Magisterial Teachings on Direct Abortion and Their Interpretation by Moral Theologians from the Late Nineteenth Century Decisions of The Holy Office to the Present

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In the late nineteenth century, Catholic moralists argued strongly over the lawfulness of various operations that resulted in the death of a pre-born child but which saved the life of the mother. In the same time period, the Congregation of the Inquisition (the Holy Office) began issuing formal responses to questions concerning specific cases and procedures. While those decisions practically settled matters for the moralists of the time, in the decades following the Second Vatican Council similar debates have arisen among authors desiring to be faithful to the teachings of the Magisterium. Disagreements concern not only the morality of specific operations in difficult situations, but also the principles that specify human action, the definition of terms like “abortion,” and the authority and proper interpretation of magisterial interventions themselves.

The purpose of this study is to identify and analyze the teachings of the Magisterium on direct abortion and their interpretation by Catholic moralists from the late nineteenth century to the present in order to inform current debates among Catholic scholars on the understanding and application of those teachings. This dissertation is divided into three principal parts, following periods of development in magisterial teaching: the period of the Holy Office decisions (1884-1902), the period from the first Code of Canon Law to the Second Vatican Council (1917-1962), and the period from the Council to the present. In each section I present the teachings or
decisions in their respective contexts, including relevant questions or debates that may have occasioned or resulted from the magisterial interventions.

This dissertation concludes that since the nineteenth century, while there has been no reversal of prior doctrine at any point, there has been a development of magisterial teaching on direct abortion in at least three ways: 1) the meaning of the term “direct” has been clarified, 2) the meaning of “abortion” has broadened to include more actions than it previously had in the usage of the Magisterium, and 3) teaching on the relationship between direct abortion and direct killing became more explicit. I explain the relevance these and other developments have for current debates.
This dissertation by Joseph Michael Arias fulfills the dissertation requirement for the doctoral degree in Moral Theology/Ethics approved by Joseph E. Capizzi, Ph.D., as Director, and by William C. Mattison, III, Ph.D., and John S. Grabowski, Ph.D., as Readers.

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own teaching and diligence. I only hope that one day I might imitate you. I dedicate this
dissertation to you.

Ultimately, I offer the work of this project in gratitude to God for the moral Magisterium
of Pope Saint John Paul II, who boldly proclaimed the “Gospel of Life” in both words and deeds.
I pray that in some small way this dissertation may contribute to that same proclamation.
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Introduction

On January 27, 2011, Origins published an article by moral theologian M. Therese Lysaught defending a procedure at a Catholic hospital in Phoenix, Arizona, that in the judgment of the local ordinary was a direct abortion in violation of the Ethical and Religious Directives for Catholic Health Care Services of the United States Conference of Catholic Bishops and subject to canonical penalty. In her analysis, Lysaught did not dispute the immorality of direct abortion per se, rather she argued that what took place at the hospital should not properly be described as a direct abortion, precisely because she maintained that no direct killing took place. This analysis formally contradicted the judgment of the Bishop of Phoenix, Thomas J. Olmsted, who stated: “When I met with officials of the hospital to learn more of the details of what had occurred, it became clear that in the decision to abort, the equal dignity of mother and her baby were not both upheld; but that the baby was directly killed, which is a clear violation of Ethical and Religious Directive No. 45.”


2 Lysaught, “Moral Analysis of Procedure at Phoenix Hospital,” 541-548.

3 Olmsted, “Phoenix Hospital No Longer Catholic,” 506. Directive No. 45 states: “Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted. Every procedure whose sole immediate effect is the termination of pregnancy before viability is an abortion, which, in its moral context, includes the interval between conception and implantation of the embryo. Catholic health care institutions are not to provide abortion services, even based upon the principle of material cooperation. In this context, Catholic health care institutions need to be concerned about the danger of scandal in
The disagreement between M. Therese Lysaught and Bishop Thomas J. Olmsted manifested not only the grave importance of moral action theory for informing decisions regarding concrete cases involving life and death, but also the profound divergence of opinion that can and does exist among recent Catholic authors who both write on matters of action theory and desire to teach in accord with documents of the Magisterium and other ecclesial directives. Indeed, the “Phoenix Hospital Case” itself, as it has come to be known, has directly led to no small amount of commentary and argument. As multiple authors have recognized, it has truly become a test case for examining rival theories of human action, especially as those theories relate to the topics of abortion and homicide.

Is it ever justifiable to intend the procurement of abortion? What about in cases of “vital conflict,” when both mother and child will die without an abortion but the mother can be saved with it? By intentionally procuring an abortion, is the human agent necessarily committing homicide, even if he does not propose the action to himself as killing? What makes a human action to be of the killing kind? How do the answers to these questions relate to debates concerning how the object of the human act is determined? All of these questions have been


involved explicitly or implicitly in the discussions on the Phoenix Case, and also in recent broader debates on action theory among Catholic moralists.\(^5\)

In her own article attempting to justify the procedure at St. Joseph’s Hospital, Lysaught relied especially on the theories and works of Martin Rhonheimer and Germain Grisez.\(^6\)

Lysaught employs the opinions of both authors in support of the general thesis that an agent may sometimes choose to perform an action that in the order of causality immediately produces the

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death of an innocent human being, and may even be described as a “direct killing” in a physical or material sense, but without being an intentional or direct killing in a moral sense. Lysaught points to Rhonheimer’s and Grisez’s uses of the example of craniotomy to illustrate their point.⁷

Both Rhonheimer and Grisez clearly maintain that in some circumstances the physically direct killing procedure of craniotomy (or its equivalent) may be freely chosen by an agent having full knowledge of its causality, but without the agent choosing or intending to kill the subject of the craniotomy.⁸ Rhonheimer holds this position for situations of vital conflict, for in such cases he maintains that, since the child cannot survive in any case, the lethal procedure is performed outside the “ethical context” of justice, which normally prohibits the material act of taking human life.⁹ “In this case, only the life of the mother is at the disposal of another human

⁷ Lysaught, “Moral Analysis of Procedure at Phoenix Hospital,” 543-545. Grisez, The Way of the Lord Jesus, Vol. 2, 502, describes craniotomy as “an operation in which instruments are used to empty and crush the head of the child so that it can be removed from the birth canal.”

⁸ Ibid., “With respect to physical causality, craniotomy immediately destroys the baby, and only in this way saves the mother...However, assuming [certain] conditions are met, the baby's death need not be included in the proposal adopted in choosing to do a craniotomy.” Similarly, Rhonheimer, Vital Conflicts in Medical Ethics, 124, speaking of craniotomy and other similar procedures in a context in which the child will die with or without the procedure but the mother can be saved with it: “The only charge that can be leveled against the procedure is that it is ‘direct,’ i.e., physically direct. But is this morally decisive?” “According to my argument, this point of view is not morally decisive in this context. Therefore, in this case, the killing of the fetus would not consist in a choice of the death of a human being as a means to save the life of the mother. Intentionally (objectively) we can describe the case simply as ‘the saving of the mother’s life.’” In a footnote continuing on the next page, Rhonheimer explains, “...an act can be an act of killing materialiter but something else entirely formaliter, e.g., self-preservation, the saving of a life, medical therapy. The object of an action is determined on the basis of the formal aspect, not the material.” (All emphases are in the original.)

⁹ Rhonheimer, Vital Conflicts in Medical Ethics, 123: “Let me now recapitulate the fundamental argument for the moral justification of this mode of action (causing the death of an embryo or fetus that can not survive). The argument consists in the view that the decision to allow both mother and child to die—when at least the mother can be saved and the child will die in any case—is simply irrational, and particularly from the perspective of the doctor. The norm that prohibits the killing of a human being appears, in this case, to be simply pointless and nonsensical. In fact the meaning of the norm is that no unjust killing be committed; it is simply beyond comprehension, therefore, to claim that the child’s right to life is disregarded in such cases. One cannot ‘take away’ a life for which it is already clear that it will never even be born.” (Emphases are in the original.)
being—the fetus is no longer even subject to a decision between ‘killing and allowing to live’; the only morally good thing that can be chosen here is to save the life of the mother.”

Grisez comes to the same conclusion as Rhonheimer concerning the lawfulness of craniotomy and other physically direct lethal procedures in certain circumstances; however, he does so for different reasons. “Sometimes four conditions are simultaneously fulfilled: (i) some pathology threatens the lives of both a pregnant woman and her child, (ii) it is not safe to wait or waiting surely will result in the death of both, (iii) there is no way to save the child, and (iv) an operation that can save the mother’s life will result in the child’s death.” Assuming a case where the four conditions are met, and granting that with “respect to physical causality, craniotomy immediately destroys the baby, and only in this way saves the mother,” Grisez maintains that the agent’s intentional “proposal can be simply to alter the child’s physical dimensions and remove him or her, because, as a physical object, this body cannot remain where it is without ending in both the baby’s and the mother’s deaths…In adopting this proposal, the baby’s death need only be accepted as a side effect.” For Grisez, what is central and most decisive for the justification is that the lethal effect is not determinative of the human act’s object or species precisely because the effect is not part of the act as proposed by the agent to himself in the order of intentionality. Hence, Grisez concludes, “according to the analysis of action

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10 Ibid. Emphases are in the original.


12 Ibid.

13 For the central role the intentional “proposal” plays in determining the object or species of a human act in Grisez’s work, see Germain Grisez, The Way of the Lord Jesus, Vol. 1, Christian Moral Principles (Chicago, Illinois: Franciscan Herald Press, 1983), 233: “The action of an individual is defined by the proposal adopted by a choice, just as the action of a group is defined by the motion adopted by a vote…The expression, ‘the proposal adopted by choice,’ has more or less the same meaning as St. Thomas’ expression, ‘the object of an action.’ The point made here by saying, ‘the action is defined by a proposal adopted by choice,’ often is expressed in his language, ‘The action is specified by its object’ (cf. S.T., 1-2, q. 18, a. 2).” (Emphasis is in the original.) For a statement of Martin Rhonheimer distancing himself “from the view that the object is ‘simply that which the agent
employed in this book, even craniotomy (and, a fortiori, other operations meeting the four stated conditions) need not be direct killing, and so, provided the death of the baby is not intended (which is possible but unnecessary), any operation in a situation meeting the four conditions could be morally acceptable."¹⁴

Since Rhonheimer and Grisez come to the same conclusion (albeit by different means), that even a procedure as causally directly lethal as craniotomy (or its equivalent) can be justifiably chosen in the respective conditions they laid out, Lysaught herself concludes:

Therefore, should any ethics committee at a Catholic hospital research the literature on this question, they would obtain a consensus opinion from two leading conservative scholars of the Catholic moral tradition, both of whom have written in defense of *Humanae Vitae*, who are expert scholars of Thomas Aquinas, are dedicated to *Veritatis Splendor* and *Evangelium Vitae*, and who have made clear their dedication to magisterial teaching. That opinion would have supported the conclusion reached by the ethics committee at St. Joseph’s Hospital and Medical Center.¹⁵

It is clear from Lysaught’s conclusion and overall analysis that not only did the philosophical argumentation of the authors she appealed to matter, but also their commitment to the magisterial tradition, which is presupposed to have informed their moral reasoning.

One way in which Lysaught manifests Rhonheimer’s dedication to magisterial teaching is by noting in his own words how the essential content of his *Vital Conflicts in Medical Ethics* “was drafted for the Roman Congregation for the Doctrine of the Faith…After it was carefully studied in the congregation and by its then prefect, Cardinal Joseph Ratzinger, the congregation proposes to himself,” see his “Author’s note” on pages 85-86 of *Vital Conflicts in Medical Ethics*, “But I have never held such a view, nor have I advanced it in the present work. If I had, I could have omitted 99 percent of what I have said. It would have been sufficient to assert that the object of an act of killing a baby performed with the proposal of saving the mother’s life is ‘saving life’ or ‘healing’; and that, therefore, the act is morally licit.”


¹⁵ Lysaught, “Moral Analysis of Procedure at Phoenix Hospital,” 545.
in turn asked that it be published so the theses it contains could be discussed by specialists.”\textsuperscript{16} In support of Grisez’s dedication, Lysaught notes the \textit{Nihil Obstat} and \textit{Imprimatur} of Volume 2 of his \textit{The Way of the Lord Jesus}, wherein appear the texts she employed in her analysis.\textsuperscript{17}

Lysaught does exactly the same for the work of another author, William E. May, regarding the second edition of his book, \textit{Catholic Bioethics and the Gift of Human Life}, wherein May argues in favor of certain procedures that many other moralists have considered illicit direct abortions.\textsuperscript{18}

One of the most notable contributions of May’s book to the recent discussions on abortion and action theory is his use of magisterial documentation, in particular the 1995 encyclical letter of Pope John Paul II, \textit{Evangelium vitae}, to support a distinction between two supposed types of abortion, “abortion as removal,” and “abortion as killing.”\textsuperscript{19} The former is defined as the simple removal or expulsion of a non-viable fetus from his or her mother; the latter is defined as the intentional killing of the fetus at any point from conception to birth. May contends that in \textit{Evangelium vitae} Pope John Paul II absolutely condemns “abortion as killing,” but not necessarily “abortion as removal.” May, maintaining the theory of human action articulated by Grisez above, argues that in some circumstances “abortion as removal” is justifiable.\textsuperscript{20}

\textsuperscript{16} Ibid., 549 (endnote 23). The original text is found in Rhonheimer, \textit{Vital Conflicts in Medical Ethics}, xiii (Author’s Preface). There Rhonheimer adds: “Obviously, the observations made here are my personal opinions and not those of the Congregation for the Doctrine of the Faith.”

\textsuperscript{17} On page 503 of this work, immediately following the text corresponding to footnote 14 of this dissertation above, Grisez himself notes: “If the analysis proposed here should lead in practice to a judgment in conflict with the Church’s teaching, I would follow and urge others to follow the Church’s teaching. If the teaching is open to refinements in respect to its application, these must be completed by the magistertium.”


\textsuperscript{19} See Ibid., 167-211.

\textsuperscript{20} Ibid., especially 192-199.
While Lysaught herself drew attention to the magisterial commitments of authors such as Rhonheimer, Grisez, and May, in order to support her conclusion that the procedure at St. Joseph’s Hospital was accomplished without defying Catholic teachings, a survey of responses from equally disposed authors reveals a deep divide concerning what is actually in accord with authentic Catholic moral principles. Moreover, while some authors engaging in the scholarly discussions have offered focused explanations of magisterial documents on the topics of abortion, homicide, and human action, the vast majority of recent literature on these topics has focused on philosophical argumentation and exegesis of the writings of Saint Thomas Aquinas.\(^{21}\)

In the last four decades, there has been no comprehensive study focused on the concept of direct abortion in the recent teachings of the Magisterium and their interpretation by Catholic moralists.\(^{22}\) This dissertation is intended to provide such a study.

The purpose of this dissertation is to identify and analyze the teachings of the Magisterium on direct abortion and their interpretation by Catholic moralists from the late nineteenth century to the present in order to inform current debates among Catholic scholars on the understanding and application of those teachings. Philosophical arguments about how the object or species of a human act (especially an act of homicide) is determined are not the focus; nevertheless, such arguments are presented and analyzed throughout, to the extent that they are


\(^{22}\) John Connery, S.J., \emph{Abortion: The Development of the Roman Catholic Perspective} (Chicago, Illinois: Loyola University Press, 1977), remains the definitive study in the English language on the development of magisterial teaching and theological opinion concerning abortion, from the texts of the Old Testament until the first half of the twentieth century.
necessary or useful for understanding the teachings of the Magisterium on abortion. The time period starts in the late nineteenth century because it was then that the term “direct” began to appear in documents of the Holy See concerned with obstetrical procedures involving life and death decisions.

This dissertation is divided into three principal parts, corresponding to three periods of significant development in the teachings of the Magisterium on direct abortion. Each principal section or chapter presents the teachings or decisions in their respective contexts, including relevant questions or debates that may have occasioned or resulted from the magisterial interventions.

The first chapter treats especially of the late nineteenth century interventions of the Supreme Congregation of the Holy Roman and Universal Inquisition (commonly called the Holy Office), which employed the term “direct” in relation to certain obstetrical procedures. These decisions are foundational, for they introduced terms that are still used and discussed currently, and which responded to debates not dissimilar to those found in contemporary discussions. The decisions of this period are generally distinguished by their practical character, as brief responses to questions (dubia) concerning whether certain actions may be performed, or performed in a certain manner, but with little or no explanation provided. Consequently, adequate reasons for the responses are found explicitly only in subsequent documents of the Magisterium, most especially in the encyclical letter of Pope John Paul II, *Evangelium vitae* (1995).

The second chapter treats the early to middle twentieth century magisterial documents on direct abortion, as found especially in the teachings of Pope Pius XI and Pope Pius XII, but also in the development of the canonical penalties incurred by those who procured abortions, insofar as tracing this development is useful for understanding later teachings on abortion, especially in
the pontificate of John Paul II. The magisterial and canonical documents of the middle-period covered in this chapter are particularly important because of the clarity they brought to specific terms (e.g., “direct” and “abortion”) that are used and further developed in the teaching of *Evangelium vitae*, and other sources since the Second Vatican Council.

The third chapter examines the most recent documents of the Magisterium concerning direct abortion. Among the various documents since the Second Vatican Council, the encyclical *Evangelium vitae* receives the greatest attention, as this document combines prior teachings from, and provides an interpretative key for, many previous documents of the moral Magisterium and canonical tradition concerning direct abortion. This chapter engages most directly the various interpretations and discussions found among prominent contemporary Catholic moralists who have offered focused explanations of magisterial documents on abortion.

Finally, a general concluding section provides an overview of Catholic teaching on direct abortion in the period under consideration, and offers an analysis and evaluation of points of agreement and dispute among recent and contemporary Catholic authors relevant to that teaching. This section also offers a synopsis of some questions that remain open for further development or clarification.
Chapter One

Introduction

This chapter introduces the recent magisterial corpus on direct abortion by focusing on what might be called the “first period” of development. Broadly, this period covers the moral discussions and magisterial interventions of the second half of the nineteenth century, which interventions laid the foundations for all later ecclesial teachings on direct abortion, as well as for contemporary debates on the meanings of those teachings. More particularly, this chapter introduces and explains the decisions of the Holy See from 1869 through 1902 relevant to abortion within the context of questions and debates focused on by Catholic moralists since the mid-nineteenth century.

This chapter begins by introducing the 1895 judgment of the Holy See on direct abortion. Since this particular judgment represents a sort of climax of relevant magisterial teaching on the subject at its time, the rest of the chapter will be structured so as to provide material that makes the judgment more intelligible in itself and in its relations to prior and subsequent teachings. Hence, after an initial presentation and explanation of the judgment, I will introduce and explain some of the more relevant moral discussions that eventually led to the need for magisterial interventions on direct abortion. I will also show how in order to understand the official teaching on abortion, it is necessary to distinguish and understand the differences between abortion and craniotomy or embryotomy, and how decisions from the Holy See relevant to the latter procedures should be understood in relation to the teaching on abortion. Although abortion is similar to craniotomy in important respects, what the Church teaches about the distinct species of abortion has great relevance for understanding what the Church teaches about the act and morality of direct killing. Exploring these matters in detail will take place in subsequent
chapters, but the foundations for that exploration are laid in the present chapter, in the terms, distinctions, and decisions of the dicasteries of the Holy See from 1869 to 1902.

*The Inquisition Decision from 1895: Introduction and Background*

The most important decision from the Magisterium in the late nineteenth century that touches upon the morality of the act of abortion came from the *Suprema Congregatio Sanctae Romanae et Universalis Inquisitionis* on July 25, 1895. This decision is essentially a reply to a *dubium* from the Archbishop of Cambrai about whether a doctor could remove a nonviable fetus from the womb of a woman who was dying from consequences of her state of pregnancy. The precise details are found in the case as it was presented to the Inquisition.

Titius, a medical doctor, when called to a gravely ill woman with child, he gradually noticed that the cause of the lethal disorder was nothing other than the pregnancy itself, that is, the fetus present in the womb. Therefore, so that he might save the mother from certain and imminent death, one way was ready at hand to him, namely the procuring of abortion, or the ejection of the fetus. He began this way in the usual manner, however, the applied means and operations did not tend of themselves and immediately as to kill the fetus in the womb of the mother, but only to its being brought forth to light alive, if it would be possible to take place, although it was about to die soon, since it still would have been altogether immature.

Indeed, having read what the Holy See wrote in reply to the Archbishop of Cambrai on August 19, 1888, that *it cannot be safely taught* that any directly lethal operation on the fetus is licit, even if this were necessary to save the mother: Titius remains doubtful concerning the lawfulness of the surgical operations by which he, up to this point, not rarely procured abortion, so that he might save gravely ill pregnant women. Therefore, in order that he might take counsel for his conscience, Titius suppliantly asks: Whether he may safely repeat the expressed operations in circumstances repeating those mentioned above?

On the 4th day of the week, July 24, 1895, in the general Congregation of the Holy Roman and Universal Inquisition, with the above written instance proposed, the Most Eminent and Reverend Lord Cardinals, general Inquisitors in matters of Faith and morals, with the previously held vote of the RR. DD. Advisors, responding decreed: *Negative*, according to the other decrees, namely of May 28, 1884 and August 19, 1888 [1889]. Indeed, on the following day, the fifth of the week, July 25, in the audience granted to R. P. D., Assessor, our Most Holy Lord himself approved the related resolution of the eminent fathers.¹

¹ This is my translation of the following Latin text. Unless noted otherwise, all translations in this dissertation are my own, and all emphases are those found in the original texts. *Suprema Congregatio sanctae romanae et*
The judgment of the Inquisition on this case is significant for at least three reasons. In terms of authority, this judgment was expressly approved by the Holy Father at the time, Pope Leo XIII. In terms of content, the reply denies that the doctor in question can “safely repeat” a procedure that is clearly an abortion in the strict sense of a mere removal or ejection of a nonviable fetus (not embryotomy, craniotomy, or some other form of feticide), even to save a woman from “certain and imminent death,” in which case, inasmuch as the child is nonviable, his own death is guaranteed with or without the abortion. Consequently, such a removal is forbidden as a resolution even for the most extreme of medical circumstances, what some later authors will call cases of “vital conflict.” Finally, the judgment is in the negative “according to” the prior decrees of May 28, 1884, and of August 19, 1889. Together, these earlier decrees denied that it could be safely taught that craniotomy could be done under conditions similar to those expressed in the 1895 case, and proscribed “every directly lethal surgical operation for


“Stephanus Maria Alphonsus Sounois, Archiepiscopus Cameracensis, ad pedes Sanctitatis Tuae devotissime provulutus, quae sequuntur humiliter exponit:

“Titius medicus, cum ad praegnantem graviter decumbentem vocabatur, passim animadvertebat lethalis morbi causam alien non subsese praeter ipsam praegnati onem, hoc est, foetus in utero praesentia. Una igitur, ut matrem a certa atque imminenti morte salvaret, praesto ipsi erat via, procurandi scilicet abortum seu foetus ejectionem. Viam hanc consueto ipse inibat, adhibitis tamen mediis et operationibus, per se atque immediate non quidem ad id tendentibus, ut in materno sinu foetum occiderent, sed solummodo ut vivus, si fieri posset, ad lucem ederetur, quamvis proxime moriturus, utpote qui immaturus omnino adhuc esset.

“Iamvero lectis quae die 19 Augusti 1888 Sancta Sedes ad Cameracenses Archiepiscopos rescriptis: tuto doceri non posse licitam esse quancumque operationem directe occisivam foetus, etiam si hoc necessarium foret ad matrem salvandam: dubius haeret Titius circa liceitatem operationum chirurgicarum, quibus non raro ipse abortum hucusque procurabat, ut praegnantes graviter agrotantes salvaret.

“Quare, ut conscientiae suae consulat supplicant Titius petit: Utrum enuntiata operationes in repetitis dictis circumstantiis instaurare tuto possit.

“Feria IV die 24 Iulii 1895.

“In Congregatione generali S. Romanae et Universalis Inquisitionis, proposita suprascripta instantia, Emi ac Rmi Domini Cardinales in rebus Fidei et morum Inquisitores generales, prae habito RR. DD. Consultorum voto, respondendum decreverunt: Negative, iuxta alias decreta, dei scilicet 28 Maii 1884 et 19 Augusti 1888 (Recole Vol. XVI, 556 et Vol. XXII, 748). [The last date is mistaken by one year, the decision cited undoubtedly refers to that of August 19, 1889; see Acta Sancta Sedis 22 (1889-1890): 748.]


“Ios. Mancini Can. Magnoni
S. Rom. et Univ. Inquisitionis Notarius.”
either the fetus or the pregnant mother.” Hence, the 1895 decision needs to be considered and understood in relation to those earlier decisions.

As important as the 1884 and 1889 decisions are, both in themselves and for understanding the 1895 decision, in order to place the later decision in its fuller context it seems necessary to go back several decades earlier to the beginnings of a discussion that would be settled *de facto* only with the 1895 resolution. In his monumental work, *Abortion: The Development of the Roman Catholic Perspective*, John Connery, S.J., refers to what appears to have initiated the proximate moral conversation that would eventually lead to that resolution of the Inquisition.² In 1857, the editors of the *Revue théologique* published an *Essai sur la théologie morale* in which a case was examined from a medical doctor in Antwerp.³ This case contained many circumstances similar to those of the “Titius” case later submitted to the Inquisition in 1895.

The *Revue* case concerns a woman in the fourth or fifth month of pregnancy suffering from such a grave and intractable uterine hemorrhage that her death is certain to arrive within hours. As many as four physicians have unanimously judged that there is only one way that offers “salvation” in the situation: “they ask permission to transport the child from an environment *where he cannot continue to live*, into another environment *where he cannot live any further* (since he is not born viable), that is to say they propose *to procure abortion.*”⁴ If the abortion is not procured both “the mother and the child undoubtedly die, and the child *dies without baptism*;” on the other hand, if it is procured, “the mother is saved, the child is not, it

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⁴ Ibid., 267-268: “ils vous demandent la permission de transporter l’enfant d’un milieu où il ne peut pas continuer à vivre, dans un autre milieu où il ne peut pas vivre davantage (puisqu’il n’est pas né viable), c’est-à-dire ils vous proposent de provoquer l’avortement.”
cannot be; but by the fact of his extraction outside of the womb, where he must die all the same, he is placed in the possibility to receive before his death the holy sacrament of baptism.\textsuperscript{5} The editors then state the heart of the moral question and provide their response.

Thus the question to resolve is this one: Is it permitted and lawful to advance by some hours the death of a nonviable fetus, in order to baptize him and to save the mother? We think yes, because such an action is not forbidden by any law, and from there we conclude that a doctor would be obliged in conscience to attempt the means, when it is the only that he can employ with success.\textsuperscript{6}

After defending their affirmative position on the grounds that they find an analogy between accelerating the death of the child through abortion and accelerating a child’s death by baptizing him with frigid water in a case where he would die shortly anyway, an action they claim is permitted by “all theologians,” the editors raise and respond to several objections. Two of these objections are worth noting, as they both illustrate principles that have continued to be the subjects of disputation among Catholic moralists in discussions about abortion, even in more recent years.

To the first objection, that the natural law “you shall not kill” (\textit{non occides}) is general and does not admit of exceptions, the \textit{Revue} editors reply with the putative counter-example of killing in the case of legitimate defense. Acknowledging that for such an action really to be legitimate the only goal the agent may have is to defend life, with the killing itself not being intended, the editors contend that the moral equivalent occurs in their case. “The surgeon, who extracts the child from the womb, does not have the intention to kill him, he desires simply to

\textsuperscript{5} Ibid., 268: “la mère et l’enfant meurent indubitablement, et l’enfant \textit{meurt sans baptême};... la mère est sauvée, l’enfant ne l’est pas, il ne peut pas l’être; mais par le fait de son extraction hors de la matrice, où il devait mourir tout de même, il est mis dans la possibilité de recevoir avant sa mort le saint sacrement du baptême.”

\textsuperscript{6} Ibid., 269-270: “Ainsi la question à résoudre est celle-ci : Est-il permis et licite d’avancer de quelques heures la mort d’un foetus non viable, afin de le baptiser et de sauver la mère? Nous pensons qu’oui, car une telle action n’est défendue par aucune loi, et de là nous concluons qu’un médecin serait obligé, en conscience de tenter le moyen, quand c’est le seul qu’il puisse employer avec succès.”
baptize him and to set free the mother.”⁷ “Moreover,” they argue that in the particular circumstances “it cannot be said that the surgeon kills the child, he only advances by some hours the inevitable death of the fetus.”⁸

To the second objection, evils are not to be done so that goods may come about (non sunt facienda mala ut eveniant bona), the authors deny that the axiom is applicable. They consider it evident that the premature extraction of a fetus (l’extraction prématurée d’un foetus) is not an evil in itself (mal de soi). Furthermore, in the actual circumstances, they consider the displacement of the fetus (le déplacement du foetus) to be very advantageous to the mother as well as to the child. For, as the authors previously noted, the déplacement saves the mother’s life and allows the inevitably dying child the opportunity to be baptized.⁹

While particular circumstances vary, it is clear that the essence of the case presented in the Revue is morally identical to the case considered by the Inquisition in 1895. Both cases concern a woman suffering life-threatening ailments related to her state of pregnancy. Each situation is such that the woman and her child will die soon unless an intervention removes the child from the womb. This intervention can save the mother from death, but the child will certainly die because he is nonviable, that is, not able to live apart from his mother. Hence, the child will die with or without intervention. The method of removing the child does not involve killing him in the womb or prior to his extraction. Rather the action can be described as an ejection, displacement, or transport from the maternal environment where he cannot continue to live into another environment where due to his nonviable status he cannot live any further.

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⁷ Ibid., 270: “Le chirurgien, qui extrait l’enfant de la matrice, n’a pas l’intention de le tuer, il veut simplement le baptiser et délivrer la mère.”

⁸ Ibid. “Au surplus,… ne peut pas dire que le chirurgien tue l’enfant, il ne fait qu’avancer de quelques heures la mort inévitable du foetus.”

⁹ Ibid., 271.
Deliberately to accomplish this action is to procure abortion. Clearly, for the authors of the *Revue théologique* article, to procure abortion is not necessarily to kill the child. As discussed below, this proposition became the subject of strong disagreement among Catholic moralists for almost four decades between the *Revue* article and the 1895 decision.

According to Connery, the case set out in the *Revue théologique* provided the occasion for a clear but informal rebuttal from one of the most renowned moral theologians of the time period, the Jesuit Father Jean Pierre Gury (1801-1866). The informality of the response is found in the absence of any direct reference to the article in the *Revue théologique*.

Nevertheless, in an early edition of his *Casus Conscientiae in Praecipuas Quaestiones Theologiae Moralis*, Gury presented a case which, although formally fictitious, contains too many similarities with the Antwerp case to be merely coincidental.

Pelagia, a woman of four or five months pregnant, is confirmed to be in the greatest danger of life and is now perceived about to breathe out her soul. Besides the ordinary physician, three others are called pursuing the cause of counsel. Thus having weighed carefully the case with diligence, unanimously they resolve: if the ejection of the fetus is procured with the assistance of medical art, this [fetus] will perish indeed; but he probably will be able to be baptized, before being extinguished, and the mother certainly will be rescued from the danger of death. On the other hand, if it is not so done, it is all over concerning both the mother and the child, and this [child] will be deprived the benefit of baptism. These established, they conclude that an abortion is to be procured. The event proved the foresight of the doctors; for the child, ejected and baptized immediately, was extinguished; and Pelagia was saved from the great danger she evaded.

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11 As Connery notes: “The name was fictitious but the parallel with the case of the Antwerp physician was too close to be coincidental.” Ibid., 215.

12 Joanne Petro Gury, S.J., *Casus Conscientiae in Praecipuas Quaestiones Theologiae Moralis* (Germania: Georgii Joseph Manz, 1865), 123-124. The original text of the case is the following: Pelagia, mulier a quatuor vel quinque mensibus praegnans, in summo vitae periculo constituitur et videtur jamjam animam efflatura. Praeter medicum ordinarium tres alii advocantur consilii caresssendi causa. Re sedulo perpensa sic unanimiter resolvunt: si ope artis medicalis procuretur ejectio foetus, hic quidem peribit; sed probabiliter poterit baptizari, antequam exstinguatur, et mater certo mortis periculo ripiuetur. Econtra, nisi ita fiat, actum est tum de matre, tum de prole, et haec beneficio baptismi carebit. His statutis concludunt ad abortum procurandum. Eventus praevisionem medicorum probavit; proles enim ejecta et baptizata illico extincta est, et Pelagia salva e tanto periculo evasit.
Similar in style to the *Revue théologique* article, Gury then provided a general response followed by a set of objections and replies.

In his response, Gury notes first that some “newcomers” or *neoterici* affirm the lawfulness of the abortion, because in their judgment no disadvantage actually follows and great benefits are secured. That the death of the fetus comes a little more quickly in the circumstances seems a small matter before the great goods of saving the mother while providing eternal life for the child through baptism. However, Gury quickly points out that, contrary to the *neoterici*, the most common judgment (*sententia communissima*) of theologians, “which in practice is kept under mortal sin,” absolutely denies the lawfulness of the abortion in the case under consideration.\(^{13}\) The author then provides the strongest reason he believes substantiates the *sententia communissima*.

The most powerful reason is because for no private person is it ever licit *directly* to kill anybody: for a *direct* killing of a human being is always something intrinsically evil, except the case in which someone is justly punished for the penalty of a crime by public authority. And in the present case it is a *direct* killing of a human being; for the ejection of the immature fetus procured in a violent manner is *directly* intended, that the mother may be removed from it uninjured. Further, this is said to be a true and proper killing, since the fetus is violently cast forth from the uterus of the mother and is deposited in a condition in which he can by no means live. Therefore the fetus properly and directly is killed. Therefore abortion even in those circumstances is illicit and a great crime.\(^{14}\)

For Gury, then, directly intended ejection of the immature fetus is most clearly an instance of direct killing. That is to say, contrary to the judgment of the *Revue théologique* authors, to procure abortion is necessarily to kill directly. The act of killing is contained in the expulsion itself *insofar as* in being cast forth from the uterus the fetus is deposited in a condition in which

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\(^{13}\) Ibid., 124.

\(^{14}\) Ibid. *Ratio potentissima est, quia nemini privato licet umquam quemquam directe occidere: occisio enim directa hominis semper est quid intrinsece malum praeter casum, in quo quis ab auctoritate publica in poenam criminis juste punitur. Atque in praesenti casu est occasio directa hominis; nam intenditur directe ejectio foetus immaturi modo violento procurata, ut eo remoto mater incolumis fiat. Porro hoc est vera et proprie dicta occisio, siquidem foetus violenter ab utero matris eruitur et ponitur in statu, in quo vivere minime potest. Ergo foetus proprie et directe occiditur. Ergo abortus etiam in illis circumstantiis est illicitus et crimen ingens.*
he can by no means live. In other words, the fetus is killed insofar as the expulsion does not
preserve his viability. This is the principal reason why procured abortion is never licit in any set
of circumstances.

Before considering Gury’s responses to objections, it will be useful to address how
precisely he employed the term *direct*, as well as how he understood the malice proper to
homicide. Both of these issues will be relevant for addressing later discussions and decisions
from the Holy See. In relation to a voluntary action Gury distinguishes *directum* and *indirectum*,
“according as the act directly or in itself is willed, or indirectly or in another only, as an effect in
a cause, or as something with which it is connected.”  

Hence, ejection of an immature fetus
willed in itself is direct abortion; whereas, abortion is indirect when the ejection of an immature
fetus results from another action willed in itself. The former is never lawful, the latter might be
lawful. The necessary conditions under which the latter would be lawful are 1) if the end of the
agent is honorable (*honestus*); 2) if the cause be good in itself, or indifferent; 3) if the good effect
follows equally immediately with the evil effect from the cause; 4) if the good effect at least
balances the evil.

For Gury the malice of direct homicide, or the direct killing of one who must be regarded
as innocent, involves the agent assuming to himself a dominion over life which he does not have
and which belongs to God alone. While public authority has been given by God the power to


16 Ibid., 264-266.

17 Ibid., 17: “Licet ponere causam ad bonum effectum, quamvis ex ea sequatur effectus malus, si adsint sequentes
conditiones: scilicet: 1° Si finis agentis sit honestus; 2° si causa sit in se bona, vel indifferentem; 3° si bonus effectus
aeque immediate ac malus ex causa sequatur; 4° si bonus effectus malum saltem compenset.”

18 Ibid., 253.
defend the common good of society against malefactors, and by that authority it is lawful to kill them if necessary, not even this supreme human authority has the dominion necessary lawfully to kill the innocent. Accordingly, it is never licit directly to procure abortion, and this holds true for Gury even if one were to suppose a case of a fetus without a rational soul (inanimatus). Directly procured abortion of an animated fetus is homicide properly speaking (homicidium proprie dictum); but in the case of an unanimated fetus it is “anticipated homicide.” For in the latter case, the fetus is “ordained unto a formed man” (ordinatur ad hominem formandum). Hence, his ejection is homicidium anticipatum.

Returning to his resolution of the Pelagia case, Gury briefly responds to four objections. The first considers the advantages which follow from the abortion. It is claimed that one of the advantages is that the offspring would be a survivor even for the “smallest instance of life” (which in the case allowed for the advantage of baptism just before death itself). To this Gury responds that it is not a question concerning advantages and disadvantages as in the case in which an indifferent cause is placed, from which a twofold effect follows, one good and the other evil, but what takes place is an “intrinsically evil action” (actione intrinsece mala), and “evils are not to be done, that goods might come” (non sunt autem facienda mala, ut eveniant bona).

The next objection is twofold. It is first alleged that since it is sometimes lawful to kill an unjust aggressor, it is sometimes lawful to kill by private authority. In the second place it is said that the fetus in the Pelagia case can be held to be an unjust aggressor to the life of the mother.

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19 Ibid., 258-259, and 263.

20 Ibid., 264. “Nunquam licet directe procurare abortum…quia si animatus sit foetus, est homicidium proprie dictum; si vero non sit animatus, est homicidium anticipatum. Foetus enim, etiam non animatus, ordinatur ad hominem formandum; ergo illius ejectio est homicidium anticipatum.”

21 Gury, S.J., Casus Conscientiae in Praecipuas Quaestiones Theologiae Moralis, 124.
Therefore the fetus may be killed. Gury responds that the killing in the case of unjust aggression is not done directly, but indirectly by the one invaded, who is truly defending himself (and not intending to kill). Hence, he regards the comparison to be invalid. Secondly, Gury contends that it is absurd to say that the fetus is an unjust aggressor. “For aggression is an act elicited and posited by a man; whereas the fetus does not act, but is moved and ruled by the laws of nature.”

The third objection states that “the killing of the fetus is not directly willed,” since the health of the mother is the “primary object of the will” of the doctor. Gury replies saying that the assertion is false. He then provides a brief explanation that reveals an important principle of his action theory. “For abortion is truly and directly procured, howsoever the intention is formed, whenever the remedies immediately accomplish the ejection of the fetus and the mother is not saved except because she is freed from the fetus.” Hence, for Gury the species of the human act can be determined by the causality involved in the external action. In the case at hand, whenever an operation immediately accomplishes (which language addresses the order of causality, not merely the order of intentionality) the ejection of the immature fetus as a means necessary for some end, then the moral species of the human act must include directly procured abortion. Moreover, since Gury regards direct abortion as a type of direct killing, deliberately to accomplish the immediate ejection of the immature fetus as a means necessary for some end is to be morally responsible for direct killing.

The final objection is that the fetus can be considered a member of the mother; and as an injurious member can be cut off, so can the fetus in the case. Gury replies emphatically that this

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22 Ibid. “Aggressio enim est actus ab homine elicitus et positus; foetus autem non agit, sed legibus naturae agitur et regitur.”

23 Ibid. Objiciunt 3° Occisio non est directe volita, siquidem sanitas matris est objectum primarium voluntatis medici. R. Falsa est assertio. Etenim vere et directe procuratur abortus, quaecumque fingatur intentio, quoties remedia immediate in foetus ejectionem agunt et mater non salvatur, nisi quia foetu liberatur.
is nonsense, saying that the objection is both vain and ridiculous. A mere member of the body does not have its own proper life, existence and soul separated from the mother. Also, it is clear to Gury that the fetus is not ordered to the body of the mother as to a whole.\textsuperscript{24}

Gury’s overall resolution and replies could not have been more opposed to the position on procured abortion in vital conflict situations defended by the editors of the \textit{Revue théologique}. The positions defended by the \textit{Revue} editors and by Gury, and their respective arguments, would be reflected in various ways in the writings of other theologians in subsequent years. Ironically, one of the most significant proponents of the position found in the \textit{Revue} came from a commentator on the writings of Gury, Antonio Ballerini, S.J. (1805-1881).

In his extensive commentary on Gury’s \textit{Compendium Theologiae Moralis}, in the section \textit{De procuratione abortus}, Ballerini presents a set of principles for addressing difficult cases involving dangers for the mother or child. One controversial principle was presented in the following way.

If the mother, seized with sickness, would labor in the grave danger of death unless the fetus is expelled by accelerating birth [\textit{accelerando partum}]; and if hope would be probable for it to be accomplished with the help of medicine so that the fetus may come forth to light alive, even if only for a short time, at least so that he may reach eternal life; then an expulsion of this kind not only seems lawful, but obligatory. The reason is because the danger and death of the mother would be no profit to the temporal life of the child, and furthermore it would press the offspring into very grave risk of eternal salvation.\textsuperscript{25}

This principle manifests a clear departure from the earlier solution found in Gury’s \textit{Casus Conscientiae} from 1865. The position advocated by Ballerini permits, even obliges, expulsion of

\textsuperscript{24} Ibid.

\textsuperscript{25} Ballerini’s comments are found in Joanne Petro Gury, S.J., \textit{Compendium Theologiae Moralis}, Editio Nona, Tomus Primus (Rome: Ex Typographia Polyglotta S. C. de Propaganda Fide, 1887), 384: \textit{Si mater morbo correpta, gravi mortis periculo laboret, nisi foetus partum accelerando expellatur; probabilis autem spes sit, ope medicinae effici posse, ut foetus vivus in lucem prodeat, atque adeo sin minus temporalem, saltem aeternam vitam adepturus sit; tune eiusmodi expulsio non modo licta videtur, sed praecepta. Ratio, quia matris periculum ac mors nihil prodesset vitae temporali prolis, et insuper in gravissimum salutis aeternae discrimen ipsam prolem coniceret.}
a nonviable fetus in the same circumstances according to which Gury condemned the expulsion.
Moreover, according to Gury’s earlier analysis, Ballerini’s position is contrary also to the
sententia communissima of past theologians. Hence, in the commentary of Ballerini, Connery
observes a significant turning point in the abortion conversation in relation to the writings of
well-known nineteenth century moralists. “What is new in Ballerini’s analysis is the distinction
between acceleratio partus and causing direct injury or death to the fetus, or in more technical
language, direct abortion and direct killing. Previous authors had identified the two, and
considered abortion homicide for this reason.”

Another important author of the same period, August Lehmkuhl, S.J. (1834-1918),
argued in favor of the lawfulness of the intentional ejection of an immature fetus, at least when
the life of the mother was in immediate danger. However, Lehmkuhl made what was for him an
important distinction.

…[I]n such a case it will hardly be the procuration of direct abortion in the theological
sense, any more than to surrender a plank to a friend in a shipwreck is a direct killing of
oneself. (In the same way, if the ejection of the fetus were necessary for his baptism, this
would be an indirect killing, or rather it would seem to be the indirect acceleration of
death: but that hardly ever will occur.)

It appears that for Lehmkuhl certain intentional or “direct” abortions should not be considered
“direct” in the theological sense of the term, the sense in which Catholic theology should

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26 Connery, Abortion, 219. Connery also notes that there is a controversy surrounding whether the editorial
influence of Ballerini was present in some of the works of Gury around the time of Gury’s death. In particular,
Connery refers to the seventeenth edition of Gury’s Compendium, published in the year of his death, where there
seems to be a change of opinion on the lawfulness of procured abortion in a vital conflict situation like the one he
treated in his earlier Casus. Also referenced is the edition of the Casus published in the year following Gury’s
death. Connery writes: “There the author clearly sides with the neoterici…Some later authors will again ask
whether it is really Gury speaking in this response, or rather Ballerini.” Abortion, 216-217.

27 Augustin Lehmkuhl, S.J., Theologia Moralis, Volumen 1: Theologiam Moralem Generalem et ex Speciali
Theologia Morali Tractatus De Virtutibus et Officiis Vitae Christianae, Editio Septima (Friburgi Brisgoviae:
Sumptibus Herder, 1893), 500. “…quod in casu vix magis erit directa abortûs procuratio sensu theologico, quam in
naufragio tabulam amico cedere est directa sui ipsius occision. (Eodem modo, si ejectio foetûs necessaria esset ad
ejus baptismum, haec indirecta occision, seu potius mortis indirecta acceleratio, videretur esse: sed id vix inquam
occurret.)
absolutely forbid an abortion. Evidently, the theological sense, in the author’s estimation, is applicable only when the procured abortion is also a direct killing. For Lehmkuhl, some procured abortions may involve only “indirect” killing. Hence, electing to eject an immature fetus does not necessarily equate to a direct killing in the morally relevant sense. Just as with Ballerini’s judgment, Lehmkuhl maintains a distinction between direct abortion and direct killing. The former may be the latter, although not necessarily; it will depend upon circumstances.

However, Lehmkuhl is not so tolerating of other procedures, such as craniotomy. Here his judgment is unconditional. “The operation is never truly licit, which they call craniotomy or cephalotripsy, in which the fetus is slaughtered in the womb, before there is certainty concerning his death.” There can be no doubt that the reason Lehmkuhl finds craniotomy absolutely morally repugnant is because he judges it to be direct killing in every case. Furthermore, in order to support his position that craniotomy is always forbidden, but that procured abortion is not, Lehmkuhl has reference to three decisions from the Holy See relevant to Catholic teaching on craniotomy. The first is from the Sacred Penitentiary on November 28, 1872. The other two are from the Inquisition, from May of 1884, and August of 1889, both of which were referenced explicitly in, and which were foundational for, the July 25, 1895 decision on procured abortion.

Before turning to a treatment of the decisions on craniotomy, it is necessary to note the sharp distinction between the ways the terms craniotomy and abortion were used during the time period under consideration. Well before the late nineteenth century Pope Sixtus V (1585-1590)

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28 Ibid. “Non vero licita est unquam operatio, quam craniotomiam, cephalotripsiam vocant, qua foetus in utero conciditur, antequam de ejus morte constet.”

29 Ibid., 504-505.
had defined abortion, especially for the purposes of canon law, as “ejection of an immature fetus” (eiectio fetus immaturi). Writing in the early 1940’s, canonist Roger John Huser noted: “This definition, in sense if not in the exact terminology, became the standard, even to the present day.”

Connery provides definitions of other terms as they were used during the nineteenth century. “Craniotomy is defined as the cutting to pieces of a fetal head to facilitate delivery. It differs from another procedure called cephalotripsy in which the fetal head is crushed for the same purpose. Embryotomy is the dismemberment of the fetus to facilitate delivery.” Hence, abortion can be distinguished from the other procedures in at least two ways. First, it is not necessary that any laceration, crushing or dismemberment take place in order for abortion to be accomplished. The fetus may be ejected perfectly intact and without any alteration to his bodily integrity per se. Second, abortion is distinguished insofar as its subject is always an immature (not merely premature), and hence a nonviable, fetus. The other three procedures are always possible on a viable fetus, which in practice would have been the traditional subject of those procedures.

30 Pope Sixtus V, Effraenatam, October 29, 1588, as found in Pietro Gasparri, ed., Codicis Iuris Canonici Fontes, Volumen I (Rome: Typis Polyglottis Vaticanis, 1947), 308-311.


32 Connery, Abortion, 332.

33 Huser, The Crime of Abortion in Canon Law, 110, confirms the identity between immature and nonviable. On the traditional difference in usage between immature and premature, see Antonio Arregui, S.J., Summa Theologiae Moralis (Westminster, Maryland: The Newman Bookshop, 1944), 146: “The fetus…is said to be premature or immature, precisely according to whether it can live outside the uterus or not. The ejection of the immature fetus is called abortion,—but of the premature, the hastening of birth.” [Fetus…dicitur praematurus vel immaturus, prout extra uterum vivere possit vel non. Eiectio fetus immaturi dicitur abortus,—praematuri, acceleratio partus.] Of course, if one uses acceleratio partus in relation to a nonviable fetus, as Ballerini did, then the act falls under the definition of abortion.

34 See Huser, The Crime of Abortion in Canon Law, 129: “Craniotomy and other like operations are procedures which as a matter of actual practice are undertaken upon the fetus only after it has attained the stage of viability. It is during the early months of pregnancy that the great majority of deliberately induced abortions are naturally expected to be and actually are undertaken. At this time the fetal body is so small that the operations technically and
The earliest decision that has been made public from a dicastery of the Holy See that explicitly uses the term *craniotomia* was issued on November 28, 1872, by the Sacred Penitentiary. However, it is possible to find a decision from the same dicastery from a few years earlier that appears to address a similar procedure, even if not using the same term. The following case received a reply from the Apostolic Penitentiary on September 2, 1869.

Thomas, a priest, is called to Julia lying gravely on account of difficult delivery. Since the fetus can in no way be expelled, the physician declares the death of the mother to be certainly imminent, unless beforehand the fetus is torn to pieces alive, being extracted by forceps. This thing Julia detests; but with the physician urging with this reason, namely, that the certain life of the mother is to be preferred to the strongly uncertain life of the fetus, she asks Thomas what is to be done.

It is asked whether in the case the fetus can be expelled directly? D.D., Kenrick observes: *This was the practice and custom of very many physicians, who think they should always assist the mother.* (Theolog. Mor., tract. III, c. IX, nº 128.) The Sacred Penitentiary, having thoroughly examined the forgoing, responds to the beloved speaker in Christ: *Consult approved authors.* Given from Rome in the Sacred Penitentiary, the 2nd of September, 1869.35

While the case nowhere uses any term such as *abortion, embryotomy, or craniotomy*, there can be no doubt that the procedure described refers to either embryotomy or craniotomy. The details provided indicate more likely the latter procedure, given that the child is at the point of delivery but unable to be expelled except by the use of forceps. However, what became immediately controversial was the right understanding of the Penitentiary’s reply.

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“Quaeritur utrum in casu posit foetus directe expelli? D.D. Kenrick advertit: *Hunc esse usum et consuetudinem plerorumque medicorum, qui putant matri omnino subveniendum.* (Theolog. Mor., tract. III, c. IX, nº 128.) *S. Poenitentiaria, perlectis expositis, diletto in Christo oratori respondet: Consulat probatos auctores.* Datum Romae in S. Poenitentiaria, die 2 septembris 1869.”
For one author, Craisson, the reply of the Penitentiary appeared to be sufficiently clear in every respect. For in his judgment, a consultation of approved authors would inevitably lead to a negative answer. Here is how Craisson reasoned.

No reason therefore can legitimize the execrable action to make the child perish in the womb of his mother. The teaching in this regard is unanimous; and doubtless that is why the Sacred Penitentiary has not believed it must give to the consulter another response than to send him to the authors whose doctrine is reputed safe. One can consult in this regard St. Liguori lib. 3, n° 394; Msgr. Gousset, *Morale*, tom. 1 n° 622; le P. Gury, *Compendium*, tom. I, n° 402; and if we would dare to cite even ourselves, we would resend the reader to one of our last opuscules: *De rebus venereis*, where we treat this question in enough length in numbers 320 and following.36

Hence, according to Craisson the response *consulat probatos auctores* for the particular case was both pedagogical and unambiguous. Not all authors, however, agreed with Craisson’s interpretation of the Penitentiary’s reply.

Immediately, in the very next issue of the same journal in which Craisson published his commentary on the Penitentiary’s response, the *Revue des Sciences Ecclésiastiques*, A. Eschbach offered an alternative interpretation.37 For Eschbach, the reply *consulat probatos auctores* is not so clearly implying a condemnation of craniotomy in the case submitted to the Penitentiary’s judgment. Seemingly assuming that it would be odd for the Holy See to prefer to omit a direct response in order to manifest its judgment by simply referring a petitioner to sources he should have already consulted, Eschbach rhetorically asks: “Is it indeed within the customary practices of the Roman Congregations to respond to questions in such a way that they would resolve

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36 Ibid., 453: Aucune raison ne peut donc légitimer l’action exécrable de faire périr l’enfant dans le sein de sa mère. L’enseignement à cet égard est unanime; et c’est pour cela sans doute que la Sacrée Pénitencerie n’a pas cru devoir donner au consulteur d’autre réponse que de le renvoyer aux auteurs dont la doctrine est réputée saine. On peut consulter à cet égard S. Liguori lib. 3, n° 394; Mgr Gousset, *Morale*, tom. 1er n° 622; le P. Gury, *Compendium*, tom. I, n° 402; et si nous osions nous citer nous même, nous renverrions le lecteur à un de nos derniers opuscules: *De rebus venereis*, où nous traitons assez longuement cette question aux nos. 320 et suivants.

themselves?” He then asks whether the formula of reply might implicitly contain an acknowledgement that there is in fact disagreement among authors and theologians on the issue. Eschbach himself goes on to speak of his knowledge of moral theologians in Rome and elsewhere who are not persuaded that in every set of circumstances the procedure described in the Penitentiary case is unlawful. Accordingly, Eschbach does not find Craisson’s interpretation conclusive. There simply is not enough in the Penitentiary’s response to say with certainty that it intended absolutely to prohibit craniotomy or embryotomy as a possible life-saving procedure.

Unfortunately, the very same hermeneutical problem arises with the consideration of the next decision from the Holy See on craniotomy. Three years later, on November 28, 1872, the Sacred Penitentiary replied in the following manner to what appears to be the first question submitted to it explicitly using the term craniotomia.

Whether the operation may be lawful, which is called craniotomy or a similar operation, which per se directly tends to the killing of the infant set in the womb? [Response:] Consult approved authors, either old or recent, and act prudently.

The response is more explicit than that of 1869 in two ways. First, the range of approved authors now clearly includes recent moral theologians who would fit the description auctores probati. Second, it seems clear in the present reply that the officials of the Penitentiary do not intend to pass judgment on the intrinsic morality of craniotomy. Rather, their concern and response are meant to address the issue from a formally practical point of view. The questioner is guided

38 Ibid., 563. “Est-il bien dans les usages des Congrégations romaines de répondre de la sorte aux questions qui se résolvent d’elles-mêmes?”

39 Ibid., 564.

40 As found in Augustin Lehmkuhl, S.J., Theologia Moralis, Volumen 1: Theologiam Moralem Generalem et ex Speciali Theologia Morali Tractatus De Virtutibus et Officiis Vitae Christianae, Editio Septima (Friburgi Brisgoviae: Sumptibus Herder, 1893), 505. “An unquam licaet operatio, quae vocatur craniotomia vel similis operatio, quae per se directe tendit ad occisionem infantis in utero positi,” “Consulat probatos auctores sive veteres sive recentes, et prudenter agat.”
concerning the practical formation of his conscience and exhorted to act prudently. Avoidance of direct settlement of the question asked seems deliberate. De facto this encouraged discussion of the moral status of craniotomy and similar procedures in subsequent years.

An important aspect of the 1872 intervention is the fact that the question is formulated in a way that allows the reader to recognize how the operation in question is both similar to abortion and yet distinct from it. Craniotomy (or a similar operation) is like abortion insofar as the death of the child is a necessary effect of either procedure. However, craniotomy is distinct from abortion insofar as the former “per se directly tends to the killing of the infant in the womb,” without any qualification in relation to the child’s immaturity; whereas abortion itself is the act of expelling the immature fetus from the womb. The distinction between the two procedures is most clearly recognizable by comparing the language of the 1872 case with the language of the 1895 case considered by the Inquisition. In the latter case, as quoted earlier, it is stated explicitly that “the applied means and operations did not tend of themselves and immediately as to kill the fetus in the womb of the mother, but only to its being brought forth to light alive, if it would be possible to take place, although it was about to die soon, since it still would have been altogether immature.” Hence, by the 1895 decision, even the formal documents of the Holy See manifest the distinction made by theologians of the time between craniotomy and abortion.

The discussion of the moral status of craniotomy and similar procedures continued after the 1872 response, resulting in two additional decisions before 1895. Both decisions were issued from the Inquisition. I will consider these decisions together, as they are closely connected in

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41 Over seventy years later, the response from 1872 was still being characterized by one author as “a rather non-committal answer.” See T. Lincoln Bouscaren, Ethics of Ectopic Operations, Second Edition (Milwaukee, Wisconsin: The Bruce Publishing Company, 1944), 13.
language and content. The first is usually dated May 28, 1884, and can be presented in the
following form.

