

# But Who Are the Innocent?

*John J. Conley, S.J.*

IN the moral teaching of the Catholic Church—and in the moral doctrine of other religious communities adhering to a natural-law ethic—murder is defined as the direct killing of an innocent human being. As John Paul II argues in *Evangelium Vitae*,<sup>i</sup> the rule against the direct killing of the innocent is absolute. No foreseen consequences, no good intention, no set of circumstances can justify the violation of this rule. More than a general ideal, the norm against the direct killing of the innocent is a law without exception. For the upright moral agent, individual or corporate, respect for the good of human life condemns every recourse to this act of homicide as gravely wrong.

On the surface, this lapidary rule against murder appears quite simple. In fact, certain critics of this traditional rule, such as the late Richard McCormick,<sup>ii</sup> argue that it is too simple, too unyielding to the complexities of human conflict.

Even cursory reflection, however, indicates the complexities of this norm against murder. What is the difference between direct and indirect killing? The dividing line between the two types of homicide travels through a centuries-old casuistry on abortion, on euthanasia, and on war.<sup>iii</sup>

Even murkier is the frontier between the innocent and the aggressor. Just who are the innocent who enjoy immunity from lethal assault? The question is especially complex, given the fact that the category of the aggressor is broader than that of moral aggressors alone and given the growing emphasis on respecting even the life of the aggressor in recent ecclesiastical and natural-law reflection.

The identity of the innocent reveals itself by studying the identity of its antithesis: the aggressor. The natural-law norm against direct killing of the innocent permits the killing of an aggressor under certain circumstances. The aggressor is a moral agent who destroys or threatens to destroy the life or other comparable goods of an innocent human

being. Under the condition of last-resort, as well as other conditions, the upright moral agent may take the life of an aggressor.

Two examples can illustrate the killing of an aggressor. A pedestrian walking down the street is assaulted by a criminal wielding a lethal weapon. To defend herself from imminent death, the pedestrian kills the aggressor through the use of lethal force. In the second example, a police officer orders a suspect to put up his hands. The suspect refuses to do so and grabs an object which appears to be a gun. Fearing imminent threat to his life, the officer fires, killing the suspect.

Both examples would appear to be straightforward examples of the legitimate use of lethal force to defend the lives of the innocent against aggression. The second case indirectly involves the defense of the civic community of innocent lives (in the person of the officer) against criminal aggression.

Even these straightforward cases, however, are more complex than they appear. To be legitimate, the recourse to lethal force must truly constitute a last-resort option. In other words, the defending agent (and a reasonable observer judging the actions of the agent) must believe that the use of non-lethal means to repel the mortal aggression would be inadequate to meet the threat. If a police officer believed that wrestling the menacing suspect to the ground was as feasible and as effective as—and no riskier than—shooting the suspect in the effort to repel a lethal threat, she would be obliged (legally as well as morally) to use the less radical option.

These apparently straightforward cases of defending the innocent against aggression hide another complication. There must be a clear justification of the moral agent's belief that he or she is the object of an actual or imminent lethal assault. The agent should have moral certitude—or at least a certitude close to moral—that he or she is in imminent peril of being killed in order to justify recourse to lethal force. The obligation of a professional representative of the state, such as a police officer or a soldier, to assess accurately the degree of imminent peril is greater than that of a civilian making such a judgment in a sudden situation of violent assault. If lethal force can be tolerated as a last-resort defense of the innocent against aggression, the recourse to lethal force

must be carefully controlled by clear evidence concerning the reality and the gravity of such alleged aggression.

A further complication in these apparently simple cases of aggression concerns the nature of the aggressor. While the assailant in both cases is clearly a material aggressor, it is unclear whether he or she is also a moral aggressor. By his or her physical actions (the brandishing of a lethal weapon in actual or imminent assault), the assailant here qualifies as a material aggressor. However, for moral aggression to occur, the agent must bear responsibility for the act. The intellect and the will of the agent must make a substantial contribution to the act of aggression. An insane person, while clearly aggressing against the innocent, does not bear moral or legal responsibility for the act. Factors such as passion or ignorance might mitigate, but not wholly abolish, moral culpability for the aggressive agent.

