

Life or Death?

Medical and Moral Ambiguity
And the Dignity of the Human Person

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Overview

- An important case study
- Key medical and moral challenges
- Thomistic analysis of a moral act
- Key Catholic documents
- The Principle of Double Effect
- Rhonheimer's alternative and Lysaught's compromise?
- The issue of direct vs. indirect killing and causation.
- Uncertainty and pastoral responsibility (HIPAA&PSQIA)
- WWJS? Natural Law vs. Supernatural Aspiration
- Key challenges to any resolution of the paradoxes

St. Joseph's Hospital

An important case study

- Moral Analysis of an Intervention Performed at St. Joseph's Hospital and Medical Center
 - Prof. M. Therese Lysaught, Ph.D., Marquette University
- Presenting problem:
 - 27-year old woman, 11 weeks pregnant
 - Medical condition: pulmonary arterial hypertension (PAH)
 - Hypoxia induced by demands of growing placenta
 - Specific issues: cardiogenic shock, insufficient blood flow to mother's lungs, oxygen starvation of the mother and the infant.
 - Stress condition brought on by increased progesterone produced by the new placenta.

Key Medical/Moral Challenges

- Cardiogenic shock and hypoxia require emergency medical attention.
- Risk of mortality approaches 100%.
- The immediate causal issue is elevated progesterone from the placenta.
- Surgery contraindicated (lung capillaries).
- Drug treatment of PAH induces labor.
- Direct abortion is always immoral.
- Was a curative treatment available that induced an “indirect abortion?”

Thomistic Analysis from the Summa Theologiae

- Intention and the object of an act
 - 1st Part of the 2nd Part, Question 12: Intention
 - The role of causation in an act – distinction of means and ends as objects of the will? Thomas' gives a complete formal answer but not a complete moral answer.
- When an act has two causal effects
 - 2nd Part of the 2nd Part, Question 64: Murder, Article 7: Self-Defense
 - The core of the argument for the principle of double effect (PDE), founded in Thomas' separation of means and ends as acts of the will. PDE is actually narrower.

Key Catholic Documents

- *Declaration on Procured Abortion*, CDF 1974
- *Veritatis Splendor*, JP II, 1993
- *Evangelium Vitae*, JP II, 1995
- “Address of Pope Pius XII to the Associations of Large Families” 1951
- *Ethical and Religious Directives for Catholic Health Care Services* (4th Ed., 2001)
- “The Distinction Between Direct Abortion and Legitimate Medical Procedures” USCCB, June 23, 2010

The Principle of Double Effect

- A given act to be chosen is, of its nature, morally neutral.
- The act, in the given instance, is known to have two effects, one desired, the other not.
- It is the intention of the actor to choose the good result in performing the act, but the bad effect is an undesired, albeit unavoidable, side-effect.
- The good effect must be at least as good as the bad effect is bad. This is the legitimate role of proportionality.

A Critique of PDE and Thomas

- From Thomas –
 - “Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention.” 2nd – 2nd Q64, Article 7
 - This fails to fully address moral responsibility when the unintended effect is a foreseeable consequence of the act. “Beside the intention” is disingenuous.
 - There is a natural law case for self-defense, but it does not rely upon an artificial separation of will and causality.
 - Without that separation, PDE is incoherent.

Rhonheimer's Alternative

- Fr. Martin Rhonheimer
 - *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies*, CUA Press, 2009.
- Key statement:
 - “... the decision to allow both mother and child to die—at least when the mother can be saved and the child will die in any case—is simply irrational.”
- Approach:
 - Rhonheimer drops consideration of *direct vs. indirect* abortion (the PDE route), and simply argues on the basis of self-defense. (Recall that self-defense intervention is direct.)
 - Rhonheimer avoids causal incoherence, but flirts with proportionalism.

Lysaught's Compromise?