The Most Eminent Fathers, together with us, Inquisitors General, having been held on the
4th day of the week, on the 28th day of May proceeding, in order to examine the question
proposed by your Eminence, recalled: Whether the surgical operation they call
“craniotomy” can be safely taught in Catholic schools to be licit, when certainly, with it
omitted, the mother and the infant will perish: on the other hand with it admitted, the
mother may be saved, with the infant perishing? And having considered everything
maturely and for a long time, also having taken into account what was composed on this
matter by experts from Catholic men and transmitted by your Eminence to this
Congregation, they have directed to be responded: It cannot be safely taught.
Which response, when in an audience on the same feast and day Our Most Holy Lord
fully confirmed, I communicate to your Eminence.
From Rome, May 31, 1884. R. Card. Monaco.42

This same judgment was to be repeated, with additions, in a subsequent decision from the
Inquisition on August 19, 1889. However, in order to understand the latter decision, especially
in relation to what it added to the 1884 judgment, it is necessary to provide at least a summary of
the questions posed to the Inquisition which occasioned its response.

The 1889 reply was in fact a response to no less than seventeen questions formulated in
relation to twelve hypothetical cases submitted to the Inquisition by the Archbishop of Cambrai

42 This is my translation of the full version found in A. Eschbach, Disputationes Physiologico-Theologicae,
Disputationes III et IV: De Embryologia Sacra, De Abortu medicali et de Embryotomia, Editio Tertia (Rome:
Desclée, N.D.), 251. “Eminentissimi PP. mecum Inquisitores Generales in Congregatione generali, habita feria IV,
die 28 labentis Maii, ad examen revocarunt dubium ab Eminentia tua propositum: An tuto doceri possit in scholis
catholicis licitam esse operationem chirurgicam quam “Craniotomiam” appellant, quando scilicet, ea omissa, mater
et filius perituri sint, ea e contra admissa, salvanda sit mater, infante pereunte? Ac omnibus diu et mature perpensis,
habita quoque ratione eorum quae hac in re peritis a catholicis viris conscripta ac ab Eminentia tua huic
Congregatio transmissa sunt, respondendum esse duxerunt: Tuto doceri non posse. Quam responsionem, cum
SSmus D.N. inaudientia ejusdem feriae ac diei plene confirmaverit, Eminentiae tuae communico. Romae, 31, Maii
1884. R. Card. MONACO.”
See also the abbreviated form found in Collectanea S. Congregationis de Propaganda Fide seu Decreta
Propaganda Fide, 1907), 201: “An tuto doceri possit in scholis catholicis licitam esse operationem chirurgicam quam
craniotomiam appellant, quando scilicet, ea omissa, mater et infans perituri sunt: ea contra admissa, salvanda sit
mater, infante pereunte. R. Tuto doceri non posse.”
three years earlier, in 1886. These cases are surely representative of the intense discussions that took place at that time among Catholic theologians concerned with the moral statuses of

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43 The full text of the original questions posed in French can be found in Bouscaren, *Ethics of Ectopic Operations*, Second Edition, 173-176. The text is reproduced here for comparison with the summary and translations in the body of this dissertation.

I.—A. Une femme enceinte est sur le point de mourir; la cause de la mort prochaine est une hémorragie, une éclampsie, ou une autre maladie résultant de la grossesse. Le fétus a atteint l’âge de la viabilité. Le chirurgien peut-il conseiller l’accouchement prématuré artificiel? Appelé dans le but de pratiquer cette opération, le chirurgien est-il en droit d’employer tous les moyens de sa compétence, pourvu que ces moyens ne portent aucune atteinte à la vie de l’enfant à naître?

B. Dans les mêmes conjonctures, et en raison du danger plus imminent de mort de la parturiente, ou pour un autre motif d’urgence, le chirurgien est-il en droit d’employer, pour provoquer l’accouchement prématuré artificiel, un moyen qui de sa nature détermine la mort de l’enfant à naître?

C. Une femme enceinte est sur le point de mourir. Le fétus a atteint l’âge de la viabilité. Tandis que la mère est entrée dans la période agonique et n’a plus que peu d’instants à vivre, le fétus a encore plus d’une heure de vie probable. Le chirurgien est-il en droit de pratiquer pour amener l’enfant à la lumière dans de meilleures conditions, une opération qui, de sa nature, est capable de hâter de quelques instants la mort inévitable de la mère?

II.—A. Une femme enceinte est sur le point de mourir; la cause de la mort prochaine est une hémorragie, une éclampsie, ou une autre maladie résultant de la grossesse. Le fétus n’a pas l’âge de la viabilité. Le chirurgien peut-il conseiller l’avortement? Appelé dans le but de pratiquer cette opération, le chirurgien est-il en droit d’employer, pour provoquer le fétus du sein de sa mère, bien qu’il cause, par le fait même, la mort de l’enfant à naître?

B. Dans les mêmes conjonctures, le fétus, qui n’a pas atteint l’âge de la viabilité, est voué à une mort imminente; il est même entré dans la période agonique, tandis que la parturiente a encore plusieurs heures de vie probable. Le chirurgien est-il en droit, pour placer la mère dans de meilleures conditions, de pratiquer une opération qui, de sa nature, est capable de hâter de quelques instants la mort inévitable du fétus?

III.—A. Une femme enceinte est sur le point de devenir aveugle, ou paralytique, ou démente, ou infirme dans une mesure quelconque. La cause de cette cécité, de cette paralysie, de cette folie, de cette infirmité, est la grossesse elle-même. Le fétus a atteint l’âge de la viabilité. Le chirurgien peut-il conseiller l’accouchement prématuré artificiel? Appelé dans le but de pratiquer cette opération, le chirurgien est-il en droit d’employer tous les moyens de sa compétence, pourvu que ces moyens ne portent aucune atteinte à la vie de l’enfant à naître?

B. Dans les mêmes conjonctures, en raison du danger plus imminent de voir l’infirmité devenir définitive, c’est-à-dire incurable, ou pour un autre motif d’urgence, le chirurgien est-il en droit d’employer, pour provoquer l’accouchement prématuré artificiel, un moyen qui, de sa nature, détermine la mort de l’enfant à naître?

IV.—A. Une femme enceinte est sur le point de devenir aveugle, ou paralytique, ou démente, ou infirme dans une mesure quelconque. La cause de cette cécité, de cette paralysie, de cette folie, de cette infirmité, est la grossesse elle-même. Le fétus n’a pas atteint l’âge de la viabilité. Le chirurgien peut-il conseiller l’avortement? Appelé dans le but de pratiquer cette opération, le chirurgien est-il en droit de faire sortir le fétus du sein de sa mère, bien qu’il cause par le fait même la mort de l’enfant à naître?

B. Dans les mêmes conjonctures, le fétus qui n’a pas atteint l’âge de la viabilité, est en état de mort prochaine, il est même entré dans la période agonique; en même temps le danger se fait imminent de voir l’infirmité de la mère devenir définitive, c’est-à-dire incurable, ou bien il y a un autre motif d’urgence. Le chirurgien est-il en droit, pour placer la mère dans de meilleures conditions, de pratiquer une opération qui, de sa nature, est capable de hâter de quelques instants la mort inévitable du fétus?

V.—Une femme enceinte porte son fruit, non pas dans l’utérus, mais bien dans une cavité kystique extra-utérine. La sortie de l’enfant ne peut être obtenue que par une opération. D’une part, cette opération, sans être mortifère de sa nature, ni pour l’enfant ni pour la mère, est cependant d’une importance grave pour celle-ci. D’autre part, si l’enfant n’est pas amené au jour par l’opération chirurgicale, il meurt inévitablement, mais cesse de devenir un danger de mort pour sa mère, et n’est plus qu’un fardeau sans espérance pour celle-ci. Le chirurgien peut-il conseiller de donner la mort, soit par le poison, soit par l’électricité, soit par tout autre moyen, au fétus, avant que celui-ci devienne un fardeau plus peineable à sa mère et afin d’éviter à cette même mère les dangers que comporte une opération grave mais indispensable pour amener le fétus à la vie? Appelé dans le but de pratiquer cette opération, le
craniotomy, abortion, and similar procedures. The first five cases concern situations where “a pregnant woman is about to die.” In the first two cases, the cause of the impending death is a hemorrhage, an eclampsia, or another malady resulting from pregnancy. In these cases and in the third case the fetus has attained the age of viability. Two questions are asked in relation to the first case. 1) Can the surgeon advise premature artificial delivery? 2) Called in order to accomplish this operation, is the surgeon entitled to employ all the means of his competence, “provided that those means do not carry out an attack on the life of the unborn child?” Then, under the same circumstances, but because of a more imminent danger of death for the woman in labor, or for another reason or urgency, it is asked in relation to the second case whether the surgeon is entitled to employ “a means which of its nature determines the death of the unborn child.” The third case intensifies the situation by assuming that the mother has entered the “agonal period” and has only a few moments to live, while the fetus has still more than an hour of probable life. It is asked whether for the benefit of the infant the surgeon is entitled to perform “an operation that, of its nature, is able to hasten by a few moments the inevitable death of the mother.”

Cases four and five are united insofar as the fetus is now considered prior to the age of viability, while the mother is still considered in dire circumstances due to some malady resulting
from pregnancy. In relation to case four it is asked both whether the surgeon can counsel abortion and whether, called in order to accomplish abortion, the surgeon has “the right to take the fetus out of the womb of his mother, even though it causes, by that very fact, the death of the unborn child.” Adding the circumstance that the fetus is doomed to an imminent death, having entered the “agonal period,” while the parturient still has several hours of probable life, case five asks if “it is right for the surgeon, to place the mother in better conditions, to perform an operation that, of its nature, is able to hasten by a few moments the inevitable death of the fetus.” Hence, this case is identical to the third case but with the places of the mother and the child interposed.

Cases six, seven, and eight correspond exactly to cases one, two, and four, respectively, except that, instead of facing death, the pregnant woman in each case is about to become “blind, or a paralytic, or insane, or disabled in any measure.” Also maintaining the changed circumstances, case nine most closely resembles case five. The nonviable fetus is in a state of impending death, he has even entered the “agonal period,” at the same time the danger is made imminent to see the disability of the mother become permanent or incurable, or there is another reason of urgency. Accordingly, it is asked whether “it is right for the surgeon, to place the mother in better conditions, to perform an operation that, of its nature, is able to hasten by a few moments the inevitable death of the fetus.” Evidently, proportionality in terms of gravity of effects is what is at stake in the changed circumstances between the prior and subsequent cases.

Finally, cases ten, eleven, and twelve are distinct from the rest insofar as each is concerned with a woman who “bears her fruit, not in the uterus, but indeed in an extra-uterine cystic cavity.” In the first of these cases the child can exit his mother only by an operation, and this same operation is not “lethal of its nature,” either for the child or for the mother. On the
other hand, if the child is not brought to light by the operation, he inevitably dies and thereby ceases to be a danger of death for his mother. It is asked whether the surgeon can counsel to put to death, whether by poison, or by electricity, or by any other means, the fetus, before he becomes a more painful burden to his mother and to avoid posing to her the dangers involved in a grave but indispensable operation to bring the fetus to life. Lastly, cases eleven and twelve both present a surgeon recognizing the abnormal seat of the pregnancy while in the course of a grave operation on the woman. The principal difference between the two cases is that in case eleven the fetus is viable, whereas in case twelve he is not. For the former case it is asked whether it is right for the surgeon to save the mother a subsequent grave operation, and to use the occasion of the present operation to bring to light the fetus prior to the normal term of gestation, and without practicing “any lethal maneuver.” On the other hand, for the twelfth case it is asked whether it is right for the surgeon to save the mother a subsequent grave operation, and to use the occasion of the present operation to bring to light the fetus, “although this maneuver causes by that very fact the death of the unborn child.”

The official response of the Inquisition was published in the *Acta Sancta Sedis* in the following form.

In the year 1886, your Great Predecessor proposed several questions to this supreme Congregation concerning the liceity of certain surgical operations akin to craniotomy. Which, having been carefully examined with diligence, the Most Eminent and Most Reverend Cardinal Fathers, together with us Inquisitors General, on the 4th day of the week, the 14th of the month proceeding, responding have ordered: “In catholic schools it cannot be safely taught that the surgical operation they call craniotomy is licit, as it was declared on the 28th day of May, 1884, and any directly lethal surgical operation on the fetus or the gestating mother.”

This I make known to your Greatness, as to significant professors of the medical faculty of the catholic University of Lille. Meanwhile, I wish to you everything favorable and felicitous from the Lord. From Rome, on the 19th day of August, 1889.

Your Great and Most Devoted in the Lord, R. Card. Monaco.

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44 Suprema Congregatio sanitae romanae et universalis inquisitiones, “Epistola ad Archiepiscopum Cameracensem in qua edicitur, illicitam esse quacumque operationem chirurgicam, quae directe occidat foetum vel matrem
Essentially, the only material addition to the 1884 decision is the express prohibition of “any directly lethal surgical operation on the fetus or the gestating mother.” Any such operation cannot be safely taught in Catholic schools in the same way that craniotomy *tuto doceri non posse*, according to the 1884 decision. Hence, it is necessary first of all to determine the nature of that specific censure. Subsequently, it will be necessary to determine the proper meaning of “any directly lethal surgical operation.”

Evidently, the reason the members of the Inquisition chose the formulation *tuto doceri non posse* in their 1884 response is because that was the language used by the questioner, D. Caverot, Cardinal Archbishop of Lyons, in his *dubium* originally sent to the Inquisition. Hence, the formulation of the censure was simply a direct reply to the question as it was asked. But this still leaves open the question whether the response itself should be considered “doctrinal and definitive” (*doctrinale atque definitivum*), or merely “disciplinary or prudential” (*disciplinare seu prudentiale*). According to Eschbach, this was precisely the question that was relevant to address once the reply was given. 45

In order to resolve the doubt, Eschbach observes that the formula of the response is not new in the usage of the Inquisition. About twenty years earlier, on September 18, 1861, the Inquisition had replied *Negative* to the question “Whether the following propositions can be safely handed on?” (*Utrum sequentes propositiones tuto tradi possint*), concerning seven

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propositions representing Ontologism.\footnote{Suprema Congregatio sanctae romanae et universalis inquisitionis, “Propositiones Reprobatae Circa Ontologismum Et Modum Explicandi Creationem,” Acta Sanctae Sedis III (1867): 204-205.} Shortly after that decision, there were some professors in Belgium who held that the response prohibited only the teaching of Ontologism, but that it remained licit to maintain it \textit{in mente et corde}.\footnote{Eschbach, \textit{Disputationes Physiologico-Theologicae}, 251.} Eschbach recalls how, when that interpretation was reported to the Holy See by the Archbishop and Bishops of Belgium, it was addressed by Cardinal Patrizzi in the name of the Holy Father. The Cardinal replied that the doubts raised by the professors did not require a new interpretation and declaration of something “already defined” (\textit{jam definitae}). Rather, the doubts could be washed away (\textit{diluendis}) abundantly by the response of the Congregation as it had been given.\footnote{Ibid., 252.} After receiving the letter from Cardinal Patrizzi, the Archbishop and Bishops of Belgium advised the relevant professors that the question was to be regarded as having been decided \textit{definitively}, and that it was the strongest will (\textit{firmissimam voluntatem}) of the Holy Father that, errors having been removed (\textit{erroribus sublatis}), all should be of the same judgment. Eschbach concludes that the censure in relation to craniotomy should be understood in the same sense as the censure in relation to Ontologism, “insofar as it would be erroneous to hold that it could ever be licit to practice this surgical operation.”\footnote{Ibid. Eschbach’s full statement is “Non secus jam ab annis contigit de controversia circa craniotomiae liceitatem, quam, hoc sensu \textit{tuto doceri non posse} S. Officium declaravit, quatenus erroneum foret tenere, quod hanc chirurgicam operationem instituere unquam liceat.”}

According to Eschbach’s interpretation, the 1884 decision cannot be understood in a merely disciplinary or prudential manner, namely, as merely forbidding the teaching of craniotomy as a lawful practice. Rather, by declaring that craniotomy, even to resolve a vital conflict situation, \textit{tuto doceri non posse}, the Inquisition was making or implying a doctrinal...
statement that Catholics must *think* that the practice of craniotomy is never lawful. If it were only an intervention of the prudential order, Catholics would not necessarily be forbidden to maintain that there are cases in which craniotomy would be justified; but they would be forbidden to teach that it is justified, perhaps because such a teaching would be dangerous, scandalous, or likely to lead to misunderstandings or misapplications. Hence, if Eschbach is correct, then not only are Catholics to avoid teaching the lawfulness of craniotomy, or any directly lethal surgical operation on the fetus or the gestating mother, but they also must not theoretically accept the opinion that such an operation may be lawful.

A view like that of Eschbach must have been accepted widely by theologians of the late nineteenth century, for in the years immediately following the decisions of 1884 and 1889, virtually no Catholic author can be found who continued to defend craniotomy as a lawful practice. In a subsequent chapter I will examine the views of some later authors who have suggested that the decisions of the late nineteenth century are best understood as merely disciplinary or prudential. But at this point I will offer a few reasons in favor of the interpretation of Eschbach, in contrast to the mere disciplinary/prudential view. According to the latter position, the decisions on craniotomy from the Inquisition are not to be interpreted as authoritative and binding prohibitions of propositions concerning the moral status of craniotomy or any similar operation. Rather, the decisions provide pastoral guidance for faithful and prudent teachers and physicians, allowing these persons to hold in principle the lawfulness of craniotomy, but directing them in practice not to teach or act in accord with any opinion favoring that lawfulness.

How is one to judge between the opposed interpretations of the craniotomy decisions? While both interpretations are compatible with the grammar and syntax of the decisions, only
Eschbach’s view offers an exegesis that situates the formula used in the decisions within their proximate historical context. It is plausible that, with the clarifications of the Ontologism decision still fresh in people’s minds, Cardinal Caverot asked the Inquisition about craniotomy using the formula An tuto doceri possit precisely because the use of the equivalent formula Utrum tuto tradi possint by the same congregation in 1861 led to such a definite and clear response. But in any case, there can be no doubt that the members of the Inquisition, and the Holy Father who confirmed their decision, understood that, given the relatively recent clarification of the Ontologism decision, the 1884 decision on craniotomy would be taken to mean that an equally definite and clear teaching had been handed down. Moreover, in the case of the 1884 decision the Holy Father’s confirmation was given formally with the decree itself, something lacking in the Inquisition’s original decree on Ontologism. This specific and immediate confirmation, together with the other circumstances mentioned in the 1884 response (that the decision follows long and mature deliberation that took into account the studies of experts), makes the argument in favor of a definite and doctrinal statement even stronger. In light of the above considerations, compared to the mere disciplinary/prudential interpretation, the view of Eschbach appears to be at least the more reasonable position.

Furthermore, there are reasons to doubt the mere prudential interpretation insofar as this interpretation denies a judgment on the moral status of craniotomy as an action. In the circumstances of the late nineteenth century discussions among moral theologians it was already well established that, as the writings of an unquestionably orthodox theologian like Gury make clear, under certain conditions one could lawfully perform an action which certainly results in the death of an innocent human being.\textsuperscript{50} The conditions listed by Gury are those of the

traditional principle of double-effect. In the vital conflict case submitted to the Inquisition in 1884 (“when certainly, with [craniotomy] omitted, the mother and the infant will perish: on the other hand with it admitted, the mother may be saved, with the infant perishing”), there can be no doubt that the conditions of good motivation and proportionality are satisfied. Hence, the only reasons craniotomy could be found worthy of censure are because it is evil by virtue of its object, or because it involves the good effect following as a consequence from the evil effect. In the former case, craniotomy is a malum in se; in the latter case, the causal structure of the action necessitates that the agent wills an evil means to a good end. Either way, the act of craniotomy involves the willing of moral evil.

Having an understanding of the Inquisition’s censure tuto doceri non posse in relation to craniotomy, it is necessary to explore further what kind of action qualifies as a “directly lethal surgical operation on the fetus or the gestating mother,” according to the language of the Inquisition’s 1889 decision. Perhaps the best way to arrive at an accurate sense of a “directly lethal surgical operation” is to examine the language of the cases submitted to the Inquisition by the Archbishop of Cambrai. Several of the cases asked about the lawfulness of procedures described in terms that approximate “directly lethal surgical operation.” Case two asked whether it would be lawful to save a parturient’s life by employing “a means which of its nature determines the death of the unborn child.” On the other hand, the third case asked whether, in other circumstances, the surgeon is entitled to perform “an operation that, of its nature, is able to hasten by a few moments the inevitable death of the mother” for the benefit of the infant. Case four asked whether, to save the mother from dire circumstances resulting from pregnancy, the surgeon has “the right to take the [nonviable] fetus out of the womb of his mother, even though it

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causes, by that very fact, the death of the unborn child.” Cases five through nine asked about whether “it is right for the surgeon, to place the mother in better conditions, to perform an operation that, of its nature, is able to hasten by a few moments the inevitable death of the fetus.” Case ten distinguished between an operation that is “lethal of its nature” and one that is not. The same case also asked about the lawfulness of counseling “to put to death, whether by poison, or by electricity, or by any other means, the fetus,” in order to avoid a grave operation. Case eleven asked about the lawfulness of premature delivery that did not involve “any lethal maneuver.” Lastly, case twelve asked about the lawfulness of delivering “to light” the nonviable fetus, “although this maneuver causes by that very fact the death of the unborn child.”

Hence, according to the context of the questions posed to the Inquisition, “any directly lethal surgical operation,” most likely includes “a means which of its nature determines the death,” or “an operation that, of its nature, is able to hasten the death,” of the fetus or the mother, even in the case when either is already in the process of dying. Examples using “means” language would seem to include putting the fetus to death by means of poison and electricity. Other specific examples of operations that are lethal of their nature or that involve a “lethal maneuver” are not clearly provided in the documentation of the Inquisition. Nevertheless, it is relevant that the language of case four and case twelve speaks of removing or delivering the nonviable fetus as a procedure or a “maneuver” that “causes, by that very fact, the death of the unborn child.” Accordingly, it is likely that procured abortion itself (the removal simpliciter of the nonviable fetus) should be understood in the context of the Inquisition decision as a “directly lethal surgical operation.” Such a judgment, however, was evidently doubted by some in the years after the 1889 decision. That doubt led directly to the 1895 Titius case.
Before returning to the 1895 case, it is necessary to point out one other important characteristic of the cases sent to the Inquisition by the Archbishop of Cambrai. Every case that asks about the lawfulness of procedures described in terms that seem to approximate “directly lethal surgical operation” does so in the language of causality. “A means which of its nature determines death,” “an operation that, of its nature, is able to hasten death,” a taking out of the womb that “causes, by that very fact, death,” an “operation” that is “lethal of its nature,” and a “maneuver” that “causes death by that very fact,” are the principal candidates that could correspond to “directly lethal surgical operation” in the context of the Inquisition decree. Hence, however one interprets the adverbial qualifier “directly” in the decree, it seems necessary to admit that the Inquisition meant to include those surgical operations which are lethal by virtue of the causal structure of the external activity involved. That is to say, from the context of the decree as a response to precisely formulated cases and questions, it is implausible that “directly lethal surgical operation” refers only to those operations which can be said to be lethal because the agent deliberately formulates an intention to kill the fetus or gestating mother. It is useful to recall how the use of the term “directly” in relation to physical causality had already been established with the earliest decisions on craniotomy from the Sacred Penitentiary on September 2, 1869, and November 28, 1872. The latter decision was concerned with the lawfulness of the “operation, which is called craniotomy or a similar operation, which per se directly tends to the killing of the infant set in the womb.” Hence, the question is about the “operation,” the external work which of itself “directly” tends to some effect in certain circumstances. The 1889 judgment was concerned with similar operations.
The 1895 Decision Revisited in Light of Prior Decisions

Having presented the most relevant moral discussions that led to the 1895 response, as well as the prior and authoritative ecclesial documents that provide a context for that response, it is necessary to return to the decision itself and to consider what conclusions can be drawn from it. As noted at the beginning of this chapter, the 1895 judgment can be considered the most important decision from the Magisterium in the late nineteenth century that touches upon the morality of the act of abortion. For, in terms of its matter, the judgment is the only one up to its time to focus exclusively on the act of abortion in a vital conflict situation.

Beginning in 1869, the Holy See commenced issuing responses concerning craniotomy and operations “akin” to it. As noted above, at least two of the cases and questions that received a response in the form of the 1889 decision of the Inquisition appear to require that one regards abortion as a “directly lethal surgical operation” that “cannot be safely taught” in Catholic schools in the same manner as craniotomy. Nevertheless, doubt remained in practice. Authors such as Ballerini, Lehmkuhl, and the editors of the early Revue théologique article had argued that abortion simpliciter did not have to be considered a morally evil act of direct killing. While the 1889 response ruled out many operations in principle, even after receiving that decision in the Archdiocese of Cambrai some still questioned whether medical abortion was impermissible in all circumstances.°52 To resolve doubt in an authoritative way, the Archbishop of Cambrai submitted the Titius case to the Inquisition.

As presented at the beginning of this chapter, the Titius case was formulated in such a way that it de facto represented decades of discussions and doubts posed by Catholic moralists on the lawfulness of abortion. Indeed, the case could not have been more precise in its

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52 See Connery, 291; and Bouscaren, 14.
specification of abortion per se as an act of “ejection” of an “immature” fetus, brought forth alive from the womb of his mother, without the use of means or operations that “tend of themselves and immediately as to kill the fetus in the womb.” Also, the circumstances of the case were presented in such a way that the conditions of good motivation and proportionality would have been clearly met if the principle of double-effect were applicable. For the physician, Titius, would perform the ejection of the fetus only to save the mother’s life, and the situation is such that the fetus could not survive in any case. Due to his immaturity, if he is ejected, the fetus dies; but if he is not ejected, the mother dies, and the fetus dies nonetheless. Moreover, while nothing is said of it explicitly in the situation, if the fetus is ejected alive, there may be a chance that he could be baptized before he expires. Hence, if procured abortion admits of circumstantial justification, the Titius case could be seen as a model scenario.

After the circumstances of the case had been set forth, the Archbishop noted that Titius remained doubtful “concerning the lawfulness of the surgical operations by which he, up to this point, not rarely procured abortion, so that he might save gravely ill pregnant women.” It stated explicitly that this doubt remained even after Titius had read the 1889 decision of the Inquisition “that it cannot be safely taught that any directly lethal operation on the fetus is licit, even if this were necessary to save the mother.” Hence, it is asked whether Titius “may safely [tuto possit] repeat the expressed operations” should the same circumstances recur. The response, formally approved by Pope Leo XIII, is not merely negative, but “negative, according to the other decrees of May 28, 1884 and August 19, 188[9].”

The negative response is intrinsically practical, insofar as it means that Titius may not safely act to procure abortion even to save the mother’s life in an extreme case of vital conflict.

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But several questions can be raised in relation to the language of the response. What does it mean to say that Titius “may not safely” act to procure abortion? Similarly, why may he not act that way? By referencing the prior decrees of 1884 and 1889, is the 1895 decree teaching or implying that the physician may not act to procure abortion because to do so is a “directly lethal operation on the fetus”? Or, is the decree merely stating or implying that, because giving approval to procured abortion in one case would be dangerous or scandalous, in practice one must act as though abortion may not be procured in any situation?

An affirmative answer to the last question would imply a mere disciplinary or prudential understanding of the decision. Accordingly, to say that some action “cannot be safely done” is not to teach that it is immoral, but to stipulate that teachers and physicians ought to proceed as if it were immoral, even though, in principle, it might be justifiable. However, this interpretation is subject to the same hermeneutical problem that was addressed by Eschbach in relation to the 1884 judgment on craniotomy. According to Eschbach’s interpretation, which takes into account the equivalent language used in the 1861 Ontologism condemnation, the 1884 decision cannot be understood in a merely disciplinary or prudential manner. To read the 1884 decision, and by extension the 1889 and 1895 decisions as well, in such a manner risks interpreting those interventions without sufficient appreciation for the usage of the formulation “may x be safely taught/done?” in late nineteenth century magisterial documents. Once the precedent was established by the 1861 condemnations of Ontologism, which were made clear by the intervention of Cardinal Patrizzi in the name of the Holy Father at the time, the note “it may not be safely taught/done” cannot reasonably be dismissed as non-doctrinal in nature. On the contrary, for reasons already given in relation to the 1884 decree, it is much more likely that the
decisions from 1884, 1889, and 1895, which employ the judgment “it may not be safely taught/done,” are to be interpreted as more than merely prudential or disciplinary.

So what does it mean to say that the 1895 decision is more than merely prudential or disciplinary? According to Connery, by teaching that procured abortion could not be safely used, *in accord with the 1884 and 1889 decrees*, “what it was saying practically was that a medical abortion involved direct killing and therefore could not be justified any more than craniotomy or other procedures of this kind.”\(^5^4\) Indeed, this understanding offers a very consistent way of reading the 1895 judgment “according to” the two earlier decrees. The reason the doctor cannot safely procure an abortion under conditions of the *Titius* case is because that abortion is a “directly lethal operation,” it is a direct killing of the fetus. Even if the fetus will certainly die anyway, to kill him is still wrong, because it is always wrong directly to kill the innocent. Direct abortion must be regarded as doing just that.

Connery’s interpretation of the 1895 decision finds remarkable support in the writings of one of the most renowned theologians who were directly involved in the late nineteenth century controversy on the lawfulness of procured abortion. As noted earlier in this chapter, August Lehmkühl had argued that in some circumstances the deliberate ejection of a nonviable fetus could be justified as an *indirect* killing, or even “an *indirect* acceleration of death.”\(^5^5\) However, after the publication of the 1895 decision, Lehmkühl explicitly renounced his prior teaching because of the Inquisition’s judgment. Lehmkühl’s renunciation was not merely that one could not act upon his prior teaching, but that his prior teaching should be held as erroneous in theory. For example, in the twelfth edition of his *Theologia Moralis*, when explaining why direct

\(^{54}\) Connery, 291.

abortion is never licit, Lehmkuhl notes how “in prior editions” of his manual he had brought forward reasons that could be used in support of the lawfulness of a “violent attack” on the fetus and on his “vital element” in order to save the mother who would otherwise die.

By the “vital element” of the fetus Lehmkuhl meant his “existing in” or inherence to the uterus (inexistensiam in utero). While he acknowledged that per se the fetus has a right to his “vital element,” it had seemed to Lehmkuhl that under certain circumstances this right could be regarded as renounced by the fetus, or it might be thought to yield to a prior right of the mother. In this context Lehmkuhl noted the analogy of the man who gives up his plank to another man after a shipwreck. While the plank is necessary for the man’s life in the circumstances, insofar as it is an extrinsic good to man, he can renounce it in favor of a proportionate good. However, even if the vital element is regarded as intrinsic to the fetus and his life, Lehmkuhl had argued that it still did not seem necessary to maintain that the living fetus himself was attacked in abortion. It seemed as though the fetus’s right to the uterus can come into conflict with the mother’s equal right to avoid danger to her own life, as a person’s right to common air does not seem certain in a case where there is not enough to be breathed by two people in the same place. Given such reasons, Lehmkuhl had concluded that the procured ejection of a nonviable fetus in certain circumstances seemed to be essentially distinct from craniotomy. Immediately after recounting his prior reasons in favor of the justification of some procured abortions, Lehmkuhl wrote, “However, it was seen differently by the Holy Office, which holds that an attack on the

vital element of the fetus is equal to craniotomy and a direct killing, and hence, intrinsically unlawful."\textsuperscript{57}

Finally, Lehmkuhl went on to address how he had come to see that the reasons he had brought forth in earlier editions of his manual are really \textit{speciores}. For the living fetus, himself, is \textit{primo et per se} attacked in the operation. Violently to sever the membranes and fibers which connected the fetus with the maternal womb is in fact nothing else than to inflict a lethal wound on the fetus. The author also denies that there is any similitude with the case of subtracting common air in a situation when there is not enough for two people. He contends that the better analogy is found in a case where necessary air already breathed in by one person is extracted so that it may serve to save the life of another. That, Lehmkuhl contends, should be held everywhere to be \textit{directa occisio} and \textit{intrinsically evil}.\textsuperscript{58} Immediately following these clarifications, Lehmkuhl quotes in full the text of the Inquisition from 1895.

It is noteworthy that Lehmkuhl interpreted the force of the 1895 decision as requiring a change not only in what might be counseled in practice, but also a change in the speculative order. He had maintained that some procured abortions could be \textit{indirect} killings and morally licit in principle. But everything changed after the Inquisition’s intervention. Procured or direct abortion is to be regarded as direct killing, which has clear implications for action theory; and direct abortion is intrinsically evil, which has clear implications for moral doctrine. Surely, had he thought there was room for doubt about the speculative implications of the decree, an author such as Lehmkuhl, who was a prominent agent in the discussions leading up to the decree, would have distinguished between the practical and theoretical orders and the respective duties or

\textsuperscript{57} Ibid., 565: "Verum aliter visum erat S. Officio, quod eiusmodi invasionem in vitale foetus elementum craniotomiae aequiparat atque pro directa occisione habet, proin pro re intrinsecus illicita."

\textsuperscript{58} Ibid.
liberties relevant to each. Overall, Lehmkuhl’s response to the Inquisition’s decree provides a concrete example of Connery’s assertion that the 1884, 1889, and 1895 decisions “resolved on the level of authentic teaching the controversies of the second half of the nineteenth century.”

As these controversies were not only practical, but also speculative, with the practical controversies based upon speculative controversies, it is understandable that Lehmkuhl would consider himself obliged to think differently about the kinds of action with which the Inquisition’s declarations were concerned.

*Decisions of the Holy See after 1895*

While the 1895 decree represented a sort of climax relative to prior discussions and decrees, there are two other interventions that must be considered in order to have a complete understanding of the magisterial teachings from the late nineteenth century period. These last interventions are united insofar as both are concerned with further clarifications relevant to the distinction between premature and immature delivery, as well as the lawfulness of procedures concerned with the management of ectopic pregnancies. Being concerned with those issues, both decisions may also be viewed as supplying further guidance in relation to some of the particular cases that were raised by the Archbishop of Cambrai and that led to the general response from the Inquisition in 1889.

The first decree is a set of responses to three *dubia* presented to the Inquisition by the Bishop of Sinaloa, Mexico. The responses are dated May 4, 1898, from the Inquisition, with papal approval from May 6, 1898. The questions and responses can be presented in the following form.

1. Will an acceleration of birth be permitted when the coming forth of the child at its natural time is impossible because of the narrowness of the woman’s (pelvis)?

59 Connery, 291-292.
2. And if the narrowness of the woman’s (pelvis) is such that even a premature birth is not considered possible, will it be permitted to induce an abortion or perform a Caesarean operation at the (appropriate) time?

3. Is a laparotomy permitted in the case of an extrauterine pregnancy or an ectopic conception?

Responses:
To 1: The acceleration of the birth in itself is not illicit, provided it is performed for just reasons and at such a time and in such a manner that, under ordinary circumstances, care is taken for the life of the mother and the offspring.

To 2: With regard to the first part, no, according to the decree of Wednesday, July 24, 1895, on the illicitness of abortion.—With regard to the second part, nothing stands in the way of the woman whom this concerns from submitting to a Caesarian operation at the appropriate time.

To 3: In the case of strict necessity, it is permitted to have a laparotomy to extract the ectopic conception from the womb of the mother, provided that, insofar as possible, care is shown for the life of both the mother and the fetus in a serious and appropriate manner.⁶⁰

The clearest part of the response to the first question is that the acceleration of birth can be lawful in certain circumstances. The circumstances in which the acceleration can be lawful

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⁶⁰ This is the translation found in Heinrich Denzinger, *Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals*, edited by Robert Fastiggi and Anne Englund Nash, 43rd edition (San Francisco, California: Ignatius Press, 2012), 674. The complete text is found in the *Acta Sanctae Sedis XXX* (1897/1898): 703-704: Beatissime Pater, Episcopus Sinaloen., ad pedes S.V. provolutus, humiliter petit resolutionem insequentium dubiorum:

I. Erina licita partus acceleratio quoties ex mulieris arctitudine impossibilis evaderet foetus egressio suo naturali tempore?

II. Et si mulieris arctitudo talis sit, ut neque partus praematurus possibilis censeatur, licebitne abortum provocare aut caesaream suo tempore perficere operationem?

III. Est ne licita laparatomia quando agitur de praegnatione extra-uterina, seu de ectopicis conceptibus?

Feria IV. Die 4 Maii 1898

In Congregatione Generali habita ab EEmis et RRmis DD. Cardinalibus contra haereticam pravitatem Generalibus Inquisitoribus, proposisit suprascriptis dubiis, praehabitoque RR. DD. Consultorum voto, idem EEmi ac RRmi Patres rescribendum censuerunt:

<<Ad. I. Partus accelerationem per se illicitam non esse, dummodo perficiatur iustis de causis et eo tempore ac modis, quibus ex ordinariis contingentibus matris et foetus vitae consulatur>>.

<<Ad II. Quoad primam partem, negative, iuxta decretum Feria IV, 24 Iulii 1895, de abortus illiceitate (1).—Ad secundum vero quod spectat: nihil obstare quominus mulier de qua agitur, caesareae operationi suero tempore subjiciatur>>.

<<Ad III. Necessitate cogente, licitam esse laparatomiam ad extrahendos e sinu matris ectopicos conceptus, dummodo et foetus et matris vitae, quantum fieri potest, serio et opportune provideatur>>.


include the presence of a just reason, and also ordinary care taken for the life of the mother and
the child. That this first response, in its concern for the proper “time” of the acceleration, leaves
no room for the lawfulness of *immature* delivery, but only *premature* delivery, can be seen in
relation to the reply to the second question.

The response to the second question considers that question in two parts. Abortion, the
ejection of the *immature* fetus, is clearly ruled out, *according to* the 1895 decision. It is
noteworthy that the latter decision is specified as the decree *de abortus illiceitate*. This
specification is readily harmonizable with the moral doctrinal interpretation of that decree
provided by Lehmkuhl and Connery. On the other hand, the specification is not as easily
intelligible as a mere disciplinary interpretation. Evidently, by the time of the 1898 decree, the
1895 decision had become a document of reference for the Magisterium itself, *de abortus
illiceitate*. Because of this reference, T. Lincoln Bouscaren went so far as to conclude: “the
question of the possible licitness of direct abortion in any form is thus, for Catholic moralists and
physicians, forever closed.”

The second part of the response to the second question makes it clear that a Caesarean
operation “at the appropriate time” is lawful in a case when natural birth is impossible. While
“appropriate time” may refer to a time relevant to the health of the mother, it must refer, given
the prior response, at least to the time of viability for the child. However, since the notion of
time was not addressed clearly in the reply to the third question, this left doubt in the minds of
some concerning whether in the *abnormal* case of *ectopic* pregnancy the “serious and
appropriate care” that must be shown for the fetus required his viable status. Clarity on this issue
came with the final intervention from the Inquisition, on March 20, 1902.

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61 Bouscaren, 13.
The 1902 response of the Inquisition was published in the *Acta Sanctae Sedis* out of the office of the Sacred Congregation de Propaganda Fide, addressed to R. D. Carolus Lecoq, dean of the faculty of theology of the University Marianopolitana. The formal question and response can be presented in the following form.

**Question:** Is it sometimes permitted to extract from the womb of the mother ectopic fetuses still immature, when the sixth month after conception has not passed?

**Response:** No, according to the decree of Wednesday, May 4, 1898, by the force of which care must be taken seriously and fittingly, insofar as it can be done, for the life of the fetus and that of the mother; moreover, with respect to time, according to the same decree, the questioner is reminded that no acceleration of birth is licit, unless it be performed at the time and according to the methods by which in the ordinary course of events the life of the mother and that of the fetus are considered.62

This response brings clarity not only to the question of the lawfulness of extracting immature ectopic fetuses, but also to the question of the meaning of the 1898 decree. It is clear from the 1902 response that the 1898 decree, itself, does not allow for the extraction of the fetus or acceleration of birth prior to the viability of the fetus, even in cases when the fetus is located in an abnormal manner outside the uterus. In other words, according to Connery, “what became

62 This is the translation found in Heinrich Denzinger, *Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals*, edited by Robert Fastiggi and Anne Englund Nash, 43rd edition, 679. The complete text is found in the *Acta Sanctae Sedis* XXXV (1902/1903):162:

Must, ac Revme Domine, R. D. Carolus Lecoq, Decanus Facultatis Theologiae in ista Universitate Marianopolitana, per litteras diei 12’ Martii an. 1900 sequens dubium proponebat circa interpretationem resolutionum S. Officii quoad liceitatem extinctionis chirurgicae foetus immaturi: <<Utrum aliquando liceat e sinu matris extrahere foetus ectopicos adhuc immaturos, nondum exacto sexto mense post conceptionem?>>

Curae mihi fuit factum dubium solvendum transmittere eidem Supremo Tribunali S. Officii. Illi vero Emi ac Rmi Patres Card. Inquisitores generales, in congregatione fer. IV die 5 vertentis mensis Martii, post maturam rei discussionem, sequens emanarunt responsum: <<Negative, iuxta Decretum fer. IV, 4 Maii 1898 vi cuius foetus et matris vitae quantum neri [Denzinger edition has fieri instead] potest, serio et opportune providendum est; quoad vero tempus, iuxta idem Decretum, Orator meminerit, nullam partus accelerationem licitam esse, nisi perficiatur tempore ac modis quibus ex ordinarie contigentibus matris ac foetus vitae consulatur.—Praesens vero decreatum expediatur per Ordinarium>>.

Haec habui, quae cum Amplitudine Tua hac super re, pro meo munere, communicarem: et precor Deum, ut Te diu sospitet.

20 Martii 1902. Amplitudinis Tuae

clear from this response was that direct removal of a nonviable fetus was no more acceptable when the pregnancy was ectopic than when it was uterine.\(^6\)

There is a further question that can be raised in relation to the last statement from Connery. Connery added the qualifier “direct” in his interpretation of the 1902 response. But, given the generality of the wording used in the 1898 and 1902 decrees, do the responses teach that only direct removal of ectopic fetuses is illicit? Or, do the decisions exclude also indirect removals, as when the fetus is removed not in himself (tantum), but with and in the fallopian tube, ovary, etc.? Bouscaren takes up this question in his definitive study on the *Ethics of Ectopic Operations*. Convincingly, Bouscaren argues affirmatively for the first question, and negatively for the second.\(^6\)

Bouscaren argues that the purpose of the 1898 and 1902 decrees was to apply in particular to ectopic conceptions the teaching set forth on August 19, 1889, which condemned in a general way any directly lethal surgical operation on the fetus or gestating mother. Moreover, neither the 1898 nor the 1902 questions or answers make specific mention of indirect abortion. At the same time, “to extract ectopic conceptions” can be understood to apply only to operations which directly kill the child. If that is a possible understanding, then, Bouscaren argues, it must be the proper understanding. The reason he gives for this is that if the 1898 and 1902 declarations are understood to refer to direct removals/killings only, then the declarations are consistent not only with the liberty (for indirect abortions) allowed under the 1889 decree, but also with the “universally accepted opinion of Catholic theologians.” On the other hand, that liberty and the unanimous opinion of theologians would be contradicted by the severer

\(^6\) Connery, 302.

\(^6\) Bouscaren, 60-61.
interpretation. Hence, Boucaren concludes, “it is not to be presumed that such a complete reversal of moral teaching would be made by mere implication, without an explicit declaration. Our interpretation of these decrees is therefore reasonable; whereas the severer interpretation is not.” Bouscaren’s own interpretation has stood the test of time, and is fully consistent with later ecclesial documents, such as the 2009 Ethical and Religious Directives for Catholic Health Care Services, of the United States Conference of Catholic Bishops.

There is one final question that can be asked in relation to the 1902 declaration. Is the six-month marker absolute in relation to the lawfulness of direct extractions of ectopic fetuses? To put the question another way, could it be lawful to extract directly an ectopic, or even uterine, fetus prior to six months gestation in circumstances in which technology is available to preserve the fetus’s viability? While I am not aware of any author who has treated these questions expressly, I believe the answer to the first question must be no, and the answer to the second question must be yes. I base these responses on the reasons provided in the 1902 response. The negative answer to the question posed in the 1902 declaration is due to the fact that at that time there were no means of adequately caring or providing for the life of the fetus before the passing of the sixth month of gestation. Prior to that time, the fetus had to be considered immature, that is, nonviable. However, in circumstances that provide for a reasonable expectation that the viability of the fetus would be preserved before the sixth month of gestation, it could be true to say that the acceleration of birth is “performed at the time and according to the methods by which in the ordinary course of events the life of the mother and that of the fetus are considered.”

65 Ibid.

Such an acceleration would not have to be the removal of an *immature* fetus; hence, it would not have to fall under the prohibition of the 1902 response.\(^{67}\)

*Conclusion to Chapter One*

Having examined the decisions from the Holy See relevant to craniotomy, abortion, and the management of ectopic pregnancies, from 1869 to 1902, and some of the discussions that led to or resulted from these decisions, it is possible to summarize some important points and conclusions. First, in the second half of the nineteenth century, Catholic moralists argued strongly over the lawfulness of various procedures which resulted in the death of a fetus. Some argued that circumstances could justify the procurement of the ejection of a nonviable fetus, abortion, but not the destruction of the bodily integrity of the fetus by embryotomy or craniotomy. Others argued that craniotomy as well as abortion could be justified. Craniotomy was addressed first by the Apostolic Penitentiary in ways that referred questioners to *auctores probati* without providing specific guidance. This manner of responding led to more questions until the decisions from the Inquisition in 1884 and 1889 effectively settled that craniotomy, and any directly lethal surgical operation on the fetus or gestating mother, could not be safely taught as licit in Catholic schools. While the grammatical and syntactical formulation of this judgment left open the question whether it was to be understood as a mere prudential/disciplinary decision or as a doctrinal decision that settled the moral status of the procedures involved, the more reasonable position (based in part on the established language used by the Holy See in the time period) favors a doctrinal decision. The same reasoning can be extended to include the 1895 decision on the unlawfulness of direct abortion even in a vital conflict situation. Furthermore, according to the latest decrees from the period, direct abortion is unlawful regardless of the location from which the fetus is extracted from the mother. There is no reason from the

\(^{67}\) The matters considered in this paragraph will arise again in the next chapter.
decisions of the Holy See to question the lawfulness of indirect abortion or indirect killing in certain circumstances, according to the principle of double-effect.

In the early decisions of the Holy See, the term “direct” (directa) or “directly” (directe), as it is employed in relation to lethal procedures, is sometimes used in a context (e.g., in the decisions from the Apostolic Penitentiary of November 28, 1872, and from the Inquisition of August 19, 1889) where it has a certain reference to the manner in which a procedure is accomplished with respect to physical causality in the order of an action’s external execution. In documents treated in subsequent chapters, that sense of “direct”/“directly” is never repudiated. However, a more complete understanding of the term “direct” will be found in the teachings of Pope Pius XII (addressed especially in the second chapter) and Pope John Paul II (addressed especially in the third chapter). Both popes will use the term “direct” also to indicate how an action or effect of a certain kind proceeds from the will of a human agent in the order of intentionality. By the end of the third chapter, I will show how the various senses or uses of the term “direct” in documents of the Holy See can be combined to inform theory concerning the moral specification of human action.
Chapter 2

Introduction

This chapter continues to follow the development of Catholic teaching on direct abortion, by focusing on the relevant early to middle twentieth century magisterial documents, especially those produced in the pontificates of Pius XI and Pius XII. In this period, there were also significant developments in canon law, which are necessary to understand in order to interpret important documents of the Magisterium, even some that would be written many years later, after the Second Vatican Council.

As in the first chapter, the progression is generally chronological. This approach manifests the development of doctrine and terms that appear gradually in the pre-conciliar period and which are presupposed or referenced in the post-conciliar period. Hence, this chapter begins by explaining the canonical legislation relevant to procured abortion that was promulgated with the first Code of Canon Law in 1917. Particular attention is given to the canonical definition of abortion, as this will be very significant for understanding the act of abortion in magisterial documents and also in moral discussions and disagreements that arose among theologians both before and after the Second Vatican Council.

After considering abortion in canon law, this chapter focuses on papal teachings from Pope Pius XI (the encyclical Casti connubii, of December 31, 1930), and Pope Pius XII (three addresses: to the Medico-Biological Union “San Luca,” of November 12, 1944; to the Congress of the Italian Catholic Union of Midwives, of October 29, 1951; and to the Sodality of the “Family Front,” of November 26, 1951). The writings of Catholic moralists are used throughout to show continuity between the twentieth century teachings of the Magisterium and those of the nineteenth century, and to explain those teachings and the concepts they employ. One particular
aim of this chapter is to show how a common, although not completely unanimous, consensus had developed by the time of the Second Vatican Council around the affirmation of the thesis that direct abortion (understood as abortion intended as an end or as a means to an end) is direct killing. This was not at all obvious to several prominent authors in the late nineteenth century, as the last chapter demonstrated. This chapter shows how the thesis developed and what it means.

The 1917 Codex Iuris Canonici on Procured Abortion

After the decision concerning viability and the management of ectopic pregnancies from the Inquisition in 1902, the next most significant development in the twentieth century relevant to Catholic teaching on direct abortion came with the promulgation of the *Codex Iuris Canonici* by Pope Benedict XV in 1917. The two most important canons are 985, 4°, and 2350 §1.

985 They are irregular from delict:
4° Who perpetrate voluntary homicide or who procure abortion of a human fetus, upon accomplishment having been secured, and all cooperators.¹

2350 §1 Procurers of abortion, the mother not excepted, incur, upon accomplishment having been secured, excommunication latae sententiae reserved to the Ordinary; and if they are clerics, they are also to be deposed.²

The complete import of these canons, especially 2350 §1, for the magisterial tradition on direct abortion becomes apparent only when they are considered in relation to later documents issued during the pontificate of Pope John Paul II, which will be treated in the next chapter. At this point, it is sufficient to explain the proper meanings of the relevant parts of the canons in their historical context.


At the time of their promulgation, canons 985, 4°, and 2350 §1 represented the development of centuries of canonical legislation on abortion considered as a crime according to ecclesiastical law. While it is not necessary to recount the entire history of that development, it will be useful to note three important points in that history which can help explain the formulations found in the 1917 Code. The first came with the Constitution *Effraenatam* of Pope Sixtus V, on October 29, 1588. Excommunication and irregularity were among the many punishments this pope legislated for procurers of abortion. While there is nothing particularly remarkable about such punishments in the history of canonical legislation on abortion, a distinctive feature of the *Effraenatam* was its determination that the law applied equally whether the object of the abortion was a fetus that was animated or non-animated, formed or not formed (*animati, quam etiam inanimati, formati, vel informis*).³

Just two and a half years later, in the Constitution *Sedes Apostolica*, on May 3, 1591, Pope Gregory XIV restricted the punishments determined by Sixtus V to the abortion of an animated fetus.⁴ Hence, the canonical punishments for procuring the abortion of a *non-animated* fetus no longer included excommunication or irregularity. Neither Pope Sixtus nor Pope Gregory defined the time of rational animation. But in practice the commonly accepted view regarded animation of a male at forty days and a female at eighty days.⁵ In cases where there was doubt concerning the sex of the fetus, the standard of eighty days was accepted.⁶

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Finally, on October 12, 1869, Pope Pius IX promulgated revised law regarding abortion in the Constitution *Apostolicae Sedis.* The Holy Father included among those subject to excommunication *latae sententiae* reserved to bishops or ordinaries, “procurers of abortion, upon accomplishment having been secured.”\(^7\) Removing the distinction between an animated and a non-animated fetus, the object of the canonical crime of abortion, relevant to excommunication *latae sententiae*, became the product of human conception at any point until viability. However, the distinction between the animated fetus and the non-animated fetus, and the standards for determining the presence of one versus the other, remained relevant for the effect of irregularity. In that respect, the law promulgated by Pope Gregory XIV remained in force.\(^8\)

The progression of legislation on the canonical consequences for procurers of abortion traced above sheds light upon the formulations of canons 985, 4°, and 2350 §1 of the 1917 Code of Canon Law. A significant difference between the two canons is the specification “human fetus” in 985, 4°, which is absent in 2350 §1. Huser explains the difference in the following way.

In the insertion of the phrase “human fetus” in canon 985, 4°, the [commentators on canon law] see a definite indication of the legislator’s will to eliminate the distinction between the animated and non-animated fetus. Any fetus conceived by woman, so long as it is living, is a human fetus in the sense intended by canon law. Consequently, in so far as the verification of the element *human* is concerned, irregularity and censure too are incurred for abortion effected at any time after the definitely established fact of conception.\(^9\)

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“Human” was added to canon 985, 4°, alone because until the 1917 Code irregulärity applied only to the procurer of abortion of an animated fetus; whereas, since Pius IX’s constitution, excommunication was applicable in relation to abortion of any human fetus. “What the Constitution ‘Apostolicae Sedis’ accomplished regarding the incurring of the censure, canon 985, 4°, effected for the irregulärity—the elimination of the distinction between the animated and non-animated fetus as a practical norm.”10

While the Code eliminated the distinction between the animated and non-animated fetus in relation to the canonical crime of abortion, commentators generally held that this did not necessarily imply any magisterial or canonical determination concerning the precise moment of rational ensoulment. Hence, commenting on canon 2350, Matthew Ramstein notes: “Whether the fetus is animate or inanimate is immaterial in theory, while in practice the precise moment of animation cannot be determined anyway.”11 Similarly, Bouscaren, Ellis, and Korth write: “The theoretical question as to the moment of the infusion of the human soul is not considered. The censure is incurred any time after conception has certainly taken place.”12 Explaining the significance of the term “human” in this context, Huser writes: “…any fetus conceived by woman, so long as it is living, is a human fetus in the sense intended by canon law. The requirement that the fetus be living does not mean that this life necessarily is or must be derived from an intellectual principal, the rational soul.”13 Nevertheless, it is required that there is

10 Ibid., 104.


present a true “human fetus,” as distinguished from some other living thing or appendage, even if
derived from cells of human origin, such as a tumor, mole, or other growth.14

For the purposes of the present dissertation, it is necessary to provide adequate answers to
the following two questions. What does it mean to procure a completed (effectu secuto)
abortion? What is the proper and complete object of the act of abortion that makes one subject to
canonical censure?

In his dissertation on the canonical crime of abortion, Huser explains the common
understanding of canonists in response to the first question.

Both before and after the Code, there is general agreement among authors as to the
essential notions contained in the phrase “to procure” as it is employed in relation to the
crime of abortion.
It may be said that he procures an abortion who intends it and designedly or purposely
brings it about by employing means in themselves efficacious for the purpose. This is the
form commonly employed by authors in defining the procuring of an abortion.
…In so far as the notion of procuring abortion is concerned, it appears sufficient to state
that the crime is committed when the abortion (1) is intended (not merely permitted) and
(2) results from the means employed for this purpose.15

Then, considering the notion of efficacious means in greater detail, Huser provides the following
explanation.

The means employed to effect abortion may be either physical (v.g., drugs) or moral
(v.g., psychic trauma, as terror inflicted upon the mother). The abortion may be caused
by a single means (v.g., the use of drugs alone) or the cause may be multiple, consisting
of a combination of means (v.g., the use of drugs and x-rays). The means may be simple,
i.e., simplex, consisting of a single individual act (v.g., curettage); or it may be complex, a
series of acts following naturally and necessarily one from another and ultimately

450: “The crime is not had if from the uterus is ejected a mole or mass of flesh which is not a fetus, it may be ejected
by intention as abortion may be procured.” [Non habetur delictum si ex utero eiiciatur mola seu massa carnis quae
foetus non sit, licet ea intentione eiiciatur ut procuretur abortus.] Similarly, Huser, The Crime of Abortion in Canon
Law, 98: “It may be noted here that there likewise is no true abortion if that which is expelled from the mother is not
a true fetus but a tumor or growth, although abortion may have been intended and a true fetus was thought to be
present before the ejection was effected. If there is founded and reasonable doubt in this regard, canonical penalties
are imputed to none of the parties concerned.”

15 Huser, The Crime of Abortion in Canon Law, 81-83.
resulting in the expulsion of the fetus (v.g., certain drugs produce abortion by their primary toxic effect upon the intestines or kidneys).

… It is merely required, and hence it suffices, that [the means] be relatively efficacious, i.e., in a particular case the means used actually cause the abortion. After all, the main criterion of their efficacy is that the abortion has actually resulted from their use as an effect from an efficient cause.\textsuperscript{16}

Hence, the notion of \textit{procuring} combines an internal act, intention, and an external act, using determined and efficacious means to realize the intention. The internal act alone may result in sin, but not in procuring; hence, not in canonical crime. Similarly, the external act alone may result in ejection of a non-viable fetus, but without the direction of the intention, abortion has not been procured in the sense relevant for canonical crime. Such an external act might be the result of a mere act of a man (as distinguished from a human act), such as when a clumsy person falls on the abdomen of a pregnant woman who is lying down. Likewise, it might result from an action lawful in itself but having more than one immediate effect, as in a case where the principle of double effect could apply, with the agent not intending the evil effect of abortion. In neither case is abortion \textit{procured}.

