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## ACTION, INTENTION AND SELF-DETERMINATION

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### INTRODUCTION TO THE PROBLEM

A scene from the 2004 Sci Fi film, *Alien v. Predator*, illustrates a point that has troubled philosophers of action theory for over sixty years. The dilemma is this. A team of unlucky scientists, exploring an ancient pyramid frozen 2000 feet beneath the icy surface in Antarctica, find themselves in the middle of an epic battle. A dragonsque parasite, called Alien, who turns his victims into living incubation pods before bursting out their chests like a virus has risen from a hundred year slumber to face off against his ancient rival, a steel-clawed, gladiatorial space invader, Predator, who hunts down and mutilates his victims for sport. Exploration team leader, Alexa Woods, discovers her unfortunate comrade, Sebastian de Rosa, pinned against a wall in the “sacrificial chamber” with an alien parasite growing inside his chest cavity. She pulls her .44 magnum pistol. Sebastian yells, “Kill it before it reaches the surface!” She freezes. In an instant she reasons: “If I shoot, I’ll kill the monster; but I’ll kill Sebastian too—*for sure*.” “If I don’t, the monster may escape and the consequences could be disastrous.” She aims at his chest, shouts “I’m sorry!,” and shoots Sebastian three times at point blank range and kills both.

If a third party happened on the scene an instant before the shooting, that person might be tempted to conclude that Alexa shot Sebastian *to* kill him. It would seem quite clear: the range of the shot, Alexa’s proximity and body position vis-a-vis Sebastian, the deadly caliber of the handgun, the undeniably deliberate pulling of the trigger and Sebastian’s immediate death. Increasing the apparent clarity would be the spectator’s correct conclusion that Sebastian’s killing was—how could it be otherwise?—not only foreseen by Alexa, but foreseen with near certitude. If someone asked the spectator, “What did she do?”, he would say, “Isn’t it obvious? She killed him. Anyone can see that.” And in one sense this is quite true. Alexa did shoot Sebastian in the chest; and her shooting did kill him. One can even say that she killed Sebastian purposely, inasmuch as she did so to kill the incubus, which meant killing him as well.

The morally relevant question here is not one of identifying what outcome was produced by outward behavior. The question is what did Alexa *do*. Did she shoot Sebastian *in order to* kill him? Was getting him dead (at least) a proximate end of hers. Even more importantly, did she kill him in order to kill the incubus? She could not kill the incubus without killing him too, so was killing him a means to getting at it? That she intended to shoot him seems undeniable. But in shooting him did she intend his death as either an end or a means? According to the account of intention defended in this essay (which is consistent in most respects with the account proposed by John Finnis, Germain Grisez and Joseph Boyle), the killing of Sebastian need not have been intended either as an end or a means; Alexa need not have been shooting *to* kill him. Though his killing *could* have been intended (Alexa could have taken advantage of the extraordinary circumstances to bump off a rival); it need not have been. Sebastian’s killing could have been a tragic and regrettable foreseen *side-effect* of an otherwise legitimately intended act of self defense against a gravely harmful aggressor.

Some theorists think this is implausible. Even if Alexa *wanted* to direct her intention

away from the killing of Sebastian, they say, in intending to shoot him, she just *did* intend to kill him. Some effects, in other words, are of such a kind that they cannot be said *not* to be chosen. Most who argue in this way do so from one or more of the following premises (formulated as conditionals): if the harm-causing behavior of the agent is proximate to or close-in to or physically carried out on the person who suffers the harmful effect; if the effect follows immediately from the cause; if given a similar state of affairs the same effect would follow invariably from the same kind of cause; if the effect was clearly foreseen; then the effect is part of what is intended despite what the agent may say about what he intended.<sup>1</sup> One cannot simply perform some inner act of directing one's attention away from one description of an act and toward another and then claim that the resulting description is the morally relevant one.<sup>2</sup> Common sense tells us that some effects are intrinsic to what is chosen. The proximity of cause to effect and the physical circumstances of the act limit what description is and is not valid. Although it might be the case that our wishing can be separable from the limits the world imposes upon us (e.g., I can wish I could fly like Peter Pan), our intendings are, at least to some degree, beholden to that structure; and that is not changed by wishing. When a person stands three feet from another and shoots him in the heart with a .44 magnum, it is nonsense to say she did not shoot *to* kill.

Because it corresponds to a common intuition of many morally conscientious people, this objection needs to be addressed. It raises the question of the nature of intention. In particular, the question of whether intention is an internal act separable from the physical behavior that carries it out or whether or to what degree external behavior is necessarily intended. In Catholic moral tradition since Aquinas intention has been judged to be the central moral determinant of human action.<sup>3</sup> If one's intended end or means is at odds with human good, one's act is wrong. But if one's intention is upright, it can be (though not always is) legitimate to bring about side-effects that would be wrong to intend.

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<sup>1</sup>Various formulations of these premises include: Warren S. Quinn, "Actions, Intentions, and Consequences," in *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle*, ed. P.A. Woodward (South Bend, Ind.: University of Notre Dame Press, 2001), p. 26; Philippa Foot, "The Problem of Abortion and the Doctrine of the Double Effect," in *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle*, ed. P.A. Woodward (South Bend, Ind.: University of Notre Dame Press, 2001), p. 145; H.L.A. Hart, "Intention and Punishment," in *Punishment and Responsibility: Essays in the Philosophy of Law* (OUP, 1968), p. 120; G.E.M. Anscombe, "Medalist's Address: Action, Intention, and 'Double Effect'," in *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle*, ed. P.A. Woodward (South Bend, Ind.: University of Notre Dame Press, 2001), p. 63; Nicanor Pier Giorgio Austriaco, OP, "On Reshaping Skulls and Unintelligible Intentions," *Nova et Vetera*, vol. 2, no. 2 (2004), p. 89; Kevin Flannery, S.J., "What is Included in a Means to an End?" *Gregorianum* 74 (1993), pp. 511-12.

<sup>2</sup>"After all we can *form* intentions; now if intention is an interior movement, it would appear that we can choose to have a certain intention and not another, just by e.g. saying within ourselves: 'What I *mean* to be doing . . . ' The idea that one can determine one's intentions by making such a little speech to oneself is obvious bosh." G.E.M. Anscombe, *Intention* (Oxford: Basil Blackwell, 1957), p. 42.

<sup>3</sup>"Now moral acts take their species according to what is intended, and not according to what is beside the intention (*praeter intentionem*)." Aquinas, *Summa Theologiae* (ST), II-II, q. 64, a. 7c.

## FREE CHOICE MATTERS

The underlying assertion of my entire essay is this: *reasons lead people to choose and those reasons, as principles of choice, become principles of self-determination.* Let's tease this out a bit. As principles of action, the reasons that lead me to choose are, precisely stated, the possibilities for human fulfillment promised by choosing in a certain way (or which I believe are possible by choosing in a certain way). Before I choose, however, there may be other reasons or sets of reasons that I find attractive, each promising fulfillments (benefits, goods) different enough to establish it as a rival alternative in my mind. If each of a set of alternatives promises goods I am interested in, and if no single alternative promises all the goods I am interested in or all the goods promised by any other alternative or combination of others, then I need to choose among the alternatives. I must make my own one set of reasons with the fulfillment they promise rather than any other set of reasons with their promised fulfillment. And assuming the choosing is free, not constrained by something outside itself, I myself settle which alternative I take. Thus, by free choices I fulfill myself in some goods and set aside others. A graduating college senior, for example, deliberating over whether to go to medical school after graduation with a view to marrying and having a family or whether to enter religious life, must in the end settle on one of the two alternatives, and unless her choice is to set aside both in favor of a third alternative (which might be to put off choosing either for the time being), her choice for medical school or religious life will open up for her real self-determining possibilities, real sorts of human fulfillment, futures with very different kinds of possibilities. It will also *close down* possibilities. Christians who have conscientiously discerned their state-in-life will be familiar with the scenario I describe here, including the conflict experienced as they contemplated not only the real gains promised by choosing one state in life, but the real losses promised by not choosing the other.

