

Discussion

Acts Amid Precepts: The Aristotelian Logical Structure of Thomas Aquinas's Moral Theory

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THIS IS A STUDY of practical reasoning, and the shape proper to it, as taught by St. Thomas. Father Kevin Flannery, dean of philosophy at the Pontifical Gregorianum University in Rome, provides us with a searching investigation, showing a most impressive familiarity with a wide range of scholarship. Anyone who reads this work carefully will benefit hugely. I say this quite apart from any incidental disagreements one might have with the author.

In his first chapter, Flannery provides an argument for the existence of absolutely fixed principles of practical reasoning according to Aristotle, tied to the doctrine of *Motion of Animals*.¹ This challenges Martha Nussbaum's interpretation of Aristotelian ethics and is very effective. Flannery neatly shows that the role of the ends, the first principles in Aristotelian ethics, for our conduct is akin to that of the immobile starting point that Aristotle discerned in animal movement, a source of "leverage" as Flannery says (24).

¹ Cf. p. 21. In his note 44 there, Flannery mentions the commentator Michael of Ephesus as seeing the products of crafts as to be identified with the end of practical reason. Flannery, later in the book, uses the products of crafts as a principle for understanding double-effect reasoning in morals (chs. 7 and 8).

Rather than go through the book chapter by chapter, I will here focus on two important points where I have some disagreement. The first point occurs in Flannery's chapter 2, a presentation of the precepts of natural law. Flannery is in the course of presenting a stratification of practical reason analogous to that found in theoretical reason. He places first the apprehension of the intelligibility of "the good," and second the first principle of practical reason. Third come the "common precepts" (42). On this level Flannery points to such precepts as (1) "ill is to be done to no one," (2) "one should act rationally," and (3) "love of God and (4) neighbor." This leads him to explain how these four "common precepts" are parallel to the "common axioms" of theoretical reason. I am concerned here only with his discussion of "love of God" in this context (44).

The love of God is described by Thomas as a first and common precept of natural law, known by virtue of itself to human reason, either by nature or by faith; it is related to all Ten Commandments as principle to conclusions.² Flannery takes into consideration the teaching of St. Thomas that the existence of God is a demonstrable conclusion rather than a proposition *per se nota quoad nos*. How, then, can the precept "love God" be so known? Flannery's solution amounts to substituting for the precept "love God" the precept "love happiness" or "seek happiness," on the basis of the teaching of St. Thomas that the existence of God is thus known in a way, in that we have a natural desire for happiness and God is in fact happiness.³

This is hardly satisfactory. We are, after all, speaking of the best-known items in the domain of practical reason. Consider what is said about the precept to love God above all else. For example: "That which is maximally and firstly natural to man is that he love the good, and most especially the divine good and the good of one's neighbor."⁴ Moreover, it is natural to love God more than ourselves by a friendly love, not merely a concupiscible love; and our love for happiness is merely concupiscible.⁵

Flannery claims to be taking his cue from Thomas's comments on Aristotle's *Nicomachean Ethics*, as follows:

And it can be said that all men have appetite for the same delight in virtue of natural appetite, though not, nevertheless, according to their

² Cf. *ST* I-II, q. 100, a. 3, ad 1, referred to by Flannery at 43, note 54.

³ Flannery refers us, in nos. 57 and 58, to *ST* I, q. 2, a. 1, ad 1; In Boet. *De trin.* 1.3, ad 4; and to *De veritate* 22.2.

⁴ *ST* II-II, q. 34, a. 5: "Id autem quod est maxime et primo naturale homini est quod diligat bonum, et praecipue bonum divinum et bonum proximi."