On the other hand, abortion is still considered \textit{procured} in a case where the necessary internal act of intention seems merely implicit, by being contained in the will to perform an action that by virtue of its causality is ordered immediately only to the effect of abortion. Huser indicates this in the following way. “It is quite true that when one places an action which he knows will \textit{ex natura sua} directly and immediately result in abortion—the \textit{finis operis}—he can not escape the penalties for the crime simply by pleading that he has not intended the abortion which follows. His actions give the lie to his words.”\textsuperscript{17} Hence, by intending to posit an action which the agent knows will produce abortion as the end to which the action is naturally ordered,

\textsuperscript{16} Ibid., 85-86.

\textsuperscript{17} Ibid., 87.
as its direct and immediate end (assuming there is no other equally direct and immediate end),
the agent necessarily intends abortion as a procurer. In such a case abortion may not be the end
motivating the agent (the *finis operantis*), but it is the end of the act itself (*finis operis*).
Accordingly, as far as the law is concerned, to intend the act with knowledge of its *finis operis* is
to intend the *finis operis* itself.

In other cases, it may happen that the causality of the external action is not ordered of
itself to the sole immediate effect of abortion. Yet, *procuring* abortion is still possible if the
proper internal intention be joined to an efficacious, albeit *mediate*, means. A healthy woman
might choose to have a hysterectomy in her third month of pregnancy merely to rid herself of the
child inside her. “This surgical operation removes the uterus itself, and consequently also the
fetus contained therein. From the viewpoint of strict physical causality, the abortion may be
called indirect because the method was indirect. Yet the crime of abortion is committed, for the
sinful intention is present, and the external action is efficacious and beyond doubt constitutes the
serious material sin of abortion.”

The Code also makes clear that the crime of abortion is committed when procurers have
performed the act *effectu secuto*. What is the meaning of this qualification? Translators of the
Code have rendered this phrase in different ways. Edward Peters translates it literally as “upon
the effect being secured.” Bouscaren, Ellis, and Korth have “if the effect is produced.”

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18 Ibid., 88.

Peters (San Francisco, California: Ignatius Press, 2001), 746: “Procurers of abortion, the mother not excepted, incur,
upon the effect being secured, automatic excommunication reserved to the Ordinary, and if they are clerics, they are
also deposed.”

who procure abortion, not excepting the mother, incur, if the effect is produced, an excommunication *latae
sententiae* reserved to the Ordinary; and if they be clerics they are moreover to be deposed.”
Stanislaus Woywod more loosely has “at the moment the crime takes place.” Ramstein attempts to capture the meaning in the words “provided abortion was not merely attempted but really effected.” While this is far from a direct translation, Ramstein has made clear the significance of *effectu secuto* in canons 985, 4°, and 2350 §1. However gravely sinful it is to intend or even attempt abortion, the canonical crime is not perpetrated and its legal effects are not incurred unless and until the abortion is accomplished. Hence, if by accident the means ordinarily apt to procure abortion fail, or even if they are intentionally set in motion by one agent and then deliberately halted by another prior to completion, the intended abortion is not procured *effectu secuto*.

In my own translations of canons 985, 4°, and 2350 §1, at the beginning of this chapter, I elected to render *effectu secuto* as “upon accomplishment having been secured.” This closely resembles the translation provided by Edward Peters above, which is much more literal than those offered by Woywod and Ramstein. Peters’s translation clearly represents the prepositional phrase appropriate to the ablative case of both words, but “upon accomplishment having been secured” is preferable to his “upon the effect being secured,” as the former more fully signifies the sense of completion proper to the perfect passive participle of *secuto*. An adequate translation and understanding of procuring abortion *effectu secuto* will be important for

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21 Stanislaus Woywod, *A Practical Commentary on the Code of Canon Law*, revised by Callistus Smith (New York: Joseph F. Wagner, Inc., 1957), 545: “Persons who procure abortion, the mother not excepted, automatically incur excommunication reserved to the Ordinary at the moment the crime takes place; if they are clerics, they shall also be deposed.”

22 Matthew Ramstein, *A Manual of Canon Law*, 714: “Those who procure abortion, the mother herself not excluded, incur a *latae sententiae* excommunication reserved to the Ordinary, provided abortion was not merely attempted but really effected. Clerics, moreover, who cooperate in this crime are to be deposed.”

23 See also P. Chas. Augustine, *A Commentary on the New Code of Canon Law, Volume 8, Book 5 Penal Code*, (Saint Louis, Missouri: B. Herder Book Co., 1931), 401: “*Effecto [sic] secuto* means that the attempt must be effective. Whether the effect (abortion) is procured by means of drugs or instruments, or by burdens imposed on the pregnant woman does not matter.”
understanding later legislation in the 1983 Code of Canon Law, which employs some of the same terms used in the 1917 Code.

*The Canonical Object of “Abortion” as “Eiectio Fetus Immaturi”*

It is now necessary to provide a response to the question concerning the proper and complete object of the act of abortion that makes one subject to canonical censure. It was noted in the first chapter that after Pope Sixtus V’s *Effraenatam* (1588), the definition of abortion as “ejection of an immature fetus” (*eiectio fetus immaturi*) became the standard used by Catholic canonists and moralists. So important was the strict meaning of the term that, at least by the late nineteenth century, it was commonly held that other equally death-causing procedures, such as craniotomy, cephalotripsy, and embryotomy, however immoral they may be, were not considered abortions. The first thing to consider, then, is whether there is any reason to think that the traditional definition was altered with the advent of the 1917 Code.

Despite the well-established pre-Code tradition of defining abortion as *eiectio fetus immaturi*, it is possible to find a minority of commentators who argued that the 1917 Code should be interpreted to include acts like craniotomy and embryotomy in canon 2350 §1. Examples of representations of the minority view can be found in the writings of Eduard Eichmann and Matthaeus Conte a Coronata. Eichmann’s reasoning is contained in the following passage.

Also, the induction of artificial abortion (craniotomy) by means of homicide, for the purpose of dismembering the child, in order to save the life of the mother, falls under can. 2350 §1; on the question: “whether the surgical operation they call ‘craniotomy’ can be safely taught in Catholic schools to be licit, when certainly, with it omitted, the mother and the infant will perish; on the other hand with it admitted, the mother may be saved, with the infant perishing,” the Sacred Congregation of the Inquisition has repeatedly decided in the negative (31 May 1884, 19 August 1889, 24 July 1895). For the continuing validity of these rules cf. can. 6 n. 3.24

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24 Eduard Eichmann, *DasStrafrecht des Codex Iuris Canonici* (Paderborn: Druck und Verlag von Ferdinand Schöningh, 1920), 176-177: Auch die Herbeiführung des künstlichen Abortus (Kraniotomie), durch Tötung,
Number 3 of canon 6 of the Code to which Eichmann refers reads: “Canons that are only congruent in part with the old law, inasmuch as they are congruent, are to be determined from the old law; inasmuch as they are discrepant, they are to be judged from the meaning of their own words.”

Evidently Eichmann understands the “rules” (Bestimmungen) he referenced from the Inquisition to have been canons of ecclesiastical law, all dealing with different types of abortion. But this interpretation is inadmissible for two reasons. In the first place, as seen in the first chapter of this dissertation, the decisions cited from the Inquisition were doctrinal and moral in character, not legislative, and this was confirmed by authors writing during and after the nineteenth century decisions. Secondly, as also established in the first chapter, the distinction between abortion in the proper sense (ejectio fetus immaturi) and craniotomy or embryotomy was already well recognized and employed at the time that the Inquisition was issuing its decisions. Hence, it is inaccurate and confusing for Eichmann to assume that craniotomy is a type of abortion, especially in reference to the particular judgments of the Inquisition.

Matthaeus Conte a Coronata argues that since the elements of delict found in abortion also appear to be equally present in craniotomy, embryotomy, and similar operations, it seems that there is no reason to exempt such actions from the sanctioned penalties of canon 2350 §1.

“Therefore,” writes Coronata, “notwithstanding the more common doctrine of the authors, I judge that it is to be affirmed that even craniotomy, embryotomy and other similar operations fall

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25 Canon 6: 3° Canones qui ex parte tantum cum veteri iure congruunt, qua congruunt, ex iure antiquo aestimandi sunt; qua discrepant, sunt ex sua ipsorum sententia diiudicandi.

under the sanctions established against abortion, and that abortion can be better defined than the
ejection of an immature human fetus from the mother’s womb, as civil attorneys define it, as *the
violent interruption of the process of physiological maturation of the fetus.*”

This proposed definition directly challenges the traditional canonical and moral understanding of the act of
procured abortion, particularly with respect to the requirement of immaturity (non-viability) of
the fetus.

Did the challenge to the traditional understanding of the object of abortion, offered by
Eichmann, Coronata, and others, provide sufficient reasons to make it uncertain that the penalties
for procured abortion in the 1917 Code applied exclusively in cases of *ejectio fetus immaturi*?

For the vast majority of commentators on the Code, the answer is firmly in the negative. Huser
lists over twenty authors who, holding that the traditional definition of abortion is maintained in
the 1917 Code, teach that embryotomy (understood broadly as inclusive of craniotomy and
similar procedures) does not induce the censure of excommunication for abortion. Such authors
include: Vermeersch, Cappello, Creusen, Chelodi, Cocchi, Pistocchi, Cavigioli, Farrugia,
Salucci, Bouuaert-Simenon, Ayrinhac-Lydon, Cipollini, Sole, Cerato, Teodori, Schaaf, Noldin-
Schmitt, Schöenegger, Ferreres, Iorio, Loiano, and Marc-Getermann.

For example, Johannes Cavigioli writes: “Abortion in canon law is *ejectio foetus immaturi*…The canonical notion
differs from the notion of legal medicine, from which abortion properly is violently interrupted

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27 Ibid.: *Non obstante igitur communiori doctrina auctororum, affirmandum censeo etiam craniotomiam, embryotomiam et alias similes operationes cadere sub sanctionibus contra abortum statutis et abortum melius quam immaturi foetus humani ex utero matris eiectionem definiiri posse, sicut definiunt poenalistae civiles, violentam interruptionem processus physiologicis maturationis foetus.*”

28 Other authors who hold positions similar to those of Eichmann and Coronata include Francisco Wernz and Petri Vidal, *Ius Canonicum, Tomus VII: Ius Poenale Ecclesiasticum* (Rome: Pontificia Universitas Gregoriana, 1937), 517; and Pericles Felici, *De Poenali iure Interpretando* (Rome: Appollinaris, 1939), 96. Wernz and Vidal maintain that direct feticide, in reality and in intention, is “true abortion.” Felici argues that embryotomy should fall under the penalty of canon 2350 §1 because it produces the same effect as abortion, and by crueler means.

[child]-bearing [or the fetus violently broken apart], either outside, or inside the uterus. To us, therefore, neither embryotomy, nor craniotomy, nor acceleration of birth comes in this place.”

Similarly, understanding that “abortion consists in the expelling of the immature fetus (before 7 months of gestation) from the uterus of the mother,” Mario Pistocchi writes: “Hence, abortion is not the acceleration of birth that one can have after the seventh month of gestation, it is not craniotomy and the other very similar surgical operations, which directly intend the killing of the infant in the uterus of the mother.”

H.A. Ayrinhac summarizes the common teaching in his work on Penal Legislation in the New Code of Canon Law.

To incur the penalties [of 2350 §1, excommunication latae sententiae, and deposition, ferendae sententiae, if a cleric] there must be real abortion, i.e., the ejection from the womb of the mother, of a living foetus which is not viable or before the twenty-eighth week of pregnancy. Causing premature birth or the birth of a child which is viable, before the regular term, is not causing abortion. Nor do operations of craniotomy, embryotomy and others of a similar nature come under this law, criminal though they be.

Finally, referring to a principle of canonical interpretation, which will be explained in further detail below, P.J. Lydon writes: “Laws in which punishments are enacted must be strictly interpreted (C. 19) and, hence, in this matter of abortion the word must be understood as

30 Johannes Cavigioli, De Censuris Latae Sententiae in Codice Juris Canonici Continentur Commentariolum (Torino: Libreria Editrice Internazionale, 1918), 131-132: “Abortus in jure canonico est ejectio foetus immatutri...Notio canonica differt a notione medicinae legalis, ex qua abortus proprius est foetura violenter interrupta, sive extra, sive intra uterum. Nobis igitur hic non venit embryotomia, nec craniotomia, nec acceleratio partus.”

31 Mario Pistocchi, I Canoni Penali del Codice Ecclesiastico (Rome: Casa Editrice Marietti, 1925), 170. The quotations from this source are combined from the following sentences (which end on page 171 of the source): “—Abortum.—Secondo il concetto dato. Non si tratta quindi di accelerazione del parto che si può avere dopo il settimo mese della gestazione, non si tratta di craniotomia e di altre consimili operazioni chirurgiche, che direttamente intendono la uccisione de l’infante, ne l’utero della madre. Perché l’aborto consiste nel discacciare il feto immaturo (prima dei 7 mesi di gestazione) da l’utero de la madre, non si deve confondere con esso l’operazione che liberasse la madre del feto già morto per cause indipendenti da artificio umano.”

meaning the intentional ejection of the immature fetus from the maternal womb. The censure, therefore, is not attached to craniotomy or to indirect abortion.”

Other authors not mentioned by Huser, but who explicitly hold the same view, include: Adrien Cance, Matthew Ramstein, Pedro Lumbreras, Ludovico Bender, T. Lincoln Bouscaren, Adam Ellis, and Francis Korth. Hence, from the weight of authors alone there is a strong argument in favor of the restrictive interpretation of abortion as the ejectionus of an immature human fetus from the uterus of the mother, that is, before at least the beginning of the seventh month of gestation, from the moment of conception. The censure is not incurred: 1° if a dead fetus is ejected; 2° if it is not at all certain that what is ejected is a human fetus; 3° if the expulsive action is accomplished immediately after intercourse, because conception is not yet certain; 4° if nothing but acceleration of birth be accomplished. Neither do craniotomy, embryotomy, etc., come under the name abortion.”


Adrien Cance, Le Code de Droit Canonique: Commentaire Succinct et Pratique, Tome Troisième (Paris: Libraire Lecoffre, 1929), 414: “Under the name of abortion comes the ejection of an immature human fetus from the uterus of the mother, that is, before at least the beginning of the seventh month of gestation, from the moment of conception. The censure is not incurred: 1° if a dead fetus is ejected; 2° if it is not at all certain that what is ejected is a human fetus; 3° if the expulsive action is accomplished immediately after intercourse, because conception is not yet certain; 4° if nothing but acceleration of birth be accomplished. Neither do craniotomy, embryotomy, etc., come under the name abortion.”

Matthew Ramstein, A Manual of Canon Law, 714-715. Ramstein simply defines abortion (“ejection of an immature fetus from the womb”) and then states “…Neither is craniotomy abortion…” without discussing any reason for the distinction. Petrus Lumbreras, De Iustitia (Rome: Angelicum, 1938), 89-90. Similar to Ramstein, Lumbreras defines abortion (“ejection of the fetus at a time in which he cannot live outside the uterus”) and then simply states: “They do not incur this penalty [excommunication latae sententiae] who merely accelerate birth; neither indeed do those performing craniotomy, since that operation would be distinct from abortion.”

Ludovico Bender, “Embryotomy,” in Dictionary of Moral Theology, Translated from the Second Italian Edition under the Direction of Henry J. Yannone (London: Burns & Oates, 1962), 453. Bender recognizes and includes potential reasons for the distinction: “ Abortions are punished with the ecclesiastical penalty of excommunication; the same penalty, however, is not incurred in the case of embryotomy, though it is no less serious a sin. The imposition of an ecclesiastical penalty attached to a sin does not depend solely on the gravity of the sin. Other factors, such as the extensiveness of the evil, and the judgment of the legislator, enter into excommunications.”

This canon alone is addressed here because even if the irregularity of canon 985 °4 would not apply because of abortion in cases of craniotomy or embryotomy, those same acts could result in the irregularity of canon 985 °4 because of homicide.
dogma among authors that craniotomy and embryotomy, though grievously unlawful and forbidden, do not fall under the censure of can. 2350. However, when the argument from extrinsic authority is combined with principles from the 1917 Code of Canon law itself, it becomes certain that the only action which subjected one to the penalties of procured abortion was *eiectio fetus immaturi*, strictly understood.

There are three canons in particular that are often referenced by commentators in support of the position that the abortion of canon 2350 §1 must be interpreted exclusively as *eiectio fetus immaturi*.

Can. 15—Laws, even invalidating and disqualifying, do not bind in doubt of law; whereas in doubt of fact the Ordinary can dispense from them, so long as it is concerned with laws from which the Roman Pontiff is accustomed to dispense.

Can. 19—Laws that establish a penalty, or that constrain the free exercise of a right, or that contain an exception to the law, are subject to strict interpretation.

Can. 2219 §1—In penalties, the more benign interpretation is to be made.

“A doubt of law is a doubt about either the existence or the meaning of the law.” According to the majority and common interpretation of canonists, it is at least doubtful that laws on abortion mean to include craniotomy, embryotomy, and equivalent procedures. Therefore, according to canon 15, the penal laws relevant to procured abortion do not bind with respect to those procedures. Hence, canonist Heribert Jone, who apparently favored in theory the view that canon 2350 §1 included craniotomy, taught: “Although the contrary opinion seems theoretically

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37 Canon 15—Leges, etiam irritantes et inhabilitantes, in dubio iuris non urgent; in dubio autem facti potest Ordinarius in eis dispensare, dummodo agatur de legibus in quibus Romanus Pontifex dispensare solet.

38 Canon 19—Leges quae poenam statuunt, aut liberum iurium exercitium coarctant, aut exceptionem a lege continent, strictae subsunt interpretationi.

39 Canon 2219 §1—In poenis benignior est interpretatio facienda.

more probable, according to the more common and therefore practically certain opinion (cf. Can. 15) the penalty is not incurred if the infant is killed in the uterus by craniotomy or embryotomy.”

Lydon, quoted above, appealed to canon 19 when arguing that in the matter of “abortion” the Code’s use of the word must be understood as meaning the intentional ejection of the immature fetus from the maternal womb, to the exclusion of craniotomy. Bouscaren, Ellis, and Korth explain, “To interpret a law strictly here means to interpret it narrowly; that is, so as to narrow rather than enlarge its application.” These authors then connect canon 19 to canon 2219 §1, by appealing to the principle “odious things are to be restricted” (*odiosa restringuntur*). Commenting on the latter canon, Augustine appeals to the same principle: “Penalties are considered odious, and the old maxim holds, ‘Odiosa sunt restringenda.’ They are to be strictly interpreted. The words of the law must be taken in their proper sense indeed, but not extended beyond this.” In a following paragraph, the same author applies this to the censure concerning abortion. “A censure is incurred by those who procure an abortion. In this context abortion does not include craniotomy or acceleration of birth without cause, but is taken

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41 Heriberto Jone, *Commentarium in Codicem Iuris Canonici*, Tomus Tertius (Paderborn: Officina Libraria F. Schöningh, 1955), 531: “Etsi contraria sententia theoretice probabilior videtur, secundum sententiam communiores et ideo practice certam (cfr. Can. 15) poena non incurrirtur, si infans in utero matris craniotomia vel embryotomia interficiatur.” Roger Viau, *Doubt in Canon Law: A Historical Synopsis and a Commentary* (Washington, D.C.: The Catholic University of America Press, 1954), 76, offers an explanation of the theory behind canon 15: “…it may be deducted that, if the prohibition be doubtful, it does not bind, and consequently one is not held to a penalty which presupposes a delict. There is nothing here of the nature of a delict, because the morally imputable violation of a law is absent, since by virtue of the doubt the law does not exist. If the penal law is doubtful, one is not bound to observe the penalty, because an obscure or uncertain law is not a fit measure to assure uniformity of action in a community, and does not clearly indicate the legislator’s will.”


43 Ibid.

to mean the ‘direct removal of the unviable fetus from the womb.’”45 Hence, the only action that practically and certainly subjected one to the censure for abortion under the 1917 Code was *ejectio fetus immaturi*, excluding the procedures commonly called embryotomy, craniotomy, etc.

Huser indicates the principal reason why embryotomy and equivalent forms of feticide were not included under the excommunicable offense of abortion is because the strict definition of abortion required a non-viable fetus as its subject. “From the time of the relevant legislation of Pope Sixtus V in 1588 until the present day [1942], ecclesiastical jurisprudence has consistently embodied the element of non-viability as a characteristic note in the definition of abortion.”46 Yet ordinarily embryotomy, craniotomy, etc., would be accomplished only on fetuses who have reached the stage of viability. Prior to that stage the fetus is ordinarily too small for such procedures to be useful in comparison to abortion, if they are even practically possible, and abortion is generally less dangerous and requires less skill to perform.47 While Huser acknowledges the existence of the minority view of some authors writing after the 1917 Code who held that embryotomy begot the censure of abortion, he points out that “since the Code it is unquestionably the common and well-nigh universal opinion that embryotomy as distinct from abortion does not induce the censure of excommunication.”48 Hence, all things considered, and “since penal laws are to be interpreted strictly,” (referencing canons 19 and 2219 of the Code), Huser “does not think it even solidly probable that under the law abortion can

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45 Ibid., 30. Lydon, commenting on canon 19, also appeals to the same principle and uses the censure for abortion as an example: “Penalties are odious and ‘odiosa sunt restringenda,’ e.g., abortion, when excommunication is concerned, does not include craniotomy.” See Ready Answers in Canon Law: A Practical Summary of the Code for the Parish Clergy, 337.


47 Ibid., 129-130.

48 Ibid., 124.
legitimately be interpreted or defined so as to abstract from the notion of non-viability, and thus to include the viable fetus as a subject for the crime of abortion which would involve excommunication."\(^{49}\)

At this point an important question can be raised. What if, in a rare case, a procedure materially the same as embryotomy or craniotomy were performed on a non-viable fetus? Could that count as abortion as envisioned in the 1917 Code? Huser appears to answer affirmatively by offering the opinion that “any procedure performed to secure the ejection or expulsion of a non-viable fetus constitutes abortion in the sense envisioned by the penal law of the Church, and hence gives rise to the censure of excommunication and to the irregularity \textit{ex delicto}."\(^{50}\) The author goes on to clarify: “Whether the abortionist employs hysterotomy, instrumental dilation of the cervix, tamponade, forceps, curette, cranioclaster, drugs, x-ray, or any other means whatsoever seems quite irrelevant. All these various means are merely variant physical techniques which may be employed to effect the ejection of the non-viable fetus.”\(^{51}\) He concludes, “The reasonable norm in this matter is afforded by the condition of viability or non-viability.”\(^{52}\)

Perhaps greater clarity can be brought to the last question by considering the response of Bouscaren, Ellis, and Korth to a further question.

Is it necessary to incur the censure that the \textit{fetus be alive} when ejected?
1) If the child is certainly dead before any attempt to eject it is made, there is no abortion, and no censure.

\(^{49}\) Ibid., 128. See also Paschalis de Siena, \textit{Commentarius Censurarum Juxta Novum Codicem Juris Canonici} (Neapoli: Francisci Giannini et Filiorum, 1918), 56: “Equally, surgeons do not incur [the censure], who in a case of difficult birth kill the fetus in the womb in order to save the mother, and extract him piece by piece, because in this case the fetus is already mature, and it is not abortion, however gravely they may sin.” [Pariter eam non incurrunt chirurgi, qui in difficili partu ad salvandam matrem in ejus utero foetum necant, et membratim extrahunt, quia in hoc casu foetus est jam maturus, et non est abortus, licet graviter peccent.]

\(^{50}\) Ibid., 133 (emphases in the original).

\(^{51}\) Ibid.

\(^{52}\) Ibid., 134.
2) If the child is killed by embryotomy or craniotomy, an abominable crime is committed, but it is not “abortion” in the common parlance, hence no censure is incurred.
3) If a living child is attacked and destroyed by any of the means which commonly go by the name of abortion (curetting the womb, drugs, compresses, etc.), it makes no difference whether the child died before being ejected or afterward. The difference between this case and n. 2 is that this is commonly called abortion, the other is not.  

Besides viability, is there anything that distinguishes embryotomy or craniotomy from abortion in “common parlance”? In the minimal and strict definition of *eiectio fetus immaturi*, the only element left is *eiectio*. Huser explains that *ejection* refers to the “entire physical process of abortion.” The essential characteristic is that the non-viable fetus is “ejected,” “expelled,” “separated,” “detached,” “extracted,” “delivered,” or “removed” from the pregnant woman. “The mere technique or method employed to secure the delivery of an immature fetus is something accidental to the notion of abortion.”

Accordingly, it seems possible to unite the insights of Huser, Bouscaren, Ellis, and Korth in the following way. If an act that bears material identity to craniotomy or embryotomy is chosen as the manner of ejecting the non-viable fetus from the mother, then abortion is procured in the canonical sense. For example, if in the process of curetting the womb of a non-viable fetus (a means “commonly called” abortion) a procedure materially identical to embryotomy takes place, then abortion, and not simply embryotomy, has been accomplished. What would seem to

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54 Huser, *The Canonical Crime of Abortion in Canon Law*, 91. On this same page, he explains further: “It is true that the abortion is not complete until the fetus is delivered externally; then abortion has taken place. But even before the external appearance of the fetus, for example, once the detachment from the uterine site has been begun, abortion is taking place. Those steps which of physical necessity must precede the external expulsion are a part of the abortifacient process. It would be contrary to physical facts, therefore, to hold that abortion consists solely in the external ejection of the fetus. When abortion is said to be the ejection of a fetus, the term ‘ejection’ is indicative and in a way descriptive of the entire process.”

55 Ibid., 91-93. Over these pages Huser recognizes the equivalent descriptive value of each of these words for the canonical notion of *eiectio*.

56 Ibid., 93.
make the action abortion is its formality as a means or manner of ejecting a non-viable fetus. Without that formality (i.e., embryotomy or craniotomy materially considered), or without the fetal status of non-viability, there is no “abortion” according to “common parlance.”

The treatment of the canonical notion of abortion so far has made evident the importance of the strict definition of *eiectio fetu immaturi*. “This is the classical definition for abortion, and because it was employed by Pope Sixtus V, it enjoys an acknowledgement of an official character. From the sixteenth century…this concise statement, although sometimes expressed in slightly varying terminology, has enjoyed universal acceptation by canonists and moralists.”

Examples of expressions employing such slightly varying terminology include: “the ejection from the womb of the mother, of a living foetus, which is not viable”; “the ejection of a non-vital fetus outside the uterus”; “the *ejection of an immature human fetus from the uterus* of the mother”; “the expulsion of a human fetus from the womb before it is capable of living separately”; “the ejection of the fetus at a time in which he cannot live outside the uterus”; “the ejection of an immature human fetus from the uterus of the woman; or even more determined: the *expulsion from the maternal uterus of the fruit of conception, of uterine life, not yet truly capable of extrauterine [existence]”; “the ejection of an immature fetus from the womb”; “the ejection of an immature fetus, i.e., which de facto cannot live outside the mother”; the “expulsion

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57 Perhaps it might be said that *per se* embryotomy or craniotomy does not amount to the canonical crime of abortion; but *per accidens* (insofar as the procedure bears the formality of ejection) it can be *included* in the act of abortion. *Included* is emphasized here because it is not the procedure *as such* that is materially identical to embryotomy or craniotomy that specifies abortion; rather, that procedure happens to be involved in the ejection of the non-viable fetus.

of a human foetus during uterine gestation before the foetus is viable”; “the ejection of a living nonviable fetus.”

The additional qualifiers “human,” and “living,” found in some of the variant definitions, have already been addressed. But what about the frequently recurring qualification, “from the uterus of the woman”? Does this mean that true abortion in the canonical sense does not take place if the fetus is extra-uterine or ectopic? The majority of commentators do not directly address this question. Out of the dozens of authors surveyed by Huser, he found only two who consider the question, Udalricus Beste and Aloysius Barrett, both of whom consider an affirmative response probable. In support of their view, one can also cite Matthew Ramstein, who taught, “…nor is the extraction of an extra-uterine fetus abortion…” Yet Huser, himself, argued that true abortion is present so long as there is eiectio fetus immaturi, regardless of the location from which the fetus is extracted from the woman.

Huser’s reasons for rejecting the position of authors such as Beste, Barrett, and Ramstein can be summarized in the following ways. While some commentators define abortion as an ejection from the womb, others simply use the traditional and unqualified eiectio fetus immaturi. Moreover, official canonical texts have not limited the crime of abortion to cases involving only

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60 Huser, The Crime of Abortion in Canon Law, 134-135.

uterine pregnancy. Indeed, the law of Pope Sixtus V, which provided the basis for subsequent definitions, defined abortion simply as *ejectio fetus immaturi*, and “an ‘immature fetus’ includes the immature *ectopic* fetus as well as the immature *uterine* fetus.” The frequent addition of uterine location can be accounted for because that is the “ordinary and normal occurrence,” hence it is natural that canonists would speak that way when treating of the penalties for abortion. Virtually all canonists point out various cases in which the true notion of abortion is not applicable; but they generally do not mention ectopic or extra-uterine pregnancy as such a case. Finally, “The very essence of abortion seems to consist in the *lethal* removal or expulsion of a *non-viable* fetus; the precise *place from which* the fetus is removed within the mother appears to be a factor that is quite accidental.”

It seems that the principal and most compelling reason in favor of Huser’s view is that the law itself, at least since the time of Pope Sixtus V, has never made a distinction with respect to fetal location within the mother, and the strict and minimal elements of the traditional definition (itself provided by Pope Sixtus)—in a matter in which the law is to be interpreted strictly—would apply equally to a case involving a uterine or an ectopic non-viable fetus. However, there may be another way to approach the definition of abortion that includes reference to the uterine location of the non-viable fetus, which still comes to the same conclusion arrived at by Huser.

While it seems impossible to know the minds of most authors on the issue with certitude (since, as noted above, most commentators do not treat the issue *ex professo*), it might be that some who employed the augmented definition with “from the womb/uterus” language understood “womb”

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63 Ibid.

64 Ibid., 136.

65 Ibid.
or “uterus” in a wide sense. Most properly, those terms refer to the ordinary and ideal part of a woman’s reproductive system fit for optimal and complete fetal gestation, namely, the upper part or “body” of the uterus.66 In a wide sense, the “womb” might be considered that locus where the fetus actually implants and gestates, insofar as this locus then functions like the womb proper; it is the “womb” in a de facto sense.67 Such a usage may even seem moderately appropriate when considering the fact that even many bishops operating under the 1917 Code commonly referred to the ovaries and fallopian tubes as “uterine appendages.”


In extra-uterine pregnancy the dangerously affected part of the mother (e.g., cervix, ovary, or fallopian tube) may be removed, even though fetal death is foreseen, provided that: (a) the affected part is presumed already to be so damaged and dangerously affected as to warrant its removal, and that (b) the operation is not just a separation of the embryo or fetus from its site within the part (which would be a direct abortion from a uterine appendage); and that (c) the operation cannot be postponed without notably increasing the danger to the mother.68

This directive not only confirms that the principle of double-effect can sometimes justify the removal of a damaged and dangerously affected part of the woman’s body even if a fetus is contained within that part (and in such justified cases there would be no canonical penalty, as

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66 Clarence Wilbur Taber, Taber’s Cyclopedic Medical Dictionary (Philadelphia, Pennsylvania: F.A. Davis Company, 1958), U-21: “The organ is divided into a body, or upper part, and cervix, or lower part. The upper part of the body is called the fundus and the ends of the fundus to which the tubes are attached are called the cornual ends.”

67 Even in recent English usage, “womb” has often carried a primary meaning of “belly,” “stomach,” or “bowels,” and a secondary meaning of the “uterus” as an organ. See The Compact Edition of the Oxford English Dictionary (New York: Oxford University Press, 1971), Wh.-250-251. While medical usage can employ “womb” and “uterus” as synonyms, “womb” is sometimes defined on its own in a general way, as the “Female organ for protection and nourishment of the fetus.” See Taber, Taber’s Cyclopedic Medical Dictionary, W-5.

abortion is not procured but is merely a side effect of a lawful action), but also makes clear that certain body parts can be considered “uterine appendages.” Given this language, it is not inappropriate to admit the possibility of a wide sense of “uterus,” inclusive of cervix, ovaries, and fallopian tubes, just as the fingers are manual appendages but are sometimes included in the name “hand.”69

If a wide sense of “womb” or “uterus” operated in the writings of some commentators, that could explain why even those authors who include “from the womb/uterus” language in their definitions of abortion still made no exception from canonical penalty for those who procured the ejection of an immature ectopic fetus. But, without more relevant information from the commentators themselves, it is hard to know for sure what most of them would have thought about this explanation. Nevertheless, it seems certain to say with Huser that the extra-uterine (in the narrow sense) location of the non-viable fetus did not of itself render the ejection of such a fetus something different from the canonical crime of abortion.

There is one final issue that needs to be addressed in relation to the canonical notion of abortion, namely, viability. This refers to the ability of the fetus to live outside the womb (understood widely) of his or her gestating mother. But, it must be asked, what determines viability? Many authors make reference to a temporal standard. Hence, one frequently finds in writings of the period a standard of non-viability prior to the twenty-eighth week or seventh month of gestation.70 After this time, ejection of the fetus may be termed “premature birth” or

69 It is noteworthy in comparison to Taber’s quotations that some speak of the “cervix” as a part of the uterus in the proper sense, while others (such as the authors of the Ethical and Religious Directives) speak of the “cervix” as something that can be distinguished from the uterus. This fact alone indicates that there have been more or less inclusive ways to consider and speak about the uterus itself.

“acceleration,” but not abortion. Some appear to interpret the “seventh month” standard closer to its commencement rather than towards its conclusion. Hence, Woywod states that the fetus “is generally considered viable after six months of uterine gestation.” John McHugh also adopts this criterion: “The length of gestation is approximately 273 days or nine months, and viability begins about the 183rd day or after the sixth month, though there is a much better chance of survival for a child born a few weeks later.” In any case, it is clear from the last two authors that the temporal standard is approximate or general, and not absolute.

From the perspective of a moralist, John Kenny indicates some reasons why the temporal standard used by various canonists must be general.

A fetus is said to be viable when it is able to live outside the womb of the mother. From the opinions furnished by outstanding obstetricians, the moralists make a distinction when speaking of the viability of the fetus. It is the common teaching of the moralists that under conditions prevailing in private medical practice the fetus is not viable until the end of the twenty-eight week of gestation; in properly equipped hospitals, it may be considered viable at the end of twenty-sixth week.

Evidently, the twenty-eight week viability standard was based on generally occurring circumstances in common medical practice. In more advanced medical environments, an earlier standard could be admitted. Charles McFadden provides even more details for the necessity of a non-absolute temporal standard of viability.

The point of time at which a fetus is viable is essentially a scientific problem, not an ethical problem...It must be remembered that whether or not a fetus can live outside the womb of its mother will depend on a number of variable conditions...In each particular

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71 See, respectively, Chas. Augustine, A Commentary on the New Code of Canon Law, Volume 8, Book 5 Penal Code, 399; and Matthew Ramstein, A Manual of Canon Law, 715.

72 Stanislaus Woywod, A Practical Commentary on the Code of Canon Law, 603.


instance, the doctor will have to estimate the age, health, and strength of the fetus, the conditions under which it will be born, as well as the amount and quality of the knowledge, skill, and equipment which will be available for its care.\(^\text{75}\)

Hence, given so many contingent variables, it is clear that fetal viability cannot be determined simply by a temporal standard that will be applicable always and everywhere.

While without special aid most infants will not be able to survive prior to two months of prematurity, with the right kind of assistance many might be kept alive at an earlier time of delivery. In practice, then, the time of viability can change based on circumstances. The more medical science advances, the more likely that viability will be measured at increasingly earlier times of gestation. If, by means of advanced medical technology, a child were kept alive after only 4 months uterine gestation, by definition it would have to be said that the child was viable. Consequently, even if malice or neglect were involved in the act of delivery, such a case would not involve the canonical crime of abortion.

The common temporal standard of approximately seven months gestation is still valuable as a point past which the child is *presumed* to be viable even in ordinary circumstances, and *a fortiori* in circumstances involving advanced medical technology. Prior to seven months gestation, it seems that the knowledgeable physician or attendant will have to make a prudential judgment concerning the presence or absence of viability based on all relevant circumstances (the state of medical art, the attendant’s own experience and skill, the health and strength of the fetus, etc.). In such matters one can expect no more than moral certainty. Accordingly, if the competent physician or attendant judges beyond a reasonable doubt that in the circumstances the fetus is viable, then the requisites (at least in terms of subjective intentionality) for the canonical

crime of procured abortion would not be present in the event of induced delivery, even if the attendant happened to be mistaken.76

Perhaps due to the difficulties involved in providing a definite temporal standard of viability, some canonists, such as Arthur Vermeersch, Joseph Creusen, and Heribert Jone, make no mention of a particular time, but simply affirm that the fetus is non-viable or immature “who de facto cannot live outside the mother.”77 At least in terms of an objective standard, this appears to be a perfectly concise and accurate description of the non-viable fetus. The description accounts for all the qualifications of time and circumstance noted above by Kenny and McFadden. It also makes it easy to contrast the non-viable with the opposite description: “who de facto can live outside the mother,” even with artificial assistance.

*The Encyclical Letter of Pope Pius XI: Casti Connubii (1930)*

The next significant ecclesial document to address the issue of procured abortion is the encyclical letter of Pope Pius XI, *Casti connubii*, from December 31, 1930. In particular, there are five paragraphs which provide moral teaching relevant to abortion. Some statements are more important for the topic than others, but the totality of the teaching is presented below in order to place the important statements in their proper context.78

76 See Huser, *The Crime of Abortion in Canon Law*, 114-115: “…if the judgment of competent and conscientious physicians is that the fetus is viable, there will be no question of canonical crime even though it be learned post factum that the fetus really was non-viable and consequently died.”

77 Arthur Vermeersch and Joseph Creusen, *Epitome Iuris Canonici cum Commentariis*, Tomus III (Malines: H. Dessain, 1956), 352: “…fetus immaturus, i.e. qui de facto extra matrem vivere nequit.” Jone, *Commentarium in Codicem Iuris Canonici*, 530: “Nomine abortus venit ictio foetus immaturi, i.e. qui de facto extra matrem vivere nequit.”

But another very grave crime is to be noted, Venerable Brethren, which regards the taking of the life of the offspring hidden in the mother’s womb \([quo vita prolis, in sinu materno reconditae, attentatur]\). Some wish it to be allowed and left to the will of the father or the mother; others say it is unlawful unless there are weighty reasons which they call by the name of medical, social, or eugenic “indication.” Because this matter falls under the penal laws of the State by which the destruction of the offspring begotten but unborn is forbidden, these people demand that the “indication,” which in one form or another they defend, be recognized as such by the public law and in no way penalized. There are those, moreover, who ask that the public authorities provide aid for these death-dealing operations \([letiferas sectiones]\), a thing which, sad to say, everyone knows is of very frequent occurrence in some places.

As to the “medical and therapeutic indication” to which, using their own words, we have made reference, Venerable Brethren, however much we may pity the mother whose health and even life is gravely imperiled in the performance of the duty allotted to her by nature, nevertheless what could ever be a sufficient reason for excusing in any way the direct murder of the innocent \([directam innocentis necem]\)? This is precisely what we are dealing with here. Whether inflicted upon the mother or upon the child, it is against the precept of God and the law of nature: “Thou shalt not kill”: \([footnote 50: \text{Exod. xx. 13; cfr. Decr. S. Offic. 4 May 1898, 24 July 1895; 31 May 1884.}]\) The life of each is equally sacred, and no one has the power, not even the public authority, to destroy it. It is of no use to appeal to the right of taking away life for here it is a question of the innocent, whereas that right has regard only to the guilty; nor is there here question of defense by bloodshed against an unjust aggressor (for who would call an innocent child an unjust aggressor?); again there is no question here of what is called the “law of extreme necessity” which could even extend to the direct killing of the innocent \([neque ullum adest “extremae necessitatis ius” quod vocant, quodque usque ad innocentis directam occisionem pervenire possit]\). Upright and skillful doctors strive most praiseworthily to guard and preserve the lives of both mother and child; on the contrary, those show themselves most unworthy of the noble medical profession who encompass the death of one or the other, through a pretense at practicing medicine or through motives of misguided pity.

All of which agrees with the stern words of the Bishop of Hippo in denouncing those wicked parents who seek to remain childless, and failing in this, are not ashamed to put their offspring to death: “Sometimes this lustful cruelty or cruel lust goes so far as to seek to procure a baneful sterility, and if this fails the foetus conceived in the womb is in one way or another smothered or evacuated, in the desire to destroy the offspring before it has life, or if it already lives in the womb, to kill it before it is born. If both man and woman are party to such practices they are not spouses at all; and if from the first they have carried on thus they have come together not for honest wedlock, but for impure gratification; if both are not party to these deeds, I make bold to say that either the one makes herself a mistress of the husband, or the other simply the paramour of his wife.” \([footnote 51: \text{St. August., De nupt. et concupisc., cap. XV.}]\)

What is asserted in favor of the social and eugenic “indication” may and must be accepted, provided lawful and upright methods are employed within the proper limits; but

\(79\) The date of the first decree is wrongly represented as 1897 in the NCWC text. I have changed it to 1898, as it is properly given in the \textit{Acta Apostolicae Sedis} text of the encyclical.
to wish to put forward reasons based upon them for the killing of the innocent
[occisionem innocentium] is unthinkable and contrary to the divine precept promulgated
in the words of the Apostle: Evil is not to be done that good may come of it. [footnote 52:
Rom. iii. 8.]

Those who hold the reins of government should not forget that it is the duty of public
authority by appropriate laws and sanctions to defend the lives of the innocent, and this
all the more so since those whose lives are endangered and assailed [periclitatur et
impugnatur] cannot defend themselves. Among whom we must mention in the first place
infants hidden in the mother’s womb [infantes in visceribus maternis abditi]. And if the
public magistrates not only do not defend them, but by their laws and ordinances betray
them to death at the hands of doctors or of others, let them remember that God is the
Judge and Avenger of innocent blood which cries from earth to Heaven. [footnote 53:
Gen. iv. 10.]

In the first paragraph the Holy Father begins this section of the encyclical by recalling to his
fellow bishops the very grave crime by which the life of the offspring in the womb is attacked
(attentatur). The precise means by which the life of the offspring in the womb is attacked is
never specifically limited by the text of the encyclical, although at the end of the first paragraph
the pope describes what he has in mind as “death-dealing operations.” Among magisterial
documents, that description would likely bring to mind some of the death-causing procedures
evaluated by the Inquisition in the late nineteenth century. It is no surprise, then, that the pope
references three of those decisions in the next paragraph.

The second paragraph commences with the consideration of cases in which a woman’s
health or even life is gravely imperiled in relation to child-bearung. No matter how grave the
situation, Pope Pius XI teaches that it is always forbidden, by divine and natural law, to resolve
the danger by an action that involves “direct murder of the innocent” (directam innocentis
necem), whether of the child or of the mother. Then, in referring to the commandment, “Thou
shalt not kill,” the pope references Exodus 20:13 and relevant Inquisition decrees from 1884,
1895, and 1898. The first reference is a clear indication of Pius XI’s teaching that what he
condemns is against the “precept of God” (i.e., divine law). It is possible that he intended the
other three references to represent declarations of “the law of nature.” But in any case, it is evident that the Holy Father intended to use the Inquisition documents as sources readers could consult that would support and provide further insight regarding his claim that direct murder of the innocent is never justified as a means of saving the health or life of a woman experiencing grave difficulties related to child-bearing. Given the contents of those decrees, such use is entirely appropriate.

As covered in the first chapter, the three decrees referenced by Pope Pius XI all dealt with cases involving grave threats to the health or life of the mother in relation to child-bearing. The 1884 decree responded, “It cannot be safely taught,” to the question whether craniotomy can be safely taught in Catholic schools to be licit, “when certainly, with it omitted, the mother and the infant will perish: on the other hand with it admitted, the mother may be saved, with the infant perishing.” The 1895 decision responded in the negative to the question of whether a medical doctor could procure abortion in the strict sense in order to save the mother from certain and imminent death, in which case the fetus would certainly die as well. Finally, the 1898 decision taught, among other things, that it is wrong to induce abortion in a case where, because of the narrowness of the woman’s pelvis, a premature birth (after fetal viability) is not considered possible; although the same decision noted that cesarean could be lawful “at the appropriate time” (after viability). In the context of the second paragraph of Casti connubii, the first two decisions offer clear examples of situations in which even the life of the mother is “gravely imperiled in the performance of the duty allotted to her by nature.” The third offers a clear example of a situation in which at least the health, and possibly also the life, of the mother is gravely imperiled. All the decisions are noted by Pope Pius XI for readers to compare with his own teaching against killing the innocent. Hence, it seems necessary to conclude, that according
to the mind of Pius XI, procured abortion, craniotomy, and other “death-dealing operations” performed on the fetus for any “indication” favoring the health or life of the mother are all to be regarded as acts of direct killing.80

Continuing in the second paragraph of Casti connubii, the pope briefly raises and rejects three potential appeals for justification of killing related to a “medical and therapeutic indication.” The first concerns the right of public authority to take away the life of a member of society, as in a case of capital punishment. However, since the child is innocent, and that right has regard only to the guilty, such an appeal simply implies an error concerning the scope of the right of public authority.81 The second potential appeal is to the principle of deadly defense against an unjust aggressor. While this appeal had long been raised and responded to by

80 In the text Pope Pius XI uses the words “direct murder of the innocent” (directam innocentis necem). Necem, the accusative form of nex, is obviously a distinct word from occisio, which can also mean either “killing” or “murder.” Nex may more commonly denote a “violent death.” This might seem to apply more properly to craniotomy or embryotomy instead of abortion (as it was strictly understood at the time of Casti connubii). However, abortion in the narrow sense can still aptly be described as nex for at least two reasons. First, every procured abortion involves death caused by violence, insofar as “violence” refers to force imposed on one from the outside. Second, it is possible to find in the writings of moral theologians of the time period clear descriptions of violent activity involved in abortion in the strict sense. See Augustin Lehmkuhl, S.J., Theologia Moralis, Volumen 1: Theologiam Moralem Generalem et ex Speciali Theologia Morali Tractatus De Virtutibus et Officiis Vitae Christianae, Editio Duodecima (Friburgi Brisgoviae: B. Herder, 1914), 565: “For violently to sever the membranes and fibers, which connected the fetus with the maternal womb, is in fact nothing else than to inflict a lethal wound on the fetus.” [Violenter enim disrumpere membranas et fibras, quibus foetus cum utero materno concrevit, revera nihil est nisi letale vulnus foetui infulgere.] See the similar language used by Arthur Vermeersch, What Is Marriage? A Catechism Arranged according to the Encyclical “Casti Connubii” of Pope Pius XI, trans. T. Lincoln Bouscaren (New York: The America Press, 1932), 47: “For abortion is not merely the placing of a child outside the surroundings which are indispensable for him to live, but it is the violent tearing away of the membranes and tissues by which the child is as it were one with his mother, and through which he breathes and receives nourishment—membranes which, at least in part, belong to him as an organ developed by his own growth. Abortion directly produced is a deadly wound inflicted on an innocent human being.”

81 This teaching of Pope Pius XI is confirmed with language similar to that of this section of the encyclical in a decree from the Holy Office on December 2, 1940. Published with the express approval of Pope Pius XII, the Holy Office responded “In the negative, since it is contrary to the natural and divine positive law,” to the following question: “Whether it is licit, from command of public authority, directly to kill those, who, although they have committed no crime worthy of death, nevertheless on account of psychic or physical defects are no longer able to be profitable to the nation and who are thought rather to hinder and to burden its vigor and strength?” See Suprema Sacra Congregatio Sancti Officii, “Decretum de Directa Insontium Occisione ex Mandato Auctoritatis Publicae Peragenda,” Acta Apostolicae Sedis XXXII (1940): 553-554: “Num licitum sit, ex mandato auctoritatis publicae, directe occidere eos qui, quamvis nullum crimen morte dignum commiserint, tamen ob defectus psychicos vel physicos nationi prodesse iam non valent, eamque potius gravare eiusque vigori ac robori obstare cesentur.” Response: “Negative, cum sit iuri naturali ac divino positivo contrarium.”
moralists, this is the first time it appears and is explicitly addressed by a document of the Magisterium.\(^\text{82}\) The Holy Father does not entertain any argumentation on the issue, but simply rejects the appeal by asking rhetorically, “who would call an innocent child an unjust aggressor?”

Evidently, it was very clear to the pope that there is no true sense in which the human fetus can be considered an aggressor. Moreover, it was clear to moral theologians at the time that the rhetorical question itself was sufficient to censure the theory that the fetus could be regarded as an unjust aggressor against whom one could justify deadly defense. For example, John McCarthy wrote: “The allegation that in certain circumstances, in particular those of ectopic gestation, the child might be regarded as a materially unjust aggressor is no longer made by theologians. ‘Who would call the innocent child an unjust aggressor?’ was the rhetorical question asked by Pope Pius XI in his encyclical *Casti Connubii*.”\(^\text{83}\) However, what was stated in the final potential appeal mentioned by Pope Pius, concerning the “law of extreme necessity,” was not so clear to every theologian.

The pope’s statement, “neither is there present any ‘law of extreme necessity’ as they call it, that also may be able to reach all the way to the direct killing of the innocent” (*neque ullum adest “extremae necessitatis ius” quod vocant, quodque usque ad innocentis directam*

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\(^{82}\) See chapter one of this dissertation, where the following work of Gury is treated: Joanne Petro Gury, S.J., *Casus Conscientiae in Praecipuas Quaestiones Theologiae Moralis* (Germania: Georgii Joseph Manz, 1865), 123-124. Gury responds in two ways to the contention that the fetus can sometimes be considered as an unjust aggressor and therefore be killed. First, the killing that takes place in defense against unjust aggression is not direct killing. Rather, the death that follows is a side-effect of the act of defense. Second, in the case of the fetus there is no action on his part; he is but “moved and ruled by the laws of nature”; whereas “aggression is an act elicited and posited by a man.”

\(^{83}\) John McCarthy, “Direct and Indirect Abortion—Ectopic Pregnancy,” *The Irish Ecclesiastical Record* Volume LV (January to June 1940): 59-66, at 61. See also Herbert Kramer, *The Indirect Voluntary Or Voluntarium in Causa* (Washington, D.C.: The Catholic University of America Press, 1935), 48: “This…view [that abortion is justified because the child is an unjust aggressor] has been condemned.” Immediately after this statement, Kramer references *Casti connubii*. 
occisionem pervenire possit), met with contrary interpretations. Is the meaning of this teaching that there is in principle no “law of extreme necessity” that could ever justify the direct killing of the innocent, or, rather, is it that a “law of extreme necessity” may in principle be able to justify (“may be able to reach all the way”) the direct killing of the innocent, but such is simply not in fact the case (“not present”) in the situations of medical and therapeutic indication addressed at this point in the encyclical? At least one author appears to have answered the latter in the affirmative. But he did so while making a distinction between two types of “direct killing.”

In his dissertation, *The Indirect Voluntary Or Voluntarium in Causa*, published in 1935, Herbert Kramer formulated his understanding of the common opinion of theologians (at the time of *Casti connubii*) on the nature of the direct voluntary. “Only that which is intended either as an end or as a means to an end, is caused by the will according to its proper mode of activity, that is, is directly willed.” Kramer distinguishes this sense of direct from direct in the order of causality, where a cause “leads necessarily and immediately” to an effect. For Kramer, to choose to place a cause from which death necessarily and immediately follows as an effect may be considered direct killing in the order of causality, but it will not be direct killing in the moral order unless death is also willed (intended) as an end or as a means to an end. Intending the proper cause of such an effect is not sufficient, one must also formally intend death.

After quoting the same paragraphs of *Casti connubii* provided above, Kramer gives the following commentary on the encyclical’s teaching on therapeutic abortion.

At first sight the Holy Father here seems to say that therapeutic abortion is direct killing—“the direct murder of the innocent.” However, the word direct, in this connection, is used in various meanings and we must determine the meaning that is here intended from the context. The word is used once more in the same paragraph where the Holy Father states: “There is no question here of what is called the law of extreme necessity.”

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84 Herbert Kramer, *The Indirect Voluntary Or Voluntarium in Causa*, 30.

85 Ibid., 51.
necessity, which could even extend to the direct killing of the innocent.” Here it is evident that the word is not used in the sense that the death is directly willed. Moral theologians agree that an individual is never allowed to cause the death of an innocent person directly, in the sense that the death is chosen either as a means or an end. Certainly the Holy Father does not intend, by this merely explanatory phrase, to introduce a doctrine contrary to that commonly accepted by theologians. The more obvious interpretation is that the word direct is here used in the sense that therapeutic abortion leads necessarily and immediately to the death of the infant, and not that death is necessarily directly willed.86

Hence, for Kramer, the Holy Father is not teaching that therapeutic abortion is wrong because it is to be identified with direct killing in the moral sense; rather the teaching is that “Therapeutic abortion is wrong because there is no sufficient reason for permitting the death of the innocent.”87 Kramer reads the encyclical as implying that the “law of extreme necessity” can sometimes justify direct killing of the innocent in the order of causality, but that therapeutic abortion is simply not one of those cases where the circumstances could justify the application of that law.

On the other hand, an alternative interpretation of the encyclical’s teaching concerning the “law of extreme necessity” and direct killing of the innocent is found the writings of Arthur Vermeersch. Commenting on the same passage, Vermeersch writes: “[Pope Pius XI] declares that the right to take away life cannot be appealed to,…nor the right of extreme necessity, since that never goes to the extent of killing a living person.”88 Here Vermeersch reads the encyclical

86 Ibid., 51-52.
87 Ibid., 52.
88 Arthur Vermeersch, What Is Marriage? A Catechism Arranged according to the Encyclical “Casti Connubii” of Pope Pius XI, 48. Apparently, Vermeersch leaves out the word “innocent” here because in his judgment the law or right of “extreme necessity” is never a justification for killing any person. This does not deny that legitimate authority has the right to inflict capital punishment, or that one might justifiably defend against aggression with necessary lethal force. But it does deny that “extreme necessity” will be the principle of justification in either case, or in any case where death is inflicted or caused to a human person.

For a classical view related to the “law of extreme necessity” and its limitations, see Thomas Aquinas, Summa Theologiae I-II Q. 96, Art. 6.
as implying the opposite of Kramer’s interpretation. Instead of reading that the “law of extreme necessity” can sometimes justify direct killing of the innocent (as Kramer reads it), Vermeersch interprets the Holy Father to teach that extreme necessity never extends to such killing.

Evidently, an interpretation like the one offered by Vermeersch was shared by a significant amount of other interpreters. Various professional translations of the relevant passage of *Casti connubii* reflect an understanding of the pope’s teaching that is similar or identical to that offered by Vermeersch. The translation found in The America Press version reads: “Again, there is no question here of what is called the ‘law of extreme necessity’ which could ever extend to the direct killing of the innocent.”90 The mere substitution of “ever” in place of “even” found in the NCWC translation cited above (and repeated by Kramer) might seem like a typeset error, if it were not for The America Press version’s purpose as “a completely revised” translation of NCWC original. Moreover, another widely used translation is even stronger in the same direction: “again there is no question here of what is called the ‘law of extreme necessity’ which could never extend to the direct killing of the innocent.”90 Similarly, the English translation of the textual arrangement of the monks of Solesmes has, “Nor, finally, does there exist any so-called right of extreme necessity which could extend to the direct killing of an innocent human being.”91 This last translation, insofar as its phrasing denies the existence of a law of extreme necessity that could extend to direct killing of the innocent, is also found in a German version of

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90 This translation is found in both Gerald Treacy, *Seven Great Encyclicals* (Glen Rock, New Jersey: Paulist Press, 1963), 95; and Walter Handren, *No Longer Two: A Commentary on the Encyclical Casti Connubii of Pius XI* (Westminster, Maryland: The Newman Press, 1956), 115. The use of “never” in Treacy’s text must have been deliberate, as it represents a significant change from the English translation he used in an earlier publication, where “even” (as the NCWC text has it) was in the place of “never.” See Gerald Treacy, *Five Great Encyclicals* (New York: The Paulist Press, 1939), 95.

the passage, which can be rendered in English as, “There is no ‘law of emergency,’ that could reach all the way to the direct killing of an innocent one.”\textsuperscript{92} Hence, Kramer’s interpretation of one English translation was not at all universally accepted. Rather, many translations reflect an understanding of papal teaching closer to that of Vermeersch.

It must be admitted that the original Latin text of the passage (which I rendered above as “neither is there present any ‘law of extreme necessity’ as they call it, that also may be able to reach all the way to the direct killing of the innocent”), taken materially or according to the mere words themselves, is open to both the interpretation of Kramer and the interpretation of Vermeersch. However, taken within its context, the passage does not appear to harmonize with Kramer’s interpretation. The actions addressed by the Holy Father that do not admit of justification by appeal to public authority, defense against an unjust aggressor, or the law of extreme necessity, are described in the text “precisely” as “direct murder of the innocent,” and contrary to the natural and divine law: \textit{Thou shalt not kill}. Clearly, the kind of direct killing of the innocent being addressed in the paragraph is the kind that falls under absolute negative moral precept. (Why else appeal explicitly to the natural and divine law?) That is to say, it is always wrong \textit{to will} the kind of direct killing addressed by the Holy Father in the paragraph. Nowhere in the surrounding context does the Holy Father provide any indication that he implies a distinction between \textit{directness} in the order of causality versus the order of moral action. Hence, Kramer’s interpretation superimposes that distinction onto the text itself.

