

## On Reshaping Skulls and Unintelligible Intentions

NICANOR PIER GIORGIO AUSTRIACO, OP

*Dominican House of Studies*

*Washington, D.C.*

SOMETIMES, human actions can lead both to good and to bad effects. The classic example at the end-of-life is the action of the physician who administers a narcotic analgesic in order to relieve the pain of a dying patient. However, his medical treatment could also hasten the death of the patient by leading to respiratory arrest. In the Catholic moral tradition, the adjectives “direct” and “indirect” have been used to distinguish those outcomes that are directly intended by the agent and those outcomes that are only indirectly intended by the agent, and as such, are accepted only as foreseen side effects of the agent’s action. Moral reflection within the tradition has reasoned that the effect that is directly intended by the agent, the end that is chosen and done by the agent here and now, also called the direct object of a human act, tells us what an act is and what it is not.<sup>1</sup> It is not surprising, therefore that the direct object of an act has a primary role in determining the moral goodness or badness of that act.<sup>2</sup> Thus, in its

<sup>1</sup> *Catechism of the Catholic Church*, no. 1751: “The *object* chosen is a good toward which the will deliberately directs itself. It is the matter of a human act. The object chosen morally specifies the act of the will, insofar as reason recognizes and judges it to be or not to be in conformity with the true good. Objective norms of morality express the rational order of good and evil, attested to by conscience.”

<sup>2</sup> As St. Thomas Aquinas noted, the good or evil of an action depends on its fullness of being or its lack of that fullness. Since the first thing that belongs to the fullness of being of a thing is that which specifies it, the primary goodness of a moral action is derived from its suitable object. (see *ST II*, q. 18, a. 2). For discussion, see the two historical commentaries on Aquinas on the object of the moral act published in the January 2003 issue of *The Thomist*: Tobias Hoffmann, “Moral Action As Human Action: End and Object in Aquinas in Comparison with Abelard, Lombard, Albert and Duns Scotus,” *The Thomist* 67 (2003): 73–94; and

*Declaration on Euthanasia*, the Congregation for the Doctrine of the Faith, in making the distinction between aggressive palliative care and euthanasia, concludes that in the former case “death is no way intended or sought even if the risk of it is reasonably taken; the intention is simply to relieve pain effectively, using for this purpose painkillers available for medicine.”<sup>3</sup> Hence, the action of our physician, if he only intended the relief of the patient’s pain in administering the narcotic, is a good one because in this case, the hastening of the death of the patient, if it occurs, is only an indirect outcome, a side effect, of his act.

But how is one properly to distinguish the direct and indirect objects of a particular human agent’s actions? In other words, how are we to evaluate the intention of a human agent if it includes both an intended and an unintended but foreseen effect? Germain Grisez, John Finnis, and Joseph Boyle (hereafter, GFB) have argued that the human agent and the human agent alone can properly specify the objects of his act.<sup>4</sup> To put it another way, according to these New Natural Law theorists, in order to properly grasp the object of the act that specifies an act morally, it is necessary that one place oneself in the perspective of the acting person. It is the agent’s self-description that is paramount in specifying his intentions because this is the only perspective that can take into consideration the complex interior acts that specify and qualify human action. For instance, Boyle has argued that the fetal craniotomy, a medical procedure that involves evacuating an unborn baby’s brain and crushing its skull in order to remove him from his mother’s body, can be described as *indirect* killing as long as the doctor does not directly intend the death of the child.<sup>5</sup>

---

Kevin L. Flannery, SJ, “The Multifarious Moral Object of Thomas Aquinas,” *The Thomist* 67 (2003): 95–118. Also see Martin Rhonheimer, “The Perspective of the Acting Person and the Nature of Practical Reason: The ‘Object of the Human Act’ in Thomistic Anthropology in Action,” *Nova et Vetera*, English Edition 2(2004): 461–516.

<sup>3</sup> CDF, *Declaration on Euthanasia*, May 5, 1980, no. III.

<sup>4</sup> See especially John Finnis, Germain Grisez, and Joseph Boyle, “‘Direct’ and ‘Indirect’: A Reply to Critics of our Action Theory,” *The Thomist* 65 (2001): 1–44. Other works that defend their theory of action include John Finnis, Joseph Boyle, and Germain Grisez, *Nuclear Deterrence, Morality and Realism* (Oxford: Oxford University Press, 1987), 292–93; Joseph Boyle, “Who is Entitled to Double Effect?” *Journal of Medicine and Philosophy* 16 (1991): 486–92; and 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.

<sup>5</sup> Joseph M. Boyle, Jr., “Double-effect and a Certain Type of Embryotomy,” *Irish Theological Quarterly* 44 (1977): 303–18. Boyle defines a craniotomy this way: “In a craniotomy, the skull is perforated; its contents emptied and the skull collapsed.”

