

Causal Constraints on Intention

A Critique of Tollefsen on the Phoenix Case

Steven J. Jensen

Abstract. Christopher Tollefsen, relying on the new natural law theory, has suggested that in the Phoenix abortion case, the action might be characterized simply as removing the baby rather than killing the baby. Tollefsen and other proponents of the new natural law theory fail to give proper weight to the observable facts of the world around us, and thereby tend to ignore the importance of observable causes in shaping the character of our intentions and our actions. An appreciation of the role of causes reveals that our intentions cannot so readily land on one description of an action and exclude other descriptions. For the Phoenix case, the description “harming the baby” cannot fall outside the doctors’ intention. *National Catholic Bioethics Quarterly* 14.2 (Summer 2014): 273–293.

In a recent article, Christopher Tollefsen used the account of moral actions found within the new natural law theory to justify what has come to be called the Phoenix abortion case, in which an abortion was performed in order to relieve life-threatening pulmonary hypertension in the mother.¹ In cases such as these, suggests Tollefsen, the action need not be characterized as killing the baby; it can be simply an act of removing the baby.

His comments are set within an exchange with Robert Koons and Matthew O’Brien, who wrote a lengthy article criticizing the new natural law theory and

Steven J. Jensen, PhD, is a professor of philosophy in the Center for Thomistic Studies at the University of St. Thomas in Houston, Texas.

¹ Christopher O. Tollefsen, “Response to Robert Koons and Matthew O’Brien’s ‘Objects of Intention: a Hylomorphic Critique of the New Natural Law Theory,’” *American Catholic Philosophical Quarterly* 87.4 (Fall 2013): 751–778.

advancing their own action theory.² In his response, Tollefsen defends the new natural law theory against the criticisms and offers his own critique of Koons and O'Brien. In this article, I will not be concerned with this broader exchange. I do not seek to determine whether Koons and O'Brien are correct in their criticisms or whether Tollefsen has adequately responded to them.³ My only concern is with the action theory developed by new natural law proponents and defended by Tollefsen in his article, especially as this action theory has casuistic application to cases such as the Phoenix abortion case.

Notoriously, new natural law theorists have defended craniotomy in cases of cephalopelvic disproportion, in which the head of the baby is crushed in order to remove the baby from the womb, thereby saving the mother from an interminable labor.⁴ Many other thinkers consider this action unjustified because it involves directly harming the baby. This craniotomy case is typically contrasted to the hysterectomy case, in which a pregnant woman is found to have aggressive uterine cancer. If treatment is delayed until the baby is viable, the mother is likely to die. The hysterectomy is justified because it is an act of removing a diseased organ, even though the baby will die as a result; the baby is not directly harmed or attacked but dies as a side effect of the hysterectomy.

New natural law theorists have treated the two cases in a similar manner, claiming that the harm to the baby in the craniotomy case is also indirect. The direct action performed is simply reducing the size of the baby's head, with the consequence that the baby is harmed. This same kind of reasoning has now been extended to the Phoenix case. Once again, the baby is not directly harmed; rather, he is simply removed from the womb.

Like Koons and O'Brien, I am concerned that such facile redescriptions of actions open the door to egregious abuses. Indeed, I will argue that such redescriptions, when applied to these cases of abortion, have already been used to justify killing the innocent. These are not merely abstract academic disputes. They touch at the souls of men and women making important decisions in their lives.

First-Person Account of Actions

Any action theory attempts to provide a precise characterization of human actions. What is it that the agent is most properly doing? In a broad sense, anything

² Matthew B. O'Brien and Robert C. Koons, "Objects of Intention: a Hylomorphic Critique of the New Natural Law Theory," *American Catholic Philosophical Quarterly* 86.4 (Fall 2012): 655–703.

³ This article is dedicated to a criticism of Tollefsen, but I should note that his article has many merits, not the least of which is its clarity. My focus in no way indicates that I fail to acknowledge the many occasions in which Tollefsen truly identifies the inadequacies of the arguments of Koons and O'Brien, nor does it indicate that I endorse the views of Koons and O'Brien.

⁴ Although this case is widely discussed, it has little bearing on the practice of advanced medicine, in which a C-section is readily available to resolve the medical complication. The case still has merit in helping to understand actions and their moral characterization.

that results from an action might be attributed to the agent. When a drunk driver gets in an accident in which other people die, we typically say that he killed them, as indeed he did. He did not, however, set out to kill them. Properly speaking, he drove recklessly, with the consequence that people died. In the so-called tactical bomber case, the bomber kills innocent civilians, for that is what happens as a result of his action; the killing of civilians, however, is not what he precisely performs, for he aims to destroy a military site, foreseeing that the civilians will die. A good action theory will provide the tools to separate out the various descriptions of our actions, identifying those that are most properly performed by the agent.

Tollefsen advocates what he calls an entirely first-person account of actions, in which the character of our actions depends solely upon the proposals we form and then choose. He divides human actions into three stages: the proposal, the choice or intention, and the execution.⁵ The doctor who performs the craniotomy, for instance, first deliberates and proposes the action, then chooses to perform the action, and finally actually carries it out. According to Tollefsen, the first stage is the crucial step. The proper characterization of the action comes from the proposal. The choice or intention is entirely derivative upon the proposal, for we intend to do that which we propose. Finally, the action executed might have a variety of characterizations, but the action that arises from the agent is only the action that he proposes and intends. If we can determine what the doctor proposes, then, we will also be able to determine the proper characterization of his action.

I do not wish to contest this aspect of Tollefsen's account. Rather, I am concerned with what Tollefsen puts into his proposals. The term "proposal" has a certain freedom and laxity about it, as if an agent could propose one thing but then change his mind and propose another. The impression left is that the precise description of the action is left to the whim of the agent.

Any account of action grants some freedom in the possible descriptions of an action. The standard case of palliative sedation (although probably not a realistic case) involves the action of sedating a patient in order to relieve his pain, but with the foreseen consequence that the patient's life will likely end sooner. In this scenario, the doctor is not entirely constrained in his proposal. He might propose to sedate the patient as an act of relieving pain, but conceivably he could deliberately propose to bring a quicker end to the patient's life. This proposal would make the action immoral.

Tollefsen acknowledges a freedom on the part of the agent in such cases, but he denies that his account gives unlimited license for redescribing actions. Fair enough. Perhaps it does not give unlimited license. Nevertheless, it might give too great a license. On his account, the doctor who crushes the skull of the baby has liberty to propose the action simply as "reducing the size of the head." This freedom, I will suggest, is liberty taken too far.

