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A Propaedeutic Treatment of Embodied Theology and the Applications of Self-Defence

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ABSTRACT

Self-defence is generally thought to be either a staple of martial arts practice or a way for the Crown to establish if an accused was acting in self-defence. That calls to mind two essential aspects about the actor in self-defence: 1) the subjectivity of the actor's intent and actions, and 2) the objective examination against what other prudent persons would or would not do given the same set of circumstances. Assessing criminal liability is essential to the legalities of self-defence but, the discovery of one's mind and actions after the fact is relevant to consequence and reflective practice which merely defines what may be considered reasonable, legitimate, and necessary as per case. More importantly, is there a divine pre-eminence of self-defence that can ameliorate one's actions of force against another to curtail the negative effects of a hostile attacker. In this article, I propose that both virtue and duty can lead the actor to discover the sacred site of the lived-body as the self-known as I to value the self-known as the other. To view the body as sacred in such a pre-emptive way may re-establish restraint and control over one's actions as to promote bodily integrity and the preservation of life.

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Introduction

That a person is justified in using force, as a legitimate form of self-defence, has long been held in the common law as a complete defence to criminal liability [1]. To determine the legitimacy of such a defence, the court must extensively examine the subjectivity and objectivity of a person as to whether the conduct of that person is lawful or unlawful. Although rendering a decision of lawful self-defence requires a majority consensus to achieve any measure of certainty [1]. Here, more objectively the criminal courts must be satisfied beyond reasonable doubt that the internal motivations of the actor have allied with the outward applications of self-defence. Examinations of this nature tend to discover the perspectives of a person acting in self-defence against the position of what another reasonably minded person would or would not do under the same circumstances. This is what legal scholars describe as subjective and objective assessments. This fascinating legal aspect of subjectivity and objectivity of the person becomes the point of departure for this article, particularly in terms of lawful applications of self-defence, given that the evidentiary basis for self-defence as a defence requires deep consideration of the actor's motivations and applications of force. Yet even though subjectivity is examined through the trial process, consideration is given to personal characteristics at the time that the accused carried out the conduct against another. The commonly held position of the courts in New South Wales will consider the subjective assessment to the degree that it can determine the characteristics of the persons conduct and that the conduct was proportionate, necessary, and legitimate. And in response to an attacker, the court seeks to determine the subjective application of self-defence if it were reasonable from an objective standpoint. To provide a broader scope on the lawful application of self-defence, I turn to legal precedents to demonstrate how these subjective and objective characteristics are assessed. Howie & Johnson note in *R v Katarzynski* [2002] NSWSC 613: BC200203724; (2002) 9 Crim LN 54 [1445], the court held that.

"The first question is determined from a completely subjective point of view considering all the personal characteristics of the accused at the time he or she carried out the conduct. The second question is determined by an entirely objective assessment of the proportionality of the accused's response to the situation the accused subjectively believed he or she faced".

One must bear in mind that the courts are not attempting to define the consciousness of the lived-body in such ways that preoccupy the minds of phenomenologists. The duty of the court is to determine if the applications of self-defence are lawful. However, there is much to be gleaned from the phenomenon of the lived-body because self-defence, as much as it may be a somatic reflex, is equally an expression of consciousness that trespasses the body of another conscious being. Thus, the self is under immense scrutiny when acting in self-defence. So, the challenge here is to take up the notion of a *self*-determinate perambulatory conscious deliberation of a right and just act of defence. The rationale for such an argument emerges from a simple notion that if one is conscious of the self as sacred, one may also identify the other as sacred which hopefully calls to mind enough restraint to reduce bodily violability.

But does this get one any closer to defining what *self* is relative to subjectivity? In short, No! I say this because the subjective assessment requires an examination (external objectification) of what the person has done relative to the temporal coincidence of one's state of mind and conduct. While motivation and conduct are personal characteristics of the animated self, the conduct is the product of the self which is located at the site of the inner being. At a glance there now appears to be a distinction between the manifest outpouring of applied force versus the non-manifest intention behind the act. But even that idea merely describes that there is a temporal coincidence between one's cortical neural activity (*mens rea*) and somatosensory animation (*actus reus*) at a particular point in time. Yet, one may still struggle to comprehend what is happening deep within the body-subject that prevents the actor from stepping over the threshold of legitimate self-defence.