The refusal to reduce the category of the aggressor to the simple one of moral aggression not only grounds the complexities of moral blame and the legal adjudication of guilt. It has also formed the background of a long-standing dispute concerning a rare kind of abortion. Certain natural-law theorists have argued that if an unborn child's coming to term clearly threatened to kill the pregnant woman, an abortion could be justified on the ground that the unborn child here could be construed as a material aggressor. Other natural-law theorists have denied this claim by arguing that the unborn child could not be considered an aggressor, since a child at this stage is clearly innocent and that to kill the unborn child is to turn the physician and his or her assistants into a moral (deliberate, intentional) aggressor against an innocent.<sup>iv</sup>

Even the Catholic Church, which decisively rejected the "material aggressor" argument in a celebrated judgment on craniotomy cases, hesitated a long while before rendering its verdict.<sup>v</sup> The hazy boundaries of material aggression have long influenced such ambiguity in the moral judgment of certain lethal actions claiming to defend the lives of the innocent.

Another complication surrounds the nature of the goods being defended against assault by an aggressor. In the two cases cited above, the good protected by recourse to lethal force is the good of human life

itself. But the natural-law tradition has long argued that in addition to the good of life, lethal force might be legitimately employed as last-resort means to protect “comparable goods” of the innocent person.<sup>vi</sup> But just what are these comparable goods?

Grave assault against the goods of physical integrity might create situations where the killing of the aggressor might seem justified. What if this were the only way for an innocent person to save himself or herself from torture at the hands of a brute? What if it were the only means to ward off or to stop an actual rape? The extension of the justification of lethal force to cases involving aggressors other than apparent murderers, however, carries its own risks. Last-resort defense of one’s life or physical integrity can easily glide into the use of lethal force to defend oneself against a punch or to save the family silverware against a burglar. Several recent trials—that of the Menendez brothers being the most notorious—indicate how easily the ethical controls limiting the recourse to lethal force against the aggressor can collapse once the “aggressor” we may kill in self-defense is other than a murderous assailant.

The drift of the philosophical literature on the question of abortion illustrates how easily loose discussion of aggression can lead to virtually unlimited violence against the nascent child in the womb. The discussion concerning whether the unborn child constituted an aggressor in the extremely rare cases of a pregnancy threatening the very survival of the mother had become by 1970 a discussion of how the unborn child’s continued existence constituted an aggression against the physical or mental health of the mother. The work of Judith Jarvis Thomson<sup>vii</sup> considered virtually any burden placed by pregnancy on a woman as a justifying reason to procure an abortion. The philosopher does not deny that the nascent child is a human being who holds some claim upon us. But the claims of a barely formed and dependent human being cede to any desire of a self-conscious human person. Any burden on the pregnant woman’s plans becomes an intolerable aggression.

The deterioration of the status of an aggressor in the abortion controversy reflects one of the perennial mechanisms in the justification of homicide: that a group of human beings deserves destruction because of its real or imagined aggression.

If the line between the innocent and the aggressor is hazy because of the complications surrounding the material aggressor and the gravity of the aggression, the traditional line is also altered by a heightened respect for the life of the aggressor in the teaching of the Catholic Church and in the doctrine of communities committed to a similar natural-law ethic.

The traditional norm tolerating last-resort killing of the aggressor permitted recourse to lethal force in the areas of self-defense, war, and capital punishment. Current teaching, however, has restricted the justification of recourse to war and has, at least on a prudential level, abolished the justification of capital punishment. Both changes reflect a heightened, but not absolute, respect for the good of human life and concomitantly a heightened, but not pacifistic, protection of the life of the aggressor.

The shift in the justification on the recourse to war occurred early in the twentieth century and had become normative by the reign of Pope Pius XII.<sup>viii</sup> The key change here is the narrowing of the causes for justification of war to one: defense against actual aggression. Earlier just-war theorists had argued that certain other types of offensive war might be justified: for example, to avenge the honor of a nation or to advance a supreme religious good. The modern teaching on war, however, argued that the evil provoked by war is so grave that only a defensive response to patent aggression (such as military invasion of one's territory or the territory of one's ally) can justify the resort to war. Further considerations of last resort (more extensive today than formerly), of proportionality, and of the immunity of the civilian population have deepened the skepticism with which the contemporary moral agent must confront any effort to justify warfare.

The more recent ecclesiastical opposition to capital punishment rests on several grounds, not always as clear as one might desire. One argument claims that the use of lethal force, in judicial punishment as in war and in police action, must only be used as a last resort. When non-lethal means to fulfill the purposes of legal punishment (retribution, deterrence, and reformation) exist, the moral agent must renounce the recourse to capital punishment. Using this type of reasoning, John Paul II argues that, since the modern state possesses the resources to punish

effectively the criminal by non-lethal means, the justification for the use of capital punishment in modern society has vanished.<sup>ix</sup>

A somewhat different critique of capital punishment is offered by philosophers and theologians associated with the work of Germain Grisez.<sup>x</sup> According to this perspective, the use of lethal force to defend the innocent against aggression is justified only in the immediate moment of actual or imminent assault by a murderous aggressor. Once the aggressor has been disabled, lethal force is no longer justified. In this perspective, certain types of just-war or self-defense or police-action homicide are tolerable, but capital punishment loses its justification in any context, since lethal force cannot be used to punish an aggressor after he or she has been disarmed as an agent of aggression. In this theory, all morally justified homicide is a species of indirect killing, the secondary consequence of defense of innocent life against aggression.

