

Maritain's Contribution to the Development of the Magisterium on Means

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Introduction

This paper has three parts.¹ First, I examine Maritain's treatment of the "problem of means." Second, I canvass statements of the *Magisterium on means*, giving particular attention to recent developments in the Church's teaching on war and capital punishment. Finally, I apply the work of Maritain, in light of the recent statements of the *Magisterium on means*, to an actual case so that the richness of Maritain's analysis might be demonstrated.

Maritain's Problem of Means

Maritain addresses the problem of means at length in at least four of his published works. For Maritain, the problem of means is "the basic problem in political philosophy."² His earliest treatment of this topic appears to have been in "Religion and Culture," which was published in 1930.³ Therein, Maritain explains the particular context in which the problem of means arises: "The Church and Catholicism are essentially supernatural, supra-cultural things whose end is eternal life;" however, "Christian civilization and the Catholic cultural world remain a civilization and a world whose specific end . . . is in itself of the temporal order." The Church must not be "confused with any civilization whatsoever."⁴ The spiritual and the temporal orders can never be treated as identical, but just as pernicious an error is to believe that they are antithetical. It is within this context of the relationship of the spiritual order to the temporal order that the problem of means arises.

¹ This article was improved by the editorial assistance of Dina C. Barron.

² Jacques Maritain, *Man and the State* (Chicago: The University of Chicago Press, 1951), p. 54.

³ Unless otherwise noted, the dates of publication for Maritain's works are taken from *The Collected Works of Jacques Maritain* VII (Notre Dame, Indiana: University of Notre Dame Press, 1995), pp. xxii-xxviii.

⁴ Jacques Maritain, "Religion and Culture," trans. J. F. Scanlon, *Essays in Order* (New York: Macmillan Co., 1931), p. 35.

Maritain seeks to elucidate his point by drawing a scholastic distinction. There are two different ways in which an instrument can be considered: "in its own peculiar causality and [in] its instrumental causality."⁵ The temporal order considered in its own causality has its own peculiar goods to safeguard. From this perspective the "decisive issue is victory or defeat" and we ought to wish greatly for victory for "it has biological importance": it may be a matter of life and death. However, insofar as the temporal order is considered in its instrumental causality,

... the temporal acts precisely as the instrument of the spiritual . . . [and] the decisive issue is not victory in the battle, but the way in which the battle is fought and the weapons employed. Weapons of light! Of truth, loyalty, justice, innocence, let our weapons be unsullied! We shall be beaten, that goes without saying, historians and politicians are right in warning us. But it is impossible to be beaten; when the stake is not biological but spiritual, defeat or victory with unsullied weapons is always a victory.⁶

Therefore, temporal means, in the process of seeking success on this earth, must not impose on the means of the intemporal "for that would be an outrageous prevarication." Rather, temporal means must be "subject to the law of the spirit."⁷ Thus far the matter is relatively straightforward. It is good to desire success on the temporal level and to take measures to secure such success; however, the means one uses to achieve success on the temporal realm are subject to the law of the spirit. Such means cannot involve lies, betrayal, injustice, or corruption,⁸ that is to say, they cannot be evil in themselves. We must not do evil that good may come of it.

Maritain further asserts that even among temporal means which are "good in themselves, legitimate and normal," there is an "order" or "hierarchy."⁹ This hierarchy is based on the degree to which a given temporal mean is instrumentalized to the spiritual order:

There is the labor of the soldier, . . . the ploughman [sic], the . . . politician, the poet, the philosopher, there are the works of us Christians of the common herd, the works of the saints; there are the works of the saints with a mission to discharge such as . . . St. Louis, and the works of saints exempt from any such mission . . . What a weight of glory for the temporal was the history of the patriarchs and the long preparation for the Incarnation!¹⁰

Maritain calls "rich temporal means" those so implicated in the work of the spirit that they "of their own nature postulate a certain degree of temporal success." Such means are "the particular means of this world . . . in truth . . . they fall within the domain of the Prince of this world. Our duty is to wrest them from him."¹¹ For example, due to Divine Providence, Moses' mother's plan of safeguarding her

⁵ Ibid., p. 44.