The question concerns the degree to which facts in the world around us constrain the proposal of the agent. On Tollefsen's account, the determination of the proposal depends only minimally upon observable facts. These facts, says Tollefsen, present us

⁵ Tollefsen, "Response to Koons and O'Brien," 759.

with possibilities for action; beyond that, the observable world places no constraints upon our proposals.⁶ In the craniotomy case, if the doctor proposes to bring about the death of the baby, then he performs an act of killing, but if he proposes merely to reduce the size of the baby's head, leaving the death of the baby outside his proposal, then his action is not characterized as a killing.

How does the doctor form his proposal? Through the goals he desires, says Tollefsen, and through what he takes to be needful for these goals.⁷ Both of these elements are deliberately first person, with the appearance of being subjective. The doctor happens to set the goal of saving the life of the mother, but he could just as well set other possible goals, such as saving the life of the baby by cutting the mother open. Once the doctor has set the goal of saving the life of the mother, his proposal is constrained only by what he takes to be needful to achieve this goal from his own first-person perspective. If he does not suppose that the death of the baby is needful, then he need not "propose" to kill the baby, for what is needed for his goal is not the death of the baby but only the reduction of the size of his head.

I will suggest a more robust role for the observable facts of the world around us, leading to greater constraint upon our proposals. For the formation of proposals, Tollefsen and the new natural law theory tend to ignore the important role played by causes in the world around us. These causes, I will argue, place strong constraints upon our proposals.

Concerning proposals, let us stipulate that we are dealing with well-informed agents. If Tollefsen's first-person account is simply a claim that misinformed agents might not intend actions according to observable behavior, then it is rather uncontroversial.⁸ Perhaps the doctor does not intend to kill the baby because he fails to recognize that a craniotomy is, by its nature, a killing. Perhaps this failure is unlikely, but nevertheless human beings pursue the good insofar as they are aware of it. A defect in their knowledge of the good might free them from certain constraints, even moral restraints, but it does not follow that the constraints do not exist or that they are relative.

One further note about our proceedings. Although we are primarily concerned with a person's planning or proposal, we will sometimes speak about intention as if it were interchangeable with the proposal. After all, the proposal and the intention do correspond with one another since intention is specified by the proposal. Furthermore, sometimes it will be more convenient to speak about what the agent intends in various situations than to speak of his proposals.

Means and Causes

Tollefsen correctly notes that our deliberations begin when we have set some end or goal. Further, the agent proceeds to determine what is needful to attain that

⁶ *Ibid.*, 760.

⁷ *Ibid.*, 752, 757. Sometimes Tollefsen uses the less subjective sounding "what is needful" rather than "what the agent takes to be needful" (see pp. 757, 770, 774).

⁸ Tollefsen's claim that reason and will "trump publicly observable facts" seems a bit stronger than a claim concerning misinformed agents ("Response to Koons and O'Brien," 764).

goal. Since we are dealing with a well-informed agent, there is no need to use the subjective sounding phrase “what the agent takes to be needful,” because the well-informed agent will take to be needful what in fact is needful. Indeed, it is better to drop the whole mention of “needful.” Often the means that we choose are needful only in the broad sense that some means or other is needful. If Anna sets the goal of going from London to Paris, she might fly, take a boat (together with car), or take the Channel tunnel. If she settles on an airplane, it is not strictly speaking needful, since she could take the other two options. Let us say, then (as new natural law theorists often do), that the agent’s plan begins with the goal and works back to various means, which in some manner help to attain the goal.

For these two elements—the goal and the means—Tollefsen concedes that the facts of the world set some constraints; namely, they present the possibilities.⁹ Anna cannot set the goal of going to Paris if Paris does not exist. She cannot consider the option of taking the Channel tunnel if it does not exist.

What counts as a means to the goal? A means, it would seem, in some way causes the goal. The airplane, the boat, and the Channel tunnel all cause Anna to get to Paris. Advocates of the new natural law theory seem somewhat averse to using the word “cause” in this situation. They prefer to speak, as Tollefsen does, of “what is needful” for the goal, or they speak of what “contributes” to the goal.¹⁰ They do not seem to have in mind anything different from what is conveyed by “cause.” Why do they avoid the obvious and everyday word “cause”?

Perhaps they are worried about the erroneous view criticized by John Finnis, Germain Grisez, and Joseph Boyle.¹¹ Certain theologians, they say,

tried to identify conditions under which an act’s bad effects would not be part of the act considered as a chosen means. But in trying to do this, they unfortunately failed to adopt and consistently maintain the perspective of the acting person. Rather than focusing on the precise object of the acting person’s choice, they focused on cause-effect relationships identifiable by outside observers. So, in trying to explicate the requirement that one’s chosen means include nothing bad, they reduced means to cause and said that any bad effect of an act must not be a cause of the good effect(s) for the sake of which it is done. . . . This was a mistake. That a bad effect issues from an act more immediately and directly than a good effect, or precedes and causes a good effect, does not by itself make the bad effect a means to the good.¹²

They seem to think that identifying the means with causes diverts one away from the first-person “perspective of the acting person” and commits one to the third person perspective of “cause-effect relationships identifiable by outside observers.”

⁹ Tollefsen, “Response to Koons and O’Brien,” 760.

¹⁰ See John Finnis, Germain G. Grisez, and Joseph Boyle, “‘Direct’ and ‘Indirect’: A Reply to Critics of Our Action Theory,” *The Thomist* 65 (January 2001): 40.

¹¹ Tollefsen (in “Is a Purely First Person Account of Human Action Defensible?,” *Ethical Theory and Moral Practice* 9.4 (August 2006): 443–444) also criticizes this error.

¹² Finnis et al., “‘Direct’ and ‘Indirect,’” 19–20.

I am not sure what it means to “reduce means to causes,” but it sounds like a bad idea. Certainly, not every cause is a means. On the other hand, every means is a cause of some sort. Apparently, because Finnis, Grisez, and Boyle are worried about those who find a cause and conclude that it is a means, they themselves avoid finding a means and calling it a cause. Whether we use the word “cause” or “contribute,” however, the meaning seems to be essentially the same: a means brings about the desired goal. If it did not, it could not possibly be a means.

In their analysis of the craniotomy case, new natural law theorists might avoid the terminology of “causes,” preferring instead to speak of “contributions.” Whatever word is used, however, it seems they have causes in mind. The death of the baby, they might say, does not “contribute” to the goal of ending the labor; rather, the reduction of the size of the head is what ends the labor. As such, the death of the baby is not a means to the goal, but the reduction of the head is a means. What they purport to say is that the death of the baby does not cause the labor to end. What does is the smaller size of the head (or at least it is a causally contributing factor).