⁵ On friendly natural love for God more than for ourselves, cf. *ST* I, q. 60, a. 5; whereas the love of God involved in his being our happiness is presented by Thomas as concupiscible love, at *ST* I-II, q. 2, a. 7, ad 2.

own judgment; for not all reckon in their heart nor say orally that the same delight is best; still, nature inclines all to the same delight as to the best, namely, to the contemplation of intelligible truth, inasmuch as all men by nature desire to know. And this happens because all have naturally within themselves something divine, namely, the inclination of nature which derives from the first principle; or else, namely, the very form which is the principle of this inclination.⁶

Now this involves moving from whatever people *judge and say* they find supreme pleasure in to their *actually* finding supreme pleasure in the contemplation of intelligible truth. However, that move does not take us from what is humanly known intuitively (we desire happiness) to what is known only through demonstration or reasoning (happiness is to be found in God). Thus, it does not really provide a model for what Flannery is doing with “love happiness” standing in for “love God.”

However, Flannery also makes reference to the *Summa contra Gentiles*, book 3, question 38 (2161), though he does not quote it.⁷ This, in fact, is quite a different doctrine from the one he has featured. It is not about an implicit knowledge of God through an actual knowledge of happiness. It is about a remarkable dimension of our natural life, namely, a *natural*

⁶ *In Ethic. Nic.* 7.13.14, where Thomas is explaining Aristotle at 7.13 (1153b31–32): “Et potest dici quod omnes homines appetunt eandem delectationem secundum naturalem appetitum, non tamen secundum proprium iudicium; non enim omnes existimant corde, neque dicunt ore eandem delectationem esse optimam, natura tamen omnes inclinatur in eandem delectationem sicut in optimam, puta in contemplationem intelligibilis veritatis, secundum quod omnes homines natura scire desiderant. Et hoc contingit, quia omnia habent naturaliter in se ipsis quiddam divinum, scilicet inclinationem naturae, quae dependet ex principio primo; vel etiam ipsam formam, quae est huius inclinationis principium.”

⁷ In no. 58, he refers to SCG, bk 3, ch. 38. In no. 57, he mentioned in more detailed fashion ST I–II, q. 89, a. 6. I notice that Flannery presents the topic of ST I–II, q. 89, a. 6, as whether it is possible for a youth to sin venially before sinning mortally. The topic is rather whether one can have only original sin and venial sin on one's soul (no mortal sin). The answer is no. The idea is that before one can commit a venial sin one must either get rid of original sin or one will commit a mortal sin. Thus, it is quite possible, according to the doctrine, to sin venially before sinning mortally. This is so, if one first turns to God, thus eliminating original sin, and then sins venially. The doctrine in this text, with its reply to objection 3 about the obligation to turn to God at the very start of the moral life, I would say should be read in the light of the doctrine of *natural reasoning* that I mention below. However, Cajetan read it as requiring one to recognize, through deliberation, only the *bonum honestum* as such (as one's proper end), rather than actual knowledge of and turning to God; cf. my paper “Natural Law and the First Act of Freedom: Maritain Revisited,” *Études Maritainiennes/Maritain Studies* 12 (1996): 3–32, in the section on Cajetan, ca n. 27.

reasoning to a conclusion that God exists. We should not envisage the natural dimension of our cognitive life merely in terms of simple apprehensions of such items as being, unity, act, and potency.⁸ We should not even limit the picture to the primary axioms, such as the impossibility for the same thing to be and not be.⁹ Rather, a further dimension of what is naturally conferred on us is our *natural reasoning*. Three texts come to mind. There is the just mentioned *Summa contra Gentiles* item. There is the *Summa theologiae* II–II, question 85, article 1, on natural law as requiring the offering of sacrifice to God, and, least known of all, there is Thomas's commentary on Psalm 8, a text from his final activity in Naples.¹⁰

The *Summa contra Gentiles* text occurs in a context where it is already clear that ultimate human happiness consists in a knowledge of God. Thomas is beginning a series of chapters in which various modes of human knowledge of God are considered as possible candidates for such happiness, a series beginning with the most imperfect knowledge. Thus, Thomas speaks of a knowledge had by pretty well everyone, the sort of knowledge of God that has led some thinkers to say that such knowledge is *per se notum*. He himself holds that it is really the result of *natural reason* (*naturali ratione*) proceeding from our experience of the order of natural