⁶ Ibid., my emphasis.

⁷ Ibid., p. 45.

⁸ This is the inverse of the list that Maritain gives in "Religion and Culture," p. 44.

⁹ Ibid., p. 45.

¹⁰ Ibid.

child by putting him in a basket and placing the basket among the reeds on the bank of the Nile River was going to be successful.¹²

In contrast, the poor temporal means “are the peculiar temporal means of the spirit ... The Cross is in them. The less burdened they are by matter, the more destitute, the less visible— the more efficacious they are.”¹³ The poor temporal means are not ordered for tangible success but rather “participate in the efficacy of the spirit.”¹⁴ As examples of poor temporal means, Maritain cites the writings of Aquinas, the discourses of Plato and Aristotle, and the singing of Homer and King David. According to Maritain, the full listing of the hierarchy of means, from highest to lowest is: pure spiritual means directed toward eternity; spiritual means directed toward the material world; and temporal means as already discussed.¹⁵

Maritain’s most extensive treatment of the problem of means is contained in *Freedom in the Modern World*¹⁶, published in 1933. Therein he states that, while “the purity and sincerity of an attempt to renew the temporal order on Christian principles excludes all ways and means that are not sincere and pure,”¹⁷ it does not rule out victory, even temporal victory. A Christian revolution can succeed through the power of faith, for, Maritain reminds us “if faith is able to move mountains, is it powerless to shift the mighty from their seats?”¹⁸ In addition to faith, even those who operate out of the perspective of the spiritual order may use a “measure of coercion.”¹⁹ In this context Maritain mentions several of the traditional criteria for resistance to a tyrannical government, but always in reserved terms. For example, only after first mentioning the possibility of “passive resistance” does he go on to condone the use of “armed and open force.” Further, he immediately qualifies his position with the parenthetical phrase “by way of defensive action.”²⁰ Maritain, after commenting on this tradition that allows, in certain well-defined cases, “opposing by violence, even to the shedding of blood,”²¹ then goes on to question the relevance of that tradition and of the traditional criteria to the situations we face in the modern era:

The question raised by the conditions of the temporal order in our time does not concern the action of a tyrant laying a city to waste by cruelty ... The question that confronts our time has to do with a universal state of depression and disorder ... In the political and social struggle that is the eternal lot of human society ... has the Christian ethic nothing else to offer to those who are engaged in temporal strife than abstract advice to moderate and limit in accordance with the

¹¹ Ibid., page 46.

¹² See *Exodus* 2:1-10. This is my example. Maritain himself refers to the successful reign of St. Louis. A somewhat different division and definition of means is given by Maritain in *Freedom in the Modern World*, trans. Richard O’Sullivan (New York; Charles Scribner’s Sons, 1936), p. 133.

¹³ *Religion and Culture*, pp. 46-47.

¹⁴ Ibid., p. 47.

¹⁵ Jacques Maritain, *Freedom in the Modern World*, pp. 185-86.

¹⁶ Ibid.

¹⁷ Ibid., p. 152.

¹⁸ Ibid.

¹⁹ Ibid., p. 153.

²⁰ Ibid.

²¹ Ibid., p. 154.

rules of reason and of divine law the use of coercive force? ... If it really is so, is there not an inevitable conflict between the demands of Christian ethics and of temporal success ... Is the Christian soul doomed to defeat if it remains loyal; to infidelity if it declares for success? Or as an alternative, to perpetual inaction?²²

Maritain's reply to these pointed questions is that they are the product not of a Christian but of a Manichean outlook. The Christian believes in Divine Providence and knows that, even though the work of the Spirit is often thwarted, it makes constant progress in time.²³ The Manichean's division of spirit and matter, of spiritual truths from the necessities of state, led in time to a:

... pharasaical spirituality [which] relied on political forces to do the work that its scruples forbade it to do ... In this way the actions of States as well as the conduct of wars and conspiracies, revolutions, acts of violence and the rest came to be the work of a tiny group of men who sacrificed their virtue on the altar of public welfare in much the same way that prostitutes sacrifice their honor to maintain the peace of families.²⁴