In terms of self-defence, I have drawn a distinction between two aspects of the person, namely, the body-subject and the body-object. I believe that this may be helpful when conceptualising and defining that part of the *self-known* as I (subject) as distinct from that which is known as *me* (object). This eidetic reduction is fundamental to the examination of men's rea in understanding the priming condition of cognitive reasoning as well as describing actus reus and its relationship to a guilty or righteous act. Phenomenologically, that brings the reader a little closer at conceptualising the internal musings of I, the one who is deliberating over the non-manifest characteristics of self-defence, versus *me*, the one who then manifests self-defence. Even then, when one can analyse a characteristic of themselves, they have effectively objectified themselves in a way that can only be partially known. For instance, if I isolate and examine my hand, I know that that is my hand, but I cannot fully know my hand as I know myself. If my hand were cut off, I can be divorced from my hand, but I cannot in the same way be divorced from the awareness of myself as *I* the inner self. My hand, even though a part of me, can be objectified independent of the known self.

Before the self can be declared a sacred site, I shall background the concept of self with Merleau-Ponty who most aptly defines the body-subject as the being of consciousness in-itself. This means that a body that is in-itself is known relative to the world of objects but only so far as what can be accessed by the self. The other's body is an object in front of one's own consciousness which in no way can encounter another consciousness. A thought experiment may help elucidate this concept. Imagine that you are standing in front of the mirror. How would you describe who and what you are seeing? You may find yourself gazing upon your reflection and conducting a self-appraisal prior to leaving the house, or you may begin to fault find and peer into all your imperfections. You may even make statements about yourself such as, "gee, that does not look too good", or "gosh, you are looking awful today", or "hmm, yeah, not looking too bad". If, like me, you are probably having a conversation with yourself, about yourself which is an objective analysis. And, if like me, you would rarely stare at yourself in the mirror, speaking through the subjective voice of *I*, saying such things as, "I will do better than yesterday", or "I am quite a generous and caring person", all the while completely dismissing any objectification of self. The point here is, we often know ourselves in two ways: 1) subjectively as *I*, and 2) objectively as *me*. For example, I am aware that I am thinking, yet I am also aware that it is me (in-itself) who is doing the thinking. The same logic can be applied to reading. There is my voice reading the words of a book. Then there is me hearing the voice that is reading. And lastly, there is me who does the thinking about what I have just read and heard. That is how the phenomenologist may describe the *self* as body-subject and body-object while evaluating the temporality of the present centred self in relation to others. But even more so, the embodied self is the site which experience finds meaning through body consciousness and projects that consciousness into and onto the world [2]. And it is the projection and extension of the self which is most tested in cases of self-defence. So, in that sense, peering into the self as a sacred being is not simply reflective practice, it is as Gillie Bolton suggests, "A spirited enquiry leading to constructive developmental change and personal and professional integrity based on deep understandings [3]. It is *creative, illuminative, dynamic, self-affirming*, all of which may be useful in curtailing the outward actions towards another, especially if those internal musings discover that the human being is a salient figure of divine creation.

Aesthetician, Sondra Fraleigh, aptly states, "The self is revealed in context of intention and action", which illustrates how the human manifested state known as I and its subjective context of present-centeredness exists in the world. That is quite a fair summation and reduction of self, but one cannot help to think that in all the attempts to bracket and describe the lived-experience of self, that some of the mystery of being human begins to fade away in the plethora of phenomenological text. Then again, a theology of self tends to lift us out of the quagmire of reductionism toward the revealed self as seen through divine creation and communion with others. That is to say, the projection of oneself into and onto the world is more than reflexivity and reflective practice, it is a story of divine creation playing out through the narrative of one's own existence. The narrative emerges and unfolds a bit at a time where the self as a visible body reveals an invisible reality of *imago Dei* (image of God), or in other words, being image bearers of the Divine Creator [4]. In light of this, the other mirrors to us (the viewer) an image that exerts a powerful pull towards our own bodily integrity. So, theology moves us to consider that our embodied self is a predetermined mystery of imago Dei which becomes revealed through our somaticity (bodily action), experienced materially and concretely as we project ourselves into and onto the world around us [5]. The challenge I take up here is to illumine the narrative of self as told through faith and reason so as to bring virtue and duty to the foreground in the act of self-defence. If one may take the view that self-defence can uphold the sacredness of the body, an ameliorated self-defence that bears the hallmarks of divine characteristics may then cause us to see that every action upon another will have either a positive or negative effect. In a way, for every trespass committed against another in effect degrades and dehumanises the essence of humanity. For instance, if a person is called to action to defend their bodily integrity, they must acknowledge that every action of force upon another has the potential to render that person into a state of powerlessness and subjugation [6]. Walter Wink interprets such action as the myth of redemptive violence which reconceptualises certain applications of force as necessary forms of coercive action for a society's continued existence [7]. But even redemptive violence comes from a state of human fallibility. It would seem that to lift us beyond our corrupted carnal corporeality, as bodies amongst bodies living in the world, pursuing what is morally virtuous means preserving the sacred body and upholding just and right behaviour.

