Chapter 1 of Austriaco's *Biomedicine and Beatitude*: Four Crucial Issues

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Biomedicine and Beatitude: An Introduction to Bioethics by Nicanor Pier Giorgio Austriaco, O.P., is a very important and valuable book. His presentations and discussions of the major bioethical issues of our day are excellent, rooted in current scientific knowledge, of which Austriaco, with a doctorate in biology from M.I.T., is himself a master,¹ and faithful to magisterial teaching. His appendix on Church documents on bioethics, his selected (and massive) bibliography (plus the footnotes accompanying each chapter) are gold mines of information for teachers and students.

However, I have some serious problems with Austriaco's first chapter, in particular the following critical questions: (1) St. Thomas's understanding of natural law; (2) the role of virtue in determining the morally right act; (3) his presentation of St. Thomas's teaching on the constitution of the "object" specifying morally a human act; and (4) closely linked to (3) his critique of the position developed by Grisez, Finnis, and Boyle regarding unique situations involving craniotomy.

ST. THOMAS'S UNDERSTANDING OF NATURAL LAW

In company with several others—including the late and great Belgian Dominican

moral theologian Servais Pinckaers² and the fine American Dominican moral theologian Romanus Cessario³—Austriaco insists that for St. Thomas the natural law is best understood as a set of natural inclinations. In a section of chapter 1 called "Natural Inclinations and the Structure of Human Acts" (pp. 11–13) Austriaco writes as follows on p. 11:

God has implanted natural inclinations within our hearts that move us to our beatitude with Him. Preexisting elicited desires, these inclinations direct us to those ends that are constitutive of the human good. They help us to understand our perfection precisely as human beings. Not unexpectedly, development psychologists have identified these inclinations, which direct us to our self-preservation, to true and certain knowledge of the world, to life in society, and to God.

I in no way deny this. But is this St. Thomas's understanding of natural law? Or does he identify it with "universal propositions of practical reason ordered to actions"? To answer this question I will now examine key texts of St. Thomas.

In I-II, q. 94, a. 1, for instance, Aquinas himself explicitly says that it is the "precepts," not the *inclinations* that are found habitually in the reason in the *habitus* of synderesis. In I-II, q. 94, a. 3,

his point is that “acting in accordance with reason, i.e., in accordance with virtue,” is a *good* towards which we are “naturally inclined.” Thus it follows, from what he has said in I–II, q. 94, a. 2, that reason naturally apprehends acting in accordance with reason as good and therefore to be pursued in action, for in that text he had said: “reason naturally grasps as *goods* and therefore to be pursued in action everything to which man is naturally inclined” [emphasis added] (my trans. of “ratio naturaliter apprehendit ut *bona* et per consequens ut opere prosequenda omnia illa (*bona*) ad quae homo habet naturalem inclinationem”). It thus follows that in this text (q. 94, a. 3) he is simply saying that acting in accordance with reason is a *good* towards which we are naturally inclined, and that therefore one precept of natural law is that we ought to act in accordance with reason or virtue.

The claim that it is preferable to speak of natural law “inclinations” rather than natural law “precepts” seems to me very unThomistic. St. Thomas, in setting forth his understanding of natural law emphasized that it is indeed the work of practical reason and formally consists in “precepts” or “principles” of practical reason. All creatures, he stressed, share in and are subject to God’s eternal law insofar as they are ruled and measured by it. This is true of the rational creature as well, but the glory of the rational creature (i.e., man) is that he shares in this law properly as *law*, insofar as he is capable of ruling and measuring his own acts by it, and this rational participation is indeed what he means by natural law or the participation of the eternal law in the rational creature. Indeed, as Thomas says, “even nonrational [the Latin has *irrational* not *nonrational*, and ‘nonrational’ better conveys what medieval irrational signifies] animals participate in one way in [God’s] eternal reason just as the rational creature does

because the rational creature participates in it intellectually and rationally, it follows that the participation of the rational creature in the eternal law is properly called law: for law is something of reason.... But in the nonrational creature it [law] is not rationally participated and can be called law only by a likeness or similitude” (I–II, q. 91, a. 1, ad. 3).⁴

