

BODILY INVASIONS. WHEN SIDE-EFFECTS ARE MORALLY CONCLUSIVE

DR HELEN WATT, SENIOR RESEARCH FELLOW, ANSCOMBE BIOETHICS CENTRE, OXFORD, UK



What kind of interventions on the body of an innocent human being may be licitly intended? This question arises in relation to maternal-fetal conflicts such as ectopic pregnancy and obstructed labour,[1] and to other cases such as organ harvesting and separation of conjoined twins.[2]

Very often, commentators from the Catholic tradition look exclusively for an intention to kill or harm, tending to assume that only if such an intention is present will the act be ruled out absolutely. It is thought that while side effects are morally relevant, in the sense that they can outweigh intended effects, they are not morally conclusive in themselves: only intentions can be that.

However, this assumption is, I believe, mistaken: it is not always the case that foreseen harm is merely a factor to weigh against benefits we intend. [3] On the contrary, foreseen harm (and absence of benefit) for the person affected is sometimes morally conclusive when linked to an immediate intention to affect that person's body (or at least, to invade the space it fills). There are, in short, side effects which have a crucial role in the description of prohibited acts.

What an agent intends in a given situation is a matter not of logic or of facts about the world, but of facts about the agent. For example, a person who was somehow unaware, due to mental illness or simple ignorance, that babies could not survive craniotomy could easily intend craniotomy for her baby without intending death. Then again, whether people are capable of intending lethal interventions without intending the deaths they do foresee cannot be decided a priori, but is a matter of personal psychology. Thus transplant surgeon A may have a psychological makeup due to which he is perfectly capable of intending to harvest the organs of a live anencephalic baby without intending the death he knows will result. After all, surgeon A may also know that this death will not advance in any way his goal of using the organs in transplantation: It is harvesting the organs, not killing the baby, which will promote that goal. The wounding and subsequent death of the baby occur during harvesting, and are caused by it, but are conceptually separable from it.

People differ in the way they see their actions and the actions of others: Transplant surgeon B may be so much struck by the certainty of death being caused that he is unable to separate this in his own mind from the organ retrieval. If surgeon B engages in the harvesting procedure, he may see this as deliberately hastening death in a good cause: The baby is not, he may argue, being unfairly treated as she is in any case terminally ill.

To give a third perspective: Onlooker C, who is rightly horrified by the baby's exploitation, may wrongly assume that both surgeon A and surgeon B are intending to end the baby's life, as well as retrieve her organs. However, this may not be the case, nor is it necessary to claim this in order to

condemn the organ harvesting in the most absolute terms. The surgeons' unjustified causation of death in the context of a deliberate bodily assault on a known innocent is quite bad enough without imputing an additional intention, which may not be present, to kill or harm.

When examining such cases, we need to look for more than a possible intent to kill or harm—morally conclusive though such an aim will be where it does in fact exist. Respect for a person as a living bodily being encompasses respect for that person's bodily borders, of a kind which goes well beyond avoidance of deliberate harm to life or health. An innocent person who is not intending unjust harm to others must surely have a right to bodily integrity: his or her body should not be deliberately invaded in a way foreseen (though not intended) to cause death or serious permanent injury.

This applies equally to ectopic pregnancy: however short the child's life will be, to invade the child's body (including the placenta and amniotic sac) in a foreseeably, seriously, and exclusively harmful way seems incompatible with respect for the bodily integrity of that child. In practice, such invasions are likely to be involved in most deliberate removals of an unborn child before viability^[4] - which Church teaching already gives us grounds for thinking are morally excluded. ^[5] So to attack the ectopic embryo's body with lasers, for example, will be 'direct abortion' for the purpose of moral prohibition, and very different from removing a tube which is already so damaged as to need removal, even if the child had already miscarried. Like the anencephalic baby, the ectopic embryo has a right to bodily integrity throughout its short life, while the woman has, of course, a right to have her own organs removed when they have been damaged in some way. It is no more acceptable to protect the woman's health by deliberately invading the body of her child than it would be to invade the body of a dying pregnant woman, in a way foreseen to kill her, to rescue the viable fetus whom her body is endangering.

The bodily rights of human beings do not lapse just because the person is already facing death. They do not lapse even if the body of the dying person threatens that of someone else. Thus in a case of conjoined twins where one twin will die as a result of separation, not only the final act which kills the weaker twin but previous acts of cutting into the weaker twin (including parts shared with the stronger twin) are, in this view, impossible to justify. Again, we need not claim that death or harm is somehow the aim of the procedure in order to exclude such bodily invasions: as with the organ harvesting example, the weaker twin's death (as opposed to her separation) does not promote the health of the stronger twin, and may well not be intended. However, the weaker twin, like the stronger, still has a right, as an innocent human being, to have her body respected for whatever short time she has to live.

Here as elsewhere, in evaluating choices we should avoid the false dichotomy between 'This harm is intended, so the act can't be justified' and 'This harm is not intended, so the act may be justified, if the intended good is good enough.' The virtue of respect for each others' bodily space, as we negotiate the common space between our bodies, demands more of us than that.

1. See e.g. the review by Nicanor Austriaco of Martin Rhonheimer's book *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies*, *National Catholic Bioethics Quarterly* 10.1 (Spring 2010): 202–206.
2. See Joseph Howard, "The Principle of Double Effect as Applied to the Maltese Conjoined Twins", *National Catholic Bioethics Quarterly* 9.1 (Spring 2009): 85–96. I discuss this case in "Conjoined Twins: Separation as Lethal Mutilation," in *The Right to Life and the Value of Life: Orientations in Law, Politics and Ethics*, ed. Jon Yorke (Farnham, UK: Ashgate, 2010). An earlier version of this paper was published as "Conjoined Twins: Separation as Mutilation," *Medical Law Review* 9.3 (Autumn 2001): 237–245.
3. For more on this, see Helen Watt, "Beyond Double Effect: Side-effects and Bodily Harm", in *Human Values: New Essays on Ethics and Natural Law*, ed. David Oderberg and Timothy Chappell (London: Palgrave MacMillan, 2004); J. L. A. Garcia, "Intentions in Medical Ethics," in *Human Lives: Critical Essays on Consequentialist Bioethics*, ed. David Oderberg and Jacqueline Laing (London: Macmillan, 1997).
4. Removal of a still-undamaged tube or tube segment because it contains an ectopic embryo would not involve such a lethal bodily invasion. It would, however, constitute an abortive termination as the still-living embryo endangering the tube or segment is the reason for removing tube and embryo. In the same way, a surgeon who removes a cancerous organ intends to remove both tumour and organ.
5. For a detailed historical account of debates and Church rulings on maternal-fetal conflicts, see John Connery, *Abortion: The Development of the Roman Catholic Perspective* (Chicago, IL: Loyola University Press, 1977).

ORIGINALLY PUBLISHED IN THE SPRING 2011 EDITION OF THE NATIONAL CATHOLIC
BIOETHICS QUARTERLY