Here, according to Boyle, the physician who performs the craniotomy intends not the death of the unborn child but the reshaping of its skull. Thus, the death of the child is only a foreseen side effect of his action.<sup>6</sup>

In recent years, the action theory used by GFB to defend the morality of fetal craniotomies has been criticized as being too subjective. As Jean Porter has suggested, Does the account of intention proposed by GFB not open up the possibility that every action, even evil ones, could be redescribed by the agent in terms of some good which he is voluntarily seeking? She writes: “Does Grisez’s interpretation of the direct/indirect 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?”<sup>7</sup> In other words, for Porter, it becomes impossible morally to evaluate any human action if the human agent is radically free to redescribe his intention after the fact such that his intention is always directed toward some good end, thus relegating the harms that he brings about to foreseen but not chosen aspects of the act. For Porter, GFB make a fundamental mistake when they reject the importance of the relationship between the agent’s intention and the causal structure of the act, a relationship that according to Porter “play[ed] a crucial role in traditional moral theology, because it provided an objective basis for assessing the intention of the agent.”<sup>8</sup> In the same vein, Kevin Flannery, SJ, claims that “in order [for GFB] 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.”<sup>9</sup> Such redescription, according to

---

The craniotomy, now obsolete in the developed world, was often used in situations where the large size of the baby was threatening the life of his mother. For details on the use of craniotomies in current medical practice, see Tasneem Aslam Tariq and Razia Korejo, “Evaluation of the Role of Craniotomy in Developing Countries,” *Journal of the Pakistan Medical Association* 43 (1993): 30–32.

<sup>6</sup> Note that it is generally agreed that Boyle’s position in defense of fetal craniotomies is not significantly different from the positions held by either Germain Grisez or John Finnis. For instance, Grisez writes: “Therefore, according to the analysis of action employed in this book, even craniotomy . . . need not be direct killing . . . provided the death of the baby is not intended.” Germain Grisez, *Living a Christian Life* (Quincy, IL: Franciscan Press, 1993), 502–3. Finnis associates himself with both Boyle and Grisez’s position in Finnis, Grisez, and Boyle, “‘Direct’ and ‘Indirect.’”

<sup>7</sup> Jean Porter, “‘Direct’ and ‘Indirect’ in Grisez’s Moral Theory,” *Theological Studies* 57 (1996): 611–32, at 620.

<sup>8</sup> *Ibid.*

<sup>9</sup> Kevin Flannery, SJ, “What is Included in a Means to an End?” *Gregorianum* 74 (1993): 499–513, at 511.

Flannery, is “artificial.” Thus, one cannot justifiably conclude that the death of the fetus is not an evil means to a good end. Finally, Stephen Brock contends that the basic problem with GFB’s position regarding fetal craniotomies is that “in distinguishing an action from its side effects, it is not plausible to go so far as to reduce the action to a merely abstract description expressing only what its conduciveness to one’s purpose formally consists in.”<sup>10</sup> He argues that one cannot differentiate, as GFB do, “narrowing the fetal cranium” from “crushing the fetal cranium” because “in fact, narrowing a cranium, in the way that the surgeon intends in such a case, is crushing it. It is narrowing *because* it is a crushing; he narrows the cranium by crushing it.”<sup>11</sup> In sum, for these critics, GFB’s position on fetal craniotomies suggests that the human agent can arbitrarily or, using Flannery’s term, “artificially,” redescribe his act to evade an action description that is morally bad: “Crushing the skull” would be redescribed as “reshaping the skull.” This subjective redescription would not be justifiable.

In their published response to their critics, GFB, using numerous examples, persuasively show that moral analysis that takes the perspective of the acting person is the only account of human action that does justice to the richness of human experience.<sup>12</sup> It is the only perspective that can properly take into account the interior acts that specify human action. Thus, the agent’s perspective has a privileged place in moral analysis, though as we shall see below, there are criteria that others can use to verify the accuracy of this perspective. GFB also point out that in the Catholic moral tradition the agent’s “subjective” perspective has privileged status because each human act is a freely chosen kind of behavior and should be treated as such.<sup>13</sup> Finally, GFB argue that the “subjective” stance of the acting person does not undermine the “objectivity” of moral reasoning because “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.”<sup>14</sup> In other words, the

<sup>10</sup> Stephen Brock, *Action and Conduct: Thomas Aquinas and the Theory of Action* (Edinburgh: T&T Clark, 1998), 204, n. 17.

<sup>11</sup> *Ibid.*, 205, n. 17.

<sup>12</sup> Finnis, Grisez, and Boyle, “‘Direct’ and ‘Indirect.’”

<sup>13</sup> Pope John Paul has reiterated this teaching by writing that “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.” See *Veritatis Splendor*, no. 78.

<sup>14</sup> Finnis, Grisez, and Boyle, “‘Direct’ and ‘Indirect,’” 34.

agent may mislead others in describing his actions—he may even mislead himself when he reflects upon his actions—but the objective reality of his action at the time it was performed—what he chose to do there and then—remains unchanged and as such can specify the moral nature of that act. Thus, GFB claim that the argument of their critics who suggest that they unjustifiably redescribe human acts to defend fetal craniotomies “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, [. . .] is unacceptable.”<sup>15</sup>

Though I agree with GFB’s proper emphasis on the perspective of the acting person, their response raises two interesting questions: How are we to know when an agent is either misleading himself or lying to others? How are we morally to evaluate such a situation? In this essay, I propose that the answers to these questions and the solution to the larger problem of evaluating the intention of a human agent if it includes both an intended and an unintended effect lie not in focusing upon what is subjective or objective, but in discerning what is intelligible both to the agent and to other reasonable acting persons. I borrow this insight from Alasdair MacIntyre who has cogently shown that human actions can be either intelligible or unintelligible.<sup>16</sup> The intelligibility of an agent’s actions and, I would add, of his intentions is an important criterion in moral analysis that protects the objective nature of the subjective perspective of the acting person. Thus, as moralists, we first need to understand the actions and intentions of the acting person before we can morally evaluate them. We need to make them intelligible. Furthermore, our moral judgments would depend upon the intelligibility or unintelligibility of those actions and intentions. I argue that GFB’s defense of fetal craniotomies is flawed because they fail to acknowledge this crucial step in moral reasoning.