⁸ Thomas Aquinas, *Sententia libri Ethicorum Aristotelis* 6.5 (ed. Leonine, t. 47–2, Rome, 1969: Ad Sanctae Sabinae, lines 102–106 (concerning Aristotle at 1141a12–17) (ed. Pirotta, no. 1181): “existimamus quosdam esse sapientes totaliter, idest respectu totius generis entium . . . illa quae est sapientia simpliciter est certissima inter omnes scientias, inquantum scilicet attingit ad prima principia entium, quae secundum se sunt notissima, quamvis aliqua illarum, scilicet immaterialia, sunt minus nota quoad nos. *Universalissima autem principia sunt etiam quoad nos magis nota, sicut ea quae pertinent ad ens inquantum est ens: quorum cognitio pertinet ad sapientiam sic dictam, ut patet in quarto Metaphysicae*” (emphasis added). And Thomas, *In Meta.*, prologue: “illa scientia maxime est intellectualis, quae circa principia maxime universalia versatur. Quae quidem sunt ens, et ea quae consequuntur ens, ut unum et multa, potentia et actus.”

⁹ St. Thomas describes this as the *maximally* first principle: cf. *In Meta.* 3.5.6.

¹⁰ This work is presented by James Weisheipl, *Friar Thomas D'Aquino: His Life, Work, and Thought* (Garden City, NY: Doubleday and Co., 1974), 368–69 and 302–4, as *Postilla super Psalmos*. Ps. 1–54 (Naples, 1272–1273). He explains that the given title reflects the use of the psalms in the liturgy of the Church, but that Thomas is really writing what would be more properly and simply described as *Super Psalmos* (incomplete) (*Friar Thomas*, 303). Speaking of the period September 29, 1272, to December 6, 1273, from the beginning of the academic year 1272–1273 to the moment in the following term when Thomas stopped writing, Fr. Weisheipl says that “this is the only academic work that can be attributed to this period with certainty” (*Friar Thomas*, 302). By “academic work” here is meant actual lecturing; the *Super Psalmos* is a *reportatio* by Reginald of Piperno, Thomas's personal secretary.

things to an orderer of natural things. The stress is on the imperfection of the knowledge, the “confused” character of the knowledge. One should note particularly, in the same chapter, that a person who does not have such knowledge is morally blameworthy. Thus, it is knowledge very much linked to our common membership in the moral order.

While the *Summa contra Gentiles* text relates the reasoning to our experience of “the order of natural things,” the *Summa theologiae* II–II text is more closely linked to *our experience of our own imperfection*. We read:

*natural reason [naturalis ratio] declares forcefully [dictat] to man that he is placed under some superior [being], because of the defects which he experiences in himself, with regard to which he needs to be aided and directed by some superior. And whatever that [superior] is, this it is which among all [men] is called “a God.” But just as, in natural things, the lower are naturally placed under the higher, so also natural reason strongly declares to man, in accordance with natural inclination [naturalis ratio dictat homini secundum naturalem inclinationem], that he [should] exhibit, in a way in keeping with his own self, submission and honor to that which is above man.*¹¹

Here the resulting precept is not precisely the love precept, but rather pertains to the virtue of religion, the highest form of justice.¹² Nevertheless, what interests us is the nature of the knowledge of God that is involved, the fruit of natural reasoning. And it is seen as universal, that is, pertaining to man by his very nature.

Lastly, and in many ways most impressively, we have the comment on Psalm 8, speaking of the manifest character of the divine greatness, seen by mere “infants.” There had previously been mention in the psalm of the *majesty* of God. Thus, Thomas says:

Then, when he says: “Out of the mouth” [*ex ore*], he shows that it [the majesty of God] is maximally manifest. And firstly he shows the manifestness; secondly the reason for it, there [where he says]: “Because I will see” [*Quoniam videbo*].

That it is manifest he proves: because that is manifest which is placed within [inditum] all, no matter how simple [they are], as by a sort of natural knowledge [quasi quadam naturali cognitione]. For there are two sorts of men who follow natural and right instinct [*naturalem et rectum instinctum*], namely, the simple and the wise. That the wise know God is no great matter; but that the simple do is [a great matter]. But there are some who pervert the right instinct, and these people reject knowledge

¹¹ ST II–II, q. 85, a. 1 (ed. Ottawa, 1861b48–1862a6).