Thomas clarifies the way that the eternal law is “in” the rational creature in the very first article of I–II, q. 94, the question devoted to natural law. There he asks, “*utrum lex naturalis sit habitus.*” Today this seems to be a strange question, but it was very pertinent when St. Thomas was writing precisely because some of his predecessors and contemporaries had identified natural law with the *habitus* of synderesis [the Latin *habitus* is translated simply as “habit” in some English translations of this text, but in medieval Latin it was a special term and signified a firm disposition in a person enabling the person to do things well or to be a good person, or to do things badly or to be a bad person], virtues or vices. Some virtues are not *moral* but rather enable a person to make or do something well—e.g., to produce cookies or films or speeches—and this is what Thomas later called *quo quis agit*, i.e., that by means of which one can do something (see Lottin 1932). In his response to this question he grants that natural law may, in a *secondary and derived sense*, be regarded as a *habitus*, insofar as the propositions of practical reason that together constitute natural law are habitually held in mind. However, in its *proper and formal sense*, natural law is *not* a *habitus* nor is it a *power*. Rather, it is a reality brought into being (*constitutum*) through reason: it is a work of human practical intelligence ordered to action. It is something we bring into being by our own intelligent activity, what Thomas calls

“what someone does” (*quod quis agit*), not something, e.g., a *habitus*, enabling us to do something, what Thomas calls “that whereby one does something,” a *quo quis agit*. His text on this matter is lucidly clear: “something can be said to be a *habitus* in two ways. First, properly and essentially, and in this way the natural law is not a *habitus*, as was said before [see. q. 90, a. 1, ad 2, where Thomas had emphasized that ‘universal propositions of practical reason ordered to actions have the meaning of law’ because natural law is something constituted by reason: but a proposition is some product of reason. For what one does is not the same as that by which someone does something... Therefore, since a *habitus* is that by which someone does something a *habitus* cannot properly be the natural law.” The reason is this: “natural law is something constituted by reason, just as a proposition is. But what one does is not the same as that whereby one is enabled to do something.... Therefore, since a *habitus* is that whereby one is enabled to do something, it cannot be law properly and essentially” (*lex naturalis est aliquid per rationem constitutum: sicut etiam propositio est quoddam opus rationis. Non est autem idem quod quid agit, et quo quis agit.... Cum igitur habitus sit quo quis agit, non potest esse quod lex aliqua sit habitus proprie et essentialiter*) (I–II, q. 94, a. 1).

That Aquinas regarded natural law, precisely as law, as a set of universal propositions (precepts) of practical reason ordered to action becomes even clearer in his treatment of the different “levels” or “grades” of natural law precepts. The Common Doctor devoted considerable attention to this issue in I–II, q. 100, aa. 1, 3, 8, 11. There he distinguished three “grades” or “levels” of natural law precepts. The first grade or set of natural law precepts consists of “those common and

first precepts” that need no “edition” other than the fact that they are written in natural reason and are as it were “self-evidently” known (q. 100, a. 8; see also q. 100, a. 11). Belonging to this set are such precepts as “Good is to be done and pursued and evil avoided” (*bonum est faciendum et prosequendum et malum vitandum*) (q. 94, a. 2), “do evil to no one” (*nulli esse malum faciendum*) (q. 95, a. 2) and others of this kind. Indeed, in q. 100, q. 3, ad 1, he explicitly affirms that the precepts of love of God and love of neighbor are the first and common precepts of natural law to which all the precepts of the Decalogue must be referred as conclusions are referred to their common principles.

The second set or “grade” of natural law precepts are those “which the natural reason of any man judges immediately must be done or not done” (*quae statim per se ratio naturalis cuiuslibet hominis diiudicat esse facienda vel non facienda*) (q. 100, a. 1). Such precepts are proximate conclusions from the first and common principles of natural law (q. 100, aa. 3 and 11), and they can be grasped as true “immediately, with little consideration” (*statim, cum modica consideratione*) (q. 100, a. 1). These are the natural law precepts we find in the Decalogue as conclusions from the two precepts of love of God and love of neighbor (see q. 100, a. 11).

The third grade of set of natural law precepts for Aquinas are truths about human action that are known “by a more subtle consideration of reason” (*subtiliori consideratione rationis*) (q. 100, a. 1) and are like conclusions drawn from the second set of precepts (q. 100, aa. 3 and 11) and are known only by the wise (*ibid.*).

I think it evident, from an examination of relevant Thomistic texts, that Thomas considered natural law essentially and

formally to consist in precepts or principles, i.e., universal propositions of practical reason ordered to actions, and *not* in “natural inclinations.” More could be said on this matter, but this should suffice.