In contrast, Maritain argues that the state should "not make sin one of its instruments" since "justice is of greater value than force in the conservation of the state."²⁵

Still, what are Christians to do when they are members of a state that has made many sins its instruments? What are Christians to do when they find themselves locked in a struggle with the state on one or more matters of fundamental importance? Maritain, sounding like a contemporary commentator on the American political scene, surveys the tools that are commonly used in political struggles such as the "mobilization of all the devils of the human heart" and of the need to appeal to victim's demands for expiation, pride of race, and of class.

"But bold and fearless falsehood, falsehood sure of itself, fast as the pillars of Hercules ... becomes the power par excellence that is demanded for the manufacture of political opinion. The whole people shall be nurtured on fable and steeped in imposture; that they shall be taught to call good evil and evil good."²⁶

These are means which Christians will be sorely tempted to use if they believe the sole means available to them is secular warfare.²⁷ Fortunately, Maritain's purpose is to show us that not only are other means available, but they are more

²² Ibid., pp. 154-56.

²³ Ibid., pp. 156-57.

²⁴ Ibid., p. 158. Maritain compares this situation to "the pious Jewish housewife who employs a goi servant so that the housework may be done on the Sabbath." To those unfamiliar with Maritain's work, it should be pointed out that by this comment he intended nothing disrespectful of the Jewish faith.

²⁵ Ibid., p. 160.

²⁶ Ibid., p. 161.

²⁷ In the course of his discussion, Maritain asks: "Are the arms of moral reconstruction the only arms he [a Christian] is at liberty to use?" (Ibid., p. 167) Maritain never directly answers this question although he does state, earlier on the same page, that "means of warfare, though not in themselves the most important, are nonetheless necessary. The history of mankind does not in fact dispense with these means." Still, the question of whether a Christian may do as history has done is left open.

effective and more powerful than the tools of sin. First, he explodes the myth that there is a conflict between the claims of ethics and those of temporal success.²⁸ He argues that the organic means of moral reconstruction, which he is proposing, have “more potency in promoting historical change than the ways of war.”²⁹ Pure means are a kind of laboring to give birth: a bringing into being, “in the very center of the existing temporal regime, the institutions proper to a new order of things.”³⁰

As an example of the spiritual means of warfare, Maritain examines the practice and teachings of Gandhi. Unlike some Catholics of his generation (and ours), Maritain, while finding great value in Gandhi’s doctrine of Satyagraha, is by no means romantically uncritical of it, stating that it “needs rectification on essential points.”³¹ Among the problems Maritain finds is that “Gandhi has no sense of state.”³² Maritain could not accept Gandhi’s absolute rejection of the use of force by the state. In this Maritain finds an “escape to angelism which carried to its extreme limit involves ... the rejection of the Incarnation.”³³ In contradistinction to Gandhi, Maritain affirms the real difference between violence and force; the common good may call for the use of force against those who attack truth, even though violence should not be used to impose truth on others.³⁴

A true doctrine of force, Maritain explains, will consider force as a power of the soul, as the moral virtue of fortitude. Fortitude, the virtue which inclines and steadies the will to do justice, come what may, admits of two principle aspects or manifestations. There is the fortitude that attacks and the fortitude that endures. The former is a “force of coercion” and “a force that inflicts suffering on others” while the latter is “the force of patience” and the “force that endures the infliction of suffering on oneself.”³⁵ According to Maritain:

... courage in endurance corresponds to the principle act of the virtue of fortitude and is characteristic of the “bravest of the brave.” Such endurance derives its strength from something that possesses the greatest power of resistance in the world of nature, from the paradox of a nothing which is also a universe, the invisible power of human personality.³⁶

The force of coercion “aims at the destruction of one evil by way of another evil”³⁷ and thus evil passes back and forth like a game of tag between the two parties. In contrast, the force of endurance is a force of “patience” and “voluntary suffering” which can “annihilate ... evil by accepting and dissolving it in love.”³⁸ Maritain

²⁸ Ibid., p. 166.