¹² Cf. ST II–II, q. 122, a. 1.

of God. Cf. Psalm 81: "They have not known," that is, they willed not to know, "nor have they understood" etc. Cf. Job 22: "They have said to God: Go away from us; we do not want your ways." But God has brought it about that through them, that is, through the simple people who follow the natural instinct, are confounded those who pervert the natural instinct. By "infants" the simple are signified, cf. 1 Peter 2: "Like new-born infants, reasonable, without guile." Therefore he [the Psalmist] says: "Your name is admirable"; but in such a way that "out of the mouth of infants and nurselings you have brought praise to perfection," [you] who interiorly instigate to this; and this "because of your enemies," who oppose your science and knowledge. Cf. Philippians 3: "Enemies of the cross of Christ" etc. . . . This takes place when the simple recognize God, and others pervert the study of natural knowledge, lest they know God himself.¹³

Though Thomas speaks of a "natural knowledge" had by the simple, and of them following "natural instinct," he still sees this phenomenon as having its reason, its source, in a grasp of the cosmic situation.¹⁴ He sees the common man as *spontaneously sizing things up*, somewhat as in the *Summa contra Gentiles* and the *Summa theologiae* II-II texts.

¹³ Emphasis added. The commentary continues, speaking of the celestial phenomena as the ground of the natural reasoning, in keeping with the text of the psalm: "Next, he subjoins the reason for this manifestess, saying 'Because' [*Quoniam*]. Tully says in the book *De natura deorum*, and it was said also by Aristotle, though in those books of his that we have among us it is not found, that if some man were to enter a palace, which he would see [to be] well disposed, none is so lacking in intellect [*amens*] that, even though he would not see how it had been made, he would not perceive that it had been made by someone. And this the order of the celestial bodies especially shows. For there were some who, erring, attributed the causes of things to the necessity of matter: hence, they said all had been made because of the warm, the cold, the dry, and the wet: as by the elements which have these properties. But this, if it can have an appearance [of truth] regarding other things, can in no way [have such appearance] in [the case of] the celestial bodies; for they cannot be attributed to the necessity of matter, where one is so distant from the other, and they take so great a time to complete their course. That cannot be traced back to anything but an intelligent cause. And so Scripture, when it wants to manifest the power of God, directs us to a consideration of the heavens."

¹⁴ Clearly the presentations in the *SCG* and the *In Psalm.* relate to Thomas's "fifth way" of proving the existence of God (*ST* I, q. 2, a. 3). It is also notable that it is this line of thinking, purpose as opposed to chance as a source of the cosmos, which is presented in Thomas's popular sermons on the Apostles' Creed, concerning the existence of a God. Cf. *In Symbolorum Apostolorum expositio*, in *Opuscula theologica*, t. II, ed. R. Spiazzi, O.P. (Rome and Turin: Marietti, 1954), no. 869. Here Thomas insists on the *regularity of the celestial movements*. This work also dates from 1273, in Naples. And once again, Thomas speaks of the rarity and stupidity of people who do not believe that the cosmos is governed.

It seems to me perfectly acceptable that the natural love that man has for God more than for his own self be seen as *following* from this *natural* knowledge of God that man has by a spontaneous, inborn *reasoning* to the existence of God. I think this is better than attempting to see such a primary precept as "love God above all else" merely in the way it is present in the desire for happiness.

The natural love for God above all else is present in every creature, but in each according to its own mode or measure. In the rational creature, that is, angels and man, it is "in the mode of will." Such natural love presupposes natural intellectual knowledge of God.¹⁵ In the angel such knowledge is a mediated intuition.¹⁶ In the human being, it is a *natural conclusion*, the fruit of a spontaneous, universally inborn *discursive* operation. Our intellectuality is "rational," as possessed of a weaker light than the angelic.¹⁷

Notice that it is inasmuch as God is known as the author of being, life, and intelligence that he cannot be hated, but must be loved.¹⁸ That we need a commandment concerning such love stems from the possibility (through habituation to sin) of our not living according to it in particular choices.¹⁹

My understanding is, then, that Thomas presents the existence of God as *naturally* known to all, even though *naturally reasoned to*. That someone

¹⁵ In *ST* I, q. 60, a. 1, it is seen that natural love is present in each creature according to its own mode, and that for angels and men, this is *secundum voluntatem*. In *ST* I, q. 59, a. 1, it was seen that will is the most perfect mode of inclination toward the good, in that it follows upon the intellectual vision of goodness, considered universally. In *ST* I, q. 60, a. 5, ad 1, it is seen that all naturally love God more than themselves, each in its own mode (and notice that the *sed contra* there links this love to the natural law).