THE ROLE OF THE VIRTUES

Presentation of Austriaco’s view

Austriaco has a substantive and well-developed section of chapter 1 devoted to this issue. In it he notes that common difficulties often prevent people from acting well; the moral life in general and moral reasoning on bioethical issues in particular require the virtues—“stable dispositions in the human agent that enable him to know, to desire, and to do the good—to help us to act well.” Classically three categories of virtues have been distinguished: the intellectual, the moral, and the theological. The moral virtues order our desires so that we routinely—by “second nature” as it were—both desire the good and act to attain it. These virtues are either acquired by human effort and are the fruit of repeated morally good acts. These virtues can also be infused into the person by God. St. Thomas insisted both that we are in constant need of God’s grace to exercise the natural virtues and that God infuses into the soul infused moral virtues that correspond to the acquired moral virtues, elevating the human person “so that he can perform supernatural acts that transcend reason and duty in light of the Cross,” ordering him to his ultimate beatitude, sharing in the very life of the Triune God (pp. 14–15).

Four moral virtues are called “cardinal,” because they are the “hinges” (from the Latin word for “hinge”: *cardo*, *cardines*), namely prudence, justice, fortitude, and temperance. Of these prudence is both a moral and an intellectual virtue, “disposing

the person not only to discern the true good in every moral situation, but also to choose the right means of achieving it, enabling the person to intend, to deliberate, to decide, and to execute this particular act well, here and now, with his and his community’s authentic good in mind” (pp. 15–16).

As we can see, Austriaco’s (with many authors today) knowledge of moral principles and of norms derived from them neither makes a person a morally good person, nor does a person who knows these principles and how to apply them necessarily choose to act in accordance with them and may choose to violate them. For instance, a professor of moral theology may have an excellent grasp of these principles and norms derived from them and still act immorally. It should be noted that on pp. 41–42 Austriaco, after citing a passage from my 2004 essay, “Contemporary Perspectives on Thomistic Natural Law,” in *St. Thomas and the Natural Law Tradition*, May 2004, p. 129, in which I had criticized Benedict Ashley and Pamela Hall for claiming that only the virtue of prudence shows the truth of specific moral norms and had observed that virtuous persons themselves sometimes disagree in a contradictory way about specific moral norms and that there are no objective reasons for holding one person (e.g., Ashley) more virtuous than another virtuous person who might have a contradictory judgment about a specific moral norm (e.g., whether it is always morally obligatory to provide persons in the so-called “vegetative” condition with nutrition and hydration through tubal means). Austriaco comments on this opinion of mine by saying that I misunderstand the role of the virtues in bioethics. He writes:

It is not enough for a Catholic bioethicist to argue that having an abortion is

intrinsically evil. The Catholic bioethicist also needs to be able to convince a seventeen-year-old teenager living in Overland Park, Kansas, who is scared of disappointing her mother and of angering her boyfriend.

But this is not my point (see below, under “Critical Reflections on Virtue-based Ethics”), and I do not think that Austriaco has managed to understand it.

A virtuous person, or morally good person, on the other hand, is inwardly disposed and habituated to make good moral choices and to do them. After all, did not Jesus say, “A good person brings forth good out of a store of goodness” (Mt 12:35; see Mk 7:21–23; Lk 6:45). In addition, did not St. Thomas advise us that, in cases of doubt when we are not clear as to what the morally good option is, we should ask a virtuous person to tell us? In fact, St. Thomas explicitly taught that the “remote conclusions” from the “first and common principles of natural law” are known only to the wise and that in God’s providence other members of society are to come to know these precepts or norms “through the discipline of the wise” (*Summa Theologiae*, I–II, q. 100, a. 3). And by the “wise” St. Thomas meant “saints.” Surely, if one were perplexed about homologous *in vitro* fertilization, I think the person would get good advice from a person like Blessed Mother Teresa of Calcutta and not from Masters and Johnson.

Critical reflections on virtue-based ethics

I fully appreciate and acknowledge the truths about human life and existence central to virtue ethics, but believe that it is wrong to oppose virtue ethics to the morality of principles. Both are needed.