Kramer simply has not proven the truth of his contention that “it is evident that the word [\textit{direct}] is not used in the sense that the death is directly willed.” On the contrary, there are contextual reasons to maintain that the Holy Father is using \textit{direct killing} in the same way

throughout the paragraph under consideration. But if that is the case, then there are positive reasons to reject Kramer’s reading that the “law of extreme necessity” can sometimes justify the (causally) direct killing of the innocent, and to prefer the reading, offered by Vermeersch and others, that denies in principle the extension of that “law” to any direct killing of the innocent.

It is significant to note that in his dissertation Kramer appears to be invested in the position that Casti connubii, and magisterial teaching in general, does not state or imply that procured abortion must be considered a direct killing in the morally relevant sense. Not only does he studiously avoid reading Casti connubii as containing such a statement or implication, but he also calls into question that the 1884, 1889, and 1895 decisions of the Inquisition contain that implication as well. “These decisions leave no doubt that therapeutic abortion is always illicit,” writes Kramer, “but it is not clear that the reason for the illicitness is that an abortion is a direct killing. It may be due to the fact that there is not a sufficient excusing cause to allow the placing of an act from which death necessarily results.” Ultimately, what appears to be guiding Kramer’s interpretation of magisterial documents on the illicitness of procured abortion is the theory of direct voluntariness defended throughout his dissertation.

Kramer’s theory can be summarized in his own words in the following statements.

“[O]nly those objects are directly willed which the agent intends, and all unintended effects are only indirectly willed.”

“The distinction between the direct and the indirect voluntary is due to a difference of final causality and not to a difference of efficient causality.”

With specific application to procured abortion, these propositions imply for Kramer (as seen above in the

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93 Herbert Kramer, *The Indirect Voluntary Or Voluntarium in Causa*, 49.

94 Ibid., 42. On this same page Kramer makes it clear that by “which the agent intends” he is referring to the *finis operantis* (the end of the agent), which he distinguishes from the *finis operis* (the end of the act). He describes the latter as “that which the act effects by its nature.”

95 Ibid., 84.
paragraph from him) that while procured abortion leads necessarily and immediately to the death of the infant in the order of efficient causality, that order does not determine the will of the agent in the order of intentionality (final causality). In other words, one can intend direct abortion (causally) without intending direct killing (morally).  

Not surprisingly, Kramer’s interpretation of magisterial documents on the illicitness of direct abortion was strongly opposed by Arthur Vermeersch. In fact, Vermeersch went so far as to maintain that because of magisterial documents on abortion, the theory of direct voluntariness defended by Kramer must be rejected. In his 1932 article, “De Causalitate per se et per accidens, seu directa et indirecta,” Vermeersch acknowledges three accounts that have been offered concerning the distinction between “direct” and “indirect” in relation to human action. “The first,” he writes, “looks to only the intention of the agent.” As an example of a representative of this view, at least in relation to the distinction between direct and indirect abortion, Vermeersch mentions August Lehmkuhl, at least in his writing prior to the decisions of the Inquisition in the late nineteenth century. As addressed in the first chapter, prior to those decisions (especially the 1895 decision on abortion in the strict sense), Lehmkuhl argued in favor of the lawfulness of the intentional ejection of an immature fetus, at least when the life of the mother was in immediate danger. Lehmkuhl contended that the procuration of abortion in that

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96 This position defended by Kramer will reemerge in the writings of some authors after the Second Vatican Council. Accordingly, that position, along with the relevant writings, will be treated again in the next chapter, and in relation to later documents of the Magisterium.

97 This is not said in the sense that Vermeersch ever offered a formal reply to Kramer. Kramer’s dissertation was published in 1935, and Vermeersch died in 1936. It is difficult to find evidence that would show with certainty whether Vermeersch even read Kramer’s dissertation. Nevertheless, Kramer himself was well aware of Vermeersch’s positions being opposed to his own. Kramer presents and argues against Vermeersch’s account on direct voluntariness, as something opposed to Kramer’s own account, on pages 42-52 of his dissertation.


99 Ibid., 115: “Prima ad solam agentis intentionem respicit.”
case need not be considered direct abortion in the “theological sense,” by which he meant a “direct killing” of the fetus in the moral order. Of course, after the 1895 judgment of the Inquisition, Lehmkuhl became known for his complete rejection of his earlier position, and thenceforward argued that procured abortion in all circumstances should be regarded as direct killing and intrinsically evil. Prior to that change, Vermeersch believed Lehmkuhl “was not alien from that opinion” which held direct action to be determined solely by the intention of the agent. 100

“The second notion,” Vermeersch writes, “teaches that direct or indirect abortion is not to be estimated from the end of the agent only (solo operantis fine), but also from the end of the act (ex operis fine).” 101 The author then offers a helpful explanation that employs important terms that other authors will also use in relation to different ways of willing homicide. “That abortion be indirect, it does not suffice that the death of the innocent fetus not be sought for its own sake (propter se), but it is necessary besides that it not be sought in itself (in se), just as a means of a good effect.” 102 For this second view, then, an action is said to be direct either through being the end of the agent (ex fine operantis) or through being the end of the act (ex fine operis). The former can also be described as being sought for its own sake (propter se), and the latter can be described as being sought in itself (in se) even if not for its own sake. In relation to homicide, one is said to kill directly either by willing to cause death as the goal the agent intends (ex fine operantis) for its own sake (propter se), or by willing to cause death in itself (in se) through the performance of an action that has the end of death in the order of efficient causality (ex fine operantis).

100 Ibid.
101 Ibid. “Altera notio non e solo operantis fine sed etiam ex operis fine abortum directum vel indirectum esse aestimandum docet.”
102 Ibid., 115-116: “Ut indirectus sit abortus, non sufficit ut mors innocentis foetus non quaeatur propter se, sed oportet praeterea ut non quaeatur in se, tamquam medium boni effectus.”
operis) independent of the intention or desire of the agent. Insofar as procured abortion has that end in the latter way, it is regarded always as a direct killing, at least in se, ex fine operis.

“Finally,” Vermeersch considers that, “the third notion maintains direct or indirect causality to be, in concrete circumstances, [determined] according to an evil effect that cannot be avoided, or only given its danger.”103 Hence, on this view, if death will follow from an action with certainty, it will be regarded as direct killing. But if death would follow only probably, the action can be considered an indirect killing.

Vermeersch concludes by offering an evaluation of the three views. Regarding the first, he writes the following. “Now the first notion today is compelled to be banished from the school of Catholic theologians, on account of the responses of the Holy See on abortion which, according to that notion, they were excusing when the mother was not able to be rescued from certain death except through abortion.”104 There is no doubt for Vermeersch that the decisions of the Holy See on abortion have provided at least implicit guidance for theologians on moral action theory.105 Evidently, he thinks that because the Holy See proscribed the procuring of abortion even to save the life of the mother, and because the decisions on abortion also appear to

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103 Ibid., 116: “Tertia demum notio causalitatatem directam vel indirectam esse contendit, prout, in concretis adiunctis, effectus malus vitari nequitt, vel solum eius datur periculum.”

104 Ibid. “Iam vero prima notio hodie a schola catholicorum theologorum exsulare cogit, propter responsa S. Sedis de abortu quem, secundum istam notionem, excusabant quando mater non poterat nisi per abortum e certa morte eripi.” See the same author’s similar statements in “Avortement direct ou indirect,” Nouvelle Revue Théologique 60 (1933): 604: “What is necessary, therefore, for the causality to be indirect? It is necessary first that the intention does not end in the bad effect. However, that alone is not enough. Before the latest decisions of the Holy Office, some authors, even very esteemed, believed they could content themselves with it, and they estimated indirect every abortion procured in order to save the mother. This manner of understanding indirect causality is no longer admitted today.” [“Que faut-il donc pour que la causalité soit indirecte? Il faut d’abord que l’intention ne se termine pas à l’effet mauvais. Cela seul cependant ne suffit pas. Avant les dernières décisions du S.-Office, quelques auteurs, d’ailleurs très estimables, croyaient pouvoir s’en contenter; et ils estimaient indirect tout avortement provoqué en vue de sauver la mère. Cette manière de comprendre la causalité indirecte n’est plus admise aujourd’hui…”]

105 The responses to which Vermeersch refers must include at least the decisions from the Inquisition in the late nineteenth century, as those (especially the one from 1895) taken together address the kind of situation he mentions in the quotation.
state or imply that procured abortion involves direct killing, the Holy See appears to have implied that it is incorrect to maintain that the end of the agent alone determines the species and manner of a human action. For a procurer of abortion might have formulated his end (*finis operantis*) solely to be the saving of the life of the mother, and he might even choose abortion as a means to that end without desiring the death of the fetus, yet, on Vermeersch’s interpretation, the Holy See has implicitly taught that the procurer has still performed a morally prohibited act of direct killing.

Vermeersch next addresses the third view. “The third labors under confusion of direct and indirect causality. For that an effect certainly or only probably is about to exist, it in no way affects the direction of the action.”106 It seems as though the third view confuses the epistemological order with the orders of causality and intentionality. While Vermeersch views the last two orders as critical for direction in human action, he finds the question of certitude *per se* irrelevant for the distinction between direct and indirect action. This seems appropriate, insofar as certitude describes an act of the intellect insofar as it gives assent without reasonable fear of error, whereas, a human act proceeds from the will. The will’s role in a human act may necessarily presuppose acts of the intellect (for a human act is an act of *deliberate* will), such as apprehension of a perceived good and judgment that it would be possible to attain that good (as an end) through some means. Yet the direction in a human act does not seem to come from the state of certitude in the intellect, but, for Vermeersch, it comes *per se* from the will’s tending to the end or the means, and from the possible direction that the causality involved in the act itself (*ex fine operis*) might impress upon the will. Moreover, based on the rest of his article, Vermeersch is clearly concerned that if the third view were true, it would overturn the traditional...
understanding and application of the principle of double effect. That principle has traditionally been used by many authors to justify actions even in circumstances where death is foreseen as a certain effect of a good or indifferent action that also produced an at least equally immediate and proportionately good effect (as may happen in cases of self-defense, bombing lawful and important targets in war, and excising a gravely diseased uterus that happens to have a non-viable fetus inside). If the third view were correct, the traditionally defended principle of double effect would have to be abandoned.

Having rejected the first and third views, Vermeersch concludes that “only the second notion is suitable at the same time to philosophical analysis and also to the generally received judgment of the classic authors.” Given that Vermeersch thinks this view of direct and indirect action alone harmonizes with both the decisions of the Holy See and traditional moral analysis, it is no surprise that he interpreted the teaching of Casti connubii in light of that view and contrary to the interpretation of Kramer. Ultimately, Vermeersch is choosing to be guided in his moral action theory by the decisions of the Holy See, rather than the other way around. He believes he is bound to avoid interpreting Casti connubii as Kramer does because to do so would involve both embracing a theory of human action that has been implicitly rejected by the Holy See, and reading a papal encyclical in discontinuity with prior teaching of the Magisterium. Regardless of whether Vermeersch is correct in all the details of his philosophical explanation of the teaching of the Holy See on direct abortion, and on direct and indirect human action in general, his interpretations of the decisions from the Inquisition and Casti connubii are preferable to those of Kramer. Vermeersch’s understanding of the documents harmonizes completely with

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107 For these examples and Vermeersch’s defense of traditional double effect reasoning, see Ibid., 103-109.

108 Ibid., 116: “Sola igitur secunda notio simul philosophicae analysi et communiter receptae sententiae etiam classicorum auctorum consentanea est,...”
what was discovered about decisions in the first chapter of this dissertation (e.g., that they are most reasonably to be understood as doctrinal in nature and that they affirm that direct abortion is direct killing), and he does not force an implausible reading onto Casti connubii in the way that Kramer does.

The Address of Pope Pius XII to the Medico-Biological Union “San Luca” (1944)

In the pontificate of Pius XII, there are three principal addresses that present authoritative teaching relevant for understanding direct abortion. The first is an address of the pontiff given to the Medico-Biological Union “San Luca,” on November 12, 1944. The relevant teaching is a paragraph under the heading “The Intangibility of Human Life.”

The fifth commandment—Non occides (Exod. 20, 13)—, this synthesis of the duties regarding the life and the integrity of the human body, is fruitful in teachings, as much for the lecturer on the university chair, as for the medical practitioner. As long as a man is not guilty, his life is intangible, and therefore every act tending directly to destroy it is illicit, whether such destruction be intended as an end or only as a means to the end, whether it deals with embryonic life or [life] in its full development or [life] already arrived at its end. Of the life of a man, not guilty of a crime punishable with the penalty of death, only God is Lord! The physician has no right to dispose either of the life of the child or of that of the mother: and no one in the world, no private person, no human authority, can authorize him to the direct destruction of it. His office is not to destroy lives, but to save them. [These are] fundamental and immutable principles, which the Church in the course of the last decades has seen the necessity to proclaim repeatedly and with all clarity against opposite opinions and methods. In the resolutions and in the decrees of the ecclesiastical magisterium the Catholic physician finds in this regard a secure guide for his theoretical judgment and his practical conduct.109

109 Pope Pius XII, Discorso alla Unione Medico-Biologica “San Luca,” as found in Discorsi e Radiomessaggi di Sua Santità Pio XII, VI Sesto Anno di Pontificato 2 Marzo 1944—1 Marzo 1945 (Milan: Società Editrice “Vita E Pensiero,” 1945), 191-192: “LA INTANGIBILITÀ DELLA VITA UMANA: Il quinto comandamento—Non occides (Exod. 20, 13)—, questa sintesi dei doveri riguardanti la vita e la integrità del corpo umano, è fecondo d’insegnamenti, così per il docente sulla cattedra universitaria, come per il medico esercente. Finché un uomo non è colpevole, la sua vita è intangibile, ed è quindi illecito ogni atto tendente direttamente a distruggerla, sia che tale distruzione venga intesa come fine o soltanto come mezzo al fine, sia che si tratti di vita embrionale o nel suo pieno sviluppo ovvero giunta ormai al suo termine. Della vita di un uomo, non reo di delitto punibile con la pena di morte, solo signore è Dio! Il medico non ha diritto di disporre né della vita del bambino né di quella della madre: e niente al mondo, nessuna persona privata, nessuna umana potestà, può autorizzarlo alla diretta distruzione di essa. Il suo ufficio non è di distruggere le vite, ma di salvarle. Principi fondamentali e immutabili, che la Chiesa nel corso degli ultimi decenni si è vista nella necessità di proclamare ripetutamente e con ogni chiarezza contro opinioni e metodi opposti. Nelle risoluzioni e nei decreti del magistero ecclesiastico il medico cattolico trova a questo riguardo una guida sicura per il suo giudizio teorico e la sua condotta pratica.”
In this address, the Holy Father refers, as did Pope Pius XI before him, to the moral obligation “thou shalt not kill,” as expressed in divine positive law. This commandment is implicitly interpreted as referring strictly to innocent human life. Just as in *Casti connubii*, it is understood that governing authorities have the right to punish those guilty of certain crimes with the penalty of death. However, the life of an innocent, in whatever stage or condition, is “intangible” by both private persons and public authorities. The ultimate reason for this is that God alone has rights (lordship) over the lives of the innocent. Consequently, Pius XII teaches that any “act tending directly to destroy” that life is illicit. The Pope then adds an explanation that does not appear explicitly in the magisterial interventions treated prior to his address, but which had appeared in the writings of some theologians, namely, that an act can be regarded as “tending directly to destroy” life whenever “such destruction be intended as an end or only as a means to the end.” Hence, there are two ways recognized in which one may “intend” directly to destroy or to kill life, as an end (*fine*) or as a means (*mezzo*). Intending either way involves a moral violation of the commandment.

While the teaching of the San Luca Address is helpful in making explicit the different ways one can intend direct killing, its language is not sufficient on its own to settle the action theory dispute between authors such as Vermeersch and Kramer. Both authors would have affirmed the truth of the proposition that morally prohibited direct killing is willed by an agent who intends destruction of human life as an end or as a means to an end. But they would disagree as to whether the causality involved in freely chosen external behavior can impose on the will of the agent an intention to kill, such that, if an agent chooses external behavior having the death of a human being as its sole immediate effect, that agent necessarily intends directly to
kill that human being. Vermeersch would affirm, Kramer would deny. The wording of the San Luca address seems too general to decide between them.

Finally, it is noteworthy that in the last line of the text from the San Luca address, Pope Pius XII teaches that the Catholic physician finds in the “resolutions” (risoluzioni) and in the “decrees” (decreti) of the ecclesiastical Magisterium a “secure guide” for both his “theoretical judgment” (giudizio teorico) and his “practical conduct” (condotta practica) regarding proper respect for the lives of a mother and her unborn child. Considering that the relevant interventions of the Inquisition from 1884 through 1902 would certainly count as such resolutions or decrees, the teaching of Pope Pius XII strongly implies that those interventions should not be understood as mere disciplinary or prudential decisions. Rather, they also provide guidance for the theoretical order, directing how Catholics ought to think about the issues addressed in the decisions. This understanding of the Inquisition decrees supports the views of authors such as Eschbach, Lehmkuhl, and Connery, treated in the first chapter of this dissertation.

*The Address of Pope Pius XII to the Congress of the Italian Catholic Union of Midwives (1951)*

The next relevant address of Pope Pius XII was delivered on October 29, 1951, to participants in the Congress of the Italian Catholic Union of Midwives. The following is the most relevant part of the address.

Moreover, every human being, even the child in the maternal womb, has the right to life immediately from God, not from the parents, nor from any society or human authority. Therefore there is no man, no human authority, no science, no medical, eugenic, social, economic, or moral “indication,” that can show or give a valid juridical title for a direct deliberate disposal concerning an innocent human life, that is to say, a disposal, that aims at its destruction, either as to an end, or as to a means for another end, perhaps in no way illicit in itself. Thus, for example, to save the life of the mother is a very noble end; but the direct killing of the child as a means to such an end is not licit. The direct destruction of so-called “life without value,” born or not yet born, practiced a few years ago in large numbers, cannot in any way be justified. Therefore, when this practice had [its]
beginning, the Church formally declared to be contrary to the natural and divine law, and thus illicit, the killing, even by order of the public authority, of those who, though innocent, nevertheless through physical or psychic defects are not useful to the nation, but rather become a burden on it. [Footnote 3: Decr. S. Off. 2 dec, 1940, Acta Ap Sedis, vol. XXXII, 1940, pag. 553-554.] The life of an innocent is intangible, and any direct attack or aggression against it is a violation of the fundamental laws, without which a human coexistence is impossible. We have no need to teach you in the particulars the meaning and the importance, in your profession, of this fundamental law. But do not forget: above any human law, above any “indication,” rises, indefectible, the law of God. [Pope Pius XII then completes the next sentence with a reference to Exodus 20:13, “Thou shalt not kill.”] 

There is much in this paragraph that recalls prior magisterial texts, including *Casti connubii*, the decree of the Holy Office from 1940, and the San Luca Address from 1944. That innocent human life is “intangible” in terms of direct disposal by any mere human authority is clearly affirmed. Also renewed is the teaching that such unlawful “direct disposal” is that which aims at the destruction of human life either as an end or as a means to an end. The qualifier “direct” is used four times in the paragraph: “direct deliberate disposal,” “direct killing,” “direct destruction,” and “direct attack or aggression.” Especially noticeable is the first use, emphasized by the pope himself. In this case “direct” qualifies not only an action, as with all the other uses, but also a modifier of an action. “Direct” and “deliberate” then both qualify “disposal.”

110 Pope Pius XII, “Discorso all Partecipanti al Congresso della Unione Cattolica Italiana Ostetriche,” *Acta Apostolicae Sedis* XXXXIII (1951): 835-854, at 838-839: “Inoltre ogni essere umano, anche il bambino nel seno materno, ha il diritto alla vita *immediatamente*, da Dio, non dai genitori, né da qualsiasi società o autorità umana. Quindi non vi è nessun uomo, nessuna autorità umana, nessuna scienza, nessuna “indicazione” medica, eugenica, sociale, economica, morale, che possa esibire o dare un valido titolo giuridico per una *diretta* deliberata disposizione sopra una vita umana innocente, vale a dire una disposizione, che miri alla sua distruzione, sia come a scopo, sia come a mezzo per un altro scopo, per sé forse in nessun modo illecito. Così, per esempio, salvare la vita della madre è un nobilissimo fine; ma l’uccisione diretta del bambino come mezzo a tal fine, non è lecita. La diretta distruzione della cosiddetta “vita senza valore”, nata o non ancora nata, praticata pochi anni or sono in gran numero, non si può in alcun modo giustificare. Perciò, quando questa pratica ebbe principio, la Chiesa dichiarò formalmente essere contrario al diritto naturale e divino positivo, e quindi illecito, l’uccidere, anche se per ordine della pubblica autorità, coloro che, sebbene innocenti, tuttavia per tare fisiche o psichiche non sono utili alla nazione, ma piuttosto ne divengono un aggravio. [Footnote 3: Decr. S. Off., 2 dec, 1940; Acta Ap Sedis, vol. XXXII, 1940, pag. 553-554.] La vita di un innocente è intangibile, e qualunque diretto attentato o agrression contro di essa è violazione di una delle leggi fondamentali, senza le quali non è possibile una sicura convivenza umana. Non abbiamo bisogno d’insegnare a voi nei particolari il significato e la portata, nella vostra professione, di questa legge fondamentale. Ma non dimenticate: al di sopra di qualsiasi legge umana, al di sopra di qualsiasi “indicazione”, si leva, indefettabile, la legge di Dio.”
significance of the distinction of terms seems to be that in the mind of Pope Pius XII they do not necessarily refer to the same thing.

Unless he was being stylistically redundant, it would seem that the words “direct” and “deliberate,” in qualification of “disposal,” refer respectively to external immediacy in the causal structure of the external act and internal intentionality in the agent performing the act. “Deliberate” ordinarily means “done on purpose,” that is, intentionally. “Direct” can mean the same thing, and often does. Yet, in the context of the passage, if “direct” is to be distinguished from “deliberate,” the only reasonable alternative would seem to be external, that is to say, causal, immediacy. Hence, “direct deliberate disposal” likely refers to that disposal which follows upon deliberation and is caused with immediacy. However, without more clarity from the pope himself, it is difficult to have certainty on the matter.111

The Address of Pope Pius XII to the Sodality of the “Family Front” (1951)

Some clarity on the use of the term “direct” in relation to abortion and killing would come from the Holy Father, himself, and less than a month after the address to midwives. On November 26, 1951, Pope Pius XII gave an address to the Sodality of the “Family Front” and the Association of Large Families. Although much shorter overall than the Address to Midwives, the “Family Front” address contains the most illustrative passages from Pope Pius XII on direct abortion and direct killing. Here are the relevant paragraphs:

At the center of that doctrine [of conjugal morality expounded by Pope Pius XII in recent years] matrimony appeared as an institution at the service of life. In strict connection with this principle, we, according to the constant teaching of the Church have illustrated a thesis which is one of the essential foundations not only of conjugal morality, but also of

111 On this point, see the comments of Richard A. McCormick, The Removal of a Fetus Probably Dead to Save the Life of the Mother (Rome: La Sfera, 1957), 76-77, at 77: “It is difficult to know whether the repetition is for emphasis or whether the two words actually are not coterminus. There is a hint at least that directement may refer exclusively to causality, délibérément to the voluntariety…the point to be made is that the word direct in the allocutions sometimes denotes voluntary, at others it denotes the tendency of the act.” McCormick was using a French version of the Allocution to Midwives.
social morality in general: namely that the direct attack on innocent human life, as a means to the end,—in the present case to the end of saving another life,—is illicit. Innocent human life, in whatever condition it is found, is withdrawn, from the first moment of its existence, from any direct voluntary attack. This is a fundamental right of the human person, of general value in the conception of the Christian life; valid thus for the life still hidden in the womb of the mother, as for the life already blossomed outside of her; thus against direct abortion, as against the direct killing of the child before, during and after the birth. However established the distinction may be between those diverse moments of the development of the life born or not yet born for profane and ecclesiastical law and for some civil and penal consequences,—according to the moral law, in all those cases it deals with a grave and illicit attack on inviolable human life.

This principle holds true for the life of the child, as for that of the mother. Never and in no case has the Church taught that the life of the child must be preferred to that of the mother. It is erroneous to lay out the question with this alternative: either the life of the child or that of the mother. No, neither the life of the mother, nor that of the child, may be subjected to an act of direct suppression. For the one part and for the other the demand cannot be but only one: to make every effort to save the life of both, of the mother and of the child. (cf. Pii XI Encycl Casti Connubii, 31 Dec. 1930; Acta Ap. Sedis vol. 22, pag. 562-563).

It is one of the most beautiful and noble aspirations of medicine always to look for new ways to secure the life of both. If, notwithstanding all the progresses of science, there still remain, and will remain in the future, cases in which one has to reckon with the death of the mother, when she wishes to bring to birth the life that she carries in herself, and not to destroy it in violation of the commandment of God: Thou shalt not kill!—no more remains to man, who to the last moment will strive to help and to save, except to bow with respect before the laws of nature and to the dispositions of divine Providence.

But—it is objected—the life of the mother, principally of a mother of a large family, is of incomparably superior worth to that of a child not yet born. The application of the theory of the scale of values to the case which now occupies us has already found acceptance in juridical discussion.—The reply to this tormenting objection is not difficult. The inviolability of the life of an innocent does not depend on its greater or lesser value. More than ten years ago the Church formally condemned the killing of life considered “without value”; and whoever knows the sad antecedents that provoked such a condemnation, whoever knows [how] to ponder the disastrous consequences to which it would reach, if one wanted to measure the intangibility of innocent life according to its value; [such a person] knows well to appreciate the motives that led to that disposition. Besides, who can judge with certainty which of the two lives is in reality more precious? Who can know what path that child will follow and to what height of works and of perfection it will be able to reach? Two greatnesses are compared here, about one of which nothing is known.

[The Holy Father then provides a long concrete example to prove his point; after which he teaches the following.]

We have on purpose always used the expression “direct attack on the life of the innocent,” “direct killing.” Because if, for example, the salvation of the life of the future mother, independently of her state of pregnancy, might demand urgently a surgical act, or other therapeutic application, which would have as an accessory consequence, in no way
desired nor intended, but inevitable, the death of the fetus, such an act could no longer be called a *direct* attack on innocent life. In these conditions the operation can be licit, as other similar medical interventions, provided that it is concerned with a good of high value, such as life is, and it is not possible to postpone it until after the birth of the child, nor to have recourse to another efficacious remedy.\(^\text{112}\)

At the beginning of the teaching from the “Family Front” address, the Holy Father again recalls the teaching from his prior two addresses on the unlawfulness of any “direct attack on innocent human life,” even as a means to the end of saving another life. This teaching is presented as an essential foundation of conjugal morality and social morality in general. Pope


“È una delle più belle e nobili aspirazioni della medicina il cercare sempre nuove vie per assicurare la vita entrambi. Che se, nonostante tutti i progressi della scienza, rimangono ancora, e rimarranno in futuro, casi in cui si debba contare con la morte della madre, quando questa vuol condurre fino alla nascita la vita che porta in sé, e non distruggerla in violazione del comandamento di Dio: non uccidere!—altro non resta all’uomo, che fino all’ultimo momento si sforzerà di aiutare e di salvare, se non d’inchinarsi con rispetto dinanzi alle leggi della natura e alle disposizioni della divina Provvidenza.

“Ma—si obietta—la vita della madre, principalmente di una madre di numero famiglia, è di un pregio incomparabilmente superiore a quello di un bambino ancora nato. L’applicazione della teoria della bilancia dei valori al caso che ora ci occupa ha già trovato accoglimento nelle discussioni giurdiche. —La risposta a questa tormentosa obiezione non è difficile. L’inviolabilità della vita di un innocente non dipende dal suo maggiore o minore valore. Già da oltre dieci anni la Chiesa ha formalmente condannato l’uccisione della vita stimata “senza valore”; e chi conosce i tristi antecedenti che provocarono tale condanna, chi sa ponderare le funeste conseguenze a cui si guingerebbe, se si volesse misurare l’intangibilità della vita innocente secondo il suo valore; ben sa apprezzare i motivi che hanno condotto a quella disposizione.

“Del resto, chi può giudicare con certezza quale delle due vite è in realtà più preziosa? Chi può sapere quale sentiero seguirà quel bambino e a quale altezza di opere e di perfezione esso potrà giungere? Si paragonano qui due grandezze, di una delle quali nulla si conosce.”

[Two paragraphs later:] “Noi abbiamo di proposito usato sempre l’espressione “attentato diretto alla vita dell’innocente”, “uccisione diretta”. Poiché se, per esempio, la salvezza della vita della futura madre, indipendentemente dal suo stato di gravidanza, richiedesse urgentemente un atto chirurgico, o altra applicazione terapeutica, che avrebbe come conseguenza accessoria, in nessun modo voluta né intesa, ma inevitabile, la morte del feto, un tale atto non potrebbe più dirsi un *diretto* attentato alla vita innocente. In queste condizioni l’operazione può essere lecita, come altri simili interventi medici, sempre che si tratti di un bene di alto valore, qual è la vita, e non sia possibile di rimandarla dopo la nascita del bambino, nè di ricorrere ad altro efficace rimedio.”
Pius then addresses the moral right of innocent human life, from the first moment of its existence, to be immune from any “direct voluntary attack.” This language is very similar to “direct deliberate disposal,” noted above in relation to the Address to Midwives. Whatever the precise meaning of each description is according to the intention of Pope Pius XII, in the very next sentence of the “Family Front” address he provides some particular guidance concerning the application of his teaching. The fundamental right of immunity from direct voluntary attack is said to be valid for the child in the womb as for life outside the womb. The Holy Father immediately continues the comparative language by saying, “thus against direct abortion, as against the direct killing of the child before, during and after the birth.” In teaching that the right of immunity from voluntary direct attack excludes the lawfulness of direct abortion as it excludes direct killing of the child before, during and after birth, the address appears necessarily to imply that direct abortion is itself an instance of direct voluntary attack on innocent human life. The implication seems all the more necessary in light of the affirmation contained in the immediately following sentence, where the Pope states that in all cases, no matter what stage of child development is present, “it deals with a grave and illicit attack on inviolable human life.”

In light of the three addresses from Pope Pius XII, direct abortion must be understood as abortion intended as an end or as a means to an end. That is the same as saying ejection of a non-viable fetus intended as an end or as a means to an end. Hence, the implication that seems unavoidable is that the ejection of a non-viable fetus, intended as an end or as a means, is a “direct voluntary attack” on innocent human life. In other words, direct abortion is as much a direct killing as other forms of intended feticide.

The following three paragraphs of the “Family Front” address are dedicated principally to teaching that in conflict situations involving the lives of a mother and her unborn child no
preference for the life of either, and no supposed “scale of values” applied to their lives, could ever justify an “act of direct suppression” of one for the sake of the other. “The inviolability of the life of an innocent does not depend on its greater or lesser value.” As is clear from the prior two addresses, the inviolability depends rather on the absolute dominion over innocent human life possessed solely by God, the violation of which is protected by the commandment “Thou shalt not kill,” mentioned in all three addresses. Still, as an accessory consideration, the Holy Father makes clear that the “scale of values” reasoning is itself subject to great uncertainty in practice.

In the last paragraph provided from the address, Pius XII became the first pope to draw explicit attention to the use of the word “direct” in official teachings of the Magisterium. However, somewhat ironically, he addresses the meaning of the term “direct” in an indirect way. The Pontiff sheds light on the concept of “direct attack” by giving an example that, in contrast, does not involve such an attack. The example is that of a pregnant woman who, independently of her state of pregnancy, needs a therapeutic intervention to save her life, but the act to be performed would inevitably cause the death of the fetus. Provided that the death is in no way desired or intended, and that the procedure cannot be postponed or substituted with another efficacious remedy, the act “could no longer be called a direct attack on innocent life.” Without stating it explicitly, the Holy Father is distinguishing “direct killing” or “direct attack on the life of the innocent” from a case in which the principle of double effect would apply.

The conditions for the application of the principle of double effect were articulated in the first chapter using the formulation of Gury: 1) if the end of the agent is honorable (honestus); 2) if the cause be good in itself, or indifferent; 3) if the good effect follows equally immediately with the evil effect from the cause; 4) if the good effect at least balances the evil. In the example
provided by Pope Pius, the first condition is met because the only motivation is the salvation of the life of the mother. The fourth condition is fulfilled on account of the same reason, and because the life of the mother is equal to that of the child (and no “scale of values” is invoked). On the one hand, the second and third conditions are met precisely insofar as the Holy Father assumes that the procedure is not a direct abortion or a direct killing (“in no way desired nor intended”). But the particular indications that conditions two and three are met in the example are found in the qualifications “independently of her state of pregnancy,” and “which would have as an accessory consequence.” If the cause of the danger is independent of the state of pregnancy, then the procedure that aims at removing that cause will itself have to address something other than the condition of pregnancy. Nevertheless, that procedure may have various accessory consequences, some of which would affect adversely the state of pregnancy. As long as the harmful effects to the child follow with equal immediacy (or a fortiori if they are mediated through other causes), which the Holy Father assumes in the case, then the third condition of the principle will be satisfied.

It should be noted that while Pope Pius XII addressed a case, as an example, in which the danger to the mother is caused independently of her state of pregnancy, he did not teach that such a case is the only kind that would be free from direct killing. It is possible that some cases of grave danger to the life of the mother might be caused, remotely or even proximately, by the presence or growth of the child itself. This is most noticeably the case with some ectopic pregnancies. The presence and growth of the child in the fallopian tube usually causes destruction to the membranes and tissues of the tube, which endangers the life of the mother through tube rupture and bleeding. Still, according to Directive 16 of the 1977 edition of the Ethical and Religious Directives for Catholic Health Facilities, referenced above, the tube itself
can be removed even though the death of the fetus will follow as an inevitable result. However, the child is not removed directly, only the tube (or that portion of it) that in its present condition poses a grave danger to the life of the mother. The child’s presence, attachment, and growth in the tube may be a cause that is destroying the tube, but it is the tube’s *being destroyed* and tendency to rupture that present the immediate danger to the woman. Hence, it is on account of the *tube’s condition* *per se* that it presents a danger that warrants its removal. In such a case it cannot be said without qualification that the danger to the mother is independent of her state of pregnancy; nevertheless, the same double-effect reasoning used by Pope Pius XII can apply in justification of the removal of the pathological and danger-posing tube, even though the child inside it will die as an accessory consequence (which is in no way desired or intended).

*The Common Teaching of Catholic Moralists on Direct Abortion*

Having presented the principal developments in canon law and in the teachings of the Magisterium on procured abortion in the decades leading up to the Second Vatican Council, it is necessary to consider how the writings of Catholic moralists of the same time period generally presented and embodied an understanding of Catholic teaching on the subject. One of the most noteworthy features of the general presentation of Catholic teaching, in comparison to the disagreements and debates among moralists in the late nineteenth century, is the witness of so many Catholic authors that direct abortion is to be identified with a direct killing. This is not to say that every author of the period affirmed this explicitly, or that there were no disagreements among authors on this point, such as the disagreement between Vermeersch and Kramer treated above. Nevertheless, considering the amount and diversity (in terms of geographical locations and religious orders) of authors who affirm the identity between direct abortion and direct
killing, it seems justified to say that that position represented common Catholic teaching on the morality of direct abortion. At the very least, it is far more noticeable than any contrary position.


It will be useful to consider in detail the writings of some of the more prominent and widely consulted authors, in order to provide some examples of how teaching on direct abortion was often presented by moral theologians of the time period. The texts of Benoît Merkelbach, Edouard Genicot and Joseph Salsmans (Genicot-Salsmans), Dominic Prümmer, Thomas Iorio, and Hieronymus Noldin and Albert Schmitt (Noldin-Schmitt), will provide suitable examples, as they all aptly represent the style of writing (Latin manuals specially designed for wide-scale seminary instruction) and particular concerns common to moral theologians in the decades leading up to the Second Vatican Council.

Like most authors of the time, Benoît Merkelbach treats of embryotomy and abortion in close connection with each other, but recognizing their distinction. Embryotomy is used as a general term that includes various operations.

Operations which kill the fetus and in general are called by the name embryotomy (which is a surgical operation by which the infant in the uterus is slain and cut up and extracted in parts) consist in the reduction or division of the various parts of the fetus, which are then extracted gradually one at a time, when on account of excessive narrowness of the pelvis or excessive magnitude of the head, the extraction of the fetus is possible in no other way.

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114 Benoît Merkelbach, O.P., Quaestiones Pastorales II: Quaestiones de Embryologia et de Ministrature Baptismatis, 30-44.

115 Ibid., 30: “Operationes quae foetum occidunt et generali nomine embryotomia vocantur (quae est operatio chirurgica qua infans in utero conciditur et concisus per partes extrahitur), consistunt in reductione vel divisione variarum partium foetus, quae singulae postea paulatim extrahuntur, cum propter nimiam angustiam pelvis vel nimiam magnitudinem capitis, nullo ali modo extractio foetus est possibilis.”
The subspecies of embryotomy include: **craniotomy**, “by which the cranium of the infant is perforated and the cerebral mass is extracted,” **cephalotripsy** (“compression of the head”), **sphenotripsy**, “by which the basis of the head is perforated in many places,” **embryulcia**, by which the head is separated from the trunk,” and **evisceration**.116

Merkelbach then teaches that embryotomy under whatsoever form is intrinsically evil, and that all the various operations he described are illicit and unjust, even if baptism would be provided for the infant *in utero*, and there is no other medium to help the mother, and without the operation both infant and mother would certainly perish. “For,” he writes, those operations “are always and per se directly lethal, since the good effect would not proceed equally immediately, but only mediately by the evil effect; and therefore the death of the infant would necessarily be willed as a medium to the saving the mother.” Immediately afterwards, the author notes: “Thus the Holy Office 28 May 1884 concerning craniotomy, and 14 August 1889 concerning every operation directly lethal for the mother or the child.” Finally, he adds a footnote to the last sentence, wherein he writes: “You should not be astonished that the Holy Office only said it *cannot be safely taught*, but not that it is illicit. For thus, because it responded to the question: *whether it can be safely taught?* Moreover, afterwards it also explicitly said it is illicit (24 July 1895).”117

Turning to the distinct question on the procuration of abortion, Merkelbach first defines it as “the artificial ejection from the uterus of the mother of an immature fetus who thus cannot

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116 Ibid., 30-31.

117 Ibid., 31: “Sunt enim semper per se et directe occisivae, cum effectus bonus non procedat aeque immediate, sed solum mediante effectu malo; et ideo mors infantis necessario sit volita ut medium ad salvandam matrem. Ita S. Off. 28 maii 1884 de craniotomia, et 14 augusti 1889 de omni operatione directe occisiva matris vel infantis (1).” “(1) Ne mireris S. Off. solum dixisse id *tuto doceri non posse*, non autem esse illicitum. Ita enim, quia respondit quaesito: *an tuto doceri potest?* Ceterum postea etiam explicite dixit illicitum (24 iul. 1895).”
live, or of the fetus capable of uterine life and not capable of extrauterine life.”

He then provides definitions for “direct” and “indirect” procuration of abortion. The former is realized “if the means which are employed immediately and per se kill or expel the fetus, even if mediately they may procure an ulterior good effect”; the latter is realized “if the means which are employed immediately and per se are ordered to a good effect, for example, to the health of the mother, although outside the intention and per accidens they may also simultaneously expel the fetus.”

Evidently, by referring to means which per se kill or expel the fetus in the definition of direct procuration of abortion, Merkelbach does not mean to include the various types of embryotomy he treated earlier (for he clearly distinguishes embryotomy from abortion throughout his text). Rather, what he seems to have in mind is another consideration that he presents on the same page where he distinguishes direct and indirect abortion. He writes, “in the definition of abortion, the ejection is not to be understood so much concerning the external ejection as concerning the avulsion and separation of the fetus from the maternal uterus before it could be vital.” Hence, by separating the non-viable fetus from the maternal uterus internally, one could be said to kill the fetus even prior to the external expulsion from the entire body of the mother. In such a case, one could be said to have procured abortion in principle, even prior to abortion being completed in all its proper effects. This is related to the point made by canonist

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118 Ibid., 34: “Procuratio abortus est artificialis ex utero matris eicet foetus immaturi qui ita vivere nequit, seu foetus vitae uterinae capacis et vitae extrauterine incapax.”

119 Ibid., 35: “Procuratio autem abortus distinguetur duplex: 1) directa, si media adhibeantur quae immediate et per se occidunt foetum vel expellunt, licet ulterius et mediately effectum bonum procurent; 2) indirecta, si media adhibeantur quae immediate et per se ordinata sunt ad effectum bonum v.g. sanitatem matris, quamvis etiam praeter intentionem aut per accidens possint simul expellere foetum.”

120 Ibid., “…in definitione abortus, eicetio non tam intelligitur de externa eicetione quam de foetus avulsione et sepratione ab utero materno antequam sit vitalis.”
John Huser above, about the *ejection* in the definition of abortion referring to the entire physical process of abortion.\[121\]

Concerning the moral status of abortion directly procured, Merkelbach teaches that, by whatever way it is obtained, it is illicit, since it is intrinsically evil and unjust (*utpote intrinsece malus et in iustus*). “The reason is because it immediately produces nothing except the separation of the fetus from the mother and thus it directly brings death to the fetus who is a man or on the way to a man; wherefore it is the direct killing of a man or it is equivalent to it.”\[122\] The author then expounds on this reasoning in the following explanation. “Abortion naturally [*scilicet*] deprives the fetus from the service of the placenta by which he adheres to the mother and receives nourishment and purgation of the blood; and these two are altogether necessary for the fetus to live; therefore to deprive the fetus from such things is truly to kill him, as to kill a man by hunger. Thus the Holy Office responded 14 Aug. 1889; 24 July 1895 and 4 May 1898.” Finally, Merkelbach writes in a footnote immediately attached to the last sentence: “Before the Roman decisions, some theologians, such as Ballerini and Lehmkuhl, were considering abortion to be benign in certain cases.”\[123\] Hence, the implication for Merkelbach is that not only did the Roman decisions forbid the positions of such theologians, but they also imply that direct abortion is illicit because it necessarily involves a direct killing of the fetus.

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121 See footnote 54.

122 Merkelbach, O.P., *Quaestiones Pastorales II: Quaestiones de Embyologia et de Ministratione Baptismatis*, 36: “Ratio est quia nihil immediate producit nisi separationem foetus a matre et sic mortem directe affert foetui qui est homo vel via ad hominem; unde est directa occisio hominis vel ipsi aequivalet.”

Merkelbach completes his treatment of directly procured abortion by posing an objection to his reasoning found in the last paragraph. The objection is essentially that procured abortion is not killing but a mere cessation of providing sustaining means of life. “It is not killing but the cessation from conservation of the fetus by which the mother allows him to slip away from the sinu and thus permits him to perish…”

His very clear response is reminiscent of the final position of Lehmkuhl after the publication of the decisions of the Inquisition from the nineteenth century.

Response: It is not merely a cessation or an omission by which it is permitted or not impeded that the fetus is not conserved (in the same way as if in a spontaneous abortion nature ceases from conserving the fetus); but the action is positively deadly which by nature severs and impedes the conservation of the fetus, and is a violent disturbance of natural conditions: it is positively to act such that the fetus may be separated from the mother and thus be placed in a state of necessary death. Wherefore the death is not only permitted but it is directly procured, and therefore the action is directly lethal and intrinsically evil.

Combining this text with the other passages from Merkelbach, it is evident that, for him, to intend the ejection of the non-viable fetus, either for its own sake (as an end), or as a means to an end, is to intend that action which has as its sole immediate effect the separation of that fetus from its mother. But since that fetus is incapable of living separated from its mother, to intend that separation is to intend the deprivation of the necessary conditions for the life of the fetus. To intend that is to intend to kill the fetus. Most clearly, then, physical causality plays an important role in determining one’s moral intention in the teaching of Merkelbach, and he

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124 Ibid., 36-37: “Obiiciunt: Non est occisio sed cessatio a conservatione foetus qua mater illum e sinu elabi sinat et ita perire permittat…”

125 Ibid., 37: “Resp.: Non est mera cessatio seu omissio qua indirecte permittitur seu non impeditur quod foetus non conservetur (eodem modo ac si in abortu spontaneo natura cessat a foetu conservando); sed est actio positiva mortifera quae conservationem foetus a natura abrumpit et impedit, et violenta perturbatio conditionis naturalis: est positive agere ut separetur foetus a matre et sic in statu necessariae mortis ponatur. Unde mors non tantum permittitur sed directe procuratur, et ideo actio est directe occasiva et intrinsece mala.”
believes that the documents of the Magisterium support both his fundamental teachings on embryotomy and directly procured abortion, and the reasons behind those teachings.

Edouard Genicot and Joseph Salsmans provide several important principles within their treatment “On the Killing of the Fetus.” Their first moral assertion is that “**Directly to kill the infant in the uterus** of the mother through *embryotomy*, etc., is *never* licit, even if with such an operation omitted the mother and the infant will perish, but with it admitted the mother may hope to be saved with the infant perishing.” The authors explain, “The reason is that an action directly lethal is not something indifferent; furthermore the death of the infant is intended just as a means to obtaining salvation for the mother, thus that good effect follows only mediately.” They conclude by noting that “this is also proved from the responses of the Holy Office 28 May 1884 and 19 August 1889.”

Concerning abortion, which they define as “the ejection of the fetus who cannot yet live outside the uterus,” the authors write: “To procure voluntary abortion directly is gravely illicit, intended *either as an end, or as a means,…* For it is direct killing of the innocent.” This judgment is unconditional: “Even when the mother dwells in present peril of life, and no other medium is given for saving her than to procure abortion, it remains gravely illicit.”

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“Ratio est quod *actio directe occisiva* non est aliquid indifferens; insuper intenditur mors infantis tamquam medium ad salutem matri obtinendam, ita ut bonus effectus tantum mediate sequatur…Probatur etiam ex *responsis S. Officii* 28 maii 1884 et 19 aug. 1889.”

127 Ibid. The first quotation is from page 307 [“*Abortus* est *ejectio fetus qui nondum extra uterum vivere potest*”], and the second is from page 308: **Procurare abortum directe voluntarium** graviter illicitum est, *sive ut finis, sive ut medium,…* Est enim occisio directa innocentis.”

authors then immediately reference the encyclical *Casti connubii*, followed by the responses of the Inquisition from 1895 and 1898. Finally, Genicot-Salsmans comment in the next sentence: “On account of those responses the positive induction of abortion is now commonly held as always certainly illicit, even by those authors who, as Lehmkuhl, were not daring to condemn it previously.”

Concerning ectopic pregnancies, citing the Inquisition responses from 1898 (which they mistakenly record as 1893) and 1902, the authors do not allow anything more in these cases than they do for uterine cases. Like others before and after them, they apparently do allow for the excision of the entire fallopian tube, or other uterine appendage or organ, containing the fetus, in cases of “urgent danger.” It is said that they “apparently” allow for this because their description of what is removed is a little unclear. They speak of the excision of the whole fetal sack (*excisio totius sacci fetalis*). In any case, they certainly consider the object of the excision to be something other than the non-viable fetus per se, “for thus,” they write, “the fetus is not directly, but only indirectly killed, as in case IV below.”

In “case IV,” they argue for the lawfulness of abortion indirectly willed (*de abortu indirecte voluntario*) in which the whole of a gravid uterus is excised in order to remove a disease from the mother. Hence, neither in the latter scenario nor in the ectopic pregnancy case do the authors permit direct removal of a non-viable fetus.

The teaching of Genicot-Salsmans is in complete harmony with that of Merkelbach, and they use documents of the Magisterium in very similar ways. Merkelbach’s text was written prior to *Casti connubii* and the pontificate of Pius XII. Publishing in 1951, Genicot-Salsmans incorporate the teaching of the latter pope, and while they do not reference explicitly any address

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129 Ibid. “Ob responsa ista iam communiter positiva inductio abortus tamquam semper certo illicita habetur, etiam ab iis AA. Qui, ut Lehmkuhl, eam antea dammare non erant ausi.”

130 Ibid., 309: “…ita enim fetus non directe, sed indirecte tantaum occiditur, ut in casu IV infra.”
of Pope Pius XII, the language they employ in their description of directly procured abortion is the same that the Holy Father used as early as his San Luca address (1944), which certainly could have influenced the text of Genicot-Salsmans.

Like Merkelbach and Genicot-Salsmans, Dominic Prümmer treats first of craniotomy (under which he includes cephalotripsia, embryotomia, perforatio, decollatio, exenteratio, and embryothlasia), then of abortion. Concerning the former, Prümmer writes: “Craniotomy, moreover, not only cannot be safely taught, but it is also absolutely illicit, as is plain from the response of the Holy Office the 24th day of July, 1895. Moreover, the reason is because craniotomy and other similar surgical operations are direct killing of innocent offspring. Furthermore, never and for no one is it licit directly to kill the innocent.” Here his interpretation of the Inquisition response from 1895, which includes references to the responses from 1884 and 1889, is fully consistent with the uses and interpretations of all those responses by Merkelbach and Genicot-Salsmans, and also with the conclusions of the first chapter of this dissertation.

Concerning abortion specifically, Prümmer defines it as “the ejection of an immature living fetus from the maternal uterus.” He then distinguishes the procuration of abortion into direct and indirect. “It is said to be direct, if the means applied per se and immediately kill and expel the fetus. But it is said to be indirect, if the means applied per se and immediately are ordered to the health of the mother, but per accidens and outside the intention (it may not be

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132 Ibid., 127: “Abortus est eiectio immaturi foetus viventis ex utero materno.”
outside pre-vision) expel the fetus."\textsuperscript{133} On the next page, he states the principle, "It is never licit directly to procure abortion of a living fetus."\textsuperscript{134} It is noteworthy that Prümmer defines direct procuration of abortion only in terms of causality, but indirect procuration in terms of causality and intentionality. However, because indirect procuration requires the expelling of the non-viable fetus to be "outside the intention," he evidently assumes that in direct procuration the expelling is within the agent’s intention. It may also be significant that Prümmer defines direct procuration of abortion as killing and expelling, where Merkelbach had killing or expelling. But perhaps Prümmer simply has in mind that this expelling (of a non-viable fetus) is always a killing due to the causality involved.

In explaining his principle on the absolute unlawfulness of directly procured abortion, Prümmer provides a three-fold defense.

It is said: \textit{of a living fetus}. Because if the fetus is certainly dead, it is licit to extract it from the sinu of the mother, as is plain per se. However, the death of the fetus ought not to be presumed, but it is to be proved. The principle enunciated is easily proved. For a) direct procuration of abortion is direct homicide of the innocent. But it is never licit directly to kill an innocent human being. Therefore direct procuration of abortion is never licit. For the living fetus is a man consisting of body and soul; according to the opinion of those who teach the rational soul does not arrive until after 40 or 80 days, the fetus before this time elapsed is a man \textit{in becoming} and certainly will be a man, if it is not impeded. Whence Innocent XI proscribed the proposition (34): "It is licit to procure abortion before animation of the fetus, lest the girl caught pregnant is killed or defamed."—b) Through procuration of abortion is caused to the animated fetus not only the death of the body, but also the death of the soul, since baptism can very rarely be confirmed, if in fact it is to be conferred—c) In the year 1889 on day 19 of August, the Holy Office responded to the Archbishop of Cambrai, who set out six diverse modes of procuring abortion: "In catholic schools it cannot be safely taught that the surgical operation they call craniotomy is licit, as it was declared on the 28\textsuperscript{th} day of May, 1884,

\begin{footnotesize}
\textsuperscript{133} Ibid., 128: “Procuratio autem abortus altera es directa, altera indirecta. Directa dicitur, si media adhibita per se et immediate occidunt foetum expelluntque. Indirecta vero dicitur, si media adhibita per se et immediate ordinata sunt ad sanitatem matris, sed per accidens et praeter intentionem (licet non praeter praevisionem) expellunt foetum.”

\textsuperscript{134} Ibid., 129: “Numquam licet directe procurare abortum foetus viventis.”
\end{footnotesize}
and any directly lethal surgical operation on the fetus or the gestating mother.”—From all of which it is manifestly plain that direct procuration of abortion is never licit. 135

Finally, at the bottom of the same page from which this passage is taken, Prümmer provides the text of the declaration of the Inquisition from 1895. He then notes how after that declaration Lehmkuhl retracted his prior position, according to which he had held that violent invasion on the fetus and his “vital element” could possibly be licit in order to save the mother. This retraction of Lehmkuhl was apparently very significant for authors after him. Merkelbach and Genicot-Salsmans also refer to it. For all of them it serves as evidence that the Inquisition decrees were moral-doctrinal in nature, not merely prudential.

Clearly for Prümmer, as with the prior three authors, direct abortion is direct killing of an innocent human being. However, Prümmer makes a qualification similar to that found in Merkelbach, concerning abortion of a possible inanimate fetus. Merkelbach maintained that direct procuration of abortion “directly brings death to the fetus who is a man or on the way to a man; wherefore it is the direct killing of a man or it is equivalent to it.” Prümmer appears to make the same point when he notes that even prior to animation (if delayed animation takes place) the fetus is a man “in becoming” (in fieri), and certainly will be a man, if not impeded by

135 Ibid., 129-130: “Dicitur: foetus viventis. Etenim si foetus certo mortuus est, licet illum ex sinu matris extrahere, ut per se patet. Mors autem foetus non debet praesumi, sed probari. Principium enuntiatur facile probatur. Nam a) directa procuratio abortus est directum homicidium hominis innocentis. Atqui numquam licet directe occidere hominem innocentem. Ergo directa procuratio abortus numquam licet. Foetus enim vivens est homo constans ex corpore et anima; iuxta sententiam autem illorum, qui docent animam rationalem non advenire nisi post 40 aut 80 dies, foetus ante hoc tempus elapsum est homo in fieri et certo erit homo, nisi impediatur. Unde Innocentius XI proscriptit propositionem (34): 'Licet procurare abortum ante animationem foetus, ne puella deprehensa gravida occidatur aut infemetur.'—b) Per procurationem abortus causatur foetui animato non tantum mors corporis, sed etiam mors animae, cum baptismus rarissime conferri possit aut saltem de facto conferatur.—c) Anno 1889 die 19 Aug. S. Officium respondit Archiepiscopo Cameracensi, qui sex diversos modos procurandi abortum expositus: 'In scholis catholici tuto doceri non posse licitam esse operationem chirurgicam, quam craniotomiam appellant, sicut declaratum fuit die 28 Maii 1884, et quamcunque chirurgicam operationem directe occisivam foetus vel matris gestantis.'—Ex quibus omnibus manifeste patet directam procurationem abortus numquam licere.” The proposition proscribed by Pope Innocent XI refers to the thirty-fourth of sixty-five propositions censured “as at least scandalous and in practice pernicious” (ut minimum tamquam scandalosae et in praxi perniciosae), on March 2, 1679. The complete text can be found in Heinrich Denzinger, Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals, edited by Robert Fastiggi and Anne Englund Nash, 43rd edition (San Francisco, California: Ignatius Press, 2012), 466-474.
abortion. Although he does not use the term explicitly, Prümmer seems to imply that procured abortion in such a case would be what Gury and others called “anticipated homicide” *(homicidium anticipatum).*

Referring to Exodus 23:7, and the decree of the Holy Office of December 2, 1940, Thomas Iorio first affirms that “It is never licit *directly* to kill the innocent either by private or by public authority, not even in order to procure the public good: for it is an action intrinsically evil and expressly prohibited by divine law.” On the other hand, he also teaches, “On account of a grave cause it is licit to place an action in itself good or indifferent, from which, outside the intention, death of the innocent may follow, according to what was said concerning the liceity of an action *voluntary in cause*.” Iorio is referring to his treatment of the distinction between the direct voluntary and the indirect voluntary in the first volume of his *Theologia Moralis.* There he distinguished between the direct voluntary and the voluntary in cause. The former is intended in itself (*in se*) either immediately or mediately, in the order of causality. For example, fornication is willed in itself immediately in its performance, or mediately through an act of seduction. Whereas an action voluntary in cause is had when the cause of an effect is willed in itself but the effect is not necessarily willed, even though it may be foreseen. For example, homicide may result from recklessness that is caused by direct voluntary inebriation. The homicide and the recklessness may be said to be indirectly voluntary. That does not mean,


138 Ibid. “Licet ob gravem causam ponere actionem in se bonam aut indifferentem, ex qua praeter intentionem sequatur mors innocentis, iuxta dicta de liceitate actionis *voluntarii in causa*.”

however, that the person is not culpable for the effects that are indirectly voluntary. Moral responsibility for such effects is a complicated matter, and the principle of double effect may be applicable in some cases.  