¹⁶ Cf. *ST* I, q. 56, a. 3.

¹⁷ Cf. *ST* I, q. 58, a. 3.

¹⁸ Cf. *ST* II–II, q. 34, a. 1.

¹⁹ Cf. *ST* I–II, q. 99, a. 2, ad 2: "It is to be said that it was fitting for the divine law that it provide for man not only as to those matters which are beyond the capacity of reason, but also as to those concerning which it does occur that human reason suffer impediment. Now, human reason concerning the moral precepts, as regards the most common precepts of the natural law, could not err, taking them universally, but nevertheless, because of habituation in sinning, it has been obscured regarding particular things to be done."

Cf. also *ST* I–II, q. 100, a. 5, ad 1, as to why the ten commandments speak of our duty to God and to our neighbor, but not of our duty to ourselves: "The precepts of the Decalogue are related to the precepts of love. But a precept had to be given to man concerning the love of God and neighbor because in that respect the natural law had been obscured because of sin; not as regards the love of himself, because in that respect the natural law was still in vigor." Cf. also *ST* I–II, q. 109, a. 3, on our natural love for God above all else, and the effect of original sin.

professes ignorance of the existence of God stems from moral disorder (as the Psalms commentary as well as the SCG text asserts). I would say that this natural knowledge would fill out the picture of the commandment of love as known by virtue of itself to all. Given that one has knowledge of God as the author of being, one has knowledge of him as lovable by us, indeed as more lovable than ourselves.²⁰

My second main point of difference with Flannery concerns the principle of double effect and fixed paths. In his introduction (cf. xiii), Flannery tells us that the problem of the morally right action that one does, knowing that its outcome will be bad in certain respects, is *what generated the book*. The text of St. Thomas that most immediately relates to the principle of double effect is that on the licitness of self-defense, *Summa theologiae* II-II, question 64, article 7. There Thomas explains that an act can have two effects, only one of which is intended. This is the case with self-defense, where it is natural and good to defend one's own life, even though this requires, in a particular instance, killing the adversary.²¹ Even with a good intention, the act will be illicit if one uses more force than necessary. One cannot, moreover, have the intention of killing the adversary, since that is exclusively the responsibility of the public authority.

Flannery mentions at the outset of the relevant chapter (ch. 7, pp. 167 ff.) that he wonders how the public authority can *intend* to kill the criminal, since that has the appearance of an action that opposes a basic human good. He promises to return to this.

His discussion features some modern issues related to the principle of double effect. The problem is, as it seems, that in some situations one can treat the bad feature of the situation as unintended whereas in other situations this is not acceptable. A hypothetical case to illustrate this is "the fat potholer." This member of a group of spelunkers becomes fixed in the only escape-hole, thus constituting a threat to the lives of the group. Is it licit for the group to blow the person away in self-defense? The case was

²⁰ As I have often pointed out, the first level of natural inclinations spoken of in *ST* I-II, q. 94, a. 2, is the natural inclination common to all creatures; it is not ordered merely toward the preservation of the individual self. It covers everything spoken of in *ST* I, q. 60, as natural love: love of the individual self, love of one's species more than the individual self, and love of God more than oneself or any creature. The second level of inclination in that text is not about reproduction, for that is common to all substances, but about the perfect animal mode of reproduction. The third level is not about love of God, but about seeking the truth about God, as well as living in society: The rational animal by nature desires to know, and especially to know the truth concerning God.

