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"DIRECT" AND "INDIRECT": A REPLY TO CRITICS OF OUR ACTION THEORY

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I

The adjectives "direct" and "indirect" have been used in some documents of the Magisterium to qualify nouns that refer to certain ways in which one brings about bad outcomes. Those adjectives are used to distinguish cases in which an acting person intends the bad outcome either as an end or as a means ("direct abortion")[1] from cases in which the moral agent, in doing some other, morally upright action, only accepts the bad outcome as its side effect. Rather than using "direct" and "indirect," it seems to us preferable to speak of what is *intended* and what is *accepted as a side effect*,[2] and we shall usually do so here.

To understand this distinction, one should begin by considering free choices and the actions that carry them out. Those are good or bad—in the first instance good or bad for the human persons who shape themselves by making such choices and carrying them out. Groups of persons also deliberate and act, and their actions affect and shape them too.

[1] See, e.g., *Catechism of the Catholic Church* (hereafter *CCC*) 2271; John Paul II, *Evangelium vitae* (25 March 1995) 62. A primary source for these and other recent documents, on this point, is the set of statements of Pius XII cited in *Evangelium vitae* 62 at n. 66.

[2] See Germain Grisez, *The Way of the Lord Jesus*, vol. 2, *Living a Christian Life* (Quincy, Ill.: Franciscan Herald Press, 1993), 473-74.

Of course, each individual who participates in the communal action will in so doing make his own free choices.

Moral good and evil are a matter of whether and how fully or deficiently these choices are reasonable, that is to say, in accord with fully reasonable judgments about what is to be done or avoided.[3]

Before children can make free choices, emotional motivations attract them to, or avert them from, certain possibilities, and motivations of this sort are still operative in one's adult life. As one becomes capable of being motivated by reasons, one enters the moral domain by reasoning about what to do, by more or less integrating one's emotional motivations with each other and with reasons, and by more or less reasonably making free choices. But what is it to have a reason for action by which one might thus be motivated and guided towards choice? Essentially, it is to understand the intelligible con-

[3] Of course, this statement must be qualified. People's capacities to judge correctly what to do and to exercise their freedom in acting on their judgment can be more or less limited in various ways. So, a person's moral quality depends on his self-determination in relation to his capacity to act reasonably. Thus a person whose capacity to act reasonably is limited may be a good person even while determining himself to an act of a kind that is wrong and would never be done by a good person free of those limitations. For that reason, Catholic moral theology and pastoral practice have recognized the difference between the "subjective" good and evil of persons and their choices, on the one hand, and, on the other, the "objective" good and evil of actions measured by unqualified practical reasonableness. This distinction can also be marked—though we do not recommend this way of speaking—by reserving the adjectives *good* and *evil* to qualify persons and choices, and the adjectives *right* and *wrong* to qualify choices and actions. Of course, the good and the right, the evil and the wrong, are sometimes distinguished in ways that we regard as inconsistent with sound morality and pastoral practice. For example, James F. Keenan, S.J., *Goodness and Rightness in Thomas Aquinas's "Summa Theologiae"* (Washington, D.C.: Georgetown University, 1992), 173-174, holds that acts commanded by charity or "benevolence" "are good, though not necessarily right"—indeed, are good even if wrong—and that "the defect in rightness does not affect" the description of the act as morally good. Again, some Christian theologians maintain that practical reasonableness sometimes requires an upright person in this fallen world to commit a sin—that is, to do what is truly wrong. Such ways of distinguishing good from right and evil from wrong separate right and wrong from the basic human good of practical reasonableness and the moral virtue of *prudentia*—something traditional Catholic moral theology and pastoral practice never allowed.

nection between some benefit by which one and/or others could be fulfilled and some action(s) that one anticipates could involve or bring about that benefit.

Choice is between alternatives. Both emotional and rational motives suggest possible purposes that seem to be within one's power to achieve in a certain way or ways. In one's deliberating about what to do, one considers both the proposal to pursue a purpose in a certain way for the sake of a benefit, and the alternative proposal to pursue the same purpose in a different way, or to pursue an alternative purpose for the same or some other benefit. One has to choose because of these alternative proposals—alternative options—including the proposal to do nothing.

The ideas introduced and linked with one another in the preceding three paragraphs make possible the understanding of actions as morally significant. In making that understanding possible, they also make possible a proper understanding of the words, concepts, and realities with which moral and legal analysis is centrally concerned, not only in Judaeo-Christian but also (as we will show) in widely different cultural contexts: intention, choice, and foresight; ends, means, and side effects.

The most perspicuous way of getting clear about these words, concepts, and realities is to consider some examples of proposals (options), choices adopting them, and actions carrying out those choices.

Case A. A boy with money to buy Friday lunch sees a beautiful airplane in a shop window. He thinks about the alternatives: buy lunch to satisfy his hunger or buy the plane to play with on the weekend. He foresees that if he buys the plane he will be hungry that afternoon, and that if he buys lunch he will have to do without the weekend fun. He chooses to buy the plane for the sake of the weekend fun; the intended end (purpose) is the weekend fun, the chosen means is buying the plane. Being hungry follows inevitably; it is a foreseen side effect. It is a side effect precisely because it was not part of the proposal he adopted, to buy the plane for the sake of weekend

fun, just as going without the weekend fun was no part of the proposal he did not adopt, to buy lunch to avoid hunger.

Case B. A man with high blood pressure is offered a drug to lower it. Taking this drug has what everyone calls side effects; some of these are very rare but lethal. He knows about these side effects, but chooses to take the drug, realizing that he is incurring some risk of earlier death; and, as it happens, he dies from one of the drug's rare side effects. In choosing to take the medication, he adopted the proposal of using it to lower his blood pressure for the purpose of living longer, but accepted the side effect: the (low) probability of dying from the drug. Though he foresaw and brought about the risk he accepted, running that risk was no part of his intention: the purpose he was trying to achieve and the means he chose for achieving it.

Case C. A man at a party considers three proposals: to stay over and (uncomfortably) sleep on the sofa, to call a (costly) cab, or to drive (woozily) home. To get home cheaply he drives; risking running someone down is a side effect of his choice, and as it happens he runs someone down. This disaster is a further side effect of his choice. He is responsible for that side effect. That is to say, he should have taken such an effect into account and made the reasonable choice of one or other of the alternatives. But if his hostess has had a heart attack and, to get her to hospital, he accepts the same risk by driving in the same condition, his choice to drive may well be reasonable.

Case D. A woman has decided to give testimony at her brother's trial, although she is acutely conscious of her uncontrollable stutter. Her purpose is to help her brother get justice, her means of helping is giving evidence, and a side effect is publicly stuttering. This side effect is an inseparable part of the woman's performance; her speech is always stuttering. But that side effect is unwanted in itself; indeed, it is a side effect that obstructs her purpose in testifying (because it distracts and perhaps annoys the jury). Stuttering is not included in her intentions. She chooses and tries to speak as

best she can. She does not choose to stutter; indeed, she does her best not to.

Case E. A farmer castrates male calves in order to change their hormonal constitution and thereby make them fat and manageable. He accepts that this will make them sterile, and if he did not find it more profitable to fatten and calm them all he would keep some unsterilized for breeding (instead of hiring bulls for breeding in season). Nothing in the behavior he does perform differentiates sterilizing the calves by castrating them from fattening and calming them by castrating them. But the proposal to fatten is quite distinct from any proposal to sterilize. So, although the performance is sterilizing (as anyone would say who looks just at the performance and its physical effects), any question as to what is included in the farmer's proposal is not settled by reference to his behavior. Indeed, since sterilizing (achieving a state of infertility) is for the farmer neither end (purpose) nor means, it is not included in the proposal he adopts, is not what he chooses, and for the purposes of an account of human action is not what he is *doing*.

The analysis of choice and action applies, as we have said, to groups' acts as well as individuals'. (Indeed, talk of "proposals" is adapted from the realm of deliberative assemblies.) So the next two cases we shall consider happen to be group acts but could equally have been the acts of a powerful individual.

Case F. A majority of the members of a club vote for a motion to commend an outgoing president, unpopular with some. In doing so, they accept the side effect of antagonizing the minority. In voting—choosing to commend the president—they carry out the behavior that constitutes the act of commending her and achieve their purpose in doing so.

Case G. A company's directors deliberate about a proposal to shut down the production line for January and an alternative proposal to shut it down in May. Production must be halted for a month, for retooling. For production purposes,

May would be much the best month; for short-term financial purposes, January would be marginally better. But closing in January would also have the effect of nipping unionization in the bud, whereas closing in May would have the effect of giving the unions time to organize and impose unwelcome demands on the company. If the directors choose to shut down the line in January with a view to nipping unionization in the bud, their intention is not only to shut down the line and to retool but also to nip unionization in the bud—preventing unionization is no mere side effect. If short-term financial gain was not part of the directors' reasons for their decision, they do not intend it. Though they foresee it and will welcome it, it remains a side effect. That being so, if they learn that this time there will be no short-term financial gain, they will see no reason to reconsider their decision. If the directors choose to close for retooling in May for production purposes, the enhanced unionization is an unwelcome side effect.

Case H. A spy, horrified that his house guest has become aware of his treason, deliberates about what is necessary to ensure her silence. Though wanting her continuing companionship, he very reluctantly decides to kill her. He takes her to a lovely rural spot and with feelings of great regret pushes her over a cliff. Retching with disgust at himself, he checks to make sure she is dead and then, as planned, reports the "accident." While his intention, in the sense of the purpose for the sake of which he acts, is to ensure her silence, that is not all he intends. He also intends precisely what he chooses: to kill his companion. Her death cannot be regarded as a side effect. His repugnance, regret, and remorse do not make it any less the case that he intends to kill her.

Though the preceding examples could be multiplied indefinitely, even these eight alone provide enough data to show that the theory of action discussed in this paper is sound, and is applicable across the whole range of choices and actions quite independently of moral judgments about their goodness or badness, rightness or wrongness.

Case A makes it clear that an action carries out a proposal adopted by choice, and that one intends[4] both to carry out that proposal and to achieve the purpose for the sake of which one adopts it. This case also makes it clear that one's actions have unintended side effects, inasmuch as some of the foreseen and inevitable consequences of one's intentional behavior are nevertheless not intended.