This aversion for the word “cause” may have more than verbal consequences: it may lead new natural law theorists conveniently to overlook certain causes. This inadvertence is perhaps most evident in the case of self-defense. Grisez gives us the example of someone who holds a gun to an assailant’s head and pulls the trigger. Must this person, acting in self-defense, intend to kill the assailant? Evidently not, for—claims Grisez—she need propose only to stop the attack; she need intend only a self-defensive act.¹³

Certainly, the defender proposes to stop the attack, for she begins with the goal of saving her life and then searches for the means of doing so—that is, she must identify causes.¹⁴ She might escape, or she might stop the attack. Both would cause her life to be saved. If she settles upon stopping the attack, then she must look for causes here as well. How can she stop the attack? Does she consider holding the gun to the attacker’s head and firing the gun? Not immediately. First, another and prior step is needed. She can stop the attack, she realizes, by injuring the assailant. How can she injure her assailant? By firing a gun at his head. This middle step of injuring the assailant, which is missing in the analysis by Grisez, cannot be dispensed with. If firing a gun at someone’s head did not injure or kill him, then it would be useless in stopping his attack.¹⁵

Evidently, then, Grisez has overlooked an important cause that serves as a means of defense. Nevertheless, he still might claim that the defender need not intend to kill the assailant; she need intend only to injure him, for the attack will be stopped just so

¹³ Germain G. Grisez, *The Way of the Lord Jesus 2: Living a Christian Life* (Quincy, IL: Franciscan Press, 1993), 473, 484.

¹⁴ For a detailed account of the reasoning involved, see Steven J. Jensen, *Good and Evil Actions: A Journey through St. Thomas Aquinas* (Washington, DC: Catholic University of America Press, 2010), 58–62 and 84–91.

¹⁵ Tollefsen (“Response to Koons and O’Brien,” 758) also leaves injury out of the firing of the gun for self-defense; he conveniently describes the act of firing the gun as “forcible resistance to Smith’s attack.”

long as the assailant is sufficiently injured.¹⁶ According to the new natural law theory, however, not only is the direct killing of a human being universally wrong, but the direct injuring of another human being is also universally prohibited.¹⁷

To make his case for the acceptability of self-defense, then, an advocate of the new natural law theory must claim not only that the killing of the assailant is indirect but also that the injury to the assailant is indirect. In the case of firing a gun at the assailant's head, he can do so only by overlooking one aspect of the means chosen by the defender. As she searches for an effective way to stop the attack, she settles upon injuring him and only then decides to fire the gun. Talk of means devoid of causes, talk of "contributions," and talk of first-person perspectives may lead someone to overlook this crucial causal nexus in the deliberations of the defender. Tollefsen acknowledges that an agent must consider causes, but, he says, his deliberation "is not determined by them."¹⁸ This statement is true so far as it goes, but this liberty from causes seems to lead theorists to overlook causal connections within experience that must enter into certain avenues chosen to attain a goal.

A similar oversight occurs in the analysis of the craniotomy case provided by the new natural law. The doctor begins with the goal of saving the life of the mother and then considers ways to achieve it. The doctor first determines that he must end the labor, and then he searches for a cause of ending the labor. He determines that he must get the baby out, and then he searches for causes of removing the baby. He determines that the head must be smaller and then searches for a way to make the head smaller. Finally, he settles upon the craniotomy.

A crucial step has been left out (or at least not described explicitly). How does he make the head smaller? He must crush the skull. The account given by new natural law theorists does not always leave this step out.¹⁹ Inexplicably, however, when it comes to describing the object of the act—what the agent proposes to himself—this step is not included; rather, the object of the act is described as reducing the size of the head.²⁰ Once again, a description that involves direct injury is conveniently left out.²¹

Finnis, Grisez, and Boyle will protest that the doctor need not kill the baby since the death of the baby does not contribute to the goal. Let the point be granted. Nevertheless, the injury to the baby (what in fact is a fatal injury) does contribute

¹⁶ This seems to me the idea of the example given by Finnis et al. in "'Direct' and 'Indirect,'" 35, in which a woman shoots for the shoulder but hits the heart.

¹⁷ See, for example, John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998), 276, 278.

¹⁸ Tollefsen, "First Person Account," 454.

¹⁹ See Joseph M. Boyle, "Who Is Entitled to Double Effect?," *Journal of Medicine and Philosophy* 16.5 (October 1991): 480.

²⁰ Finnis et al., "'Direct' and 'Indirect,'" 25.

²¹ Tollefsen ("Response to Koons and O'Brien," 757) thinks that Koons and O'Brien falsely accuse the new natural law theory of relying upon "conceivability," which throws off constraints to be replaced with "whatever story the agent could tell himself." Perhaps the new natural law has not opened itself up entirely to this loose approach, but they have made themselves prone to overlooking inconvenient features of actions.

to (or cause) the goal.²² When presented with this point, Finnis, Grisez, and Boyle respond that this objection “fails to show that the object of the surgeon’s chosen act is better described as ‘producing the crushed skull of an innocent person’ than as ‘cranium-narrowing for the purposes of removal from the birthcanal.’”²³ This reply is rather odd, given Finnis, Grisez, and Boyle’s own account of the moral object. The new natural law theory acknowledges that what is intended—which is the object—is the end and the means. Furthermore, the means in fact include the causes that the agent determines to achieve the goal. In this case, the doctor determines that he must crush the skull. Otherwise, he cannot narrow it.²⁴ Finnis, Grisez, and Boyle seem to be unaware of the necessity of this step, at least when attempting to identify the object of the act, perhaps because they have eschewed causes from the category of means.²⁵

Actions and Descriptions of Actions

New natural law theorists have another option open to them in this case (although not in the case of self-defense). They might acknowledge that the doctor must intend to crush the head of the baby but claim that his intention still need not include injury to the baby. Why? Because the doctor does not intend to crush the skull precisely insofar as it injures the baby; rather, he intends to crush the skull insofar as it reduces the size of the head.²⁶

Intention, it seems, begins to be sliced rather thinly. We are not simply intending to bring about effects; we are intending to bring about certain descriptions of effects. Not only can the doctor intend to reduce the size of the head while failing to intend the death of the baby, which is a distinct effect, but the doctor can also intend

²² For this argument, see Stephen L. Brock, *Action and Conduct: Thomas Aquinas and the Theory of Action* (Edinburgh: T&T Clark, 1998), 204–205, n. 17; and Christopher Kaczor, “Distinguishing Intention from Foresight: What is Included in a Means to an End?,” *International Philosophical Quarterly* 41.1 (March 2001): 86.

²³ Finnis et al., “‘Direct’ and ‘Indirect,’” 26, n. 38.

²⁴ Finnis et al. go on to say that this point relegates the immorality of the craniotomy to a matter of unfairness because it does not oppose the universal norm against killing. They seem to overlook their own view that there is a universal norm against injuring.