²¹ "The act" has two effects, taken as a physical act; the moral act is simply "saving one's own life." Cf. *ST* I-II, q. 1, a. 3, ad 3.

designed to show that, while the answer is “no,” it is not easy to say why this is so. (Some discussants even said “yes.”)

More actually encountered situations are the surgical treatments of pregnant women. It has been held that the removal of a cancerous uterus (“hysterectomy”) is acceptable, even though this inevitably means the death of the fetus, whereas crushing the skull of a fetus (“craniotomy,” for short) in order to save the life of the mother is unacceptable. Finding in discussions such descriptions of one victim as “close” and another as “more distant,” or “direct” and “indirect,” Flannery expresses dissatisfaction, and the conviction that the disputes, so presented, can never be settled. He suggests that there is something missing from the discussion, something that was present of old, namely a context of fixed human practices.

Having noted appeals along these lines in Plato and Aristotle, he focuses on the practice of medicine as something with definite procedures. The hysterectomy procedure has its place in medical practice, whereas the “craniotomy” case has not. Flannery explains this in terms of what constitutes treatment of the patient; he sees the fetus in the craniotomy case as a very badly treated patient.

Flannery, in this line of thinking, is now obliged to say what fixed practice Thomas is involved with in his self-defense article. His answer is law. Thus, he calls to our attention the references to law as characterizing the context of Thomas's discussion. In answer to the possible objection that this is a “legalistic” solution, he recalls the way positive law in Thomas's doctrine flows from natural law.

I cannot say I am happy with this treatment. It seems to me that nature and the natural should have been given more prominence. Flannery's difficulties stem in part, I would say, from not reading the *Summa theologiae* II-II, question 64, article 7, as part of the whole question 64. I am concerned that so little attention has been given to the pedagogy of the question. The first article, establishing our right to kill plants and animals, begins with the premise that no one sins in treating a thing in accordance with its purpose.²² The first thing we learn, after the case of plants and animals, is about the justification of the public authority killing the criminal. The second thing is that the private person cannot kill the criminal. The third is that the killer of the criminal cannot be a cleric (who, of course, can have public responsibility; his ministers must perform the

²² In speaking of the natural purpose of plants and animals, Thomas even makes reference to Aristotle, *Politics* 1.8 (1256b15). This text falls in with Flannery's appeal to arts as fixed paths, though modern readers might not like to see war presented as an art of acquisition (of slaves).

execution: cf. the *ST* II-II, q. 64, a. 4, ad 3). The fourth is that one cannot kill oneself. This applies even to the ruler who is a criminal, since no one is to judge oneself. We then come to the case of the killing of the innocent: It is altogether forbidden. Only then do we come to that problematic figure, the attacker of the private citizen. No judgment will be made as regards his state of soul, but the person attacked has the right to take the necessary steps to save himself, even though this sometimes must result in the death of the attacker. Lastly, we have the case of accidental killing.

This rich context first sees the criminal as analogous to the beast, and as analogous to the diseased bodily member; all are cases of the imperfect being for the sake of the perfect. The human individual who menaces the community may have to be “used” for the well-being of the community, even to the point of being executed. Article 3, forbidding the killing of the criminal by a private person, makes clear the reason for this: The killing of the criminal is for the sake of the common good only, and thus it is for those responsible for that good to make the necessary judgment about the criminality of the criminal. The reply to objection 2 should be especially considered:

The man who is a sinner is not naturally distinct from just men. Therefore, there is need of the public judgment, in order to discern whether someone is to be killed for the common welfare.

The insistence is on the need for right discernment concerning the public need and the moral condition of the accused, in inflicting such great harm on a person.²³

This need for public judgment throws great light on the situation of the private self-defender. His act simply cannot be a killing of the attacker as a malefactor. In this same line, the lesson for us from the anti-suicide article is that even a supreme judge, himself a criminal, cannot, having come to condemn himself personally, do away with himself. Public judgment is a matter for “someone else.”

