

# The Double-Effect Principle: From Thomas Aquinas to Its Current Meaning\*

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## Abstract

This contribution offers a preliminary overview of the historical origins of the modern double-effect principle. The article will start by challenging the traditional attribution of the authorship of the principle to Thomas Aquinas in the *Summa Theologica* II-II, 64.7. The following sections will hold that the contemporary interpretation of the double-effect principle resulted from a convergence between the Thomistic terminology and the development of additional mechanisms of moral pondering. An initial sketch of the chain of transmission, based on a division of its different phases and a sample of the most representative authors, will be proposed.

## Keywords

Double-Effect Principle, Ethical Dilemmas, Self-Defensive Homicide, Moral Pondering

## 1. Introduction

The Double-Effect Principle (DEP) is a recurrent tool for modern applied ethics to ponder the potential negative consequences of legitimate actions.<sup>1</sup>

The principle is often invoked to assess whether achieving a major good justifies causing negative—generally illegal or at least immoral—side-effects.


From a historical perspective, it is commonly accepted that Thomas Aquinas originally formulated the double-effect principle as a part of his justification of the self-defense homicide in the *Summa Theologica* (ST). Nevertheless, some authors have challenged this assumption in the last decades. According to these critical voices, Aquinas did not propose any mechanism for moral pondering within this section of the ST but just some specific requirements that an action must meet to be considered self-defensive. These same authors have attempted, to a lesser or greater extent, to trace the chain of transmission from Aquinas to the modern DEP. In most cases, their contributions have proposed linear chains of transmission from Thomas


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<sup>1</sup>For a general definition of the concept: “The doctrine (or principle) of double effect is often invoked to explain the permissibility of an action that causes a serious harm, such as the death of a human being, as a side effect of promoting some good end. According to the principle of double effect, sometimes it is permissible to cause a harm as a side effect (or “double effect”) of bringing about a good result even though it would not be permissible to cause such a harm as a means to bringing about the same good end.” [1]

Aquinas to the nineteenth century—often to Jean-Pierre Gury (1801-1866). According to this perspective, the evolution of the DEP would have consisted of a progressive deformation of its original meaning.

The position held in this article is that this process was far more complex and eclectic. I will start by analyzing the medieval concept of self-defense and its relationship with Aquinas' argument in *ST II-II*, 64.7. This first section will aim at corroborating the recent critics against the traditional attribution of the DEP's origins to Thomas Aquinas. Then, the article will offer an overview of the evolution of the so-called 'lesser-evil principle', the preferred mechanism of moral pondering by ethical thinkers from the twelfth century onwards. The argument I will suggest is that both principles were traditionally perceived as two different ethical mechanisms that ultimately converged in the eighteenth century.

This contribution is a preliminary presentation of the outputs of a more extensive research, whose results are expected to be published soon.

## 2. Thomas Aquinas and the Medieval Views on Self-defense

Let's start by analyzing the legal perception of self-defense among the scholastics. The permission to kill an aggressor to protect one's life was a prerogative widely accepted among medieval thinkers. Indeed, it had been inherited from classical antiquity. Patristic authors, such as Isidore of Seville [2], acknowledged its validity without discussing in depth its theoretical grounds. The legal development of the principle and its requirements became more profuse from Gratian and thirteenth-century canonists onwards. In the *Decretum* (1142), Gratian pointed out the agent's will as the main requirement to assess the nature of the homicide as self-defense. To Gratian, only the wish to kill turns the action into a crime. Conversely, the absence of this will relativize the sin [3].

Gratian discusses the self-defense principle under this reasoning as a part of the casuistry he provides to sustain his interpretation of when it is licit to kill. He admits that self-defense brings a just cause to wage war against the enemy—whether an individual or a sovereign with a regular army—or to deal with criminals [*Decretum*, II, Causa XXIII, q. III, c. V], but he does not delve into the requisites that might be met to justify violence. Gratian states that one who kills a man to protect himself from an unjust action (like an aggression by a criminal), or by obedience, or to escape from a robber or an enemy soldier is not to blame. In these situations, the man who caused the death—namely, the original aggressor—is guiltier than the defender who performed the action of killing [*Decretum*, II, Causa XXIII, q. V, c. XIX].