Not all choices organize one's life as widely and deeply as choices for one's state in life. Some merely reinforce existing components of one's moral self, like the choice of a scholar to attend an academic conference, or of a music lover to buy season's tickets to the opera and forego the convenience of extra pocket money, or the choice of a young married man to remain on a professional fast track with what it implies—good and bad—for marital and family relationships. Others introduce new dispositions for better or worse into one's persisting character, for example, the choice of spouses to have their first child, or the choice of a woman to nurse her aging mother at home and not commit her to an institution, or the choice of a man to finally yield to the solicitations of a courtesan. The one thing they all have in common is all free choices contribute in different ways and to different degrees to the determining of the kind of people we become. *Choices are principles of the creative self-shaping of moral character.* This is a traditional insight. The great 4<sup>th</sup> century Eastern Church Father, Gregory of Nyssa, writes:

All things subject to change and to becoming never remain constant, but continually pass from one state to another, for better or worse. . . Now, human life is always subject to change; it needs to be born ever anew. . . But here birth does not come about by a foreign intervention, as is the case with bodily beings . . .; it is the result of a free choice. Thus

we are in a certain way our own parents, creating ourselves as we will, by our decisions.<sup>4</sup>

The insight is not unique to the Christian tradition. Plato in his *Laws* writes:

He who does not estimate the base and evil, the good and noble . . . and abstain in every possible way from the one and practice the other to the utmost of his power, does not know that in all these respects he is most foully and disgracefully abusing his soul, which is the divinest part of man; for no one, as I may say, ever considers that which is declared to be the greatest penalty of evil-doing--namely, to grow into the likeness of bad men. (*Laws* V, 728b)

The reflexive, self-determining character of human choice, an aspect of the theory of action largely ignored in the philosophical literature, is central to our discussion of the relevance of and relations between intention and side-effects. The link between what I do and what my doing does to me (i.e., who I become), the relationship between self-directed action and human action's (often unrecognized) self-shaping quality, will shed light on why two pieces of human behaviour, identical in appearance from the outside, but differing in intention from the internal perspective of the acting person, can be very different moral acts<sup>5</sup> (e.g. a genital act between husband and wife can be either an act of selfish self-gratification or self-giving love).

#### FREE CHOICE AND INTENTION

Free choice is a necessary condition for the moral goodness or badness of human beings.<sup>6</sup> According to Aquinas, human action involves a dynamic interplay between reason and will. Through reason we envisage intelligible possibilities for action; we deliberate over suitable means for realizing those possibilities; and we judge which means we think best here and now: reason apprehends, deliberates over and proposes for choice what is good. But it is through will (*voluntas*) that we move to action. Will is one's responsiveness to reasons put forward by *ratio*.<sup>7</sup> Aquinas analyzes several varieties of voluntariness—several types of actualizations of will. They are: *voluntas simplex*<sup>8</sup> – simple willing (i.e., will's general openness to and interest in human

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<sup>4</sup>Gregory of Nyssa, *On the Life of Moses*, II, 2-3: PG 44, 327-328; quoted in John Paul II, Encyclical Letter *Veritatis Splendor* (1993), no. 71.

<sup>5</sup>I do not mean to imply that doing good in the world through one's moral agency is not important. Consequences are morally relevant, but not decisive in the directing of practical reason. Only a small percentage of the consequences we cause by our behaviour can be foreseen.

<sup>6</sup>But not for other aspects of their goodness or badness, e.g., the goodness of being made in God's image and likeness, or the badness of their nearsightedness, or bad back.

<sup>7</sup>"Intention is a movement of the will to something already ordained by the reason." *ST*, I-II, Q. 12, a. 3, ad 2; John Finnis helpfully sets forth in tabular form the main elements of Aquinas' account of the relation between *ratio* and *voluntas* in human action in *Aquinas: Moral, Political and Legal Theory* (Oxford: Oxford University Press, 1998), p. 71.

<sup>8</sup>*ST*, I-II, q. 12, a. 1, ad 4, q. 15, a. 3c.

good); *intentio*<sup>9</sup> – intention (interest in, movement towards, a purpose envisaged by reason); *consensus*<sup>10</sup> – consent (i.e., will’s openness to and interest in certain alternatives as real possibilities of realizing good); *electio*<sup>11</sup> – choice (i.e., the definitive movement of the will toward some good); *usus*<sup>12</sup> – execution (i.e., will’s carrying out of the choice once made); and *fruitio*<sup>13</sup> – enjoyment (will’s enjoyment of the “sweetness” of the end attained through choice).<sup>14</sup> The two with which I concern myself here are *intentio* and *electio*.

Aquinas’ analysis of voluntariness at times distinguishes between *intentio* and *electio* by distinguishing between the willing (intending) of ends and the willing (choosing) of means: “in so far as the movement of the will is to the means, as ordained to the end, it is called *electio*: but the movement of the will to the end as acquired by the means, is called *intentio*.”<sup>15</sup> But he does not mean to say by this that intention and choice are different acts of the will. Aquinas says the will stands in a threefold relation to the good.<sup>16</sup> The first is the will’s ordinary openness to and interest in human good (what was called above *voluntas simplex*). Second is the will’s resting in the good (i.e., experience of satisfaction in the good once realized, or *fruitio*). The third is the will’s movement towards (“stretching towards,” Lt. *intendere*) the good which constitutes *intentio*. This third relation, the stretching towards the good, also defines the relationship of the will to the good in choosing (*electio*). Choice, Aquinas says, is “the act whereby the will tends to something proposed to it as being good, through being ordained to the end by the reason.”<sup>17</sup> Aquinas’ distinction then between intending and choosing is a formal distinction of the relatedness of the will to ends and means, not a distinction between different types of acts of the will.

When I will certain means for the sake of a certain end, I will also that end. The intending of the end is part of the same act of the will as the choice of the means.<sup>18</sup> Said in another way, that for the sake of which I choose my means (i.e., the intelligible benefit that I believe is possible—my end) is part of what I will in choosing my means. For example, when I

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<sup>9</sup>*Ibid.* at q. 12.

<sup>10</sup>*Ibid.* at q. 15.

<sup>11</sup>*Ibid.* at q. 13.

<sup>12</sup>*Ibid.* at q. 16.

<sup>13</sup>*Ibid.* at q. 11.

<sup>14</sup>See Finnis, *op. cit.*, at 69-71; see also his “Object and Intention in Moral Judgments According to Aquinas,” *The Thomist*, 55, 1 (1991), pp. 1-27.

<sup>15</sup>*ST*, I-II, q. 12, a. 4, ad 3.

<sup>16</sup>*Ibid.* at q. 12, a. 1, ad 4.

<sup>17</sup>*Ibid.* at q. 13, a. 1c.

<sup>18</sup>*Ibid.* at q. 12, a. 4c & sed contra.

say I wish to give my wife flowers (my means) in order to make her happy (my end) I signify the same movement of the will.<sup>19</sup> My willing to give her flowers includes the will to make her happy.