²⁹ Ibid., pp. 166-7.

³⁰ Ibid., pp. 164-7.

³¹ Thus John DiJoseph’s comment on page 119 of *Jacques Maritain and the Moral Foundation of Democracy* (Lanham, Maryland: Rowman & Littlefield, 1996) that Maritain’s “solution to political conflict was to wholeheartedly adopt the techniques of creative nonviolence as developed in India by Mahatma Gandhi” seems overstated.

³² Jacques Maritain, *Freedom in the Modern World*, p. 169.

³³ Ibid., p. 170.

³⁴ Ibid., p. 171.

³⁵ Ibid., pp. 172-73.

³⁶ Ibid., p. 174.

³⁷ Ibid., p. 175.

again qualifies his comments by noting that there is still an essential role to be played by coercive force.

Even in relation to spiritual ends [coercive force] and material means may be used, within the limits of justice. Even St. Augustine in the end admitted that against the destruction wrought by heretics the Church might appeal to the material power of the secular arm. The Church ... is entitled in her own sphere to exercise a certain measure of coercion.³⁹

Maritain goes so far as to say:

Apart from the fact that the systematic refusal to render military service, such as is practiced by Conscientious Objectors, is based on an ideology that is shallow and steeped in illusion, it is also of no real effect against the evil of warfare and might well endanger the safety of the community in a case where a just war had to be waged.⁴⁰

One would have thought that Maritain had made himself sufficiently clear on this point; however, some had apparently confused his treatment of the problem of means with the advocacy of pacifism. In August of 1934, a mere year after the French publication of *Freedom in the Modern World*, Maritain gave a series of six lectures at the Summer School of the University of Santander. Those lectures were later published as *True Humanism*.⁴¹ Therein Maritain returns again to the problem of means, not to change what had gone before, but "only ... to remove certain misunderstandings."⁴² He explains that "some people have thought that I condemned as impure in themselves, i.e., as intrinsically evil, means not evil in themselves, but of an inferior degree."⁴³ Again he confirms that the physical means of war, including "violence," "terror," and the "use of all the means of destruction" can be just if all of the relevant theological conditions for their use are met.⁴⁴

Maritain's principle concern is with those who confuse "pharasaical purism" with the doctrine of the purification of means. They urge an abandonment of writing because "modern publicity is impure" or recommend that persons stop voting because the political process is corrupt. Such an attitude is directly counter to the program that Maritain is laboring to develop. The means one uses should, as near as possible, correspond to the end one is trying to achieve. The doctrine of means

... does not so much insist on the rejection of the use of certain means as on the positive will to raise up means not only good in general, but truly proportionate to their end, truly bearing on them the stamp and imprint of their end: means in which that sanctity and sanctification of the secular ... are incarnate.⁴⁵

³⁸ Ibid., p. 176.

³⁹ Ibid., p. 177.

⁴⁰ Ibid., p. 180. Maritain wrote this some thirty-two years before Vatican II's *Gaudium et Spes* (Par. 79) declared that "it seems right that laws make humane provisions for the case of those who for reasons of conscience refuse to bear arms, provided, however, that they agree to serve the human community in some other way."

⁴¹ Jacques Maritain, *True Humanism*, trans. Margot Adamson (London: Geoffrey Bles, 1938).

⁴² Ibid., p. 240.

⁴³ Ibid., p. 241.

⁴⁴ Ibid.

⁴⁵ Ibid., pp. 244-45.

