## Cases of Vital Conflict

*To the Editor:* Fr. Nicanor Austriaco, for whom I have great esteem both as a scholar and a person, has made an admirable effort in reviewing my book *Vital Conflicts in Medical Ethics*, a study originally drafted for the Roman Congregation for the Doctrine of Faith and now published in English by the Catholic University of America Press.[1] Unfortunately, and despite Fr. Austriaco's obvious endeavor to give a fair account of my argument (see especially 202–205), his review contains a considerable amount of imprecision and even mistakes, some of which I will try to correct in the following.

Referring to the preface of my *Vital Conflicts*, Fr. Austriaco writes that this book "was published with the encouragement of its then prefect, Joseph Cardinal Ratzinger." Without wanting to deny or to affirm that this is the case, this is not what I wrote in the preface about this text now published in English. What I say about it is, "After it was carefully studied in the Congregation [for the Doctrine of Faith] and by its then prefect, Cardinal Joseph Ratzinger, *the Congregation in turn asked that it be published,* so that the theses it contains could be discussed by specialists."[2] The Congregation gave me the explicit permission to make this public by mentioning it in the preface. I regret that in Fr. Austriaco's review this important information was not correctly reflected. Even if I explicitly remarked in my preface that "the observations made here are my personal opinions and not those of the Congregation for the Doctrine of Faith," which is certainly true, the Congregation considered this a valuable contribution to be publicly discussed by specialists.

I certainly appreciate that Fr. Austriaco, at the end of his review, highly recommends my book to readers: "It will challenge the reader, as it did me, to clarify his account of human action in a way few other books have done" (206). In the meantime, however, he thinks my argument is "fatally flawed"—and this, he suggests, *in a manifest way*. I do not claim infallibility, but if Fr. Austriaco's verdict of my argument being "manifestly" flawed were true, it would not reflect well on the Congregation. This is why some clarifications must be done in the following, not to defend my argument—which I expect to be challenged by counterarguments—but simply to present correctly some of its central features.

What Fr. Austriaco calls my "fatal error" is actually an incorrect presentation of my argument. This "fatal error" of mine, so he writes, "is made manifestly clear" when I claim that it is lawful to kill a baby "'for which it is already clear that it will never even be born'" (206). Falsely reducing my argument to such a statement, Fr. Austriaco fails to mention (in this critical part of his review) its very rationale: the context of a specific dilemma in the heart (i.e., the intellect, will, and emotions) of the physician due to a situation which I call vital conflict. Especially in the case of craniotomy, the conflict is this: if the physician abstains from destroying one life (the baby's) which menaces the other life (the mother's), the inevitable outcome will be the loss of *both* lives. My argument is not that killing a human being which in any case cannot survive much longer is not unjust—*simply because it will never be born alive*. In the section "Objections and Response" of my book I explicitly refute an objection to my argument based on such a reading of it.[3]

My argument is that such an intervention cannot be called unjust if the short-term survival of a going-to-die-anyway human being *is actually causing the certain death of another person*. As I wrote on page 131 of *Vital Conflicts in Medical Ethics*,

> I would reply that the fact that someone will die anyway is in *itself* no justification for taking any kind of action whose direct consequence would be the immediate death of this person; this, in fact, was not the argument in the preceding pages. Rather, the fact of the foreseeable death of person X (the child) is to be seen in connection with the fact that not doing an act that *would result in the immediate death of X would also lead to the death of person Y (the mother)*. (In fact, in the case discussed here, Y's life is also the condition for the survival of X, so that the continued life of X, which is fatal for Y, is precisely also the cause of death for X itself: because person X causes the death of person Y, X causes its own death as well.) But Y can live through the performance of an action that will lead to the earlier death of X—who will die anyway. This action can thus be characterized as an act of saving a life or as a therapeutic measure. (original emphases)