²⁵ Tollefsen (in “First Person Account,” 450) gives the example of doctors using forceps to deliver a baby, sometimes even using them to change the shape of the baby’s head, and sometimes leading the baby to have a permanent change of shape. That is not the kind of causality, however, that the doctor considers in the craniotomy case. He does not attempt to change the shape of the head, foreseeing that he might change it permanently. Rather, he decides to change it permanently by crushing it. The first doctor is gentle, using little force, careful not to crush the head of the baby, and at least tries to avoid making the change of shape permanent. The doctor in the craniotomy case deliberately uses great force because he knows that is the necessary cause to crush the skull, which is needed to change the shape sufficiently to end the labor. If he thought that the baby could be delivered through a minor change of shape, he would not perform the craniotomy.

²⁶ This possibility is available for the craniotomy because the crushing of the skull is effective in ending the labor not insofar as it is an injury; it is not available for self-defense because shooting someone with a gun is effective at stopping an attack precisely insofar as it injures the assailant.

to crush the baby's skull but not intend to harm the baby, although these two are the same effect described differently. As Tollefsen says, "States of affairs are chosen under a description, and it is only as so chosen that they are part of an agent's intention."²⁷ And as Finnis claims, "The means are included in the proposal . . . under that description which makes them intelligibly attractive as a means."²⁸

Tollefsen's claim might be confused with a similar claim of G. E. M. Anscombe, that actions are intended under a certain description.²⁹ The two claims are not quite the same. Tollefsen is speaking of states of affairs, while Anscombe is speaking of actions. Actions are notoriously fluid in their descriptions, for a single action has multiple effects and can typically be redescribed in terms of these effects. A person who is sawing a plank is also making a noise and is also scattering sawdust upon the floor. The single action has the effect of cutting the plank in two, making noise, and making sawdust, and it can be described in terms of any of these effects. According to Anscombe, however, the agent intends the action only under some of its descriptions.

On occasion, we do speak, as does Tollefsen, of intending or choosing states of affairs, such as intending someone's death, but states of affairs are not as fluid in their descriptions as are actions. The sawed plank can be described neither as noise nor as sawdust. The act of crushing a skull can be described as resizing the head and as killing the baby, and as many other things besides, although it may be intended only under some of these descriptions. The crushed skull itself, however, cannot be described as death, even if it causes death; it can, however, be described as a skull with a different shape, and if that shape is smaller than some other shape, it can be described as a skull that is smaller. The crushed skull can also be described as an injury of the baby. All such redescriptions relate the effect to something else (even if that "something else" is only in our thoughts). The current shape is related to another shape; the current size is related to another size; the current shape is related to the well-being of the baby.

Actions, then, can be described in terms of the multiple states of affairs to which they relate, even as the craniotomy can be described as crushing a skull, killing a baby, and saving a mother, for the same action brings about these distinct states of affairs: a crushed skull, a dead baby, and a mother freed from a threat. But since these distinct states of affairs can themselves be redescribed, the action can in turn be further redescribed. The crushed skull can be redescribed as a smaller skull; consequently, the act of crushing the skull can be redescribed as reducing the size of the head. There is no new effect here, no new state of affairs; it is the same state of affairs described differently. Likewise, since the crushed skull can be described as

²⁷ Tollefsen, "First Person Account," 445. Tollefsen also makes the mistake, which may have some implications for his view, of supposing that we choose states of affairs rather than actions.

²⁸ John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (Washington, DC: Catholic University of America Press, 1991), 68.

²⁹ G. E. M. Anscombe, *Intention*, 2nd ed. (Ithaca, NY: Cornell University Press, 1963), 11–12, 28–29.

an injury of the baby, the action can also be redescribed as injuring the baby. Once again, the state of affairs is one and the same, differing only in its description.

In our actions we seek to introduce some change into some subject; for example, we seek to introduce a crushing into the skull of a baby.³⁰ The same action may be redescribed insofar as it relates to distinct changes or to distinct subjects. The crushing of the skull brings about the death of the baby, which is a distinct effect (death as opposed to crushing) in the same subject (the baby). It also removes a threat from the mother, which is a distinct change (removal of a threat) in a distinct subject (the mother). In the hysterectomy case, the uterus is removed; the same action brings about the death of the baby, which is a distinct change (death) in a distinct subject (the baby).

The action can be further redescribed because the change itself can be redescribed and because the subject acted upon has many descriptions. Not only can the crushing be redescribed as a reduction in size, the baby who is acted upon can be redescribed in many ways. She is female, weighs six pounds, and has blue eyes. Consequently, the action can be redescribed as crushing the skull of a female, crushing the skull of something that weighs six pounds, and crushing the skull of something with blue eyes. Clearly, the redescriptions can be multiplied almost indefinitely.

From the first-person perspective of the acting person, however, not all of these diverse descriptions are equal. According to Tollefsen and Finnis, only those descriptions that provide motivation properly enter the proposal and properly describe the action performed. Since the injury to the baby provides no motivation for the doctor, the action is not properly an injury. Rather, it is a reducing the size of the head, since it is this description that provides motivation as a means to end the labor.

I wish to suggest another difference in the descriptions. Through our actions we relate to diverse realities. A murderer orders himself to the death of his victim. In an act of healing, a doctor orders himself to the health of his patient. Sometimes an action is redescribed in terms of distinct realities to which it relates. Sawing the plank is redescribed as making a noise, because the same action relates not only to the divided plank but also to the effect of noise; likewise, it is redescribed as making sawdust.

At other times, an action is redescribed not in terms of a new reality, but in terms of the different description of the same reality. This difference might prove significant because although a single action can relate to diverse realities, it does so in different ways. Sometimes we relate directly to a reality and sometimes only indirectly. The person is directly sawing the plank, and only indirectly making a noise. The tactical bomber is directly destroying a military site and only indirectly killing innocent civilians.

The distinction between direct and indirect, however, does not apply when we are concerned with the same effect, merely described differently. The doctor does not directly crush the skull and indirectly reduce the size of the head. He directly

³⁰ Sometimes actions involve directing some power toward some object, such as the act of “thinking about triangles,” but these kinds of actions will not be our concern here.

relates to one reality, which is both a crushing of the skull and a reducing of the size of the head.

Why might this difference matter? Because we relate directly to what we set out to achieve, and what we set out to achieve is a kind of good, if only an instrumental good. In the hysterectomy case, the doctor sets out to achieve the removal of a diseased organ, which is a good. He does not set out to achieve the death of the baby, nor any injury to the baby, although these things follow from his action. In the craniotomy case, the doctor sets out to achieve a crushed skull, but this crushed skull is in fact an injury to the baby, and as such he sets out to achieve an injury to the baby.

Such is the statement of the case. In its favor, two sorts of evidence will be presented: common experience or intuition and, more importantly, the nature of deliberation.

