this reliance, and so we speak of the end of defense as sometimes requiring lethal means, or as Thomas says, “the act of defense from which sometimes homicide follows.”

This reading clearly also explicates the lines of Thomas, “Nor is it necessary for salvation that a man omit the act of moderate self-defense in order to avoid killing the other man” (“Nec est necessarium ad salutem ut hunc actum moderatae tutelae praetermittat ad evitandam occisionem alterius”).⁹ For one might fear to undertake moderate self-defense because one feared that homicide might occur by way of consequence; or one might fear to undertake moderate self-defense because, in a given case, it was apparent that only lethal means would be proportionate to the end of defense. There is no particular reason to suppose that Thomas does not mean the line to cover both cases, unless of course we trifle with the constant and clear sense of his text that the primary object of intention is the end, or lose sight of what the proper sense of a human act is (both of which are common afflictions amongst logicist interpreters: for the end is an extrinsic cause, and the proper sense of a human act establishes the necessity of considering natural teleology in determining the moral species).¹⁰

⁹ Ibid.

¹⁰ Of course, there are two senses of “natural teleology”—the sense in which certain acts “by their nature” are defective vis-à-vis the end, and the sense in which natural teleology is ethically normative. But, of course, the first presupposes the second both absolutely speaking and epistemically. Thus, for example, we say that deliberately to “blow up” an innocent person is naturally ordered to harming or killing the person (so that this moral object shares the moral species of action against the innocent to which it is naturally ordered), while of course we also say that this act is contrary to the normative teleological order of nature, to the natural moral law.

This leads to my final point, regarding the distinction between “killing as means” and “killing as end.” It is a point that has been made by a number of scholars that killing is never rightly pursued as an end—even in the case of capital punishment—because it is justified in relation to justice for whose sake it is done. That is well and good, but the issue here is simply whether the completed act that the headsman intends does or does not essentially include killing in its definition. That is, the headsman intends a particular act of justice whose very essential definition includes a homicide. It follows that the headsman who seeks to perform this act of justice intends to kill as a definitory *part* of the end of performing an act of justice. The headsman is not delivering a parking ticket, or arraigning a criminal for trial, or any one of a number of other acts of justice, *but is imposing an act of justice whose very definition entails killing*. Killing is not accidental to capital punishment. How does the headsman know the act of justice prescribed by the court is fulfilled? It is fulfilled when the criminal has been executed.

Nonetheless, nowhere do I suggest that killing is apart from the defining moral species of that killing as some sort of end in itself. Rather, I point out that capital punishment is by its nature ordered to an imposition of justice—an imposition of a particular nature that includes homicide. Whether such killing is, as advocates of the incommensurability of goods wish to argue, intrinsically evil or—as *Evangelium vitae* makes clear by not listing it among intrinsic evils, and by treating it prudentially, and by according with doctrinal tradition—otherwise, there is simply no doubt that capital punishment is an act of justice whose definition entails killing. Since the executioner intends a just punishment of execution, and his acts are naturally ordered to that end, the datum that this lethal act of justice is further ordered to the wider system of justice in no way alters the clear fact that the executioner intends the death of the sentenced criminal as an essential definitory part of the act of justice the executioner seeks to perform.

By contrast with the executioner’s *intention* of an act of justice that by its very nature includes a homicide, the private citizen who *intends* as an end to defend an innocent does not intend something whose very definition includes a homicide. It may be that circumstances are such that other means of defense are not availing, and that the defender finds that the only proportionate means to achieve the end of defense is a lethal means. *Unlike capital punishment, the end of defense is not one that essentially requires homicide, or else every defense would be deliberately homicidal just as every execution is deliberately homicidal*. But this is not the case. To say that the executioner merely intends justice “in general” misses what he intends, which is a very partic-

ular act of justice that requires homicide not merely by circumstantial necessity but by its very nature.