When treating craniotomy and embryotomy, Iorio considers both to be direct killings of the fetus that are always illicit. He maintains that this thesis is expressed in the decision of the Inquisition from May 31, 1889, and in *Casti connubii*. Considering the management of ectopic pregnancies, Iorio references the decisions from 1898 and 1902. He understands those decisions to forbid direct removal of the ectopic non-viable fetus, which Iorio regards as direct killing.  

Abortion itself is defined as “the immature ejection of a living fetus from the uterus or sinu of the mother.” It is somewhat peculiar that Iorio has “immature” (*immatura*) modify “ejection” (*eiectio*) here, and not “fetus.” It is much more common for authors to speak of immaturity as a quality of the one aborted, *fetus immaturi*. Nevertheless, Iorio’s definition amounts to the same thing, as he explains: “It is said: an immature ejection, when, namely, outside the uterus it [the fetus] cannot yet live.” In any case, Iorio identifies direct abortion with direct homicide. But to procure abortion *indirectly* can be justified for a proportionately grave cause.

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140 See ibid., 27-28, and Volume II, 117. The examples dealing with fornication, inebriation, and reckless homicide are taken from page 22 of Volume I.


142 Ibid., 119-120.

143 Ibid., 120: “Abortus est immatura eiectio fetus viventis ex utero seu sinu matris.”

144 Ibid., “Dicitur: *immatura* eiectio, quando scil. extra uterum nondum viviere potest.”

145 Ibid., 122.

146 Ibid., 121.
Noldin-Schmitt first distinguish voluntary homicide from involuntary homicide. The former is that which proceeds from the will and is foreseen as such; whereas, the latter is that which is in no way foreseen. “Voluntary homicide is either direct, if it is intended in itself, or indirect, if intended only in its cause, from which it is foreseen (it is permitted) to follow.” It will be clear below that by “intended in itself,” they include what is intended as an end or as a means to an end. “It is never licit directly to kill the innocent, not even by public authority: for this action is evil in itself.” However, “From a proportionately grave cause it is licit indirectly to kill the innocent.”

Craniotomy, including perforation or cephalotripsy, is illicit because “it is direct killing of the innocent, since the death of the infant would be intended just as a means to saving the mother. For that reason the Holy Office responded: not only ‘it cannot be safely taught,’ but also that directly lethal operations cannot be practically repeated.” In proof of the last statement, the authors refer to the decision from May 28, 1884, which they note was repeated in 1889, and there extended to every surgical operation directly lethal for the fetus or gestating mother, and to the 1895 decision which extended to practical exercise.

Turning to abortion in the proper sense, Noldin-Schmitt define it as “ejection of an immature fetus from the uterus of the mother.” They then distinguish direct from indirect

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148 Ibid. “Numquam licitum est directe occidere innocentem, ne publica auctoritate: nam actio haec est in se mala.”

149 Ibid., 310: “Ex causa proportionate gravi licitum est indirecte innocentem occidere.”

150 Ibid., 311: “…est enim directa occisio innocentis, cum mors infantis intendatur tamquam medium ad servandam matrem. Ideo s. Officium respondit: non solum ‘tuto doceri non posse’, sed etiam practice instaurari non posse operationes directe occisas.”

151 Ibid., 313: “Abortus est ejection foetus immaturi ex utero matris.”
procuration. “[I]t is said to be direct, if the means are employed for the sake of that end, that the fetus be expelled; it is said to be indirect, if the means are employed toward another end, for example, to procuring the health of the mother, from which, however, outside the intention the abortion is foreseen to follow.”\textsuperscript{152} But the authors, using terms like Pope Pius XII did, also speak of direct procuration in the following way: “for abortion is directly procured, either intended as an end or as a means to obtaining another end.”\textsuperscript{153} Clearly, the authors use the term “procure” in a general way, in the sense of “cause” or “will.” Some other authors, as seen above, use the term as synonymous with “direct” itself.

When treating the moral status of procuring abortion, Noldin-Schmitt first address indirect procuring. “It is licit to procure abortion indirectly on account of a proportionately grave cause: for from a proportionately grave cause it is licit to place an indifferent action, from which a two-fold effect follows, one good, which is intended, the other evil, which is permitted on account of a grave cause.”\textsuperscript{154} The authors then provide an example that fits the conditions described by Pope Pius XII in the “Family Front” address. “Indeed it is licit in order to save the life of the mother to extirpate a uterus cancerously affected even though the fetus might perish; for it is not an action directly lethal on the fetus, but his death follows indirectly from an action

\textsuperscript{152} Ibid., 314: “…directa dicitur, si media adhibentur eo fine, ut foetus expellatur; indirecta dicitur, si media adhibentur in alium finem, e.g. ad sanitatem matris procurandum, ex quibus tamen praeter intentionem etiam abortus secuturus praeventur.”

\textsuperscript{153} Ibid., 315: “…abortus enim directe procuratur, sive intendatur ut finis sive ut medium ad alium finem obtinendum.”

\textsuperscript{154} Ibid., 314: “Ex causa proportionate gravi licitum est abortum indirecte procurare: nam ex causa proportionate gravi licet actionem ponere indifferentem, ex qua duplex sequitur effectus, alter bonus, qui intenditur, alter malus, qui ex gravi causa permittitur.”
necessary for saving the life of the mother, which same action is employed in exactly that way even if the mother is not pregnant.”

Then, turning to direct abortion, the authors simply state: “It is not licit directly to procure abortion.” They then give a brief explanation that articulates the same reason for unlawfulness provided by Merkelbach. “For this is the same as to take away his life: for since the fetus can live only in the body of the mother, to place him outside that [body] is the same as a positive action to take away his life.” Immediately after this statement, the authors add a footnote referencing, among other sources, the decisions from the Holy Office of August 19, 1889; July 24, 1895; May 4, 1898; Casti connubii, Pope Pius XII’s Address to Midwives, and the same Pontiff’s Address to the “Family Front.”

Noldin-Schmitt provide one final principle, namely, that even in the case of when the mother dwells in certain danger to her life, and no other medium exists for saving her besides the procuration of abortion, it is still illicit. “[B]ecause the procuration of abortion even in this case is a direct killing of the innocent, which always remains illicit, even if through it a great good would be obtained.”

**Toward a Definition of “Direct Killing”**

The teaching of the theologians, especially Noldin-Schmitt and Merkelbach, on the reasons why direct abortion should be understood as a direct killing are suggestive of conditions

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155 Ibid. “Immo licet ad vitam matris servandam exstirpare uterum cancere affectum, quamvis foetus pereat; non enim est actio directe occisiva foetus, sed huius mors sequitur indirecte ex actione necessaria ad vitam matris servandam, quae actio eodem prorsus modo exercetur etiamsi mater non gravida est.”

156 Ibid. “Non licet directe procurare abortum.”

157 Ibid. “Nam hoc idem est ac vitam ei adimere: cum enim foetus solum in corpore matris vivere possit, eum extra illud collocare idem est ac positiva actio ei vitam auferre.”

158 Ibid.

159 Ibid., 315: “etenim procuratio abortus etiam in hoc casu est directa occisio innocentis, quae semper illicita manet, etsi per eam magnum bonum obtineatur.”
necessary for constituting an act as one of direct killing. While all authors agree (and the Magisterium formally teaches) that direct killing is that which is intended as an end or as a means to another end, that definition appears to provide only a formal description of direct killing, that is to say, the form the will takes whenever direct killing is being willed or accomplished. But it does not of itself provide a material description of the necessary conditions for accomplishing killing, in the order of execution. In other words, it might be asked: what type of performance (or omission) must proceed from the will in order for the action to possess both the form (intention) and the “matter” of killing? For when the Holy Father and the theologians teach that direct killing is that which is intended as an end or as a means to an end, they are assuming that any concrete killing has more to it than a mere intention. They must assume this because an intention as such is not (and cannot be) a killing. It must be joined in the concrete to some external action or omission in order for death to result. Intention alone would be like an unsubstantiated form, like a soul without a body.

What is an adequate definition of direct killing that includes both the proper formal and material elements? Some authors of the time period under consideration in this chapter have attempted to provide such a definition. Three definitions are offered here, each slightly more detailed than the previous, in order to illustrate how direct abortion might be better understood as a kind of direct killing. The first definition comes from Canon John McCarthy. He humbly notes first of all that it “is not easy to define in exact and simple terms what is meant by direct killing.”

Then, he recalls how Pope Pius XII, in his 1951 Address to Midwives, described a direct attack on human life as one which aims at the destruction of that life as an end or as a means to some other end. “Perhaps, then,” writes McCarthy, “direct killing may be defined as

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the performance of (or the omission of) an act, the primary and natural result of which is to bring about death.”

McCarthy also provides references to definitions from Benoît Merkelbach, and Ludovico Bender. These are here presented in their own terms. Merkelbach, in his *Summa Theologiae Moralis*, describes killing in general as “an action or omission which is apt (nata) to cause death.” Then, defining direct killing, he writes: “it is that which in itself is intended just as an end or a medium, either explicitly, or implicitly, such that the action or omission can tend immediately to no other end.” By intending killing as an end or medium *explicitly*, Merkelbach seems to mean by a clear and distinct desire to kill for its own sake or for the sake of something else (as a means to an end). By implicitly, he seems to mean by the intention to perform the action (or omission) which concretely tends immediately (in the order of execution) to no other end than death, even if the agent lacks or refuses to formulate a clear and distinct desire to kill.

In his 1951 article, “Occisio Directa et Indirecta,” Ludovico Bender offers the following definition of killing after a lengthy discussion. “Wherefore the definition of killing is: an action which deprives the body of the necessary disposition such that the soul cannot remain in it or which stops the operations of a living being necessary for conserving those dispositions or omits

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161 Ibid.


163 Ibid. “*Directa* [occisio] est quae in se intenditur tamquam finis aut medium, sive explicite, sive implicite, ut dum actio vel omissio ad nullum alium finem immediate tendere possit.”

164 The analysis offered here by Merkelbach, especially concerning the doctrine that the intention to kill can be either explicit or implicit, parallels and perfectly harmonizes with the understanding expounded above on the different ways in which abortion can be procured according to canon law. See especially pages 61-63.
those necessary operations.”

Bender considers the distinction between direct and indirect to depend on the manner by which the effect (death) proceeds from the cause. “In either case the effect is death, otherwise it would not be regarded a killing. But in direct killing death is an effect per se of this act; in indirect killing death is an effect per accidens.”

Drawing from the three definitions, and from the writings of the theologians whose works were examined just prior to providing these definitions, direct abortion might be explained as a direct killing in the following way. By intending to eject the nonviable fetus from the uterus (or from the site within the mother), the agent procuring abortion performs an action, the primary, natural, and sole immediate effect of which is separation of the fetus from the mother wherein alone are his conditions necessary for life naturally provided. Thus, this separation immediately deprives the fetus of the operations necessary for conserving the dispositions such that his soul can remain within his body. Thus death is an effect per se of this act, not an effect per accidens.

The above treatment of the question concerning an adequate definition of direct killing has been offered here to illustrate how certain authors of this period who were faithful to the teachings of the Magisterium attempted to account for what determines a human action to be of the killing kind, and how that account could make sense of an ecclesial doctrine that equates the procuring of ejectio fetus immaturi with direct killing. In the final chapter of this dissertation, after taking into account further developments in magisterial teaching (especially in light of Evangelium vitae), I will return to the question of what definition of direct killing is adequate to account for the Church’s doctrine on direct abortion (and similar procedures).

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166 Ibid., 225: “In utroque casu effectus est mors, secus non haberetur occisio. Sed in occasione directa mors est effectus per se huius actus; in occasione indirecta mors est effectus per accidens.”
Conclusion to Chapter Two

The survey of canonical, magisterial, and theological sources on procured or direct abortion in the decades before the Second Vatican Council has revealed certain conclusions. In the first place, at least after the promulgation of the 1917 Code of Canon Law, abortion was universally understood properly as the ejection of a non-viable fetus. This definition was so important that unless it strictly could describe a person’s intended external action, that person would not be subject to canonical excommunication or irregularity consequent upon abortion. This was the case even if a person intended and caused death to a fetus by some other morally repugnant action, such as embryotomy or craniotomy.

Also, it was taught by the Magisterium and confirmed (explicitly or implicitly) by virtually all theologians that direct killing is that which is intended by an agent as an end or as a means to another end. Moreover, direct killing of the innocent is never morally justified by private or public human authority, no matter the circumstances or the good effects that might follow, or the evil effects that might be avoided if the killing were accomplished.

It is at least widely taught or assumed that the nineteenth century decisions from the Inquisition on directly lethal procedures are doctrinally authoritative, and that they teach the moral unlawfulness of craniotomy, direct abortion, and any directly lethal operation on the fetus or gestating mother. Moreover, the teachings of Pope Pius XI (in Casti connubii) and Pope Pius XII (in the “San Luca” Address) also appear to assume that interventions from the Inquisition in the late nineteenth century were moral-doctrinal in nature and not merely prudential or disciplinary.

It is clear in the teachings of Popes Pius XI and Pius XII that the life of the innocent human being or person is absolutely morally “intangible” in relation to any mere human or
earthly authority. Practically, this means that any innocent human being or person has an absolute right to immunity from a direct attack on his or her life.

While not providing a simple and direct statement, Pope Pius XI and Pope Pius XII (especially in his “Family Front” Address) very strongly appear to teach that direct abortion (ejection of a non-viable fetus intended as an end or as a means) is a morally unlawful form of direct killing of the innocent. This same thesis is at least commonly taught by theologians. In the next chapter, I will show how the teaching of Pope John Paul II, especially in *Evangelium vitae*, makes explicit the apparent teaching of Popes Pius XI and Pius XII, and thereby confirms the common teaching of theologians in the immediate pre-conciliar period.

While not many theologians treat explicitly the details of the connection between the order of causality and the order of intentionality, the thesis that direct abortion is direct killing has clear implications for theories about that connection, as the disagreements between authors such as Kramer and Vermeersch indicated in this chapter. Some such implications and theories will be addressed in the final chapter, where I will also address the question of an adequate definition of direct killing that coheres with the documents of the Magisterium (across all periods of recent development).
Chapter Three

Introduction

This chapter completes the presentation and examination of the recent magisterial corpus on direct abortion, by focusing on the contemporary period of development. This period begins with the Second Vatican Council, and while it does not end with *Evangelium vitae* (1995), it finds a certain apex in the teaching of that encyclical. In that letter, Pope John Paul II offers the most focused, complete, and authoritative presentation of the Church’s doctrine on abortion that has ever appeared in a document of its kind from the papal Magisterium.

Despite the detail and authority of *Evangelium vitae*, its teaching on abortion has been misunderstood in some very important ways by several commentators. Hence, a significant part of this chapter will be concerned with discovering an accurate articulation of the teaching found in that encyclical. It is particularly necessary to determine how Pope John Paul II understood and employed the definition of “abortion” in his teaching, and how that teaching relates the act of abortion to the moral species of *killing an innocent human being*.

Overall, I will show that Pope John Paul II’s teaching complements and develops the teachings of prior interventions of the Magisterium, even going back to the decisions from the Inquisition. I will also make clear how the documents of the contemporary period are informed by and build upon previous documents treated in the first and second chapters of this dissertation. In order to understand the teaching of *Evangelium vitae* in particular, and the doctrine of the Magisterium on abortion generally, it is necessary to examine certain documents that *Evangelium vitae* itself builds upon or employs in a special way. Hence, after treating of the relevant teaching from the Second Vatican Council (1965), and of *Veritatis splendor* (1993) commenting on that teaching, this chapter will focus on the Congregation for the Doctrine of the
Faith’s *Declaration on Procured Abortion* (1974), and the 1983 Code of Canon Law, which contains an important development in the understanding of abortion that is assumed in *Evangelium vitae*.

*The Second Vatican Council: Gaudium et spes*

There are only two passages in the documents of the Second Vatican Council that address the topic of abortion. Both are contained within the *Pastoral Constitution on the Church in the World of This Time, Gaudium et spes*, of December 7, 1965.\(^1\) The first is found in the third paragraph of section 27, which bears the subtitle “concerning reverence for the human person.” Because abortion is treated within a complex teaching on offences against human life, it is best to present that teaching together with the paragraphs of section 27 that provide the complete context necessary for understanding the conciliar teaching on abortion.

27. (*Concerning reverence for the human person*). Descending to practical and urgent conclusions, the Council lays stress on reverence for man, so that each must consider his neighbor, with no exception, as another self, having in mind first of all his life and the means necessary to living it worthily, lest they imitate the rich man, who had no care for the poor man Lazarus. Especially in our days an obligation urges of making ourselves the neighbors of absolutely every human being and of actively serving him [when] meeting [him], whether he be an aged person abandoned by all, or a foreign laborer unjustly despised, or an exile, or a child born from an illegitimate union, undeservedly suffering on account of a sin not committed by himself, or a hungry person who disturbs our conscience recalling the voice of the Lord: “as long as you did it to one of these least of my brothers, you did it to me” (*Matth.* 24:40).

Moreover, [actions that] oppose in whatsoever manner to life itself, such as any kind of murder, genocide, abortion, euthanasia and suicide that is itself voluntary; [actions] in whatsoever manner violating the integrity of the human person, such as mutilations, tortures inflicted to the body or the mind, attempts of coercing souls themselves; whatsoever [actions or realities] offend human dignity, such as subhuman conditions of living, arbitrary incarcerations, deportations, slavery, prostitution, commerce of women and children; also ignominious conditions of work, in which laborers are treated as mere instruments of gain, not as free and responsible persons: all these and others of such kind are disgraceful indeed, and while they infect human civilization, they defile more those

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who themselves act in such ways, than those who suffer the injury and they especially contradict the honor of the Creator.²

The second reference to abortion in Gaudium et spes is found in the third paragraph of section 51, which bears the subtitle “on conjugal love reconciled with reverence for human life.” The relevant passage reads: “For God, the Lord of life, has committed to men the excelling ministry of watching over life, which is to be fulfilled in a manner worthy of man. Life, therefore, from its conception, must be guarded with the greatest care; abortion and also infanticide are unspeakable crimes.”³ This particular passage is much simpler than the first passage from Gaudium et spes that addresses abortion. Its teaching on abortion is plain and unambiguous. Nevertheless, several features of the teachings of both passages are worthy of note.

In both passages abortion is set in opposition to the rightly ordered concern and care which human beings, especially Christians, must have and exercise in relation to the lives of others. Abortion is not a moral evil only because it involves positively inflicting death on an innocent victim, but also because it is a failure in the duty of “watching over” and guarding

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² Ibid., 1047-1048: 27. (De reverentia erga personam humanam). Ad practica urgentioraque consortaria descendens, Concilium reverentiam inculcat erga hominem, ita ut singuli proximum, nullo excepto, tamquam alterum seipsum considerare debeant, de eius vita et de medis ad illum digemendam necessariis rationem imprimis habentis, ne divitem illitum entur, qui pauperis Lakazi nulam curam egit. Nostris praesertim diebus urget obligatio nosmetipsos cuiuslibet omnis proximos efficiendi et illi occurrenti actwo inserviendi, sive sit senex ab omnibus derelictus, sive alienegena operarius inustae despectus, sive exsul, sive infans ex illegitima unione natus, impius patiens propter peccatum a se non commissum, vel esuriens qui conscientiam nostram interpellat Domini vocem revocans: “Quamdui fecistis uni ex his fratribus meis minimis, mihi fecistis” (Matth. 25, 40).

Quaecumque insuper ipsi vitae adversantur, ut ciusvis generis homicidid, genocidid, abortus, euthanasia et ipsum voluntarum suicidium; quaecumque humanae personae integritatem violant, ut mutilationes, tormenta corporis mentive inflicta, conatus ipsos animos coercedi; quaecumque humanam dignitatem offendunt, ut infrahumanae vivendi condiciones, arbitrariae incarcerations, deportations, servitus, prostitutio, mercatus mulierum et iuvenum; condiciones quoque laboris ignominiosae, quibus operarii ut mera quaestus instrumenta, non ut liberae et responsabiles personae tractantur: haec omnia et alia huismodi probra quidem sunt, ac dum civilizationem humanam inciunt, magis eos inquinat qui sic se gerunt, quam eos qui iniuriam patiuntur et Creatoris honori maxime contradicunt.

³ Ibid., 1072: Deus enim, Dominus vitae, praecellens servandi vitam ministerium hominibus commissit, modo homine digno adimplendum. Vita igitur inde a conceptione, maxima cura tuenda est; abortus necon infanticidium nefanda sunt crimina.
human life. Combining the teachings from the two passages, abortion must be considered a “crime” that is opposed to life itself, like murder, genocide, euthanasia, and voluntary suicide.

While the terms “direct” or “procured” are never used, it is obvious from the contexts that abortion is considered as a deliberate and voluntary act, willed either as an end or as a means to an end (hence, “crime”). Moreover, while abortion itself is never defined in the passages, and no footnotes are provided that point to ecclesial documents, it must be assumed that the Council Fathers are employing the term according to its common and settled usage, as the ejection of an immature fetus.

_Gaudium et spes_ and _Veritatis splendor_

Given the meaning of the term “abortion” in Catholic usage at the time of the Council, and its employment in _Gaudium et spes_, one of the most remarkable developments in Church teaching on this issue would take place about thirty years later, in the encyclical letter of Pope John Paul II, _Veritatis splendor_ (August 6, 1993). In section 80 of that encyclical, under the sub-heading “‘Intrinsic evil’: evil is not to be done that good might come of it (cf. Rom 3:8),” the Holy Father includes the last part of section 27 of _Gaudium et spes_ in the following context.

80. However, reason testifies there are objects of the human act, which appear “not capable of being ordered” [non ordinabilia] to God, because they altogether dissent from the good of the person created to His image. These are acts which are called “intrinsically evil” [intrinsece malum] by the moral tradition of the Church: they are such always and per se, that is, on account of their object itself [ob ipsum eorum objectum], not by reason of the agent and his other circumstances. Wherefore, the Church, by no means denying the importance of circumstances and in the first place the intention on morality, teaches that there exist “acts, which per se and in themselves [per se ipsos et in se ipsis], outside circumstances, on account of [the act’s] own object [objectum suum], are always gravely illicit.” The second Vatican Council, in the context concerning the respect that is owed to the human person, produces a large example of such acts: “Moreover, [actions that] oppose in whatsoever manner to life itself, such as any kind of murder, genocide, abortion,…”

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Atqui ratio testatur actus humani obiecta esse, quae apparent “non ordinabilia” ad Deum, quia omnino dissident a bono personae ad Ipsi imaginem creatae. Hi sunt actus, qui a morali Ecclesiae traditione “intrinsece malum”
It is necessary to conclude, then, that in the teaching of the Magisterium, abortion, considered as the object of a human act, is intrinsically evil. Given the meaning of abortion in Catholic usage at the time of Gaudium et spes, that necessarily means that eictio fetus immaturi, considered as the object of a human act, is intrinsically evil. Such an act, considered objectively, is non ordinabilia ad Deum, because it altogether dissents from the good of the person created in God’s image. This is the case regardless of the circumstances or the intention of the agent. Moreover, according to Pope John Paul II, the moral object of abortion is an example of an intrinsically evil act that does not admit parvity of matter.

Theologians commonly distinguish three categories of sins based on gravity or levity in matter. There are sins which on account of their matter are always light. An act involving such sinful matter can be mortal only due to an erroneous conscience (judging the matter grave), a gravely evil intention of the agent (finis operantis), or circumstances that change (by way of addition) the moral species of the action (such as when immoderate sleep is deliberately indulged in by a person who has a grave duty to be awake in the circumstances, e.g., a military guard at his post in a time of danger). Sins of this class are said to be “light” from their entire category

5 For examples of treatments on these three categories, see Hieronymus Noldin, S.J. and A. Schmitt, S.J., Summa Theologiae Moralis, Volume I: De Principiis (Austria: Feliciani Rauch, 1960), 274-275; also, Dominic Prümmer, O.P., Manuale Theologiae Moralis, Tomus I (Barcelona, Herder, 1946), 247-256.
(peccata ex toto genere suo levia). Common examples of such sins include excesses in food and non-inebriating drink, immoderation in sleep or in laughter, and vain or idle thoughts.

On the opposite end of the spectrum are sins which on account of their matter are always grave. An act involving such sinful matter can be venial only due to an imperfection in the human action, either on the part of the intellect (failing in knowledge or advertence regarding the gravity of the sin) or on the part of the will (failing to give adequate consent to the action performed). Sins of this class are said to be grave from their entire category (peccata ex toto genere suo gravia). They do not admit parvity of matter (non admittunt parvitatem materiae). Sins may be in this category because they are directly opposed to divine good, such as heresy, blasphemy, deliberate despair (against theological hope), and hatred of God. Sins may also be grave ex toto genere suo if they do injury to a created good of great value that is indivisible, such as innocent human life itself. Hence, murder is an example of such a sin. The Magisterium also recognizes this category of sin in the teaching of paragraph 1756 of the Catechism of the Catholic Church: “There are actions which through themselves and in themselves, independently from circumstances and from intentions, are gravely illicit by reason of the object itself; thus blasphemy and perjury, murder and adultery.”

Finally, in between the two classes already mentioned fall sins that are generally grave (peccata ex genere suo gravia), but which in the concrete may admit parvity of matter (admittunt parvitatem materiae). Sins may be in this category if the good they injure is finite and divisible, such as the property of another. Accordingly, stealing is generally grave but admits to levity

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6 Catechismus Catholicae Ecclesiae (Città del Vaticano: Libreria Editrice Vaticana, 1997), 470: “Actus sunt qui per se ipsos et in se ipsis, independenter a circumstantiis et ab intentionibus, ratione sui objecti semper sunt graviter illiciti; sic blasphemia et perjurium, homicidium et adulterium.”
when the portion of the property taken is small and does no serious harm to the owner or to others.

According to *Gaudium et spes* and *Veritatis splendor*, the teaching of the Magisterium implies that the object of abortion cannot be considered as a sin belonging to the categories of *ex toto genere suo levia* or *ex genere suo gravia*. Rather, it must belong to the category of *peccata ex toto genere suo gravia*. That is to say, the sinful matter involved in the human act of *eiectio fetus immaturi* is always and necessarily grave, never admitting parvity of matter. The agent can avoid guilt of mortal sin only due to inadequate knowledge (or advertence) or inadequate consent of the will.

From the teaching of *Gaudium et spes*, the general reason why abortion is grave *ex toto genere suo* is because it is an action that is in opposition to human life itself, like other sins of murder, genocide, euthanasia, and voluntary suicide. Every one of the acts mentioned is in opposition to human life in an indivisible manner; there is no way to murder someone *in part*, in the manner in which one can deprive another of his monetary property *in part*. Similarly, abortion always deprives the nonviable fetus of life entirely. As noted in the previous chapter, if the child survives the ejection, *abortion* was not procured. Hence, abortion too must be regarded as an action opposed to human life in an indivisible manner. While this seems sufficient to explain why abortion must be included in the class of sins that are grave *ex toto genere suo*, subsequent teaching of Pope John Paul II will bring even more clarity to the reasons behind abortion’s placement in that category of grave sin.

*Congregation for the Doctrine of the Faith: Declaratio De Abortu Procurato*

Before addressing the teaching of Pope John Paul II in *Evangelium vitae*, it is necessary to consider one other magisterial document that, like *Gaudium et spes*, was published in the
pontificate of Paul VI. On November 18, 1974, the Congregation for the Doctrine of the Faith, by the order of Pope Paul VI, published its *Declaration on Procured Abortion (Declaratio De Abortu Procurato)*.\(^7\) This document is divided into six sections. In between a preface (paragraphs 1-4) and a conclusion (paragraphs 24-27), the substantive sections, first, expound the doctrine of the faith that provides the foundation for the Church’s teaching on procured abortion (paragraphs 5-7); second, join the doctrine of the faith with arguments discoverable by the light of reason (paragraphs 8-13); third, present replies to some objections (paragraphs 14-18); and, finally, address the relationship between the moral life and the civil law on the problem of abortion (paragraphs 19-23).

Although dedicated entirely to the topic of procured abortion, the *Declaration* does not contain any significant developments in Church teaching on that topic that cannot be found in other ecclesial documents. But this is not surprising, as the principal purpose of the document is “to recall” to all the Christian faithful the traditional teachings of the Church on the right to life of the innocent and on the problem of procured abortion.\(^8\) Still, the following points of the *Declaration* are noteworthy.

Since the apostolic period, and into the Middle Ages and beyond, the “Fathers” (*Pateres*), “Pastors” (*Pastores*), and “Doctors” (*Doctores*) of the Church consistently taught the same fundamental doctrines on the illicitness of abortion (*de abortu illiceitate*). While the *Declaration* acknowledges that ecclesiastical laws and opinions of various “approved authors” (*probatos auctores*) sometimes made distinctions with respect to penalties and the evaluation of sins and case resolutions based on the generally held view that the spiritual soul was not present until

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\(^8\) Ibid., 731. According to the document’s preface, the occasions for recalling the traditional teaching were the increasing movements aimed at the liberalization of abortion laws in various societies of the time.
after the first weeks, it goes on to state: “Nevertheless, it was never denied by them [the authors] at that time that abortion, even in the first days, is objectively a grave sin. And in fact all were unanimous in such a condemnation.”

Immediately following the last statement, the *Declaration* recalls various documents in support of the unanimous tradition of condemning abortion as an objectively grave sin. Among the sources referenced, special mention is made of the teachings of Pope Pius XI, Pope Pius XII, and the Second Vatican Council. Concerning the teaching of Pope Pius XI, the document references the section of *Casti connubii* addressed in chapter two of this dissertation, stating: “Pius XI expressly replied to the more grave objections.”

Given the context in which this statement appears in the *Declaration*, it is clear that, according to the judgment of the Congregation for the Doctrine of the Faith, even though *Casti connubii* never used the term “abortion” when condemning all operations that involve “direct killing of the innocent,” abortion itself was necessarily included in that condemnation.

Concerning the teaching of Pope Pius XII, the *Declaration* states: “Pius XII clearly rejected direct abortion, namely, that which has that aspect [*ratio*] of an end or of a means to an end.” In a footnote to this statement, the Congregation notes that the judgments of Pius XII are “certain” (*certae*), “definite” (*definitae*), and “many” (*plures*), and capable of their own complete treatise. The footnote then indicates the preference of the Congregation simply to quote from a passage of the “San Luca” Address of November 12, 1944. “As long as a man is not guilty, his

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9 Ibid., 734: “Nihilominus ab iis numquam tunc negatum est abortum, etiam primis iis diebus, objective grave esse peccatum. Ac reapse in talem condemnationem omnes convenerunt.”

10 Ibid., 735: “Pius XI gravioribus obiectionibus expresse respondit.” As addressed in the second chapter of this dissertation, such “grave objections” include: that death-dealing operations on the fetus may be required to save the health or life of the mother, and may be justified by principles of defense against an unjust aggressor, or the “law of extreme necessity.”

11 Ibid.: “Pius XII clare reiecit abortum directum, eum scilicet qui finis vel medii ad finem rationem habet.”
life is intangible, and therefore every act tending directly to destroy it is illicit, whether such
destruction be intended as an end or only as a means to an end, whether it deals with embryonic
life or [life] in its full development or [life] already at its end.”

In referencing the Second Vatican Council, the Declaration quotes one line from section 51 of Gaudium et spes, “Life… from its conception, must be guarded with the greatest care;
abortion and also infanticide are unspeakable crimes”; and then refers readers to section 27 in a
footnote. Immediately following the last quotation, the Declaration completes its summary
treatment of ecclesial texts by recognizing the more recent declarations of Pope Paul VI on the
subject of abortion. In particular, the document points readers to the Holy Father’s December 9,
1972, allocution to Italian Catholic experts of law, Salutiamo con paterno effusione, wherein
Paul VI taught that the Church’s condemnation of abortion “has never changed, and can never be
changed.”

After providing in a footnote the relevant reference information for the last quotation
from Pope Paul VI, the Declaration contains the following statement in the same footnote
(number 18). “Among the documents of this unchangeable doctrine, to be held in a special place
is the declaration of the Holy Office, by which direct abortion is condemned (Denz. 1890).

12 Ibid., footnote 15. The quotation from the San Luca address is given as: “Finché un uomo non è colpevole, la sua
vita è intangibile, ed è quindi illecito ogni atto tendente direttamente a distruggerla, sia che tale distruzione venga
intesa come fine o soltanto come mezzo al fine, sia che si tratti di vita embrionale, o nel suo pieno sviluppo ovvero
giunta ormai al suo termine.”

13 Ibid., 736. The Declaration gives the quotation as “neque esse mutatam, neque posse umquam mutari.” The
citation provided (in footnote 18) is “Alloc. Salutiamo con paterno effusione, die 9 Dec. habita, a. 1972 (A.A.S. 64,
1972, pp. 76-79).” Evidently there was a typesetting mistake in the pagination, as the allocution is really found on
pages 776-779 of the Acta Apostolicae Sedis. The full context of the quotation, originally given in Italian, can be
found on page 777: “You know well how the Church has always condemned abortion, so that the teachings of our
Predecessor of venerable memory, Pius XII, and of the Second Vatican Council have done nothing but to confirm
her never changed and immutable moral doctrine.” [“Voi ben sapete come la Chiesa abbia sempre condannato
l’aborto, si che gl’insegnamenti del nostro Predecessore di ven. mem. Pio XII e del Concilio Vaticano II non han
fatto che confermare la mai mutata ed immutabile sua doctrina morale.”] There are two footnotes in the original
allocution, one referring to the October 29, 1951, Address to Midwives of Pope Pius XII, the other to sections 27
and 51 of Gaudium et spes.
A.S.S. 17 (1884), pp. 555-56; 22 (1888-90), p. 748; Denz.-Schön. 3258.”\(^{14}\) The parenthetical note to “Denz. 1890” at the end of the sentence refers readers directly to the August 19, 1889, reply of the Inquisition to the Archbishop of Cambrai. Number 1890 in Denzinger reads: “*In the same way the response is given with [the following] having been added: ‘and any directly lethal surgical operation on the fetus or gestating mother.’”\(^{15}\) The response to which it refers is that of the Inquisition from May 28, 1884, which declared that craniotomy “cannot be safely taught” in Catholic schools to be licit, even in cases when the child would die with or without the operation, but the mother could be saved with it. Hence, Denzinger 1890 merely provides the response of 1889 in abbreviated form.

It should be recalled that among the twelve hypothetical cases, and the seventeen questions formulated in relation to those cases, submitted to the Inquisition by the Archbishop of Cambrai, at least two of the cases asked about the lawfulness of abortion (as distinguished from craniotomy or some other procedure) in order to save the mother from dire circumstances resulting from pregnancy or to save her from a grave operation. Accordingly, the *Declaration* can rightly refer to the 1889 response without confusing the distinction between abortion in the strict sense and craniotomy, or other similar procedures. While the second reference (A.S.S. 17) is to the 1884 response to the question about the teaching of craniotomy per se, it is immediately followed by the A.S.S. 22 reference and the Denzinger-Schömetzer 3258 reference, both of which refer again to the 1889 response alone.\(^{16}\) It seems clear that between the 1884 response

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and the 1889 response, the latter is the principal document the Congregation for the Doctrine of the Faith referred to “by which direct abortion is condemned.” The inclusion of the 1884 response on craniotomy is still reasonable and useful insofar as it provides an important part of the context for the 1889 response.

While in the Declaration the 1889 response clearly holds a place of prominence among the documents on abortion, it seems at least highly probable that it was not the only document the Congregation intended to reference when it cited “Denzinger 1890” in its parenthetical note. Immediately under “1890” (i.e., the 1889 response) are “1890a,” the July 25, 1895, Inquisition response to the Titius case; “1890b,” the May 4/6, 1898, Inquisition response to the Bishop of Sinaloa; and “1890c,” the March 20, 1902, Inquisition response to the dean of the theology faculty of the University of Marianopolitana. As covered in the first chapter of this dissertation, all of the responses just listed rejected direct abortion as a possible moral solution to gravely difficult situations of pregnancy. Given that the responses appear in Denzinger as subsumed under paragraph 1890 (i.e., as 1890a-c), it seems likely that the Congregation intended all of the responses to be read together as a magisterial declaration condemning direct abortion.

Even if by the “Denzinger 1890” reference the Congregation intended only to refer to the response of August 19, 1889 (“...and any directly lethal surgical operation on the fetus or gestating mother”), at least one important point is clear from the language surrounding that reference. According to the Declaration, it is not just the teaching that direct abortion is lawful that was condemned by the Holy Office (Inquisition) in the late nineteenth century, but the act of

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18 This would be fitting also given that the responses are all connected, with the later ones building upon the earlier ones. The 1895 response was given “according to” the earlier decrees of 1884 and 1889; the 1889 response was given, in part, “according to the decree of” 1895; and the 1902 response was given “according to the decree of” 1898.
direct abortion itself. Such an understanding confirms the widely taught interpretation of theologians presented in the first two chapters of this dissertation, that the nineteenth century decisions on directly lethal procedures are doctrinally authoritative, and that they teach the moral unlawfulness of craniotomy, direct abortion, and any directly lethal operation on the fetus or gestating mother.

Also in harmony with the responses of the Inquisition, and with the common teaching of theologians through Vatican II, the Declaration appears to take for granted that procured abortion is a form of direct killing. After explaining how conclusions of natural reason cohere with the teaching of the Church on abortion, paragraph 14 of the document opens with the following statements. “Therefore, the divine law and natural reason itself exclude any right of directly killing [directe interficiendi] an innocent human being. But if the causes, by which abortion is defended, were always manifestly perverse or futile, this question would not be so vehemently agitating…”19 Here it seems that the Declaration simply assumes procured abortion is a type of direct killing of an innocent human being, albeit one that is often defended on account of causes that are not in themselves always manifestly perverse or futile.

Examples of such not always manifestly perverse or futile causes are also provided in paragraph 14 of the Declaration. They include: dangers to the mother’s health or even life; grave burdens accompanying another infant, especially in cases when there are good reasons to think the child will be abnormal or infirm; considerations of honor or dishonor, or diminution of social status; etc. “But,” the Declaration states, “straightforwardly it is to be declared [that] from these reasons it is not possible to grant to anyone, at any time, the right of deciding concerning

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19 Congregatio Pro Doctrina Fidei, “Declaratio De abortu procurato,” 739: “Lex igitur divina atque ipsa naturalis ratio excludunt quodlibet ius directe interficiendi hominem innocentem. Verumtamen si causae, quibus abortus defenditur, semper essent manifesto pravae vel futtiles, haec quaestio non tam vehementer agitaretur...”
the life of another human being, even in his beginning…” It goes on to conclude, “That infant himself, when he will have reached to a mature age, will never have the right of inflicting death upon himself; therefore, so long as there is no right over himself, so much less are the parents able to choose death on behalf of him.”20 These statements provide more evidence that in the Declaration the Congregation assumes that procured abortion involves choosing death for the child.

Finally, the Congregation makes an important point regarding the independence of the Church’s teaching from any theory concerning the moment of rational animation in the fetus. Footnote 19 of the document dedicates a whole paragraph to the explanation of why the Declaration deliberately leaves aside the question of the moment when the spiritual soul is infused (anima spiritualis infundatur) into the product of conception or fertilization. It notes how there is not a unanimous tradition, and that authors differ among themselves on the question. Moreover, the determination of the correct view does not belong to (physical) science, since the existence of the immortal soul (animae immortalis) does not pertain to its province. Rather, it is properly a question of philosophy, from which the moral affirmation of the Declaration is regarded as entirely independent, on account of two causes.21

The first reason given is “because, even if one posits to arrive a slower infusion to the soul, there is nonetheless the beginning of human life in the fetus (which is confirmed with the help of biological science), which both prepares for and demands a soul, through which the

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20 Ibid.: “At prorsus est declarandum ex his rationibus nullam umquam obiective tribuere posse ius decernendi de alterius hominis vita, etiam in eius exordio;…Ille ipse infans cum ad maturam aetatem pervenerit, numquam ius habebit mortem sibi consciscendi; donec igitur sui iuris non est, tanto minus parentes eligere valent pro eo mortem.”

21 Ibid., 738.
nature received from the parents would be perfected.” In the body of the Declaration, the implications of this point are later made explicit. “Certainly, from a moral account, this is firm: even if by chance it be doubted that the fruit of conception is already a human person, it is already objectively a grave sin to entrust oneself to the danger of committing homicide. ‘He is a man also who will be a man.’” The points made here are clearly reminiscent of teachings of some theologians covered in the first and second chapters of this dissertation. For example, Merkelbach maintained that direct abortion always brings death to the fetus who is a man or “on the way to a man”; hence, he regarded it as the direct killing of a man or an action “equivalent to it.” For those holding a delayed animation theory, Prümmer noted how the early fetus can be considered a “man in becoming” (“homo in fieri”), who certainly will be a man, if not impeded by abortion. Similarly, Gury taught that a fetus without a rational soul would still be “ordained unto a formed man” (ordinatur ad hominem formandum). Consequently, in such a case, he considered procured abortion to be “anticipated homicide” (homicidium anticipatum).

The second reason given by the Declaration is “because if the infusion of the soul be only probable, concerning which we affirm (for in reality the contrary will never be certain), it should be concluded that to take away the life is the same as to commit oneself to the risk of killing a human being, not only in expectation, but altogether arranged by a soul.” Perhaps this point can be illustrated by the following example. A man goes into a popular part of a forest

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22 Ibid.: “1) quia, etiam si ponatur infusionem animae tardius supervenire, est nihilominus in fetu incipiens humana vita (de qua biologicae scientiae ope constat), quae et praeparat et exigit animam, per quam natura a parentibus accepta perficiatur;”

23 Ibid., 739: “Ex ratione vero morali hoc constat: etiamsi forte dubitetur sitne fructus conceptionis iam persona humana, objective grave peccatum est se committere in periculum homicidii faciendii. ‘Homo est et qui est futurus.’” The internal quotation is attributed to Tertullian, Apologeticum IX, 8: PL I, 314-320; Corp. Christ. I, p.103, 1. 31-36.

24 Ibid., 738: “quia si solum tamquam probabilis illa animae infusio, de qua dicimus (non enim de re contraria umquam constat), judicetur, vitam ei adimere idem est ac periculo se committere occidendi hominis, non tamquam in spe, sed omnino anima instructi.”
during hunting season in order to hunt deer. Off in the distance he notices a movement in the bushes and sees a figure that could be either a deer or another hunter. While he thinks it is likely a deer, it is not yet possible to be certain; there is still reasonable probability that it is a man. To shoot in such circumstances is to commit oneself to the risk of killing a human being. But to commit oneself in such a fashion is to be willing to kill the innocent. Since such killing is objectively morally evil, that means a willingness to do what is objectively sinful.

In a similar way, according to the Declaration, an agent would not escape moral fault in relation to the killing of a human being when the agent is willing to abort in a case where the presence of a rational soul is only probable. As long as there is unresolved reasonable doubt concerning the absence of a rational soul (because there is reasonable probability concerning its presence), the agent who aborts is willing to kill an innocent human person, precisely because he is choosing to abort what really could be (what probably is) an innocent human person.

*The 1983 Codex Iuris Canonici*

Before considering the focused teaching of Pope John Paul II on abortion, which presupposes and builds upon the texts of Vatican II and the Declaration, it is necessary to address one more development that will be crucial for understanding that teaching. Between the Declaration from the Congregation for the Doctrine of the Faith in 1974, and his 1995 encyclical letter, *The Gospel of Life (Evangelium vitae)*, Pope John Paul II promulgated the revised *Codex Iuris Canonici.* He did this in the Apostolic Constitution, *Sacrae disciplinae leges,* of January 25, 1983. Therein the Holy Father decreed that the revised *Code of Canon Law* would take

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25 Pope John Paul II, “Codex Iuris Canonici,” *Acta Apostolicae Sedis* LXXV, Pars II (1983): 1-317. All quotations and references to the revised Code of Canon Law are taken from this text, which hereafter will be abbreviated by *CIC.*

effect the first day of Advent of that same year. Since then, the revised Code has taken the place of the *Code of Canon Law* promulgated in 1917, and has become binding on the whole Latin Church.27

The most relevant canon of the revised Code is canon 1398. That canon reads: “Anyone who procures abortion, upon accomplishment having been secured [effectu secuto], incurs excommunication latae sententiae.”28 Given that canon 6 §2 instructs that “the canons of this Code, insofar as they repeat the former law, are to be assessed also in light of the canonical tradition,” the explanations of the terms “procure” and “effectu secuto” provided in the second chapter of this dissertation can be applied to canon 1398 of the revised Code.29 By the same principle, the term “abortion” must also mean (at least) *ejectio fetus immaturi*. This is further supported by the verbatim repetition of most of the language of canons 15 and 19 of the 1917 Code in canons 14 and 18, respectively, of the revised Code. Canon 14 reads: “Laws, even invalidating and disqualifying, do not bind in doubt of law; whereas in doubt Ordinaries can dispense from them, so long as, if it is a matter of a reserved dispensation, it is accustomed to be conceded by the authority to which it is reserved.”30 Canon 18 is entirely identical to canon 19 of the 1917 Code: “Laws that establish a penalty, or that constrain the free exercise of a right, or

27 See *CIC*, canons 6 (concerning the abrogation of the 1917 Code) and 1 (concerning the application of the canons of the Code to the “Ecclesiam latinam”).

28 *CIC* 1398: “Qui abortum procurat, effectu secuto, in excommunicationem latae sententiae incurrit.”

29 *CIC* 6 §2: “Canones huius Codicis, quatenus ius vetus referunt, aestimandi sunt ratione etiam canonicae traditionis habita.”

30 *CIC* 14: “Leges, etiam irritantes et inhabilitantes, in dubio iuria non urgent; in dubio autem facti Ordinarii ab eis dispensare possunt, dummodo, si agatur de dispensatione reservata, concedi soleat ab auctoritate cui reservatur.” As translated in the second chapter of this dissertation, canon 15 of the 1917 Code can be rendered: “Laws, even invalidating and disqualifying, do not bind in doubt of law; whereas in doubt of fact the Ordinary can dispense from them, so long as it is a matter concerning laws from which the Roman is accustomed to dispense.” [“Leges, etiam irritantes et inhabilitantes, in dubio iuris non urgent; in dubio autem facti potest Ordinarius in eis dispensare, dummodo agatur de legibus in quibus Romanus Pontifex dispensare solet.”]
that contain an exception to the law, are subject to strict interpretation.”  

Hence, for the same reasons expounded in the second chapter of this dissertation, it would seem that the “abortion” spoken of in canon 1398 of the revised Code must be subject to the strict definition of *ejectio fetus immaturi*, even if a wider definition might be thought probable.

Given the principles just articulated, it is no surprise that some early commentators on the revised *Code of Canon Law* maintained the traditional understanding of abortion in their explanations of canon 1398. Accordingly, in his 1985 commentary, Federico Anzar wrote: “The abortion here contemplated is denominated procured abortion, differentiating it from spontaneous abortion; that is to say, the interruption of pregnancy when the fetus is not yet viable, when he cannot subsist outside of the maternal womb, and this fact is due to the free intervention of man.”  Similarly, in the same year, Thomas Green noted: “…the 1917 Code is largely restated (CIC 2350, §1). All involved in the deliberate and successful effort to eject a non-viable fetus from the mother’s womb incur a *latae sententiae* excommunication.”

De Paolis summarized the matter in the following way.

The Code does not say what should be understood by the word “abortion.” The traditional doctrine distinguishes infanticide from abortion. Infanticide is had where the infant is killed while still in the maternal womb, so that by parts it may be extracted, when it is not possible to be extracted whole, on account of diverse reasons. Abortion, however, is generally defined: the ejection of a living but not vital fetus. Since in penal matter a strict interpretation is to be held (c. 18), and analogy is not possible, the penalty of excommunication is not to be applied to infanticide by the law established, but only to

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31 *CIC* 18: “Leges quae poenam statuunt, aut liberum iurium exercitium coarctant, aut exceptionem a lege continent, strictae subsunt interpretationi.” The Latin text is identical to that of canon 19 of the 1917 Code.

32 Federico Anzar, “De las sanciones en la Iglesia,” in Lamberto de Echeverria, ed., *Código de Derecho Canónico* (Madrid: Biblioteca de Autores Cristianos, 1985), 625-683, at 682: “El aborto aquí contemplado es el denominado aborto provocado, diferenciándolo del aborto espontáneo; es decir, la interrupción del embarazo cuando el feto todavía no es viable, cuando no puede subsistir fuera del seno materno, y este hecho se debe a la libre intervención del hombre.”

abortion.\textsuperscript{34}

Hence, in the absence of any authoritative determination to the contrary, it seemed clear to various canonists that the traditional and strict definition of abortion had to be assumed in the interpretation of canon 1398 of the revised Code.\textsuperscript{35}

Nevertheless, both within the years leading up to the revised Code and within the years just after its promulgation, it is possible to find certain trends among some authors suggesting a need for a broader definition of abortion. Accordingly, even in the same work of De Paolis quoted above, the author goes on to state the following.

But this strict interpretation \textit{[of the definition of abortion]} had already found opposition in Coronata and in Wernz-Vidal. But especially today, the distinction between feticide and abortion cannot be sustained any longer, if we consider the modern means to procuring abortions. Moreover, the rationale of the distinction seems no longer to be given, at least if we consider feticide as the abortive means and abortion itself. In this context c. 1398 is to be understood.\textsuperscript{36}

While he appeared to acknowledge that principles of canonical tradition and interpretation demanded the penalty of canon 1398 to be applicable only in cases of ejection of a non-viable fetus, De Paolis believed that in the era of the revised Code, the time had come to recognize a broader definition of abortion, inclusive of feticide. His rationale for the more inclusive

\textsuperscript{34} Velasio De Paolis, \textit{De Sanctionibus in Ecclesia: Adnotationes in Codicem: Liber VI} (Rome: Pontificia Universitas Gregoriana, 1986), 119: “Codex non dicit quid intelligatur verbo ‘abortus’. Doctrina tradicionalis [sic] distinguit infanticidium ab abortu. Infanticidium habetur ubi infans occiditur adhuc in utero materno, ita ut per partes extrahi possit, cum non possit integer extrahi, propter diversas rationes. Abortus autem generatim definitur: ejectio foetus vivi sed non vitalis. Cum in materia poenali stricta sit tenenda interpretatio (c. 18), neque possibilis sit analogia, iam poena excommunicationis a lege statuta non applicatur infanticidio, sed tantum abortui.”


\textsuperscript{36} Velasio De Paolis, \textit{De Sanctionibus in Ecclesia: Adnotationes in Codicem: Liber VI}, 119: “Sed haec interpretatio stricta oppositionem iam invenerat in Coronata et in Wernz-Vidal. Sed praesertim hodie distinctio inter foeticidium et abortum iam sustineri non amplius potest, si media moderna ad abortus procurandos consideramus. Ceterum non amplius videtur dari ratio distinctionis, saltem si consideramus foeticidium ut medium abortivum et abortum ipsum. In hoc contextu intelligendus est c. 1398.” The opposition of Coronata and Wernz-Vidal, mentioned by De Paolis, was addressed in the second chapter of this dissertation.
definition is because modern methods of procuring abortion no longer allow for a clear
distinction between feticide in the womb and ejection of an immature fetus.

Just a few years prior to the promulgation of the revised Code, another author had offered
a rather comprehensive redefinition of abortion, which, precisely because of its greater
inclusiveness, he believed was superior to the traditional and narrower definition. In 1979, Lino
Ciccone suggested that abortion should be defined as “the deliberate and direct killing, however
realized, of a human being in the initial phase of his life including between fertilization and
birth.” With this definition, the distinction between the viable and non-viable fetus would be
irrelevant, as well as any necessary distinction between abortion and embryotomy, craniotomy,
or other form of feticide accomplished prior to birth. However, it is important to note that the
traditional understanding of abortion, as *ejectio fetus immaturi*, could still be included within
Ciccone’s revised definition, as one realized form of deliberate and direct killing.

While some authors before Ciccone had argued in favor of a wider definition of abortion,
Ciccone’s own definition seems to have appeared at an opportune time to be considered not just
by his fellow clerics, but even by the Pontifical Council for Legislative texts. On January 19,
1988, the Pontifical Commission for Authentically Interpreting the Code of Canon Law (as it
was then called) provided an official response to the following dubium.

Whether abortion, as found in canon 1398, is to be understood only concerning the

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uccisione deliberata e diretta, comunque attuata, di un essere umano nella fase iniziale della sua vita compresa tra
la fecondazione e la nascita.”

38 An indication that Ciccone’s article was widely read is its appearance in French translation in the journal *Esprit et
Vie*, in 1981. Gérard Lefeuvre, the translator from Italian to French, rendered Ciccone’s definition in the following
way: “la mise à mort délibérée et directe, réalisée de quelque façon que ce soit, d’un être humain, dans la période
initiale de sa vie comprise entre la fécondation et la naissance.” [“the deliberate and direct putting to death,
realized in whatever way it may be, of a human being, in the initial period of its life, including between fertilization
and birth.”] This is found on page 402 of “Le Confesseur et L’Abortement,” *Esprit et Vie* 27 (9 July 1981): 401-410.
ejection of an immature fetus, or also concerning the killing of the same fetus in whatsoever manner and at whatsoever time from the moment of conception it may be procured?

**Response:** Negative to the first part: affirmative to the second.

The response was then officially confirmed by Pope John Paul II on May 23, 1988.\(^{39}\) Since the Pontifical Council provided no explanation or background concerning the response, it is impossible to say whether Ciccone’s writing actually provided the occasion for the decision.\(^{40}\) Nevertheless, that decision *de facto* settled the issue in Ciccone’s favor. Perhaps more importantly, the language he used not only bears similarities to the language of the dubium, but it will be almost identical to a phrasing employed just seven years later by Pope John Paul II, in *Evangelium vitae*.

Before turning to *Evangelium vitae*, it will be helpful to summarize the relevance of the January 19, 1988 decision from the Pontifical Council for Legislative Texts, as both parts of that decision are critically important for understanding the teaching on abortion contained in *Evangelium vitae*. The first part of the response basically addresses whether the understanding of abortion in the 1983 Code is simply identical to the understanding of abortion in the 1917 Code. The negative response does not deny that the ejection of an immature fetus is still *sufficient* to constitute an abortion. That such an ejection is still abortion in the canonical sense


\(^{40}\) At the very least, it can be said with Morrisey, “…after considering the opinions of authors such as De Paolis and Ciccone, it is not difficult to see that such a clarification was necessary.” See *The Canonical Effects of Abortion in the 1983 Code of Canon Law*, 22.
is implicitly affirmed in the second part of the response. Here *not only* is the ejection of an immature fetus an abortion according to canonical understanding, but also (*etiam*) the killing (*occisione*) of the same fetus, “in whatsoever manner and at whatsoever time from the moment of conception it may be procured,” is to be understood as “abortion.” But *still included* is the traditional understanding of “ejection of an immature fetus” as sufficient to constitute abortion. According to canonical understanding under the 1917 Code, only the procurement of “ejection of an immature fetus” constituted “abortion” that was punished with excommunication *latae sententiae*; embryotomy and craniotomy (inasmuch as they constituted direct feticide), though sinful, were not punished with the same excommunication. Now, procuring fetal death by those means may be punishable by the same excommunication that also applies to the ejection of an immature fetus.

While neither the Pontifical Council nor the Holy Father needed to give any explanation for the widening of the definition of abortion in the revised Code (and none was provided), it seems clear that one likely reason can be found in the concern expressed above by De Paolis: that due consideration be given to the modern means of procuring abortion. Considering those means, and the extensive legalization of abortion in various countries in the years leading up to the 1983 Code, it is not surprising that Pope John Paul II deemed it necessary to provide a more encompassing definition of abortion in canon law.

Even just a year before the promulgation of the revised Code, it is possible to find Catholic authors explaining in detail common means of procuring pregnancy termination.⁴¹ These include: *dilatation and curettage* (D & C), by which the cervix is progressively dilated,

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⁴¹ Donald G. McCarthy and Edward J. Bayer, eds., *Handbook on Critical Life Issues* (Saint Louis, Missouri: Pope John Center, 1982), 96-98. Concerning the last method mentioned in this paragraph, the authors mistakenly use the term *hysterectomy* instead of *hysterotomy*. The latter, the cutting into the uterus, is what they mean; the former is the removal of the uterus itself.
and the lining of the womb is then scraped with a sharp curette, removing the fetus, placenta, and remaining tissue; *suction and curettage* (S & C), similar to D & C, except a vacuum suction device is used in place of a curette; *instillation* (by injection) of *prostaglandins*, causing contractions that force the fetus to leave the womb; *instillation* of *hypertonic saline* into the amniotic fluid, which usually kills the fetus through burning and salt imbalance as a result of swallowing the saline; *dilation and evacuation* (D & E), like D & C, but with the use of specially-designed “ovum forceps,” which crush the fetal body to facilitate removal of placenta, membranes, and fetus from the uterus. Of course, *hysterotomy* or *cesarean section* is also used, especially when the fetus is too large to be removed by D & E, or when instillation procedures fail; the newborn may simply be left to die in such cases.