But which takes precedence? I believe that the morality of principles does so. First of all, we can ask how one acquires a virtue? One acquires the virtue by acting virtuously, that is, in accordance with reason, in accordance with true moral principles and norms derived therefrom and known to us through our intelligent participation in “the highest norm of human life,” i.e., “the divine law—eternal, objective, and universal—whereby God orders, directs, and governs the entire universe and all the ways of the human community by a plan conceived in wisdom and love. Man has been made by God to participate in this law, with the result that, under the gentle disposition of divine Providence, he can come to perceive ever more fully the truth that is unchanging” (Vatican Council II, *Dignitatis Humanae*, no. 3).

Moreover, it frequently happens that virtuous persons disagree among themselves, and at times their disagreements are contradictory so that one view must be true and the other false. For instance, I know some persons who are very virtuous and vigorously disagree whether it is morally permissible for a married woman and her husband to “adopt” a frozen and abandoned unborn baby “left over” from *in vitro* fertilization.

Some judge this to be inherently bad; others morally justifiable and not inherently bad. These judgments are contradictory; one must be true, the other must be false. Were a married couple, perplexed about what they should do, to ask them for advice on this matter they would still be perplexed. I think that what one must do then is to examine the *arguments* rooted in moral principles and norms relevant to this situation to see which party has rightly grasped and applied these principles and norms after settling relevant factual matters. Or in other words, which side has done its homework?

ST. THOMAS'S TEACHING ON THE CONSTITUTION OF THE "OBJECT" SPECIFYING MORALLY A HUMAN ACT

Austriaco's view

Austriaco takes up this matter in his presentation of Blessed John Paul II's masterful encyclical *Veritatis Splendor* (on pp. 24–28). On p. 26, footnote 48, Austriaco writes as follows:

How are we formally describe the relationship between the moral and the physical dimensions of the human act. As St. Thomas Aquinas taught, the moral object is constituted both by the choice of the acting person and the physical structure of the acts in the same way that form and matter constitute a substantial being. It is this composite whole that is chosen by the will. Thus the physical act limits the moral objects that can legitimately be chosen to specify it in the same way that matter limits form.... The teleological ordering of the physical act constrains the legitimate moral objects that can be chosen to specify it from the perspective of the acting person in the same way that matter limits form.

Critique

I suggest, first of all, that Austriaco does not properly understand Thomas's meaning when he says that the moral object is constituted by the physical dimensions of the act *in the same way that form and matter constitute a substantial being*. In *Summa theologiae*, I–II, q. 18, a. 6 Thomas writes as follows:

In the will act a twofold act is found, namely, the internal act of the will, and the external act; and each of these acts has its object. The end is properly the object of the interior act of the will; but that with which the external act is concerned is its object. Therefore just as the

external act receives its species from the object with which it is concerned, so the internal act of the will receives its species from the end, as from its proper object. But that which comes from the part of the will is related formally to what comes from the part of the external act...for external acts have moral significance only insofar as they are willed or voluntary. (*In actu autem voluntario invenitur duplex actus, scilicet actus interior voluntatis, et actus exterior; et uterque horum actuum habet suum obiectum. Finis autem proprie est obiectum interioris actus voluntarii; id autem circa quod est actio exterior est obiectum eius. Sicut igitur actus exterior accipit speciem ab obiecto circa quod est; ita actus interior voluntatis accipit speciem a fine, sicut a proprio obiecto...ita autem quod est ex parte voluntatis, se habet ut formale ad id quod est ex parte exterioris actus...neque actus exteriores habente rationem moralitatis, nisi inquantum sunt voluntarii.*)

The proper object morally specifying the external act is, as we have seen, not the matter making up the act (the *materia ex qua*). This puts the act into its "natural species" (e.g., sexual union). Rather this proper object is the intelligibly understood subject matter with which the external act is concerned (the *materia circa quam*). This puts the act into its "moral species" (the marital act or adultery or fornication). Thomas explains matters this way later in the question. A human act is not like a "thing" in the world of nature and given its form, and through its form its species, by nature. Rather human acts, since they proceed from human reason and will, are given their forms, and through their forms their moral species, by human intelligence, which "measures" or "rules" human actions. Thus, Thomas writes: "just as the species of natural things are constituted by their natural forms, so the species of moral acts are constituted by forms insofar as they are conceived by reason" (*sicut species rerum naturalium constituuntur ex*

naturalibus formis, ita species moralium actuum constituuntur ex formis prout sunt a ratione conceptae) (q. 18, a. 10). This intelligently constituted “form” is the “object” of the external act. The subject matter (the *materia circa quam* or proper object) of the external act, in other words, can be understood by the subject and judged by him as being either in accord with or not in accord with the normative principles of practical reason (*patet ergo quod differentia boni et mali circum obiectum considerata comparatur per se ad rationem: scilicet secundum quod obiectum est ei conveniens vel non conveniens*) (q. 18, a. 5).