Though having provided the bases for the whole scholastic doctrine, posterior authors developed and qualified Gratian's positions. The commentators of the *Decretum*, the so-called decretists, laid down the basic requirements for self-defensive killing in their glosses to the *Decretum* at the end of the twelfth century and the dawn of the thirteenth century. They added two requisites that any action must meet to be deemed self-defensive [*Decretum*, II, Causa XXII, q. V, c. XIX]:

1. The action must be 'in continenti'. That is, the action must be exclusively produced to repeal an attack. On the other hand, they qualify that this requirement should be interpreted broadly. A preventive strike might be considered self-defense if there was

an actual danger of suffering an attack—for example, by killing an ambusher. Likewise, striking back might also be regarded self-defense if the aggressor were to hit again. However, if this later risk was not real, the action cannot be considered self-defense, but revenge, which is contrary to the right intention. In other words, the absence of rightful aim turns self-defensive killing into murder.

2. Self-defense must be conducted ‘cum moderamine’, with moderation. However, the lack of restraint might be tolerated when not intended.

Most of the thirteenth century theoreticians shared these two fundamental conditions, including Ramon of Penyafort (1175-1275), whose views must be counted as the most influential and authoritative of the period. The Dominican friar included his arguments in favor of self-defense in the discussion on just war in his *Summa de Casibus Poenitentiae* (1224-1226) [4]. The interpretation of both concepts does not differ from the glosses of the *Decretum*—indeed, Penyafort eventually was a decretist. Their scope, limits, and consequences are the same. Therefore, Penyafort also stresses the agent’s right aim, the action’s external circumstances, and the moderation to determine the existence of self-defense. Just as Gratian and his Patristic precedents, Penyafort interprets the lack of intention not as an accident but as an action performed with the rightful aim.

In the light of this tradition, let’s examine Aquinas’ argument in ST II-II 64.7 [5], which is often alleged to be the origin of the DEP:

“I reply that nothing impedes an action to produce two effects, which only one is intended (‘in intention), while the other one is not intended (‘*praeter intentionem*’). The morality of an action is determined according to what was intended (‘*intenditur*’), and not according to what is outside the intention (‘*praeter intentionem*’), which is an accident (‘*accidens*’). Self-defense might produce a double-effect: one, the conservation of the own life; the other, killing the invader. Thus, the intended action—preserving oneself life—is not licit, since it is natural to preserve it as far as possible”. (The translation is mine).

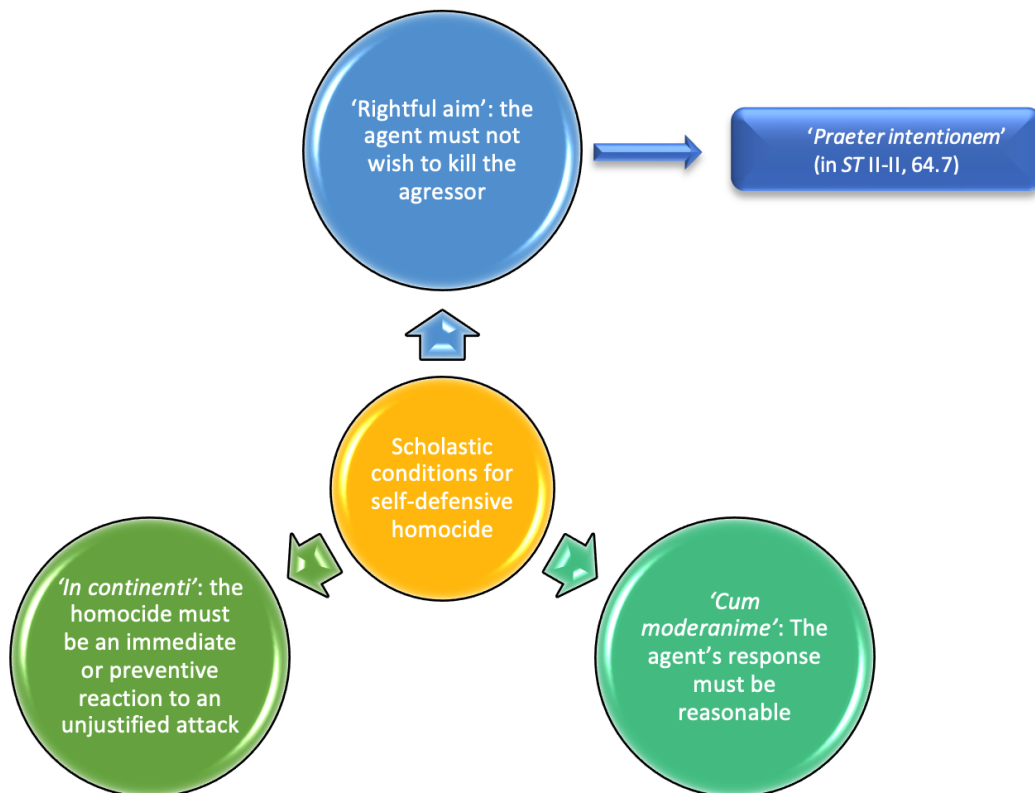
Several authors like Montaldi [6], Gregory M. Reichberg [7, 8, 9], and Cavanaugh [10], have argued that Aquinas’ statement does not propose a system for moral pondering but that his sole intention was to provide a philosophical justification for the traditionally accepted right to self-defense. They consider that other principles—some also admitted by Aquinas—different from the argument in ST, II-II, 64.7 permit to produce negative side-effects under some circumstances.