As regards defense, there is always or for the most part a natural relation between the slaying of an assailant and the end of an assault.¹¹ Thus, when the only proportionate means for a just defense (for there are unjust defenses, as Thomas expressly identifies in speaking of the sin of strife)¹² is lethal, *then*—precisely because the object is naturally ordered to the end—the defining moral species is from the end. And that end is defensive. Professor Jensen avers puzzlement over the distinction between performative innocence and moral innocence, but the distinction goes to the heart of the difference between capital punishment and justified lethal defense. One who has the care of another, and who defends that other from unjust assault, is not *judging* the moral responsibility of the assailant, *but protecting the one assailed from the assault*. By contrast, capital punishment requires prior judgment of guilt, and—like all felony penalties—cannot justly abstract from the question of *moral responsibility*.

In sum, a serious speculative reading of Thomas will discover that the intuitions present in his account are those that any serious consideration of justified defense by private parties must consider. The reason is that those considerations, rooted as they are in the structure of human action and the nature of the moral law, *have not significantly changed*. St. Thomas makes clear that *intention* pertains to the end, and *choice* to the means, and that any use of *intention* for the object as an intermediate term is a secondary and implicitly analogous usage. He also makes clear that the primary sense of the human act is that wherein the object is *naturally ordered* to the end, and that when the object is naturally ordered to the end that the defining moral

¹¹ Of course, an exception can be conceived. Suppose the case of an assailant who arranges that a signal he is emitting cease when his heart stops beating, and further arranges that should this signal cease that a nuclear bomb explode in an urban area. In such a case, to use lethal means to stop the assailant would paradoxically stop one assault by catalyzing a more harmful one. But this is the stuff of fiction and does not alter the general proposition that, apart from such contorted circumstances, to slay the assailant is always or for the most part to suppress that individual's assault. Only the mechanical means used in the example alters the case, by rendering the assault to be mechanically rather than humanly implemented and not to depend on the life of the one who sets the process in motion. And, even here, the first assault is ended by slaying the assailant, albeit this catalyzes another even worse.

¹² Self-preservation is not simply in itself a sufficient ground for deliberate killing. For example, in *ST* II–II, q. 41, a. 1, ad 3, St. Thomas points out that those who defend themselves against public authority are guilty of strife—clearly the mere idea of self-defense is not a normative one necessarily entailing justice or by itself sufficient.

species is derived from the end. Hence natural teleology is unequivocally implicit in the determination of the moral species.

Any effort to understand the moral species must sooner or later cope with *Summa theologiae* II–II, q. 64, a. 7. Coping with the counterintuitive effects of a bad reading of this text by brushing aside “merely contemporary” intuitions about self-defense (i.e., the kind that almost all human beings naturally enjoy, but which it is suggested we must deny of Thomas even when his text articulates them) and refusing to weight texts according to their speculative content, fails to pay Aquinas the compliment that his account may in fact be coherent, consistent with natural moral intuitions, and indeed true. Surely Thomas knew what the practice in the courts of his day was when he wrote in *Summa theologiae* I–II, q. 100, a. 8, ad 3: “The slaying of a man is forbidden in the decalogue, in so far as it bears the character of something undue: for in this sense the precept contains the very essence of justice. Human law cannot make it lawful for a man to be slain unduly. But it is not undue for evil-doers or foes of the common weal to be slain: hence this is not contrary to the precept of the decalogue; and such a killing is no murder as forbidden by that precept, as Augustine observes (*De Lib. Arb.* i, 4).” The merely contemporary philosopher, like the merely contemporary moral theologian or pastor, cannot help but note that Thomas refers to “lawful slaying”—not only to the judicial penalty of execution, but to the kind of slaying in justified defense that courts have always accepted as lawful. The private citizen may not *intend*, as clearly the executioner *does* intend, an end whose very essential definition (as with the judicial penalty of death) includes homicide. But the private citizen may *intend* defense, and undertake those measures proportionate thereto, even should this require the deliberate use of lethal means. Defense is not an end whose essential definition requires homicide. When the means are objectively ordered to the end of defense, the defining moral species of the act derives from the end and so is defensive even should it be the case that in this instance the means need be lethal. N V