Thomas, moreover, insists that the *first* goodness (*prima bonitas*) of a human act comes from the object of the external act and that the *first* badness (*prima malitia*) of human action comes from the same source (q. 18, a. 2). He explicitly teaches that the goodness human acts have by reason of the specification they receive from the end for whose sake they are done and upon which they depend as a final cause is a *further* source of their goodness *in addition to the “absolute” goodness which exists in them*. Thus he writes: “Human actions, and other things whose goodness depends on something else, have the character of goodness from the end on which they depend, *in addition to the absolute goodness which exists in them*” (*Actiones humanae, et alia quorum bonitas dependet ab alio, habent rationem bonitatis ex fine a quo dependent, praeter bonitatem absolutam quae in eis existat*) (q. 18, a. 4).

Of even more importance is the following text from St. Thomas, *In II Sent*, II, 40, 1, 2c, a text seemingly not known to Austriaco and the other authors to whom he refers in these pages.

Voluntas dupliciter potest considerari: vel secundum quod est intendens, prout in ultimum finem fertur; vel secundum quod est eligens, prout fertur in obiectum

proximum, quod in finem ultimum ordinatur. Si consideretur primo modo, sic malitia voluntatis sufficit ad hoc quod actus malus esse dicatur; quia quod malo fine agitur malum est. Non autem bonitas voluntatis intendentis sufficit ad bonitatem actus: quia actus potest de se malus, qui nullo modo bene fieri potest. *Si autem consideretur voluntas secundum est eligens, sic universaliter verum est quod a bonitate voluntatis dicitur actus bonus, et a malitia malus.*” St. Thomas, *In II Sent*, II, 40, 1, 2c.

John Finnis (1991) translates this as:

Willing can be considered under two aspects: (i) as intention, insofar as it bears on an ultimate end; (ii) as choice, insofar as it bears on a proximate object ordered to an ultimate end. Then, (i) When we take willing as intending, we can say that the will’s badness suffices to make the act bad, since whatever is done for a bad end is bad. Yet the goodness of the intending will is not sufficient to make the act good, for the act may be bad in itself, an act which in no way can be good to do. But (ii) if we take the will as choosing, then it is universally the case that the will’s goodness makes the act good, and the will’s badness makes the act bad.

AUSTRIACO’S CRITIQUE OF THE GRIEZ, FINNIS, AND BOYLE RE A UNIQUE CASE OF CRANIOTOMY

Earlier I noted that this issue is closely related to (3) St. Thomas’s teaching on the “moral object.” According to Austriaco’s (mis-)understanding of Aquinas on this matter, “physical acts rule out...in particular moral objects that can be legitimately chosen to specify the act.” He then writes (pp. 26–27, footnote 48):

Therefore, it is unintelligible and erroneous to claim, as Catholic moralists Germain Grisez, John Finnis, and Joseph A. Boyle, Jr. have done [see their article,

“Direct’ and ‘Indirect’: A Reply to Our Critics,” *The Thomist*, 65 (2001): 1–44] that the physician who crushes the skull of an unborn child [in the unique case when the pressure of its skull on its mother’s cervix will kill its mother unless this pressure is removed, *my addition*] in an operation known as a craniotomy is not killing an innocent human being but is merely redesigning the circumference of the child’s skull. According to their flawed account, the death of the child would only be a side effect [and hence not necessarily included as part of the act’s moral object, *my addition*] of changing the dimensions of the skull. Since crushing an infant’s skull necessarily leads to his death...the killing of the child needs to be included in the moral object chosen by the surgeon as he describes his action if he is to remain intelligible and morally coherent.