I present my argument in three steps. First, I propose that the intelligibility of human intentions depends on at least two things, the narrative of the human agent and the narrative of the human act. Next, to illustrate this, I examine the intelligibility of the human intentions typically associated with three classic cases in Catholic moral theology. Finally, I show that GFB’s defense of the fetal craniotomy is unreasonable and thus unacceptable because the intention it attributes to the surgeon performing the craniotomy is unintelligible.

---

<sup>15</sup> Ibid., 29, n. 29.

<sup>16</sup> Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame, IN: University of Notre Dame Press, 1981), 209–10. For insightful discussion on how the intelligibility of human acts depends on their context, see Charles R. Pinches, *Theology and Action* (Grand Rapids, MI; Eerdmans Publishing, 2002), 11–33.

### The Intelligibility of Human Intentions

As Alasdair MacIntyre has pointed out, the intelligibility of human actions depends upon their context. His classic example is his story of the young man who suddenly tells you at the bus stop: “The name of the common wild duck is *Histrionicus histrionicus histrionicus*.”<sup>17</sup> One can understand the sentence but it is unintelligible. What was he doing in uttering it? As MacIntyre points out, this utterance, this human action, will only become intelligible when it is situated within a narrative. In like manner, I propose that the intelligibility of human intentions also depends on context. Here, I focus on two elements that contextualize intentions, the narrative of the agent and the narrative of the action. Also, in light of G. E. M. Anscombe’s argument that numerous descriptions of any one act are always possible,<sup>18</sup> I look at the intelligibility of intentions that involve actions with multiple legitimate action descriptions.

First, the intelligibility of human intentions depends on the narrative of the human agent. Consider the following case: At a birthday party, Tom, a twelve-year old takes a pin and quickly stabs the balloon that Lisa, his sister, had received from her best friend. It explodes. When confronted by their parents, Tom argues that he simply wanted to prick the balloon but did not intend on destroying it. Lisa bursts into tears. “What were you thinking?” she screams as she runs out the room.

Was Lisa justly angry with Tom for the loss of her balloon? Our moral intuitions and common sense would probably assert—correctly in my opinion—that the proper response to this question is yes. All reasonable persons recognize the teleological structure of certain human acts—stabbing a fully inflated balloon with a pin always and necessarily leads to its destruction. Thus, Tom’s defense is unintelligible. His intention does not make sense. We cannot imagine how anyone could prick a balloon without intending its destruction. In other words, we cannot understand how he could say that the destruction of the balloon was only a side effect of his pricking it. In fact, most people would immediately conclude that he is lying. As we will see below, this arises from the immediate causal relationship between the pricking and the destroying of the balloon. Note however that our response would be different if we learned that Tom had never seen or pricked a balloon before. We would suddenly understand his intention. We would see that his self-description of his action was a

<sup>17</sup> *Ibid.*, 210.

<sup>18</sup> For details, see G. E. M. Anscombe, “Under a Description,” *Nous* 13 (1979): 219–33; reprinted in *Metaphysics and the Philosophy of Mind: The Collected Philosophical Papers of G. E. M. Anscombe*, vol. 2 (Minneapolis: University of Minnesota Press, 1981), 208–19.

reasonable one. We would conclude that, in this particular context, Tom could directly intend the pricking of the balloon without intending its destruction. The narrative of the acting person does make a difference. It helps us to make sense of the objects that he specifies in his actions and includes in his action descriptions.

Next, the intelligibility of human intentions depends upon the narrative of the action. It does so in two ways. First, the particular details of an act help us to understand the intention of the agent. For example, as we will discuss below, the exact dosage of a narcotic analgesic administered by an ICU nurse at the end-of-life will make her intention either intelligible or unintelligible. If she administered a dosage greater than the minimum amount to alleviate pain, we would properly question her intention if she claimed that she only intended to relieve the pain of the patient. Second, the causal structure of the human act helps us to understand the intention of the agent. Here, I describe three narratives of human action: illusory, immediate, and contingent causal chains of events. Each type of act narrative constrains the intentions that an acting person can have and still remain intelligible.

First, there are what I call illusory causal chains of events. To illustrate this type of act narrative, take the following case: Mr. Solomon, a thirty-two year old man, enters the confessional and tells the priest that he is a murderer. He reports that he has discovered that he can kill people simply by clapping his hands three times. When asked to explain himself, the penitent says that a few months ago he noticed that every time he clapped his hands in a particular way, someone would die—their obituaries would appear in the local newspaper several days later. He goes on to confess that the previous Thursday at 4:30 P.M., he decided that he would kill someone, and he clapped his hands. This morning, he read that Mrs. Jones, mother of eight, had died suddenly at 4:30 P.M., Thursday last. The penitent now admits that he is remorseful that he left the eight little ones motherless and comes to ask for forgiveness.

Is our thirty-two year old penitent a murderer? Note that he describes his act as intentional homicide. The death of another was the proximate end of his hand clapping—the direct object of his act. (Parenthetically, it is irrelevant that he did not know the identity of his victim—a terrorist who leaves a bomb to explode in an airport lounge is a murderer even if he does not know the names of his seven victims.) The correct response supported by our moral intuitions is clear: Mr. Solomon is not a murderer. Though he intended to kill someone, he in fact did not kill anyone. To insist that Mr. Solomon had indeed ended the life of another simply by clapping his hands would be an unintelligible and therefore an unreasonable conclusion

because the causal relationship between the clapping of Mr. Solomon's hands and the death of a person is only an illusory one. In other words, it is a causal relationship that exists only in the agent's mind without any correspondence to reality. All things being equal, the death of Mrs. Jones, or anyone else for that matter, can never be the reasonably intended end or side effect of Mr. Solomon's hand clapping. This leads us to an important conclusion: No reasonable agent can posit as a direct or indirect object an end that results from his action if that end is linked to his action by an illusory causal chain of events. To do so would be unintelligible.