This is the "vital conflict" for which I try to suggest a moral answer on the basis of the principle of justice (belonging to natural law). It is a real conflict, and for a physician who is bound to save life, it is a tragic and rationally unsolvable dilemma. I noted that in the past, a proven Dominican moral theologian like Fr. Dominic Prümmer (referring to the authorities of Noldin and Lehmkuhl) taught that a physician who had performed a craniotomy should be left in good faith by the confessor, and not be bothered, though on the basis of the decrees of the Holy Office he considered the intervention to be illicit.[4] It has long been a legitimate Catholic position that a confessor must not oblige a physician to let die mother and child when at least the mother can be saved by a medical intervention! As I show in my book, there is no evidence that the Church ever demanded that physicians be instructed to not save mothers in such situations. *Vital Conflicts in Medical Ethics*, therefore, contains an argument aimed at explaining why a physician who acts in this way cannot be blamed for the death of the baby. No preferential choice is made against the life of the child by, for example, considering it as less savable than the mother's life, and preferring the latter to the former.

Fr. Austriaco comes to his judgment that my argument is "fatally flawed" by disregarding all these features and the supporting evidence as it is broadly explained in the book. This is somewhat strange because in the first part of his review, Fr. Austriaco gives a detailed and valuable account of my analysis of the relation between "killing" and "injustice," and of my understanding of "direct" as an intentional category. He also correctly mentions several other elements of my argument. Yet, this remains without any effect when, on page 205, he starts with an evaluation of my argument. At this point, Fr. Austriaco completely overlooks the true nature of the "vital conflict" a physician in such a situation has to cope with, which is at the center of my analysis: the dilemma in the mind and the heart of a physician whose only endeavor is to save life and not to destroy it, but who knows that if he abstains from lethally harming the baby the inevitable outcome will be the loss of *both* lives, the baby's and the mother's. In order to refute me, Fr. Austriaco presents the hypothetical scenario of the Nazi physician seeking to kill Jewish babies. In my view, the example is counterintuitive, misconstrued, and totally alien to the case I am dealing with in this book; Fr. Austriaco's scenario is about a physician who from the outset seeks to kill, not to save life!

Moreover, on page 205, Fr. Austriaco suggests that my leading principle is "the context of the act." This is mistaken in two ways. I do not speak simply of "contexts" but, as mentioned above, of "*ethical* contexts" (as is mentioned earlier in his review). By now using the terminology "context of the act," which is completely alien to my argument, Fr. Austriaco seems to suggest that I am sort

of a situation ethicist. "Ethical contexts," as I understand them, *are defined by objective standards and facts* (also natural facts and teleologies) which, as I say—and this is fundamental—are the ends of the virtues. The ends of the virtues coincide with the principles/precepts of the natural law.[5] In the present case it is the ethical context of justice which is analyzed. The ethical context in each case is something objectively given.[6] But in each case this ethical context actually has to be carefully analyzed in the light of the ends of the virtues, that is, the principles of natural law, and the objective facts of the case in question.

Fr. Austriaco also suggests that, unlike Steven A. Long, I do not provide "a general principle that explains why certain objects are legitimate for a particular act done here and now" (205). For Long, he says this principle is "the teleological structure of an act [which] limits the legitimate objects that can be chosen." However, Fr. Austriaco's example for applying this principle ("you cannot make a sculpture of David from orange juice") seems to be ill chosen because one actually *can* make a sculpture of David from orange juice (not a *marble* sculpture, of course, but a sculpture of frozen orange juice, for example). In order to render the example effective, one should say: "you cannot make a *marble* sculpture of David out of orange juice." But this is completely tautological and the application of Long's principle here would be an empty phrase, or trivial. So, at least on the basis of such examples it seems that Long's general principle is not as effective as Fr. Austriaco believes. He definitely applies it in a wrong way, because he applies it not to human (moral) actions (the realm of the practical, agency) but to *poietic* (artistic, technical) activity. This, however, is a category mistake.[7]

To sum up: *Vital Conflicts in Medical Ethics* deals with conflicts going on in the mind and heart of a physician who is endeavoring to save life, and by his professional medical ethos is bound to save life. The solution suggested by Fr. Austriaco—in accordance with many other Catholic ethicists and moral theologians—simply sticks to the lethal harm inflicted to the baby by the intervention of craniotomy, while absolutely ignoring the vital conflict situation in which this happens. My main concern is that such problems are looked at in the proper *perspective of morality*, which, finally, is the perspective of moral virtue. In morals we are not dealing with natural structures or biological occurrences, but with what is going on in people's hearts—which is not to say that what is going on in people's hearts has nothing to do with the natural preconditions of human action and their material or physical aspects. Absolutely not! But about this, I have said enough in *Vital Conflicts in Medical Ethics* itself and even much more elsewhere.[8]

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[1]Nicanor Pier Giorgio Austriaco, review of *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies* by Martin Rhonheimer, *National Catholic Bioethics Quarterly* 10.1 (Spring 2010): 202–206.