Intuitions concerning Intention

We commonly recognize that certain effects can be outside intention, for example, someone can intend to take medication for health without intending the side effect of nausea. Do we equally recognize that redescriptions of the same effects can be outside intention? I think not. When a change falls within intention, then so do its various descriptions.

If an assassin intends to kill the prime minister, and if he knows that the prime minister is the brother of Kim, then he also intends to kill the brother of Kim. The two descriptions cannot be separated in his intention (supposing a well-informed agent, who knows that the prime minister is the brother of Kim). If someone intends to draw a triangle and his only writing utensil is a green pencil, then he intends to draw something green. He might not like the color green; he might prefer to draw a red triangle; nevertheless, he intends to draw a green triangle. If a thief intends to steal a car, and if the car is red, then he intends to steal a red car. If the car is a sports car, then he intends to steal a sports car. Perhaps he is indifferent about the color of the car; perhaps he does not care that it is a sports car. Nevertheless, by intending to steal this car, he intends to steal it under all its descriptions.

Tollefsen might insist—together with Anscombe—that we intend actions under certain descriptions but not under others. The thief intends to take the car insofar as it is a car and not insofar as it is red or a sports car. The assassin intends to kill the prime minister insofar as he is the prime minister and not insofar as he is the brother of Kim.

This notion of intending under a description, however, might have two different meanings. It might mean that a certain description provides the motivating force leading to the intention. In this manner, the assassin intends to kill the prime minister insofar as he is the prime minister, for that provides the motivation; he does not intend to kill this individual insofar as he is the brother of Kim, since that would provide no motivation for him to act. Similarly, the person intends to draw the triangle precisely insofar as it is a triangle, and its color provides no motivation.

On the other hand, intending under a description and not under other descriptions might mean something more. It might mean not simply that certain descriptions give motivation while others do not; it might mean that certain descriptions are not

intended at all.³¹ The assassin does intend to kill the brother of Kim, although this description provides no motivation. In contrast, the doctor in the hysterectomy case does not intend to kill the baby. It is not simply that the death of the baby provides no motivation; in addition, the doctor does not move to effect this change (the death of the baby) under any description.

Perhaps proponents of the new natural law theory might object that the intuitions given above are incorrect: it is simply false to say that the assassin intends to kill the brother of Kim, and it is false to say that the thief intends to take a red car. One might respond that their theory has corrupted their intuitions. But rather than get into a battle of intuitions, I will seek a firmer foundation, turning to the very nature of the first-person deliberations of the acting person.

Before turning to this second line of evidence, however, it is worth pointing out an extreme consequence of slicing off descriptions from intention, as does the new natural law theory. If Tollefsen is correct, then few adulterers would commit adultery and few thieves would steal. Most adulterers do not intend to have sexual intercourse with a woman insofar as she is another man's wife; most thieves do not intend to steal insofar as the object stolen belongs to someone else. These features or descriptions do not provide the motivation behind the action. Typically, the adulterer wants to commit adultery with this woman not because she is another man's wife but because she is beautiful or some similar reason, and the thief does not want to take the object precisely insofar as it belongs to someone else but insofar as it is valuable.

If Finnis is correct, then an agent intends actions only under the descriptions that make them intelligibly attractive, that is, only under the descriptions that provide motivating force. Again, if Tollefsen and the new natural law theory are correct, then an agent does precisely what he proposes to do. It follows, then, that adulterers do not commit adultery, at least not usually, and thieves typically do not steal. Perhaps their actions are wrong for other reasons, but they are not wrong because of their very character as evil acts of adultery or stealing.

Theories or intuitions that reach these conclusions, it seems, should be seriously reexamined. The more plausible intuition says that the adulterer does indeed intend to have sexual relations with another man's wife, even though that description might not provide the motivation for his action; similarly, the thief does indeed intend to take what belongs to another, although this description might not provide motivating force.

Intending Concrete Actions

According to the new natural law theory, we intend the end and the means chosen to attain the end. As we have already indicated, in our deliberations we search for means, which is the same as searching for causes of the end desired. Sometimes the new natural law theory fails to identify certain actions because its proponents inexplicably ignore certain causes. The person using a gun in self-defense must seek to

³¹ Anscombe herself seemed to have been concerned immediately with descriptions that fall outside intention because of ignorance.

stop the attack, but she does so by injuring the assailant, for it is precisely the injury that causes the goal she seeks. This injury, however, is omitted from the account of the action provided by Grisez.

The new natural law theory sometimes fails in a second way, namely, by slicing off certain descriptions of an action. This second failure also results from inadequate attention to the deliberations of the acting person. In our deliberations concerning the means, we encounter two kinds of causes: efficient causes and what might be called specifying or formal causes. An efficient cause is a change that brings about (or at least provides the condition for) another distinct change. The smaller size of the baby's head provides the conditions for another effect, namely, the ending of the labor, which in turn eliminates the threat to the life of the mother. The firing of the gun brings about the distinct effect of injury to the assailant, which brings about the end of the assault. We have a series of efficient causes, one change bringing about another.

Sometimes, however, we deliberate about means that are not efficient causes; rather, they might be described as specifying or formal causes. We move from the more general to the more particular instance, quite naturally speaking about the particular as a means to the more general. If Anna wants to go to Europe, she may then decide to go to Rome as a means of going to Europe. In fact, going to Rome is the same thing as going to Europe, just more precisely specified. Going to Rome is not an efficient cause of going to Europe, for the one change is not distinct from the other. Anna must specify her trip more precisely yet. She is going to Rome in April. Once again, this more concrete specification is not distinct from going to Rome; the one is not an efficient cause of the other.

Actions occur in the concrete. There is no such thing as an abstract action. Nevertheless, we typically begin our deliberations with actions considered under an abstraction. Anna begins by wanting to go to Europe; however, there is no such thing as an act of going to Europe that is not also an act of going somewhere more precise. In order to intend an act of going to Europe, Anna must intend something more precise, so she searches for a "means" of going to Europe by searching for a more precise action. She is not searching for an efficient cause but for a more determinate formal cause.

The thief wants a car precisely insofar as it is a car, but he cannot take an abstract car. He must take a concrete car. If he is faced with a red car, a green car, and a blue car, and he settles upon the red car, then he has chosen to take a red car as a means of taking a car. If the red car is the only one available, he still chooses to take a red car. Taking a red car is a means to taking a car, not because the one is the efficient cause of the other, but because the concrete details of an action are necessary to attain the action; the action itself is sought on account of some particular description, but it can be realized only with the multitude of details found in the concrete. The adulterer may want simply to have sexual relations with a beautiful woman, but the woman he chooses is another man's wife. He chooses to have sexual relations with another man's wife, therefore, as a means of having sexual relations with a beautiful woman.