Incidentally, how should the confessor judge Mr. Solomon's action? Some may suggest that though he did not kill Mrs. Jones, he certainly intended her death. He really believed that he could kill with his hand clapping and then willed to kill her. Thus he is guilty of attempted murder. In reply, I would argue that the proper response to Mr. Solomon is not to judge his actions but to first question his sanity. Only individuals who are out of touch with reality could think that they could kill an individual simply by clapping their hands. We judge intelligibility before we judge morality.

Note that this only applies to ignorance of the real structure of causal chains and not to other types of ignorance. For instance, take this different scenario: Mr. Solomon takes a gun and shoots Mrs. Jones thinking that the gun was loaded with bullets. Fortunately for her, the gun was loaded with blanks and she survives the attack. Here, despite his ignorance of the blanks, Mr. Solomon is guilty of attempted murder simply because he had already willingly performed an interior act in his heart that is murderous. Successfully completing the exterior act of actually killing Mrs. Jones would have been worse, since he would have been guilty not only of the interior act performed but also the exterior act's bad effects such as making her children motherless.

Second, there are what I call immediate causal chains of events. The example of Tom and the balloon-pricking described above illustrates this type of act narrative. All reasonable persons recognize the teleological structure of certain human acts—stabbing a fully inflated balloon with a pin always leads to its destruction. Another example would be bolting a closed door and locking it. Bolting a closed door locks it. It would be unintelligible if an agent said that he had intended to bolt the door without intending to lock it. Bolting the door *is* locking the door just like stabbing a fully inflated balloon with a pin *is* destroying the balloon. In effect, with immediate causal chains, the two action descriptions are descriptions of the same act. However, the nature of immediate causal chains is learned from experience. Thus, as noted above, the narrative of the agent can influence the intelligibility of his action even if his action



involves an immediate causal chain of events. Nevertheless, once learned, the real structure of causal chains is expected to guide the moral judgment of reasonable agents. To ignore the necessity of the causal relationships involved would make one's intention unintelligible. This leads us to another important conclusion: No reasonable agent can posit as an indirect object an end that results from his action if that end is linked to his action by an immediate causal chain of events. All such ends can only be, properly and reasonably, direct objects of human acts. Again, to claim otherwise would be unintelligible.

Finally, there are what I call contingent causal chains of events. We take another example to illustrate this act narrative: Ten-year-old, Bobby Walker tickles his younger brother, Jordan, who backs into a nearby vase knocking it over and breaking it. When their mother confronts the boys, Bobby claims innocence. He did not intend to break the vase. It just happened.

How are we to understand Bobby's defense? Bobby's action of tickling his brother did not necessarily lead to the destruction of the vase. This was not a necessary causal chain of events because we could easily imagine a situation where his tickling of Jordan would not lead to a broken vase. Rather it was a contingent chain of causes: Bobby's action coincidentally led to the destruction of the glassware. To put it another way, in this scenario tickling Jordan and breaking the vase are two separate acts. The first act did not have to lead to the second act and thus both are separable. He caused Jordan to move. Jordan's moving caused the destruction of the vase. As such, our moral intuitions would be correct in concluding that it would be reasonable for Bobby to call the broken vase an unintended effect of his act. In this case, the unintended effect was not foreseen. However, it could have been otherwise—for instance, Bobby's mother may have told her sons that playing in the living room would result in broken vases—but Bobby's knowledge of this possibility still does not take away from the reality that in this case, the broken vase remains an unintended effect because he did not intend its destruction.

Note, however, that Bobby could also have directly intended the destruction of the vase. In our altered scenario, he could have tickled his brother knowing that this would move him in the direction of the vase causing it to come crashing down. In this case, it would also be reasonable for Bobby to conclude that he directly intended the vase's destruction thus seeing his act as a deliberate attempt to wreck his mother's decor. With contingent chains of causes, the specification of objects is more flexible than that with the two types of act narrative described immediately above. Thus, we come to our third conclusion: A reasonable agent can posit either as a direct or an indirect object an end that results

from his action if that end is linked to his action by a contingent chain of causes. Note again that what would be important here is that we need to quiz the human agent to discern his intentions. We seek intelligibility. We ask questions of the human agent and those around him until his intentions become intelligible. In this case, we would continue talking to Bobby and his brother until we understand what happened. For instance, if it became clear that Jordan had noticed that Bobby was consistently nudging him on in only one direction, the direction of the vase, it would become much harder for Bobby to continue to say that he did not intend for his brother to knock the vase over. To do so would be unintelligible.

In sum, the narratives of the human agent and of human actions help us to understand the intentions of acting persons. Hence, GFB are correct—the perspective of the moral agent is crucial in moral analysis. However, this perspective involves more than just his intentions. It also includes his narrative and the narrative of his action because these narratives make his intentions intelligible. Most of the time, we take these narratives for granted. We presume that all things being equal, a human agent would behave like every other reasonable human person. We presume that he has a generic narrative and that he is an individual who understands the causal structures of human acts. Our moral judgments would then be based upon the perspective of the acting person as he describes his actions. However, this would change if we did not understand his intentions. If the acting person's intention were unintelligible to us—like Tom's self-description of his action in the balloon-pricking example—we would start asking questions about the agent and his action. We seek the intelligibility that we need even before we can morally evaluate his deeds. And if we are unable to attain this intelligibility, we reasonably conclude that the human agent is either crazy, misleading himself or lying. This conclusion would then influence the moral judgments we would make about that agent's behavior. In this case, our moral judgments would not be based upon the perspective of the acting person as he describes it but upon the perspective we conclude he should have had or even did have in spite of his self-description. For instance, in the balloon-pricking example, it would be reasonable for Tom's parents to conclude that since he was familiar with pins and balloons, he must have intended the destruction of the balloon. In other words, Tom is lying.