I submit that Austriaco is badly mistaken, and that a careful reading of St. Thomas’s teaching on “Killing in self-defense” is *Summa Theologiae*, II–II, q. 64, a. 7, will show why. There we read:

Nothing hinders one act from having two effects, only one of which is intended, while the other is outside the scope of one’s intention (Latin “*praeter intentionem*”). Now moral acts take their species according to what is intended, and not according to what is outside the scope of their intention, since this is accidental as explained above (43, 3; I–II, 12, 1). Accordingly the act of self-defense may have two effects, one is the saving of one’s life, the other is the slaying of the aggressor. Therefore this act, since one’s intention is to save one’s own life, is not unlawful, seeing that it is natural to everything to keep itself in “being,” as far as possible. And yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end. Wherefore if a man, in self-defense, uses more than necessary violence [to ward off the unprovoked attack,

my addition], it will be unlawful: whereas if he repel force with moderation his defense will be lawful. Nor is it necessary for salvation that a man omit the act of moderate self-defense in order to avoid killing the other man, since one is bound to take more care of one’s own life than of another’s. But as it is unlawful to take a man’s life, except for the public authority acting for the common good, as stated above (Article 3), it is not lawful for a man *to intend* killing a man in self-defense, except for such as have public authority, who while intending to kill a man in self-defense, refer this to the public good, as in the case of a soldier fighting against the foe, and in the minister of the judge struggling with robbers, although even these sin if they be moved by private animosity.

Note that Thomas insists that the *death* of the assailant who engages in an unprovoked life-threatening attack on an innocent person is *not properly intended*—it is “*praeter intentionem*” (*outside the scope of his intention*) so long as the violence to ward off the attack is “proportionae,” i.e., necessary and sufficient to ward the attack off. But in St. Thomas’s day what physical tools, besides one’s own arms, etc. (which may indeed be weaker than the assailant’s and hence unable to ward off his attack) were available? Spears and swords were common, and perhaps violence sufficient and necessary to ward off the unprovoked attack might require the person attacked to behead with his sword the assailant or to stab him through his heart with his lance. This *physical act* would surely be the *cause* of the assailant’s death, but since this violence was both necessary and sufficient to ward off the attack, that death was “*praeter intentionem*,” or “outside the scope of the agent’s intention” and hence morally permissible.

I submit that this applies to the justification by Grisez et al. to the craniotomy in the unique case they are considering.

For years I struggled with their view and refused to accept it. But a careful reading of their *Thomist* article, and reflection on St. Thomas's teaching in *Summa theologiae*, II-II, q. 64, a. 7, led me to change my mind.

I also think that Austriaco fails to recognize the moral significance of Blessed John Paul II's definition of abortion in his great encyclical, *Evangelium vitae*, no. 58 where he defined direct, procured abortion as "the deliberate and direct killing, by whatever means it is carried out, of a human being in the initial phase of his or her existence, extending from conception to birth."⁵

John Paul II's new definition also raises the possibility that we can distinguish abortion as the removal of a non-viable fetus from its mother's womb—e.g., for corrective surgery, and its replacement within her womb from its killing, and only the latter would be morally wrong.

Kevin Flannery, S.J., developed a strong argument against the Grisez et al. (1991) position. Essentially, he argued, "in the craniotomy it is necessary to 'redescribe' the act by calling it a 'cranium-narrowing' 'operation', or 'altering of the measurements of the skull' operation.... The practice of medicine has as its sole legitimate object... the health of the individuals it turns its attention to. But in the craniotomy case this is not its object: the fetus, which is clearly the object of the operation, is killed. In this instance, medicine has not been practiced in a reputable manner. This is morally relevant" (Flannery 1993).

But it is important to describe what a craniotomy is. The following description of it was sent to me by e-mail on October 20, 2007, by a great pro-life Catholic obstetrician-gynecologist, John Bruchalski, M.D.:

The technical definition of a craniotomy is the surgical procedure where the

physician creates a hole in the cranium (crani-otomy). The most common practical situation would be when a pre-born child has water on the brain, hydrocephalus. In that case the craniotomy is accomplished by an 18 g needle [...] where the skull is punctured and fluid drained to decompress the child's skull enough to affect vaginal delivery. *The intent in that case [is to affect delivery] not to kill the child* [emphasis added]. In a D&X abortion [= partial-birth abortion], the craniotomy is to kill the child and enable the delivery of the head. Today, a cesarean section would be done in most cases to safely deliver the child and "save" the mother's life in most medical situations. The intention of doing a craniotomy with anything other than a needle is the death of a child to save the mother's life. Craniotomy is the direct, intended destruction of the child in most medical cases where it is recommended as a therapy for delivery to protect the life of the mother. Cesarean sections are able to be done safely and quickly.