[2]Martin Rhonheimer, *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies* (Washington, DC: Catholic University of America Press, 2009), xiii, emphasis added.

[3]Rhonheimer, *Vital Conflicts*, 131–132.

[4]See ibid., 20, note 32.

[5]See my *Natural Law and Practical Reason: A Thomistic View of Moral Autonomy* (New York: Fordham University Press, 2000) and a full account in my forthcoming *The Perspective of Morality: Philosophical Foundations of Thomistic Virtue Ethics*, trans. Gerald Malsbary (Washington, DC: Catholic University of America Press, 2011). For concrete examples, see my *Ethics of Procreation and the Defense of Human Life: Contraception, Artificial Fertilization, and Abortion*, ed. William F. Murphy Jr. (Washington, DC: Catholic University of America Press, 2010), 20–150.

[6]Rhonheimer, *Vital Conflicts*, 84–85.

[7]To make actually the same point, in my *The Perspective of the Acting Person*, I used examples which seem to me to be more appropriate for the realm of the practical: "It is not rationally possible to chew gum with the end of feeding oneself; nor is it rationally possible to hit someone on the head

with the purpose of healing his migraine." *The Perspective of the Acting Person: Essays in the Renewal of Thomistic Moral Philosophy* (Washington, DC: Catholic University of America Press, 2008), 241.

[8]Especially in my forthcoming *The Perspective of Morality* (quoted in note 5).

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*Rev. Austriaco replies*: I thank Fr. Rhonheimer for his comments, and for this opportunity to continue this very important conversation on the moral questions raised by cases of vital conflict. As the public confusion generated by a recent situation in Phoenix, AZ, made abundantly clear, cases of vital conflict remain controversial. In this case, an unborn child was killed in order to save the life of a pregnant woman with pulmonary hypertension.

A few years ago, I was privileged to serve as a chaplain at a major tertiary care hospital in New York City. During my ministry, I told a physician struggling with a case of vital conflict that, as Fr. Rhonheimer correctly notes, "it has long been a legitimate Catholic position that a confessor must not oblige a physician to let die mother and child when at least the mother can be saved by a medical intervention," and that "the Church has never demanded that physicians be instructed to not save mothers in such situations [of vital conflict]." However, I also told this attending physician that a health care professional *may not kill an unborn child as a means to save the mother*. This too has long been a legitimate Catholic position, which was confirmed recently by the Committee on Doctrine of the U.S. Conference of Catholic Bishops in its response to the Phoenix, Arizona, case of vital conflict.[1]

In its clarification of Catholic teaching on cases of vital conflict that lead in some manner to the death of an unborn child, the USCCB Committee on Doctrine explained that a direct abortion, which "is never morally permissible," obtains when a medical intervention, such as a surgical intervention,

> *directly* targets the life of the unborn child. It is the surgical instrument in the hands of the doctor that causes the child's death. The surgery does not directly address the health problem of the woman, for example, by repairing the organ that is malfunctioning. The surgery is likely to improve the functioning of the organ or organs, but only in an *indirect* way, i.e., by lessening the overall demands placed upon the organ or organs, since the burden posed by the pregnancy will be removed. The abortion is the means by which a reduced strain upon the organ or organs is achieved.[2]

As the Committee on Doctrine emphasized, quoting Pope Pius XII, "as long as a man is not guilty, his life is untouchable, and therefore any act directly tending to destroy it is illicit, whether such destruction is intended as an end in itself or only as a means to an end, whether it is a question of life in the embryonic stage or in a stage of full development or already in its final stages."[3] To reiterate, it too has long been a legitimate Catholic position that in cases of vital conflict, a physician or other health care professional may never intend, choose, or seek—even reluctantly, remorsefully, or tragically—the death of the unborn child as a means to save the mother's life.