But Aquinas seems also to say that the willing of the end is called intention only *when means are adopted*, that it is not till one has resolved upon some means for realizing some end that one has formed one's intent to realize that end;<sup>20</sup> before this we might be interested in Y and wish for it, but we *intend* Y only we set about to get it by means of something else: "for when we speak of intending to have health, we mean not only that we will have it [i.e., that we are interested in having it], but that *we will have it by means of something else*."<sup>21</sup> This is not to say the end, as a state of affairs to be realized (Aquinas' "*res*"), is identical with the means that one concludes are adequate for realizing that end; in this regard ends and means are distinct objects of the will. Their union lies rather in the fact that insofar as the end is the reason (that for the sake of which) I will my means, the end and the means are one and the same willed object.<sup>22</sup> So, for example, when I shoot you to incapacitate you to steal your money, stealing your money *and* shooting you to incapacitate you form my object ("*unum et idem obiectum*").

The willing of ends and means both involve an *intentio* (a "stretching towards") on the part of our wills. That towards which our wills stretch (i.e., what we intend) is some state of affairs (*res*) envisaged as an intelligible possibility desired *for its own sake* or *the sake of something else*.<sup>23</sup> When I drink a cup of coffee in the morning in order to help myself wake up, my will stretches towards both my desired end of waking up and my preferred means of drinking a cup of coffee. Both together—what I am willing here and now and why—define my plan of action. To choose, Finnis writes, is "to adopt a plan or proposal."<sup>24</sup> Whatever is included within that plan of action is chosen. It is correct to say also, in light of what we said above, that whatever is included within that plan is *intended*.<sup>25</sup>

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<sup>19</sup>*Ibid.*

<sup>20</sup>"*Motus autem voluntatis qui fertur in finem, secundum quod acquiritur per ea quae sunt ad finem, vocatur intention*", *ibid* at a. 4, ad 3.

<sup>21</sup>*Ibid.* at a. 2, ad 4, emp. added; cf. *De Veritate*, q. 22, a. 13c; Finnis argues convincingly for this interpretation in *Object and Intention*, pp. 7-9, see especially note 18, pp. 8-9 where he addresses the objection that the last statement of q. 12, a. 4, ad 3 ("*intentio finis esse potest, etiam nondum determinatis his quae sunt ad finem, quorum est electio*") contradicts this interpretation.

<sup>22</sup>"*In quantum est ratio volendi id quod est ad finem, est unum et idem obiectum*." *Ibid.*, at a. 4, ad 2; cf. Finnis, *op. cit.*, at 9.

<sup>23</sup>Finnis, "Intention and Side-effects," in *Liability and Responsibility: Essays in Law and Morals*, eds. R.G. Frey and Christopher W. Morris (Cambridge: CUP, 1991), pp. 61-62.

<sup>24</sup>Finnis, "The Act of a Person." *Persona Verità e Morale: Atti del Congresso Internazionale di Teologia Morale (Roma, 7-12 Aprile 1986)*, pp. 159-75, quote on p. 168 (Roma: Città Nuova Editrice).

<sup>25</sup>"What one does is done "with intent to X" if X is a part of one's plan either as its end (or a part of its end, or one of its ends) or as a means." Finnis, *op. cit.* at 168. Philippa Foot says something similar: a person "intends in the strictest sense both those things that he aims at as ends and those that he aims at as means to his ends." Philippa

So we intend both our ends and our means. This is intelligible even within an idiom that considers ends alone as intended. Intention regards ends; but means are close-in ends with respect to the means necessary to their realization.<sup>26</sup> If we move from A to C through B, C is an end with respect to A and B, but B is an end with respect to A.<sup>27</sup> “Intention,” Aquinas says, “is not only of the last end . . . but also of an intermediary end. A man intends at the same time, both the proximate and the last end.”<sup>28</sup> And again, “for things which act for an end, all things intermediate between the first agent and the ultimate end are as ends in regard to things prior, and as active principles (means) with regard to things consequent.”<sup>29</sup> Ends and means therefore are linked together in the plan we adopt through choice. That plan is something intelligible we try to bring about (to realize, to make happen) in order to accomplish something.<sup>30</sup>

### INTENTION AS COMMITMENT TO HUMAN GOOD

This is relevant to our consideration of the relationship between intention and side-effects. If what one chooses one intends; and if (as we said above) *reasons* lead us to choose,<sup>31</sup> and those reasons taken together constitute our plan or proposal for acting; then what we do is defined by those reasons. I said above that choice matters first and foremost because the reasons that lead us to choose act as principles of self-determination shaping the persons we become. As I have shown those reasons, formulated as our plans and purposes, include both ends and means. So it is our intended ends and means that we resolve, try, stretch toward, to bring about. The unintended side-effects we bring about however are not the reasons that lead us to choose. Though we bring them about, and if foreseen, we bring them about voluntarily, they are not what we resolve to bring about. They are not part of our proposal adopted by choice. *They do not motivate us to act*; sometimes it is quite the reverse; sometimes they cause us to

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Foot, *op. cit.*, at 144.

<sup>26</sup>“A terminus (end) is something last, not always in respect of the whole, but sometimes in respect of a part.” Aquinas, *ST*, I-II, q. 12, a. 2, ad 2.

<sup>27</sup>*Ibid.* at q. 12, a. 2c.

<sup>28</sup>*Ibid.* at a. 3c.

<sup>29</sup>Aquinas, *Summa Contra Gentiles (SCG)*, bk. 3, ch. 2, no. 5; see also *De Malo*, q. 2, a. 2 ad 8.

<sup>30</sup>“There is a plan or proposal wherever there is *trying*, or doing (or refraining from doing) something *in order to* bring about something or *as a way of* accomplishing something.” Finnis, “Intention in Tort Law,” in *Philosophical Foundations of Tort Law*, ed. David G. Owen (Oxford: Clarendon Press, 1996), p. 229; see also Joseph M. Boyle, Jr., “*Praeter Intentionem* In Aquinas,” *The Thomist*, 42 (1978), pp. 649-665, esp. p. 664.

<sup>31</sup>The proposition “reasons lead me to choose” is commonly accepted among philosophers; for example, Donald Davidson writes: “The primary reason for an action is its cause”; an “intentional” action is one that is “done for a reason”; Davidson, “Actions, Reasons, and Causes” (1963), in *Essays on Actions and Events* (Oxford: Clarendon Press, 1980), pp. 3-19, quotes on p. 4 and p. 6 respectively. P.M.S. Hacker, commenting on Wittgenstein, writes: “Intentional actions . . . are actions for which *it always makes sense to ask for the agent’s reasons.*” P.M.S. Hacker, “Wittgenstein: Mind and Will,” *An analytical commentary on the Philosophical Investigations*, Volume 4, Part I, (Oxford: Blackwell Publishers, Inc., 2000), p. 240; cf. Anscombe, *op. cit.*, at 9.

hesitate, when serious enough, they move us not to choose an envisaged plan of action.<sup>32</sup> In short, they are neither means chosen nor ends intended; they do not pertain to the “object” morally specifying an act.