The medieval approach to defensive killing we have just examined seems to validate this hypothesis. Thomas Aquinas incorporated these legal requirements to build his moral argument. There is no ethical pondering in Aquinas’ discussion since the potential dilemma was solved a priori by natural law: protecting own life will always prevail over respecting the aggressor’s life. Furthermore, his idea of ‘*praeter intentionem*’ should be interpreted as a synonym for rightful aim and not as an unexpected result of the action. The aggressor’s death ‘*per accidens*’ (by accident) is the primary consequence of this ‘*praeter intentionem*’ as it is the consequence of the need to protect one’s life.

Therefore, the aim, or intention, must be interpreted as the lack of hate or enjoyment in killing. It must be perceived by the agent as a mere matter of necessity, as a mechanism to protect his own life. Given these arguments, we can conclude that Reichberg and Cavanaugh

were right when they considered that Aquinas ‘*praeter intentionem*’ did not mean accident or side-effect but a rightful aim.

The question that follows this analysis is obvious: how the argument presented by Aquinas in ST II-II 64.7 became the elementary instrument to solve moral dilemmas? My point is that the interpretation of this section of the *Summa Theologica* was progressively influenced by the increasing ethical relevance of other principles aiming at giving an answer to moral dichotomies. Ultimately, this process led to a redefinition of the meaning of Aquinas’ positions.



**Figure 1:** Scholastic conditions for self-defensive killing

### 3. Medieval dilemmas: The lesser-evil principle

Parallel to the development of the self-defense principle, Medieval theoreticians faced another ethical challenge whose outputs might be linked to the modern interpretation of the DEP: how to deal with the moral dilemmas that arise when the agent is compelled to choose between two sinful courses of action. In these circumstances, most Medieval authors were prone to accept that in case of necessity and after the agent had assessed the situation, he might legitimately opt for the less sinful option. The evolution of the “lesser-evil” doctrine followed a similar path to the self-defense principle: it was first formulated by classic writers, incorporated by the Church

Fathers and High Medieval theologians [11], and legally developed by the Scholastics.

By the mid-twelfth century, the validity of the principle had been almost unchallenged. In the *Decretum*, for instance, Gratian aligned himself in favor of this idea [*Decretum*, I, Distinction XIII]. As his antecessors, Gratian did not dig deep into the causes, implications, and hypothetical solutions of the moral dilemmas. He only assumed this ethical permission. The development of the principle was first intended by the glossators of the *Decretum*, who further elaborated on it and even amended the views of their master. They held that no contradiction could exist between natural or divine commandments. Consequently, they stated that the dichotomy posed by moral dilemmas is not caused by a real contradiction within natural or divine Law but that it is a subjective epistemic problem [12]. It implies that these legal dilemmas are not real but just apparent. However, it does not mean that the decretists deny that an agent must face a situation compelling him to choose between two sinful actions. Their point was that these dichotomies result from the agent's personal perplexity. A good understanding of legal hermeneutics will always provide a pondered and rational solution compliant with natural and divine laws.