Case B reinforces the point that, when one knowingly brings about bad effects in carrying out some choice, one need not intend them. Even though one both foresees and causes them, one does not choose them; one only accepts them—indeed freely accepts them.

Case C makes it clear that when one's action has foreseen but unintended side effects, one has moral responsibility in respect to accepting them. But since not all the moral criteria applicable to intending to do something apply to accepting bad side effects, one sometimes can reasonably accept something that it would be wrong to bring about intentionally.

Case D makes it clear that a side effect need not be causally consequent upon the performance that carries out one's choice. Even an integral part of the behavior by which one carries out a choice can be a side effect, and such a side effect can even precede the part of the behavior that constitutes one's intended act, and all the more so can precede the effects for the sake of which one is acting.

Case E makes it clear that, depending on what one proposes to do and what one only accepts as a side effect, one can be doing either of two acts different in kind even though everything about one's behavior and the observable context is the same.

Case F makes it clear that the structure of actions articulated by our analysis is found even in a case where one and the same behavior is at once the choosing of the act, the

[4] Common parlance (like Aquinas: see n. 22 below) talks of "intention" in two different ways: (1) that for the sake of which one does X; or (2) doing X-for-the-sake-of-that. See John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford and New York: Oxford University, 1998), 166.

doing of the act, and the realizing of the purpose for which it is done. Despite the unity of all the analytically distinct factors that constitute it, this moral act has a side effect really distinct from itself.

Case G makes it clear that foreseen and welcome effects of what one is doing, effects that could have been reasons for acting, need not be intended even if one chooses precisely as one would if one did intend them. Foreseen effects of what one does are intended only if they actually are among one's reasons for acting. If they are not, they are part of neither the proposal one adopts in choosing nor the purpose(s) for the sake of which one chooses: they are part of neither the means nor the end(s).

Case H makes it clear that intentions are constituted by acting persons' reasons for making their choices and by precisely what they choose to do, not by what they feel, or would like, or are reluctant or eager to do, or regret the "necessity" of doing.

The preceding cases also illustrate some of the many ways employed in common speech to refer to intentions and the intentional. These ways include not only the cognates of "intend," but such phrases as "for the sake of," "for the purpose of," "with the object/purpose/aim/goal of," "in order to," "so as to," "with a view to," and often enough plain "to"—as well as other terms. The fact that in this sort of context people easily and accurately communicate, using so many different expressions synonymously, at least suggests that the concepts of intention and side effects are sound and precise, and that what all these terms signify are indeed realities. Moreover, the many formal and informal words and phrases we have just listed—like their counterparts in the idioms of other languages—all refer one to the relations we have been outlining, relations whose *terms* are captured in the more static-seeming idiom of philosophy: "end(s)," "means," "intentions," "choices," and "unintended effects" or (synonymously) "side effects."

Realities, even the human realities of deliberation and action, need not be reflectively understood by those who engage in them. The understanding and analysis of intention, choice, and action has undoubtedly reached its greatest clarity in Christian reflection guided by the firm Judaeo-Christian recognition of free choice. But even cultures not shaped by that recognition have more or less clearly acknowledged the reality of intention, its distinction from certain other realities, and its significance for the moral and therefore the legal assessment of conduct.

During the nineteenth and early twentieth centuries many scholars claimed that the ancients had little or no understanding of, or interest in, the distinctions between the intended and the unintended (whether negligent, truly accidental, or foreseen and reluctantly accepted). This common view about ancient thought exaggerates the distance between the later, Christian clarity and earlier, less differentiated thought. The exaggerated form of this modern view about ancient thought has been plausibly contested, notably by David Daube, Jewish biblicist and historian of Roman law. A few quotations from Daube's review of the evidence[5] suggest its force:

> There is not a single case in the whole of Greek literature—myth, saga, history—or, for that matter, in the Bible, of a man who killed without intent being put to death, be it in the course of self-help, blood-vengeance, be it by public authority; and this although there are laws that (as I just remarked)[6] objectivize *dolus* [wrongful intent] and impose the death-

[5] See especially David Daube, *Roman Law: Linguistic, Social and Philosophical Aspects* (Edinburgh: Edinburgh University, 1969) 157-75.

[6] See ibid., 164: "It is a dogma that, in dealing with homicide, not only does early law equate the unwitting doer with the witting, but this course is taken from blindness or indifference to what separates the two. In reality, full equation occurs much more rarely than the prevalent view has it, and where it does occur it is a *pis aller*, resorted to because of the insurmountable practical obstacles in the way of determining on which side of the line a given case falls: by treating as a murderer, say, anyone who kills by a direct blow or anyone who kills with a piece of iron, justice is done in the vast majority of incidents though, now and then, an innocent person gets trapped. The alternative would be for the law to abdicate altogether. In the *Pentateuch* both

penalty, say, on killing by a direct blow. Not a single case: let that fact sink in.[7]

I repeat: the sources—Oriental, Greek, Roman—offer not one example of an unintentional killer being killed. I do not, of course, count the cases where the prevalent doctrine says, Ah yes, but he would have been killed were it not for such-and-such special circumstances. I want to be shown one instance where he is killed: surely a modest request. If the prevalent view is right, there ought to be hundreds.[8]

So ancient thought and practice did attend to intent, and distinguished among the effects of actions—for example, death brought about intentionally or not intentionally. The latter, of course, includes death brought about accidentally or carelessly, but also includes death brought about as a foreseen side effect in carrying out a choice to do something else.

A similar understanding can be observed in modern, secular legal thought. Legal thinkers influenced by utilitarianism's characteristic denial of free choice often argue that the law's typical concern with externally observable performances and their consequences is justified by the purpose of reducing overall net social harm. A notable element in this outlook is the claim, launched by Bentham and vigorously defended by some recent legal theorists, that consequences foreseen as certain or highly probable are intended. But even the leading proponents of this view have found themselves obliged to accept that intention is a reality quite distinguishable, as a specific kind of fact, from the "intent" which may, by a legal fiction, be imputed to someone who acts or omits while being aware—or in a position to be aware—that harm will very probably be caused by the action or omission. And there are

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stages—death to whoever kills by a direct blow and death to whoever kills with a piece of iron—are preserved [footnote: '*Exodus*, 21.12, *Numbers*, 35.16—in their original setting, as yet unprovided with the reservations which in the text before us modify them.']. The latter statute is part of a legislation avowedly concerned with confining the rigor of the law to those who deserve it. But the former too is designed to get at *dolus* [wrongful intent]—the *dolus* being objectivized, established by the external situation."

[7] Ibid., 165.

[8] Ibid., 174.

today important areas of law in which the fiction that consequences foreseen as very probable are intended is simply rejected or strictly contained. As the United States Supreme Court noted in 1980 and reaffirmed in 1997, "The . . . common law of homicide often distinguishes . . . between a person who *knows* that another person *will be* killed as the result of his conduct and a person who acts with the specific purpose of taking another's life."[9]

To be sure, neither present-day law nor Christian teaching and reflection deny or overlook that one is morally responsible for outcomes of one's action that are outside one's intention. The case of the drunk driver (*case C*) illustrates one way in which side effects that are foreseen or should be foreseen and have an impact on human well-being are morally significant and not outside the acting person's responsibility. But that case also indicates how accepting such outcomes, or the risk of such outcomes, precisely as side effects, is subject to moral (or legal) norms different from the moral (or legal) norms that bear on intended outcomes. The woozy driver is not responsible for the death in the way he would be if he chose (intended) to kill the victim. His accepting, however knowingly and willingly, of the risk to the victim is assessed under the moral and legal norms of "negligence," not the moral and legal norms forbidding intentional homicide.

To say that not all the moral criteria applicable to what one chooses to do are applicable to accepting side effects is not to say that the latter are always less serious or culpable. When a

[9] *United States v. Bailey* 444 United States Reports 394 at 405 (1980) (judgment of the Court) (emphasis added); the quoted proposition is reaffirmed in the more extensive review in *Vacco v. Quill* 117 Supreme Court Reporter 2293 at 2299 (1997) (judgment of the Court), which concludes with a quotation from an earlier judicial opinion in a lower federal court: "When General Eisenhower ordered American soldiers onto the beaches of Normandy, he knew that he was sending many American soldiers to certain death. . . . His purpose, though, was to . . . liberate Europe from the Nazis." So he had no intent to kill Allied soldiers. The death of his soldiers was only a foreseen side effect, reasonably accepted in accord with what Catholic theologians have often called the principle of double effect (a "principle" to which the Supreme Court's judgment in *Vacco v. Quill* alludes with apparent assent at 2301 n. 11).

hospital doctor knows he must give a certain patient medication by midnight or she will die, but chooses to go out and complete an extremely profitable business deal that must be done by midnight (reasoning that no one will know he gave the medication later provided he gives it before the patient dies), he is guilty of manslaughter by very gross negligence. And that homicide may well be a graver sin than (say) a storekeeper's killing a mobster who is subjecting her to extortion.[10]

II

In describing and analyzing the cases set out in the preceding section, we adopted the perspective of the acting person or body. In morally evaluating human actions, one must identify the action to be evaluated from that perspective rather than from the perspective of an observer. Indeed, the perspective of the acting person or body is to be taken even in those contexts (such as *case C*) where the focus of analysis and assessment is not intention to harm but rather some failure to meet a standard such as the standard of due care or some similar moral requirement.