- Return to PDE and indirection:
 - Key medical issue is the stress of additional progesterone produced by the placenta.
 - Key intervention is to separate the placenta from the mother or to reduce progesterone through pharmaceutical means.
 - Both interventions result in the death of the fetus, an “unintended effect” (in the Thomistic sense) of the intervention.
- Key question: who “owns” the placenta or the progesterone environment? Mother or infant?

Direct/Indirect Killing, Causation

- *Evangelium Vitae*, ¶ 57
 - “I confirm that the direct and voluntary killing of an innocent human being is always gravely immoral.”
 - The last refuge in the PDE is “indirect” killing.
 - How is any act that predictably and certainly hastens the death of a person “indirect” killing? Here the laws of nature and the will of the human actor come into direct conflict.
 - Yet, Pope John Paul II's declaration clearly emphasizes the use of the term “direct” introduced by Pope Pius XII.
 - More precise language and analysis is clearly required.
 - Key question: What does the Pope mean by “innocent?”

Two Scenarios

- A classic PDE example: ectopic pregnancy.
 - The surgeon removes the diseased fallopian tube, with the fetus growing inside, to save the life of the mother.
 - The death of the fetus is predictably and certainly hastened. In other words, the surgeon's act kills the fetus.
 - Yet the fetus was not growing in its natural, nurturing environment, but in an environment that would, in any case, with or without intervention, kill it.
- The new case, a mother with PAH in cardiogenic shock.
 - The medical issue for the fetus is hypoxia, death from lack of oxygen.
 - The fetus is growing in a deadly, hypoxic environment. Yet, removing the fetus from the environment will probably hasten death.
 - The fetus will die, with or without intervention.

A Thomistic Proposal

- Argument from “self defense”
 - Thomas' analysis of self defense from an attacker does not depend upon knowing the culpability of the attacker. Indeed, it applies even when the attacker is not morally culpable.
 - Obvious, the cases being analyzed involve a toxic, life-threatening pregnancy. The pathology threatens the mother and the life of the fetus is inextricably involved in (critically contributes to) the pathology.
 - The life of the fetus cannot be saved, is medically immanent.
 - The surgeon acts to defend the life of the mother from the deadly pathology, but cannot do so without removing the fetus (or life-critical support) possibly, probably or certainly hastening the death of the fetus.

Uncertainty and Pastoral Responsibility

- Not just human lives were at stake in the St. Joseph's case. The integrity of the Catholic moral tradition was also at stake.
- Government-mandated confidentiality (HIPAA and PSQIA) were potential impediments to a just resolution.
- Neither the hospital nor Sr. Margaret McBride argued that the abortion was “indirect.”
- In face of these *facts*, was not Bishop Olmsted obliged to declare the effect of c. 1398 with *material cooperation*.
- Declaring c. 1398 and imposing excommunication are not the same, yet it was Olmsted's duty to impose practical penalties.
- Until the paradoxes can be resolved, Canon Law stands.

What would Jesus say?

- Recall that Jesus advised against self-defense, a clear natural law mandate:
 - Or did he? “Do not resist one who is evil. But if any one strikes you on the right cheek, turn to him the other also.” [Matt 5:39]
 - This suggests avoiding participation in hand-to-hand combat. What does it say about preventive measures in the case of immanent death?
 - Does not Jesus' saying imply “Do not resist (through violence) the natural effects of the life process of one who is innocent.”
- When immanent death is involved, natural law clearly conflicts with a literalist interpretation of Matt 5:39.

Key Challenges to Any Resolution

- What if, instead of “close to 100%” risk of mortality, the numbers were 50% for the mother and 50% for the infant?
- Who is responsible for the pregnancy to begin with? How does that affect the moral resolution? What about rape or incest coupled with medical risks?
- Thomas did not argue from “indirection,” but purely from intention and natural law. This arose in a declaration of Pope Pius XII. PDE rests upon this distinction. Is it coherent, given the laws of causality? How, for example, is an attack on the fallopian tube (in a tubal pregnancy) not an attack on the fetus?
- Is justice possible in the event of government-imposed silence?
- Are the subtleties we face necessarily opaque in public discourse? Which is clearer, PDE or “self defense?”