These examples focus upon the concrete realization of the subject acted upon (a car or a woman). The same need for concrete realization is found for the effect or change that is brought about. Although someone may care only to draw a triangle, with little concern for the color, he cannot draw a triangle without drawing a triangle

of some particular color. In order to bring about a triangle (considered just as a triangle), he must choose (as a cause of the desired effect) a triangle of some particular color. If the only pencil available is a green pencil, then he chooses it by default; he could always choose not to draw a triangle if he is opposed to the color green. If someone is told to draw a figure, any figure, and he draws a triangle, then he intends to draw a triangle as the particular means of drawing a figure, even though he is only concerned about it being a figure and not about it being a triangle. If someone wishes to draw a triangle, and he draws a right triangle, then he has drawn a right triangle as a means of drawing a triangle.

Of course, with our limited human knowledge we will never know all of the concrete details of an action, but those concrete details that we do know enter our intention as part of the means of performing an action, which we desire under some more general description. Our intention, then, will include a multitude of features; it will not be limited to those features that provide some special motivation. Or, on the other hand, one might say that the motivation of instantiating the act—a motivation necessary for any activity—suffices to bring a description under intention.

The aspects of an action that are intended are yet further multiplied because particular features that fall under intention can often be described in multiple ways. “Taking a red car” might be described as “taking a car the same color as blood.” “Moving the queen to B4” might be described as “moving the queen next to the opponent’s knight.” We often describe the same thing in multiple ways insofar as it relates to others. The morning star and the evening star are the same thing, but they are described differently based upon different relations. The space B4 is the same as the space next to the opponent’s knight, but it is described in relation to different realities.

Someone might object that we have obviated Anscombe’s dictum, namely, that an action is intended under only some of its descriptions. We are claiming, it seems, that an action is intended under all of its concrete descriptions. In order to instantiate an action, we must intend a concrete action, and it is concrete under multiple descriptions.

This objection, however, overlooks the two different aspects of our deliberations. As I have noted, sometimes we deliberate by seeking an efficient cause, that is, some distinct change that will bring about the change we desire. At other times, we deliberate by seeking a formal cause, some concrete realization of the change we desire. This latter movement of our deliberations, we have argued, brings the concrete details of an action into our proposals or intentions.

The former movement, concerning efficient causes, leaves some effects of our actions—what we call side effects—outside of intention. The doctor seeks to save the life of the mother, and he searches for an efficient cause: eliminate the cancer. What cause will eliminate the cancer? Remove it from her body. It happens that the woman is pregnant, and by removing the cancer from her body, the doctor also removes the baby from her body, thereby leading to the death of the baby. This change or effect (the death of the baby), however, does not enter his deliberations as he seeks for efficient causes.

Through our actions we direct ourselves to certain changes or states of affairs but not to others. The doctor directs himself to the removal of the cancer but not to the death of the baby. When we direct ourselves to a certain state of affairs, however, we direct ourselves to that state of affairs under all its descriptions, or under all those descriptions of which we are aware. Why? Because we cannot intend an abstract action. We must intend it as a concrete reality. In the hysterectomy case, then, the doctor must direct himself to the removal of the cancer, but he need not direct himself to the death of the baby, which is a distinct reality. When he directs himself to the removal of the cancer, however, he must do so under all of its descriptions (for example, removal of a diseased organ, removal of a spherical organ, and so on).

As mentioned above, intending an action “under a description” but not under another description can have two different meanings. On the one hand, it might refer simply to the description of the action that provides motivation: The assassin kills this individual insofar as he is the prime minister but not insofar as he is the brother of Kim. The thief takes the car insofar as it is a car and not insofar as it belongs to someone else. On the other hand, it might refer to some descriptions that fall entirely outside intention because they do not concern causes chosen to realize the goal (or because of ignorance): the death of the baby is not an efficient cause that brings about the end of the cancer, so the doctor need not intend the action under the description “killing the baby.” It is not simply that this description fails to provide the primary motivating force; rather, this description is in no way perceived as a cause—whether efficient or formal—of realizing the goal.

Tollefsen objects to the claim that moving a chess piece into the position of mate is simply the same action as mate, and that, consequently, by intending to move the piece, one also intends mate.³² Tollefsen thinks he can intend to move the piece into the position of mate without intending mate; he thereby gives an example of what we are discussing, namely, intending an action but slicing off a description.³³ In his example, he is playing with his son and trying to lose, but not obviously so. Unfortunately, he gets in a position in which the only plausible move is to checkmate his son. When he moves the piece, Tollefsen implies, he does not intend mate; rather, he intends to make the only move that is not obviously bad. The two moves are in

³² See Tollefsen, “Response to Koons and O’Brien,” 773.

³³ Tollefsen (in “First Person Account,” 448) also gives the example of playing golf on Tuesday when that has been declared illegal. The person, he says, breaks the law, but he intends only to enjoy a game of golf. “Breaking the law,” of course, is a metaphor to express performing an action that is against the law. The person who plays golf on Tuesday does indeed intend to perform an action that is against the law even if he does not desire it precisely insofar as it is against the law. Tollefsen also gives the example (451–452) of a surgeon trying to reduce the risks of surgery; therefore, concludes Tollefsen, the surgeon does not intend to perform an action that is a risk to the patient. Rather, the surgeon does intend to perform an action that is a risk, but he also intends to eliminate these risks *as far as possible*. Part of the problem, in this case, is that Tollefsen seems to think that exposing somebody to risk, even for his own benefit, must be justified by double-effect reasoning.

fact one and the same, differing only in description. Can Tollefsen really intend the action without intending to checkmate his son?

Tollefsen may be misled by the fact that we intend actions under a certain description; it does not follow that we intend just that description, or that other descriptions fall outside our intention. The assassin intends to kill the prime minister insofar as he is the prime minister and not insofar as he is the brother of Kim. The person intends to draw a triangle insofar as it is a triangle and not insofar as it is green. And perhaps the thief intends to steal the car insofar as it is a means of transportation, and not insofar as it is red. In these cases, the “insofar as” phrase indicates the motivating description; it does not indicate the exclusion of other descriptions from intention: the assassin still does intend to kill the brother of Kim, the person intends to draw a green triangle, and the thief intends to take a red car. Likewise, Tollefsen intends to move the chess piece insofar as it is the only move that is not obviously bad. Nevertheless, he intends the move that is mate, and so he intends mate. He does so reluctantly, but he does so nevertheless.

The queen being in the space B4 is the same as the queen being next to the opponent’s knight. The same state of affairs is described differently, as it relates to different things. The state of affairs might also be the same as mate; it is just that the description “mate” involves a whole complex of relations. Moving the queen to B4, then, is the same action as checkmating the opponent, and by intending the details of this queen being in this location, one also intends mate, even if—other things being equal—one would prefer not to mate. One does intend to mate because in order to realize the action that one does want—in this case, a move that is not obviously bad—one must intend to bring about these details, which are the same as mate.