One of the most influential contributors to theoretical thought on this concept of the self and the human journey towards morality, was the Italian priest Thomas Aquinas [8]. In his seminal work *Summa Theologiae*, Aquinas critiques injurious deeds such as killing in self-defence with an explicit reference to omitting the

responsibility to preserve life as the end goal. Driven by divine imperatives, Aquinas states, "It is not licit for a man actually to intend to kill another in self-defence, since the taking of life is reserved to public authorities acting for the general good" [8]. Here, Aquinas is alluding to the notion of responsible acts of self-defence where the force used is moderate, legitimate, and proportionate to the force imposed. Nevertheless, the goal, according to Aquinas, is to act in such a way that all good conscience avoids the vitiation of unproportionate responses to violence. With that in mind it may then be appropriate to ask this question: What standard measure of defence should be considered in our moral obligation towards the protection of others while protecting ourselves from body violability? In answering this question, I move to introduce two thinkers who do the bulk of heavy lifting on such matters. Firstly, I introduce the works of Karol Wojtyla's *Theology of the Body* to buttress the Thomistic view and speak more deeply on matters of subjectivity and bodily integrity [9]. Secondly, I turn to Emmanuel Kant's *Groundwork of the Metaphysics of Morals* to provide philosophical yet secular balance concerning violence, conflict, and moral behaviour [10]. Kant's pure intuitions suitably address a deontic evaluation of personal duty and responsibility when confronted with engagements in self-defence. Kant's view is more specific to those who do not draw upon divine inspiration. For this reason, I make provisions within this article to address the self as defended and expressed which is duty bound to a categorical imperative. Kant developed this notion of the categorical imperative as a proclamation that considers every human being "as an end itself" to which Kant also says. "Is the supreme limiting condition of the freedom of action of every human being" (4:431). Given the exhaustive nature of each author's work, it is well beyond the scope of this summative work to exegete any one text to the degree it deserves. My intention here is to provide a concise review that compares and contrasts virtue and duty in matters of self-defence.

Discovering Virtue in Self-Defence

To begin, preceding Wojtyla, Aquinas gave us the *Summa Theologiae* to consider the legitimacy of our moral behaviour in self-defence. In theory, the Thomistic view of self-defence is a cornerstone of bodily integrity which influenced Wojtyla's body theology. Aquinas' theology of self-defence calls for a thoughtful and responsible use of force, providing insights that may answer the above question with the view that if we do act in self-defence, the responsibility to preserve our own life is not outweighed by the value of another's life (II.64.7). That foundational principle is echoed in Kant's reasoning of applications of self-defence and in many ways a shadow of biblical truth because Kant believed that it is the duty of every person to preserve life because life itself is a good thing (4:398). Even though the responsibility to preserve another's life cannot impose a greater meaning over our own lives, this is qualified by conditions that restrict the behaviour to proportionality and that in turn demand from us an examination of the intent behind the action. Kant's critique on the reasoning of our moral duty helps to illumine this concept of legitimacy as defined by law. In terms of self-defence, Kant would reason that our duty of what we ought to do should act with the end in mind, given that end is not purely duty bound to its inclinations.