This is important. Such unintended consequences stand outside our reasons for acting, and hence outside of the relationship of means to ends that constitutes our chosen proposal. Such effects are not our goal; they are not what we judge to be choiceworthy; there is no commitment to bringing them about; they are not what an agent “sets his or her heart on.”<sup>33</sup> We intend only what we have positive interest in bringing about. By this I do not mean having positive feelings or sentiments. This may or may not be the case. Rather I mean having rational and volitional interest. I am interested in bringing about the states of affairs I intend; in this sense I *want* to bring them about, even if sometimes my feelings register repugnance. A hit man may find the shooting of his victim emotionally repugnant; but if he wants his money, he makes the object of his rational interest the bringing about of his plan; he resolves, tries, sets about to kill his victim. In this sense he *wants* his victim dead.<sup>34</sup> The side effects we bring about are not part of our plan or purpose. In *this* sense we do not want to bring them about. We have no committed interest in their realization. They do arise as a result of intended purposes. But *they* are not what we intend; they do not move us. If we could realize our purpose without bringing them about, we would. They are not our reasons.<sup>35</sup>

Why is this relevant to self-determination? Because when I intend I envisage as ends and means states of affairs in which instances of basic human goods like friendship, human life, knowledge and the appreciation of beauty, marriage and friendship with God, or means that do or appear to promote such conditions, as objects of choice, are engaged by my will. These goods we might say are *committed* to my will, delivered into its charge. Or, if you will, my will is committed towards these goods, positively or negatively. Should I intend to destroy a good, damage it or impede its realization, even for good reasons, I set my will and hence myself at odds with it. “What one thus adopts is, so to speak, synthesised with one’s will, i.e., with oneself

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<sup>32</sup>Boyle writes: “The foreseen consequences of one’s bringing about an intended state of affairs are often considered in deliberating, but not as reasons *for* the action—rather, they are sometimes conditions *in spite of which* one acts. It is not for the sake of such conditions that one selects an option; it is not these effects to which one is committed in acting.” Joseph M. Boyle, Jr., “Toward Understanding the Principle of Double Effect,” in *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle*, ed. P.A. Woodward (South Bend, Ind.: University of Notre Dame Press, 2001), pp. 7-20, quote on p. 15.

<sup>33</sup>*Ibid.* at 17.

<sup>34</sup>The term “want” is accurately used if it is taken to mean rationally invested in or committed to bringing something about, but can be misleading if it is taken to mean having positive feelings in relation to one’s intended ends and means. Davidson acknowledges the problem of using the term “want” in reference to one’s reasons for acting, but argues that nevertheless “in a vast number of typical cases, some pro attitude must be assumed to be present if a statement of an agent’s reasons in acting is to be intelligible.” Davidson, *op. cit.* at 11.

<sup>35</sup>Boyle, *Praeter Intentionem* In Aquinas, p. 664.

as an acting subject; one *becomes* what one saw reason to do and chose and set oneself to do.”<sup>36</sup> Through the intending of ends and means one forms, reinforces, deepens, hardens, uproots and reforms one’s moral disposition in relation to human good. This is the primary element in the formation of character.<sup>37</sup> Though it is not the only element.

#### INTENTION, FORESEEN SIDE-EFFECTS AND SELF-DETERMINATION

I said above that one’s accepting of foreseen side-effects is an expression of voluntariness. It is voluntariness in the sense that in bringing about certain harms that we think we are likely to bring about through our intending, we voluntarily bring about those harms. Anscombe agrees saying such effects are “voluntary though not intentional.”<sup>38</sup> Some scholars, wishing to maintain a link between intention and foresight, say such harms are brought about by an “oblique intention” (to be distinguished from “direct intention”).<sup>39</sup> Finnis maintains the link by saying such harms are *not* caused *unintentionally*, since unintentionally implies “accident or mistake or lack of foresight,” but thinks the term “oblique intention” is an unfortunate piece of jargon derived from an unsound account of intention.<sup>40</sup> Whatever voluntariness accurately describes our causality in the bringing about of unintentional harms, our description is always implicitly qualified by some form of the verb “to accept”: i.e., “willingly *accepting* harmful side-effects. . .,” “voluntarily *accepting* . . .,” “intentionally *accepting* . . .” This qualification is telling. It connotes awareness and willingness, so it seems appropriate to say with Finnis that such harms are not entirely unintentional.<sup>41</sup> But it also connotes a lesser degree of active engagement of voluntariness. The two statements: “I accept that my action will bring about

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<sup>36</sup>Finnis, *Intention and Side-effects*, pp. 61-62. This “synthesis,” he says elsewhere, “is a real, empirical (though spiritual), and inbuilt effect of one’s adopting a proposal. Whatever consequences lie *outside* one’s proposal, because neither wanted for their own sake nor needed as a means, are not synthesized into one’s will.” Finnis, *Intention in Tort Law*, p. 244.

<sup>37</sup>Wittgenstein relates intention and character in follows quote: “Why do I want to tell him about an intention too, as well as telling him what I did? – Not because the intention was also something which was going on at the time. But because I want to tell him something about *myself*, which goes beyond what happened at that time.” Ludwig Wittgenstein, *Philosophical Investigations*, tr. G.E.M. Anscombe, 3<sup>rd</sup> edition (Oxford: Blackwell, 2001), no. 659, p. 141. Commenting on this Hacker states that to reveal to another one’s intention “may be to reveal something about one’s character. It is to lay bare one’s objectives at that time . . . In appropriate contexts, it is to disclose something about what considerations moved one to action or tempted one to action.” Hacker, *op. cit.*, at 259.

<sup>38</sup>Anscombe, *Intention*, p. 89; see also Stephen Brock, *Action and Conduct: Thomas Aquinas and the Theory of Action* (Edinburgh: T & T Clark, 1998), p. 197.

<sup>39</sup>H.L.A. Hart, “Intention in Punishment,” in *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Clarendon Press, 1968), pp. 120-21; Glanville Williams, *The Mental Element in Crime* (The Hebrew University of Jerusalem, Lionel Cohen lectures) (Jerusalem & Oxford: Magnes Press, 1965), p. 10.

<sup>40</sup>Finnis, *Intention and Side-effects*, pp. 47-48.

<sup>41</sup>One might even say they are done “intentionally” in a loose sense in which whatever one brings about not by accident but voluntarily, fully aware that one’s behavior will cause it, is done intentionally. But they are not intended in the stricter sense of being chosen as means or sought as ends.

harm X,” and “I intend harm X”, both describe the engagement of the voluntary self, but at different depths. Catholic moral tradition, while always making a distinction between those evils we intend and those we merely bring about, has agreed that we are responsible for both, though not in the same way. One’s responsibility for foreseen side-effect lies precisely in the fact that they are foreseen and voluntarily accepted, and hence could have been avoided by not choosing in a certain way.<sup>42</sup> As Grisez writes: “since side effects are freely accepted, it makes sense to ask whether one ought to accept them.”<sup>43</sup> But because they are not among the reasons moving us to act, not among the states of affairs desired for their own sakes or for the sakes of something else, the voluntariness that brings them about is weaker, less self-engaging and hence less self-determining than the voluntariness of intending. The voluntariness entailed in intending is voluntariness in its fullest sense.<sup>44</sup>

### INTENTION AS A SPIRITUAL ACT

At the outset of this essay I raised the question of whether intention is an internal act separable from, though usually accompanied by, the physical behavior that carries it out; or whether or to what extent external physical aspects of our behavior and close-in effects caused by our behavior are necessarily intended. My contention is that it is the former, that intention is a spiritual act, an act of the will,<sup>45</sup> an act of the existential self, initiated and commanded by reason, and, ordinarily, but not necessarily, carried out by bodily behavior. Intention is first and foremost a spiritual act. One might object saying this is too dualistic, that it makes mind and will one thing, and body another, intention all in one, and body just there to do the mind and will’s bidding. The objection is important and flags an error in mind-body theory that must be avoided; the error holds that body is instrumental to mind and will, ancillary to the self of consciousness and freedom: my body is not me, though I *use* my body to execute many of my purposes in a material universe.