The Dominican theologians soon championed these views. Ramon of Penyafort, for instance, assumed these positions in his *Summa de casibus*, where he asserted that “Between two evils (...) one may choose (...) the one considered lesser sinful” [SC III, 30, 5] (the translation is mine). Aquinas also resorted to moral pondering in several sections of the *ST*—but not in *ST II-II* 64.7. For example, *ST II-II* 43.1-4, where Aquinas discusses the idea of scandal, and *ST II-II* 64.6, related to accidental homicide.

Therefore, unlike the self-defense principle, where any hypothetical moral dilemma is a priori solved, the doctrine of the “lesser evil” entails a mechanism for ethical pondering applicable to a wide casuistry.

#### **4. The sixteenth century: The dawn of modernity**

In the fifteenth century, the Dominican order still kept the intellectual leadership of the Church. Hence, there was a clear continuity of the Medieval doctrines on moral pondering and self-defense. Nevertheless, the theories formulated in this period were characterized by a progressive relaxation of the traditional requirements to authorize the commission of lesser evils for the sake of major goods.

Cardinal Thomas Cajetan pioneered this process. Cajetan proved himself to be a supporter of Gratian's approach to moral pondering. In one of his major works, known as *Summula*, he acknowledged that innocent civilians might fall accidentally (‘per accidens’) victims of military operations [13]. He alleges two arguments to justify this sort of side-effects. On the one hand, he considers that the unintended death of civilians is a lesser evil than the major good pursued by a just war—restoring justice. On the other hand, if these side-effects are accidental, they fall out of the rules.

Furthermore, Cajetan only quotes two authors in the section of the *Summula* dealing with the unintentional death of civilians: Gratian and Saint Augustine, who is mostly indirectly cited via the *Decretum*. Although there is no mention of Gratian's discussion on the lesser evil, it might be assumed that he is Cajetan's primary referent also in this point. There are no more possibilities. It is highly unprovable that Cajetan built on his whole discussion on

quotations from the *Decretum* except for this particular point without providing references to other authors. In any case, there is no single mention here of the *Summa Theologica* or any other work by Aquinas. The references cited in the *Summula*, a work with deep roots in the Thomistic tradition, are a shred of additional evidence proving that Cajetan conceived moral pondering as separate from the double-effect argument.

As for the treatment of self-defense, Cajetan based his arguments directly on ST II-II, 64.7 [*Summula*, 'Homicidium per accidens', pp. 324-327]. Therefore, his views on self-defense are inherited from the medieval tradition. There is no moral pondering in there. 'Praeter intentionem' only refers to the right aim of the agent while performing the action. However, in his discussion on the permission to kill innocents, he establishes a moral ponderation between justice and unintended side-effects, resolving in favor of justice. Therefore, the expression 'per accidens' should be understood as unwilling, as an effect that occurs beyond the agent's will.

This interpretation of pondering and the permission to produce negative side-effects is shared and enlarged by Francisco de Vitoria (1483-1546) in his *De Iure Belli* (1539) [14]. He sets two requisites to justify collateral victims. Firstly, the damage must be caused 'per accidens', an expression that he uses in the same vein as Cajetan [15]. Secondly, the action must be necessary to win the (just) war.

There is a second remarkable point in Vitoria's argumentation. After presenting these requisites, Vitoria expressly rejects the morality of this ponderation. He considers that legal arguments allow this interpretation but that his personal ethical convictions prevent him from admitting that achieving a major good or avoiding a greater evil justifies committing a lesser sin ("tamen credo quod nullo modo licet, quia non sunt facienda mala, ut vitentur etiam alia mala maiora"). In front of the lack of references, it should be assumed that this reflection is directly addressed against Gratian's approach to the lesser evil, probably via Cajetan. Consequently, Vitoria is another Dominican author who has excluded Aquinas from his moral equation.

## 5. The seventeenth century and the hegemony of the Society of Jesus

From the end of the sixteenth century onwards, the increasing influence of the theologians of the newborn Society of Jesus boosted their leading role in the discussion of moral pondering. Although the elementary features of the Dominican positions are to be found again among this new generation of authors, the use of the terminology related to moral pondering and self-defense became less uniform. Jesuit writers often held a personal interpretative approach to concepts such as 'accidens' and 'praeter intentionem.' Nevertheless, self-defense and moral pondering were still clearly regarded as two different domains.