Maritain holds that a Christian may use force when absolutely necessary but that this turn of events will naturally be considered regrettable to the Christian as it runs contrary to the spirit of the ways of God.⁴⁶ Maritain returns for the final time to the problem of means in his Charles R. Walgreen Foundation lectures which he delivered in December of 1949, and which were later published as *Man and the State* in 1951.⁴⁷ While Maritain largely reiterates arguments I have already discussed, he does add several important points of clarification. Means are the basic problem of political philosophy because they are “the end itself in the very process of coming into existence.”⁴⁸ Means are not extrinsic but intrinsic to the end achieved; therefore, it is simply impossible to achieve an intrinsically good end through the use of intrinsically evil means. The problem of means is uniquely important to democracy since the particular ends of democracy are justice and freedom. For a democracy to use means that are intrinsically destructive of these ends would be, literally, suicidal.⁴⁹

The Magisterium on Means

Several subsequent statements of the *Magisterium* bear a strong resemblance to Maritain’s doctrine of the hierarchy of means. Strikingly, these statements utilize almost the exact same language as Maritain did. A textual search of all the major documents of the *Magisterium* since 1959 revealed five significant documents which utilize “means” in the same way that Maritain did.⁵⁰

Pope John XXIII issued his encyclical *Pacem in Terris*⁵¹ in 1963. Therein he implicitly confirms Maritain’s hierarchy of means in regards to distributive justice, that is to say, in regards to a government’s treatment of its people. The Pope states that:

A civil authority which uses as its only or its chief means either threats and fear of punishment or promises of rewards cannot effectively move men to promote the common good of all. Even if it did so move them, this would be altogether opposed to their dignity as men, endowed with reason and free will. As authority rests chiefly on moral force, it follows that civil authority must appeal primarily to the conscience of individual citizens, that is, to each one’s duty to collaborate readily for the common good of all.⁵²

Obviously the encyclical is not condemning all use of incentives or punishments by government. The concern evidenced is for those civil authorities who have inverted the order of the hierarchy of means. Instead of using treats and fear of

⁴⁶ Ibid., p. 246.

⁴⁷ Jacques Maritain, *Man and the State* (Chicago: The University of Chicago Press, 1951).

⁴⁸ Ibid., p. 55.

⁴⁹ Ibid., p. 60.

⁵⁰ This search was performed using *Church Documents: Conciliar and Post-Conciliar*, Fifth edition (Boston: Pauline Software, 1997). The search yielded 1727 usages of the term “means.” An examination of these passages revealed that only five of the passages contain usages of “means” in the same sense as found in Maritain’s discussion of the “problem of means.”

⁵¹ John XXIII, *Pacem in Terris*, (Peace on Earth), April 11, 1963. Citations taken from *Church Documents: Conciliar and Post-Conciliar*, Fifth edition (Boston: Pauline Software, 1997).

⁵² Ibid., par. 48.

punishment as a last resort, they are being used as the first method, as the “only or chief means.” The hierarchy of means for distributive justice requires that governments, first and foremost, use those means most in conformity with the dignity of the person and only resort to lesser means when absolutely necessary.

Gaudium et Spes, Vatican II’s Pastoral Constitution on the Church in the Modern World,⁵³ issued on December 7, 1965, strongly echoes Maritain’s treatment of the problem of means in “Religion and Culture.” Just as in “Religion and Culture,” *Gaudium et Spes* prefaces its discussion of means with a description of the relationship between the political community and the Church.

It is very important ... that there be a correct notion of the relationship between the political community and the Church, and a clear distinction between the tasks which Christians undertake ... The Church, by reason of her role and competence, is not identified in any way with the political community nor bound to any political system ... The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men.⁵⁴

The Constitution then goes on to distinguish the “ways and means proper to the Gospel” from the “means proper to the earthly city.” Both the supernatural and the temporal are “closely linked” and the “Church herself makes use of temporal things insofar as her own mission requires it;” however, she uses only those temporal means which are in “accord with the Gospel.”⁵⁵ The document goes on to implicitly recognize a hierarchy of temporal means in saying that governments “cannot be denied the right to legitimate defense once every means of peaceful settlement has been exhausted.”⁵⁶ In other words, military defense, even when legitimate, should not be the first, but the last, of the temporal means used. The document also calls on people to “find means for resolving our disputes in a manner more worthy of man.”⁵⁷ Again, the existence of a hierarchy of means is assumed. In the Constitution’s description of the hierarchy, just as in Maritain’s discussion, means are ranked in order of their conformity to the dignity of the human person.⁵⁸

In 1986 the Sacred Congregation for the Doctrine of the Faith issued *Libertatis Conscientia*,⁵⁹ an “Instruction on Christian Freedom and Liberation.” This document explicitly addressed the issue of the morality of means and, once again, there

⁵³ Vatican II, *Gaudium et Spes*, (Pastoral Constitution on the Church in the Modern World), December 7, 1965. Citations taken from *Church Documents: Conciliar and Post-Conciliar*, Fifth edition (Boston: Pauline Software, 1997).