Many theorists, even when discussing actions in the context of moral assessment, do not adopt and steadily maintain the perspective of the acting person, and many do not adopt it at all. They consider actions, behavior, and outcomes from, so to speak, the outside—from the perspective of a spectator—in which primary or exclusive attention is given to causal relationships. Such displacement or abandonment of the acting person's deliberative perspective was common among Catholic manualists of moral theology (see section III below). The observer's perspective can be adopted in other ways, for instance by trying to understand action by reference to "a

[10] The moral evaluation of side effects is important and difficult, and not yet sufficiently studied in Catholic moral theology. An effort to do some of the necessary work is made in Germain Grisez, *The Way of the Lord Jesus,* vol. 3, *Difficult Moral Questions* (Quincy, Ill.: Franciscan Herald Press, 1997), appendices 1 and 2.

variety of factors,"[11] or to various "contexts of meaning,"[12] or to outcomes thought to be assessable by comparing the proportions of human good and bad in them. This last displacement of the perspective of the acting person is characteristic of moralists referred to as "proportionalists" in the encyclical *Veritatis splendor.*[13]

It was appropriate for that encyclical, in the course of rejecting proportionalism[14] as incompatible with Catholic

[11] See John Finnis, "The Rights and Wrongs of Abortion" in *The Rights and Wrongs of Abortion,* ed. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton: Princeton University, 1974), 105: "A variety of factors are appealed to explicitly or implicitly in making a judgment that the bad effect is to count as intended-as-a-means." In this article, written in 1972, Finnis's understanding of intention and action had not reached the precision of, for example, his "The Act of the Person," in *Persona verità e morale: Atti del congresso internazionale di teologia morale (Roma, 7-12 aprile 1986)* (Rome: Città Nuova, 1987), 159-75.

[12] See, e.g., Jean Porter, "'Direct' and 'Indirect' in Grisez's Moral Theory," *Theological Studies* 57 (1996): 631: "we think of them [*scil.* our actions] in terms of wider contexts of meaning, some of which reflect the normal causal relationships among different primitive acts, some of which are cultural constructs, and many of which combine both kinds of considerations." Porter is right in thinking that societies develop action concepts and language to pick out any human behavior that is interesting for any of a wide variety of reasons. But those reasons often have little or nothing to do with moral evaluation, and often focus upon observable units of behavior picked out with little or no regard for the perspective of the acting person.

[13] In previous writings we have criticized the accounts of action found among proportionalists. See, e.g. , Germain Grisez, *The Way of the Lord Jesus,* vol. 1, *Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983), 240 with 248-49 (nn. 5 and 13); John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (Washington, D.C.: The Catholic University of America Press, 1991), 77-78: "Christian reflection on God and his holy will, and Christian reflection on the morality of human choosing and doing" advance "decisively beyond the undifferentiated concept of 'cause,' replacing it with the act-analytical distinctions between choosing or intending and permitting or accepting. As one reads through the writings of sophisticated proportionalist moralists of the late twentieth century, one sees with amazement that they everywhere lose their grip on the distinction. They have fallen back into the undifferentiated problematic of 'causing' evils (including, of course, the Enlightenment extension of 'cause' to include whatever one could have prevented but did not, a concept incompatible with Christian understanding of divine holiness)."

[14] The rejection of proportionalism in John Paul II's encyclical *Veritatis splendor* does not depend upon the encyclical's description of it in nos. 74-76, but is found rather in its formal (and repeated) condemnation of "the thesis, characteristic of teleological and proportionalist theories, which holds that it is impossible to qualify as

faith,[15] to affirm the primacy of the internal perspective in the understanding of action for the purposes of moral assessment. Immediately following its formal statement of "the thesis, characteristic of . . . proportionalist theories," that is to be rejected by Catholics, the encyclical says, "The primary and decisive element for moral judgment is the object of the human act."[16] This statement recalls what was said in the previous section of the encyclical:

> *The morality of the human act depends primarily and fundamentally on the "object" rationally chosen by the deliberate will.* . . . In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person.*[17]

That last sentence is of decisive importance. It is philosophically sound,[18] even if its roots, for the purposes of

morally evil according to its species—its 'object'—the deliberate choice of certain kinds of behavior or specific acts, apart from a consideration of the intention for which the choice is made or the totality of the foreseeable consequences of that act for all persons concerned" (no. 79; verbatim in no. 82). Notice that in this sentence "intention" is used in the sense in which the acting person's end is distinguished from his or her chosen means—the act's object, also described (indeed, defined) in no. 78 as the acting person's "proximate end." In a wider sense of "intention," which we generally use, both what one does and all the ends for the sake of which one does it are intended.

[15] See *Veritatis splendor* no. 29 ("some trends of theological thinking and certain philosophical affirmations are incompatible with revealed truth"). The pope's grounds for his judgment that the theories dealt with in the encyclical, including proportionalism, are incompatible with Catholic faith are to be found, e.g., at the end of no. 52 and in the places where he repeatedly uses Scripture (see nos. 48, 78-81 quoting Romans 3:8 and 1 Cor. 6:9-10) to verify teachings with which dissenting theories are incompatible. See also Germain Grisez, "Revelation versus Dissent," *The Tablet* (16 Oct. 1993): 1329-31, reprinted in John Wilkins, ed., *Understanding Veritatis Splendor* (London: Society for Promoting Christian Knowledge, 1994), 1-8.

[16] *Veritatis splendor* no. 79; likewise no. 82; see n. 14 above.

[17] *Veritatis splendor* no. 78. The phrases omitted in this quotation refer to the "insightful analysis, still valid" in Aquinas, *Summa Theologiae* I-II, q. 18, a. 6.

[18] See John Finnis, Joseph Boyle, and Germain Grisez, *Nuclear Deterrence, Morality and Realism* (Oxford & New York: Oxford University Press, 1987), 292-93; Joseph Boyle, "Who Is Entitled to Double Effect?" *Journal of Medicine and Philosophy* 16 (1991): 486-92; John Finnis, "Intention and Side Effects," in *Liability and Responsibility: Essays in Law and Morals,* ed. R. G. Frey and Christopher W. Morris (Cambridge: Cambridge University Press, 1991), 32-64; idem, "Intention in Tort Law,"

its affirmation in an encyclical, are firmly embedded in revelation's confirmation of the centrality of conscience, of the heart, the "within"[19] from which come forth actions good and bad.

The importance of the perspective of the acting person was vividly emphasized in Aquinas's refutation, in one telling paragraph, of two twelfth-century currents in moral theology that, in different ways, failed to recognize the proper significance of the object of the act understood from the perspective of the acting person. The issues are so clearly framed in that debate that it is worth summarizing.[20]

In the second quarter of the twelfth century, Peter Abelard had argued, ambiguously, that behavior is morally indifferent and the morality of acts depends entirely on intention. He was widely understood as denying that there are exceptionless, non-tautologous negative norms. Representatives of the

in David Owen, ed., *Philosophical Foundations of Tort Law* (Oxford: Oxford University Press, 1995), 229-48.

Some people say that the authors of this article, or at least one or two of them, are significantly responsible for the content of *Veritatis splendor* (see, e.g., Richard A. McCormick, S.J., "Some Early Reactions to *Veritatis Splendor*," *Theological Studies* 55 (1994): 486: "I (along with others) see [Finnis's] hands at work in Chapter 2 [of the encyclical]"). We take the opportunity here to say: (1) None of us was at any stage asked to draft anything for the document; (2) Grisez (but not Finnis) was among those asked for suggestions in November 1987, and was asked to comment on the whole first draft in April 1989 and on the second draft of part 2 in January 1990, and Finnis assisted him in preparing his comments, but after his response dated 6 February 1990 Grisez was not asked to do anything more, and (like Finnis) had no communication about the work with anyone involved in it during the subsequent 42 months before its signing on 6 August 1993; (3) in making suggestions and comments, we very firmly adhered to our view that nothing peculiar to our thought should appear in an encyclical; (4) Grisez did propose language on a number of points, but virtually none of this language and few of his substantive suggestions—and of these none involved in our disputes with dissenting Catholic moralists—appear in the encyclical; (5) while there are some important points in the encyclical that more or less coincide with views defended by Grisez (notably the treatment of faith as the fundamental option) or by all of us (notably the teaching about fundamental goods), we did not propose that the encyclical make these points and were pleasantly surprised to find them when the encyclical appeared.

[19] See Mark 7:20-23

[20] See also Finnis, *Moral Absolutes*, 65-67; *Aquinas*, 165-66.

tradition responded. Within a decade or two, Peter Lombard's *Sentences* attacked Abelard's position by contrasting it with passages from Augustine's treatises against lying, interpreted by Lombard as teaching that the acts specified in the exceptionless negative norms of Jewish and Christian tradition are called wrong "in themselves" (*mala in se*) precisely because—Lombard contended—their wrongfulness does *not* come from the purpose, will, intention, or motivation of the person who does them.

In a single paragraph Aquinas refutes both Abelard (as widely understood) and Peter Lombard. There are indeed, he says, acts each of which is wrong in itself and cannot in any way be rightly done (*de se malus, qui nullo modo bene fieri potest*). But such acts are wrongful precisely by reason of the acting person's will, intention, purpose. When I do such an act, there may be nothing wrong with my further intentions, my *voluntas intendens,* my ultimate purpose (*finis ultimus*), for example, to give money to the poor. What is wrongful (and what is picked out for exclusion by the relevant negative norm) is, rather, my choice, my *electio* or *voluntas eligens,* my immediate purpose (*obiectum proximum; finis proximus*), for example, to forge this document. The goodness or badness, rightness or wrongness, of my "exterior act" (i.e., everything I do to carry out my choice) depends on the goodness or badness, rightness or wrongness, of all my relevant willing: intending ends, choosing means, and accepting side effects.[21]

Aquinas's references to "proximate" and "further" objects clarify the issue, both substantially and terminologically (and are echoed in *Veritatis splendor*). Terminologically one can—and Aquinas not rarely does—call both proximate and

[21] II *Sent.*, d. 40, a. 2, c and ad 2-3; see *De Malo,* q. 2, a. 2, ad 8. Note Aquinas's thesis that "because the exterior act stands to the will as *object,* the interior act of will has its goodness from the exterior—though not, of course, from the exterior act as a performance but from the exterior act precisely as intended and willed" ("quia actus exterior comparatur ad voluntatem sicut objectum, inde est quod hanc bonitatem voluntatis actus interior ab exteriori habet, non quidem ex eo secundum quod est exercitus sed secundum quod est intentus et volitus").

remote objects "intended" or "the intention(s)."[22] But equally one can mark—and Aquinas more often does mark—the distinction between proximate and further objects by calling the former the "chosen object" (or simply the "object") and the latter the "intended end" (or simply the "intention"). The reason why both the broader and the narrower senses of "intention" are appropriate is that the distinction between proximate and further objectives is highly relative. Every means one adopts in the pursuit of some end will also be an end whenever there is a prior means—one closer in to the agent. Take Aquinas's standard example: in the sequence going to the cupboard, to get herbs, to mix a potion, to slim, to stay healthy, etc., each element is both an end relative to any preceding element and a means relative to any further element.[23] Speaking of "intention" in a broader sense, one can say that each element or phase in the sequence is intended (or an intention of the acting person). Or one can speak of "intention" in a narrower sense, and distinguish closer-in from further-out ends, reserving the term "intention" for the latter. *Veritatis splendor* uses "intention" in the narrower way to signify purposes beyond that object which "is the proximate end of a deliberate act of willing on the part of the acting person."[24]

In a brief passage (not unlike that in which Aquinas deals at once with Abelard and Lombard), the encyclical rejects both

[22] E.g., *STh* II-II, q. 64, a. 7; *In Matt.* c. 7 ad v. 17 [no. 661]. The distinction between the two senses of "intention" is clearly articulated in *De Malo*, q. 2, a. 2, ad 8, as is the applicability of the broader sense in which means *qua* chosen are included, along with end(s), in "my intention."