D & C and S & C procedures are normally performed in the first trimester, when the fetus is always non-viable. D & E procedures are normally performed in the second trimester, when the fetus is usually non-viable. Instillation procedures are normally performed in either the second or the third trimester, when the fetus may be viable. Hysterotomy is usually performed in the last trimester. Especially given the overlap of certain identical and commonly used procedures across periods of viability and non-viability, it is not difficult to understand why the circumstance of viability began to lose relevance in the minds of many. But from the perspective of canon law, perhaps the most critical development, apart from the official papal interpretation, was that all procedures similar to those mentioned above came to be commonly called by the name “abortion” regardless of fetal status in relation to viability. Once common parlance began to include all such procedures under “abortion,” it was only reasonable that ecclesiastical law would come to reflect this, especially since the standard of common usage was a principal reason
used by some canonists in the past for distinguishing between abortion in the strict sense and craniotomy (and similar procedures).  

*The Encyclical Letter: Evangelium vitae*

The encyclical letter “on the inviolable good of human life,” (*de vitae humanae inviolabili bono*), *Evangelium vitae*, was officially signed by Pope John Paul II on March 25, 1995. It contains, by far, the most comprehensive teaching on abortion ever produced in a papal encyclical. That teaching is found principally in the third chapter of the encyclical, titled: “You Shall Not Commit Homicide” (*Non Homicidium Facies*), which contains sections 52-77 of the letter. Within these paragraphs, the doctrine on abortion is preceded by more general doctrine on respect due to human life and the grave immorality of direct and voluntary killing of the innocent (sections 52-57).

Renewing a theme found in the teachings of Pope Pius XII, sections 52 and 53 address the foundation for the Church’s doctrine in the distinction between God’s supreme dominion or sovereignty (*dominatio*) over human life, versus man’s mere ministerial (*ministerialis*) sovereignty. The latter is limited by the former, which is said to be unique and infinite (*unicum et infinitum*). A moral consequence of this distinction is found in the statement from the Congregation for the Doctrine of the Faith’s *Instruction on respect for begetting human life and on defending the dignity of procreation, Donum vitae* (February 22, 1987), quoted in *Evangelium vitae*: “God alone is Lord of life from the beginning until the end: no one, in no circumstances,

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44 Ibid., 459-490.

can claim for himself the right of directly bringing death to an innocent human creature.\footnote{Ibid. The *Donum vitae* reference is provided on page 461 in footnote 41: “Congregatio Pro Doctrina Fidei, Instructio de observantia erga vitam humanam nascentem deque procreationis dignitate tuenda *Donum vitae* (22 Februarii 1987), Introductio, 5: AAS 80 (1988), 76-77”.
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Immediately after this quotation, *Evangelium vitae* notes: “With these words the Instruction *Donum vitae* sets forth the special doctrine of divine revelation on the sacred and inviolable character of human life.\footnote{Ibid., 461: “Praecipuam iis vocibus doctrinam revelationis divinae proponit Instructio *Donum vitae* de sacra vitae humanae inviolabilique indole.”
}

A precise formulation of the teaching of divine revelation will be provided four paragraphs later, in section 57. In between, Pope John Paul II makes an important distinction that can help in understanding his use of terms that express *directness* in relation to killing. In section 55, the Holy Father introduces the notion of “*legitimate defense*” (*defensio legitima*) of human life. In the last paragraph of this section, Pope John Paul first quotes from paragraph 2265 of the *Catechism of the Catholic Church*: “Legitimate defense can be not only a right, but a grave duty for him who ought to serve the life of others, of the family or the common good of the civil community.”\footnote{Ibid., 463: “legitima defensio potest esse non solum ius, sed grave officium ei, qui vitam aliorum, familiae et communitatis civilis bonum commune praestare debet.” Footnote 44 references “*Catholicæ Ecclesiæ Catechismus*, n. 2265.” The text of n. 2265 as quoted in *Evangelium vitae* is based on the original French version of the *Catechism*, which has “La légitime défense peut être non seulement un droit, mais un devoir grave, pour celui qui est responsable de la vie d’autrui, du bien commun de la famille ou de la cité.” See *Catéchisme de L’Église Catholique* (Paris, France: Mame-Librairie Editrice Vaticane, 1992), 463. The revised Latin *Editio Typica* has instead: “Legitima defensio potest esse non solum ius, sed grave officium ei, qui vitam aliorum praestare debet.” See *Catechismus Catholicæ Ecclesiæ*, 578.
} He then proceeds to make some important qualifications. “Unfortunately, however, it happens that because it is necessary for the attacking [one] to be hindered, lest he harm, sometimes his death may be brought about. And for that reason, in a case of death the result is to be assigned to the same criminal himself, who by his violence exposed himself to
death, even if he may not be morally culpable because of the use of reason having been impeded.”

While there is no explicit mention of “direct” or “indirect” activity in the last quotation, the legitimate defense described therein, and considered in the context of the third chapter of *Evangelium vitae*, can be understood to serve as an example of non-direct lethal activity, in contrast to any action that would need to be characterized as a direct killing. The language used to describe the legitimate defense is very carefully formulated. It studiously avoids any implication that the agent legitimately defending himself must intend killing as an end or as a means to an end, as well as any language that would indicate the permissibility of causing death as the sole immediate effect of the external activity involved. Rather, the act of defending may sometimes involve the death of the aggressor being “brought about” as a result of activity ordered to hindering the attack by the one who defends. The result of death is not to be “assigned” to the latter, but to the aggressor, and not necessarily as a human agent (for moral culpability may be lacking), but as a cause.

Clearly, then, the one who defends in such a case is not considered to be an agent who intends death. The death appears to be understood as a side-effect. The death stands outside the intention of the one defending, whose act is properly specified as “hindering” or “to keep away” (*prohiberi*). This understanding of the act and intention involved in legitimate defense can be supported by the teaching of Saint Thomas Aquinas, to which John Paul II refers, immediately following his last quoted text. The first reference in footnote 45 reads: “Cfr S. Thomas Aquinas,

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49 Ibid., 463: “Infeliciter autem evenit ut cum prohiberi necesse est adgredientem ne noceat nonnumquam sit ei inferenda mors. Eo in casu mortis exitus asdignandus est eidem ipsi reo, qui sua vi se obiecerit morti, etiamsi non sit moraliter culpabilis ob impeditum rationis usum.”
This article is concerned with whether it is lawful to kill a man in self-defense. In his response, Thomas begins by noting that “…nothing hinders one act from having two effects, of which one alone is in the intention, while the other is outside the intention [praeter intentionem].” He goes on to state that “[f]rom the act of someone defending himself a twofold effect can follow, one indeed [is] the conservation of his own life; while the other [is] the killing of the invading [one].” Clearly, the act of defending is considered its own moral species, distinguishable from the effect of death that may result in some cases, and which need not be intended by the one defending himself.

For Thomas, the one who defends himself is the one who “repels violence” (violentiam repellat), and the act of defending oneself can be properly described as “to repel force with force” (vim vi repellere). Such an act may be lawful provided that it be “proportionate to the end” (proportionatus fini) of conserving one’s own life, and that it be accomplished “moderately” (moderate), without using more than necessary violence. Furthermore, for the one without “public authority” (publica auctoritate), he must not intend “to kill a man that he may defend himself” (occidere hominem ut seipsum defendat). The one who has public authority may intend to kill in defense of himself (intendat occidere ad sui defensionem) so long as he “refers this to the public good” (refert hoc ad publicam bonum), as in the case of a soldier

50 Ibid.

51 Saint Thomas Aquinas, Summa Theologiae: Secunda Secundae, 1-91 (Lander, Wyoming: The Aquinas Institute for the Study of Sacred Doctrine, 2012), 609: “…nihil prohibet unius actus esse duos effectus, quorum alter solum sit in intentione, alius vero sit praeter intentionem.” After the publisher information page, the editors of this volume note that the Latin text “is based on the Leonine Edition, transcribed by Fr. Roberto Busa SJ, and revised by Dr. Enrique Alarcón, and other editors and collaborators…”

52 Ibid., “Ex actu igitur alicuius seipsum defendentis duplex effectus sequi potest, unus quidem conservatio propriae vitae; alius autem occisio invadentis.”
fighting against enemies. Still, even the public official would sin if he were influenced by “private passion” (*privata libidine*).\(^{53}\)

Hence, for Thomas, the act of legitimate defense is the act of repelling force with proportionate force, that is, just as much repelling force necessary to hinder the attack. As long as one does this, and no more, he need not intend death as an end or as a means to an end, even if death should follow as an effect of the repelling force. In that case, the repelling force necessary to stop the attack *just happens* to be the same force that is sufficient to be lethal. The stopping and the lethal wound are two effects that can follow with equal immediacy from the one act of repelling. Accordingly, the harm or death that results from an act of self-defense, as explained by Thomas Aquinas in Article 7 of Question 64, can be understood to be justified by the principle of double effect addressed in the first two chapters of this dissertation. Moreover, using the language of some of the theologians referred to in those chapters, proportionate lethal defense may also be seen as an example of *indirect* killing.\(^{54}\)

\(^{53}\) Ibid., 609-610.

\(^{54}\) It is important to note how in various places within Article 7 Thomas sometimes speaks about the “killing” or the “homicide” involved in cases of self-defense without clarifying the non-direct manner in which he, according to the detailed explanation contained in the body of the article, evidently means those words. For example, in one line of the corpus, he writes: “Nor is it necessary for salvation that a man omit the act of moderate guardianship in order to avoid the killing of the other, because a man is to be held to provide more for his [own] life than for the life of a stranger.” [“Nec est necessarium ad salutem ut homo actum moderatae tutelae praetermittat ad evitandum occisionem alterius, quia plus tenetur homo vitae suae providere quam vitae alienae.”] Also, in his reply to the third objection, Thomas states: “irregularity follows from the act of homicide even if it be without sin,…And because of this a cleric, even if he kills in defending himself, is irregular, even though he intends not to kill, but to defend himself.” [“…irregularitas consequitur actum homicidii etiam si sit absque peccato,…Et propter hoc clericus, etiam si se defendendo interficiat aliquem, irregularis est, quamvis non intendat occidere, sed seipsum defendere.”] At the same time, in addition to the detailed explanation found in the article’s body, Thomas’s language elsewhere in the article continues to make it clear that the “homicide” involved in proportionate defense is accomplished in a non-direct way. Hence, in his reply to the fourth objection (which argued that since it is not licit to commit fornication or adultery in order to conserve one’s own life, and these sins are less grave than homicide, it is not at all lawful to kill another in order to conserve one’s own life), Thomas writes: “the act of fornication or adultery is not of necessity ordered towards the conservation of one’s own life, as is the act from which homicide *sometimes follows*.” [“…actus fornicationis vel adulterii non ordinatur ad conservacionem propriae vitae ex necessitate, sicut actus ex quo quandoque sequitur homicidium.” Emphasis added.]
Immediately after referring to the *Summa Theologiae* II-II, Question 64, Article 7, in footnote 45 of *Evangelium vitae*, Pope John Paul II makes only one further citation: “S. Alphonsus Maria De’ Liguori, *Theologia Moralis*, 1. III, tr. 4, c. 1, dub. 3.”55 Dubium 3 treats generally “On the Killing of an Aggressor” (*De Occisione Aggressoris*), and specifically of the question “Whether and in what manner it may be licit to kill by private authority an unjust aggressor” (*An et quomodo liceat occidere privata auctoritate iniquum Aggressorem*).56 In the first paragraph of his response, Alphonsus makes it clear that his own teaching is fully in accord with that of Saint Thomas.

The law of nature permits that you may repel force with force [*ut vim vi repellas*], and the aggressor, who unjustly is attempting to take away your life, or those things that are necessary to you for it to be lived decently (such as temporal goods, honors, chastity, integrity of members), you may prevent and kill. However, that it may be done in the spirit of defending you, and with the direction of blameless guardianship: this is, not to bring about greater damage, nor to be employed with greater force, than is necessary to prevent injury.57

Then, in the very next sentence, Alphonsus states: “Thus commonly [teach] S. Thomas, Molina, etc., Lessius.” The only reference he provides for Saint Thomas is *Summa Theologiae* II-II, Question 64, Article 7.

In the context of *Evangelium vitae*, the references to the texts of Thomas Aquinas and Alphonsus Liguori can serve to illustrate how the language and teaching of Pope John Paul II on legitimate defense not only find support in traditional moral theology, but also make clearer the

55 Pope John Paul II, “*Evangelium vitae*,” *Acta Apostolicae Sedis* LXXXVII (1995): 463. All numbers hereafter given in footnotes regarding this encyclical will indicate page number from the *Acta*.


57 Ibid. “Resp. Jus naturae permittit, ut vim vi repellias, et aggressorem, qui inique eripere tibi conatur vitam, aut quae ad eam honeste agendam tibi sunt necessaria (ut bona temporalia, honores, pudicitiam, membrorum integritatem), praevenas et occidas. Ita tamen, ut id fiat animo te defendendi, et cum moderamine tutelae inculpatae: hoc est, non inferendo majus damnum, nec utendo majore vi, quam necessarium est ad arcendam injuriam.—Ita communiter S. Thomas, Molina, etc., Lessius.” The reference to Saint Thomas is the first on the page: “2a 2ae, qu. 64, art. 7.”
distinction between human acts that *happen* to kill and human acts that are *direct* killings. In section 57 of the encyclical, Pope John Paul then returns to the topic of direct killing of the innocent, where he presents his firmest teaching on the subject. He begins this section by recalling again that the commandment “you shall not kill” (*non occides*) is absolute whenever it is referring to an *innocent human being* (*innocentem hominem*). He then goes on to note: “Indeed, the complete inviolability of innocent human life contains a moral truth admirably handed on in the sacred Scriptures, constantly repeated in the Tradition of the Church and unanimously proposed by her Magisterium.”

In the very next paragraph of section 57, the Pope builds on the last statement in the following way.

Therefore, in the presence of the view of the progressing weakening within the consciences of men and society of sentiments of the absolute and grave moral disgracefulness which in them the direct slaughter [*directa...extinctio*] of every innocent human life conveys, especially at the beginning and the end of the same, the *Magisterium of the Church* has repeated her intercessions on behalf of the sacred and inviolable nature of human life which is to be protected.

He completes the paragraph by calling to mind that not only has the papal Magisterium been strong in its teaching on the issues above, but the bishops, by Episcopal Conferences and individual actions, have produced many comprehensive doctrinal and pastoral documents insisting on the same teaching. Finally, the Pope refers to the brief but “vehement” proclamation of the Second Vatican Council, in section 27 of *Gaudium et spes*.

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59 Ibid., 465: “Coram igitur conspectu progredientis imminutionis intra conscientias hominum et societatem sensuum absolue et gravis inhenestatis moralis, quam secum directa omnis innocentis humanae vitae extinctio importat, praesertim sub eiusdem principium ac finem, *Ecclesiae Magisterium* suas geminavit pro sacra inviolabilique humanae vitae natura tuaenda intercessiones.”

60 Ibid.
Immediately following, the Holy Father delivers the most solemnly formulated teaching up to this point in the encyclical.

Wherefore, by the authority conferred by Christ upon Peter and his Successors, joined together with the Bishops of the Catholic Church, We confirm that direct and voluntary killing of an innocent human being is always gravely immoral [inhonestam]. This doctrine, the roots of which are based upon that unwritten law which, proceeding from the light of reason, any man finds in his heart (cfr Rom 2: 14-15), is inculcated anew in the Sacred Books, commemorated in the Tradition of the Church and expounded by the ordinary and universal Magisterium. The deliberate plan to rob a blameless human being of his life is always an evil in moral judgment, and it cannot ever be considered licit, neither as an end nor as a way to a proposed good. For indeed, it is a grave disobedience to the moral law, even to God himself, its author and vindicator; and it contradicts the principal virtue of justice and of charity.

The italicized text (found in the original) is one of three pronouncements contained in chapter 3 of the encyclical, each of which is a confirmation or reaffirmation of teaching of the ordinary and universal Magisterium concerning the moral status of a certain act against human life. The other two pronouncements, on direct abortion as a grave disturbance of the moral order (which will be treated in detail below), and on euthanasia as a grave violation of the divine law, appear in sections 62 and 65, respectively. According to representatives from the Congregation for the Doctrine of the Faith, while the truths taught in all three pronouncements are certainly definitive, infallible, and irreformable, the pronouncements themselves are not understood to be solemn ex cathedra exercises of the papal Magisterium. Rather, they are formal reaffirmations or

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61 Ibid. “Quapropter Nos auctoritate usi Petro eiusque Successoribus a Christo collata, coniuncti cum Ecclesiae catholicae Episcopis, confirmamus directam voluntariamque hominis innocentis interfectionem gravior inhonestam esse semper. Doctrina haec, cuius inmittuntur radices illa in non scripta lege quam, praeente rationis lumine, quivis homo suo reperit in animo (cfr Rom 2, 14-15), inculcatur denuo Sacris in Litteris, Ecclesiae Traditione commendatur atque ordinario et universalsi Magisterio explanatur. Deliberatum consilium spoliandi innocuum hominem sua vita semper morali iudicio malum est, nec potest licitum haberi unquam nec uti finis neque ut via ad bonum propositum. Gravis namque inobedientia est morali legi, immo ipso Deo eius auctori ac vindici; primariae praeterea virtutis iustitiae contradicit et caritatis.”
confirmations by the ordinary Magisterium of the Pope of teachings of the ordinary and universal Magisterium.  

The first pronouncement, from section 57 above, provides a foundation for the other two, and it has several noteworthy characteristics. In the first place, the teaching that direct and voluntary killing of an innocent human being is always gravely immoral is presented not only as having roots in natural law (the “unwritten law” of the “heart”) with some sort of basis in supernatural revelation, but as actually being contained within that revelation itself. It is said to be “inculcated anew” in sacred Scripture. The teaching is not merely a conclusion based upon revealed doctrine, but is revealed doctrine per se. Accordingly, the Congregation for the Doctrine of the Faith, in its “Doctrinal Note Explaining the Concluding Formula of the Profession of Faith,” (June 29, 1998) explicitly referenced section 57 of Evangelium vitae when providing “the doctrine on the grave turpitude of direct and voluntary killing of an innocent human being” as an example of a doctrine that “is contained in the Word of God, written or handed down, and...infallibly proposed to be believed [ad credendum] by the ordinary and universal Magisterium.” The pronouncement of section 57 is the only one of the three

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62 See “Some brief responses to Questions Regarding the Professio Fidei” by representatives from the Congregation for the Doctrine of the Faith, as found in Proclaiming the Truth of Jesus Christ: Papers from the Vallombrosa Meeting (Washington, D.C.: United States Catholic Conference, 2000), 61-66. See especially page 62: “It must be remembered, however, that it is a doctrine of the Church’s faith that the Magisterium can teach a doctrine infallibly both by an act that is defining (i.e., in solemn form) or by an act that is not defining (i.e., in ordinary form). The first case is that of an ex cathedra definition by the Roman Pontiff or a solemn pronouncement by an Ecumenical Council. The second case is that of a teaching of the ordinary and universal Magisterium, which can be formally reaffirmed or confirmed by the ordinary Magisterium of the Pope (see, e.g., Pope Paul VI’s Credo of the People of God [1968], the apostolic letter Ordinatio Sacerdotalis, or the three pronouncements found in the encyclical letter Evangelium Vitae).” According to page v of the Proclaiming the Truth of Jesus Christ collection, the representatives from the Congregation for the Doctrine of the Faith who participated in the Vallombrosa conference included at least the following members: “His Eminence Joseph Cardinal Ratzinger, Prefect; Most Reverend Tarcisio Bertone, Secretary; Reverend Adriano Garuti, OFM, Head of Doctrinal Section; Reverend Monsignor Josef Clemens, staff; Reverend Charles Brown, staff.”

63 Congregation for the Doctrine of the Faith, “Nota Doctrinalis Professionis Fidei Formulam Extremam Enucleans,” Acta Apostolicæ Sedis XC (1998): 544-551. The reference to section 57 of Evangelium vitae is provided in footnote 31, on page 549, concerning the example of “doctrina de gravi turpitudine occisionis hominis innocentis directae et voluntariae.” The description of the category of doctrine to which this teaching belongs is
pronouncements of *Evangelium vitae* that is explicitly recognized, in the language of the encyclical itself and in the Congregation’s *Commentary*, as a doctrine formally contained in the deposit of faith.\footnote{This implies no denial that the doctrines of the other two pronouncements (on direct abortion and on euthanasia) are also formally contained in the deposit of faith, only that they are not explicitly recognized as such within the encyclical itself.}

Another important characteristic of the pronouncement in section 57 is that the kind of killing of an innocent human being that is censured is that which is both “direct and voluntary” (*directam voluntariamque*). The language used is similar to that found in Pope Pius XII’s addresses to midwives (October 29, 1951) and to the Sodality of the “Family Front” (November 26, 1951). As noted in the second chapter of this dissertation, in the first address the Pope used the language of “direct deliberate disposal (*diretta deliberata disposizione*) concerning an innocent human life,” and in the second, “direct voluntary attack (*diretto attacco volontario*)).

In the first address, Pope Pius made it clear that “direct” in the context meant “a disposal, that aims at its destruction, either as to an end, or as to a means for another end.” Clearly, Pope John Paul had the same understanding in mind when he went on to speak about how the deliberate plan to kill the innocent is never licit, “neither as an end nor as a way to a proposed good.”

\footnote{found, in full, on page 546: “Huius generis doctrinae in Verbo Dei scripto seu tradito continentur atque sententia sollemni tamquam veritates divinitus revelatae sive a Romano Pontifice ‘ex cathedra’ loquente sive a Collegio Episcoporum ad concilium congregato definitur, sive dein a Magisterio ordinario et universali ad credendum infallibiliter proponuntur.” For convenience I refer to the author of this document as “Congregation for the Doctrine of the Faith.” While it is signed by Joseph Cardinal Ratzinger, as Prefect, and Archbishop Tarcisio Bertone, as Secretary, it bears the unusual closing: “Rome, from the Headquarters of the Congregation for the Doctrine of the Faith, the 29th day of the month of June, A.D. 1998” (italics added) [“Romae, ex Sede Congregationis pro Doctrina Fidei, die 29 mensis Iunii A.D. MIIII.”]; and Cardinal Ratzinger himself provided the following explanation of the authorship of the document in the following year. “While the whole text was composed by the Congregation, its successive stages of development were presented to the College of Cardinals, and its final version was approved by them. It also received the approval of the Holy Father. But all were agreed that the text itself was given no binding force; rather, it was only offered as a help for understanding and was not to be published as an independent document of the Congregation. However, the particular form of its publication was purposely chosen to indicate that it was not a private work of the Prefect and the Secretary of the Congregation, but instead was an authorized aid to understanding the texts.” The latter text is from Cardinal Ratzinger’s exchange with Fr. Ladislas Örsy, S.J., published in *Stimmen der Zeit* 217 (1999) 169-172, translated by Linda Maloney, as found in Ladislas Örsy, *Receiving the Council: Theological and Canonical Insights and Debates* (Collegeville, Minnesota: Liturgical Press, 2009), 124.}
Moreover, as with the formulations of Pope Pius XII, in the context of chapter 3 of *Evangelium vitae*, it is also likely that Pope John Paul II used the term “direct” to include actions that have killing as their sole immediate effect in the order of causality.

In relation to the address to midwives, I argued that, unless the Pope was being stylistically redundant (which does not seem likely), “direct” likely referred to immediacy in the causal structure of the external act (with “deliberate” referring to internal intentionality in the agent performing the act). Further support for this understanding was found in the analysis of the “Family Front” address. With that address, it became evident that “direct” in “direct killing” or “direct attack on the life of the innocent,” was used to distinguish a kind of action that, because death is its sole immediate effect, is always illicit to perform on innocent human life. Such an action was contrasted with an action from which death results, but as one of at least two equally immediate effects that follow according to the principle of double effect.

In the pronouncement of section 57 of *Evangelium vitae*, by virtue of the enclitic conjunction (voluntariam-*que*), “direct” and “voluntary” are grammatically distinguished from each other even more than “direct” and “deliberate,” or “direct” and “voluntary” are in the addresses of Pope Pius XII. Hence, it seems even less likely that Pope John Paul II was simply being stylistically redundant and equating “direct” with “voluntary.” Rather, in the context of chapter 3, “direct” likely serves to distinguish the manner of voluntary action that in the order of the act’s execution kills an innocent with no other equally immediate and proportionately good effect, from the manner of voluntary action that produces death as a result of a cause productive of at least one other equally immediate and proportionately good effect, as in a case of legitimate defense. In both cases there is present a voluntary action that kills an *innocent* human being (at least in situations when, to use the description of Pope John Paul II, the aggressor “may not be
morally culpable because of the use of reason having been impeded”). But only in the former case is there necessarily a voluntary and direct killing.

It must be noted that if “direct” killing in section 57 can be understood in the way just explained, a fortiori, it should be understood to include also cases in which the agent performs an action that kills by immediate or even mediate consequence, but with explicit intention to produce death. Hence, even if an action that resulted in death had causal circumstances (in the order of the act’s execution) that would allow for justification according to the principle of double effect, that act would still be a direct killing if it contained a killing direction in the order of intentionality.65

In the context of chapter 3 of the encyclical, the pronouncement on direct and voluntary killing of the innocent will provide a firm foundation for the pronouncement on direct abortion that comes in section 62. Leading up to that pronouncement, the Holy Father introduces section 58 by noting that among all the crimes that man can commit against life, the evil of procured abortion is “distinguished and detestable” (insignite ac detestabilis). Hence, he recalls, “The Second Vatican Council describes it, in like manner also infanticide, as ‘an unspeakable crime.’”66 Immediately following, Pope John Paul II provides a decisive paragraph.

Nevertheless, today the perception of its gravity has been gradually covered up in the conscience itself of many men. That in minds, in customs, in laws themselves, abortion is accepted, is a clear proof of a certain very dangerous crisis of moral senses, whereupon it is continuously more difficult to distinguish between good and evil, even when it is concerned with the fundamental right to life. For this reason, given such a grave state of things, now more than ever there is need of a bold will to look at the truth itself and to

65 The point made here is similar to the point made by Benoît Merkelbach in the second chapter of this dissertation, concerning how direct killing can be intended either implicitly (by the action tending immediately, in the order of execution, to no other end than killing, even if the agent lacks or refuses to formulate a clear and distinct desire to kill), or explicitly (by the agent forming a clear and distinct desire to kill for its own sake or for the sake of something else, when performing an action that causes death), as well as the point made by canonist John Huser, concerning the different ways in which abortion can be procured according to canon law.

66 Evangelium vitae, 466: “Illum describit Concilium Vaticanum II, perinde atque infanticidium, ‘crimen nefandum.’”
call things by the proper name, that one would not yield to compromises of anyone’s convenience, nor to the invitation to deceive oneself. Concerning the same matter, the powerful reproach of the Prophet still yet resounds: “Woe to those, who call evil good and good evil, putting darkness for light and light for darkness” (Is 5:20). Ambiguous expressions, already widely disseminated, are altogether seizing on abortion, such as the “interruption of pregnancy”, which is to hide its true nature and to diminish its weight in the presence of the public. Perhaps this use of language itself is at the same time a sign of disturbed consciences. Nevertheless, no name is able to overthrow the truth of things: procured abortion, in whatsoever way it is accomplished, is the deliberate and direct killing of a human being in the first period of his/her life, which runs between conception and parturition.67

This paragraph is very important for understanding the Pope’s teaching on direct abortion, not least because of the final italicized portion, which various authors will understand to offer the encyclical’s “definition” of procured abortion. However, the nature of this definition, its possible implications, and how it relates to the rest of the doctrine on abortion found in the encyclical, will not be explained by all commentators in the same ways.

In order to address the diverse views on the “definition” in section 58, it will be best to present the remaining relevant doctrine on abortion that is contained in sections 58 to 62, and then to offer a comparison and analysis of the various views of commentators. In the last paragraphs of section 58, Pope John Paul II notes how the truth about the moral gravity of procured abortion comes to light not only in recognizing the act of homicide involved, but also in recognizing the circumstances proper to abortion. In the first place he mentions that the life destroyed is that of a human being at its beginning, and that it is not possible to think of a more

67 Ibid., 466-467: “Hodie tamen multorum hominum in conscientia ipsa eius gravitatis percepiet paulatim est obiecta. Quod in animis, in moribus, in legibus ipsis accipitur abortus, luculentum est documentum periculosissimi cuiusdam discriminis moralium sensuum, unde difficilius usque fit inter bonum discernere ac malum, etiam cum fundamentale agitur ad vitam ius. Hoc dato adeo gravi rerum statu, opus est nunc magis quam aliam quam animosa voluntate spectandi ipsam veritatem atque res proprio nomine vocitandi, ut compromissis alicuius commoditatis non cedatur neque invitamento ad sese decipiendum. De eadem re imperiosum etiamnun resonat Prophetae probrum: ‘Vae, qui dicunt malum bonum et bonum malum, ponentes tenebras in lucem et lucem in tenebras’ (Is 5,20). Omnino in abortu ambiguae voces late iam disseminatae percipiuntur, sicut est illa ‘graviditatis interruptae’, cuius abscondere est veram illius naturam atque apud vulgus immnuere pondus. Hic fortasse linguae usus idem simul signum est conscientiarum perturbatarum. Attamen rerum veritatem nullum evertere valet vocabulum: abortus procuratus quacunque peragitur via, deliberata est ac directa hominis occisio primordiali eius vitae tempore quod inter conceptionem decurrat et parturitionem.”
innocent subject. To this point, the Holy Father emphatically joins the statement: “he can never be judged an aggressor and so much less an unjust aggressor!” In the context of chapter 3 of the encyclical, this affirmation also makes clear that the killing involved in procured abortion can never rightly be judged justifiable as a case of legitimate defense.

Rather than being an aggressor, the pre-born human being “is weak and defenseless” (imbecillis est atque inermis), incapable even of the cries and tears of a newborn. “He/she is committed in every way to the guardianship and care of her by whom he/she is being gestated in utero.” Yet, the Pope recognizes that sometimes it is the mother herself who decides and requests his/her extinction (extinctionem), and even has it accomplished as well. At the same time, he acknowledges that the decision to have an abortion often brings about the bitterest sorrow to the mother herself, since the will to get rid of the fruit of conception comes forth not only from causes of egoism or convenience, but because the mother desires to preserve other goods of great importance, such as her own health or a worthy condition of life for remaining members of the family. Lastly, the Holy Father mentions that often some dispositions of life are feared to exist in the one about to be born, such that it would seem better for him not to be born at all. “Nevertheless,” writes Pope John Paul II, “these and similar reasons, howsoever weighty and harsh they may be, cannot ever purify the voluntary killing of an innocent human being.”

In section 60, the Pope addresses the objection of those who defend abortion by affirming that the fruit of conception, at least up to a certain number of days, cannot yet be judged personal human life (personalem vitam humanam). In the first paragraph of this section, the Holy Father

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68 Ibid., 467: “numquam iudicari potest adgressor tantoque minus adgressor iniustus!”

69 Ibid. “Committitur usque quaque tutelae curaeque ipsius a qua in utero gestatur.”

70 Ibid. “Veruntamen non possunt hae similesque rationes, quantumvis ponderosae sint et acerbae, voluntariam hominis insontis necationem umquam purgare.”
largely quotes from the Congregation for the Doctrine of the Faith’s Declaration on Procured Abortion, and also from the same Congregation’s instruction, Donum vitae.\textsuperscript{71} In the second paragraph of section 60, the encyclical repeats the reasoning of the Declaration on Procured Abortion concerning how, from the point of view of moral responsibilities (officiorum moralium ratione), even the probability of the presence of a human person would prohibit intents to extinguish the human embryo.\textsuperscript{72}

In the very beginning of section 61, the encyclical addresses the relationship between its teaching on abortion and the revelation contained in the Bible.

The texts of the Sacred Books, where there is never discussion concerning voluntary abortion and therefore abortion is not rejected in direct and proper words, nevertheless, they express such great veneration of the human being himself in the maternal womb, that they would demand as a necessary conclusion that the command of God: “You shall not commit homicide” would be extended to it also.\textsuperscript{73}

This passage from the encyclical indicates that while the Church’s doctrine on abortion may not be formally contained in biblical revelation, nevertheless it does have a foundation in that revelation. It is able to be derived from the teaching of Scripture, like a necessary conclusion from firmly established premises. In the context of the encyclical, one of those premises would certainly be the doctrine expressed earlier in section 57, that the direct and voluntary killing of an innocent human being is always gravely immoral. Although discoverable in principle by natural law, that teaching was “inculcated anew in the Sacred Books.” Such formal containment

\textsuperscript{71} Congregatio pro Doctrina Fidei, “Instructio de Observantia erga Vitam Humanam Nascentem deque Procreationis Dignitate Tuenda Donum vitae,” Acta Apostolicae Sedis LXXX (1987): 70-102. Section 60 of Evangelium vitae references pages 78-79 of this document in the Acta, which include the rather rhetorical sounding question posed by the Congregation, speaking of the human embryo in its early stages: “why, therefore, would a living human creature not also be a human person?” [“cur igitur vivens creatura humana non esset etiam persona humana?”]

\textsuperscript{72} Evangelium vitae, 469.

\textsuperscript{73} Ibid., 470: “Litterarum Sacrarum loci, ubi de voluntario abortu numquam est sermo et propterea directis propriisque vocabulis abortus haud reicitur, talem tamen tantamque hominis ipsius exprimunt materno in sinu venerationem, ut tamquam necessariam conclusionem postulent ut erga illum etiam prorogetur Dei mandatum: ‘Non homicidium facies’.”
in Scripture can serve as a revealed premise from which a theological conclusion on the
immorality of direct abortion can be drawn.

The encyclical will return to the relationship between Sacred Scripture and the Church’s
teaching on abortion in the next section. In the remaining paragraphs of section 61, Pope John
Paul II calls attention to the constant witness of the Church’s Tradition on the moral
condemnation of abortion. “As the Declaration published by the Congregation for the Doctrine
of the Faith well displays concerning this matter, the Christian Tradition is consonant and clear
from the beginning up to our days, which holds abortion itself as something uniquely morally
disordered.” Following this statement, the encyclical basically summarizes teaching and
references found in the Declaration on Procured Abortion.

In a similar manner, at the beginning of section 62, the Pope also recalls the teachings of
recent documents of the Magisterium on abortion, stating: “With very great strength the recent
Papal Magisterium has repeated this common doctrine.” Pope John Paul II mentions first
Casti connubii, in which, he notes: “Pius XI rejected specious defenses of abortion.” Also
included in this section are references to the “San Luca” (November 12, 1944) and “Midwives”
(October 29, 1951) addresses of Pope Pius XII, as well as a reference to section 51 of Gaudium
et spes from the Second Vatican Council, which condemned abortion as an “unspeakable
crime.”

74 Ibid. “Prout effert probe Declaratio de hoc argumento a Congregatione pro Doctrina Fidei edita, consona est atque
illiustris a principio ad nostros usque dies christiana Traditio, quae tenet ipsum abortum veluti morale quiddam unice
inordinatum.”

75 Ibid., 471: “Permagna vi recentius Pontificum Magisterium communem hanc iteravit doctrinam.”

76 Ibid. Among the references in this section, the use of the “San Luca” address is rather peculiar. Immediately
following the statement that “Pius XI rejected specious defenses of abortion,” Pope John Paul II writes: “thereafter
Pius XII excluded every direct abortion, namely, any act directly tending to destroy a human life not yet brought
forth, ‘whether this destruction be taken as an end or only as a means to an end.’” (“exclusit dein Pius XII omem
abortum directum, actum videlicet quemlibet recta tendentem ad nondum editam humanam vitam delendam, ‘sive
In the very next paragraph, which immediately precedes the paragraph containing his own formal pronouncement on procured abortion, Pope John Paul II reviews some points of the Church’s disciplinary tradition in relation to abortion, concentrating on recent canonical penalties from the 1917 and 1983 codes of canon law.

Since already from the first centuries the canonical discipline of the Church punishes with penalties those who have defiled themselves with the fault of abortion, and this manner of acting, with more or less grave penalties, has been confirmed through the ages of history. The Code of Canon Law promulgated in the year 1917 was sanctioning the penalty of excommunication against abortion. [Footnote 69: “Cfr can. 2350, 1.”]

Similarly the renewed Code of Canon Law follows perseveringly the same norm when it establishes: “Anyone who procures abortion, upon accomplishment having been secured, incurs excommunication latae sententiae”, [Footnote 70: “Codex Iuris Canonici, can. 1398; cfr etiam Codex Canonum Ecclesiarum orientalium, can. 1450, 2.”] that is to say, of itself and immediately. The excommunication strikes all those who commit this crime with the penalty having been known, included together with those participants without whose work the crime could not have been accomplished: with such a repeated penalty, the Church notes this crime as most grave and dangerous, and thus impels its author that he might speedily find the path of conversion. Indeed, to that end, in the Church, the penalty of excommunication sees to it that men, conscious of the gravity of certain sins, may be returned as much as possible, and, therefore, that conversion also would be assisted by proper penance.

Footnote 77: “Inde a primis iam saeculis canonica Ecclesiae disciplina plecit poenis illos qui sese abortus culpa polluerunt eaque ratio agendi plus minus gravibus poenis per historiae aetates est confirmata. Codex Iuris Canonici anno MCMXVII promulgatus excommunicationis poenam in abortum sanciebat. Similiter normam persequitur eandem renovatus Iuris Canonici Codex cum statuit: Qui abortum procurat, effectu secuto, in excommunicationem latae sententiae incurrit’, ultra videlicet continuoque. Ferit excommunicatio eos omnes qui
Together with the references from the prior documents of the Magisterium on abortion, this paragraph will be crucial for understanding the papal pronouncement below.

Having established the foundation and proper context for his teaching, Pope John Paul II concludes section 62 with the following statements.

In the presence of similar unanimity in traditional doctrine and discipline of the Church, Pope Paul VI was able to declare that the same instruction neither has changed nor can be changed. Therefore by the authority conferred by Christ upon Blessed Peter and his Successors, agreeing with the Bishops who in the previously mentioned interrogation, although spread throughout the world, have agreed in one mind concerning this doctrine itself,—We declare [that] abortion procured in a direct way, either intended as an end or as a means, always entails a grave disturbance of the moral order, since that would be the deliberate killing of an innocent human being. This doctrine is based upon the natural law and upon the written Word of God, it is transmitted by the Tradition of the Church and expounded by the ordinary and universal Magisterium. Thereafter, there cannot be any condition, any purpose, any law on earth that ever renders licit an act [that is] illicit by its very nature, since it would oppose the Law of God engraved on the heart of man, proclaimed by the Church, and which can be recognized by reason.78

As with the prior pronouncement contained in section 57, the italicized text (found in the original) represents a definitive, infallible, and irreformable teaching of the ordinary and universal Magisterium, here confirmed or reaffirmed by the ordinary Magisterium of the Pope. However, there are some significant differences between the two pronouncements.

78 Ibid., 472: “Coram simili consensione in tralaticia doctrina disciplinaeque Ecclesiae, valuit pontifex Paulus VI adseverare idem magisterium nec esse mutatum nec posse mutari. Auctoritate proinde utentes Nos a Christo Beato Petro eiusque Successoribus collata, consentientes cum Episcopis qui abortum crebrius respuerunt quique in superius memorata interrogatione licet per orbem disseminati una mente tamen de hac ipsa concinuerunt doctrina—declaramus abortum recta via procuratum, sive uti finem intentum seu ut instrumentum, semper gravem prae se ferre ordinis moralis turbationem, quippe qui deliberata existat innocents hominis occisio. Haec doctrina naturali innititur lege Deique scripto Verbo, transmittitur Ecclesiae Traditione atque ab ordino et universali Magisterio exponitur. Nequit exinde ulla condicio, ulla finis, ulla lex in terris umquam licitum reddere actum suapte natura illicitum, cum Dei Legi adversetur in cuiusque hominis insculptae animo, ab Ecclesia praedicatae, quae potest etiam ratione agnosci.”
As noted above, the pronouncement from section 57, that direct and voluntary killing of an innocent human being is always gravely immoral, was presented not only as having roots in natural law with some sort of basis in supernatural revelation, but as actually being formally contained within that revelation. Hence, it was said to be “inculcated anew” in sacred Scripture. On the other hand, the pronouncement in section 62 is never clearly indicated as a truth formally taught in revelation itself. Rather, it is said to be “based upon” both the natural law and the written Word of God. This language need not mean more than that the teaching in the pronouncement of section 62 is derived in some way from the teaching contained in the Word of God, as a logical consequence from premises not all of which are revealed. Of course, this is consistent with the prior statements found in section 61 of the encyclical, where it was admitted that, while the texts of the Sacred Books never discuss and reject voluntary abortion in direct and proper words, they still demand as a “necessary conclusion” that the divine commandment against homicide would be extended to the human being in the maternal womb.

While the teaching of the pronouncement of section 62 is not affirmed as a formal teaching of revelation per se, this fact takes away nothing from its status as definitive, infallible, and irreformable, and, therefore, demanding the same character of full and irrevocable (plenam et irrevocabilem) assent from the Church’s faithful.79 The difference between the assent called for in relation to the teaching of the pronouncement from section 57 versus the teaching of the pronouncement from section 62 is found in the motive of assent. In the former case, the assent is based directly on faith on account of the Word of God (assensio recta via fide de auctoritate Verbi Dei innititur); hence, the teaching belongs to the class of doctrines to be believed concerning faith (“doctrinae de fide credenda”). Whereas, in the latter case, the assent is based

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on faith on account of the assistance provided by the Holy Spirit to the Magisterium and on the Catholic doctrine of the infallibility of the Magisterium (in fide de auxilio a Spiritu Sancto Magisterio praebito et in doctrina catholica de infallibilitate Magisterii); hence, the teaching belongs to the class of doctrines to be held concerning faith (“doctrinae de fide tenenda”).

It should be noted that being classified in the category of doctrines de fide tenenda does not necessarily preclude a teaching from materially belonging to the category of doctrines de fide credenda. The note de fide tenenda should be taken as the recognition by the Magisterium of the Church that a doctrine has been taught at least infallibly, and therefore calls for at least the definitive assent that can be expressed in the first person as “I firmly embrace (accept) and retain (hold)” (firmiter amplector ac retineo). It is possible that a doctrine de fide tenenda may be recognized at a later time by the Magisterium as belonging to the category of doctrines de fide credenda, if it becomes clear that the doctrine itself is actually formally contained in the deposit of revelation. In such a case, the doctrine would then call for the assent of theological faith (fidei theologalis). Accordingly, while the teaching that “abortion procured in a direct way, either intended as an end or as a means, always entails a grave disturbance of the moral order” is at least de fide tenenda, it is possible in principle that the matter of the teaching may actually belong to, and one day be formally recognized in, the class of doctrines de fide credenda.

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80 Ibid.
81 Ibid., 546.
82 Ibid., 546-551.
83 Ibid., 546.
Regardless, the doctrine itself will never be less than definitive and infallible, calling for firm and irrevocable assent.\footnote{Cf. “Some brief responses to Questions Regarding the Professio Fidei” by representatives from the Congregation for the Doctrine of the Faith, as found in Proclaiming the Truth of Jesus Christ: Papers from the Vallombrosa Meeting (Washington, D.C.: United States Catholic Conference, 2000), 64-65.}

The connection between the *de fide credenda* doctrine of section 57 and the *de fide tenenda* doctrine of section 62 also appears in the very sentence where the latter doctrine is pronounced. The reason why “*abortion procured in a direct way, either intended as an end or as a means, always entails a grave disturbance of the moral order*” is “*since (quippe) that would be the deliberate killing of an innocent human being.*” Abortion procured in a direct way always entails a grave disturbance of the moral order *because* that act always is the deliberate killing of an innocent human being. At this point, however, some hermeneutical questions arise. What is the act of “abortion procured in a direct way”? How does Pope John Paul II understand and use this term in the encyclical? Is he teaching that *abortion procured in a direct way* only exists when the agent deliberately forms within himself the intention to kill and then brings or imposes that intention upon the procedure that causally terminates in fetal death? Or, is he teaching that *abortion procured in a direct way* is an action that, when deliberately carried out, may also bring or impose upon the agent’s will a homicidal intention (an intentionality of the killing kind)?

In order to answer the above questions, it will be necessary to analyze the progression of teaching presented in sections 58-62 of *Evangelium vitae*. In the first place, it is necessary to examine the description of procured abortion in section 58. There, the Holy Father stated:

“*procured abortion, in whatsoever way it is accomplished, is the deliberate and direct killing of a human being in the first period of his/her life, which runs between conception and parturition.*”

As noted above, various authors have viewed this statement as Pope John Paul II’s definition of
“abortion.” Such authors include: Nicanor Austriaco, Martin Rhonheimer, William E. May, David Albert Jones, Ángel Rodríguez Luño, and, seemingly, Christopher Kaczor.85

While the authors just listed all speak of Pope John Paul II’s definition of “abortion” in Evangelium vitae as an act of deliberate or intentional killing of a human being, they do not all agree on the nature or implications of the definition. Nicanor Austriaco simply quotes the description from section 58, but provides no formal commentary on the definition or its potential implications.86 The other authors, however, all comment on their understandings of the

85 Nicanor Pier Giorgio Austriaco, Biomedicine and Beatitude: An Introduction to Catholic Bioethics (Washington, D.C.: The Catholic University of America Press, 2011), 47: “As defined in Evangelium vitae, John Paul II’s encyclical on the inviolability of human life, abortion is ‘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.’” Martin Rhonheimer, Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies (Washington, D.C.: The Catholic University of America Press, 2009), 31: “[P]rocured abortion, again ‘by whatever means it is carried out,’ is defined as ‘the deliberate and direct killing...of a human being’ (EV 58.2).” William E. May, Catholic Bioethics and the Gift of Human Life, Second Edition (Huntington, Indiana: Our Sunday Visitor, Inc., 2008), 167: “Shortly before making this powerful declaration [in section 62], John Paul II had defined direct or 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’ (Evangelium vitae, no. 58; emphasis in original).” David Albert Jones, “Magisterial Teaching on Vital Conflicts: A Reply to Rev. Kevin Flannery, SJ,” National Catholic Bioethics Quarterly 14.1 (Spring 2014): 81-104, at 98: “…in this encyclical, John Paul II defines abortion not by reference to expulsion of the child from the womb but as the direct and deliberate killing of a human being in the initial phase of his or her existence by whatever means.” Ángel Rodríguez Luño, “La valutazione teologico-morale dell’aborto,” in Commento Interdisciplinare alla “Evangelium vitae,” edited by Ramón Lucas Lucas and Elio Sgreccia (Vatican City: Libreria Editrice Vaticana, 1997), 419-434, at 419-420: “For EV,…, ‘procured abortion is the deliberate and direct killing, however it may be realized, of a human being in the initial phase of his existence, including between the moment of conception to birth’ (EV, 58b). Evidently, it’s a matter of a wider definition, the importance of which is not merely a question of words.” [Per l’EV,…, ‘l’aborto procurato è l’uccisione deliberata e diretta, comunque venga attuata, di un essere umano nella fase iniziale della sua esistenza, compresa tra il concepimento e la nascita’ (EV, 58b). Si tratta evidentemente di una definizione più ampia, la cui importanza non è una mera questione di parole.”] Christopher Kaczor, “The Ethics of Ectopic Pregnancy: A Critical Reconsideration of Salpingostomy and Methotrexate,” The Linacre Quarterly, 6, no. 3 (August 2009): 265-282. I included Christopher Kaczor “seemingly” with the other authors here because, although he does not reference the text from section 58 per se, he does reference the pronouncement of section 62 of Evangelium vitae to the same effect, after the following statement: “If we define the term as Pope John Paul II reaffirmed, direct abortion (abortion willed as an end or as a means) is always wrong because it is the deliberate (i.e., intentional) killing of an innocent human being.” (Ibid., 265-266)

86 Nevertheless, based on his express disagreement with positions taken by some of the other authors, such as Rhonheimer, May, and Kaczor, it seems likely that Austriaco would not interpret the “definition” from Evangelium vitae in the same way as those authors do, when they interpret it to allow for certain procedures that Austriaco considers constitutive of direct abortions. See, for example, Austriaco’s argument that salpingostomy and the use of methotrexate to resolve ectopic pregnancies constitute direct abortions, in Biomedicine and Beatitude: An Introduction to Catholic Bioethics, 65. In the sources referenced in the last footnote from Rhonheimer, May, and Kaczor, these authors all approve of salpingostomy and the use of methotrexate (at least in some cases) because they view those procedures as being compatible with Pope John Paul II’s definition of abortion.
definition itself or certain implications they think it has. For example, connecting the definition of section 58 with the prior pronouncement on the immorality of direct killing of an innocent human being in section 57, Martin Rhonheimer provides the following commentary.

According to Church doctrine, as it has most recently been presented in the encyclical Evangelium vitae (EV), “the direct and voluntary killing of an innocent human being is always gravely immoral” (EV 57.4). This is specified more precisely as follows: “The deliberate decision to deprive an innocent human being of his life is always morally evil and can never be licit either as an end in itself or as a means to a good end” (EV 57.5). “[P]rocured abortion,” again “by whatever means it is carried out,” is defined as “the deliberate and direct killing...of a human being” (EV 58.2). For this reason it is also included under the categorical prohibition against killing, as expressed in EV 57.4.

Stated synthetically, this means:
1. “Direct and voluntary killing” is an act that
   a. is characterized by the “deliberate decision to deprive an innocent human being of his life” and
   b. is chosen either as “an end” that is aimed for or as “a means to a good end.”
2. “[P]rocured abortion” is the “deliberate and direct [voluntary] killing of an innocent human being,” and therefore always morally forbidden, because and insofar as it fulfills conditions 1a and 1b.

Which is to say: an abortion is to be called “direct” and “procured” because (a) it includes the “deliberate decision to deprive an innocent human being of its life” and (b) the killing is chosen either as an end or as the means to a (good) end. 87

Thus, according to Rhonheimer, “procured abortion” is defined as an act of killing formed by the deliberate decision to deprive a human being of his or her life.

For Rhonheimer, if the agent does not deliberately form the resolve of the will “to kill” the innocent human being, then “procured abortion” does not exist in the sense of the word in Evangelium vitae, regardless of any “directness” the procedure itself might have in the order of causality. Rhonheimer makes this clear in the following passage.

As we have stated, in connection with the formulations of Evangelium vitae, the act of “direct killing” or “direct (procured) abortion” is defined as an “intentional action,” i.e., it is defined without reliance on physical categories and independent of those elements of acting that exist in the purely physical dimension of the act of killing. Indeed, these are

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unsuitable for grasping the distinction between “direct” and “non-direct.” That the definition stays on the purely intentional level means that the core elements of the definition were the concepts “deliberate decision” (against a human life) and the decision for something as a “means” or an “end” (again, we can leave aside abortion as an “end”; in all known indications, abortion is always chosen as means to an end). 88

Hence, in Rhonheimer’s interpretation of Evangelium vitae, by the term “direct” or “procured” abortion, Pope John Paul II means an intentional act of killing, whose moral species (as killing) formally originates in and proceeds from the order of intentionality in the agent himself. Regardless of the procedure the agent voluntarily carries out in the external order of execution, “procured abortion” does not exist unless the agent, by a deliberate decision, formally intends by the procedure “to deprive an innocent human being of its life.”

David Albert Jones provides an interpretation of the “definition” which has some similarities to that offered by Rhonheimer. Jones begins by explaining what he calls the “central case” of procured abortion, which he thinks is an important concept for understanding the “definition” in Evangelium vitae.

The Church’s teaching in this area has been formed in relation to what may be called the “central case” of procured abortion, where people have recourse to procured abortion in order to dispose of an unwanted child. An unborn child may be unwanted by his or her parents for many different reasons, sometimes because of some characteristics of the child, his disability, or her gender, but most frequently because of the circumstances or life-concerns of the parents. They do not wish to have a child at this time or in this situation. In the central case, it is precisely the continued existence of the child that is perceived to be the problem, and therefore the extinguishing of that life is no side effect of the action but is the direct and deliberate intention of the abortion. It is the constant teaching of the Church that deliberate killing of the unborn child by abortion in this way is a grave moral disorder, an injustice to the child and an act utterly incompatible with Christian charity. 89

Jones goes on to quote the pronouncement on directly procured abortion from section 62 of Evangelium vitae, and immediately afterwards he connects that pronouncement with the

88 Ibid., 34.
“definition” from section 58. “The definition of abortion in this key paragraph closely reflects that given earlier in the encyclical: ‘Procured abortion is the deliberate and direct killing [deliberata est ac directa hominis occisio], 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.’”  

Jones then points out the relevance of the “central case” of abortion in relation to the “definitions” of sections 58 and 62. “It is important to note that the de fide teaching of the ordinary magisterium is framed, at least in the first instance, in relation to abortion in the central case, that is, abortion which involves the deliberate and direct killing of an unborn child. This is how the term ‘direct abortion’ is defined and understood in Evangelium vitae.” Jones’s own understanding of this definition of direct abortion in the encyclical becomes clearer in a footnote he adds to his last statement. There he notes that “it may be objected” that the phrase of Evangelium vitae section 62, “abortion willed as an end or as a means,” should also imply that the intentional expulsion of the pre-viable child from the womb “would count as ‘direct abortion’ because the act which brings about the death of the child is ‘willed as a means’ even if the death of the child is not ‘willed as an end.’” To this “objection,” Jones gives the following response.

However, if Pope John Paul II is here defining the word “direct” [recta/directa] in relation to intention “that is, willed as an end or as a means” (emphasis added), then this seems equally to apply to the phrase “direct killing.” If this is the case, then the definition of procured abortion given in the encyclical, “the deliberate and direct killing…of a human being in the initial phase of his or her existence” (n. 58), would apply only to intentional acts of killing, that is, to acts which not only foresee but intend the death of the child, whether as an end or as a means. Acts which intend to expel the child and which foresee but do not intend the death of the child would not fall under this definition of abortion.

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90 Ibid., 86.
91 Ibid.
92 Ibid.
93 Ibid.
While he gives his response in a conditional way, it seems clear that, overall, Jones interprets *Evangelium vitae* as defining “direct abortion” as that which is formed by the intention (which at one point he appears to equate with the motivation behind the procedure) to extinguish the life of the unborn child. Moreover, he at least suggests that the definition of “direct abortion” in the encyclical is so distinct from the prior definition of *intentional expulsion of a pre-viable child*, that the new definition no longer necessarily includes that act in its scope of meaning. What Jones suggests here will be argued for very strongly by William E. May.

Among all recent moral theologians and commentators on *Evangelium vitae*, William May has most noticeably and directly argued that Pope John Paul II’s “definition” of procured or direct abortion in the encyclical represents a significant departure from the prior definition of ejection of an immature fetus. Essentially, May argues that the teaching of *Evangelium vitae* permits moralists to make a valid moral distinction between what he calls “abortion as removal” and “abortion as killing.” As May attempts to justify the validity of this distinction not only based on exegesis of *Evangelium vitae*, but also by way of philosophical argument from a moral case study, it will be useful to examine various texts that make his position clear through both approaches.

Early in the fifth chapter of May’s *Catholic Bioethics and the Gift of Human Life*, Second Edition, “Abortion and Human Life,” the author quotes the pronouncement on abortion procured in a direct way from section 62 of *Evangelium vitae*. He then immediately provides the following note on the definition of abortion.

Shortly before making this powerful declaration, John Paul II had defined direct or 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” (*Evangelium vitae*, no. 58; emphasis in original). Note that here the Pope defines abortion as an act of “killing” and not as the “expelling” from the mother’s womb of a living but not yet viable fetus. Some older manuals of Catholic moral
theology had defined abortion in this way and used other terms, e.g., “craniotomy,” “embryotomy,” “feticide,” to describe interventions that deliberately caused the death of the unborn child but did not do so by “expelling” it from the womb. I bring this matter up here because of its relevance to the distinction made today by some scholars between abortion as “killing” and abortion as “removal,” a matter to be considered later.94

As evident from the last sentence, this paragraph is preparatory for matter considered by May in a subsequent part of the chapter. Hence, it will be profitable to clarify that matter first, and then comment on it together with May’s interpretation of Evangelium vitae.

May returns to the relevance of his understanding of Evangelium vitae in a section of chapter 5 entitled, “Abortion as ‘Removal’ vs. Abortion as ‘Killing.’”95 May introduces this section by calling the reader’s attention to the title of the fourth chapter of the first edition of Patrick Lee’s book Abortion and Unborn Human Life, “Is abortion justified as nonintentional killing?”96 May goes on to note the following.