⁵⁴ *Ibid.*, par. 76.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, par. 79.

⁵⁷ *Ibid.*, par. 81.

⁵⁸ I believe it is fair, for my purposes and given the context of the language, to equate the two phrases “worthy of man” and “dignity of the human person.”

⁵⁹ *Libertatis Conscientia*, (Instruction on Christian Freedom and Liberation) Sacred Congregation for the Doctrine of the Faith, March 22, 1986. Citations taken from *Church Documents: Conciliar and Post-Conciliar*, Fifth edition (Boston: Pauline Software, 1997).

are strong similarities with Maritain's discussion. The document unequivocally states that "the means of action must be in conformity with human dignity ... There can be no true liberation if from the beginning the rights of freedom are not respected."⁶⁰ This is so because, as Maritain said in *Man and the State*, the means are "the end itself in the very process of coming into existence."⁶¹ It is simply nonsensical to attempt to bring about freedom through slavery. Therefore:

the fight against injustice is meaningless unless it is waged with a view to establishing a new social and political order in conformity with the demands of justice. Justice must already mark each stage of the establishment of this new order. There is a morality of means.⁶²

The principle of "the morality of means" not only rules out false means, means which are absolutely incompatible with the end sought, but also requires respect for the hierarchy of means. Thus the instruction goes on to insist that it is only as "a last resort," in the case of "putting an end to an obvious and prolonged tyranny which is gravely damaging the fundamental rights of individuals and the common good," that the recourse to armed struggle is justifiable. It is only in the most extreme cases that the resort to the most extreme means is justified. "Passive resistance" is a preferable means in that it "shows a way more conformable to moral principles and [has] no less likelihood of success."⁶³

Finally, and most persuasively, are the strong statements on the morality of means in both the *Catechism of the Catholic Church* and *Evangelium Vitae*. *Evangelium Vitae*,⁶⁴ issued by Pope John Paul II on March 25, 1995, promulgated a new level of clear and direct teaching on the problem of means. John Paul II notes as "signs of hope" the favoring of nonviolent means over war in public opinion and the "growing public opposition to the death penalty." He also observes that "modern society has the means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform."⁶⁵

It is not that the death penalty and war are impermissible means or means which are intrinsically evil. Rather, the Pope is concerned to enunciate the principle that all persons have a moral duty to act in accord with the hierarchy of means. Thus the state, in administering punishment, "ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible to otherwise defend society."⁶⁶ The *Catechism of the Catholic Church* (revised) teaches that:

⁶⁰ Ibid., par. 76.

⁶¹ Maritain, *Man and the State*, p. 55.

⁶² *Libertatis Conscientia*, (Instruction on Christian Freedom and Liberation), par. 78. Cf. *Document of the Third General Conference of the Latin-American Episcopate at Puebla*, pars. 533-534. Cf. John Paul II, *Homily at Drogheda*, September 30, 1997: A.A.S. 71 (1979), pars. 1076-1085.

⁶³ Ibid., par. 79.

⁶⁴ John Paul II, *Evangelium Vitae*, (The Gospel of Life), March 25, 1995. Citations taken from *Church Documents: Conciliar and Post-Conciliar*, Fifth edition (Boston: Pauline Software, 1997).

⁶⁵ Ibid., par. 17.

⁶⁶ Ibid., par. 56.

the church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor. If, however, nonlethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and more in conformity with the dignity of the human person.⁶⁷

Again, conformity to the hierarchy of means is not optional but morally required as some means are more in conformity with the end, the dignity of the human person and the preservation of life, than others.