[23] V *Metaphys.*, lect. 2, n. 9 [no. 771]:"It is not only the ultimate end, for the sake of which the agent acts, that is called *end* in relation to what precedes it: *each* of the intermediate means which are between the primary agent and the ultimate end is called an end in relation to what precedes it" (omnia intermedia quae sunt inter primum agens et ultimum finem dicuntur finis respectu praecedentium). See also II *Phys.*, lect. 5, n. 6 [no. 181]; *STh* I-II, q. 1, a. 3, ad 3; John Finnis, "Object and Intention in Moral Judgments according to St Thomas Aquinas," *The Thomist* 55 (1991): 10-14 (revised in *Finalité et intentionnalité: Doctrine Thomiste et perspectives modernes*, ed. Jacques Follon and James McEvoy [Paris: Librairie Philosophique J. Vrin, 1992], 134-38).

[24] *Veritatis splendor*, no. 78.

proportionalist overlooking of the specifying significance of object and a misunderstanding rather like Lombard's of the actions prohibited by the tradition's exceptionless moral norms:

> By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person.[25]

Employing the contrast between a "proximate" end (object) and a further end (intention)—the same contrast Aquinas employs in his critique of Abelard and Lombard—the encyclical then articulates its central affirmation: it is possible, as revelation and tradition teach, "to qualify as morally evil according to its species—its 'object'—the deliberate choice of certain kinds of behavior or specific acts, apart from a consideration of the intention for which the choice is made or the totality of the foreseeable consequences of that act for all persons concerned."[26]

Here, as we said, the encyclical uses the term "intention" in its narrower sense, as contrasted with "object" (as end is contrasted with means). But since almost every means can be at the same time an end relative to means still more proximate to the acting person's behavior, the broader use of "intention" to include both means and end is also well established in the tradition. This broader sense is particularly common, and apposite, when the issue for moral analysis is not whether something good is being done for bad motives (or, as in *Veritatis splendor,* no. 79, something bad for good motives), but whether an outcome is intended—is part of the chosen (adopted) proposal—or rather is a side effect. Since that is the main issue in questions about the permissibility of using force, even lethal force, to defend oneself or others, it is not

[25] Ibid.

[26] Ibid., no. 79; verbatim in no. 82.

surprising to find Aquinas framing his solution to that problem in terms of "intention" rather than "object:"

> Nothing prevents a single act having two effects, only one of which is intended [*in intentione*] while the other is a side effect [*praeter intentionem:* outside the intention]. Now: morally significant acts get their species [*recipiunt speciem*] according to what is intended, not what is a side effect (since the latter is incidental/collateral [*per accidens*]). . . .[27] So, from the act of one who is engaged in self-defense there can follow two effects: one, the preservation of the person's own life, and the other the killing of the attacker.[28]

But the point is in no way limited to questions of defense of self or others. Quite generally: "morally significant acts get their species [*species*] not from what happens as a side effect [*praeter intentionem*], but from precisely what it is that one intends [*per se intentum*]."[29]

III

Moral theologians in recent centuries intensively discussed the legitimacy of bringing about effects that it would be wrong to intend. They tried to identify conditions under which an act's bad effects would not be part of the act considered as a chosen means. But in trying to do this, they unfortunately failed to adopt and consistently maintain the perspective of the acting person. Rather than focusing on the precise object of the acting person's choice, they focused on cause-effect relationships identifiable by outside observers. So, in trying to explicate the requirement that one's chosen means include nothing bad, they reduced means to cause and said that any

[27] Here there is a back reference, apparently to *STh* I-II, q. 72, a. 1 and II-II, q. 43, a. 3.

[28] *STh* II-II, q. 64, a. 7. The fundamental importance of this article is suggested by *CCC* 2263. See further n. 66 below.

[29] *STh* II-II, q. 150, a. 2. Even more generally, "what is *per se* in human acts and conduct is what is *intended* [*secundum intentionem*]," and what is incidental (*per accidens*) is what is a side effect (*praeter intentionem*) (*STh* II-II, q. 37, a. 1; II-II, q. 38, a. 1; cf. II-II, q. 73, a. 8).

bad effect of an act must not be a cause of the good effect(s) for the sake of which it is done. For example, in his treatment of double effect, Henry Davis, S.J., at the outset of his manual, says:

> It is permissible to set a cause in motion, in spite of its foreseen evil effect, provided . . . secondly . . . that a good effect also issues from the act, at least as immediately and directly as the evil effect, that is to say, provided that the evil effect does not first arise, and from it, the good effect."[30]

This was a mistake. That a bad effect issues from an act more immediately and directly than a good effect, or precedes and causes a good effect, does not by itself make the bad effect a means to the good. A heroic soldier who throws himself on a grenade chooses to use his body as a shield so that the shrapnel will not kill his fellows. Yet he does not choose his own destruction as a means, even though the effect of throwing himself on the grenade—his body's being destroyed as it absorbs or slows down the shrapnel—is more immediate and direct than, and indeed causes, the good effect of the grenade's doing little or no injury to his fellows. More humdrum examples of the distinction between what one intends (and chooses as a means) and what one causes but only accepts as a side effect are given above, as *cases A* and *B,* with further refinements in *cases* C through *G*. The contemporary magisterium relies upon the distinction in a number of its teachings. In *Evangelium vitae,* for example, it is the basis for distinguishing euthanasia from (1) refusal or forgoing of extraordinary or disproportionate means of treatment, and (2) the use of painkillers "even when the result is . . . a shortening of life," on the basis that "in such a case, death is not willed or sought."[31]

[30] Henry Davis, S.J., *Moral and Pastoral Theology* 1 (4th ed.; London: Longman, 1946), 13-14.

[31] *Evangelium vitae,* no. 65, citing inter alia Pius XII, "Address to an International Group of Physicians" (24 Feb. 1957) III, *AAS* 49 (1957): 147. Likewise *CCC* 2279. Similarly *Vacco v. Quill* 117 *Supreme Court Reporter* 2293 at 2301 n. 11, approving New York State Task Force on Life and the Law, *When Death Is Sought: Assisted*

It will be helpful to consider closely the emergency obstetrical procedure usually referred to as craniotomy. Taken by itself, the word "craniotomy" strictly means cutting the cranium.[32] But the procedure in question is an operation that, at least at some times in the past, was thought to be medically indicated when a baby's head was too large to allow normal delivery: instruments could be used to crush the baby's head (perhaps after emptying its skull) so as to allow the child's removal from the birth canal and the survival of the mother who would otherwise perish in childbirth along with her child. In 1884, the Holy Office stated with papal approval that one cannot safely teach in Catholic educational institutions that this procedure is morally permissible; in 1889 it restated this, adding that one cannot safely teach that "any surgical operation directly lethal to the fetus or to the pregnant mother" is morally permissible.[33]

That craniotomy is often thought to be direct killing and to be morally unacceptable is readily understandable. A number of points can be made to express or reinforce this thought: (1) Doing a craniotomy surely *just is* killing the baby. Anyone can see what is going on: the baby's destruction and death is observed, not merely foreseen. And (2) killing the baby by crushing its skull does not, itself, help the mother. Saving her

Suicide and Euthanasia in the Medical Context (1994) at 163: "It is widely recognized that the provision of pain medication is ethically and professionally acceptable even when the treatment may hasten the patient's death, if the medication is intended to alleviate pain and severe discomfort, not to cause death."

[32] "Craniotomy" can refer to very different kinds of act. At least since 1945, in medically advanced environments, the only obstetrical craniotomies are those commonly called "partial-birth abortion," where the operation's purpose is precisely to kill the unborn or partially born child. Those are not the operations discussed as problem cases for Catholic moral theology or doctrine, though reflection on the differences between partial-birth abortion and the obstetrical crises discussed in Catholic theology would shed some light on the proper description, understanding, and moral assessment of the crisis cases under discussion here.

[33] *DS* 3258/1889-90. In 1895 the Holy Office stated, with the pope's approval, that "in accordance with the rulings of 1884 and 1889" one "cannot safely undertake" procedures which, to save the life of the mother, seek the premature expulsion of the fetus even if the intention is that the fetus be delivered if possible alive although too premature to survive (*DS* 3298/1890a).

depends on the further procedure of removing the baby's corpse from the birth canal. Nor (3) can the killing be said to be unintentional. If someone says to the surgeon "You're killing the baby," the surgeon cannot credibly reply "I don't mean to be doing that" or "I'm not doing it on purpose," as he can say credibly if removing a gravid cancerous uterus. Moreover (4) in any other context than this obstetrical crisis, the same kind of behavior would be intentionally killing the baby—what is nowadays called "partial-birth abortion." (5) This kind of behavior *never* is done to help the baby. (6) It is repugnant, horrible, and (7) contrary to Church teaching.

Though plausible, these arguments are not sound, and each of them can be refuted.

