

A CHALLENGING MORAL DILEMMA: the Phoenix abortion debate

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In November, 2009, an abortion was approved by the ethics committee of the large and long established St. Joseph's Catholic Hospital in Phoenix, Arizona, but the case did not come to public notice until May, 2010. Involved was a 27-year-old mother of four children in the 11th week of a pregnancy who was near death because of heart failure and cardiogenic shock. There was no possibility of the fetus reaching viability nor could the pregnancy continue without leading to the mother's death. The hospital claimed that this was not an instance of direct abortion, which is condemned by the Catholic Church, but the bishop of the diocese judged otherwise.

For most people, I think, plain common sense would say that preservation of the mother's life is the only good thing to come out of this situation and that the termination of the pregnancy is reasonable and morally justified. It is also probably true that in many difficult moral dilemmas the decision is made as it were intuitively or instinctively, and that only afterwards are arguments supportive of the decision developed and refined. The lively and sometimes acrimonious debate that followed the publication of this case well illustrates the often extremely complex nature of moral argumentation and for this reason it may be of interest to outline it here.

An approach based on the principle of the double effect

The double effect principle has long been used by Catholic moral theologians to make an objective judgment about moral problems engendered in the course of difficult pregnancies.² So, for example, it has been judged that an ectopic pregnancy where there is no chance of the fetus reaching viability may be terminated on the ground that the fallopian tube (or maybe the lining of the stomach) is from the beginning in a pathological condition and poses a grave risk of haemorrhaging and causing the deaths of both mother and child. The reasoning is that the intervention to remove the unhealthy section of the tube has two effects: the saving of the life of the mother (the good effect) and the inevitable loss of the fetus (the bad effect). The good effect does not come about by means of the bad effect and is certainly proportionate to it. The value of the mother's life is at least equal to that of the child and hence the operation is morally justifiable.

The same reasoning has been applied to the case of a pregnant woman whose womb is diagnosed to be cancerous. A hysterectomy could be legitimately undertaken here because the four conditions for the application of the principle of the double effect are satisfied: in itself a hysterectomy is not necessarily a morally bad thing; secondly, it is the removal of the diseased womb, not the death of the fetus, that is the means of saving the mother; thirdly, the death of



'Hope No.2', by Alice Popkorn, flickr CC

the fetus is not intended as the end or purpose of the operation; and fourthly, the preservation of the mother's life is a good that at least balances the loss of the offspring.

On the other hand, according to this way of thinking, as pointed out in the article referred to, the principle could not be validly used to justify abortion in the case of a pregnant woman at risk from heart failure, because this would violate the second and third condition:

- the death of the fetus is directly intended precisely as the means of saving the mother's life;
- it is through the termination of the pregnancy and the resultant death of the fetus that the threat to the mother's life is removed.



'Ascension' by AlicePopkorn, flickr CC

This intervention would then be judged to be a direct abortion, which contravenes the teaching of the Catholic Church. This has been the usual interpretation of the principle in such a situation. However, it was also commonly believed that, with the advances in medicine and technology, the chances of such a situation occurring were extremely rare, especially in modern hospitals. This claim would now seem to have been wishful thinking.

To those uninitiated in the niceties of moral argumentation and, indeed, to many Protestant moral theologians, this approach seems unduly strict and unrealistic. Indeed some Protestant moral theologians would justify the termination of a pregnancy, at least in the early stages, in cases where the mother's health, and not her life, is gravely threatened.

Looking more closely at the case under consideration, there is perhaps an argument that can be made in line with

the principle of the double effect. According to moral theologian, M. Therese Lysaught, associate professor of moral theology at Marquette University in Milwaukee in the United States, what exacerbated the woman's pulmonary hypertension and was causing heart failure and cardiogenic shock was not the presence of the fetus as such, but the placenta, an organ shared by the mother and the child in her womb.

“The placenta was producing the physiological changes that imperilled the mother's and child's lives.... Although in one respect the placenta was functioning 'normally', it was also functioning pathologically in two ways”, she said. “First, once the placenta initiated its normal function at week ten, a crisis was created. Second, once the patient entered cardiogenic shock, the placenta also became hypoxic (unable to get enough oxygen). In these two ways, then, the placenta not only initiated a threat to the mother's life, it also became the immediate/presenting cause of the inevitably fatal threat to the fetus”.

If this factual information is correct, the intervention to remove the pathological placenta could be morally assessed as an example of the application of the principle of the double effect similar to the classical examples already outlined of an ectopic pregnancy or a cancerous womb, traditionally considered as *indirect* abortion and licit medical procedures, both in moral theology and official Catholic Church teaching.