I think my account avoids this error. It presupposes, with Catholic tradition, that the human person is a unified integrated whole constituted of a material body and an immaterial soul. In man reason and freedom are intrinsically linked with and mediated through man’s organic self. Just as intellectual acts are spiritual though dependent on sensations, so volitional acts are spiritual though linked to emotions. Body and soul are inseparably one.<sup>46</sup> I am not

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<sup>42</sup>In Catholic tradition the question of the precise way in which, or degree to which we are responsible for harmful unintended side-effects has been systematized principally through two concepts: *proportionality* and *material cooperation in other’s wrongdoing*. For a consideration of the former see Brugger, *Capital Punishment and Roman Catholic Moral Tradition* (Notre Dame: University of Notre Dame Press, 2003), pp. 184-85; for a helpful discussion of the latter see Grisez, *Difficult Moral Questions* (Quincy, Ill.: Franciscan Press, 1997), appendix 2, pp. 871-897.

<sup>43</sup>Germain Grisez, *Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983), p. 240.

<sup>44</sup>Boyle, *Toward Understanding the Principle of Double Effect*, p. 14; Finnis, *Intention and Side-effects*, p. 62.

<sup>45</sup>Aquinas, *ST*, I-II, q. 12, a. 1c; q. 13, a. 1c.

<sup>46</sup>John Paul II, Encyclical Letter *Veritatis Splendor* (1993), nos. 48-49.

saying that intention ‘happens in mind’ and not ‘in body’, since everything that ‘happens’ in and to a human person happens in and to a conscious free bodily being. I am contending that this spiritual-embodied person has multiple capacities the realization of which may be bodily (e.g., growth), spiritual (e.g., thought) or bodily-spiritual (e.g., biofeedback). Intending is not an actualization of an organic capacity. It is the actualization of the freedom that separates human persons from non-personal creatures. The volitional resolving we call intending is an existential self-determination. As such it is the actualization of a capacity that is not per se outwardly observable. In fact, one can intend to do anything one thinks one can do, and sometimes chooses to do what is impossible. For example, Smith offers Jones ten grand for killing Brown and Jones agrees. But Brown, unbeknownst to both Smith and Jones, is already dead. Moreover, immediately after agreeing, Jones himself may suffer heart arrest, never get beyond saying “it’s a deal,” yet go straight to hell for murder. Intending therefore is rightly referred to as an internal act separable (though not mutually exclusive) from the external behavior that carries it out. It follows that what I intend and what I accept as side-effects is not settled by looking at outward behavior.

#### WHAT I INTEND IS NOT SETTLED BY LOOKING AT OUTWARD BEHAVIOR: OBJECTIONS

I said above that the view that holds that some effects (e.g., Sebastian’s death), because of their physical circumstances (e.g. proximity to Alexa’s shooting), are necessarily intended seems like “common sense.” Despite seeming commonsensical, the view proceeds from a conception of intention that fails to characterize intent consistently in terms of the intelligible reasons moving an agent to act but rather in terms of what is outwardly observable.<sup>47</sup> This failure to characterize action from the “internal” perspective of the person acting and *not* from the perspective of an inquisitive honest observer, is common in the philosophical literature on intention.<sup>48</sup> Two common ‘hard case’ examples in which it plays out are the cases of the fetal craniotomy and the “fat man in the cave”. In the first example, the question is posed whether a doctor performing a life saving emergency procedure on a pregnant woman can extract from her birth canal a pre-born baby whose head is too large to fit through her birth canal by crushing the baby’s skull, and do so without intent to kill the baby? A relevant circumstance is that without

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<sup>47</sup>Jean Porter’s analysis and criticism of the action theory of Finnis/Grisez/Boyle proceeds predominantly from a third party perspective; for example: “As long as the agent acts in pursuit of an aim which is admittedly good . . . it will always remain possible to describe the act in question in terms of the attainment of the good which is sought, omitting any reference to the bad which it brought about. And if this is so, then there is no way to rule out the possibility that the agent’s intention is determined by the good which he seeks, and not by the bad effect which he brings about.” Porter, *op. cit.*, at 626-627; see Finnis, Grisez and Boyle’s reply to her essay: ““Direct” and “Indirect”: A Reply to Critics of Our Action Theory,” *The Thomist* 65 (2001), pp. 1-44.

<sup>48</sup>Austriaco, for example, proposes a procedure of “questioning” agents about how they understand their own actions to see if their intention seems intelligible to us: “In performing the procedure of extracting the gravid uterus (which leads to the death of a non-viable fetus), 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.” Austriaco, *op. cit.* at 92, emphasis added.

performing the procedure both the mother and baby will die.<sup>49</sup> In the second, the question is whether a group of spelunkers (potholers) can extract a fat man from the lone egress hole in a cave in which he's got himself stuck by dynamiting him out of the way, and do so without intending to kill him? A relevant circumstance is that water is rising in the cave and unless the hole is opened all the potholers will die. The actions carried out in these two cases, as in the *Alien v. Predator* case, conform to criteria articulated above: the harmful cause is close-in to the harmful effect (i.e., the behavior is carried out on the one harmed); the harmful effect follows immediately from the causal behavior; and the harmful effect is foreseen. So, many suppose that the deaths of Sebastian, the fetus, and the fat man are necessarily intended by those whose voluntary behavior brings those deaths about.

Kevin Flannery, S.J., argues that defenders of the unintended killing thesis in the case of craniotomy resort to euphemism in order to argue for its liceity: "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."<sup>50</sup> But it is not at all clear that any illicit renaming has gone on. The baby's death is *not* what saves the mother, and his or her death is *not* what the doctor aims at.<sup>51</sup> The baby's being removed from her birth canal is what saves the mother; for the baby to be removed, his or her skull needs to be narrowed sufficiently so it can fit through the birth canal; the only way to narrow the baby's skull is to crush it. However in the case of this example the morally relevant point, *constantly* missed or mischaracterized by critics in the literature, is this: the crushing is not done *to* kill the baby, but *to* narrow its skull; the *what* of the act is "narrowing;" the *why* is "to be able to remove the baby;" the unneeded and unwanted and foreseen tragic side-effect is the child's death.<sup>52</sup> Defining craniotomy as skull reshaping (or narrowing) is *not* a euphemism for killing. It is *what* the doctor does *in order to* save the mother. The baby's death contributes nothing to the mother's healing. The evidence is that, if the baby is already dead and the corpse is removed in exactly the same way as if it were still alive, the

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<sup>49</sup>This example is particularly sensitive to U.S. pro-lifers who have fought valiantly and against serious opposition to ban the gruesome killing procedure known as partial birth abortion, an elective procedure designed specifically for killing late term babies.

Therapeutic recourse to craniotomy was more common before the advent of modern surgical procedures like the cesarian section. But it is still faced today in the developing world where medical resources or knowledge are limited.

<sup>50</sup>Flannery, *op. cit.*, at 511. The same 'redescribing' argument has been made by other scholars; see Austriaco, *op. cit.*, at 83-84; Stephen Brock, *op. cit.*, at 204-205, n. 17; Anscombe, *Medalist's Address: Action, Intention, and 'Double Effect'*, 63; Jean Porter, "'Direct' and 'Indirect' in Grisez's Moral Theory," *Theological Studies*, vol. 57 (1996), p. 620.