(1) Considering the behavior and its results as an event, or sequence of events, or set of causes and effects in the natural world, observers can readily see craniotomy to be killing the baby and rightly describe it as doing so directly. But *Veritatis splendor* teaches that it is wrong to consider behavior and its results in that way when carrying out moral reflection and seeking to determine what kind of human act is or was being deliberated about, chosen, and done. "By the object of a given moral act, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world."[34]

[34] *Veritatis splendor,* no. 78. As no. 79 makes clear, the morally relevant species of the act is determined by—indeed, is essentially equivalent to—its object. There is no morally relevant "nature" of the act other than the species so determined. So William E. May, "The Management of Ectopic Pregnancies: A Moral Analysis," in *The Fetal Tissue Issue: Medical and Ethical Aspects,* ed. Peter J. Cataldo and Albert S. Moraczewski, O.P. (Braintree, Mass.: The Pope John Center, 1994), 141, is mistaken in thinking that an act—as distinct from a piece of behavior considered as a physical event—can be "one which of its very nature kills a person" if killing is not included within the proposal adopted by the acting person and so within that person's object. May's assertion that "if I adopt by choice the proposal *to crush the skull and brain of an infant* I simply can not . . . *not intend the baby's death*" (ibid.) is simply unsupported by argument and, in context, a mere *petitio principii.* His equivalent assertion that when my proposal is to blow out someone's brains "I can not reasonably claim that I did not intend, i.e., choose, to kill that person . . . [or] that I was adopting by choice a proposal to *stop an unprovoked attack,* i.e. to defend myself by an act of measured

As Aquinas regularly puts it, the species of a human act, which (when measured by reason's requirements) settles the moral character of the act as good or bad, right or wrong, is not its species *in genere naturae* (in the order of nature) but its species *in genere moris* (in the order of human deliberating and choosing).[35] To be faithful to the tradition and to the contemporary magisterium, it is necessary to get beyond one-sided "common-sense" accounts of "what is being done"—accounts in which what can be seen, and factors such as causal sequences, are given an unreflective priority over the realities illustrated in section I above, realities that are also, as we saw there, recognizable by common-sense, when matters are viewed from the perspective of the acting person. In the wider secular debate, one-sided appeals to common-sense are regularly made to deride the position, affirmed by Popes Pius XII, Paul VI, and John Paul II, that distinguishes between administering analgesics in order to suppress pain while accepting the hastening of death as a side effect, and administering perhaps the very same dose to suppress pain *by* terminating life. The rejection of this and other similar intention-focused distinctions frequently appears in arguments for euthanasia and assisting suicide.

(2) It is true that crushing the baby's skull does not of itself help the mother, and that to help her the surgeon must carry out additional further procedures (remove the baby's body from the birth canal). But many surgical procedures provide no immediate benefit and by themselves are simply destructive: removing the top of someone's skull, stopping someone's heart, and so forth. Proportionalist critics of the tradition frequently claim that all these are cases in which *doing evil* is obviously justifiable as the means to a good end. But when any

force" (ibid.) is contrary to the clear sense of *STh* II-II, q. 64, a. 7 and to the implications of *Veritatis splendor,* nos. 78 and 79, as well as of *CCC* (rev. ed.) nos. 2263-67 (see n. 66 below).

[35] See e.g. II *Sent.,* d. 24, q. 3, a. 2; II *Sent.,* d. 40, q. 1, a. 1, corp. and ad 4; II *Sent.,* d. 40, q. 1, a. 4, ad 2; II *Sent.,* d. 42, q. 1, a. 1; *STh* I-II, q. 20, a. 3, ad 1; *STh* I-II, q. 20, a. 6; *De Malo,* q. 2, a. 4, ad 7; *De Malo,* q. 7, a. 3. See further Finnis, "Object and Intention," 16-24; *Finalité et intentionnalité,* 140-46.

such surgical procedure, including the obstetrical-crisis craniotomy, is considered not as a mere sequence of movements but as a human act formed by the adoption of a proposal, its moral species becomes clear. (We will say more about this in section IV below.)

(3) It is true that a surgeon removing a gravid cancerous uterus might credibly say "I don't mean to be killing the baby" or "I'm not killing the baby on purpose." Because craniotomy immediately causes the destruction of the baby with impressive physical directness, a surgeon performing a craniotomy would not be likely to say the same things. Still, a surgeon who performed a craniotomy and could soundly analyze the action, resisting the undue influence of physical and causal factors that would dominate the perception of observers, could rightly say "No way do I intend to kill the baby" and "It is no part of my purpose to kill the baby." Of course, the lethal damage done to the baby by a craniotomy, being foreseen and voluntarily accepted, can be called "deliberate" and/or "intentional" in various uses of those words. But when the question is whether bringing about that lethal damage violates the commandment and moral norm that exceptionlessly excludes killing the innocent, the fact that bringing it about can in *those* senses be called intentional and deliberate is irrelevant. What matters is whether the killing is brought about as an end sought (obviously not) or *as a chosen means*—in other words, whether it is the *object,* in the sense defined in *Veritatis splendor,* of the act of the surgeon who performs the craniotomy.[36]

(4) Craniotomy might well be physically indistinguishable from "partial-birth abortion." But the proposals adopted by the two kinds of choices, and thus the objects of the two procedures, are entirely different. In partial-birth abortion

[36] That the relevant question concerns what is intended as an end or chosen as a means is clear from the Church's teaching about a kind of act that clearly does violate the norm excluding all killing of the innocent, namely direct abortion; see *Evangelium vitae* no. 62 ("Pius XII excludes all direct abortion, i.e., every act tending directly to destroy human life in the womb 'whether such destruction is intended as an end or only as a means to an end'."); likewise CCC 2271.

done for any of the purposes for which elective abortions are done, the object of the act is to kill the baby before the killing would be classed as infanticide. In craniotomy done for the purpose of saving at least the mother's life, the object of the act is to reduce the size of the baby's head so that the baby or its corpse can be removed from the birth canal. No partial-birth abortion would ever be performed if the baby were already dead. If the baby stuck in the birth canal were already dead, craniotomy would always be performed. This difference is an important sign of the difference between the two kinds of operations considered as *human acts* in the morally significant sense of that term.

(5) Though a craniotomy of the kind we have been discussing, in which the contents of the skull are emptied so that it can be crushed, is not a procedure that could be done to help the baby, there could be a form of craniotomy in which, though the usual outcome is the death of the baby, the surgeon nevertheless hopes that cutting and squeezing the skull without emptying its contents will not result in the baby's death. This, too, is a sign that the fact that craniotomy normally results in the baby's death does not suffice to settle what is or is not the object and therefore the moral species of the act. [37]

(6) That craniotomy is repugnant and horrible is unquestionable. It is also unquestionably horrible and repugnant for doctors and nurses to stand by as both a mother and her baby die while they might be doing a craniotomy to increase the probability that at least one would survive. But in neither case can their repugnance and horror help them judge what they truly ought to do. If they correctly analyze the two options, they will see that the norm exceptionlessly excluding

[37] That fact is relevant in a consideration of another important question: even if a craniotomy can be done without violating the commandment and moral norm that exceptionlessly excludes intentional killing, isn't it unfair to the baby, and as such wrongful, and therefore homicidal? We do not consider that question in this paper, since it is not settled by what the acting person intends as an end or chooses as a means. The question is briefly considered in Grisez, *Living a Christian Life*, 503.

intentional killing does not exclude the option of performing a craniotomy, and that their judgment should accordingly be determined by considerations of fairness to both the mother and the baby.[38]

(7) Interpreting the Church's documents with precision, one finds that the Church has never taught that craniotomy is intentional killing or that performing a craniotomy is morally wrong. The three documents referring to craniotomy were responses published by the Holy Office, two of them with explicit papal approval, to questions raised by individual bishops. The first two questions (1884 and 1889) concerned craniotomy, but the response asserted only that it could not be safely taught in Catholic educational institutions to be licit. The third question (1895) concerned only premature expulsion of a nonviable fetus, and the response asserted only that such operations could not be safely done; and indicated that this response was in accordance with the earlier decrees that did refer to craniotomy.

To say that something cannot be safely taught or even that it cannot be safely done is not to assert that it is immoral. Rather, it is to provide pastoral guidance for the faithful

[38] Stephen L. Brock, *Action and Conduct: Aquinas and the Theory of Action* (Edinburgh: T & T. Clark, 1998), 204-5 n. 17, says: "Thomas's view would allow us to suppose that the surgeon is not aiming at the fetus's death, not crushing the skull *in order* that the fetus die. But—also on Thomas's view—regardless of his *further* aim, his act is aimed at producing the crushed skull of an innocent person; and surely it is to that extent unjust. . . . How unjust is it? Well, what is the value of an intact skull? The person's *life* depends on it." But Brock fails to show that the object of the surgeon's chosen act is better described as "producing the crushed skull of an innocent person" than as "cranium-narrowing for the purposes of removal from the birth-canal"—a description he set aside as "a merely abstract description" or "redescribing." (See below n. 47 and text at n. 63.) Still, Brock seems to be perhaps conceding, *sub silentio,* that the craniotomy need not be excluded by the exceptionless moral norm against killing the innocent, and therefore letting the assessment of its moral character rest on an assessment of its fairness, its justice. To support his view that it is unjust he quotes Aquinas *STh* I-II, q. 73, a. 8; but this quotation is not to the point, since it deals only with the way in which consequences, even though unintended, can aggravate the gravity of what is already judged to be wrongful. Note that whether and to what extent the life of the unborn child "depends on" not being subjected to the craniotomy is far from clear in the obstetric emergency we are considering—a situation in which the child is expected to die no matter what is done.

fulfillment of one's responsibilities as a teacher, and for the formation of one's conscience. Receiving this advice, faithful and prudent teachers and doctors would have realized that, though craniotomy might possibly be morally acceptable, their moral responsibility was to proceed on the assumption that it was not. But a good deal of pastoral guidance wisely given in the nineteenth century could not be rightly followed today. These responses of the Holy Office effectively closed the debate among theologians of those days. However, since the Holy Office did not assert that craniotomy is immoral, its responses cannot ground a sound argument against a position such as ours,[39] based as it is upon an understanding of action thoroughly in line with the tradition and the contemporary magisterium—an understanding not articulated with sufficient clarity by nineteenth-century theologians.[40]

Still, although those Holy Office responses refrain from asserting the immorality of the procedures in question, the Church's teaching elsewhere, especially in the twentieth century, makes it perfectly clear that direct killing of the unborn, even to save the life of the mother, is always wrong. We regard this teaching as a truth of faith.[41] Our position is that a doctor could do a craniotomy, even one involving emptying the baby's skull, without intending to kill the baby—that is, without the craniotomy being a direct killing.[42]

[39] Our position is shared by some theologians completely faithful to the Church's teaching; see, e.g., Marcellino Zalba, "'Nihil prohibet unius actus esse duos effectus' (*Summa theologiae* 2-2, q. 64, a. 7) Numquid applicari potest principium in abortu therapeutico?" in *Atti del Congresso Internazionale (Roma-Napoli—17/24 Aprile 1974) Tommaso D'Aquino nel suo settimo centenario*, vol. 5, *L'Agire Morale* (Napoli: Edizioni Domenicane Italiane, 1977), 567-68.