In contrast to Kant's view, Aquinas' theology appears to be supported by Augustine's proposition that self-love (Conceited Selfishness) should not be the prime mover in guiding an act [11]. This raises an important point about motive which more implicitly speaks to one's inclinations towards self-preservation. Even if one acts out of survival-instinct, the reader is challenged to consider that the applications of self-defence can be imposed upon attackers in such a way that a defender may overlook the consequences of unintended harms inflicted upon their attacker. While the case may be that a defender never intends (the internal *I*) to harm, there is a high probability that legitimate self-defence (the objective *me*) inadvertently causes harm [1]. I am careful when using such words as *inadvertent* because this assumes mistake more than it does carelessness, and if a defender does not consider foresight in applying self-defence, the omission of restraint may disqualify the legitimacy of acting in self-defence. This is why Kant calls us to consider that our actions ought never to be done in such a way that another human being is used as a mere means even in producing a good end. This principle of means and ends is not explicitly expressed by Aquinas, but in terms of searching for the most virtuously motivated act to preserve one's life, Aquinas argues that the extension of our acts ought to be mindful of others. Aquinas calls us to consider at length, beyond duty, the continual examination of self-defence to ensure that legitimacy is defined by the defender's act, and that the preservation of life remains paramount [12].

To know that we are applying a Thomistic notion of self-defence lawfully and justly, let us apply three pragmatic concepts to Aquinas' legal philosophy. Firstly, what we need to know about actualising self-defence is that the legitimacy of force is measured by moderation. Aquinas at least provides a paradigm for self-defence that practically examines the thinking *I* and the performance of *me* the actor. In no lesser terms does Aquinas allow one to dismiss the mind's deliberation, the inner self as *I*. No matter how spontaneous a reaction of defence may appear to be it is never without a determining cause. This means that the mind is ever consciously aware and deliberating, to which it possesses the ability to discharge a response upon appraisal no matter how minute the priming condition is. That infers that self-defence no matter how instinctive or reactive, is either a state of pre-reflexive awareness or a reflexive state of cognition. Secondly, Aquinas challenges us to think more objectively how the self as me ought to apply self-defence in proportion to an attacker's force. Proportionality simply means that an act of force is measured by reason and the rational will of the sentient creature must modulate any kinaesthetic response. And thirdly, the actions of the defender's force will be critically examined upon an objective test of reasonableness and necessity according to that of a prudent person [1]. However, even the most virtuous disposition cannot avoid the negative consequence as a result of necessary self-defence. This more implicit negative action is what philosophers call Double Effect Theory (DET). Alison McIntyre lays out four conditions within the applications of the principle of double effect that we may find useful:

1. The act itself must be morally good or at least indifferent.
2. The agent may not positively will the bad effect but may permit it. If he could attain the good effect without the bad effect he should do so. The bad effect is sometimes said to be indirectly voluntary.
3. The good effect must flow from the action at least as immediately (in the order of causality, though not necessarily in the order of time) as the bad effect. In other words, the good effect must be produced directly by the action, not by the bad effect. Otherwise, the agent would be using a bad means to a good end, which is never allowed.
4. The good effect must be sufficiently desirable to compensate for the allowing of the bad effect [13].

McIntyre makes some critical observances to the applications of self-defence. One of the most crucial elements to this principle of DET must take into consideration two important factors known as

the *mens rea* (guilty mind) and *actus reus* (guilty act). For example, McIntyre raises an important point about killing a person whom you have knowledge of their plotting to kill you. McIntyre argues that this would be impermissible on the grounds of intentional killing [13]. The fatal wounding of the aggressor would not be defensible purely based on knowledge alone. The actus reus is an integral link to understanding foreseeability in self-defence, but also one that raises many questions for pre-emptive strikes during wartimes. This provides substantial reasoning on the grounds of civilian affairs, but we must be careful to differentiate in our argument those acts containing foreseeable consequences in personal affairs from national conflicts. What McIntyre defines here as foreseeable is "The distinction between direct and indirect harmful agency [in] what underlies the moral significance of the distinction between intended and merely foreseeable harms, but it need not align perfectly with it". And while foresight can lead to an accurate and just outcome, this only delivers a portion of what could be known about intent. On this note, I now move to consider Wojtyla's seminal work *Theology of the Body* to expound further on the biological order and how this demands the body to animate one's intent [9]. I am only referring here to the human author of animated states and not the primary cause of *actus intellectus*, (natural inclination) for our concern here is individual responsibility as secondary action *in actus fidei* (acts of faith) [9].