But above all it is necessary to study the article jointly published by Grisez, Boyle, and Finnis in *The Thomist*. In it they show that both Thomas Aquinas (cf. *In II Sent.* d. 40, a. 2, c, and ad 2-3; *De Malo*, q. 2, a. 2, ad 8; *Summa Theologiae* 2-2, q. 64, a. 7; *In V Metaphysics*, lect. 2, no. 9) and John Paul II (*Veritatis splendor*, no. 78) make it clear that the object morally specifying a human act *cannot be identified with a process or an event in the physical order* (what Thomas called the *natural species* of an act as distinct from its *moral species*), but is rather precisely what the acting person is *choosing to do* here and now, and that this object can be grasped only from the perspective of that acting person. It is thus possible that the very same physical performance, e.g., a craniotomy in its *natural species*, can be, if viewed *from the perspective of the acting person*, either the choice to engage in a partial-birth

abortion (a morally bad object of choice) or the choice to reduce the size of the baby's head so that it or its corpse can be removed from the birth canal (an object of choice not in itself immoral), foreseeing as a non-intended side effect the death of the child, a death that could be accepted under the principle of double effect.

Finnis, Grisez, and Boyle respond to the charge that the Magisterium has condemned their view by acknowledging that toward the end of the nineteenth century the Holy Office (now the Congregation for the Doctrine of the Faith) issued three documents concerning craniotomies. But, they emphasize, *none of these documents taught that craniotomies are intentional killings or morally wrong*. But those documents did declare that one might not *teach* that craniotomies could be done and that craniotomies cannot safely be done. Our authors then write: "However, since the Holy Office did not assert that craniotomy is immoral, its responses cannot ground an argument against a position such as ours," inserting a footnote in which they write: "Our position is shared by some theologians completely faithful to the Church's magisterium, e.g., Marcellino Zalba, S.J."—Zalba was a member of the minority commission of the "papal birth control commission" that defended the Church's teaching against contraception prior to *Humanae vitae*, and subsequently heroically defended *Humanae vitae* and as a result suffered terribly.

Finnis, Grisez, and Boyle affirm that they regard as a truth of faith the Church's teaching that the intentional killing of the unborn is *always gravely immoral*. Their position, however, is that "a doctor could do a craniotomy, even one emptying a baby's skull, without intending to kill the baby—that is, without the craniotomy being a direct killing." Here they insert another footnote in which they acknowledge that *even if such killing is not directly*

intended or direct killing it could often be gravely wrong and that there might be reasons for condemning the practice of craniotomy other than that it is direct killing and that Catholics who reject their opinion certainly ought to form their consciences in the light of Church teaching in the light of faith.

It seems that there are grounds for concluding that their argument has some strength. It contends that a craniotomy could under specific conditions *not* be a direct, intentional killing of the unborn and that death of the unborn child could be accepted as a non-intended but foreseen consequence of an act not morally bad in itself. However, the Magisterium, although not declaring craniotomy in the case envisioned to be morally wrong, nonetheless still teaches that it is *not safe to teach* that craniotomies can be performed and also that *craniotomies are not safe*. Since Grisez et al. have no right to instruct the faithful, whereas the Magisterium has both the right and the duty, it seems relevant to end this discussion by citing an important passage from Grisez's 1970 massive and superb defense of the unborn, *Abortion: The Myths, the Realities, and the Arguments* (Cleveland/New York: Corpus Instrumentorum), pp. 345–346:

Roman Catholic readers may notice that my conclusions about abortion diverge from common theological teachings, and also diverge from the official teaching of the Church as it was laid down by the Holy Office in the nineteenth century. I am aware of the divergence, but would point out that my theory is consonant with the more important and more formally definite teaching that direct killing of the unborn is wrong. I reach conclusions that are not traditional by broadening the meaning of "unintended" in a revision of the principle of double effect, not by accepting the rightness of direct killing or the violability of unborn

life because of any ulterior purpose or indication.