Did Maritain directly influence the development of the *Magisterium's* teaching on means or is it merely that both the *Magisterium* and Maritain were drawing from the same deep well of the Catholic Tradition and thus independently reasoned to the same understanding on the question of means? Only a proper historical study of the intellectual influences on the Counsel Fathers and John Paul II could definitively answer this question. What is clear is that Maritain's doctrine of means is more relevant today than when he first formulated it back in 1930, and it is still ahead of its time. The *Magisterium* appears to be in the early stages of adopting a doctrine of means that parallels the work of Maritain. By reading the *Magisterium's* teaching on means in light of Maritain's doctrine of the hierarchy of means one has a rich and powerful tool for moral analysis.

Application of the Hierarchy of Means

Maritain's hierarchy of means can be considered as one way of practically applying the principle of double effect; however, Maritain has raised the principle to a higher level. Instead of describing the quandary in a minimalist way, Maritain describes it in the richest way possible. The traditional principle of double effect is based primarily on the formulation given by Aquinas in the *Summa Theologica*.⁶⁸ As Aquinas, in the course of answering the question, "Is it ever lawful to kill a man in self-defense," explains it:

[N]othing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended and not according to what is beside the intention ... Accordingly the act of self defense may have two different effects, one of saving one's life, the other is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life, is not unlawful ... and yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end.⁶⁹

⁶⁷ *Catechism of the Catholic Church* (Revised), par. 2267.

⁶⁸ Thomas Aquinas, *Summa Theologica*, II-II, Q. 64, Art. 7, trans. Fathers of the English Dominican Province (Westminster, Maryland: Christian Classics, 1981), p. 1465.

⁶⁹ *Ibid.*

The degree to which Maritain has enriched the tradition with the addition of the hierarchy of means becomes apparent if we apply both methods to a hypothetical case. This evening, after I return to my hotel room, I am robbed. The robber, after realizing that I have nothing to steal (being that I am a lowly assistant professor), decides to kill me in his frustration and anger. I cry out for help. Several of you assume that I am a practitioner of primal scream therapy and therefore do nothing. As the criminal reaches for his weapon to shoot me, a police officer who heard me bursts into my hotel room. The officer attempts to get the criminal to voluntarily disarm but, when that fails, he shoots and mortally wounds my assailant.

The traditional double effect analysis would include the following points. The intention of the police officer is to save my life or simply to preserve life. This is the effect that the officer intends by shooting the robber. Assuming that the officer is virtuous, while he foresees the possibility, he does not intend the death of my attacker. The death of the robber is a foreseen but unintended consequence of the officer's performance of his duty. The lethal force the officer uses is not disproportionate given that the thief appears ready to take my life immediately if not stopped by the police officer. So concludes the traditional analysis. The application of Maritain's doctrine of the hierarchy of means deepens and enriches the analysis. The police officer's actions, as just described, are indeed a permissible means, but a regrettable one. There is no pleasure in these means for the Christian, however necessary the circumstances might be. For the Christian police officer, or any officer who affirms the existence of God, Maritain holds out previous steps on the hierarchy of means that can be applied, and, by their very application, these steps shape and purify the intention of the officer, even in those cases where he must use lethal means. The first means would be spiritual directed toward the eternal. The Christian police officer should pray, and even fast, that persons will turn away from sin and toward God. The officer does this out of Christian charity, out of love for those who otherwise might become criminals. The officer thereby develops in himself an active love and concern for the souls of those who might give in to temptation. Like Christ, he attempts to pray hardest for and love most those who are most deeply mired in sin and crime. The second means would also be spiritual but directed toward the temporal. The officer might pray, and perhaps even fast, for the reduction of violent crime and for the reform of those persons he has arrested. He would ask God for the courage and self-control to carry out his appointed tasks with integrity. He might also pray for success in his task of preserving the lives of all those persons he will encounter that day, criminal and victim alike. Third, the officer would utilize temporal means, but in accordance with the hierarchy proper to them. When the officer is confronted with a situation in which it is his duty to act to preserve human life, he would first use those temporal means most in conformity with human dignity. Depending on the circumstances, he might first try to reason with the perpetrator and appeal to the criminal's better self, the criminal's sense of justice or virtue. If that fails, and if the situation allows, the officer might then point out to the criminal that it is in the criminal's self-