In both of these critiques of capital punishment, the life of the aggressor acquires an enhanced value as compared with earlier pro-capital punishment ethical approaches. The recourse to lethal force in defense of the innocent is narrowed to cases of repulsion of grave acts of aggression. It is the act of aggression, not the person of the aggressor, which constitutes the justifiable target for defensive lethal action.

The ambiguities concerning the identity of the innocent and of the aggressor indicate certain tasks for those who would defend the good of human life in current political controversies.

First, any effort to broaden the notion of goods comparable to life, which may justify the use of lethal force, must be met with skepticism. The erosion of the primacy and the uniqueness of the good of life itself—the foundation for the very existence of other goods—easily deteriorates into a license to kill anyone we consider a serious burden. In the discussions of euthanasia and of abortion, as in calls for war, the mechanism of this transformation of an allegedly burdensome person into an intolerable aggressor is manifest.

Second, the criterion of “last resort” for the use of lethal force requires a strict interpretation. When non-lethal means of repelling aggression are available, even at a substantial cost for the aggrieved innocent, the choice of death must be refused.

These restrictions on recourse to lethal force in cases of aggression do not imply any illusion about the gravity of aggression against the innocent in the world. The strict conditions placed on the use of lethal power do not lead to a naive pacifism that assumes that all conflict can be resolved by negotiation or by moral exhortation. Not only tolerable, the vigorous defense of the innocent against aggression, especially at risk to the defendant's own life, is an honorable occasion for self-sacrificial love.

Establishing the frontier between the innocent and the aggressor is not a simple operation, to be resolved by empirical judgment alone. It is determined by the posture of the will of the agent: how deeply one esteems human life in the hierarchy of goods, how much aggression one is ready to tolerate out of respect for this good. The capacity of a society to restrict tightly the category of aggressive acts meriting lethal response reflects the rigor or its moral order. When talk of aggression becomes loose, the innocent quickly disappear from a society's moral map and the lives of all become suspect.

#### ENDNOTES

---

i. See John Paul II, *Evangelium vitae* #57.

ii. Richard A. McCormick, S.J., "The Consistent Ethic of Life: Is There an Historical Soft Underbelly?" in Joseph Cardinal Bernardin, *Consistent Ethic of Life* (Kansas City: Sheed & Ward, 1988), pp. 96-122.

iii. For an example of how the "direct/indirect" distinction has been interpreted in natural-law manuals, see Austin Fagothey, S.J., *Right and Reason*, 2nd edition (St. Louis: C.V. Mosby Company, 1959), pp. 282-87; 563-76.

iv. For a discussion of the dispute among natural-law theorists on this question of fetal aggression, see Francis J. Beckwith, *Politically Correct Death* (Grand Rapids: Baker Books, 1993), pp.123-35, and Patrick Lee, *Abortion & Unborn Human Life* (Washington, D.C.: Catholic Univ. of America Press, 1996), pp. 105-30.

- 
- v. For a discussion of the long intra-Catholic debate on the morality of therapeutic craniotomy, see John Connery, S.J., *Abortion: The Development of the Roman Catholic Perspective* (Chicago: Loyola Univ. Press, 1977), pp. 225-83. Only in 1884 did a declaration of the Holy Office against the use of fetal craniotomy to save the life of the mother definitively state the Church's opposition to the procedure.
- vi. For a discussion of the traditional concept of "comparable goods" that merit defense by lethal force, see Fagothey, *op. cit.*, pp. 293-96.
- vii. See Judith Jarvis Thomson, "A Defense of Abortion" in *Philosophy and Public Affairs* 1 (1971) 47-66.
- viii. See Joseph Cardinal Bernardin, *Consistent Ethic of Life* (Kansas City: Sheed & Ward, 1988), pp. 5ff.
- ix. See John Paul II, *Evangelium vitae* #56.
- x. See Germain Grisez, *The Way of the Lord Jesus*, Vol. I (Chicago: Franciscan Herald Press, 1983), pp. 216-22.