The Sacred Self in Self-Defence

Wojtyla's magnum opus begins with the notion that the sentient creature derives from divine creation [9]. This implies that human beings are not autonomous (self-subsisting) but do share the nature of free will through rational choice. Wojtyla also suggests that "[W]e can deduce that man became the image of God not only through his own humanity, but also through the communion of persons, which man and woman form from the very beginning". Wojtyla points to the communion of persons as the cornerstone of bodily integrity whereas Kant sees that we abide in a universal maxim. What Wojtyla is saying is that instead of a universal maxim, through communion with others we discover simultaneity of experience, likeness in bodily integrity, and the intimacy of being with others. As stated above, we can only know the self and cannot know others, but a theology of communion is describing a consciousness by extension of how our bodies interact with others. What emerges from this theology is an implicit responsibility for human beings to govern human actions and to monitor those actions concerning foreseeable harms. In other words, conceptualising the self depends upon recognition of the other, and in the other is where we acknowledge that human relationships are distinct from other species (*genus proximus*) which is why harming one another animates a depravity not otherwise felt in the animal kingdom. Thus, in the communion of persons solitude is broken, humanity stands distinct from other species, the image of God is reflected, and we appreciate existing beside others [9]. To be clear, in others, bodily integrity is objectified, whereas the self as *I* am aware of its own bodily integrity as felt and known. But that critical element of subjectivity helps us to locate the violability of bodily integrity which is reflected from one to another. And when a violation occurs from one to another, we must see that every harm and trespass derives from the passions or the inclination toward self-interested pleasure, unless the unintended consequence of self-defence is accidental [9].

While Wojtyla attempts to cut beneath the Cartesian-Kantian-Schelerian form of subjectivity, a theology of the body recognises tension within the lived dualism of human psychosomatics but not attributing this to dialectics of contrast between the body as soul and the body as mind. A way to understand this distinction is as Fraleigh suggests, "The phenomenological (or lived) dualism implicates consciousness and intention and assumes an indivisible unity of body, soul, and mind". In other words, a being is ordered to be a unification of person and nature, and in that order the catechism of Wojtyla denies any violation to another person by making the other an object of enjoyment, or as a mere means to an end [9]. What Wojtyla is suggesting is that even in the preservation of our bodies we ought to take the view that we are to be the embodiment of love – even in self-defence. It is obvious that Kant did not share these exact sentiments from a metaphysical standpoint. Kant did not exceed beyond pure intuition, rather expressing the essence of moral law as being universally applied as a maxim. In other words, as one purports to the condition of moral action, any act towards another (especially self-defence) operates upon the principle that behind the moral belief, the rational agent ought to have control over the passions [14].

On the other hand, Wojtyla discovered the mystery of self through human intimacy, describing human intimacy as an essential property to our survival, but that intimacy also acts to draw together a deeper appreciation for others [9]. In view of this anthropological complexity, the intimate bonds of humanity lift us out of the limits of human solitude, reminding us that the somatic constitution is the product of a created order and image bearers of Yahweh. In another sense, intimacy also causes us to mirror one another because solitude cannot return to us the mirrored image of self and the value within self. In light of such a theology we are to reveal to one another a deeper sense of self, reflecting what it means to be image bearers of God and to be in communion with God.

Conclusion

The concepts contained in Wojtyla's ethic become a vital correlation to the value that we attribute to each other when applied to a Thomistic self-defence. Therefore, a morally permissible and complementary practice of self-defence would never commoditise human relationships by extracting a greater sense of self over another. Even though we find it permissible to defend ourselves with proportional force and can justify our responsibility to preserve our life over another, we learn from a body theology that we are created for each other. Our actions of self-defence are in fact tightly interwoven into the fabric of creation, that we are not merely protecting ourselves, not only being duty bound by principles, but in a greater scope helping to preserve each other. The prominence of law and being duty bound by law does not reflect the essence of being in the same way that Wojtyla describes. Thus, the self as *I*, appreciated through intimacy with others, declares being image bearers of divine creation. This is our sacred body-subject, known, and felt as we live beside others. It is in the presence of others that we may discover the object of sacredness, where our inner most desire of wellbeing is mirrored through the manifested form of sameness. It is also within those shared moments with others that the most intimate connection of being human awakens us to the fragility of our nature. Therefore, as we gaze upon the other and gain a deeper reflected image of the self, we ought to be driven with a compassion and love toward each other in a way that law cannot provide. Therefore, self-defence is more than a defence, it may be seen as a genuine act of self-preservation and by extension a courteous life sustaining practice.

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