interest to cooperate and surrender. Finally, if all of the above means fail, the officer may be duty bound to use force; however, this use of force would still conform to the hierarchy of means insofar as some means of force are more, and others less, appropriate to the officers stated end: the preservation of human life. The officer would first threaten to use force by displaying his weapon or firing a warning shot. In the most desperate situations, the officer might have to apply those means least in conformity with his stated end of preserving human life: lethal force. Still, our virtuous officer would have diligently trained to be an expert in the use of his weapon. By this training he makes it more likely that, if he needs to use lethal force, he will be able to do so in a manner most likely to preserve human life. The officer will have the skill to more fully actualize his intention to preserve life: he will be able to “shoot to wound,” rather than kill, the criminal.

As our virtuous officer has diligently respected the hierarchy of means, even though he is forced by circumstances to resort to the least means, even then he acts in a matter different than an officer who starts with the least means and ignores the existence of the hierarchy. Our virtuous officer will find it easier to remember his intended end, the preservation of life, and not slip into the vice of vengeance by intending the death of the criminal. Thus the hierarchy of means safeguards and purifies the intention of the officer, protecting him from moral corruption even when he must use the least means which also carry with them the greatest moral temptations. Also, even when using the least of means, the officer who has diligently applied the hierarchy will have the virtue to force even such lowly means to better conform with human dignity and his intended end, the preservation of human life.

Skeptical? Do any such police officers exist? They do. One of my students, a devoted, humble Catholic, who, although not knowing their name, had faithfully applied the hierarchy of means to his police work for many years. A man with a deeply developed respect for life, he complimented the image of my son's ultrasound, which I keep on my office wall next to a photo of my son after birth, saying: “You know professor, that is a great message against abortion.” This officer, I'll call him John, was responding to a routine call with two fellow officers when they were ambushed in a bar. The call was staged so that the officers might be killed. The attacker was a special forces trained member of a foreign government who had developed a grudge against the local police. All three officers were immediately hit upon entering the establishment. John perceived where the shooting was coming from and, cocking the hammer of his weapon back, he pointed it at their attacker, who was only a few feet away. Providentially, their assailant's weapon had permanently jammed, saving all three of their lives. John became aware that both of his coworkers were seriously wounded, conceivably dead. Neither was moving. John felt the side of his head and it was covered in blood. He believed he had been struck in the head, perhaps mortally.⁷⁰

⁷⁰ In fact, he had been struck in the shoulder and a piece of flesh from his shoulder had been blown onto the side of his head. Miraculously, all three officers survived the attack.

The temptation to take the law in his own hands must have been enormous, but instead John acted on his intention to preserve life. The attacker, in an intentionally suicidal move, grabbed the barrel of John's gun and pulled it against his head. He was trying to discharge John's gun into his head. As would be expected, the jerking motion released the hammer, but in the split second before it would have struck and fired the bullet into the criminal's head, John slipped his thumb between the hammer and the firing pin, stopping the gun from discharging, while causing himself considerable pain.

For his heroism, John was never rewarded in any way. In fact, after recovering and returning to active duty, he overheard his immediate supervisor telling another officer that John was an "idiot" for letting the criminal live when every officer knew that what John should have done was finish the lawbreaker off. John's ultimate reward is surely awaiting him in the life to come; however, even in the temporal realm, we can see the rewards available to those persons who diligently apply the hierarchy of means. John was able to resist moral corruption even when forced to use the least of means and, even while using such means, he was able use them in such a way as to dramatically affirm the dignity and the value of human life. John embodies Maritain's doctrine of the hierarchy of means. He does not so much reject the use of certain means, but rather exercises his will to raise up means which are "not only good in general, but truly proportionate to their end, truly bearing on them the stamp and imprint of their end: means in which that sanctity and sanctification of the secular ... are incarnate."⁷¹

⁷¹ Maritain, *True Humanism*, pp. 244-45.