Finally, regarding human acts that can be described in several legitimate ways, I propose that human agents are expected to intend the action description that is the most morally significant in order to remain intelligible. Take the following example: A man is walking across a field surrounded by a fence with large "No Trespassing" signs on it. When the man is stopped by the owner of the property, he argues that he only intended to walk

across the field. He did not intend to trespass. “But did you see the signs?” asks the farmer. “Yes, I did” the man replies, “but I did not intend to trespass.” Here our walker is unintelligible. He is unintelligible because we cannot understand how he could choose not to intend trespassing when he was aware that he was walking across private property surrounded by signs warning against trespassers. Note that “walking across the field” and “trespassing” are both legitimate and alternative descriptions of our walker’s actions. The acting person could choose either one of these descriptions to describe his action. He could also choose both. However, barring some particular circumstances that would excuse the walker, reasonable agents would expect our walker to include in his intention the most morally significant description of an action—here, trespassing is more morally significant than walking because it involves the virtue of justice. To do otherwise would make our walker’s intention unintelligible.<sup>19</sup> It is unintelligible because we live in a moral universe and we expect other agents to be morally accountable for all their actions.

### **The Intelligibility of Three Classic Moral Cases in the Catholic Tradition**

I have argued that the objects of human actions must first be made intelligible before they can be morally evaluated. This assertion is nothing new for it systematizes the prereflective moral intuitions that are already acknowledged by all reasonable moral agents. They articulate our convictions that the reasonable description of moral acts is constrained by the reality of our lives and of our actions. If accurate, the argument should be in accord with moral conclusions considered classic and well established by the Catholic moral tradition, a tradition that is often based upon a careful reflection of our common sense, everyday moral intuitions. Here we examine three standard test cases often thought to be morally problematic: the removal of a diseased uterus from a pregnant woman, the administration of opioids to relieve the pain of a dying patient, and the killing of an assailant in self-defense. The tradition defends the moral legitimacy of these actions using the principle of double effect (PDE) by arguing that the deaths involved are only unintended—though foreseen—side

---

<sup>19</sup> Charles R. Pinches, following St. Thomas Aquinas, makes a similar point when he argues that contemporary moral agents presuppose a hierarchy of moral descriptions that often remains inarticulate. He proposes the following imagined conversation as an example of how such a hierarchy functions: “I’m feeling kind of guilty.” “Why?” “I broke a promise.” “Oh? What did you do?” “Well, I promised Jim I wouldn’t kill him, but I broke my promise.” “What?! You killed Jim?!” See his *Theology and Action*, 134–36.

effects that do not specify the moral nature of these acts. If my argument is correct, then these cases must all involve intelligible intentions.

In the first scenario involving the gravid uterus, the surgeon removes the uterus containing a ten-week old fetus. The fetus dies. Can he reasonably argue that the baby's death was an unintended but foreseen side effect? The Catholic moral tradition says that he can. But is this an intelligible intention? To determine this, we would have to talk to the surgeon to determine how he understands his actions. He could claim that upon careful reflection, he has come to see that the removal of a gravid uterus does not necessarily lead to the death of the baby. Rather, it gives rise to a particular state of affairs—the exposure of the fetus to a hostile environment—that may or may not lead to its death. In fact, he could point out that he has done the exact same procedure with fetuses who are at least twenty-four weeks old and with these babies, there is a real possibility that neonatal intensive care could help them survive. In other words, in the surgeon's eyes, the surgery in itself does not cause death. The ten-week old fetus dies because of its developmental immaturity. Basically, here the surgeon justifies his intention by claiming that his actions involve a contingent causal chain of events. Thus, he is able to distinguish between the act of removing the uterus and the event of the baby dying. He causes the first while the immaturity of the baby causes the second. Thus, he can intend the first act without directly intending the second act.

At this point, we should re-emphasize that the causal structure of the act does not determine the moral quality of the act. It simply constrains the reasonability of the agent's intention and makes it intelligible or unintelligible to other acting persons. For instance, in this case, in performing the procedure of extracting the gravid uterus, the surgeon may either be an abortionist or a healer. It all depends upon what he desires through his actions, and we would have to ascertain this by questioning him about his intention until it is intelligible. Furthermore, intelligible intentions are manifested in intelligible actions. Did the surgeon try all other remedies before surgery? If the cancer was not very aggressive, did he suggest that the woman wait as long as possible before undergoing the hysterectomy? All of these actions would buttress the surgeon's claim that he only intended the healing of the patient. His intention would be intelligible, and in this case, he would be morally justified in performing the procedure because the principle of double effect would apply.<sup>20</sup>

<sup>20</sup> Incidentally, this argument can also be used in the moral debate over salpingostomy where the surgeon slits open the affected fallopian tube to scrape out the ectopic embryo. Some have argued that here the death of the embryo is only a side effect because what was directly intended was the preservation of the mother's life and