95 Ibid., 192-199.

96 Patrick Lee, Abortion & Unborn Human Life (Washington, D.C.: The Catholic University of America Press, 1997), 105-130. In this work, Lee agrees with May in at least one conclusion, namely, that some direct or procured abortions (as removal of a non-viable fetus) are not necessarily intentional killings. However, while May approaches the topic from both an exegesis of magisterial texts and philosophical argumentation, Lee approaches purely from a philosophical point of view. See for example, pages 115-116: “There are two types of abortions which are not intentional killing, and where the mother’s life is not significantly in danger. In one type, the man and the woman voluntarily perform an action which they realize could result in the procreation of a child. I will argue that in these cases causing the child’s death as a side effect is unjust because (a) they have a specific duty to the child since they placed him or her in that dependence relationship, and (b) the harm caused to the child is immensely worse than the harm that the woman (and the others involved) is avoiding by having the abortion. In the second type of case, abortion is performed during a pregnancy due to rape or incest. In this case, (a) does not apply. Still, because of (b) and other reasons which I will discuss in the next section, abortion is not morally right in this type of case, either. Finally, if the mother’s life is significantly in danger, then (b) does not apply, and if the choice to save the mother rather than the child is fair (for example, if both cannot be saved), then I have no philosophical argument against abortion in that case, since it seems that it would be causing the child’s death as a side effect and with a grave reason to do so.” However, because Lee is a faithful Catholic who is concerned with maintaining harmony with the teaching of the Magisterium, he adds a footnote to the text just quoted (footnote 16 on page 116): “However, if the act is against Catholic teaching—papal teaching seems to assume or hold that every direct abortion is a direct killing (cf. John Paul II, Evangelium Vitae [The Gospel of Life] no. 58)—then I would advise anyone to follow Church teaching rather than what my philosophical conclusions might imply. There may very well be reasons against such an action which I have been unable to uncover.” For reasons that I present below in the present chapter of this dissertation, I believe Lee was correct in his understanding of what he says Evangelium vitae “seems to assume or hold.” It should be noted that in the Second Edition of his book, Lee rearranges much of the relevant
If abortion is defined as the ‘removal’ or ‘expulsion’ of a living but not yet viable unborn child from the womb of his or her mother, then the question posed by Lee as the title of his chapter is intelligible, for it is at least conceivable that some ‘removals’ or ‘expulsions’ of a living but not yet viable unborn child from his or her mother’s womb might not have as its moral object, either as end or as means, the killing or death of the unborn child.\(^9^7\)

To illustrate the last point, May asks the reader to consider a hypothetical case of a crisis pregnancy, a case which has often been used by Catholic moralists to illustrate the principle of double-effect.

Proceeding to offer his illustrative example, May presents and comments on the case in the following way.

Assume, for the sake of argument, that the unborn child in the womb of a woman diagnosed with cancer of the uterus could be removed from her womb and placed in an artificial womb for the three months necessary for it to become viable. The woman is in danger of dying from the cancer, and traditionally Roman Catholic moralists (and the Magisterium) would justify the woman’s having a hysterectomy or undergoing chemotherapy to protect her from dying of cancer even though it was foreseen that the unborn child would die as a result of the hysterectomy or chemotherapy. The reasoning was that the “removal” of the child from the mother’s womb—the abortion itself—and consequent death were not “directly intended” but only foreseen as unavoidable but not intended effects of the hysterectomy or chemotherapy. It seems obvious that it would be far better, if it were possible, to save the life of the unborn child in such instances by “removing” him or her from the mother’s womb to an artificial womb than to “allow” him or her to die as a foreseen but nonintended result of the chemotherapy or hysterectomy. But one would, in this instance, definitely intend the “removal” of the unborn child from the mother’s womb; one could not not intend this. Thus, if abortion is defined as “removal,” then it seems that in at least some instances (like the hypothetical one I just gave) a “direct abortion” would be morally justifiable… [I]t seems only obvious to note that if we define abortion as the \emph{intentional killing of an innocent unborn child}, then it is not possible to distinguish between abortion as “removal” and abortion as “killing.” If abortion is defined as the \emph{intentional killing of an unborn child}, then directly intended \emph{removals} of the unborn from their mothers’ wombs cannot be considered \emph{abortions}, if the \emph{killing or death of the unborn} is intended neither as end nor as means, i.e., is not intended at all. But, as we have seen and as I emphasized in the first section of chapter, and he removes any mention of \textit{Evangelium vitae} or his own thoughts on its teaching. See Patrick Lee, \textit{Abortion and Unborn Human Life}, Second Edition (Washington, D.C.: The Catholic University of America Press, 2010), 108-139.

this chapter, Pope John Paul II in *Evangelium vitae* defines abortion as the *intentional killing of the unborn*. I will return to the relevance of this.\(^98\)

Finally, May returns to the relevance of this at the bottom of page 195 of chapter five. There he sums up his thoughts in the following paragraph.

As indicated at the very beginning of this section, when I considered the possibility of “removing” an unborn child from the womb of a mother about to undergo a hysterectomy or chemotherapy (to save her life from cancer) to an artificial womb, I think that the distinction between abortion as “killing” and abortion as “removal” is a valid distinction, and is relevant to the issue of abortion when it is defined as the removal or expulsion of a nonviable fetus from the mother’s body, and that if abortion is defined in this way, then some “direct” abortions are, at least in principle, justifiable. It is obvious, however, that if “direct” abortion, i.e., abortion intended either as end or as chosen means, is defined—as it is by Pope John Paul II—as the “killing” of an innocent unborn person, then all “direct” abortions are gravely immoral and in no way justifiable.\(^99\)

Having fully represented May’s views in his own words, it is now possible to offer an evaluation of his exegesis and argumentation.

In summary, May has argued that in *Evangelium vitae*, Pope John Paul II has provided a definition of “abortion” that is essentially different than, or at least no longer includes, the understanding of abortion previously assumed by Catholic moralists. May maintains that the teaching on abortion in the encyclical allows for the possibility that some direct or procured abortions (as “removal”) may be justified in principle. This is because May thinks the new definition in *Evangelium vitae* makes intelligible a morally valid distinction between abortion “as removal” and abortion “as killing.” According to May’s reading of the encyclical, the latter, insofar as its moral object is the killing of an innocent human being, is intrinsically evil; whereas, the former, insofar as its moral object is not a killing (but a mere “removal” from location), is not intrinsically evil, and may be morally justified in some cases even though the death of the child is a foreseen consequence. Finally, May thinks that his example about the pregnant woman with

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\(^{98}\) Ibid., 192-193.

\(^{99}\) Ibid., 195-196.
cancer and the hypothetical possibility of saving the fetus with an artificial womb provides a true justification from moral reasoning for a case of abortion “as removal.” However, below I will argue that May is wrong on every one of these points.

The critique of May and the alternative understanding of the “definition” of abortion in Evangelium vitae that I will now offer will also provide a response to the positions of Rhonheimer and Jones, inasmuch as those positions are similar to May’s position. I will address the issue of the “definition” first, and then respond to May’s argument from the hypothetical case.

In the first paragraph quoted from May above, he had noted that “some older manuals of Catholic moral theology had defined abortion [as the expelling from the mother’s womb of a living but not yet viable fetus] and used other terms, e.g., ‘craniotomy,’ ‘embryotomy,’ ‘feticide,’ to describe interventions that deliberately caused the death of the unborn child but did not do so by ‘expelling’ it from the womb.” While there is nothing false in this quotation, it contains a profound understatement. As seen in the first two chapters of the present dissertation, not only some older manuals of Catholic moral theology contained the strict definition of abortion as the expulsion (or removal, or ejection) of a living but non-viable fetus from his mother, rather this simply was the commonly accepted definition of abortion used by virtually all Catholic moralists and canonists over the last century, having official canonical recognition at least since the Constitution “Effraenatam” promulgated by Pope Sixtus V in 1588.

May is also correct in noting how “abortion” in the moral manual tradition was distinguished from other terms such as “craniotomy,” “embryotomy,” and “feticide.” Insofar as such terms referred to procured death-causing acts, they were also considered gravely immoral. However, as also noted in the second chapter of this dissertation, “abortion,” according to its
strict definition, had a distinct penalty of excommunication that was incurred by anyone who, possessing sufficient canonical imputability, procured the abortion. Those who procured one of the other actions on a viable fetus (the typical subject for such actions) could be guilty of grave sin, but they were not subject to the excommunication attached to abortion. Both the strict understanding of the definition of abortion in relation to the canonical penalty of excommunication and the universal acceptance of this definition into the mid-twentieth century are important for setting the context for a proper understanding of the teaching of Pope John Paul II in *Evangelium vitae*.

As I translated it above, the so-called new “definition” of *Evangelium vitae* 58 can be rendered: “procured abortion, in whatsoever way it is accomplished, is the deliberate and direct killing of a human being in the first period of his/her life, which runs between conception and parturition.” It must be admitted that it is understandable why several authors have referred to the statement just quoted as a “definition,” insofar as the formulation “procured abortion…is” reflects a manner in which definitions are usually given. Moreover, the plausibility of viewing it as a sort of “new definition” of procured abortion would seem especially reasonable given that it almost verbatim reproduces the new and more encompassing definition offered by Lino Ciccone in 1979: “the deliberate and direct killing, however realized, of a human being in the initial phase of his life including between fertilization and birth.” While commentators on *Evangelium vitae* have largely appeared to have missed the connection entirely, Ciccone’s definition truly seems to have formally influenced Pope John Paul II’s formulation; a simple coincidence does not seem sufficient to account for the closeness in language. Nevertheless, it is important to recognize two points regarding the use of Ciccone’s formulation in the encyclical. First, as noted earlier, when drawing attention to Ciccone’s definition for the first time, Ciccone himself preferred his new
definition to *eiectio fetus immaturi* precisely because it was more inclusive, and not because he thought that *eiectio fetus immaturi* should cease to be considered a true abortion. On the contrary, it is possible to understand *eiectio fetus immaturi* as one “realized” form of deliberate and direct killing. The second point is that, regardless of how Ciccone may have thought of his own proposed definition, it is necessary to understand how Pope John Paul II makes use of it in the context of *Evangelium vitae*.

To understand how Pope John Paul uses Ciccone’s formulation, it is first necessary to distinguish two possible kinds of “definition.” One is the definition of a term; the other is the definition of an action’s essential moral character, what I will refer to as a moral definition. The definition of a term is given to limit and distinguish the meaning of a word, to aid readers in understanding the proper usage of a certain word as a special unit of currency in speech. On the other hand, the moral definition is given to identify an action’s status in relation to a norm of right practical reason (informed by natural and divine law). It appears that authors such as Rhonheimer, Jones, and, certainly, May, all understand John Paul II’s statement in section 58 (“procured abortion…is…”) to be both a moral definition and a definition of a term. I will argue that the only internally (i.e., considering the context within the encyclical itself) and externally (i.e., considering the teaching of the encyclical in relation to other authoritative ecclesial sources) consistent way of reading the statement is as a moral definition alone.

The first indications that John Paul II is leading up to a moral definition of procured abortion are found in the very beginning of section 58. As seen earlier in the present chapter of this dissertation, the Holy Father introduces section 58 by noting that among all the crimes that man can commit against life, the evil of procured abortion is “distinguished and detestable.” He then immediately recalls that “The Second Vatican Council describes [*describit*] it, in like
manner also infanticide, as ‘an unspeakable crime.’” He goes on to note how recently the perception of the gravity of abortion has been gradually covered up in the conscience of many. That abortion is so widely accepted in the minds of people, as well as in customs, and even laws, is presented as a clear proof of a very dangerous crisis of moral senses, according to which it is continuously more difficult to distinguish between good and evil, even concerning the fundamental right to life. Given such a grave state of things, Pope John Paul II states that “now more than ever there is need of a bold will to look at the truth itself and to call things by the proper name, that one would not yield to compromises of anyone’s convenience, nor to the invitation to deceive oneself.” Then, recognizing that widely disseminated ambiguous expressions, such as “interruption of pregnancy,” hide abortion’s true nature and diminish its weight to the public, the Pope brings his own form of clarity: “Nevertheless, no name is able to overthrow the truth of things: procured abortion, in whatsoever way it is accomplished, is the deliberate and direct killing of a human being in the first period of his/her life, which runs between conception and parturition.”

In context, what is it about procured abortion that makes it such a “distinguished and detestable” evil, a gravely “unspeakable crime” against life? It is that procured abortion is the deliberate and direct killing of a human being in the first period of his/her life. Every deliberately elected abortion is morally evil because it is the deliberate and direct killing of a clearly innocent human being. Hence, the final italicized part of the last quotation from section 58 tells readers why abortion is morally evil. In the face of increasing moral ambiguity in popular society, we are clearly informed concerning what is the malice proper to abortion.

Furthermore, as also noted previously, in the remaining paragraphs of section 58, Pope John Paul goes on to explain how the moral gravity of procured abortion comes to light not only
in recognizing the act of homicide involved, but also in recognizing the circumstances belonging to abortion: the destruction of human life at its beginning, the absolute innocence of the victim, the impossibility of his ever being an aggressor, his weak and defenseless state, and his complete entrustment to the guardianship of his mother. Lastly, while recognizing difficulties often involved in the lives of women who choose to have abortions, and in the conditions of the pre-born children themselves, the Holy Father concludes: “Nevertheless, these and similar reasons, howsoever weighty and harsh they may be, cannot ever purify the voluntary killing of an innocent human being.” Hence, throughout all the paragraphs of section 58, the encyclical is concerned with manifesting what is morally wrong with procured abortion and why it is never justifiable. These are clear indications that the Pope is concerned with defining the essential moral character of procured abortion as an action, making clear its moral status in relation to natural and divine law. This is noticeably different from providing a definition of the term “abortion,” which the Pope never states or indicates he intends to do.

What is the proper understanding of the term “abortion” as it is used in Evangelium vitae? Pope John Paul provides some clues also beginning in section 58. The Pope had cited the Second Vatican Council as describing (describit) “abortion” as an “unspeakable crime.” But how was the term “abortion” understood in Catholic moral teaching and canon law at the time of the Second Vatican Council? At that time the definition of the term “abortion” was firmly established and universally recognized as the ejection of an immature fetus. Moreover, that definition was so strictly understood, that, as mentioned many times, one incurred a special excommunication latae sententiae for the crime of abortion, but not for simple embryotomy or feticide on a viable fetus. It is significant that Pope John Paul II writes seamlessly about the teaching of Vatican II on the moral evil of abortion and then provides his own teaching on the
moral evil of the same act. There is no indication in section 58 itself that the Pope has abandoned the understanding of abortion as *ejectio fetus immaturi*.

But there are more and even stronger reasons for thinking that Pope John Paul II had not abandoned the “older” understanding of the term “abortion” in *Evangelium vitae*. Several texts from sections 61 and 62 confirm that the Holy Father intended to include the older understanding of abortion in his teaching. Relying heavily on the Congregation for the Doctrine of the Faith’s *Declaration on Procured Abortion*, section 61 recalled the constant witness of the Church’s Tradition, “from the beginning up to our days, which holds abortion itself as something uniquely morally disordered.” Then, beginning in section 62, the Pope focused on the teachings of the recent documents of the Magisterium on abortion, recalling especially the “very great strength” with which “the recent Papal Magisterium has repeated this common doctrine.” Explicit references are made to *Casti connubii*, the “San Luca” and “Midwives” addresses, and *Gaudium et spes*. Finally, just before the paragraph of the pronouncement on procured abortion, the Pope dedicates a whole paragraph to the canonical discipline of the Church in relation to abortion, explicitly referencing the penalty of excommunication against abortion in the 1917 Code, and quoting directly canon 1398 of the 1983 Code, which he notes “follows perseveringly the same norm” of canon 2350 §1 of the 1917 Code.

It is immediately following the paragraph on the canonical discipline of the Church that Pope John Paul II, after explicitly recalling the unanimity and immutability of the ecclesial instruction on abortion, declares that “abortion procured in a direct way, either intended as an end or as a means, always entails a grave disturbance of the moral order, since that would be the deliberate killing of an innocent human being.”
The texts referenced from sections 61 and 62 are significant for several reasons. It is important to notice again the seamless way in which the Pope speaks of “abortion” across the centuries, but most especially in relation to the teachings of the Magisterium and the penalties of the two codes of canon law. At the times of the teachings of the “more recent” Magisterium referenced by Pope John Paul, the understanding of abortion, as *eiectio fetus immaturi*, was universally established. Of course, this same understanding was strictly maintained in the canonical discipline of the 1917 Code of Canon Law. The Holy Father clearly writes as though direct or procured abortion, even as it had been strictly understood in the canonical tradition, is always to be condemned, since, morally, “that would be the deliberate killing of an innocent human being.” Indeed, it is not possible to read sections 58-62 of *Evangelium vitae* consistently without recognizing that Pope John Paul II has taught that one is morally guilty (at least in the objective sense) of the deliberate killing of an innocent human being *simply if* he has elected to procure the ejection of a living but non-viable fetus. The inclusion of the penalty for abortion according to the 1917 Code (which censure was certainly incurred *only* by procuring abortion according to the strict definition of *eiectio fetus immaturi*) in the text of section 62 shows the *sufficiency* of the *eiectio fetus immaturi* definition of abortion to refer to the kind of act that the Pope condemns as deliberate and direct killing of an innocent.

Moreover, the last conclusion is also confirmed in a special way by section 62’s inclusion of canon 1398 of the 1983 revised Code of Canon Law. For this canon is the only ecclesial text from the Holy See in more than a century to have an official, public, and papally approved *definition* of the term “abortion” provided for it; and that definition includes *eiectio fetus immaturi*. As treated earlier in the present chapter of this dissertation, on January 19, 1988, the then Pontifical Commission for Authentically Interpreting the Code of Canon Law officially
responded “Negative to the first part: affirmative to the second,” to the dubium: “Whether abortion, as found in canon 1398, is to be understood only concerning the ejection of an immature fetus, or also concerning the killing of the same fetus in whatsoever manner and at whatsoever time from the moment of conception it may be procured?” The response received official papal approval on May 23, 1988. Hence, just seven years before writing *Evangelium vitae*, Pope John Paul II had made it clear that in the revised Code of Canon Law, the definition of the term “abortion” included *not only* the ejection of an immature fetus, *but also* any other form of feticide procured in whatsoever manner and time from the moment of conception.

Had Pope John Paul II intended to provide a new definition of the term “abortion” in *Evangelium vitae*, exclusive of *ejectio fetus immaturi*, he would have been implicitly undermining the intelligibility and force of his references to both the canonical tradition (especially in the two codes) and to the documents of the Magisterium over the last century. In a particular way, he also would have been contradicting the canonical definition of “abortion” that he himself had officially approved just seven years prior.

With the new canonical understanding of abortion, is it possible to make the distinction between abortion *as removal* and abortion *as killing*, and apply this distinction to the teaching of Pope John Paul II in *Evangelium vitae*? It depends on what is understood by such a distinction. If by abortion *as killing*, one means some form of feticide whereby the *viable* fetus is killed inside the mother and then removed from her body (or killed in the process of being removed), then yes, there is a *limited sense* in which feticide is a different *kind of abortion* than the ejection of a *living* but non-viable fetus. However, if by abortion *as killing*, one means to distinguish (as May does) the only kind of abortion that, according to *Evangelium vitae*, is the deliberate and direct killing of an innocent human being, with the implication that the direct or procured
ejection of a non-viable fetus is not necessarily a direct killing of an innocent, then no, there is not (essentially) a morally relevant distinction. ¹⁰⁰

Given the overall context of paragraphs 58-62 of the encyclical, there is only one consistent way to read the following statements from Pope John Paul II. “Procured abortion, in whatsoever way it is accomplished, is the deliberate and direct killing of a human being in the first period of his/her life, which runs between conception and parturition”; and, “abortion procured in a direct way, either intended as an end or as a means, always entails a grave disturbance of the moral order, since that would be the deliberate killing of an innocent human being.” If one deliberately elects a form of direct feticide, or if one deliberately elects to procure the ejection of a living but non-viable fetus (i.e., in whatsoever way it [the “abortion”] is accomplished), then what the agent does is (in the order of objective morality) a direct killing of an innocent human being. This leaves no room for the position of May stated above: “that the distinction between abortion as ‘killing’ and abortion as ‘removal’ is a valid distinction, and is relevant to the issue of abortion when it is defined as the removal or expulsion of a nonviable fetus from the mother’s body, and that if abortion is defined in this way, then some ‘direct’ abortions are at least in principle, justifiable.” May’s position as stated here is simply incompatible with a consistent reading of Evangelium vitae.

Among the commentators on Evangelium vitae who have taught or suggested that the encyclical provides a new definition of “abortion,” Ángel Rodríguez Luño provides the best alternative to the understandings of that “definition” offered by Rhonheimer, Jones, and May. Indeed, Rodríguez Luño’s interpretation of the “definition” appears to be in complete harmony with the encyclical itself, and with the view that I have argued thus far, that the “definition”

¹⁰⁰ There may still be a distinction regarding cruelty or gruesomeness (e.g., feticide by craniotomy is generally far more gruesome than removing the nonviable child without crushing him first). But these are distinctions according to circumstances of manner, not essential distinctions.
should be understood as a *moral definition* alone, not as a new definition of a *term*. In his essay, “La Valutazione Teologico-Morale Dell’Aborto,” Rodríguez Luño’s relevant commentary can be found in the following paragraphs.

The concept of procured abortion used in EV constitutes a certain evolution with respect to that [concept] which was used for a long time in the manuals of moral theology. [Rodríguez Luño here references in a footnote: D.M. Prümmer, *Manuale Theologiae Moralis* (Herder, Barcino-Friburgi Brsg.-Romae 196115) vol. II, n. 137: “Abortus est ejectio immaturi foetus viventis ex utero matris”; H. Noldin, *Summa Theologiae Moralis* (F. Rauch, Oenipont-Lipsiae 1941) vol. II, n. 342: “Abortus est ejectio foetus immaturi ex utero matris”]. By procured abortion, these understood every action that might itself propose to *expel or to pull out of the uterus of the mother* a living yet not viable fetus. The interventions that voluntarily caused the death of the fetus but were not understood within this definition received other names, such as craniotomy, feticide, embryotomy, etc., and were all the same considered as gravely illicit.

For EV, on the contrary, ‘procured abortion is the deliberate and direct killing, however it may be realized, of a human being in the initial phase of his existence, including *between conception and birth*.’ (EV, 58b). Evidently, it’s a matter of a wider definition, the importance of which is not merely a question of words. Leaving aside for the moment the analysis of the expression ‘direct,’ the fundamental elements of the definition are the following:

a) Procured abortion includes all voluntary interventions against human life from ‘conception until birth’: whatever be the place in which the embryo or the fetus may be found: uterus, fallopian tube, etc.; whatever may be the time passed from fertilization: the first moment of implantation inside the uterus, in the moments immediately after the implantation, during the fetal state, etc.; whatever may be the means through which it is realized: *extracting it from the body of the mother* or eliminating it at the interior, using a surgical procedure or using devices or substances such as the IUD, RU 486—Mifepristone—, the postovulatory estrogen and prostaglandin—‘the morning after pill’—and all the products introduced as ‘postcoital contraceptives’—, methotrexate, etc.; and whatever be the motivation to which the direct abortion corresponds: therapeutic, social, criminal, eugenic, etc…

d) …Without denying its validity from the descriptive point of view, the *distinction between extraction of the fetus, feticide, abortion preceding the implantation by the use of interceptives, the use of RU 486, etc., is considered irrelevant for its morality. All these actions constitute objectively a sin of identical lowest moral species*, which naturally does not prohibit that certain circumstances may be relevant on the plane of subjective morality.101

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101 In the translated text, the emphases are from the original, but I have placed in **bold** certain parts that are directly incompatible with May’s understanding of the “definition,” and that support the understanding for which I have argued. The original text is found in Ángel Rodríguez Luño, “La Valutazione Teologico-Morale Dell’Aborto,” 419-421: “Il concetto di aborto procurato adoperato dall’EV costituisce una certa evoluzione rispetto a quello utilizzato per molto tempo dai manuali di Teologia Morale. Questi intendevano per aborto procurato ogni azione che si proponesse di *espellere o di estrarre dall’utero materno* un feto vivo ancora non vitale. Gli interventi che
The author correctly recognizes that the teaching of the encyclical on procured abortion applies to many more actions than only those that fall under the limited description of *to expel or to pull out of the uterus of the mother* a living yet not viable fetus. In that respect, the encyclical is assuming a wider definition of “abortion” than moralists writing under the 1917 Code (for, in fact, the encyclical assumes the definition recognized by the 1988 decision from the Pontifical Council for Authentically Interpreting the [1983] Code of Canon Law).

Rodríguez Luño also correctly teaches that the concept of abortion in *Evangelium vitae* still includes *eiectio fetus immaturi*. He makes this clear when writing that “procured abortion includes…extracting it [the fetus] from the body of the mother.” Even clearer is the declaration that “the distinction between extraction of the fetus, feticide, abortion preceding the implantation by the use of interceptives, the use of RU 486, etc., is considered irrelevant for its morality.” Hence, Rodríguez Luño understands the encyclical to teach or imply that all such actions “constitute objectively a sin of identical lowest moral species.” This is equivalent to recognizing that the “definition” of *Evangelium vitae* 58, quoted by Rodríguez Luño, is a *moral definition*, causavano volontariamente la morte del feto ma non compresi in questa definizione ricevevano altri nomi, come craniotomia, feticidio, embriotomia, etc., ed erano ugualmente considerati come gravemente illeciti.

“Per l’EV, al contrario, ‘l’aborto procurato è l’uccisione deliberata e diretta, comunque venga attuata, di un essere umano nella fase iniziale della esistenza, compresa tra il concepimento e la nascita’ (EV, 58b). Si tratta evidentemente di una definizione più ampia, la cui importanza non è una mera questione di parole. Lasciando da parte per il momento l’analisi dell’espressione ‘diretta’, gli elementi fondamentali della definizione sono i seguenti: “a) L’aborto procurato comprende tutti gli interventi volontari contro la vita umana dal ‘concepimento alla nascita’: qualunque sia il luogo in cui l’embrione o il feto si trovi: utero, trombre di Falloppio, etc.; qualunque sia il tempo trascorso dalla fecondazione: prima dell’annidamento dentro l’utero, nei momenti immediatamente posteriori all’annidamento, durante lo stato fetale, etc.; qualunque sia il mezzo attraverso il quale si realizzi: estraendolo dal corpo della madre o eliminandolo al di dentro, usando un procedimento chirurgico o mediante dispositivi o sostanze come il DIU, la RU 486—Mifepristone—, gli estrogeni postovulatori e prostaglandine—‘pillola del giorno dopo’ e tutti i prodotti presentati come ‘anticongezionali postcoitali’—, il methotrexate, ecc.; e qualunque sia la motivazione a cui l’aborto diretto risponda: terapeutica, sociale, criminologica, eugenetica, ecc.

“…d) Senza negare la sua validità dal punto di vista descrittivo, la distinzione fra estrazione del feto, feticidio, aborto anteriore all’impianto mediante l’uso di intercettivi, l’uso della RU 486, ecc., è considerata irrilevante per la morale. Tutte queste azioni costituiscono oggettivamente un peccato d’identica specie morale infima, il che non impedisce naturalmente che certe circostanze possano essere rilevanti sul piano della moralità soggettiva.”
and not a definition of a term.\textsuperscript{102} For as terms, the words of “extraction of the (nonviable) fetus” and “feticide” have different semantic ranges, yet they are here considered equivalent in their essential species as moral actions.\textsuperscript{103}

\textsuperscript{102} By “lowest moral species” Rodríguez Luño uses the customary terminology of moral and sacramental theology, referring to the ultimate species of a sin in relation to the specific virtue, law, or obligation it opposes or violates. The need to determine the ultimate or lowest moral species (species infima moralis) of a sin arises in a special way in relation to an adequate confession of mortal sins in the sacrament of penance. See, for example, Henry Davis, Moral and Pastoral Theology, Volume Three: The Sacraments in General, Baptism, Confirmation, Holy Eucharist, Penance, Indulgences, Censures (London: Sheed and Ward, 1958), 372: “Mortal sins must be confessed in terms of their theological and moral species. Sins are differentiated theologically according to their gravity into mortal and venial sins. They are differentiated morally according to their opposition to different virtues or violation of specifically different laws or obligations of the same virtue. Mortal sins must also be confessed according as they are differentiated in the lowest categories or ultimate species. Thus, a mortal sin may be committed against chastity or justice, but these are general categories. The precise species of the sin against each of these virtues must be confessed, if the precise species is grave. Thus, adultery, fornication, and obscene conduct are all contrary to chastity, but in different ways; theft of church property is not mere theft; parricide is not merely homicide.”

In section (“b)”) of Rodríguez Luño’s essay, he provides some comments that are also relevant to the shared moral species of the various forms of abortion. See “La Valutazione Teologico-Morale Dell’Aborto,” 420: “(b) All the interventions which we have barely mentioned [in (a)""] and others similar constitute the elimination “of a human being in the initial phase of his existence”, and consequently are opposed to the virtue of justice and directly violate the divine precept “do not kill”, are to be clearly distinguished from contraception and from other sins against matrimonial chastity. Fertilization of the egg constitutes the border that separates the diverse forms of contraception from the diverse forms of abortion. These interventions on the already fertilized egg are included inside the moral concept of abortion as a sin against justice and the 5th commandment of the Decalogue.” (“(b) Tutti gli interventi che abbiamo appena menzionati e altri analoghi costituiscono l’eliminazione ‘di un essere umano nella fase iniziale della sua esistenza’, e di conseguenza si oppongono alla virtù della giustizia e violano direttamente il precetto divino ‘non uccidere’, distinguendosi chiaramente dalla contraccezione e dagli altri peccati contro la castità matrimoniale. La fecondazione dell’ovulo costituisce la frontiera che separa le diverse forme di contraccezione dalle diverse forme di aborto. Questi interventi sull’ovulo già fecondato sono inclusi dentro il concetto morale di aborto come peccato contro la giustizia e il V comandamento del Decalogo.”)

\textsuperscript{103} Before moving on from the commentary of Ángel Rodríguez Luño, it should be pointed out that, somewhat ironically, William May was evidently rather familiar with Rodríguez Luño’s essay on the theologico-moral evaluation of abortion. May frequently cites this work when he makes the claim that Pope John Paul II has offered a new definition of abortion allowing for the possibility of distinguishing in a morally relevant way between abortion “as removal” and abortion “as killing.” See William E. May, Catholic Bioethics and the Gift of Human Life, Second Edition, 167, 202-203; also May’s “To the Editor,” National Catholic Bioethics Quarterly (Winter 2010), 646-647; and May’s article, “Chapter 1 of Austriaco’s Biomedicine and Beatitute: Four Critical Issues,” The Linacre Quarterly, 80, no. 2 (May 2013), 147 and 150. In the first work mentioned by May, after writing: “Some older manuals of Catholic moral theology had defined abortion [as the “expelling” from the mother’s womb of a living but not yet viable fetus] and used other terms, e.g., ‘craniotomy,’ ‘embryotomy,’ ‘feticide,’ to describe interventions that deliberately caused the death of the unborn child but did not do so by ‘expelling’ it from the womb,” May provides an endnote in which he writes the following. “On this, see the helpful essay by Angel Rodríguez 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), p. 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.” Although May never directly cites Rodríguez Luño’s essay in formal support of May’s own abortion as removal vs. killing exegesis of Evangelium vitae, it is still odd that he frequently references it on those occasions when he argues for an interpretation that Rodríguez Luño clearly rejects in his own essay.
Philosophical Arguments Concerning the Abortion “as Killing” Vs. “as Removal” Distinction

Having examined and critiqued William May’s (and by extension, Martin Rhonheimer’s and David Albert Jones’s) exegesis of *Evangelium vitae* on the definition and proper understanding of procured abortion, it is now necessary to respond to May’s philosophical justification for the valid moral distinction between “abortion as killing” and “abortion as removal,” based on the hypothetical case of the pregnant woman with a cancerous uterus who has access to an “artificial womb.” In the first line of the hypothetical case, it is possible to note an equivocation that makes the case a failure in the attempt to justify some abortions as removal. May began with the line: “Assume, for the sake of argument, that the unborn child in the womb of a woman diagnosed with cancer of the uterus could be removed from her womb and placed in an artificial womb for the three months necessary for it to become viable.” There is an equivocal use of the term “viable” here, when compared with the term as it has always been used by moralists and canonists employing the definition of abortion as “the removal or expulsion of a living but not viable fetus.” According to traditional understanding, a fetus is viable if he can live outside of his mother, *even with the aid of artificial means*.

If there were an artificial “womb” that could provide reasonable hope for the sustaining of the fetus outside the body of his mother, then removing the fetus to place him in the artificial “womb” could not truly be considered a direct or procured abortion. By definition, the child is viable; hence, there is no “removal or expulsion of a living but not viable fetus.” May appears to use the term “viable” in the first line of the hypothetical case to refer to something like “able to live independently of the maternal womb and the artificial womb,” or perhaps “able to live without radical artificial assistance.” But such understandings are essentially different from how viable has been traditionally understood by Catholic moralists and canonists. Hence, the
“removal” May addresses in his case does not morally justify any true instance of “abortion.” Rather, the case described by May would be at most “premature delivery” of a viable fetus. 104

Although not using the same terms as May (“abortion as killing” vs. “abortion as removal”), Christopher Kaczor has offered a related philosophical argument attempting to justify some direct removals of non-viable fetuses. Essentially, Kaczor argues that to say that deliberately and directly removing or ejecting a non-viable fetus must be a deliberate and direct killing of an innocent human being means that such a direct ejection of a non-viable fetus is intrinsically evil. But this does not seem right, because for an action to be intrinsically evil it must be evil independently of circumstances. But viability is a circumstance that is subject to change according to time, place, and technology. Hence, the removal of even a non-viable fetus cannot be intrinsically evil, but at most is circumstantially evil. Whereas deliberate and direct killing of an innocent human being is intrinsically evil as object, without dependence on circumstances. So the deliberate and direct ejection of a non-viable fetus cannot be identified simply as a deliberate and direct killing of an innocent human being.

Considering the particular case of removing an ectopic embryo from its pathological site within the mother by way of salpingostomy (surgically incising a fallopian tube to extract an embryo lodged therein), Kaczor essentially presents the argument of the last paragraph in the following way.

It might be responded [to Kaczor’s argument that salpingostomy as a remedy for an ectopic pregnancy need not involve an intentional killing] that it is immoral to remove the

104 In a more recent article, Christopher Tollefsen makes the same mistake as May did regarding the term “viable.” Recognizing that Directive 45 of the United States Conference of Catholic Bishops Ethical and Religious Directives for Catholic Health Care Services (2009) includes the “directly intended termination of pregnancy before viability” as a morally prohibited abortion, Tollefsen writes “...by at least my lights, ERD 45 should be revised so as not to conflate the intentional ending of a pregnancy (something that could be done, for example, by removing a pre-viable child to an artificial womb) with intentional killing (which would not occur in the artificial womb case).” Christopher 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 (2013): 751-778, at 772. I will consider the teaching of Directive 45 in detail later in the present chapter.
embryo from its pathological implantation site if one has no safe haven for the embryo, such as the uterus. To use a different example, it would not be wrong to take someone off a life raft in order to put that person in a larger safer boat, but it would be wrong to knock someone off a life raft if there were no place to put him, even if the person is certain to die on the life raft. Since there is no feasible transplantation technique for ectopic pregnancy, the removal of the embryo is morally wrong. If there were such a technique, it would not be wrong to remove the embryo leaving the tube intact.

However, if there is some further condition that can be added that renders an act accurately and morally described as no longer evil, then we are no longer talking about an intrinsically evil act. Again, if something is intrinsically evil—as opposed to circumstantially evil—then no further circumstance can render that act good, including the further circumstance that they can be removed to another place of safety. In other words, the response implicitly indicates that removing a human embryo from its point of pathological location is not intrinsically evil, just as removing someone from a lifeboat is not intrinsically evil. Both may be circumstantially evil; but then one must take into account the additional circumstances; and so the act in itself is not intrinsically evil.\textsuperscript{105}

In response, it needs to be pointed out that some conditions that may be considered circumstances from a physical or material point of view are essential for determining what kind of human act is performed from the moral point of view. For example, sexual intercourse is the same physical kind of act with one’s own spouse or with the spouse of another. But the difference in circumstances between the two cases is not accidental from a moral perspective. The first case is lawful, the second is \textit{intrinsically evil}. It can be argued, together with authors whose writings were considered in the second chapter of this dissertation, that \textit{viability} in the case of the ejection of a fetus is a condition or circumstance that plays a similar decisive role in determining whether the intrinsically evil act of direct killing of the innocent is performed.\textsuperscript{106}


\textsuperscript{106}The question of special moral relevance is this: Whether according to circumstances this removal must be a direct killing? Focusing, as Kaczor does, on whether “removing a human embryo from its point of pathological location,” or “removing someone from a lifeboat,” \textit{as such} is intrinsically evil misses the point. Not one of the dozens of moralists referenced in the second chapter of this dissertation who taught that procured abortion (as eictio fetus immaturi) is a direct killing, nor any magisterial document over the last 150 years, has suggested that “removing a human embryo from its point of pathological location,” or “removing someone from a lifeboat,” \textit{as such}, is intrinsically evil. The relevant question is whether \textit{in some circumstances} such “removals,” \textit{precisely because they deprive the object moved} of his viable status, \textit{must be} direct killings of the innocent—which would then make \textit{those}
Saint Thomas Aquinas himself provides an interesting example that can be used to illustrate how viability, even according to circumstances, can be morally determinative for what kind of moral action one performs. Although treating directly another matter entirely, in his question on the recipients of the sacrament of Baptism, in the *Summa Theologiae* III, Question 68, Article 11 (Whether a Child Can Be Baptized While Yet in Its Mother’s Womb?), Thomas presents and replies to the following objection.

*Objection 3:* Further, eternal death is worse than bodily death. But out of two evils the lesser evil is to be chosen. If, therefore, the child existing in the mother’s womb cannot be baptized, it would be better that the mother be opened and the child brought forth by force to be baptized, than that the child would be eternally damned, departing without Baptism.

*Reply:* *Evils are not to be done that goods might come,* as it is said in Rom. 3. And, for that reason, a man ought not to kill the mother that he might baptize the child. If, however, the mother has died with the child living in the womb, she ought to be opened, that the child might be baptized.107

The objection and the reply are very informative given the medical context of the thirteenth century, and compared with the medical context present in many modern countries. According to ordinary circumstances in the Middle Ages, “to open” a woman by uterine incision through the abdomen and uterus (performing a cesarean operation) was, as Thomas says, “to kill the particular actions morally evil. The common teaching of theologians presented in the previous chapter of this dissertation, and the magisterial documents treated in the present chapter, would provide an affirmative response to the question.


“Ad tertium dicendum quod *non sunt facienda mala ut veniant bona,* ut dicitur Rom. III. Et ideo non debet homo occidere matrem ut baptizet puerum. Si tamen mater mortua fuerit vivente pueru in utero, aperiri debet, ut puer baptizetur.”
mother.” Circumstantially, she was *nonviable* in relation to the operation.108 Today the same need not be said.

Surely Saint Thomas would not have spoken of “opening” a woman by such an operation as the evil of killing had circumstances then been as they are in many hospitals in the modern world. Due to modern medical techniques and remedies, even uterine incision through the abdomen and uterus, sufficiently wide for the extraction of a developed fetus, does not ordinarily inflict a mortal wound on a woman. According to *these* circumstances, she is reasonably considered *viable*.109 If, as in May’s example, a competent “artificial womb” is ever available, or, as in Kaczor’s example, a reliable technique for transferring an ectopic embryo to the proper site of implantation in the uterus becomes practicable, then fetuses may become *viable* at much earlier times and in many more cases than they are now.

*The Teaching of Evangelium vitae in Relation to Other Ecclesial Documents*

The doctrine of *Evangelium vitae* on procured abortion not only perfectly harmonizes with prior magisterial teaching, but also complements and even develops, at least in terms of explicitness, that prior teaching. The specific thesis found in sections 58 and 62 of *Evangelium vitae*, that abortion procured in a direct way, even understood as *ejectio fetus immaturi*, is always a deliberate and direct killing of an innocent human being, complements or completes prior teachings by naming the precise moral reason that can account for why direct abortion was both

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108 This would still be true in general even if in some rare cases persons survived such operations. In very rare cases a person can survive a bullet through the head. If at close range a person shot another in the head with a round from a high caliber firearm, the victim might survive, but as there is generally not a well-founded hope for a victim to survive such violence, one reasonably speaks of such an action in a general way as “killing” a man, insofar as in the ordinary course of things such an action is per se apt to deprive the body of its viable status. Of course, if the victim survived, then the action would not properly be a “killing”; but it could still be considered an “attempted killing.” In the same way, if a child survives, then “abortion” was not properly accomplished, but only “attempted abortion.”

109 This would still be true in general even if in some cases a woman does not survive the operation in spite of the conditions being applied that are expected to secure her survival. If there is a well-founded hope for a patient to survive in the circumstances, such an operation need not be considered a deliberate “killing,” even if without those circumstances there would be an opposite expectation of death.
never allowed and always forbidden in previous magisterial judgments, regardless of the extremity of the circumstances. In so doing, that thesis of Evangelium vitae also makes explicit a doctrine that may have been only implicit in some earlier documents of the Magisterium. This seems to be the case especially in relation to the late nineteenth century Inquisition decisions.

To recall, the first decision from the Inquisition, from May 28, 1884, declared that craniotomy “cannot be safely taught” in Catholic schools to be licit, even in cases when the child would die with or without the operation, but the mother could be saved with it. The next decision, from August 19, 1889, repeated the same declaration, adding: “and any directly lethal surgical operation on the fetus or the gestating mother,” in response to seventeen questions formulated in relation to twelve hypothetical cases. At least two of the cases asked about the lawfulness of eictio fetus immaturi in order to save the mother from dire circumstances resulting from pregnancy or to save her from a grave operation. The third decision, from July 25, 1895, provided a negative judgment to the question of whether a medical doctor “may safely repeat” ejection of an immature fetus, in cases in which the mother’s death is certain and imminent without the abortion, but could be avoided with the abortion. Of course, given those circumstances, the immature fetus is always certain to die with or without the abortion. The 1895 decision, officially approved by Pope Leo XIII, was expressly given “according to the other decrees, namely of May 28, 1884, and August 19, 1889.” However, no one of the decisions stated explicitly that procured abortion, craniotomy, or any other particular procedure, is morally wrong because it is a direct killing of an innocent human being.

Although not providing a formal interpretation of any particular Inquisition decision, in Evangelium vitae Pope John Paul II de facto provides the reason why the doctor in the 1895 case may not “safely repeat” the abortion procedure even to save the life of the mother in a case when
the child’s death is certain with or without the procedure. For according to Pope John Paul II, to “repeat” that procedure is deliberately and directly to kill an innocent human being. One hundred years after the Inquisition response (1895-1995), the Holy Father has confirmed and made explicit why the direct ejection of a non-viable fetus may never be justifiably chosen.

Without denying the good reasons presented in the first and second chapters of the present dissertation for the doctrinal-moral authority of the early Inquisition decisions on craniotomy and abortion (i.e., in favor of the view that the decisions were teaching or implying that Catholics must think that procured abortion or craniotomy is never morally lawful, and against the view that they were mere disciplinary or prudential interventions to be observed in practice), there is a certain respect in which the teaching of *Evangelium vitae* has made irrelevant any discussion about the authority and proper implications of those decisions, at least with respect to *ejectio fetus immaturi*. For even if one were to dispute the doctrinal status and

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110 Despite the strong historico-contextual argument of Eschbach, as well as the historical witnesses of theologians such as Lehmkuhl, Connery, Bouscaren, Merkelbach, Genicot, Salsmans, Prümmer, Iorio, Noldin, and Schmitt, treated in the first and second chapters of this dissertation, all of whom interpreted the Inquisition decisions as more than mere disciplinary-prudential directives, several more recent authors have proposed understandings of the decisions that would reduce them to directives of that kind. Accordingly, in their article “‘Direct’ and ‘Indirect’: A Reply to Critics of our Action Theory,” *The Thomist* 65 (2001): 1-44, at 26-27, John Finnis, Germain Grisez, and Joseph Boyle write: “Interpreting the Church’s documents with precision, one finds that the Church has never taught that craniotomy is intentional killing or that performing a craniotomy is morally wrong. The three documents referring to craniotomy were responses published by the Holy Office, two of them with explicit papal approval, to questions raised by individual bishops. The first two questions (1884 and 1889) concerned craniotomy, but the response asserted only that it could not be safely taught in Catholic educational institutions to be licit…To say that something cannot be safely taught or even that it cannot be safely done is not to assert that it is immoral. Rather, it is to provide pastoral guidance for the faithful fulfillment of one’s responsibilities as a teacher, and for the formation of one’s conscience. Receiving this advice, faithful and prudent teachers and doctors would have realized that, though craniotomy might possibly be morally acceptable, their moral responsibility was to proceed on the assumption that is was not. But a good deal of pastoral guidance wisely given in the nineteenth century could not be rightly followed today. These responses of the Holy Office effectively closed debate among theologians of those days. However, since the Holy Office did not assert that craniotomy is immoral, its responses cannot ground a sound argument against a position such as ours, based as it is upon an understanding of action thoroughly in line with the tradition and the contemporary magisterium—an understanding not articulated with sufficient clarity by nineteenth-century theologians.” A little further down on the same page (27), the authors make clear their position: “Our position is that a doctor could do a craniotomy, even one involving emptying the baby’s skull without intending to kill the baby—that is, without the craniotomy being a direct killing.” Interestingly, the understanding of the Holy Office decisions presented in the article appears to be different from the way in which at least Grisez understood those decisions in his earlier writing. In Germain Grisez, *Abortion: The Myths, The Realities, and the Arguments* (New York: Corpus Books, 1970), 341, the author states: “However, if it were impossible to prevent the
implications of the relevant Inquisition decisions, it is clear that Pope John Paul II has taught that

eiectio fetus immaturi, procured in a direct way, is a deliberate and direct killing of an innocent
human being. Moreover, if eiectio fetus immaturi must be regarded as direct killing, a fortiori,

mother’s death (or, worse, the death of both) except by cutting up and removing the child piecemeal, it seems to me
that this death-dealing deed could be done without the killing itself coming within the scope of intention.” He also
makes clear on page 8 that in his own understanding of the term “abortion” used in his book, Grisez includes more
procedures than the traditional expulsion of a non-viable fetus: “I include procedures which kill the child within the
mother. Second, if the purpose of the procedure is detrimental to the child, I include the killing of viable children.”
Then, on page 345, he writes: “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.”
This is after he had already admitted on page 180, that “It would be a mistake to try to draw a distinction between
the previous decrees, which refer to what may not ‘safely be taught,’ and the decree of 1895, which refers to the
moral safeness of performing the operations. The Congregation itself incorporated the earlier decrees by reference
in the later one.” See also, Germain Grisez, The Way of the Lord Jesus, Volume Two: Living a Christian Life,
(Quincy, Illinois: Franciscan Press, 1993), 302: “With respect to physical causality, craniotomy immediately
destroys the baby, and only in this way saves the mother. Thus, not only classical moralists but the magisterium
regarded it as ‘direct’ killing: a bad means to a good end.” In a footnote reference on the same page, Grisez has:
“the magisterial teaching is in the nineteenth-century decrees of the Holy Office, regulating what can be taught
safely in Catholic schools; see DS 3258/—(the 1889 decree), which refers to a prior, similar decree, confirmed by
the pope (ASS 17 [1884] 556); DS 3298/1890a (confirmed by the pope, 25 July 1895).” In the 2001 article, Grisez
no longer indicates any “divergence” between his teaching and that of the Holy Office decisions. Rather, it appears
that he changed his interpretation of those decisions, such that in later years he simply reads them as having
provided practical pastoral guidance, with no teaching concerning the intrinsic morality of the procedures
themselves. In none of the works by Grisez is there any focused engagement with or refutation of the historico-
contextual argument of Eschbach or the interpretations of the other theologians mentioned above.

111 While not employing the same “pastoral guidance” description of the Inquisition decisions as used by Grisez,
Finnis, and Boyle, Martin Rhonheimer has also stated that, although the “note that it ‘could not be taught as certain’
[which is Rhonheimer’s not-so-literal rendering of tuto doceri non posse] did indeed influence teaching and medical
practice,” nevertheless, “it did not in any way decide the question from a doctrinal standpoint (and thereby the
reproach of heresy was eliminated).” See Martin Rhonheimer, Vital Conflicts in Medical Ethics: A Virtue Approach
to Craniotomy and Tubal Pregnancies, 77-78. In a footnote to the statement (footnote 73 on page 78), Rhonheimer
notes: “This is also the position of such a vehement opponent of craniotomy as Noldin; cf. H. Noldin, Summa
Theologiae Moralis, II (Regensburg: F. Rauch, 1917), 365: ‘Verum licet s. Officii responsis doctrina opposita non
declaretur simpliciter falsa, tamen ea uti amplius non licet nec theoreti nec practice.’ Unfortunately, it is not so
clear how Rhonheimer means for this reference and quotation to support his statement in his main text. For in that
text Rhonheimer might be read to equate “decid[ing] the question from a doctrinal standpoint” with “the reproach of
heresy,” as if to say that a position is not doctrinally “decided” or excluded unless it has been censured as heretical.
But the “reproach” of heresy is only one way to decide doctrinal questions, and then it can apply only to
propositions which are at least directly contrary to divine and Catholic faith, the highest category of teaching
recognized by the Congregation for the Doctrine of the Faith. Surely, there are different senses of “deciding a
question from a doctrinal standpoint” that can mean much less than branding a proposition as heretical. As seen in
the first and second chapters of this dissertation, many eminent authors in the decades following the Inquisition
decisions regarded the question of the moral lawfulness of craniotomy and direct abortion decided from a doctrinal
standpoint, but none suggested that the reproach of heresy was involved. Hence, if Rhonheimer is claiming that the
Inquisition decisions were regarded by Noldin as not decided from a doctrinal standpoint because Noldin held the
position that the decisions did not consider the lawfulness of craniotomy or direct abortion heretical, then
Rhonheimer is equivocating with the use of the description “decid[ing] the question from a doctrinal standpoint.”
embryotomy, craniotomy, and other gruesome forms of feticide must be considered the same, especially since Evangelium vitae assumes the revised canonical understanding of abortion that includes not only eictio fetus immaturi, but also “the killing” of the fetus “in whatsoever manner and at whatsoever time from the moment of conception it may be procured.”112

Moreover, it is hard to see how the quotation he provides from Noldin supports Rhonheimer’s own thesis. It can be translated as “Indeed, although the doctrine opposite to the responses of the Holy Office may not be declared simply false, nevertheless, it is not any more permitted, either theoretically or practically.” But the opposite doctrine of the responses would be “craniotomy can be safely taught” or “procured abortion can be safely done” in resolution of vital conflict situations. But Noldin is teaching that those doctrines are not allowed either theoretically or practically. To say they are not allowed theoretically implies something on the level of doctrine.

In the same footnote, Rhonheimer also notes the historico-contextual argument of Eschbach, who reasoned that the censure tuto doceri non posse of the original 1884 response should be understood as a doctrinal condemnation of craniotomy in the same way as the equivalent response by the Inquisition condemning the teaching of the Ontologists in 1861 was properly understood to be a doctrinal condemnation. About this argument, Rhonheimer writes only the following. “Whether this assessment is compelling is doubtful.” Then, without any critical engagement, he simply goes on to assert: “In any case, one cannot derive from the formulation ‘tuto doceri non posse’ any more than what it explicitly says, i.e., that one cannot teach something with certainty of conscience (because it is perhaps wrong). But it is also obvious that such a decree could also be rescinded.” The last statement recalls a position of Rhonheimer that he had stated in the book’s introduction (page xv), “that they [the late-nineteenth-century decrees of the Holy Office] should be seen today as obsolete.” Returning to the main text on page 78, Rhonheimer does more than note that the decrees could or should be rescinded (or seen as obsolete); he positively states that two of them are problematic: “Problematic, of course, is the addition of 1889 (‘et quamcumque chirurgicam operationem directe occisisam foetus’) through which craniotomy, it seems, was incorrectly classified under the genus of ‘direct killing,’ a genus of acts that all the theologians understood as impermissible. Also problematic was the decision of 1895, which confirmed this classification of craniotomy as direct killing and expanded it even to the case of the straightforward removal from the uterus of a nonviable fetus that in consequence will die.” However, given that in Evangelium vitae Pope John Paul II has now formally taught what the decision of 1895 confirmed about “the straightforward removal from the uterus of a nonviable fetus” being a “direct killing,” it should not be expected that the Magisterium itself will rescind that decision, or agree with Rhonheimer that it is problematic.

112 For a recent work that favors a doctrinal-moral interpretation of the late nineteenth century decisions of the Inquisition, against the interpretations and theories of Grisez, Finnis, Boyle, and Rhonheimer, see Kevin L. Flannery, “Vital Conflicts and the Catholic Magisterial Tradition,” The National Catholic Bioethics Quarterly 11, no. 4 (Winter 2011): 691-704, especially 697-702. For a response to Flannery, favoring at least the position of Grisez, Finnis, Boyle, and Rhonheimer, that the decisions are not sufficient to settle debates about craniotomy and direct abortion from an authoritative doctrinal perspective, see David Albert Jones, “Magisterial Teaching on Vital Conflicts: A Reply to Rev. Kevin Flannery, SJ,” The National Catholic Bioethics Quarterly 14, no. 1 (Spring 2014): 81-104. Jones does not mention or critically engage with the historico-contextual argument of Eschbach, nor with the teachings of authors such as Lehmkuhl, Conerry, Bouscaren, Merkelbach, Genicot, Salsmans, Prümmer, Iorio, Noldin, and Schmitt, on the interpretation of the Inquisition decisions.

In fairness to recent authors such as Grisez, Rhonheimer, and Jones, it should be noted that it is possible to find at least one early twentieth century author who held a position that has some similarities to their positions on at least the first two decisions from the Inquisition in the late nineteenth century. See Ludwig Ruland, Pastoral Medicine, trans. T. A. Rattler, (Saint Louis, Missouri: B. Herder Book Co., 1934), 30-32: “The Church has replied to the question whether it is permissible in such cases to save the life of the mother by sacrificing that of the child, which cannot be saved, by Tuto doceri non posse.’ Therefore, we will not ‘teach’ anything on this question, but merely ponder the pros and cons...If we consider all these circumstances, we can understand the embarrassment of conscientious physicians who are forced to make a quick decision in such cases; but we can also appreciate the
wisdom of the Church in merely deciding: ‘Tuto doceri non posse.’ With a flat ‘non licet’ she would have entered the sphere of natural science, which lies outside of her mission. This question is one that borders on the spheres of medicine and moral theology, and the Church has remained exactly within the limits of her mission. The decision ‘licit’ would have opened the door wide to abuses, and would have deprived medical science of an incentive to seek new methods in the light of which operations designed to destroy a child’s life will perhaps some day appear like a relic of barbarism. This, of course, does not mean that the Church has not the right to pronounce a ‘non licet.’ But in matter of fact she has not done so, and according to all rules of interpretation it is not permissible to explain ‘tuto doceri non posse’ as a flat ‘non licet,’ even though some commentators seem inclined to do so.” Unfortunately, the author neither names any of the commentators he had in mind nor critically engages with any of their arguments. (It is also not apparent how the author thought of the consistency of his two statements: “With a flat ‘non licet’ she would have entered the sphere of natural science, which lies outside of her mission”; and “This, of course, does not mean that the Church has not the right to pronounce a ‘non licet.’”) Ruland’s last sentence appears to be nothing more than an assertion contrary to the interpretations of the notable commentators mentioned above. To the list of their names, one can also add Henry Davis, SJ, Moral and Pastoral Theology, Volume II (London: Sheed and Ward, 1958), 168-169: “The Church, through the Holy Office (May 28, 1884; Aug. 19, 1889; July 24, 1895; May 4, 1898; March 5, 1902), has made it quite clear that craniotomy and every other operation that directly kills the fetus are forbidden. The formula used in the first decree, viz., tuto doceri non posse—i.e., that it cannot be safely taught that craniotomy is permissible—condemns feticide in point of fact. The Sacred Congregation has not, as some have wrongly thought, left any ground for the distinction between what cannot be safely taught in Catholic schools and what in practice can be morally done. The arguments of writers before the decree was published, namely, that in cases of abortion at least, the mother merely ceased to preserve the fetus in its natural environment but did nothing positively to kill it, are inconclusive, and even at the time the plea was considered a distinction without a difference. The result of condoning abortion in extreme cases leads, as experience proves, to a too facile recourse to abortions and feticides on a large scale.”