Indeed, in Tollefsen’s example, he chooses to move the piece in part precisely because it is mate, that is, the description of “mate” actually provides motivating force. Tollefsen may not want mate in itself, but he chooses mate as a way of making a move that is not obviously bad. In this case, its being mate is part of what makes it not obviously bad. In a sense, then, Tollefsen wants to mate, as a means of making a move that is not obviously bad. Insofar as he is clearheaded, he must acknowledge that checkmate is needful for the goal of making a move that is not obviously bad.

The craniotomy case is similar to the chess example. The crushed skull can be described in various ways, depending on how it relates to other things. As it relates to an intact skull, it can be described as smaller. As it relates to the well-being of the baby, it can be described as injury. The smaller size and the injury are not distinct effects; they are the same thing as the crushed skull, merely described differently. Insofar as the doctor intends to crush the skull, then, he also intends to harm the baby. The description of harm plays no positive role in achieving the goal (the way that the description “mate” positively contributes to the move being “not obviously bad”). Nevertheless, the doctor intends to crush the skull, and the skull being crushed is the same thing as harm to the baby. The description “harm” considers the reality of the crushed skull in relation to the good of the baby. Just as “moving the queen to B4” is the same as “moving the queen next to the opponent’s knight,” so crushing the skull is the same thing as harming the baby.

If the doctor could weasel out of this description, then every murderer (except perhaps those who murder out of hatred) could weasel out of harming his victim. “Yes,” he might say, “I intended to make a hole in his heart, and I did so because it would incapacitate him; nevertheless, I did not intend to harm him.” Or he might say, “Yes, I intended the death of my victim, but not insofar as it was harm; I intended it only insofar as it was convenient to eliminate my competitor.” It may be true that these murderers do not intend to kill insofar as it is harm (if we are speaking of the motivating force). Nevertheless, they intend to harm. The “insofar as” phrase indicates the motivating description; it does not exclude other descriptions from intention.

The account of the craniotomy given within the new natural law theory, then, has a certain truth to it, but it overlooks another important truth. As the doctor deliberates, searching for causes to save the life of the mother, he does not have to settle upon the death of the baby as one such efficient cause. He first reasons that he must end the labor, and then he searches for a cause of the end of the labor, and he settles upon getting the baby out. What will cause the baby to get out? A smaller head. What will cause the head to be smaller? The head being crushed (now we are actually looking at a specifying instance of the head being smaller, rather than an efficient cause, although the physical action of applying force to the head is an efficient cause of crushing). In his deliberations the doctor does not perceive the death of the baby as an efficient cause of the labor ending. Natural law theorists have recognized this truth.

Unfortunately, they have overlooked another truth. The head being crushed is the same thing as injury to the baby. And just as someone who intends to take a red car must also intend to take a car the color of blood, so someone who intends to crush a head must intend to injure. The two things are not distinct. To intend one is to intend the other.

It is certainly wrong to kill an innocent person, but it is also wrong to do serious injury to an innocent victim. Perhaps the doctor acting under the advice of the new natural law can avoid the charge of murder in the strict sense since he does not intend the death, but he does not avoid an evil action. Indeed, the harm he intends is in fact a lethal harm, and when we do unjust harm with lethal consequences, we are held responsible for the death.³⁴ The doctor may not strictly speaking murder the baby, but he is culpable for the unjust killing of the baby.

The Order to the Good

An objection might be raised. It is commonly said that actions are specified by intention. On the account given above, however, we intend all the concrete details of an action (if we are aware of them). It seems to follow that an action will be specified by all its concrete details. Surely, however, this conclusion must be rejected. When the thief takes the car, his action is specified as taking what belongs to another. But if he intends all the concrete details, including the color of the car, the make of the car, and so on, then it seems his action should be specified as taking a red car, taking

³⁴ See Thomas Aquinas, *Summa theologiae* I-II, q. 64, a. 8.

a sports car, and so on, for all of these things are intended. Perhaps the new natural law includes too little within intention, so that the action of the thief cannot be specified as taking what belongs to another (since this description does not provide the motivation). In contrast to this weakness of the new natural law theory—the objection proceeds—the account proposed above includes too much within intention, so that the action is specified by too many features.

In order to respond to this objection, it is helpful to distinguish between the natural species and the moral species. Everything within the concrete details of an action may indeed fall within its natural species. For the moral species of theft, however, only the feature of possession—that the car belongs to another—enters into the species.

The current objection uses a false premise, at least for the moral species. It is simply false to say that an action is specified by intention if one means that everything that falls within intention falls within the moral species. The falsity of this premise would be evident even if intention did not include all the concrete details, even if it included only the motivating features of an action. The adulterer might commit adultery because the woman is beautiful (that is, her beauty provides the motivating force), yet the moral species of the action is not “having sexual relations with a beautiful woman.”

The false premise contains an appearance of truth through its similarity to what in fact is the case. Intention does not give the moral species, but the moral species is taken from that which is intended.³⁵ If something falls outside intention, then it does not belong to the moral species. In the hysterectomy case, the death of the baby does not give moral species, because it is not intended. On the other hand, not everything that falls within intention belongs to the moral species. The red color of the car, although it falls within intention, does not give moral species to the act of the thief. In short, intention does not determine the moral species but it does provide those features that will determine the moral species. Everything that belongs to the moral species does in fact fall within intention.

If intention does not give the precise determination of the moral species, then we must turn to some other manner in which the character of human actions is determined. Intention does not slice off concrete descriptions of an action, but the moral species does. The moral species of the act is specified by the concrete feature of possession, but not by the concrete feature of color. Both these features are intended; only one gives species. The moral species, then, is a more precise determination of what is proposed and intended, for the proposal includes many descriptions within it, while the moral character of the action includes only some of these descriptions.

What provides the further determination, if not intention? More observable facts about behavior. Which observable facts? We observe that certain features of an action (an action proposed and intended) either conform or do not conform with

³⁵ *Ibid.*, q. 64, a. 7.

the order of an action to the human good.³⁶ Sexual activity, for instance, is part of the human good only insofar as it is kept within marriage. As such, the characteristic “my spouse” conforms to the order of the action to the human good, while the characteristic “another person’s spouse” is in opposition to this order.³⁷ Likewise, within society, material objects are ordered to the common good in part through the institution of private property, so that the description “my own” fits in with this order to the common good, while the description “belonging to someone else” does not.

Tollefsen’s first-person perspective attains to some of the truth, for what is done depends upon what is proposed, and what is proposed does depend, in part, upon the individual. Insofar as he is well informed, however, the individual’s deliberations are constrained by reality. Indeed, even the misinformed individual at least believes that reality constrains his actions, although what he believes to be reality is not in fact reality. When an individual has set the goal, he is constrained by the observable causes that can possibly bring about this goal. If he settles upon a certain chain of causes, then he must intend each of these causes within the chain.