In our second classic scenario involving the administration of a narcotic analgesic by an ICU nurse who intends to alleviate the pain of a dying patient without intending to hasten his death, the act is justified in the tradition by the claim that the death of the individual is a foreseen but unintended side effect. Again, is this intelligible? I would suggest that a first-level causal analysis reveals that the act is part of a contingent chain of causes. Administration of the drug—usually morphine—leads to pain relief by modulating the activity of neurons in the pain centers of the central nervous system. However, this also leads to a state of affairs—the presence of the drug in the respiratory center of the brain stem—that may or may not lead to the death of the patient by terminally sedating him and depressing his breathing rate. One could easily imagine another drug that specifically inhibits morphine's action in those parts of the brain that regulate respiration without affecting its analgesic, or pain-controlling, efficacy. Thus the ICU nurse could make a case for the intelligibility of her intention. She intended to alleviate the pain of her patient. Yes, she knew that he could enter terminal sedation but this was something she did not directly intend. Note that again an intelligible intention would be manifested in intelligible action. Did the nurse administer the minimum dose of narcotic to alleviate pain? Did she use the opioid as a treatment of last resort? All of these actions would indicate that the nurse was acting reasonably. The nurse's intentions would be intelligible, and again, in this case, her action would be morally justified because the principle of double effect would apply. (Incidentally, this conclusion is supported by recent data that suggest that levels

---

the fertility of one of her fallopian tubes. However, in light of the argument presented in this essay, I would argue that this is unintelligible. Scraping out the ectopic embryo is the same thing as dismembering the embryo and is therefore the same thing as killing the embryo. One could not intelligibly intend the dismembering of an embryo without also intending its death. Contrast this with a salpingectomy where the surgeon removes the portion of the fallopian tube that is affected by the ectopic pregnancy. Here, the surgeon intends only the removal of the affected tube. This procedure then exposes the embryo to a hostile environment where it is unable to survive. Therefore, like in the hysterectomy of the gravid uterus case, there are two separate events. There is the removal of the affected fallopian tube and then the death of the ectopic embryo. The surgeon causes the first. The immaturity of the embryo causes the second. Like the hysterectomy described in the text, it is therefore intelligible for the surgeon to intend the first act without intending the second act since he is only the direct cause of the first and not of the second. Note that the Magisterium has not yet ruled on the question of salpingostomies and orthodox Catholic theologians have argued for and against this procedure. For a summary of the debate, see the two essays by William E. May and Albert S. Moraczewski, OP, in "The Ethics of Treating Ectopic Pregnancy," *Ethics and Medics* 23 (1998): 3–4.

of morphine and other opioids that alleviate pain, contrary to much anecdotal information, do not hasten death.<sup>21</sup> In fact, some studies show that terminal sedation may even prolong life slightly.)<sup>22</sup>

Finally, we have the paradigmatic case of self-defense, where one shoots and kills an attacker. First, it should be obvious that one's act of shooting another does not necessarily lead to the assailant's death. There have been many instances where wounding the individual is enough to stop the attack. Thus, acts of shooting in self-defense generically considered involve a contingent chain of causes where the agent may legitimately and reasonably claim that the death of the attacker was an unintended side effect of his act of self-defense. However, the intelligibility of a human action has to be taken in a case by case basis because it depends upon a dynamic interplay of the agent's intention, his narrative, and the narrative of his action. Every act is a particular act with its own particular narrative. Consider four different scenarios.

First, take the case of a woman jogging in Central Park who shoots her would-be rapist and kills him. Recently the media had been reporting the story that there is a serial rapist who has raped several women in Central Park. When questioned, the woman admits that she was extremely frightened when her assailant jumped her, and in self-defense, she shot him. "Did you intend to shoot him in the head?" "No," she claims. "He jumped me and I just shot him. I was so nervous, I didn't think. I just shot him." Here, I think, it is intelligible for this woman to claim that she did not intend the assailant's death. She simply shot him. The principle of double effect would apply.

Contrast this with our second case. Here, the woman belongs to the National Rifle Association and is a crack-shot. The media has not reported

<sup>21</sup> In a personal communication, Dr. Susan B. LeGrand of the Harry R. Horvitz Center for Palliative Medicine in Cleveland, OH, notes that this comment is not only well documented but also observational. It is well established that patients who are not opioid-naïve develop significant tolerance to respiratory depression and will manifest sedation first. Second, pain is a potent stimulus to respiration and antagonizes the depressant effects of morphine. Third, a study evaluated the effect of high-dose morphine in hospice patients and found no effect on life expectancy. For details, see the following papers: K. Foley, "Changing concepts of tolerance to opioids," in *Current and Emerging Issues in Cancer Pain: Research and Practice* (New York: Raven Press, 1993); F. M. Borgbjerg, et al. "Experimental Pain stimulates respiration and attenuates morphine-induced respiratory depression: a controlled study in human volunteers," *Pain* 64 (1996): 123–28; and M. Bercovitch, et al. "High dose morphine use in the hospice setting. A database survey of patient characteristics and effect on life-expectancy," *Cancer* 86 (1999): 871–77. I thank Dr. LeGrand for her response.