Finally, it should also be noted that the Congregation for the Doctrine of the Faith’s doctrinal note mentions the censure tuto doceri non potest in a general way when treating of interventions from the Magisterium that require “religious submission of will and intellect” (obsequium religiosum voluntatis et intellectus). See “Nota Doctrinalis Professionis Fidei Formulam Extremam Encleus,” Acta Apostolicae Sedis XC (1998): 548-549. The statement, with preceding context, can be translated in the following way. In the second paragraph of section 10 of the Nota Doctrinalis, the document begins by stating that to the third paragraph of the Professio fidei belongs “every instruction concerning faith or concerning a moral matter presented as true or at least as certain, although not defined by a solemn judgment nor proposed as defined by the ordinary and universal Magisterium. Yet, nevertheless, such instructions authentically express the ordinary Magisterium of the Roman Pontiff or of the episcopal College and therefore demand religious submission of will and intellect. They are proposed, for instance, to obtain a deeper understanding of revelation, or to recall the conformity of some doctrine with the truth of faith, or finally to excite vigilance against notions backing away from some same truths, or against dangerous and even error inducing opinions.

“Every proposition contrary to such doctrines is to be judged false or, if it [the proposition contrary to such a doctrine] be expressed concerning an instruction made for the sake of precautioning, rash or dangerous and therefore, ‘tuto doceri non potest.’”

[“...omnis institutio de fide et de re morali tamquam vera aut saltam tamquam certa exhibita, licet iudicio sollemni non definita nec a Magisterio ordinario et universali tamquam definita proposita. Nihilominus tamen tales institutiones Magisterium ordinarium Romani Pontificis seu Collegii episcopalis authentice significant ideoque obsequium religiosum voluntatis et intellectus postulant. Proponuntur quidem ad altiorem revelationis intelligantiam obtinendum vel ad conformitatem allicuis doctrinae cum veritate fidei revocandam, vel tandem ad vigilantiam contra notiones ab iisdem veritatisibus abhorrentes vel contra sententias periculosas atque in errores inducentes excitandam.

“Omne propositionum talibus doctrinis contrarium falsum est iudicandum vel, si de instituted praecavendi causa facta agatur, temerarum seu periculosum ideoque ‘tuto doceri non potest’.”]

The last sentence, admittedly difficult to render in the middle, is translated rather loosely in Origins as “a proposition contrary to these doctrines can be qualified as erroneous or, in the case of teachings of the prudential order, as rash or dangerous and therefore ‘tuto doceri non potest.’” See Joseph Ratzinger and Tarcisio Bertone, “Commentary on Profession of Faith’s Concluding Paragraphs,” Origins 28, no. 8 (July 16, 1998): 116-119, at 118. I point this out here to make clear that the official Latin text does not literally mention anything about the “prudential order” in relation to the censure tuto doceri non potest. However, even if it had, that would neither
Pope John Paul II’s teaching in *Evangelium vitae* also perfectly accounts for why both the 1898 decision from the Inquisition referred to its 1895 decision as the decree “on the illicitness of abortion” (*de abortus illiceitate*), and the Congregation for the Doctrine of the Faith’s *Declaration on Procured Abortion* referred to the 1889 decision as the document “by which direct abortion is condemned.” Abortion’s illicitness and worthiness of condemnation are perfectly explained by the teaching of *Evangelium vitae* that *eiectio fetus immaturi*, procured in a direct way, *is* a direct killing of an innocent human being. In the very same way, the combined teachings of *Gaudium et spes* and *Veritatis splendor* are also explained, that abortion (even as *eiectio fetus immaturi*), considered as the object of a human act, is *intrinsically evil*. The reason it is *non ordinabilia ad Deum* is because it is the direct killing of an innocent human being.

The understanding of the teaching of *Evangelium vitae* presented here also makes intelligible the more recent *Clarification on Procured Abortion*, by the Congregation for the Doctrine of the Faith, published in *L’Osservatore Romano* on July 11, 2009. For the most part, this document repeats the teaching of the Church on procured abortion by quoting from the *Catechism of the Catholic Church* (paragraphs 2270-2275) and *Evangelium vitae* (sections 62, 58, and 89). In quoting from the *Catechism*, the *Clarification* includes an explicit quotation from the 1983 *Code of Canon Law* (canon 1398) referring to the penalty of excommunication for the person who procures abortion *effectu secuto*. Hence, as with the teaching of *Evangelium vitae*, the teaching of the *Clarification* should be understood to include within its use of “abortion” justify taking the censure as belonging *exclusively* to that order, nor justify taking that order to mean *merely* prudential in a sense that is wholly distinguished from the doctrinal order.

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113 Of course, these two references also support the doctrinal-moral nature of the Inquisition decisions addressed in the last three footnotes.

114 This is the date for the publication of the *Clarification* in the Italian edition of *L’Osservatore Romano*. It appears that the English edition never printed a translation of the *Clarification*. Below the English and Italian texts are taken from the Vatican website, and cited accordingly.
both the ejection of an immature fetus and the killing of the same fetus in whatsoever manner and at whatsoever time from the moment of conception it may be procured.

Having referenced canon 1398, and immediately after quoting from section 58 of Evangelium vitae, “…reasons…, however serious and tragic, can never justify the deliberate killing of an innocent human being,” the Clarification proceeds to teach the following.

As for the problem of specific medical treatments intended to preserve the health of the mother, it is necessary to make a strong distinction between two different situations: on the one hand, a procedure [intervento] that directly causes [direttamente provoca] the death of the fetus, sometimes inappropriately called “therapeutic” abortion, which can never be licit in that it is the direct killing [è l’uccisione diretta] of an innocent human being; on the other hand, a procedure not abortive in itself [un intervento in sé non abortivo] that can have, as a collateral consequence [conseguenza], the death of the child…

The language here is very informative. The terms used refer especially to the order of causality.

There is a kind of procedure or intervention that directly causes the death of the fetus.

“Therapeutic” abortion (sufficiently realized in eictio fetus immaturi) is that kind of procedure.

Morally, such a procedure can never be licit. It matters not how the agent of the procedure proposes the action to himself, as killing or as removal, or what motivates him to do it. If the procedure or intervention is “abortive in itself,” it cannot be morally licit to choose. On the other hand, a procedure not abortive in itself, but which involves the death of the child as a collateral consequence, is not necessarily morally illicit, but will depend upon circumstances.

While the Ethical and Religious Directives for Catholic Health Care Services of the United States Conference of Catholic Bishops (USCCB) is not itself a document of the ecclesial Magisterium, it is worth pointing out that the teaching of Evangelium vitae on abortion and the

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Clarification from the Congregation for the Doctrine of the Faith harmonize perfectly with the relevant Directives of the USCCB.\textsuperscript{116} In fact, Directive 45 of the Fifth Edition (2009) may actually illuminate what it can mean to speak of a procedure that is “abortive in itself.” The relevant parts of Directive 45 are the following.

Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted. Every procedure whose sole immediate effect is the termination of pregnancy before viability is an abortion, which, in its moral context, includes the interval between conception and implantation of the embryo.\textsuperscript{117}

The Clarification distinguished between a procedure that is “abortive in itself” and a procedure which involves the death of the child as a collateral consequence. Using the second sentence of Directive 45, it is possible to conclude that if a procedure has as its sole immediate effect the termination of pregnancy before viability, then that procedure is abortive in itself and does not involve the death of a child as a mere collateral consequence. But if a procedure has the termination of pregnancy before viability as an effect that is \textit{equally immediate} (or a fortiori \textit{mediate}) with another effect, then that procedure may involve the death of the child as a collateral consequence. Such a case involves a “double-effect,” and should be evaluated according to that principle.

Considering Directive 45 and the content of the Clarification in light of the teaching of Evangelium vitae, it would be consistent to maintain that any procedure whose sole immediate effect is the termination of pregnancy before viability is a procedure that should be considered a

\textsuperscript{116} Of course, this should be expected, not only because the bishops of the United States themselves are members of the apostolic college who share the teaching office of the Church, but also because drafts of the Ethical and Religious Directives have sometimes been reviewed by the Congregation for the Doctrine of the Faith. On this point and on the general history of the Ethical and Religious Directives, see Kevin D. O’Rourke, Thomas Kopfensteiner, and Ron Hamel, “A Brief History: A Summary of the Development of the Ethical and Religious Directives for Catholic Health Care Services,” Health Progress (November-December 2001): 18-21.

direct abortion, and therefore a direct killing. This position would also cohere with the official statement of the United States Conference of Catholic Bishops Committee on Doctrine on “The Distinction Between Direct Abortion and Legitimate Medical Procedures,” published in 2010, following discussions about the procedure that caused the death of an unborn child at St. Joseph’s Hospital and Medical Center in Phoenix, Arizona, now known as “the Phoenix Case.” Indeed, immediately after quoting the two sentences from Directive 45 stated above, the Committee on Doctrine wrote: “Direct abortion is never morally permissible. One may never directly kill an innocent human being, no matter what the reason.” 118 Two implications seem clear enough for the Committee on Doctrine: any procedure whose sole immediate effect is the termination of pregnancy before viability is a direct abortion, and a direct abortion is a direct killing of an innocent human being. This embodies the teaching of Evangelium vitae, and the overall teaching of the Magisterium on procured abortion over the last century and a half.

Finally, there are magisterial documents that do not address abortion per se, but which can be used to complement or illustrate the teaching of Evangelium vitae and the other documents on abortion treated in this dissertation. One set of relevant documents is comprised of a text from the Congregation for the Doctrine of the Faith during the pontificate of Paul VI, and two addresses from Pope Pius XII. All three documents are formally concerned with the issue of sterilization, but their relevance is found in their teaching on what determines a human action to be qualified as direct (sterilization).

On March 13, 1975, the Congregation for the Doctrine of the Faith published a set of “Responses to questions of the Episcopal Conference of North America about sterilization in

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Catholic hospitals,” known commonly as Quaecumque sterilizatio. One relevant passage of the document can be rendered in the following way.

Any sterilization that from itself, or from its own nature and condition, immediately causes this alone: that the generative faculty is rendered incapable to result in procreation, is to be considered a direct sterilization, as this is understood in declarations of the Pontifical Magisterium, especially of Pius XII.119

In a footnote to this text, the Congregation refers readers especially to two allocutions of Pope Pius XII, to the Catholic Union of Obstetricians (October 29, 1951), and to the International Society of Hematology (September 12, 1958).120 In these addresses, there are three paragraphs in particular that are very important for understanding the relevance of the text of the Quaecumque sterilizatio for the Magisterium’s teaching as it touches on the role of external causality in the moral specification of human action.

The most relevant passage from the Address to the Union of Obstetricians (also known as the Address to Midwives) is the following.

It would be much more than a simple lack of readiness in the service of life, if the attack of the man did not concern only a single act, but touched the organism itself in order to deprive it by means of the sterilization of the faculty to procreate a new life. Also here you have for your internal and external conduct a clear norm in the teaching of the Church. Direct sterilization—namely, that which aims, as a means or as an end, to render procreation impossible—is a grave violation of the moral law, and is thus illicit. Even the public Authority does not have any right, under pretext of whatsoever “indication”, to permit it, and much less to prescribe it or to have it executed to the detriment of innocents. This principle is already found stated in the previously mentioned Encyclical of Pius XI on matrimony [Casti connubii]. Thus when, a decade ago, sterilization came to be ever more widely applied, the Holy See itself saw the necessity to declare expressly and publicly that direct sterilization, either perpetual or temporary, either of the man or of


120 Ibid.
the woman, is illicit, in virtue of the natural law, from which the Church herself, as you know, does not have the power to dispense.\textsuperscript{121}

In his later address to the International Society of Hematology, the same Pope repeats exactly the last three sentences of the text just presented, and then adds a further explanation with illustrations.

The two relevant paragraphs from the Address to the Society of Hematology that immediately follow Pope Pius’s self-quotation from the Address to Midwives are presented below, with the “indirect” and “direct” emphases in the original French text.

By direct sterilization, We meant to designate an action that of itself proposes, as an end or as a means, to render procreation impossible; but We do not apply this term to every action which in fact renders procreation impossible. Man, indeed, does not always have the intention to do that which results from his action, even if he has foreseen it. Thus, for example, the extirpation of diseased ovaries will have as a necessary consequence to render procreation impossible; but this impossibility may not be willed either as an end, or as a means. We have reprised in detail the same explanations in Our allocution of October 8, 1953, to the Congress of Urologists. The same principles apply to the present case and forbid to consider as licit the extirpation of glands or of sexual organs in order to impede the transmission of defective hereditary characteristics. They also permit to resolve a question much discussed today among doctors and moralists: is it licit to prevent ovulation by means of pills used as remedies for exaggerated reactions of the uterus and of the organism, although this medication, in

\textsuperscript{121} Pope Pius XII, “Discorso all Partecipanti al Congresso della Unione Cattolica Italiana Ostetriche,” \textit{Acta Apostolicae Sedis} XXXXIII (1951): 835-854, at 843-844: “Sarebbe assai più di una semplice mancanza di prontezza nel servizio della vita, se l’attentato non riguardasse soltanto un singolo atto, ma toccasse l’organismo stesso allo scopo di privarlo per mezzo della sterilizzazione della facoltà di procreare una nuova vita. Anche qui voi avete per la vostra condotta interna ed esterna una chiara norma nell’insegnamento della Chiesa. La sterilizzazione diretta—cioè quella che mira, come mezzo o come scopo, a rendere impossibile la procreazione—è una grave violazione della legge morale, ed è quindi illecita. Anche l’Autorità pubblica non ha alcun diritto, sotto pretesto di qualsiasi ‘indicazione’, di permetterla, e molto meno di prescriverla o di farla eseguire a danno di innocenti. Questo principio si trova già enunciato nella Enciclica summenzionata di Pio XI sul matrimonio. Perciò quando, or è un decennio, la sterilizzazione venne ad essere sempre più largamente applicata, la S. Sede si vide nella necessità di dichiarare espressamente e pubblicamente che la sterilizzazione diretta, sia perpetua che temporanea, sia dell’uomo che della donna, è illecita, in virtù della legge naturale, dalla quale la Chiesa stessa, come sapete, non ha la potestà di dispensare.” The declaration of the Holy See from a decade before, mentioned in the last sentence of the quotation, is found in Suprema Sacra Congregatio S. Officii, “Decretum,” \textit{Acta Apostolicae Sedis} XXXII (1940): 73. There the following question and response are found: “Whether direct sterilization is licit, either perpetual or temporary, either of a man or of a woman?” “\textit{Negative} and indeed prohibited by the law of nature, and, as far as it concerns eugenic sterilization, it was already condemned by the decree of this Sacred Congregation, on the 21\textsuperscript{st} day of March, 1940.” [\textit{An licta sit directa sterilizatio sive perpetua sive temporanea, sive viri, sive mulieris}; \textit{Negative et quidem prohiberi lege naturae, eamque, quoad sterilizationem eugenicam attinet, Decreto huius S. Congregationis, die 21 Martii 1931, reprobam iam esse.”]
preventing ovulation, would also render fecundation impossible? Is this permitted to the married woman who, despite that temporary sterility, desires to have relations with her husband? The response depends on the intention of the person. If the woman takes that medication, not in view to prevent conception, but only on the advice of a doctor, as a necessary remedy to a cause of a malady of the uterus or of the organism, she would provoke an *indirect* sterilization, which remains permitted according to the general principle of actions of double effect. But one provokes a *direct*, and therefore illicit, sterilization, when one stops ovulation, in order to preserve the uterus and the organism from consequences of a pregnancy, which they are not capable to support. Some moralists claim that it is permitted to take the medications for this purpose, but it is wrong. It is necessary to reject equally the opinion of several doctors and moralists, who permit the usage, when a medical indication renders undesirable a conception too soon, or in other similar cases, which it would not be possible to mention here; in these cases the use of the medications has as a goal to prevent conception in preventing ovulation; it is therefore a matter of direct sterilization.\footnote{Pope Pius XII, “Allocutione a ‘Societate internationali pro sanguinis transfusione,’” *Acta Apostolicae Sedis* L (1958): 726-740, at 734-735: “Par stérilisation directe, Nous entendions désigner l’action de qui s’emploie, comme but ou comme moyen, de rendre impossible la procréation ; mais Nous n’appliquons pas ce terme à toute action, qui rend impossible en fait la procréation. L’homme, en effet, n’a pas toujours l’intention de faire ce qui résulte de son action, même s’il l’a prévu. Ainsi, par exemple, l’extirpation d’ovaires malades aura comme conséquence nécessaire de rendre impossible la procréation ; mais cette impossibilité peut n’être voulue ni comme fin, ni comme moyen. Nous avons repris en détail les mêmes explications dans Notre allocution du 8 octobre 1953 au Congrès des urologistes. Les mêmes principes s’appliquent au cas présent et interdisent de considérer comme licite l’extirpation des glandes ou des organes sexuels, dans le but d’entraver la transmission de caractères héréditaires défectueux. Ils permettent aussi de résoudre une question très discutée aujourd’hui chez les médecins et les moralistes : Est-il licite d’empêcher l’ovulation au moyen de pilules utilisées comme remèdes aux réactions exagérées de l’utérus et de l’organisme, quoique ce médicament, en empêchant l’ovulation, rende aussi impossible la fécondation? Est-ce permis à la femme mariée qui, malgré cette stérilité temporaire, désire avoir des relations avec son mari? La réponse dépend de l’intention de la personne. Si la femme prend ce médicament, non pas en vue d’empêcher la conception, mais uniquement sur avis du médecin, comme un remède nécessaire à cause d’une maladie de l’utérus ou de l’organisme, elle provoque une stérilisation *indirecte*, qui reste permise selon le principe général des actions à double effet. Mais on provoque une stérilisation *directe*, et donc illicite, lorsqu’on arrête l’ovulation, afin de préserver l’utérus et l’organisme des conséquences d’une grossesse, qu’ils ne sont pas capables de supporter.

Certains moralistes prétendent qu’il est permis de prendre des médicaments dans ce but, mais c’est à tort. Il faut rejeter également l’opinion de plusieurs médecins et moralistes, qui en permettent l’usage, lorsqu’une indication médicale rend indésirable une conception trop prochaine, ou en d’autres cas semblables, qu’il ne serait pas possible de mentionner ici; dans ces cas l’emploi des médicaments a comme but d’empêcher la conception en empêchant l’ovulation ; il s’agit donc de stérilisation directe.”}
teaching of the Congregation for the Doctrine of the Faith, found in *Quaecumque sterilizatio*, that “direct sterilization,” *as it is understood in declarations of the Pontifical Magisterium*, especially of Pius XII, can be determined to be “direct” on account of causal immediacy in relation to a single effect. This is related to, but more specific than, the sense of the term “direct” that was used in some earlier ecclesial documents that dealt with killing and abortion, where “direct” (*directa*) or “directly” (*directe*) has a certain reference to the manner in which a procedure is accomplished with respect to physical causality in the order of execution (e.g., in the decisions from the Apostolic Penitentiary of November 28, 1872, and the Inquisition of August 29, 1889).

Connecting the ecclesial teaching on direct sterilization to the teaching on direct abortion, there is a striking similarity between the language of *Quaecumque sterilizatio* and that of Directive 45 of the *Ethical and Religious Directives for Catholic Health Care Services* of the United States Conference of Catholic Bishops. In that directive, as in *Quaecumque sterilizatio*, it is the “sole immediate effect” of an action or procedure that plays a determinative role for our recognition of the species of the activity. In *Quaecumque sterilizatio*, the manner of the action (“direct”) is also made clear by virtue of the procedure’s causality.

According to the teaching of the Congregation for the Doctrine of the Faith, one way to know if an act of a certain kind is *direct* is if the action produces only one immediate effect. If the sole immediate effect of *this act* is rendering the generative faculty incapable of procreation, then this act is *direct* sterilization. It is important to note that because of its sole immediate effect, such an action must be both direct in manner and a sterilization in kind. But it does not follow that for an action to be considered a *direct* sterilization in the moral order it must have as its sole immediate effect rendering the generative faculty incapable of procreation. That sole
immediate effect is a sufficient condition but not a necessary one for direct sterilization. *Quaecumque sterilizatio* leaves open the possibility that one could be guilty of direct sterilization in the moral order even if in the order of causality the sole immediate effect of his procedure is not rendering the generative faculty incapable of procreation. This is certainly confirmed by the teachings found in the addresses to midwives and hematologists by Pope Pius XII.

If a doctor extracted a woman’s gravely diseased ovaries, it would be possible in principle to recognize at least two equally immediate effects: the removal of grave danger from the woman’s body, and the rendering of her generative faculty incapable of procreation. As the latter is not the sole immediate effect, the action is not necessarily a direct sterilization. But if the same doctor performed the procedure *so as* to render her generative faculty incapable of procreation, then he imposed a sterilizing direction on the procedure by his intention. In that sense, the doctor may be said to be morally guilty of direct sterilization.

Combining the principle of *Quaecumque sterilizatio* with Directive 45, it is possible to say that any action whose sole immediate effect is the termination of pregnancy before viability is a direct abortion. Or, according to the teaching of *Evangelium vitae*, one could say that any action whose sole immediate effect is the ejection of a non-viable fetus is a direct killing. Now, as with the sterilization example, if a doctor removed a gravely dangerous cancerous uterus with a non-viable fetus inside, his action need not be a direct abortion or direct killing. But if he removed the same uterus *so as* to eject the non-viable fetus, then he would impose a killing direction on the procedure by his intention and be guilty of direct killing in the moral order.

Hence, the teaching of the Church allows for an intention-driven directness to be imposed on a procedure that by virtue of the causality of the procedure itself is not determined to only one end. On the other hand, the teaching of the Church appears to demand that a causal-driven
directness is sometimes imposed upon the intentionality of the agent, such that his action must be of a certain kind and manner. An important passage from the Congregation for the Doctrine of the Faith’s 1980 Declaration on Euthanasia, commonly known as *Iura et bona*, appears to address both possibilities. It states: “By the name of euthanasia is signified an action or an omission that from its very nature or from the plan of the mind brings forth death, that in this way all suffering may be removed. Euthanasia, therefore, is contained in the purpose of the will and in the methods of proceeding, which are applied.”

The death result proper to the act of euthanasia can be from an action which is ordered to that result either by virtue of the nature of the action itself (similar to the language of *Quaecumque sterilizatio*—“of its own nature and condition”), or by virtue of the direction of the mind (*consilio mentis*) imposed on the action by the agent.

*The Definition of “Direct Killing” Revisited*

Given the teachings of the documents just considered, taken together with the other ecclesial documents treated throughout this dissertation, it is possible also to suggest a direction to build upon the theory of direct killing offered by the combined works of authors such as Merkelbach, Noldin-Schmitt, McCarthy, and Bender at the end of the second chapter. The teachings of these and other authors were treated in that chapter in order to manifest some principles that could, from a theoretical point of view, make intelligible the teaching of the Church, expressed in the common teaching of theologians leading up to the Second Vatican Council, that direct abortion is direct killing. Another author, writing well after the Second Vatican Council but just prior to the pontificate of John Paul II, has offered a definition of direct

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killing that appears to be in perfect harmony with the documents of the Magisterium and the principles of action theory they contain.

In 1977, the Redemptorist moral theologian, Augustine Regan, published a monograph on the ethics of killing in the Catholic moral tradition.\textsuperscript{124} Therein, the author presented the following as “a complete definition” of direct killing. “It can be defined as: An action (or positive omission) which from the intrinsic direction impressed upon it, either by its explicit purpose, or by its external execution, or by these two elements together, is the effective cause of human death.”\textsuperscript{125} Immediately it is possible to notice similarities between this definition and the definition of euthanasia offered in the 1980 Declaration by the Congregation for the Doctrine of the Faith. “By the name of euthanasia is signified an action or an omission that from its very nature or from the plan of the mind brings forth death, that in this way all suffering may be removed.” If the motive of removing all suffering be set aside, then both definitions appear to affirm the same essential understanding of what determines a human action as a direct killing, although Regan’s is more detailed in certain terms.

In both definitions, the “action or omission” is understood as proceeding from a deliberate will. Because of the action or the deliberate omission, death is brought forth (at least by not being prevented when it could and ought to have been prevented, in the case of an omission). The human act bears the formality of killing (or as having the killing aspect of euthanasia) because of the killing direction within (intrinsic to) the human act itself. This direction can come from one of two sources, or from both together.\textsuperscript{126} The first source expressed

\textsuperscript{124} Augustine Regan, \textit{Thou Shalt Not Kill} (Butler, Wisconsin: Clergy Book Service, 1977).

\textsuperscript{125} Ibid., 50.

\textsuperscript{126} That the Declaration on Euthanasia supports the position that the killing direction can come from either or both sources is indicated by the use of the inclusive disjunct “vel” in the original Latin. “Nomine euthanasiae significatur
by Regan is the action’s “explicit purpose,” which corresponds to the Declaration’s “from the plan of the mind” (consilio mentis). This source can be understood as a clear and distinct intention formulated by the agent to kill, even if the causality proper to the external action is not directed immediately and solely to the effect of killing. Regan illustrates with the following example. “An external action may have the appearance of killing only indirectly, as when, for example, the bombing of a military objective results in the death of civilians, who happen to be near. If, however, those who do the bombing intend to kill them, maybe under pretext of bombing a military objective, the killing is direct.”

The second source expressed by Regan is the action’s “external execution,” which corresponds to the Declaration’s “from its very nature” (suapte natura). In this case, the external element of the human action is taken as having its own “nature” already, as being quasi-substantially determined independently of any further “form” the human will might join to it. It is as though this quasi-substantial “nature” in the external action impresses itself (impresses its own natural “form”) on the will of the agent when he voluntarily joins his own intention to that external action in the performance of his human action. If the causal structure of the “external execution” bears a necessary killing direction, then that direction will become intrinsic to the human action itself. The intentional form that the agent brings to the “external execution” “nature” in such a case will not change that nature; although it may add to it a further specification. For example, adding the intention “that all suffering may be removed” will not

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127 Regan, Thou Shalt Not Kill, 47.
change the nature of the action as a killing, but it will add to this killing the more specific form of euthanasia.\textsuperscript{128}

What seems implicit in the Declaration is made explicit by Regan in the following explanation.

The unbreakable unity of the human act, in its internal and external elements, means there is a constant inter-action between them. As we have noticed, the intention, or internal element, can give a direction to an external act, in itself ambiguous, which makes it directly lethal. We have now to see that an external act, because of its inescapably lethal nature, will impart this character to the intention, in spite of the absence of any explicit consciousness of a will to kill, or protestations to the contrary.\textsuperscript{129}

Suitable to the topic of this dissertation, Regan illustrates his theoretical explanation with the example of procuring the ejection of an immature fetus.

Again, to induce artificially the birth of a five months old fetus is, at the moment, direct abortion, because there is no way of keeping it alive outside the womb. If and when it becomes possible to do so, say in a more efficient type of incubator than we have at present, and provided such means are available, such an inducement of premature birth will no longer be a direct taking of fetal life.\textsuperscript{130}

Here Regan’s theory again perfectly coincides in application with the teachings of the Magisterium on direct abortion and direct killing presented and analyzed throughout this dissertation. This just confirms that his theory offers a promising direction for further study of

\textsuperscript{128} Perhaps the underlying principle can be illustrated also by the following example. Pouring water on the head of a human being, or immersing that human being in water, in such a way that the water actually flows on the person, is by its very nature a washing. Anything added to that external act by the agent’s intention will not change the action into something other than a washing; although it might make it more than a mere natural washing. For example, adding to the external execution of the washing the words: “I baptize you in the name of the Father, and of the Son, and of the Holy Spirit,” while having the intention of doing what the Church does (to perform this as a sacred Christian rite), makes this human act a sacramental washing, namely, the sacrament of Baptism. It is important to note that either pouring, or immersing, in the manners described, provides the same essential “nature” of washing in the order of external action. Similarly, there may be multiple external actions that by “nature” provide the necessary content for determining the human will in an essentially killing direction, if ever united by the human agent to a deliberate will in the context of a human action. According to the teaching of the Magisterium, eiectio fetus immaturi certainly provides that killing “nature”; but there may be many other external actions that by “nature” are apt to provide that same direction to the human will.

\textsuperscript{129} Regan, Thou Shalt Not Kill, 48.

\textsuperscript{130} Ibid., 49.
the principles underlying the Church’s teaching as it touches upon homicidal activity and human action. At least it can be said that something like Regan’s definition of direct killing seems necessary to explain and apply the teaching of the Magisterium on homicidal activity as that teaching is found across various documents over the last century and a half.\footnote{It is relevant to mention Regan’s illustration of how a voluntary omission can also be a direct killing in the moral order. See \textit{Thou Shalt Not Kill}, 49: “What is true of an external act, in regard to its influence on the intention, is true also of an omission. One can, as has been seen, kill directly by deliberately omitting to take necessary and obligatory means of prolonging life in the desire of death for oneself or somebody else. Conversely, without any explicit desire of death, a man can kill directly by the same deliberate omission, even though he has some other end explicitly in mind. Someone, for example, goes on a hunger strike, intending to prolong it, irrespective of the outcome, until some wrong is righted. If, in fact, he dies, we have an example of direct self-killing, because his obligation to stay alive, by such an ordinary and conspicuous means as eating, makes such a positive omission, morally at least, the essential cause of his death.”}

\textit{Conclusion to Chapter Three}

Having completed the examination and analysis of the most recent documents from the Magisterium on direct abortion, it is suitable to summarize some overall conclusions, which also take into account conclusions reached in the prior chapters. In the first place, concerning \textit{direct killing} in general (of which direct abortion is a species), whenever that term or its equivalent is addressed, it is considered as a type of human activity or behavior that is morally repugnant as long as the one killed is presumed to be an innocent human being or person. Furthermore, the product of human conception (canonically, the “fetus”) is always morally presumed to be an innocent human being or person from the first moment of existence and through birth. Accordingly, the life of the fetus (or any other presumptively innocent human being) is absolutely morally “intangible” in relation to any mere human or earthly authority, which means that the fetus or innocent human being has an absolute right to immunity from a \textit{direct} attack on his or her life. Moreover, prior to birth, there is no way in which the fetus can be rightly considered an unjust aggressor in relation to his or her mother; consequently, the principle of
self-defense cannot rightly be used in carrying out any procedure that terminates the life of the fetus.

Concerning the meaning of “direct” or “directly” itself, while in earlier decisions (e.g., of the Apostolic Penitentiary of November 28, 1872, and of the Inquisition of August 19, 1889) that term is sometimes used in a context where it has a certain reference to the manner in which a procedure is accomplished with respect to physical causality in the order of external execution, since the pontificates of Pius XII and John Paul II, the term also usually refers to an action or an effect that a human agent wills or intends as an end in itself or as a means to an end. Of course, it is possible that in some cases both uses of the term may be intended at the same time (as they are not mutually exclusive). Given that, and given also that “procured” and “direct” are sometimes used interchangeably, it is not always clear in the documents of the Holy See whether certain expressions of Pope Pius XII and Pope John Paul II are to be understood either as stylistic redundancies, or as ways of expressing both senses of “direct” in a convenient way (e.g., “direct deliberate disposal” [Address to Midwives], “direct voluntary attack” [“Family Front” Address], “direct and voluntary killing,” “abortion procured in a direct way” [Evangelium vitae]).

However, as I indicated in the relevant analyses of chapters two and three, it seems more probable from the contexts in which such expressions appear that the second option is the one intended in the documents.

Considering the term “abortion,” while under the 1917 Code of Canon Law “abortion” referred narrowly to *ejectio fetus immaturi*, since the promulgation of the 1983 Code of Canon Law, and the moral Magisterium of Pope John Paul II, “abortion” now refers not only to (but still includes) *ejectio fetus immaturi*, but also to the “killing of the same fetus in whatsoever manner and at whatsoever time from conception it may be procured.” Consequently, while immediate
death-causing procedures that under the 1917 Code were commonly distinguished from *ejectio fetus immaturi* (such as “craniotomy,” “embryotomy,” or an equivalent), and were not considered “abortions” in the proper sense, since the promulgation of the 1983 Code, they can be considered abortions in the canonical sense of the term.

According to the combined teaching of *Gaudium et spes* and *Veritatis splendor*, *ejectio fetus immaturi*, as the object of a human act, is intrinsically evil (*intrinsece malum*). It is such always and per se, that is, on account of its object itself, not by reason of the agent and his other circumstances. Moreover, according to the same documents, *ejectio fetus immaturi*, as the object of a human act, is always gravely illicit; it does not admit parvity of matter. The precise reason why this is the case is provided in the teaching of *Evangelium vitae*.

In *Evangelium vitae*, Pope John Paul II never offers a proper definition of the term “abortion”; however, he teaches that procured *ejectio fetus immaturi*, or procured “abortion” carried out in some other way, is morally qualified or *morally defined* as “the deliberate and direct killing of a human being in the first period of his/her life, which runs between conception and parturition” (*Evangelium vitae* 58). Hence, direct killing is accomplished either by intending and carrying out *ejectio fetus immaturi* simply speaking, or by intending and carrying out the killing of the fetus in whatsoever manner and at whatsoever time from the moment of conception it may be procured. Accordingly, the reason why *ejectio fetus immaturi* or “abortion procured in a direct way, either intended as an end or as a means, always entails a grave disturbance of the moral order” is because such an action “would be the deliberate killing of an innocent human being” (*Evangelium vitae* 62).

Significantly, procured *ejectio fetus immaturi*, or abortion procured in some other way, is morally qualified as the deliberate and direct killing of an innocent human being, and therefore
reprehensible, regardless of the circumstances, even in cases of “vital conflict” when the child will soon die regardless, but the mother could be saved with the procedure. Also, procured *ejectio fetus immaturi* is morally qualified as the deliberate and direct killing of an innocent human being, and is therefore condemned, regardless of how the agent intentionally proposes the action to himself (e.g., as an act of mere “removal”). Consequently, contrary to the theories of some authors, there is no valid or specific moral distinction between “abortion as removal” and “abortion as killing.”

Overall, the ecclesial documents of the most recent period, especially *Evangelium vitae*, provide a key for understanding the early interventions of the Inquisition regarding procured abortion, craniotomy, and other lethal procedures. There is a profound consistency and development in teaching between the decisions from the Inquisition and the later documents of the Magisterium, such that the doctrines and reasons that are completely adequate to explain the judgments of the earlier decisions are progressively revealed and clarified by the later documentation (especially *Evangelium vitae*). While there are good reasons to think that the interventions from the Inquisition were moral-doctrinal in nature and not merely prudential or disciplinary, proper exegesis of magisterial documents since the Second Vatican Council has the potential to provide responses to the same questions on *ejectio fetus immaturi* and other directly lethal procedures that were posed to the Inquisition over one hundred years ago, but now with even greater authority and certainty.

Finally, toward the end of the present chapter, drawing on the teaching of *Evangelium vitae* and many other magisterial texts, I have suggested a direction for providing a consistent theoretical account of direct killing in light of the teaching of the Church on direct abortion. While I employed in a particular way the work of recent moral theologian, Augustine Regan, I
argued essentially that any theory of human action specification, if it is to cohere with the teaching of the Magisterium, must acknowledge that a human act will bear the formality of killing in a direct way either because that formality is impressed upon the action from a deliberate intention formulated by the agent to kill, or because that formality is impressed upon the will of the agent (such that “killing” is intended as an end or as a means, even if the agent does not wish this) by virtue of the external (to the will) “nature” of the action that bears a killing direction in the order of causality. In a final concluding section, I will explore this principle further, and address some implications of magisterial teaching in relation to issues of action theory and application raised in the introduction to this dissertation.
Conclusion

This dissertation began by drawing attention to the recent scholarly discussions and debates among Catholic moralists concerning direct abortion, generated because of events that took place at St. Joseph’s Hospital and Medical Center in Phoenix, Arizona, in 2009. While occasioned by a particular procedure at a Catholic hospital, such debates have themselves been symptomatic and revelatory of broader discussions among Catholic philosophers and theologians on human action theory, especially as it applies to lethal operations. The purpose of the present dissertation has been to identify and analyze the teachings of the Magisterium on direct abortion in order to inform current debates among scholars concerned with those teachings.

At the end of each chapter I summarized conclusions that were reached by examining the relevant magisterial documents within a particular period of development. Now, having presented and examined the principal documents of the Magisterium on direct abortion, as well as relevant discussions and debates from moralists that may have led to or resulted from those documents, it is possible to summarize some of the more salient conclusions that can inform recent debates.

Undoubtedly, one of the most important conclusions that can inform recent discussions, especially as they bear upon action theory, is the following. According to the teaching of the Magisterium, by intentionally procuring the ejection of an immature fetus—even without altering the bodily integrity of the fetus in any way (as is done in a craniotomy, embryotomy, etc.)—the human agent necessarily commits direct homicide in the order of objective morality, even if he does not propose the action to himself as killing. This necessarily implies, contrary to the theory of Germain Grisez articulated in the introduction to this dissertation, that the moral object or species of the human act is not determined simply by the proposal adopted by the agent’s choice in the order of intentionality. This implication is profoundly relevant for any theory of human
action proposed to be in harmony with the teachings of the Magisterium, especially as a theory may apply to procedures that result in the death of an innocent human being.

One way to make evident the relevance of the implication noted in the last paragraph is to compare it with the position of Germain Grisez presented in the introduction to this dissertation, where he is recorded as having stated: “according to the analysis of action employed in [Grisez’s] book, even craniotomy (and, a fortiori, other operations meeting the four stated conditions) need not be direct killing, and so, provided the death of the baby is not intended (which is possible but unnecessary), any operation in a situation meeting the four conditions could be morally acceptable.”¹ Given the conclusions of this dissertation drawn from the teachings of the Magisterium, one could justly reply to Grisez by pointing out that according to the principles of action employed in magisterial documents (especially Evangelium vitae), even ejection of an immature fetus needs to be considered direct killing in the order of objective morality; hence, a fortiori, other operations such as craniotomy must be considered the same, regardless of the circumstances surrounding the case.

The last conclusion also contradicts the position of Martin Rhonheimer presented in the introduction to this dissertation. Rhonheimer had maintained that in situations of vital conflict, when the child cannot survive in any case, the physically direct killing procedure of craniotomy is performed outside the ethical context of justice, which normally prohibits the material act of taking human life. In such a situation, Rhonheimer held that “only the life of the mother is at the disposal of another human being—the fetus is no longer even subject to a decision between ‘killing and allowing to live’; the only morally good thing that can be chosen here is to save the

¹ Germain Grisez, The Way of the Lord Jesus, Vol. 2, Living a Christian Life (Quincy, Illinois: Franciscan Press, 1993), 502-503. The “four conditions” are found on page 502: “(i) some pathology threatens the lives of both a pregnant woman and her child, (ii) it is not safe to wait or waiting surely will result in the death of both, (iii) there is no way to save the child, and (iv) an operation that can save the mother’s life will result in the child’s death.”
life of the mother.” Moreover, as noted in the third chapter of this dissertation, Rhonheimer has also stated: “Also problematic was the decision of 1895, which confirmed this classification [of the Inquisition’s 1889 decision] of craniotomy as direct killing and expanded it even to the case of the straightforward removal from the uterus of a nonviable fetus that in consequence will die.” However, given that in *Evangelium vitae* Pope John Paul II has now formally taught what Rhonheimer noted the decision of 1895 confirmed about even “the straightforward removal from the uterus of a nonviable fetus” being a “direct killing” no matter the circumstances (the 1895 decision expressly concerned a case of vital conflict), *a fortiori*, craniotomy must also be considered a morally prohibited form of direct killing.

Both Grisez and Rhonheimer regard craniotomy to be (in the order of causality) a more evidently lethal procedure than mere *ejectio fetus immaturi*. Hence, they both reason that if, *in the moral order*, the former is not necessarily a direct killing then, *a fortiori*, the latter need not be either. However, ironically, in the teaching of the Magisterium, mere *ejectio fetus immaturi*—as the object of a human act—is *more clearly taught* to be a direct killing in the order of objective morality than craniotomy is. “Craniotomy,” in its own proper concept and term, is not directly addressed as much as “abortion,” or *ejectio fetus immaturi*. So, when the Magisterium teaches that an agent who procures *ejectio fetus immaturi* is performing a human action that is morally qualified as a direct killing, the Magisterium is teaching that the procedure held by Grisez and Rhonheimer as the less evidently lethal action is nonetheless certainly a killing action in the moral order.

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3 Ibid., 78. See footnote 111 of the third chapter of this dissertation.
It is difficult to overstate the importance for action theory of the certain teaching of the Magisterium (especially found in *Evangelium vitae*) that by intentionally procuring the simple *ejection of an immature fetus*, the human agent necessarily commits a direct killing in the order of objective morality, regardless of the circumstances or the way in which the agent intentionally proposes the action to himself (e.g., not as an act of killing but only as an act of removal). This teaching implies that a fundamental principle used by Germain Grisez and his followers for determining the moral object or species of a human action is inadequate to explain and is incompatible with principles contained within the moral doctrine of the Magisterium, especially as that doctrine bears upon lethal procedures.

Understanding the human act of “abortion” as “the deliberate ending of pregnancy before the unborn can survive, or, later, by a method chosen with the intention that the unborn not survive,” in the following texts Grisez articulates how his own theory of human action applies to the procurement of abortion.4

**Sometimes intentional abortion does not involve intentional killing.** As explained above…, according to the analysis of action used in this work, intentional killing as a means is choosing (adopting a proposal) to kill or to do something understood in such a way that its very meaning implies bringing about death. By contrast, many classical moralists thought that “direct” killing as a means is positing an action that straightaway brings about death. In their view, all “direct” abortion is “direct” killing of the innocent. But on the view taken in this work, someone might choose to abort without choosing to kill.

For example, suppose a woman suffering from kidney disease becomes pregnant and wants to avoid the health problems that will result from carrying the child; or a woman becomes pregnant as a result of rape and wants to be freed of her ongoing suffering. In either case, and perhaps in a few others, in seeking abortion the precise object of the woman’s choice might be, not the baby’s death, but the termination of pregnancy as the necessary means to the end in view: a benefit expected to flow from the baby’s removal rather than from the baby’s death or any consequence of it. On this assumption, the proposal adopted is, not to kill the unborn baby, but to have him or her removed from the

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womb, with death as a foreseen and accepted side effect. An abortion carrying out such a choice would not be an intentional killing.\(^5\)

As I noted in the introduction to this dissertation, the “analysis of action used” in Grisez’s work maintains that “The action of an individual is defined by the proposal adopted by a choice, just as the action of a group is defined by the motion adopted by a vote.”\(^6\) Whatever effects the agent does not intend to include within his “proposal” are not defining for the object or species of the human act. But as I have shown, especially in chapter three of this dissertation, the Magisterium certainly teaches that the human act of procuring abortion (\textit{ejectio fetus immaturi}) is itself a species of intentional killing, regardless of whether the agent—in his own intentional description of his action—“adopts” \textit{killing} in his first-person-formulated proposal of choice. That is to say, according to the Magisterium, if one deliberately procures \textit{ejection of an immature fetus} and intentionally \textit{excludes} the killing effect of the procedure from his intentional proposal adopted by choice, his human act is still morally qualified as a deliberate and direct killing despite how the agent attempts to restrict the action’s moral species. But this necessarily implies that the fundamental principle that the action of an individual is \textit{defined} simply by the first-person-formulated proposal adopted by a choice is inadequate to explain and incompatible with the moral doctrine of the Catholic Magisterium.

At the same time, however, the limitations of the conclusions that follow upon the analysis of magisterial documents must also be recognized. While some conclusions are certainly helpful in a negative way, that is, by revealing propositions that can identify principles of action theory that are incompatible with Church teaching, it is much more difficult to derive positive principles that can be generalized as necessary for any theory of action that would be

\(^5\) Ibid., 500. Bold emphasis is in the original.

compatible with the doctrines of the Magisterium. It is one thing to make clear that if procured ejection of an immature fetus must be regarded as direct homicide in the order of objective morality (regardless of how the agent proposes the action to himself), then the position must be false that maintains the action of an individual is defined simply by the proposal adopted by choice. It is another thing altogether to articulate a principle of action theory that accounts for how exactly the object of a human act is defined.

Hence, one important question that remains open to further study is how the teachings of the Magisterium on direct abortion and direct killing should fit into a broader theory of human action, especially concerning how the object of the act is formed and specified. Answering that question in particular is quite beyond the scope of the present dissertation. Nevertheless, especially toward the ends of chapters two and three, I have suggested some directions for formulating positive principles of action theory based on the documents of the Magisterium and on the works of certain moralists who have formulated definitions of “direct killing” that are in accord with those documents. For example, taking the documents of the Magisterium together, it appears necessary to maintain that a human act can be determined with respect to a moral species (e.g., “killing,” or “sterilization”) either by virtue of the agent formulating a clear and distinct intention to perform an action of a certain kind (e.g., “to kill,” or “to sterilize”) and then imposing an intentional “directness” onto the behavior that in fact (or at least in desire) terminates in the relevant effect, or by virtue of the causality proper to the external action, which produces a sole immediate effect of a morally relevant kind (e.g., the inflicting of a mortal wound, or removing necessary conditions of viability from a subject, or rendering the generative faculty incapable to result in procreation).
Indeed, it seems that the teaching of the Magisterium on the relationship between procured ejection of an immature fetus and direct killing in the order of objective morality (regardless of the agent’s subjective proposal) implies a principle according to which the order of causality external to the rational faculties of the agent can have a positive determining influence in specifying the moral object of the agent’s will, particularly when the order of causality produces only one immediate effect of a morally relevant kind. Unfortunately, a detailed account of how exactly such an influence actually determines the moral species, and to what extent, does not itself appear in the documents of the Magisterium. Accordingly, one area that calls for further study concerns how causal structures of actions can impress their own characters or directions upon the intentionality of the human will. Also, important to study further is the question of how a morally relevant sole immediate effect of an action is determined or properly recognized.

Intimately connected with the matters of action theory and direct killing, are the particular conclusions of this dissertation that concern the proper definition of direct abortion in ecclesial documents, and whether there is any valid, specific moral distinction between “abortion as killing” and “abortion as removal” implied in those documents. How might such issues be relevant for reasoning about other moral cases or questions? Since moral theology as a science must be connected by means of principles that apply to diverse actions and circumstances, it is to be expected that a principle supposedly uncovered in one area will in some ways be relevant for judgments in other areas as well, for better or for worse. Below, I will illustrate how having a correct understanding of the definition of “abortion” in the documents of the Magisterium can be profoundly significant for reasoning about other moral matters.
In chapter three of this dissertation, I argued that certain authors were mistaken in reading *Evangelium vitae* as providing a new definition of the term “abortion,” in such a way that it no longer included *eiectio fetus immaturi* in its range of meaning in the more recent documents of the Magisterium. Especially for William E. May, reading *Evangelium vitae* in that mistaken way led him to conclude that Pope John Paul II’s teaching allowed for a valid, specific moral distinction between “abortion as killing” and “abortion as removal,” with the former being intrinsically evil and the latter being justifiable in principle (according to circumstances). May would also go on to apply or adapt his fallaciously derived distinction to reasoning about other important moral matters.

In a letter to the editor of the *National Catholic Bioethics Quarterly*, Winter 2010, May employed the distinction between abortion “as removal” vs. “as killing” to argue for the legitimacy of certain cases of human embryo adoption/rescue by uterine transfer.

…I want to suggest a “good-case scenario” for justifying and developing protocols for the “rescuing” of abandoned embryos by a single Catholic woman who would, after safely delivering the child, give it up to adoption by a Catholic couple similarly seeking to adopt an orphaned embryo…

To make this case it is important first to note the profound moral difference between abortion as *removal* and abortion as the *intentional killing of the unborn*, as distinction rooted in the teaching of Pope John Paul II in *Evangelium vitae*. There he wrote, “Procured abortion is 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.”

Notice that Pope John Paul II did *not* identify abortion as the “expelling” from the mother’s womb of a living but as yet not viable unborn child, as was the usual way that Catholic moral theologians *defined* “direct and deliberate abortions” (that is, procured abortions) as gravely immoral acts. To the contrary, John Paul II *defined* it as *killing*. This seems to me to show that there is a profound moral distinction between abortion as removal and abortion as killing. One could licitly, under certain conditions that I will show, *remove* the unborn child from its site within the mother’s body without *killing* it and, in fact, could do so precisely as a means of saving its life. I will now propose a situation in which it seems to me to be morally permissible, indeed obligatory, to remove the nonviable unborn child from its mother’s body precisely as the chosen means to protect and preserve its life.
The situation is this. A pregnant woman is diagnosed with cancer of the uterus; if the cancer is not treated immediately, both she and her unborn child will die. To prevent this, the woman undergoes a hysterectomy to remove the cancer, but as a foreseen but unintended effect, the child dies. The procedure is justified by the principle of double effect. But let us now suppose that an artificial uterus is available. It would surely not be immoral, and in my judgment, it would be morally obligatory, to remove the child from her uterus before the hysterectomy and place it in the artificial womb until it is viable and its mother can then nurse it and care for it.

Now let us suppose that the pregnant married Catholic woman has a sister who is a virgin and is committed to being a single person in the world as her way of witnessing to the faith. Would it be morally wrong to have the child removed from the pregnant woman’s uterus prior to the hysterectomy and transferred into her sister’s womb so that the sister could nurture the child until birth, and then return the child to its mother and her husband? It seems to me that this would be preferable to transferring the child to an artificial womb in that the child would be in a real human womb and the womb of a woman who can extend to that child her love as his or her aunt.

If this were morally permissible, it seems to me that it would be morally permissible to have an orphaned IVF-produced baby transferred to the womb of a woman like this who could then, after the child’s birth, give it to her married sister for adoption. We are assuming that the married sister is not capable of having children because she lacks a womb and that she and her husband…are not adopting the child as a means of overcoming infertility but simply as a means of bringing an orphaned child into their home, where it can enjoy the warmth and love of family.7

Parts of the case here resemble another hypothetical case presented by May concerning an “artificial womb” that was critiqued in the third chapter of this dissertation. What is definitely new is May’s application of the distinction between abortion “as removal” vs. “as killing” to the justification of human embryo transfer. It is clear that May thinks he is justified in reasoning the way he does in this case because of how he had interpreted the teaching of Pope John Paul II in Evangelium vitae. The point here is not to argue about whether human embryo transfer can be justifiable, but only to show that correctly understanding the Magisterium’s teaching on abortion can absolutely affect the soundness of certain arguments on issues that might appear only remotely related to that teaching. Whether human embryo transfer is ever justifiable in principle, one can be certain that, according to the guidance of the Magisterium, no sound justification can

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be based upon any reasoning that presupposes a valid moral distinction between “abortion as killing” and “abortion as removal,” such as May assumes to exist.

Also, in the last chapter of his *Catholic Bioethics and the Gift of Human Life*, Second Edition, May considers whether the distinction between “killing” and “removal” might be relevant for the procuring (by “removal”) of vital organs from certain persons in the process of dying. That this consideration is based on May’s reading of *Evangelium vitae* is directly evident from the following passage.

Here I wish to note that in *Evangelium vitae* John Paul II had *defined* abortion as the “intentional killing of an unborn child,” whereas in the past theologians had *defined* abortion as the “intentional removal of an unborn child from its site within the mother’s body” (see the discussion of this issue in Chapter Five, above). Thus a question that needs to be considered later is whether the distinction made between “intentional killing” and “intentional removal” might have relevance to procuring vital organs from certain specifiable persons in the very process of dying.\(^8\)

Toward the end of his book, May appears to return to the question he introduced, where he notes the following.

I also think that although it may, *in principle*, be possible to extirpate vital paired or unpaired organs from individuals in the dying process *without intentionally killing them*, it would be most imprudent to put into practice [certain protocols suggested by D. Alan Shewmon in his “Dead Donor” article].\(^9\)

Here it appears that the same reading of *Evangelium vitae* which allowed May to say that some abortions “as removal” could be justifiable *in principle*, now allows May to think that some extirpations (*as removal*) of vital organs from certain individuals in the dying process could be justifiable *in principle, without intentionally killing them*.

It must be admitted that if May were correct about his reading of *Evangelium vitae* on abortion (that it allows one to maintain that some direct removals of nonviable fetuses are not

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\(^9\) Ibid., 351.
intentional killings), then he would also be correct in applying that reading to the case of direct extirpations of vital organs from certain individuals without intentionally killing them. If it is lawful directly to remove a human being from his vital elements, then it would seem equally lawful directly to remove the vital elements from the human being.

Of course, as was shown in chapter three of this dissertation, May is not correct in his reading of *Evangelium vitae*. Consequently, his reasoning based on that reading cannot be sound. Nevertheless, May’s position on the (in principle) moral lawfulness of removing paired or even unpaired vital organs from the living has itself been expressly rejected by the Magisterium of the Church, and, unsurprisingly, for the same reasons that direct removal of a nonviable fetus has been condemned. In his August 29, 2000, Address to the 18th International Congress of the Transplantation Society, Pope John Paul II delivered the following teaching, which contains one of the most striking examples of magisterial teaching implying that the causal structure of an action can impress a specific moral direction on the intentionality of the agent.

Acknowledgement of the unique dignity of the human person has a further underlying consequence: vital organs which occur singly in the body can be removed only after death, that is from the body of someone who is certainly dead. This requirement is self-evident, since to act otherwise would mean intentionally to cause the death of the donor in disposing of his organs. 10 With these sentences, the Holy Father both excludes William May’s position quoted above, that “it may, in principle, be possible to extirpate vital paired or unpaired organs from individuals in the dying process without intentionally killing them,” and at the same time teaches in a most consistent manner with the understanding of *Evangelium vitae* and other magisterial documents defended in this dissertation. Just as one’s moral act would be the direct killing of a human

being if it involved the direct removal or expulsion a non-viable fetus from his mother, so too would one’s moral act be the direct killing of a human being if it involved the direct removal or extirpation of vital organs which occur singly in the body prior to death. A consistency in principles could not have led any other way.

Returning once more to the introduction of this dissertation, and to the analysis of the Phoenix Hospital Case offered by M. Therese Lysaught, it is possible to say at this point that while Lysaught may have appropriately and consistently employed the writings of authors such as Grisez, Rhonheimer, and May in support for her defense of the abortion procedure that presumably took place at the hospital (for those authors have all written in support of principles that can be used in such a defense), she was mistaken in assuming that their relevant principles and positions reflect or even harmonize with the teachings of the Magisterium on the act and moral status of direct abortion. On the contrary, as I have shown, the relevant principles and positions offered by those authors, insofar as they support the procurement of *ejectio fetus immaturi* (“abortion as removal”) or any equivalent procedure, are incompatible with the principles articulated by the Magisterium since the late nineteenth century.

I will conclude with a most important practical consideration that relates to the application of the teachings and principles developed by the Magisterium on direct abortion that have been addressed throughout this dissertation. In the scholarly discussions that followed Lysaught’s analysis of the Phoenix Hospital Case, one author in particular, an adherent to Germain Grisez’s theory of human action, explicitly called for a revision of Directive 45 of the *Ethical and Religious Directives for Catholic Health Care Services*, the same directive that the Bishop of Phoenix claimed was violated by the procedure at St. Joseph’s Hospital and Medical Center. That directive states the following.
Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted. Every procedure whose sole immediate effect is the termination of pregnancy before viability is an abortion, which, in its moral context, includes the interval between conception and implantation of the embryo.\textsuperscript{11}

Recognizing that this Directive includes “directly intended termination of pregnancy before viability” as a morally prohibited abortion, Christopher Tollefsen writes: “…by at least my lights, ERD 45 should be revised so as not to conflate the intentional ending of a pregnancy (something that could be done, for example, by removing a pre-viable child to an artificial womb) with intentional killing (which would not occur in the artificial womb case).”\textsuperscript{12}

In a subsequent work, Tollefsen explicitly argues that Directive 45 is “deeply flawed” in its attempt to provide a sufficient definition of abortion, “insofar as that term is taken to name an act that is always and everywhere wrong.”\textsuperscript{13} He writes: “[The Directive’s definition] is not sufficient because pregnancy would be intentionally terminated by removal of a child to an artificial womb without an abortion ever taking place (let us stipulate in this case that the pregnancy would fail but for the removal). ERD 45 thus fails adequately to define abortion as a procedure always and everywhere impermissible.”\textsuperscript{14} In these passages, however, Tollefsen appears to repeat the mistake made earlier by William May regarding the term “viable” (when May attempted to distinguish between “abortion as removal” and “abortion as killing”). Just like May before him, Tollefsen fails to note the essential role “viability” plays in the Directive’s definition. The hypothetical removal of a child to an artificial womb would not fall within the


\textsuperscript{13} Christopher Tollefsen, “Double Effect and Two Hard Cases in Medical Ethics,” \textit{American Catholic Philosophical Quarterly} 89 (2015): 407-420, at 419.

\textsuperscript{14} Ibid.
scope of Directive 45 precisely because the transfer to that “womb” is viability preserving and by definition is not the directly intended termination of pregnancy prior to viability.

In light of a correct understanding of Evangelium vitae and of the other ecclesial documents that support or cohere with its teaching, I believe Christopher Tollefsen is seriously misguided in calling for a revision to Directive 45 of the USCCB’s Ethical and Religious Directives. Instead of calling for a revision, I would argue, respectfully, that the better and proper response, if necessary, would be to change one’s action theory to accord with those Directives, with the teaching of Evangelium vitae, and with all the other interventions from the Magisterium from the late nineteenth century to the present.
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