[40] See, e.g., J. Waffelaert, "De Abortu et Embryotomia," *Nouvelle Revue Théologique* 16 (1884): 160-79, especially the exegesis attempted at 165-71 of *STh* II-II, q. 64 a. 7.

[41] See Germain Grisez, "The Definability of the Proposition: The Intentional Killing of an Innocent Human Being is Always Grave Matter," in *Persona Verità e Morale*, 291-313.

[42] Of course, even when bringing about a person's death is not direct killing, doing so is often gravely wrong. We do not deny that there might be reasons for condemning the practice of craniotomy other than that it is direct killing. Faithful Catholics who reject our account of intention and judge that craniotomy, or any other action, is direct

Besides the seven points we have now considered, an argument has recently been proposed by Kevin L. Flannery, S.J., that "there is positive reason *not* to separate off" the death of the baby from "the compass of the means" in the craniotomy.[43] Flannery, like virtually all Catholic moralists, holds that there is no direct killing in a case where, to save the life of the pregnant mother, her cancerous uterus is removed (hysterectomy) along with the unborn baby within it, with the inevitable result that the baby promptly dies (perhaps many weeks earlier than it otherwise would). He also accepts that "the bringing about of the death of the fetus is not conceptually related to the performance of the craniotomy" and that "there is logical independence of this sort between the crushing of a skull and the fetus's death."[44] But he contends that "the two cases, craniotomy and hysterectomy, have different logical structures."[45] He points to two ways in which the cases differ "logically."

First, the hysterectomy is performed "upon the woman," the craniotomy "upon the fetus." We reply: this difference does not show that craniotomy is direct killing. A counterexample makes this clear. All those acts of self-defense of the kind that Aquinas shows need involve no intent to kill and no direct killing are nonetheless performed "upon" the person killed.[46] And in general, the fact that an act is done to (or "upon") X for the sake of Y, or to Y for the sake of Y, provides

killing certainly ought to form their consciences, in relation to such actions, by the Church's teaching that all direct killing of the innocent is gravely wrong. And, even if certain that a possible action would not be a direct killing, all faithful Catholics should form their consciences in the light of faith with regard to the requirements of both justice and mercy.

[43] K. Flannery, "What is Included in a Means to an End?," *Gregorianum* 74 (1993): 510ff.

[44] Ibid., 506.

[45] Ibid., 511.

[46] In saying this we in no way suggest that the baby in the craniotomy is an unjust aggressor or any other kind of aggressor. (Indeed, we deny that the unborn baby is ever an aggressor.) Aquinas's analysis of the intention in self-defense does not depend upon there being an unjust aggression.

no criterion for distinguishing between what is intended and what is accepted as a side effect.

Flannery's second "logical" distinction: whereas in the hysterectomy "the death of the fetus stands outside [the] description" of the act as "a hysterectomy on a pregnant woman in order that she might regain her health," in the craniotomy, "in order to separate off from the compass of the means the killing of the fetus, it is necessary to redescribe the act of craniotomy, calling it a cranium-narrowing operation." Such separating off or redescription is, he says, "artificial."[47] This argument also fails. What counts for moral analysis is not what may or may not be included in various descriptions that might be given by observers, or even by acting persons reflecting on what they have done, but what is or is not included within a proposal developed in deliberation for possible adoption by choice. Only the truthful articulation of that proposal can be a description that specifies an act for the purposes of moral analysis. Our contention, which Flannery fails to discuss, much less refute, is that when someone chooses to do a craniotomy on a baby to save his or her mother's life in an obstetrical predicament, the morally relevant description of the act would not include killing the baby.

As we have shown in section II above, the act analysis we have just employed in refuting Flannery's argument is not simply a philosophical and anthropological view peculiar to us, but is rooted in the tradition, employed by the magisterium, and explicitly taught in *Veritatis splendor.* Flannery's insufficient grip on that act analysis is indicated by

[47] Flannery, "What is Included in a Means to an End?," 511-12. May, "The Management of Ectopic Pregnancies," 142, expresses his agreement with Flannery's article and expresses the thought that "Grisez and Boyle are really *redescribing* the act in terms of its intended (in the sense of future, as distinct from *present* intentions) consequences" (ibid., 140). In both contexts, the talk of "redescription" amounts to no more than a rhetorical means of asserting, without argument, that the description of the act for which Grisez and Boyle have argued, rearticulated with further argument in the present article, is unacceptable. *Pace* May, it is not true that "Grisez and Boyle prefer to call [craniotomy] a 'cranium-narrowing' operation." Its physical character as a lethal crushing and emptying is not evaded or softened in our discussions.

his claim, in a subsequent article, that if a hysterectomy on the cancerous womb is performed needlessly early, it "becomes not merely performing a hysterectomy but also a direct killing."[48] This is a significant confusion.[49] Performing a hysterectomy to save a woman from a slow-growing cancer, when her baby could have been saved by waiting a few weeks without much greater risk to her, is seriously wrongful killing inasmuch as it is unjust to the baby, and so can be called homicidal. But the injustice does not transform that homicide into direct killing; the baby's death is a side effect just as it would be if the operation were being done later and were justified.

It is worth adding another example of confusion about intention, object, proposals, and directness in Flannery's recent writings: Where someone puts a bomb on an aircraft in order to collect insurance *on the aircraft itself* (*not* life insurance on its passengers or crew), Flannery rightly holds that "it is not part of this proposal that anyone be killed," and that, unlike Mr. G who walks into a restaurant and shoots down Mr. H "because he wants him dead," "the aircraft bomber's intentions . . . extend only as far as destruction of the aircraft."[50] But at the same time he says that "both the aircraft bomber and Mr. G. intend death" and both of them "intend to violate" the basic human good of life, because "destruction of the aircraft . . . in fact means death for the passengers."[51] The two sets of statements contradict each other. What is true is that the passengers' death, being outside the proposal, is not intended by the bomber; and that the

[48] Kevin L. Flannery, "Natural Law *mens rea* versus the Benthamite Tradition," *American Journal of Jurisprudence* 40 (1995): 395.

[49] Flannery is also inaccurate in stating (ibid.) that "in Thomistic terms, the end (which a person intends) *specifies* the act, but it is not part of the substance of the act [*Summa Theologiae*, I-II, q. 7, a. 3]: it is not part of what the person *is doing*. It is 'a sort of adjunct end.' [*aliquis finis adiunctus*—... I-II, q. 7 a. 3]." But in *STh* I-II, q. 7, a. 3, ad 3, Aquinas does not say that an act's specifying end is "adjunct" (what Flannery calls "not part of the act's substance"); rather he says that adjunct ends are to be contrasted with specifying ends.

[50] Flannery, "Natural Law *mens rea* versus the Benthamite Tradition," 393, 392, 396.

[51] Ibid., 396.

bomber's willingness to cause their deaths, and his doing so, is nevertheless gravely wrong. A soldier who leaps on a hand-grenade to save his buddy also expects that this "in fact means" death for himself, but does not on that account intend to violate the basic good of human life, for (as we noted at the beginning of section III) he is not choosing to bring about his death.

IV

Jean Porter has recently devoted an article to arguing that the account of action and intention developed by Grisez (and the other authors of the present article) fails to provide a cogent account of "the distinction between direct and indirect action." "His applications of the distinction," she says, "apparently reflect prior moral judgments which the distinction serves to justify after the fact."[52]

Porter gives an apparently detailed and careful statement of Grisez's account of what is a *means* (i.e., what is "directly" chosen and intended) rather than a *side effect* (i.e., what is only "indirectly" willed and done) or an *end* (i.e., the *further* intention[s] of the chooser). But she considers that his account "is spelled out most fully" in an article published in 1970,[53] and that a key to his understanding of *means* is a concept important in that article, "indivisibility of performance." The bulk of her article is devoted, in one way or another, to arguments that attempt to show the unsatisfactoriness of indivisibility of performance as a "criterion" of the unity of a human act to be morally evaluated (618) and/or a "criterion for distinguishing between direct and indirect harms" (627). But "indivisibility of performance" has not been used by Grisez

[52] Jean Porter, "'Direct' and 'Indirect' in Grisez's Moral Theory," *Theological Studies* 57 (1996): 612. (Parenthetical numbers in the text below signify page numbers in her article.) In n. 4 she states that the views expressed in the writings of Boyle and Finnis on these matters are not significantly different from Grisez's.

[53] Germain Grisez, "Toward a Consistent Natural-Law Ethics of Killing," *American Journal of Jurisprudence* 15 (1970): 88, 85.

in any of his writings on action since 1970, and it plays no part whatever in any of the work on act analysis on which we have collaborated. Though its irrelevance to our understanding of intention and action will have been evident to many careful readers of our work since 1970, it would have been helpful had we stated explicitly, somewhere, that the appeal to "indivisibility of performance" in the 1970 article was a false step caused by failure to appreciate the decisive significance of "the perspective of the acting person" and of the *proposal* an acting person develops in deliberation as a possibility for choice.

Porter says something true and important in her critique of indivisibility of performance. In the 1970 article Grisez said that "The very act of crushing and removing the baby, an act in fact destructive of its life, saves the mother from otherwise perhaps inevitable death."[54] But as Porter rightly notes, the performance of the craniotomy is divisible: "if the doctor were to walk away immediately after crushing the head of the child, the woman would almost certainly still die"(629).[55] This divisibility—and its irrelevance—is implicit in our discussion of craniotomy in section III above: the baby's death is a side effect of changing the dimensions of its skull, which is the means to the further actions that save the mother's life; and no side effect of a means is part of the means.[56]

What should be said about Porter's central claim, that our analysis of action lacks objectivity, and is controlled by prior moral judgments derived from "other considerations" (631)? Her position is that the analysis common among post-

[54] Ibid., 94.