<sup>22</sup> See J. Lynn, "Letter to the Editor," *New England Journal of Medicine* 338 (1998): 1230.

on a serial rapist. In this scenario, the assailant does not surprise her. He confronts her with a gun and threatens her. In response, she grabs the gun and shoots him in the head. When queried, she admits that she wanted to blow his head off. Here, it would be unintelligible for this woman to claim that she only intended to stop the assailant and did not intend his death. “But why didn’t you shoot him in the leg, or in the arm? Wouldn’t that have stopped him?” we would ask. Without reasonable responses to these questions, this woman’s intention would not be intelligible. We would conclude that it is not reasonable for her to claim either that she did not intend the death of her assailant or that the death of her assailant was only a foreseen consequence of her action. Thus, the principle of double effect would not apply. We may even suspect that she was lying and that she directly intended to kill him as an end in itself. Further questioning would be needed to verify or to disprove this suspicion.<sup>23</sup>

Third, there is the case of a woman who has been kidnapped by a rapist. He torments her and slowly tortures her. He tells her that he will kill her. As part of his tormenting and taunting, he dares her to shoot him in the head with a rifle he has secured to the middle of his forehead. She shoots him and he dies.<sup>24</sup> Question: Can this woman claim that the death of her assailant was an unintended but foreseen consequence of her action? All things being equal, I would say no. Because of the act narrative involved, it would be unintelligible for this woman to claim that his death was only a side effect. Here, “shooting the man to disarm him” and “killing the man” are descriptions of the same act because these two events involve an immediate causal chain of events and are related in the same way that “pricking a balloon” and “destroying the balloon” are related. Thus, because of the act narrative involved, it would be reasonable for us to conclude that the victim had chosen the killing of the assailant as a means of defending herself. Thus, the PDE would not apply.

Steven A. Long has recently argued that for St. Thomas, one can knowingly choose to kill another as long as this killing is a means toward self-defense and not an end in itself.<sup>25</sup> He suggests that when the private citizen deliberately deploys a lethal means when this is the only reasonable

---

<sup>23</sup> Christopher Kaczor proposes four criteria that may be used to distinguish intention from simple foresight. These could be used to ascertain if the woman intended to kill her assailant as an end in itself. See his essay, “Distinguishing Intention from Foresight: What is Included in a Means to an End?” *International Philosophical Quarterly* 41 (2001): 77–89.

<sup>24</sup> I thank John Berkman for proposing this scenario.

<sup>25</sup> Steven A. Long, “A Brief Disquisition Regarding the Nature of the Object of the Moral Act According to St. Thomas Aquinas,” *The Thomist* 67 (2003): 45–71.

recourse in a just defense, the act for St. Thomas is still only an act of self-defense because “in the case of just lethal defense by a private party, the lethal act of defense is naturally ordered to the end of just defense such that there is only one defining and formally containing species, and that is the species of defense derived from the end.”<sup>26</sup> To further illustrate his position, Long asks us to consider the heart surgeon cutting open a patient on the operating table. Were he to choose to cut open the chest as an end *simpliciter*—as though it were good in itself—then Long correctly concludes that the act would not be justifiable. However, here the surgeon’s action is justifiable because it is ordered to the end of health. The laying open of the chest is a medical act rather than merely an act of carnage that can be intended as a means because it lies within the genus of medical acts. Its species is medicinal. In a footnote, Long adds that the surgical procedure is medicinal because it is “an act required by and ordered to those medicinal acts in heart surgery which cure rather than harm.”<sup>27</sup> But if this is the case, does this argument not also justify fetal craniotomies? Clearly, fetal craniotomies are acts required by and ordered to those medicinal acts in obstetrics and gynecological practice that cure rather than harm a mother whose child is stuck in her birth canal. In light of Long’s argument, could the ob-gyn not justify his use of a craniotomy by proposing that in the particular clinical emergency where a fetal craniotomy is required, he cracks open the fetal skull as a lethal means that is ordered to the medicinal end of saving the life of a mother whose child is stuck in her birth canal? Using Long’s argument, I think he can. Thus, I find Long’s position problematic because his notion of acts being ordered to particular ends is not clearly defined. In contradiction to St. Paul’s prohibition (cf. Rom 3:8), it appears to justify therapeutic abortions as long as they are ordered to or proportioned toward good medicinal ends by conventional medical practice.

Finally, we move to our fourth and last self-defense case. Let us suppose that a woman’s life is threatened by a rapist. The person whose life is threatened shoots the assailant in the body but the assailant is wearing a bullet proof vest and in fact can be stopped from continuing his attack only by shooting him in the head.<sup>28</sup> Can the victim shoot the rapist in the head and claim that his death is only a side effect? It depends.

For instance, the woman who shot the assailant could say, “I just kept on shooting him. I shot him in the chest. Nothing happened. So I kept shooting. I shot him in the arm and I shot him in the head.” “Did you want to

<sup>26</sup> *Ibid.*, 58.

<sup>27</sup> *Ibid.*, 66, n. 30.

<sup>28</sup> I thank Professor William E. May for proposing this scenario.



kill him?” we ask. “No, I just kept on shooting to stop him.” Here, the woman’s intention would be intelligible. The shooter did not intend the death of the assailant. She just kept shooting and it was incidental that she shot him in the head. This is similar to the first self-defense scenario described above. Contrast this with this another dialogue from the woman: “I knew that he was wearing a bullet proof vest so I aimed for his head.” “Did you know that your shooting him would kill him?” we ask. “Actually, I didn’t think about it. I just shot him where I could.” Here, again, I think this is intelligible. She just shot him in the head. Again, she did not intend his death. It was a side effect. Now take a third dialogue from the woman: “I knew that he was wearing a bullet proof vest so I aimed for his head.” “Did you know that your shooting him would kill him?” “Yes, but it was only an unintended but foreseen side effect.” In this case, the woman’s last response makes her intention unintelligible. We would ask: “How could she not have intended the death of the person if she knew that she was killing him by shooting him in the head?” Like the case described above of the woman who shoots her assailant with a rifle secured to his head, we would reasonably suspect that this woman had chosen the death of her attacker as a means to defending her life.<sup>29</sup> Thus, it could not be a side effect and the PDE would not apply. Again, the intelligibility of human intentions depends upon context. It depends upon the narrative.