The chain of causes might bring about other effects, even as crushing the skull brings about death, and these “side effects” need not be intended, for they do not serve as causes of his goal. But those causes that do bring about his goal, and which he settles upon, cannot be omitted. The defender cannot settle upon “firing the gun” and “stopping the attack” while omitting “injuring the assailant,” which is essential in order that firing the gun does indeed stop the attack.

Observable facts play a further role in determining a proposal to a precise moral characterization. Certain descriptions give moral species—while others do not—because of their relation to the human good. Intention does not entirely determine the moral species; rather, the moral species is taken from what is intended. Ultimately, the moral species is more precise than what is intended. Intention includes many descriptions; the moral character of actions settles upon just those that relate to the human good.

The moral character of human actions, then, is not only first person. It depends upon many facts about the world that can be observed. Of course, since many people are confused in their deliberations, it may turn out that the true facts of the world do not constrain their proposals. Nevertheless, what they mistakenly take to be the facts of the world constrain their proposals. On account of their confusion we may not be able to get inside their heads and determine exactly what they intend. In this sense alone, morality is entirely subjective, free from the facts of the world. We cannot say, with absolute certainty, that the doctor performing the craniotomy intends to harm the baby, because he may be confused, but we can say that if he is informed, then he

³⁶ For an account of the comparison with the order of reason see Jensen, *Good and Evil*, 122–131.

³⁷ For a clear explanation of this order of the human good of sexual activity, see Edward Feser, “The Role of Nature in Sexual Ethics,” *National Catholic Bioethics Quarterly* 13.1 (Spring 2013): 69–76.

intends to harm the baby. And of course, we wish to inform him, that is, we wish to constrain his actions by the observable facts of the world.

The Phoenix Case

As I have already mentioned, in the Phoenix case an abortion was performed on account of the mother's dangerously high hypertension aggravated by the pregnancy. Tollefsen seems to think that the doctor could have intended merely to end the pregnancy (with the consequence that the baby dies) and that he need not have intended to kill the baby.³⁸ When we consider the doctor's goal and what he takes to be needful, we see that he wishes to save the life of the mother by lowering blood pressure, which can be attained by ending the pregnancy; the death of the baby in no way comes into this consideration of what is needful.³⁹

Tollefsen is correct to the degree that the new natural law theory is right about the craniotomy: the death of the baby is not one of the causes that is needed to achieve the goal. His error parallels the error of the treatment of the craniotomy discussed above. Perhaps there will someday be a way to reduce the size of the head of the baby (sufficient for removal from the narrow pelvis) without crushing the skull (although there is no motivation to develop such a procedure, given C-sections), but the doctor in the craniotomy case, when he searches for a cause to reduce the size of the head, lands upon the act of crushing the skull, which is an act of harm.

Perhaps there are ways to end a pregnancy without first directly harming the baby, such as induced labor, but they were not chosen in this case.⁴⁰ Indeed, induced labor may well have killed the mother and child. What was chosen—what was deemed to be needful—was a dilation and curettage. This procedure involves cutting the baby, a kind of harm to the baby.

In her analysis of the case, M. Therese Lysaught argues that the doctors attempted to avoid harming the baby.⁴¹ Such a description of the action is difficult to fathom. It makes sense only by distinguishing between the baby and the placenta. Perhaps

³⁸ Tollefsen, "Response to Koons and O'Brien," 774.

³⁹ M. Therese Lysaught provides what seems like an accurate application of the new natural law theory to the Phoenix case; see M. Therese Lysaught, "Moral Analysis of Procedure at Phoenix Hospital," *Origins* 40.33 (2011): 537–547. She cites a key text from Grisez, which suggests that in an abortion one need not intend to kill the baby but simply to remove the baby from the womb (see Grisez, *Way of the Lord Jesus* 2, 502). For another analysis of Grisez' view in relation to the Phoenix case, see Thomas A. Cavanaugh, "Double-Effect Reasoning, Craniotomy, and Vital Conflicts," *National Catholic Bioethics Quarterly* 11.3 (Autumn 2011): 453–463.

⁴⁰ An induced labor acts directly upon the mother, but it does so in order to act upon the baby. This action upon the baby seeks to damage two vital organs of the baby, namely, the amniotic sac and the placenta. In short, the doctors must still reason to some direct injury to the baby. They reason that they wish to end the pregnancy. How? By getting the baby out. This getting the baby out, however, is an act of damaging the amniotic sac, which during early pregnancy is still a necessary and vital organ.

⁴¹ Lysaught, "Moral Analysis of Phoenix," 547.

the doctors attempted to avoid the body of the baby and targeted only the placenta.⁴² Unfortunately, the placenta is also an organ of the baby, if only a temporary organ.⁴³

Did the doctors attempt to target only that aspect of the placenta that belongs to the mother? Such a surgical procedure is difficult to imagine. Even with Tollefsen's limited concession to observable facts—that they constrain the possibilities—this proposal seems to be beyond what the doctors could have intended. Nevertheless, it must be granted that if it were possible to remove the placental organ of the mother without directly acting upon the placental organ of the baby, and if it could be argued that the placental organ of the mother is diseased, then it would be legitimate, with double-effect reasoning, to remove the diseased placental organ of the mother, foreseeing the side effect that the baby would die. This purely hypothetical case would be a close parallel with the hysterectomy case.

In the Phoenix case, the doctors did not stop in their deliberations with “ending the pregnancy.” They had to find some way to end the pregnancy, and they settled upon a dilation and curettage. In short, the doctors decided to end the pregnancy by cutting up or dismembering the baby, even if they attempted to avoid certain parts of the baby. This cutting is a kind of violent harm to the baby. The harm is not distinct from the cutting but is precisely that cutting insofar as it relates to the baby.

This cutting is a cause—overlooked by Tollefsen when it comes to identifying the character of the act—that the doctor must include within the means he chooses. Tollefsen's first-person perspective, then, leads us to ignore the real causes in the world, thereby seducing us into violent actions, reassuring us that they are not, strictly speaking, acts of killing.

⁴² Lysaught (“Moral Analysis of Phoenix,” 539) also tries to argue that the placenta is diseased (while at the same time stating that it is functioning normally). Even if it were diseased, the principle of totality allows removing a diseased organ for the good of the whole, which in this case is the baby, that is, the baby (rather than the mother) is the whole of which the placenta is a part.

⁴³ See Christopher Kaczor, *A Defense of Dignity: Creating Life, Destroying Life, and Protecting the Rights of Conscience* (Notre Dame, IN: University of Notre Dame Press, 2013), 81.