<sup>51</sup>Warren Quinn words it this way: "It is not death itself, or even harm itself, that is strictly intended, but rather an immediately physical effect on the fetus that will allow its removal;" Quinn, *op. cit.*, at 25, see also note 6.

<sup>52</sup>Leonard Geddes writes, "The surgeon must remove the child from the mother's womb; the dimensions of the child are such that if the surgeon attempts to remove it without changing these dimensions the mother will surely die. He therefore alters these dimensions in certain ways. A necessary but quite unneeded and unwanted consequence of the procedure is that the child dies." Leonard Geddes, "On the Intrinsic Wrongness of Killing Innocent People," *Analysis*, 33.3 (1972), pp. 94-95; quoted in Boyle, "Double Effect and a Certain Type of Embryotomy," *Irish Theological Quarterly*, vol. 44 (1977), p. 308.

benefit to the mother is exactly the same. The thesis does not dodge the violence of the act or its repugnant nature. And it is not euphemistic. It is specifying precisely the intelligible plan the doctor sets himself to realize. The term craniotomy etymologically means incision in the skull. And both Webster's 9<sup>th</sup> and the New Shorter Oxford dictionaries define it as "opening the skull" with *no* mention that it entails killing. Is defining it as "opening the skull," also 'artificially redescribing' the act? No, it is only a more precise description. Flannery's refutation from renaming is therefore unsound.

Flannery makes another argument. He says there is a difference in the logical structure between the classic case of a hysterectomy that brings about the death of a fetus, and a craniotomy that brings about the same thing: a hysterectomy is performed *upon* the woman, and a craniotomy is performed *upon* the fetus; further, a hysterectomy brings about a good for the woman upon whom it is performed, but a craniotomy brings about no good for the fetus upon whom it is performed. (Although he admits in passing that the craniotomy does aim at a good, namely the woman's health.) His conclusion is that given the logical structure of the craniotomy, "the death of the fetus is only artificially separated off from the means," meaning that in *reality* it is part of the chosen means.<sup>53</sup> This argument can be formulated more precisely as follows: if harmful behavior is performed on an individual; and it is performed not for the good of the individual upon whom it is performed, but for some other good (e.g., the good of another person, like the fetus' mother); then the harming is necessarily part of the intended means. Is this argument sound? If it is, then by implication the reasoning of Aquinas specified in his famous discussion of killing in self defense is unsound.<sup>54</sup> Aquinas says that an act of self-defense can have two effects, one good, namely saving one's life, the other bad, namely the killing of the aggressor. If one's intention is to save one's own life, and the measure of force used is no more than necessary to bring this about, then one blamelessly uses such force, even if the force kills the aggressor: "It is not necessary for salvation that a man omit the act of moderate self-defense in order to avoid killing the other man."

Joseph Boyle applies this reasoning to the case of craniotomy:

The structure of the craniotomy case is precisely similar. There is a piece of behavior – the craniotomy – which has two effects: the killing of the fetus and the saving of the mother's life. The latter alone is intended. The lethal effect of the craniotomy follows from the minimum required to save the woman's life. If the killing of the fetus is a means to saving the mother's life then so would the killing of the attacker be a means to saving one's own life. If either were a means then the death in each case would necessarily be the state of affairs defining the act. The behaviour in one case is the craniotomy, in the other – perhaps – shooting a gun. What is intended in the latter case is one's self-preservation – what one is doing is defending himself or more immediately, thwarting an attack. In the other one's intention is saving the mother – what one is doing is saving her life – or more immediately changing the dimensions of the skull. I can see no distinction: like the act of self-defense, the craniotomy is an act with two effects – one

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<sup>53</sup>Flannery, *op. cit.*, at 513.

<sup>54</sup>Aquinas, *ST*, II-II, q. 64, a. 7c.

deadly, one lifesaving.<sup>55</sup>

An objection might be made that a fetus cannot be considered an aggressor, much less an unjust aggressor, since it in no way can be held morally responsible for the danger that its presence threatens to its mother. But Aquinas does not make his analysis of the lawful use of lethal force by private persons dependent on the moral responsibility of the aggressor. He specifies only that the one upon whom the force is used is an “aggressor” (*invadens*), which implies that such a one may not be morally responsible for his aggression.<sup>56</sup> Nevertheless, the question of whether the fetus can be termed an aggressor, or, as in the tradition, materially unjust, is not relevant to the question of whether his killing is direct or indirect (although it *is* relevant to the question of whether there is proportionately grave reason to use force against him, and if so, to what degree). If for example we imagined a fetus with adult consciousness and bad will, who had the extraordinary ability to expand his head to twice the normal size, who, in an attempt to harm his mother, intentionally expands his head as he is being born *precisely in order* to get stuck in his mother’s birth canal so she will die. Knowing that his deliberate act puts both his own and his mother’s life at risk, could the choice to narrow his skull to the degree necessary to remove him from his mother’s birth canal be done without the intent to kill? Is foreseeability or inevitability of effect the determining factor? Or take for example the case of a deranged (and hence not morally responsible) man in a suit of armor, rushing at me with an ax shouting that he’s going to kill me. I have a gun. Because of his armor, there is no place on his body against which a bullet would have any effect, except, because his helmet visor is open, the flesh of his face. The only act of self defense proportioned to the end of stopping his aggression is my shooting him in the face. But I foresee that shooting him there will kill him, for argument’s sake, let’s say with at least the same certitude with which the craniotomy doctor knows his procedure will kill the baby. Can my shooting him in the face – very clearly an act of self-defense, very clearly proportionate to the end of rendering him incapable of causing harm, and very clearly lethal – be chosen without intending his death? It seems to me that it can. It is not his death that I am after, that I commit myself to bringing about, but his being rendered harmless. And so I intend an act of self defense and I carry out the act upon the person himself and he immediately dies as a result. Inevitability of outcome is not what is central to determining my intention, even though it sometimes can be an indication of intent. What is central is the specific proposal adopted by choice by the acting person in response to deliberation over relevant goods at stake. But since my life is preserved by stopping his attack, and his attack is stopped by behavior that not only incapacitates him but kills him, his death is mistakenly thought to be the chosen means of preserving my life—whereas, should my shot in his face hit the bone of his forehead and glance off but have enough force to knock him out but not enough to kill him, my life would be preserved just as well. The causal sequence alone therefore is not determining. The plan of

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<sup>55</sup>Boyle, *op. cit.*, at 311.

<sup>56</sup>This conclusion is explicitly stated in papal teaching. Considering the lawful use of lethal force against aggressors in self defense *Evangelium vitae* teaches: “the fatal outcome is attributable to the aggressor whose action brought it about, *even though he may not be morally responsible because of a lack of a use of reason.*” John Paul II, Encyclical Letter *Evangelium Vitae* (1995), no. 55, emphasis added.

action I set before myself is. It is not my purpose to kill him, not the proposal I put before myself, not what I am trying to bring about. Although I intended man-killing behavior, I did not intend it under the morally relevant specification of killing. I intended it as an act of proportionate self-defense. The same can be said of the acts in the three examples stated above.