### **The Fetal Craniotomy is *Not* Indirect Killing: The Unintelligibility of GFB’s Argument**

In light of our discussion so far, I submit that the description of the craniotomy for which GFB have argued is unacceptable because the intention it attributes to the surgeon is unintelligible. It is an abstraction that

<sup>29</sup> As Martin Rhonheimer observes, the decisive characteristic of the structure of action that is *praeter intentionem* seems to be the fact that the agent in acting never even comes to the question, “May I or may I not?” and thus never even comes to the choosing of a means. Consider the classic example taken from Cajetan. Here you have a rider who is fleeing for his life on horseback across a narrow bridge and finds his way blocked by a child. He runs over the child. Is this action morally permissible? It depends. Rhonheimer argues that the rider cannot ask himself, “May I, or may I not, ride over the child?” As soon as he does so, he would be choosing the killing of the child as a means for his own survival. This would be morally reprehensible. However, in a real-life situation, Rhonheimer points out that the rider would not even have a chance to ask this question. Everything happens within seconds. He simply wants to escape over the bridge. Thus, the killing of the child whom he sees and whom he tries by reflex to avoid remains outside the intentional structure of the action. For discussion, see Rhonheimer’s *Natural Law and Practical Reason*, trans. Gerald Malsbary (New York: Fordham University Press, 2000), 467–70.

does not appreciate the context of the surgeon's actions. Imagine a conversation with the surgeon who is attempting to justify his intention in the way that GFB suggest. When asked to describe his action, he claims that he was reshaping the skull of the baby to save the mother's life and did not directly intend the death of the fetus:

"I am sorry but the child died," the surgeon says.

"What happened?" we ask him.

"Well, the fetus got stuck in the birth canal during delivery, I had to reshape its head, and he died."

"What exactly does this 'reshaping its head' involve?" we ask him.

"Well, it involves the evacuation of the baby's head and the crushing of its skull." "Would this procedure kill the child?"

"Oh, absolutely," he replies, "evacuating anyone's head and crushing his skull kills him."

"But you claim that the baby's death was only a side effect?"

"Yes," the surgeon asserts.

I would submit that this conversation is unintelligible. It is unintelligible because the act narrative of a fetal craniotomy involves an immediate causal chain of events—evacuating a person's brain and crushing his skull is causing the death of the person—and we expect reasonable agents to intend certain things about these types of actions. We just don't understand this surgeon and his intention. "What was he thinking?" we would wonder. "How can he say that the death of the child was only a side effect when he sucked out its brain and crushed its skull?" We may even try to see if there are any other facets of his narrative that may explain his actions. Was he ignorant of the effects of crushing a fetal skull? We would continue asking him questions seeking intelligibility. Ultimately, however, I claim that we simply would not understand. We would conclude that he either is crazy—and we could determine this in other ways independent of the craniotomy—or we would claim that he is either misleading himself or lying and intentionally redescribing his action to avoid its moral implications.

The problem with GFB's argument is that it simply does not work in real life. It is difficult—if not impossible—to imagine an intelligible conversation with this surgeon that could justify his intention in the way that GFB suggest. In other words, we could not imagine a context where the surgeon could claim that the death of the fetus was a side effect, an unintended consequence of his actions, after he admits that he sucked out its brain and crushed its skull. We cannot do this because of our common-sense notion that we are morally responsible for the physical acts that are the foundation of our acts described in the moral order. Or, as Steven A. Long has put it in scholastic terminology, "the essential

matter of the act must always be included in the moral object, and is one—albeit only one—causal element in determining the moral species. The object is formal with respect to the individual act but this does not mean that its essential matter is or may be excluded from its definition.”<sup>30</sup> Thus, the fetal craniotomy is *not* indirect killing because to claim this would make no sense to any reasonable acting person. The intention involved is unintelligible and thus cannot be used as the basis for moral reasoning as GFB would have us want to do.

### Conclusion

In this essay, I have argued that reasonable action descriptions and reasonable intentions need to be intelligible. Reasonable descriptions of moral acts, like the products of all virtuous acts, arise from a dynamic interaction between the acting person and the external reality of his acts. Therefore they consist of both subjective and objective elements involving the narrative of the human agent and the narrative of the human act. In light of this, GFB’s argument in defense of fetal craniotomies is flawed because the intention it attributes to the surgeon performing the craniotomy is unintelligible. It is based on an abstract conceptual analysis of human actions that divorces the action from its human context. Yes, the perspective of the acting person is crucial in moral analysis, but this perspective involves more than just his formulated intention. The acting person lives in a community of other acting persons and his actions and intentions have to be made intelligible to himself and to his neighbors. It is an unintelligible intention to claim that the death of the fetus is only a side effect in a fetal craniotomy involving the evacuation and crushing of the baby’s skull because this could not be defended in an ordinary conversation that is intelligible to reasonable acting persons.<sup>31</sup> N-V

---

<sup>30</sup> Long, “Brief Disquisition,” 49.

<sup>31</sup> I would like to thank John Berkman, William E. May, Austin G. Murphy, OSB, two anonymous reviewers, and my Dominican brothers, Thomas Joseph White, Romanus Cessario, OP, Basil Cole, OP, and Robert Plich, OP for their helpful comments on earlier drafts of the manuscript.