A clear example of these new trends is the Dutch Jesuit Martin Becanus's (1563-1624) work *Summa Theologiae Scholasticae* (1612), a commentary on Aquinas' *Summa Theologica* II-II. Becanus combines the expressions 'per accidens' and 'praeter intentionem' to set the primary conditions for allowing the killing of innocents in a just war [16]. Nevertheless, Becanus does not link this argument with ST II-II, 64.7. Indeed, Aquinas' positions are at the core of his views on self-defensive killing, which is addressed as a separate principle in another section of this work.

The approach of Becanus, though fundamental to understand modern DEP, had a limited influence on his fellow Jesuits. Francisco Suárez's (1548-1617) account gives evidence of it. Suárez, one of the key figures in the Jesuit twist of the School of Salamanca, consolidated to a more considerable extent the arguments of the earlier Jesuits. In his work *Fide, Spe et Charitate* (1621), Suárez provides one of the most explicit statements on how intending a major good might justify the unintended death of civilians. He holds that whoever has the right to wage war under a just cause can apply the necessary means to achieve victory. Under this premise, any harm caused to civilians will be considered accidental by default. Suárez states that this conclusion is 'communis'—widely accepted. This argument implies that i) the morality of the action lies in the end and not in the means—his position is more evident than that of Aquinas and Cajetan—and ii) that the side-effect is presumed to be justified by necessity. This viewing comes closer to the modern definition of the DEP, especially when invoked in war ethics. He even compares the moral permission to kill civilians with the case of an ill pregnant woman whose only chance to save her life is taking a medicine that will kill the fetus—a typical example of DEP in bioethics [17].

## 6. The eighteenth and nineteenth centuries: The birth of the modern DEP

Most eighteenth-century theologians kept the same positions as their Jesuit and Dominican predecessors. Arguments on self-defense and moral pondering tended to be based on the same models and authors discussed above. Authors like Niccolo Mazzotta (1669-1737) in his treatise *Theologia Moralis* or Daniele Concina's *Theologia Christiana Dogmatico-Moralis* (1687-1756) are clear examples of the continuity of the theoretical separation between the two principles [18, 19]. The paradigm changed in the mid-century with the commentary on the ST published by the French Dominican Charles René Billuart (1685-1757) under the title *Summa Sancti Thomae Hodiernis Academiaram Accommodata*.

Billuart held that if an action produces a good effect and only incidentally produces a minor bad effect, it will be morally admissible. Likewise, if the action finally does not produce a good effect but causes little harm, the unintended nature of the action will result in a mere venial sin [20]. He applies that maxim to his disquisition on the permission to kill civilians as a side-effect merging the Thomistic terminology on self-defense with the seventeenth-century Dominican and, especially, Jesuit approaches to moral pondering. In his opinion, it would be impossible to wage war licitly if it were an absolute prohibition to kill civilians 'per accidens' and 'praeter intentionem' during a just war. He argues that when an action produces two immediate effects—one good, the other evil—, it is permitted to achieve the good and tolerate the bad if there is a just reason behind it. He provides the example of the destruction of an enemy fortress or the use of artillery in a defensive war. These military actions produce a good effect (the defense of the homeland) but often lead to the death of non-combatants. The common benefit caused by the good effect, he concludes, allows causing this negative side-effect. [21]

Unlike Becanus, who also resorted to the expression 'praeter intentionem' when discussing moral pondering but did not quote Aquinas, Billuart directly links his arguments with ST II-II 64.7. Therefore, he is the first author to use Aquinas' theory of the two effects as a mechanism

to solve moral dilemmas. This unprecedented argumentative combination turns Billuart into the true forerunner of modern DEP.

The crystallization of the newborn DEP reached its peak when the Jesuit priest Jean-Pierre Gury (1801-1866) published his *Compendium Theologiae Moralis* (1851). His views on the double-effect—presented in the first volume of this work—have been the most influential description of the principle for contemporary thinkers so far.