Flannery's confusion seems to stem from wider confusions about act analysis in general.<sup>57</sup> His criteria for determining whether something is intended or *praeter intentionem* are difficult to determine from his somewhat elliptical account. If I am correct, he argues that in the mind of an agent certain harmful effects caused by that agent's behavior cannot be logically (conceptually?) "separated off" from what he intends: "If in the craniotomy case, the killing of the fetus cannot be separated off from the crushing of its skull, then it must be included in the agent's intention." In just three pages of text, Flannery uses in this way the term *separate* (and its derivatives *separable*, *separated*, *separability*) ten times; a few examples include: "[Boyle's premise] presupposes that it is always possible to separate out in a way that has bearing on the moral situation two aspects of the sort of act in question, calling one aspect 'the means' and the other 'the indirect effect';" "Boyle has left unexamined the presupposition that it is always possible to separate out two aspects of the act in question, identifying one as the means the other as the side-effect;" "the soundness of this argument depends on whether one can separate in a morally significant way the "killing" from the alteration of the dimensions of the child's skull."<sup>58</sup> He even implies that defenders of the thesis (whom he refers to by the pronoun "we") separate the two *while really knowing* that the killing is part of their intended means: "if we want to make it clear that we do not wish to include it [i.e., the killing] within the means, we must artificially separate off an aspect of the operation which we regard as truly (and solely) within the compass of the means."<sup>59</sup> Finally, he argues that defenders of the unintended killing thesis "fail ever to argue for the notion that one can separate off from the compass of the means the death of the fetus in the craniotomy case."<sup>60</sup>

If my thesis is correct that intending is an internal act, an actualization of human freedom not outwardly observable, then *conclusive* evidence can never be evinced by me or any agent that one *really* has not intended to kill when carrying out behavior that looks like one has.<sup>61</sup> This

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<sup>57</sup>For example, he makes the error of saying that if a hysterectomy is performed on a pregnant woman's cancerous uterus, but the cancer is not immediately life threatening, "the hysterectomy becomes not just performing an hysterectomy but also a direct killing." But the killing need be no more direct than it would be if the cancer was immediately life threatening; what's different about the two scenarios is that in the first there is what the tradition has called "proportionately grave reason" for tolerating the harm to the fetus, in the second there is not grave reason, which means it would be immoral to proceed with the operation knowing the harms it will cause; see *Kevin Flannery, S.J., "Natural Law Mens Rea Versus the Benthamite Tradition," The American Journal of Jurisprudence*, 40 (1995), pp. 377-400, quote on pp. 394-95.

<sup>58</sup>Flannery, *What is Included in a Means to an End?*, pp. 504-506.

<sup>59</sup>*Ibid.*, at 511-12.

<sup>60</sup>He suggests we can "go further than this and say that there is positive reason *not* to separate off the death in this fashion"; *ibid.*, at 510.

<sup>61</sup>This is *inter alia* because in telling others one's intention one can always deceive them.

does not mean that when one intends something one's intention is not related to some objective state of affairs, that intention is just a matter of focusing one's mind on something or describing to oneself what one wants one's intention to be. Someone wills the end (something in itself desirable) and that part of reality which one thinks one needs to bring about in order to bring about the end. So, our willing of the end causes us to will the means. Does this mean one can intend something that is impossible? In one sense, yes. Because intention is an intelligible plan to bring about some state of affairs, one can intend only what one thinks is possible to bring about. It might in fact not be possible. But to the extent that one sees some state of affairs as desirable to bring about; and to the extent that one believes one can realize that state of affairs through acting; to that extent can one intend to bring about that state of affairs. It might be the case that there is an objective impossibility standing between me and the realization of my intention. It seems to me this does not mean we cannot intend it. Settling oneself to bring about the impossible might of course mean one is not in one's right mind. But it might merely mean that one has made a mistake in judgment.

What convinces Flannery that a person *cannot* form a plan of action that excludes elements one foresees one will bring about? He provides no analytic argument. His contention ultimately rests on an unstated erroneous proposition: that intention is reducible to a combination of inevitable foreseeability and proximity of acting agent to caused effect.<sup>62</sup> But as I have said, what is intended and unintended is determined by an agent's settling himself on an intelligible plan of action judged choiceworthy for itself or for what it promises by way of bringing about some more remote end. And though in a fallen world dissimulating is unfortunately often intertwined in peoples' self-justification of their behavior, it is not to their self-justifications that we turn in identifying intention, but rather to the reasons they themselves have for doing what they do. One who intends X knows he intends X; he may not want anyone else to know; but he knows, not because he has privileged access to his mental files; not because he peers into his mind and observes his intention there as he might if he were trying to imagine what something looks like, or remember a face when he hears a name; not by observation of his outward behavior; he knows he intends X because his intention consists in his adopting of his own reasons for acting; and he knows his own reasons because he formulated them himself. *He* formed his intention; the plans and projects he pursues are the plans and projects *he* came up with.<sup>63</sup> If a doctor performing a hysterectomy or craniotomy or cesarian section intends to kill the baby during the procedure, that is his working plan of action. He has identified *the death* (among perhaps other things) as choiceworthy, and aims at it; and knows he does. If the baby does not die, his plan to that extent fails.

A similar but inverse question might be asked: will a doctor performing a craniotomy,

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<sup>62</sup>For example, Flannery asserts: "If and when that happens [i.e., when medical science advances sufficiently], the logical structure of the act [of craniotomy] will have changed in conjunction with the state of medical technology." *Ibid.*; in other words, when the possibility becomes a real living alternative, the foreseeability of the baby's death will not be certain; one *then* will be able to conceptually "separate out" the effect from the "compass of the means"; foreseeability is the determinative factor.

<sup>63</sup>Wittgenstein holds that we do not come to know our intention based upon observation or evidence: one does not assert 'I intend to X' on the basis of evidence, or have a hunch one is intending then examine one's mind to see if there is any evidence. Hacker, *op. cit.*, at 258.

specified precisely as cranium narrowing for the sake of the baby's removal for the sake of saving the mother, *know* with the same clarity that he is *not* aiming at the baby's death when he performs the act? I grant that the psychology of the act is likely to be different from the previous example. The 'closer in' the harm causing behavior to the harmful effect, and the more foreseeable the harm, likely the more intense will be the felt experience that one is causing the harm. And indeed one is. To someone ordinarily disposed to reverence, protect and promote human life, especially vulnerable human life like that of the unborn, the feeling is likely to be vexing. The person will *know* however that the baby's death was not what he was aiming at; death offered him no gain, only loss; when he extracts the baby, we can imagine him looking down anxiously to see if, by some grace, *the baby is still alive*, though he knows this almost certainly will not be the case. But if by a miracle the baby was alive, the intention would still have been *entirely fulfilled because the baby's death was not part of it*.

The doctor who aims at death might also feel reluctant; grasping the baby's head, he might hold his breath, crinkle his brow, close his eyes before he squeezes as tightly as he can; he then withdraws the baby, and, perhaps with an overwhelming feeling of repugnance, looks down *to make sure it's dead!* If it is still alive, his plan to that extent *fails*. It is clear that this doctor is justly characterized—morally speaking—as being *a killer*. I do not think it is fair to say the same of the first doctor.

Certain opponents of this view hold that both doctors intend death;<sup>64</sup> it follows that if they do so for the same end (i.e., for the sake of the life of the mother), then *ceteris paribus* they *do* the same act. This erroneous simplification of moral analysis collapses intention into a combination of foreseeability and physical causal consequences. Nicanor Austriaco, for example, articulates the erroneous principle as follows: "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."<sup>65</sup> If immediate physical causality is the necessary determinant of intention then the soldier in a fox hole who willingly throws himself on a live grenade to save the life of his comrade in the hole with him intends to kill himself; and the woman who shoots her armored aggressor in the face to save herself from rape intends her aggressor's death; and the F-16 fighter pilot who shoots down a

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<sup>64</sup>See Nancy Davis, "The Doctrine of Double Effect: Problems of Interpretation," in *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle*, ed. P.A. Woodward (South Bend, Ind.: University of Notre Dame Press, 2001), p. 122; Nicanor Austriaco, *op. cit.*, at 98.