[55] Joseph Lombardi, "Obstetrical Dilemmas and the Principle of Double Effect," *American Journal of Jurisprudence* 37 (1992): 205-9, also notes that doing a craniotomy does not by itself save the mother's life and that further actions are required, and infers that killing the baby necessarily is a bad means to the good end of saving the mother. But Lombardi refers not to Grisez's mistake about indivisibility of performance but to Boyle's mistake of denying that further actions are needed to save the mother: see Joseph Boyle, "Double Effect and a Certain Type of Embryotomy," *Irish Theological Quarterly* 44 (1977): 307.

[56] See also Grisez, *Living a Christian Life* (1993), 502-3.

Tridentine moralists (see sec. III above) has an advantage over ours, and that their assimilation of cause-effect with means-end "provided an objective basis for assessing the intention of the agent" (620).

There is a sense of "objective" that lends plausibility to her claim. Cause and effect in the physical world are observable. So, if killing is understood simply as bringing about death, one can observe John killing Mary just as one can observe a cat killing a mouse. But, as we have explained above, unless one adopts and steadily maintains the perspective of the acting person, one cannot provide or even recognize the only description of a moral act that is morally relevant and true, and so morally objective. Therefore, the objectivity Porter considers appropriate is not even morally relevant.

It is easy to understand why this irrelevant objectivity is invoked by Porter and many others. Though observers can often infer in some respects the morally objective description of another's act, his or her proposal never can be an observable object. So people with what Bernard Lonergan calls a naïve extroverted consciousness are always likely to think that the authentic objectivity of human acts is not really objective, and that the objectivity required for act analysis must be derived from external observations of causes and effects, or other factors entirely accessible to any and every observer.

Accordingly, Porter thinks that our distinction between means and side effects is merely subjective because it is not based on the sequence of cause and effects ("the causal structure of the act"):

> Without some such basis, the agent's intention could be described in terms of *whatever could be said* to be the agent's purpose or motive in acting. In that case it would be difficult to see how the doctrine of double effect would rule anything out, since any act *can be said* to be directed to some good or other, in terms of which the agent's intention could be described. . . . The question that arises is: Does Grisez's interpretation of the direct/indirect [scil. means/side effect] distinction similarly provide an objective criterion for determining what the agent's intention is? Or does

it leave open the possibility of describing the agent's intention in terms of *whatever good purposes* motivate the act in question.[57]

Porter maintains that Grisez's account—which we have expounded in section I of this article, and whose roots in the tradition we have shown in section II—provides no ground for an objective identification of what someone is doing, and thus leaves the moral evaluation of action at the mercy of arbitrariness or manipulation.

We have emphasized in the foregoing quotation the phrases that indicate the core of Porter's view. What "could be said" about an action by people who observe its performance, and who speak about it for their multifarious purposes, is indeed, as Porter indicates, indefinitely various. Indeed, what "can be said" about an action and its intentions by the very person whose act and intent they are is various, indefinite, and unstable, if that person is reflecting, as a kind of observer, on his or her purposes and motivations. And acting persons so reflecting on their actions and intentions, and representing them to others, are indeed likely to shape their account by reference to "whatever good purposes" they have, and to suppress or misstate—perhaps even to themselves—both any other purposes that may be motivating them and any means they have adopted but would rather not think about and/or be known to have adopted. But none of this should obscure the fact that the truth about what is intended and being done is available, primarily if not exclusively to the acting person *in* that acting—*in* that deliberating, choosing, and carrying out the choice—which constitutes the reality to which all accounts of intention and action must conform if they are to be true.

Each clear-headed and honest person knows what he or she is truly or objectively doing. Such persons know what end(s) they have in view, and what means they have reason, in view of such end(s), to choose, and are actually choosing in preference to alternatives. Roe knows, for example, that he saw an assailant's attack as an opportunity to kill a long-hated

[57] Porter, "'Direct' and 'Indirect' in Grisez's Moral Theory," 620 (emphases added).

enemy (or: a person he had contracted for money to kill), and knows that in taking steps that any observer would reasonably judge to be intended only as self-defensive measures to stop the assailant's attack, he was really and truly—objectively—trying to kill in revenge (or: to fulfill the contract). Roe's self-knowledge is objective. So too in the converse case. Doe, a shopkeeper robbed many times may acquire a gun and—as a bluff—announce to the neighborhood that she will kill the next robber in her store. When she sees a young tough move something suspiciously in his coat, she judges that she is about to be robbed at gunpoint, tries to shoot him in the shoulder, but hits his heart. To a jury, what happened may well seem to have been a straightforward intentional killing, carrying out her deterrent threat. But in truth and reality it was no more than a self-defensive act, chosen, without any intent to kill, to stop what she mistakenly believed was an assault.

The morally significant acts a person does are, objectively, what that person chooses to do for the reasons he or she has for making those choices. A true and morally objective description of such acts is the description they have, prospectively (as acts still to be done), in the proposals the acting person shapes in deliberation and adopts by choice(s). What an act objectively is, and can be known objectively to be, is not affected by what the acting person or others may say about it, or by what others may reasonably (though mistakenly) infer it to be. Nor is the reality of what an acting person is doing described adequately or objectively by describing it only in terms of the purposes that motivated it, omitting what the acting person chose to do as means of pursuing those purposes.

Failing to attend to the perspective of the acting person, Porter systematically fails to attend to chosen means (to what the tradition, retrieved and restated in *Veritatis splendor,* calls the "objects" of acts). Her accounts of actions reduce them to intended ends and outward behavior—the "immediate bodily movements" she calls "primitive acts." Even the accounts she offers of ends or motivations for action tend to overlook

reasons for choosing *means*. We shall point out the oversight when commenting on her examples of types of act.

For now we illustrate Porter's misunderstanding of action by pointing simply to a notable instance that occurs when she is stating her position at the level of general theory. This instance occurs at the very moment when she acknowledges that "Grisez could admit that there are indefinitely many correct descriptions for every act, and yet still hold that only one of these is morally relevant, namely, that which describes the act in terms of what the agent does in fact intend" (622). She remarks at this point that "this argument does not resolve the difficulty" that she thinks faces Grisez in trying to distinguish means from side effects.

> If one accepts the Thomistic principle that every action is directed knowingly towards the attainment of some good (as Grisez does), then it follows that every action can be described in terms of some good which the agent is voluntarily seeking. Why should the agent not describe his intention in terms of that good, relegating the harms which he brings about to foreseen but not chosen aspects of the act? (Ibid.)

The answer to her question is clear. If a young woman chooses to have her embryonic child suctioned from her uterus *as a means* to forestalling the unwelcome choice between giving her baby up for adoption and raising him or her, then a description—such as "having the pregnancy terminated"—of this human action that omits her choice to have that done as a means to her end is objectively incomplete in an essential respect.

But instead of attending to the answer that our theory of action gives to her question, Porter imagines that Grisez would respond to it "by claiming that the intention in question must be understood psychologically as well as logically" (623). By "psychologically" she refers not to rational but to emotional motives: "no amount of redescription can change the reality of what the agent *desires*" when "desires" is understood (as she takes for granted) to refer to, for example, "hatred," "desire

for revenge," "malice," "envy," "cruelty," "or some similar motive" (620).

However, even though some such emotional factors do help motivate adult children to decide to bring about the death of their aged parent before the insurance moneys run out and the estate is consumed, still neither the emotional motives nor the prospect of financial gain specify what it is that the children choose and do. If those emotions and reasons motivate the children to think of a way to hasten their parent's death, and the children adopt that proposal, what they choose and do is hasten their parent's death. Even if the means they use cannot be recognized by outside observers as means of hastening death, the children's practical reasoning shaped their choice to hasten her death as a means to their ends, ends arising from emotional motives and/or rational considerations. Similarly, the parents of a newly born baby afflicted with Down's syndrome may consider terminating their child's life by withholding an easy, effective, and inexpensive operation, whatever emotional motivations drive that deliberation. If they decide to withhold the operation as a way of (means to) killing the child, then, whatever they tell themselves or others, they really ("objectively") intend to kill the baby. There is little or nothing to be gained by asking whether this truth about their intentions and actions is "psychological" or "logical."[58] And it is entirely beside the point to ask (as Porter repeatedly does) whether, in cases such as these, "the agent's will must

[58] If the question were pressed, we could point out that the structure of actions considered as the subject-matter of moral evaluation pertains to the third of the four types of order identified by Aquinas in the opening paragraphs of his *Commentary on the Nicomachean Ethics*—the kind of order that one brings into one's own behavior by deliberation and choice, as irreducibly distinct from (1) the order of nature (which includes much of what is called "psychological"), (2) the order of logic, and (4) the order of arts and techniques. See, e.g., Germain Grisez, *Beyond the New Theism* (Notre Dame & London: University of Notre Dame, 1975), ch. 14; Finnis, *Aquinas,* 20-23, 52 and index s.v. "four orders." So far forth, then, the structures considered in moral evaluation are neither "psychological" nor "logical," though there are psychological and logical, as well as ontological and technical, elements both in moral life and in reflection upon it.

necessarily[59] be focused on the killing, and not on the good which is sought" (623). An agent choosing to kill someone, for whatever good, necessarily and really focuses both on the end sought and the killing chosen as a means to it.