Gury synthesizes the DEP in the “*Tractus de Actibus Humanis*” stating that “It is licit to perform a good or indifferent action which would be immediately followed by a double effect one good and the other one bad if there is a grave cause and the ends of the agent are honest”, a definition that he directly links with ST II-II 64.7 [22]. His positions on this mechanism of moral pondering are essentially the same ones Billuart proposed a century earlier, an author he reiteratively quotes [20]. In this sense, Jean-Pierre Gury does not add new elements to the basic concept. Indeed, he does not mention one of the classical conditions: the ‘*praeter intentionem*’.

It can be considered that Gury’s most outstanding theoretical contribution is his clear and well-developed identification of the four principles to be met by the action and the agent:

1. “*Finis bonus*”. The finality of the action must be a good end. The negative effect must be an unintended consequence. Otherwise, the agent would be sinning.
2. “*Causa bona, vel saltem indifferens*”. The cause pursued by the action must be good or at least morally neutral. In other words, the cause cannot be illicit.
3. “*Bonus effectus aequae immediate ex causa sequatur*”. The good effect must immediately follow the action as a direct consequence, whereas the negative effect must be accidental.
4. “*Ratio gravis ponendi causam*”. The course of action must be motivated by a state of necessity.

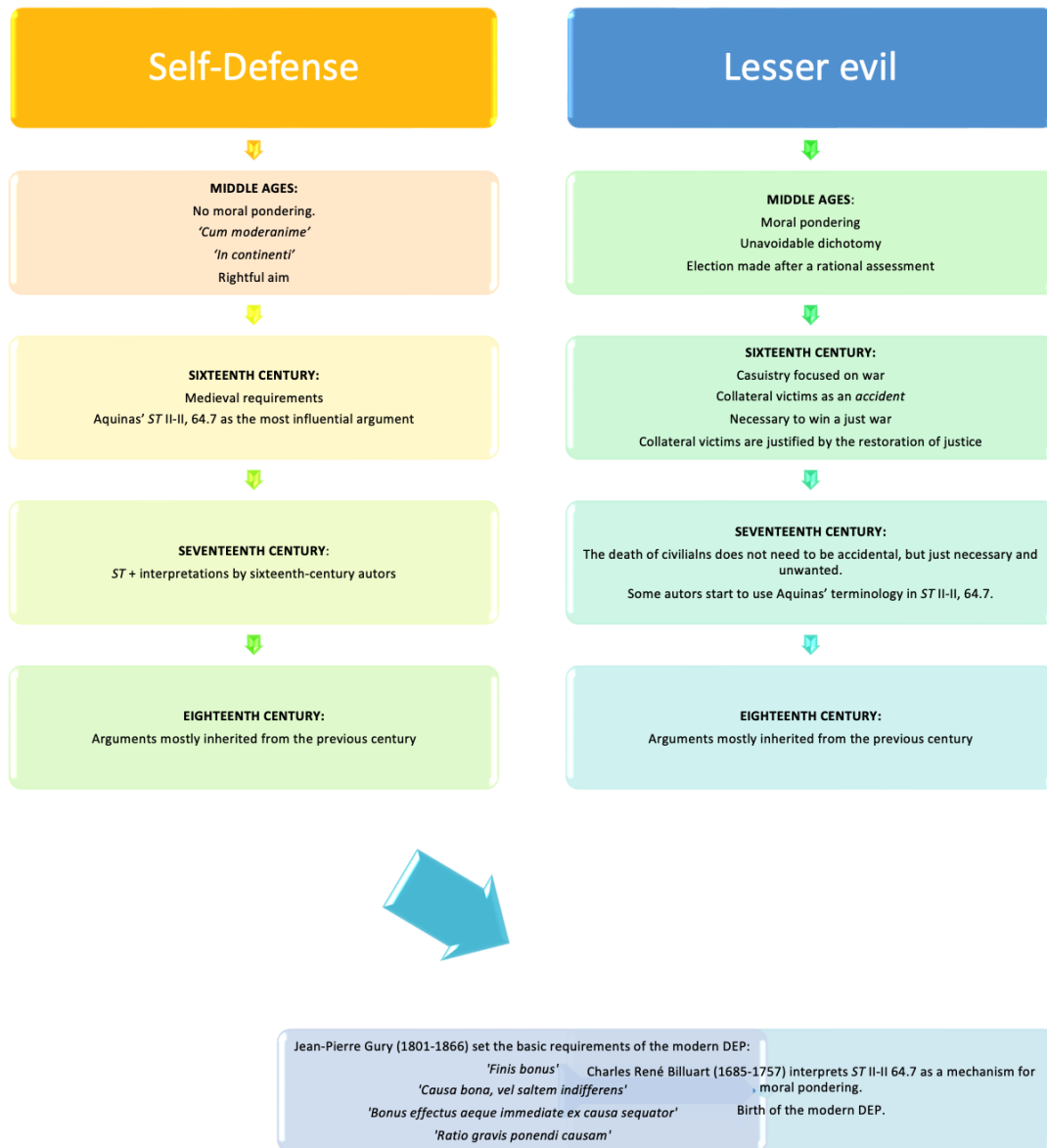
These four requirements have become the main point of reference for assessing the existence of the DEP. Throughout the twentieth century, this mechanism of moral ponderation trespassed the scope of theology to become a standard hermeneutical tool for moral philosophy. The interpretation of ST II-II 64.7 as permission to produce side-effects is currently the hegemonic reading of Aquinas’ statement. Indeed, it is often deemed the origin of the DEP. But Gury did not suggest an innovative approach. On the contrary, his merit lies in the systematization of the requirements. The last stage of this evolution, the ultimate reinterpretation of the ST and its blending with other principles traditionally unrelated, might be attributed to Charles Billuart.