<sup>65</sup>Austriaco, *On Reshaping Skulls and Unintelligible Intentions*, 89. The question might be asked whether one can intend something that is impossible. Because intention is an intelligible plan to bring about some state of affairs, one can intend only what one thinks is possible to bring about. It might in fact not be possible; but to the extent that one sees some state of affairs as desirable to bring about; and to the extent that one believes one can realize that state of affairs through action; it seems right to say to that extent one can intend. It might be the case that there is an objective impossibility standing between me and the realization of my intention. It seems to me this doesn't mean we cannot intend it. For example, if the half-giant Hagrid believes he can squeeze the grumbles out of his good friend Harry Potter who is in a beastly mood, and, settling on this plan, proceeds to squeeze Harry to death, is there any doubt that Hagrid intended to squeeze the grumbles out of Harry? Settling oneself to bring about the impossible might of course mean one is not in one's right mind. But it might merely mean that one has made a mistake in judgment.

passenger airplane that terrorists are about to crash into a crowded sky scraper intends to kill everyone on board; and the bomber who in wartime drops a bomb on an enemy's dangerous weapons depot knowing civilians are inside intends to kill those civilians; and the woman who throws herself out a 10<sup>th</sup> story window to escape engulfing flames intends to kill herself; and the sailor who closes and locks his submarine's flood doors before his vessel swamps locking out fellow sailors unable to reach the door in time intends to kill his fellow sailors; and when I say "no" to my four year old daughter knowing my words will be linked immediately to her becoming sad, I intend my daughter's unhappiness; and of course Alexa intended to kill Sebastian?<sup>66</sup> A superficial consideration of the so called "action narrative"<sup>67</sup> of each of these events, links the killing or harming in an immediate causal series with someone's choice to do something in order to bring about some good. But it is unreasonable to say that in each case the harmful effect was intended. Intention is not assessed by looking at "action narratives" or "immediate causal chains of events" or anything else except the intelligible proposal that one's reason sets before one's will in order to attain some intelligible benefit. This and this alone determines intent and this should be what we consider when analyzing what a person does.

#### SEBASTIAN'S DEATH WAS *PRAETER INTENTIONEM*

Two points by way of conclusion. First, the morally significant difference between the responsibility one has for the harms one intends and the harms one brings about as unintended side effects is not grounded in a difference between the extent of the harms that result in the two cases. The extent of the harms could be exactly the same, as they are when a physician prescribes narcotics to end the life of a burn victim whom he considers better off dead, while the nurse, while foreseeing the drug's lethal effect, administers them solely to deaden the patient's pain. The two agents' responsibility differs because their wills with respect to the effects differ. In the first, the effect's intelligibility precisely *as harmful* is willed, is volitionally (even if not always emotionally) embraced; ipso facto the orientation of that will towards the harmed human good is determined. A disposition against the good is incorporated into the agent's will. In the second, the intelligibility of the effect's harm is foreseen and tolerated but never embraced; the harm is never made the operative aim of the will's actualization. Warren Quinn answers the question with a Kantian reply, different from but consistent with what I have proposed: the former treats those harmed as *for the sake of* the agent's purposes, while the latter does not.<sup>68</sup>

Second, to say that some harms are not intended is *not to say* the acts that bring them about are thereby morally legitimate. Opponents of the view I'm defending often protest saying that if this account of intention is correct, then all one needs to do to justify acts like therapeutic

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<sup>66</sup>Austriaco's essay is marked from beginning to end with the erroneous methodological approach to the determining of intent that adverts to the perspective of what a reasonable third party observing the event would be warranted in concluding is being intended.

<sup>67</sup>Austriaco, *op. cit.*, at 90.

<sup>68</sup>Warren Quinn, *Actions, op. cit.*, at 35.

abortion is ‘not intend’ to kill.<sup>69</sup> This is a caricature. Actions not bad by virtue of their intended objects can be bad in other ways. They might, for example, violate the Golden Rule by being selfishly partial in the goods they prefer and the harms they tolerate. I might for example restrain my own children from playing in the back yard that I have freshly dusted with rat poison, but allow my neighbor’s children to play there, wrongly tolerating the harms that might come to them, without ever intending their harm. Consistent with Catholic moral tradition, my account assesses the morality of causing harm not only in the light of the agent’s intention but also in terms of whether causing harm under the circumstances is reasonable to permit, *even if not intended*. The condition for reasonableness has sometimes been called the principle of proportionality (or proportionate reason).<sup>70</sup> Aquinas formulates it in relation to the question of lawful killing in self-defense as follows: “Though proceeding from a good intention, an act may be rendered unlawful, if it is out of proportion to the end. Wherefore if a man, in self-defense, uses more than necessary violence, it will be unlawful: whereas if he repel force with moderation his defense will be lawful.”<sup>71</sup> In the case of Alexa this would mean using no more force and causing no more harm than is necessary for bringing about her good end (i.e., of protecting the world from the alien); under the circumstances she judges she needs to kill the alien; since it is growing rapidly inside Sebastian’s chest, and since she has good reason to fear that if it bursts out she will be unable to stop it before it overtakes her, she judges that she needs to shoot it while it is still in Sebastian; she accepts the harm to Sebastian. If there was a reasonable alternative, that included preserving Sebastian’s life and killing the alien, and had Alexa apprehended that alternative, she would have been morally obliged to choose it; in other words, Alexa would not have been justified in shooting the alien while still inside Sebastian, *not* because she would have thereby intended Sebastian’s death, but because unintentionally, but with foreknowledge, she would have caused more harm than was necessary to bring about her good end. This would be a grave injustice against Sebastian and hence a grave moral wrong.

The assertion therefore that the baby’s death in the case of the craniotomy can be

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<sup>69</sup>“But this has the counter-intuitive result that nearly any evil result of an action could be a side-effect.” Flannery, *op. cit.*, at 507.

<sup>70</sup>This is not to be equated with “proportionate reason” as used among proportionalist ethicists, the most influential of which in the past 50 years was Richard McCormick, S.J.; he uses the term proportionate reason to mean a state of affairs—“morally relevant circumstances”—that justifies one in intending means (objects) traditionally termed intrinsically evil:

Common to all so called proportionalists . . . is the insistence that causing certain disvalues [i.e., intending an evil object in the traditional sense]. . . in our conduct does not by that very fact make the action morally wrong . . . . These evils or disvalues are said to be premoral when considered abstractly, that is, in isolation from their morally relevant circumstances. But they are evils. . . . The action in which they occur becomes morally wrong when, all things considered, there is not a *proportionate reason* in the act justifying the disvalue. Richard A. McCormick, “Killing the Patient,” *Considering Veritatis splendor*, ed. John Wilkins, (Cleveland, Ohio: The Pilgrim Press, 1994), p. 17, emphasis added.

<sup>71</sup>Aquinas, *ST*, II-II, q. 64, a. 7c. The *Catechism of the Catholic Church* (1997) teaches: “One is not exonerated from grave offense if, without proportionate reason, he has acted in a way that brings about someone’s death, even without the intention to do so.” (No. 2269)

unintended, does not imply that it would always -- or ever -- be morally legitimate to accept.