From early times Christianity strongly disapproved of abortion and through the centuries the Church condemned it as a grave crime. This position was endorsed by Vatican II in its *Constitution on Church in the World Today (Gaudium et Spes, n.51)*. However, what was condemned was *direct* abortion, that is, where the termination of the life of the fetus is intended either as an end in itself or as a means to an end. It does not apply to *indirect* abortion, as Pope Pius XII made clear in a 1951 Address:

The reason is that if, for example, the safety of the future mother, independently of her state of pregnancy, might call for an urgent surgical operation, or any other therapeutic application, which would have as an accessory consequence, in no way desired or intended, but *inevitable*, the death of the fetus, such an act could not be called a *direct* attempt on the innocent life. In these conditions the operations can be lawful, as can other similar medical interventions, provided that it be a matter of great importance, such as life, and that it is not possible to postpone it till the birth of the child, or to have recourse to any other efficacious remedy.³

An alternative moral response

Morality must be based on reality and the distinction of direct/indirect effects arising out of the application of the principle of the double effect does not seem capable of doing full justice to the claims of reality in this situation. The well-known Catholic moral theologian, Charles Curran, considers: “In general, I do not believe that the theory of direct and indirect... adequately comes to grips with all the problems of conflict situations involving the fetus”.

It can be reasonably argued that the double effect principle does not apply here, because, whatever decision is taken, the fetus is doomed to die. The death of the child is undoubtedly a physical evil and regretful, but, since nothing can be done about it, it effectively falls outside the scope of the moral description of the action. It is reasonable to argue that it escapes the moral framework of the intervention considered in its totality and is therefore not an effect of it in a moral sense. Hence, since there are not two effects, it cannot be claimed that the death of the child is a means to the end of saving the life of the mother.

Redemptorist moral theology professor at Catholic University in Washington D.C., Brian Johnstone, cites, seemingly with approval, the argument advanced by noted theologian Germain Grisez that the basic intention in this case is to promote life and that “what is intended is the removal of the fetus from the womb, ... not necessarily the death of the fetus”. For this to be justified, as Grisez stresses, four conditions are essential:

- “Some pathology threatens the lives of both a pregnant woman and her child;
- It is not safe to wait or waiting will surely result in the death of both;
- There is no way to save the child;
- And an operation that can save the mother's life will result in the child's death”.



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It is not a question of weighing the relative value of human lives as such, nor, according to this reasoning, is this a case of direct abortion in the sense defined in official Church teaching. The only morally relevant value in the situation is the life of the mother, which is in reality enhanced by the fact that she has four other children already dependent upon her. Against this stands the disvalue of the unintended death of the fetus. The preservation of the mother's life has top priority here. It is certainly the most basic and urgent moral value in the picture, for if action is not at once taken both lives will be lost. The life of the child is already forfeit and the only morally sound option that can be taken is to do what one can to save the life of the mother.

The renowned Redemptorist moral theologian, Bernard Häring, supports this conclusion. "I consider probable", he says, "the opinion of those who justify the removal of a fetus that surely cannot survive, when the action is taken in order to prevent grave damage to the mother". He adds:

Franz Boeckle has well phrased what seems today to be the almost common opinion among Catholic theologians and the common conviction of doctors of all world views: "It is not a matter of preferring either the mother to the child or the child to the mother, but a choice between the life that can be saved and that cannot be saved. As in all practical judgments of this kind, there is not more requested than a moral certainty. In this evaluation of the goods we see the moral justification of an interruption of pregnancy medically indicated in a vital conflict. Beyond this case I do not see any plausible reasons that could morally justify an interruption of pregnancy".•

1 Dr Brian Lewis has lectured and written extensively on ethical questions and is a regular contributor to the websites of Yarra Institute and Social Policy Connections.

2 See Brian Lewis, "The Principle of 'Double Effect'", *Social Policy Connections* website, 5 May, 2009

3 "The Principle of 'Double effect'", p. 4

4 See John T. Noonan, Jr., "An Almost Absolute Value in History", in *The Morality of Abortion* (Harvard Press: Cambridge, MA., 1970), p. 1-59

5 Pope Pius XI was the first to state this in his encyclical letter in 1930 on Christian marriage and it remains official Catholic Church teaching

6 Charles E. Curran, *A New Look at Christian Morality* (Fides: Notre Dame, IN., 1968), p. 240

7 "Ethicists fault bishop's action in Phoenix abortion case", 8 June, 2010, *NCR*, 8 June, 2010, p. 2-3

8 See Brian Lewis, "The Resolution of Conflict Situations", *Social Policy Connections* website, 5 May, 2009, p. 2

9 Bernard Häring C.Ss.R., *Free and Faithful in Christ* (St. Paul Publications: Homebush NSW, 1981), p. 34

10 *Free and Faithful*, p. 33. It is perhaps worth noting that among those making up "the almost common opinion" are some moral theologians who argue on the basis that the fetus in the case under consideration is a *materially unjust aggressor*, whom the mother (or those acting on her behalf) are morally justified in killing in self-defence. This argument was once put forward by a few older theologians and is more also more recently advanced by William E. May, "The Morality of Abortion", *Linacre Quarterly* 41, 1974, p. 74ff and Patrick McCormick, "Ethicists fault bishop's action", *NCR*, p. 3-4. The obvious problem with such an argument is that the child is not engaged in aggression in any reasonable understanding of the word, not even a material one.¹