How important, then, is the absolute rejection of all killing of the innocent! First we have the obligation to love the nature that God has made and which is destroyed by killing: Thus, no one, *just or sinner*, is a killable

²³ The question on homicide leads the discussion of vices violating the justice of exchange, and in particular involuntary exchanges: This is to say that some harm is visited upon one’s neighbor against his will, either as to deed or word, and among deeds, those that harm the person or the associate of the person, or the property. Homicide comes first as maximally harming one’s neighbor. Cf. *ST* II-II, q. 64, prol.

object, just in himself. Second, we have the case of the public authority to kill the public enemy: Since the innocent primarily constitute the community (which is essentially a school of virtue), killing the innocent is analogous to amputating the head to save the arm.

It is with these premises in view that we come to the self-defender. He is faced with an attacker, but has no right to judge that attacker to be a criminal, a public enemy; no right to kill a criminal. Nor has he any right to kill an innocent human being. He has no right to kill at all.

Here I believe it would be helpful to recall the distinction between the physical act performed by the human being and the moral act. Thomas explained this very early in the *Summa theologiae* I-II.²⁴ One same species of physical act, that is, killing a human being, can be two different species of moral act, namely, murder and capital punishment. The moral act gets its species from the intention. Here in the *Summa theologiae* II-II, question 64, with self-defense, we are still dealing with a physical act of homicide. St. Thomas teaches that it cannot be a moral act of killing at all: Morally, it is neither justified nor unjustified homicide.

The "craniotomy" case Flannery speaks of is a killing of an innocent; thus, it is simply not available for any motive. The "fat potholer" case is, again, a killing of the innocent. The "hysterectomy" described is an amputation; the resultant death of the fetus is a "letting die," not a killing at all.²⁵ The true private self-defense case is one where there is obviously a menacing human being. What makes it a special moral matter is the inappropriateness of privately judging the attacker. Thus, also, the public authority's "intention to kill" relates directly to that authority's power of discernment.

Flannery is quite right in arguing that this "intention to kill" cannot be a seeking of the death of the culprit in the way that an act of hatred toward the culprit would be. As St. Thomas teaches in the article rejecting all killing of the innocent, the human being, considered just in himself, is not a possible candidate for homicide, since even in any evildoer whatsoever we ought to love the nature that God has made and that is destroyed by killing; it is only when taken relative to the well-being of the community that the public authority can rightly judge that a person is too great a menace to let live. In so judging, it is considered that the good to be gained is greater than the bad to be endured. That is Thomas's rationale for all punishment. It is only in such a *per accidens* way that the bad is intended. There must be no hatred for the executed person; on the contrary, one

²⁴ Cf. *ST* I-II, q. 1, a. 3, ad 3.

²⁵ It is not my intention to brush off the question of a mother's responsibility as easy to resolve.

must act charitably toward that person. It is definitely a judgment favoring human life, not opposing it.²⁶

The responsible act of the society is thus morally specified as an act of homicide, in that the killing is deliberately employed in the interest of the community. The private act of self-defense is, when the adversary dies as a result, physically an act of killing, but morally not a homicide, not an "act of killing a human being" at all.

Flannery focused on law as the practice to be considered in Thomas's discussion of both private and public licit killing. There is no doubt that in the article on private self-defense law is referred to. The *sed contra* is taken from the Old Law (though there is here not merely the element of a human practice but the authority proper to revelation). There is also reference to canon law. This is a significant use of legal authority. Nevertheless, I do not like Flannery's contention that in the teaching of the licitness of private self-defense, but without intention to kill, "law is simply basic here" (192). Flannery immediately adds that "neither is this law without sense. There is good reason for a society not to allow private, intentional killing. If such intentional personal self-defense were licit, how could private executions for defensive purposes be prohibited?"

Thomas's article is not about a law against intention to kill. That is rather a matter of personal conscience. It is true that excessive use of force might be a sign that the intention has been to kill. However, that is not said. It is said that the use of excessive force will make even an act done

²⁶ I quote from my paper, "Thomas Aquinas, Gerard Bradley, and the Death Penalty: Some Observations," *Gregorianum* 82 (2001): 162, quoting Thomas: "God does not will the damnation of someone under the aspect of damnation, nor the death of someone under the aspect of death, because he 'wills that all human beings be saved' [1 Tim 2:4], but he wills these under the aspect of justice. Hence, it is sufficient regarding such matters that the human being will the preservation of the justice of God and of the natural order."