Striving to press her claim that Grisez has no good way of distinguishing means from side effects, Porter takes up various kinds of cases. She asks, first, "how Grisez can distinguish morally between killing in self-defense and euthanasia" (624). After trying to show that the two kinds of act cannot be distinguished in various ways, she at last notices that Grisez would say, and has everywhere said, that (to use her rendering) "in the case of euthanasia, as opposed to killing in self-defense, the agent's act is aimed precisely at the death of the individual who is killed" (624). But instead of addressing this response, which provides precisely what she claims Grisez cannot provide, Porter changes the subject. She notices that Grisez has sometimes called attention to one *sign* or *manifestation* of the difference between engaging in lethal behavior with intent to stop an attack (accepting the attacker's death as a side effect) and engaging in the same behavior with intent to kill the attacker: that in the first case the acting person will desist from the lethal behavior if the attack is broken off by the wounding or flight of the attacker, whereas in the second the acting person will or may well press on with the lethal behavior, seizing the opportunity to finish off the attacker. Not attending to Grisez's analysis of the difference as chosen means between self-defense and euthanasia, she argues that that sign or manifestation of the difference is not an adequate criterion of it. Of course, we agree that it is not an adequate criterion, since it is no criterion at all.

[59] Porter (at 621) had introduced "necessarily" into her lead-in to a quotation from Grisez in which "necessarily" nowhere appears. She then went on to say: "When Grisez says that an action with both good and bad effects is not defined by the bad effect unless it is necessarily included in the agent's intention . . ." and proceeded to speculate about what kind of necessity that might be, thus constructing a dialectic irrelevant to Grisez's moral theory.

In irrelevantly challenging the adequacy as a criterion of the sign, Porter considers the possibility that a woman using lethal force in self-defense against rape does not at once succeed in stopping her attacker, and says: "then presumably she would try again to kill him" (625). By saying "try again to kill," Porter inadvertently makes clear the irrelevance of her argument, for Grisez's analysis of morally acceptable lethal self-defense precisely is that it is not trying to kill. It would be logically impossible for a victim to "try again" to kill an attacker if that victim's prior behavior were genuine self-defense. Porter also considers the possibility that a doctor trying to euthanase a patient might desist if the first attempt unexpectedly "somehow relieves the patient's suffering without killing him" (625). In this case she soundly points out that what usually is a sign of nonhomicidal intent cannot be a criterion. But she overlooks the physician's first choice: having tried to kill her patient, the doctor has done an act of homicide whether or not she herself, in subsequent reflection, Porter, or anyone else recognizes that.

Another of Porter's sample cases, put forth to show that Grisez's account of action cannot (without covertly drawing upon prior moral judgments) distinguish means from side effects, is craniotomy. We have discussed this in the preceding section, but it is important now to see precisely how Grisez's view of craniotomy is handled by Porter. She invites the reader to "Consider the case of the doctor who saves the life of a woman in labor by performing a craniotomy on her child. Such an act is justified, in Grisez's view, because it is inseparably an act of killing and an act of saving the woman's life" (629). Porter obviously is referring to Grisez's 1970 formulation of his view.[60] His more recent view is set out in *Living a Christian Life* (1993), which Porter cites elsewhere in her article. On the specific question being considered by

[60] Even so, she misstates that position, which was not that inseparability justifies craniotomy but only that it is a necessary condition for its moral acceptability. Even in 1970, Grisez pointed out that it is not the only necessary condition for the act's uprightness.

Porter—the question whether ending the baby's life is intended ("direct") or rather accepted as a side effect ("indirect")—Grisez states his view without reference to inseparability:

> The baby's death need not be included in the proposal adopted in choosing to do a craniotomy. The proposal can be simply to *alter the child's physical dimensions and remove him or her,* because, as a physical object, this body cannot remain where it is without ending in both the baby's and the mother's deaths. To understand this proposal, it helps to notice that the baby's death contributes nothing to the objective sought; indeed, the procedure is exactly the same if the baby has already died. In adopting this proposal, the baby's death need only be accepted as a side effect.[61]

Ignoring this articulation of the doctor's proposal, Porter addresses Grisez's former idea about inseparability, and argues that the "primitive acts" (immediate bodily movements) involved in craniotomy are in fact separable, since the doctor might walk away after crushing the baby's skull, omitting the further primitive acts needed to save the mother (pulling out the child, etc.). Since the same could be said of any surgical operation, "it is hard to see how he [Grisez] could allow any medical procedure that requires a series of primitive actions, some of which are destructive in their immediate effects" (629). That *reductio ad absurdum* would follow if Porter's interpretation of Grisez's position were sound. But it is not sound, and she concedes that "perhaps what this example shows is that we are mistaken in assuming that the Davidsonian primitive act *is* Grisez's unit of moral analysis" (ibid.). Her "assuming" that the "Davidsonian" or any other kind of "primitive act" (immediate bodily movement) is or ever has been Grisez's unit of moral analysis is groundless and plainly contrary to his account of acts in all the texts of his which she considers.[62]

[61] Ibid. 502 (emphasis added).

[62] In the 1970 article to which Porter gives (inappropriate) prominence, Grisez says: "A means in the order of human action must be a single, complete human act. . . . Now a human action derives its unity from two sources. One source is the unity of one's intention. ('*Intention' here refers not merely to intention of the end, but also to the meaning one understands his act to have when he chooses it as a means* to an intended

Porter considers the possibility that "primitive acts" are not Grisez's unit of analysis. But she does not abandon her attempts to attribute to Grisez an account of action that fails to adopt the perspective of the acting person and looks only to primitive movements plus overall intention, ignoring *chosen means:* "Perhaps the explanation of the craniotomy example lies in the fact that the primitive act of crushing, taken together with a series of other acts, is informed by the agent's overall life-saving intention, especially since Grisez insists that what is morally significant is the will of the agent, as determined by the proposal he adopts" (ibid.). Porter's reference to "the proposal he adopts" might suggest that she has grasped the central element of Grisez's analysis. However, she still fails to notice that proposals are not of primitive movements informed by an overall intention, but of actions understood as possible means. The act of craniotomy, whatever immediate physical movements it may involve, is the act accurately described by Grisez in the passage already quoted from his book: to alter the child's physical dimensions and remove him or her. Earlier on the same page of that book he had given another, equivalent description of the proposal/act: "a craniotomy (an operation in which instruments are used to empty and crush the head of the child so that it can be removed from the birth canal)." These formulations describe the same kind of act, and do so by identifying the "object" of that act.[63] Both correspond to the ways the choice and act might be conceptualized in the deliberations of a doctor considering whether or not to perform the act, and in the deliberations of the child's parents or anyone else concerned in the decision-making.

Instead of giving her own moral evaluation of craniotomy—as she imagines Grisez understands it—Porter proceeds

end')" (Grisez, "Toward a Consistent Natural-Law Ethics of Killing," 88 [emphasis added]). Or again: "both *means* and end have a behavioral aspect (Aquinas's external act) *and an aspect of human meaning* (Aquinas's interior act)" (ibid., 85 [emphasis added]).

[63] Cf. response to Brock in n. 38 above.

immediately to assert that the account of action she (mistakenly) attributes to Grisez would justify contraception by "uniting the primitive actions of employing some contraceptive and engaging in sexual intercourse into one intention, say, an intention of expressing marital intimacy in a responsible fashion" (ibid.). Here Porter unwittingly testifies to the ease with which people can identify means for the purpose of morally significant deliberation and choice. For "employing a contraceptive" is not the sort of thing she had been calling a "primitive act"; it does not pick out any immediate bodily movement or set of such movements. The relevant bodily movements, after all, might be those involved in putting on a condom, taking a pill, and so forth. Rather, "employing a contraceptive" is a kind of human act specified as a means to an end—that is, using something, anything whatever, to make an act of intercourse less likely than it otherwise would be to result in conception. In short, the very term "contraception" which Porter uses here refers to a means as it would usually be identified in deliberating and shaping proposals to act for an end: to prevent conception.

Moreover, Porter's suggestion that our view allows an argument for contraception is incorrect. On our view, one cannot engage in what Porter calls "expressing marital intimacy in a responsible fashion" without at some time or other having adopted two proposals by making two choices: (1) to employ a contraceptive, (2) to engage here and now in marital intercourse. Each is the choice and carrying out of a means to an end; each is identifiable as a distinct kind of act (however many bodily movements it may involve); and neither can be assessed morally without reference, in the first instance, to its characteristics as an act of that kind.

As noted at the beginning of this section, Porter's primary thesis is that Grisez is guilty of the same thing with which he charged Richard McCormick:[64] taking positions on moral issues and then finding reasons for them (631-32). Her article is an elaborate attempt to prove that charge against Grisez. We

[64] See Grisez, *Christian Moral Principles*, 157.

have shown that her account of his action theory, and her attempts to criticize it, fail radically. She also contends that our account of action is out of line with the tradition, but we have shown both here and elsewhere that the main lines of our account are entirely traditional.

Porter is right in saying that our analysis of craniotomy is not defending a teaching of the Church. But that fact by itself is sufficient to falsify her primary thesis. Grisez's work has not been an effort to "provide a systematic philosophical justification for the tenets of traditional Catholic morality" (611). If that had been his purpose, he surely would not have said what he consistently has about craniotomy, and capital punishment, and killing in war. He would never have taken the position that it is wrong to try to kill a human being. He would have been satisfied instead to defend the thesis that he has argued is a truth of faith: the intentional killing *of the innocent* is always grave matter. But as it is, he has criticized traditional views of capital punishment and killing in warfare, and argued that capital punishment always is wrongful killing and that even the killing of enemy combatants can be justified only if the action that brings about their death is done without any intention to kill them.[65]

The *Catechism of the Catholic Church,* most plainly in its revised edition—in relation to killing in capital punishment, and war, and in general if not on craniotomy (which is not mentioned)—has adopted a position like the one defended for thirty years by Grisez. Killing of human beings is justifiable only insofar as it is not intended.[66] This underlines the importance, for a sound understanding of the faith as well as

[65] See, e.g., ibid. 220; Finnis, Boyle, and Grisez, *Nuclear Deterrence, Morality and Realism,* 309-19.

[66] The revised CCC's entire treatment of cases of justifiable killing is put under the aegis of Aquinas's distinction between the "double effect" of lethal self-defensive actions that do not intend the killing of the aggressor (no. 2263; see n. 28 above). Accordingly, punishment can only be lethal "if this is the only way of effectively defending human lives against the unjust aggressor" (no. 2267). And killing in war can be justifiable only as "legitimate defense," that is, where "the defense of the common good requires that an unjust aggressor be rendered unable to cause harm," and the right to use arms is the right only "to repel aggressors."

for a sound philosophy, of understanding with precision and consistency just what it is to intend, to choose, and to act.