He then continues:

Most important, I cannot as a philosopher limit my conclusions by theological principles. However, I can as a Catholic propose my philosophic conclusions as suggestions for consideration in the light of faith, while not proposing anything contrary to the Church's teaching as a practical norm of conduct for my fellow believers. *Those who really believe that there exists on this earth a community whose leaders are appointed and continuously assisted by God to guide those who accept their authority safely through time to eternity, would be foolish to direct their lives by some frail fabrication of mere reason instead of by conforming to a guidance system designed and maintained by divine wisdom.* [emphasis added]

CONCLUSION

I hope the issues raised here posed by crucial sections of chapter 1 of Austriaco's very helpful study will encourage discussion among others. Austriaco considers other important issues in chapter 1 of his book, principally the role of virtue in determining the moral rightness of human acts, but this will not be considered here.

ENDNOTES

1. Father Austriaco was finishing his studies for the S.T.L. at the Dominican House of Studies in Washington, D.C., when I was teaching a course on bioethics and the family to students enrolled in the Master of Theological Studies Program at the Pontifical John Paul II Institute for Studies on Marriage and Family, then housed in the Dominican House of Studies. Several times Father Austriaco was a guest lecturer who explained clearly

to my students and me the scientific, biological issues. His lectures were models of clarity—he is a superb teacher.

2. Pinckaers's famous *The Sources of Christian Ethics*, trans. Mary Thomas Noble, O.P. (Washington, D.C.: The Catholic University of America, 1995) is divided into three major parts. The first (I) concerns "Ethics: Human and Christian" and focuses on the distinctive nature of Christian ethics; the second (II) is called "A Brief History of Moral Theology"; the third (III), called "Freedom and Natural Law" concludes with chapter 17, titled "Natural Inclinations at the Source of Freedom and Morality"; see my review of this work in "Recent Moral Theology: Servais Pinckaers and Benedict Ashley," *The Thomist* 62.1 (1998): 117–131.
3. See Romanus Cessario (2001: 79–90) concentrates on the "natural inclinations" as manifestations of the natural law. He recognizes that there are "principles" or "precepts" of natural law and that St. Thomas taught this. But he insists the preferable way for a realist Thomist theologian to speak of natural law is to speak of natural law "inclinations" rather than natural law "precepts" or principles.
4. On this see Martin Rhonheimer (2000), especially pp. 61–64, "The Natural Law as the Work of Reason." See also the observations of D. O'Donoghue: "there are two ways of understanding rational participation: We might see it as a *receptive* participation: created reason is receptive of Eternal Law just as irrational nature is... though in a higher way. Or we might see rational participation as *legislative*, as participation in the very act of legislating.... That we must understand rational participation in the second sense, seeing human reason as regulative rather than regulated, is clear from the fact that St. Thomas identifies the Natural Law with the "propositions" or "precepts" of natural reason. The matter is put beyond doubt in q. 93, a. 6, where a sharp distinction is drawn between participation in the Eternal Law by way of *inclinatio naturalis ad id quod est consonum legi aeternae* and *ipsa naturalis cognitio boni*.... That which differentiates Natural Law from natural inclination, and makes it law in the proper sense, is the fact that it is the work of reason,

expression rather than impression. It comes from God, as all human things... but the mind receives it, not as itself an object which is revealed by it but as becoming a source of light, discerning and declaring the truth for human activity." "The Thomist Concept of the Natural Law," *Irish Theological Quarterly* 22 (1955): 93–94.

5. On this see the helpful essay by Angel Rodriguez Luño, "La valutazione teologico-morale dell'aborto," in *Commento Interdisciplinare alla "Evangelium Vitae,"* under the direction and coordination of Ramon Lucas Lucas, Italian edition by Elio Sgreccia and Ramon Lucas Lucas (Vatican City: Libreria Editrice Vaticana, 1997), 419. As examples of older moral manuals defining abortion as the expelling of a living but not yet viable fetus from the mother's womb, Luño refers to those by D. M. Pruemmer and H. Noldin. In his *Manuale Theologiae Morale* (Friburgi Brisg./Rome: Herder, 1961), vol. 2, no. 137, Pruemmer defined abortion as *eiectio immaturi foetus viventis ex utero matris* (expelling of an immature living fetus from the mother's womb). In his *Summa Theologiae Moralis* (Oeniponte-Lipsiae: P. Rauch, 1941), vol. 2, no. 342, Noldin offered a similar definition, *foetus abortus est eiectio immaturi ex utero matris*

(abortion is the expelling of an immature fetus from its mother's womb).

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