This implies that, in the case of private self-defense, what is forbidden is the intention 'justice through execution.' *No one* (whether a public official or a private person) is *ever* allowed to 'intend the death of this person,' in the way that that involves pleasure in that person's suffering, or hate of that person as possessed of human nature. But the private person has not the right even to restore the order of justice through any sort of punishment.

Notice that even in punishment, what is bad, such as the death, is willed only *per accidens*. Since we say, as well, that in private self-defense the death of the adversary is *per accidens*, it seems to me that "intending the death" in the case of capital punishment must be a mode of the *per accidens* closer to the *per se* than in the case of private self-defense, where the death of the adversary is *per accidens* in the way that the physical species of the act is *per accidens* relative to the moral species of the act. Cf. *ST* I-II, q. 1, a. 3, ad 3.

with good intention illicit. And it is concluded that an act done with moderate violence will be licit. Here the law is quoted as explicitly permitting moderate force in self-defense.

Moreover, I am not happy with the translation of *licet* and related terms by “lawful.” For example, there is no law, human or divine, against a venial sin as such, and yet such sins are “illicit.” Flannery’s use of the word “lawful” (also found in the old English Dominican translation of *ST* II–II, q. 64, a. 7) is deceptive.²⁷ Thomas makes it sufficiently clear that he is basing his judgment on nature:

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. [Such an act, therefore, as intending the preservation of one’s own life, does not have the character of the illicit, since it is natural for each being whatsoever that it preserve itself in being to the extent this is possible.]

It seems to me that the practices Flannery refers to have their basis in long experience with nature. Thus, there is good sense in Flannery’s caution that one should look at the context. One might consider the use Thomas makes of the doctrine that art imitates nature in his prologue to the *Commentary on Aristotle’s Politics*. In order to effect the highest of human reason’s products, the very order of the human community, the science must proceed by imitation of nature.

Lastly, I will mention a particular claim of Flannery’s, concerning the date of *De malo* 6. He argues that it predates *De veritate*. I think the Leonine editors dating, namely, 1270, is correct. However, this is not central to his project.

An appendix contains a text and translation of *De malo* 6. Footnote 1 stresses the literalness of the translation, following even the Latin word order as much as possible. However, what I immediately note is the translation of:

Cum ergo voluntas se consilio moveat, consilium autem est inquisitio quaedam non demonstrativa, sed ad opposita viam habens, non ex necessitate voluntas seipsam movet.

²⁷ Lewis and Short, *A Latin Dictionary* (Oxford: Clarendon Press, 1879), for “*licet*” start off with “it is lawful,” but soon come to “one is at liberty to do so and so.” The systematic use of “law” in the translation is deceptive. One sees that by comparing the use of the word concerning all lying as illicit, even lies which are venial sins: cf. *ST* II–II, q. 110, a. 3, ad 4; a venial sin, as such, is not against any law whatsoever: cf. *ST* I–II, q. 88, a. 1, ad 1. I might note that there is no common linguistic origin for “*lex*” and “*licet*.”

Flannery translates:

Since, therefore, *voluntas* moves itself to counsel, but counsel is an enquiry that is not demonstrative [line 318] but oriented toward opposites, *voluntas* does not move itself of necessity.

This, I submit, is wrong. The translation should be “by counsel.” The will’s self-motion has its willing the end as cause and its choosing the means as effect; its *instrument, through which it so moves itself*, is deliberation, a non-demonstrative act of reason; and thus the resultant choice is a non-necessitated act of the will. This most important point of doctrine is obscured. Jean Oesterle rightly has “by.”²⁸

While I have chosen to indicate the few points where I differ with Flannery, I return in conclusion to my view that this is a very valuable study, stimulating reflection on a rather neglected sphere of Thomistic methodology. N-V

²⁸ Cf. St. Thomas Aquinas, *On Evil*, trans. Jean Oesterle (Notre Dame, IN: University of Notre Dame Press, 1995), at 241, before note 40.