## 7. Conclusions

This contribution has offered a preliminary overview of the historical origins of the modern DEP. It has not aimed to be an insightful and detailed analysis of this evolution process but to provide a synthesized account of its different phases and a sample of the most representative authors of each period. This discussion will soon be enlarged with further publications.

Notwithstanding the preliminary nature of this article, several conclusions can already be highlighted. It is a matter of justice to begin by restating the critics by Cavanaugh and Reichberg—*inter alia*—to the traditional attribution of the authorship of the DEP to Thomas Aquinas. Accordingly, Aquinas’ argument in ST II-II, 64.7 did not intend to establish a mechanism





**Figure 2:** Evolution of the self-defense and lesser-evil principles towards the modern DEP

to solve moral dilemmas, but only to justify the traditional requirements set by Scholastic authors to assess the existence of a defensive killing. In this sense, the general position held by Medieval canonists was that self-defensive homicide must meet three basic conditions: it must be (i) an immediate reaction—even preventive—against an unjustified attack ('in continenti') (ii) performed with moderation ('cum moderamine') and (iii) with a rightful aim—that is, the agent must not wish to kill. As noted, there is no moral pondering in Aquinas' discussion. The expression 'praeter intentionem' should be interpreted as a synonym for rightful aim and not

as an unexpected result of the action. The aggressor's death 'per accidens' (by accident) is the primary consequence of this 'praeter intentionem' as it is the consequence of the need to protect one's life.

Once discarded that Aquinas could be deemed the father of the modern DEP, I inquired on the possibility that the contemporary DEP was the result of the convergence of Thomistic views on self-defense with an alternative mechanism to solve moral dilemmas widely accepted by Medieval theoreticians: the so-called "lesser-evil principle". The theoretical development of this principle peaked in the sixteenth and seventeenth centuries. From the dawn of the sixteenth century, Dominicans like Thomas Cajetan and Francisco Vitoria deepened into the requirements to justify the morality of side-effects produced by actions pursuing a major good. The lack of connection points between this principle and ST II-II, 64.7 evinces that this section of the *Summa Theologica* was not understood as permission to produce indirect or accidental harm.

Eighteenth-century authors assumed the arguments of their predecessors on the moral requirements to legitimate the production of side-effects. No significant innovation was proposed in this regard. However, the Dominican bishop Charles-René Billuart add an original note by applying Aquinas' rhetoric on self-defensive killing to moral ponderation. This stance broadened the traditional views on ST 64.7 and turned this section of the *Summa Theologica* into the theoretical basis to assess the permissibility of indirect harms. Both principles finally converged to create the modern notion of the DEP. A century later, Jean-Pierre set the elementary conditions of the contemporary DEP.

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