In his comments on my book review, Fr. Rhonheimer makes clear that he believes that a craniotomy, the crushing of the skull of an unborn child who is lodged in his mother's birth canal, "cannot be called unjust if the short-term survival of a going-to-die-anyway human being *is actually causing the certain death of another person*" (his emphasis). Quoting from his book, Fr. Rhonheimer goes on to claim that because of the scenario of vital conflict, "this action [of a craniotomy] can thus be characterized as an act of saving a life or as a therapeutic measure."

I profoundly disagree. During a craniotomy, the surgeon crushes the skull of the unborn child as a means to save the life of the mother. To put it another way, he crushes the child's skull because this medical intervention, and only this intervention, will save the life of the mother. In doing so, as I explained in my review, he necessarily intends—probably reluctantly, remorsefully,

and tragically—the death of the going-to-die-anyway child, unjustly depriving him of his life, even if this deprivation is but mere moments in a doomed life. He necessarily intends the death of the child because the act of crushing a human skull, by its very nature, constrains those moral objects that can be legitimately specified by the person who performs this act.

In other words, an agent who chooses to crush a person's skull also must choose to kill that person. He needs the child's brain to be crushed—he needs the child to be dead—in order to save the mother's life. Thus, the surgeon who performs a craniotomy possesses—again, probably reluctantly, remorsefully, and tragically—a direct will to kill that leads to the wrongful death of the unborn child. In contrast to Fr. Rhonheimer, I argue that it is irrelevant if the unborn child, the going-to-die-anyway human being, "is actually causing the certain death of another person," because the unborn child is innocent and remains innocent, even while he remains lodged in his mother's birth canal. As Fr. Rhonheimer himself has so clearly and forcefully put it,

> It is clear that an unborn child would fall a priori under the category of "innocent." Even when he represents a danger to the mother's life, not only is he not an "unjust aggressor," but he is not an aggressor at all, since he does no action that could represent an aggression: an embryo or a fetus performs no "human acts" (in the classical sense of *actus humanus*). In certain cases his existence in the mother's womb could constitute a danger to the life or health of the mother, but this is certainly not an aggression.[4]

As such, his life, in the words of Pius XII, remains "untouchable, and therefore any act directly tending to destroy it is illicit."

In his comments, Fr. Rhonheimer further claims that a craniotomy is morally justifiable—that it is not the unjust taking of innocent human life—because he is convinced that the surgeon who crushes the skull of the unborn child does not make a preferential choice "against the life of the child by, for example, considering it as less savable than the mother's life, and preferring the latter to the former."

In response, I argue that the surgeon does not need to consider the unborn child's life less savable or less preferential than the mother's in order for him to possess a direct will to kill the child. All he needs to do is to intend the child's death, something that he necessarily does when he chooses and then acts to bring about the child's crushed brain, which is what he seeks in order to save the mother's life.

In sum, despite Fr. Rhonheimer's protestations, his argument in *Vital Conflicts in Medical Ethics* remains fatally flawed. By the very nature of crushing an unborn baby's skull, one wills, albeit reluctantly, the child's premature death, and therefore, the unjust deprivation of life. Thus, craniotomies, salpingostomies, and "therapeutic" abortions, even in cases of vital conflict, remain illicit.

Finally, I need to address the pastoral issues raised by cases of vital conflict. As Fr. Rhonheimer correctly and rightfully acknowledges, these cases involve a tragic and, in many cases, a rationally unsolvable, dilemma. A physician who finds himself in this situation needs to be counseled with prudence and prayer so that he may act according to right reason and faith. He needs to be told the truth of the matter so that he understands that he should try to save both the unborn child's and the mother's lives, and that, if this option is not available to him, he should try to save the mother's life even if he cannot save the child's life, *as long as the child's death is not a means to saving the mother's life.*

A physician who, in fact, has killed an unborn child in order to save the mother's life in a case of vital conflict needs to be counseled with humility, wisdom, and mercy. The confessor needs to acknowledge the tragic circumstances of the moral dilemma faced by the surgeon. He needs to be a compassionate instrument of God's mercy, offering hope and forgiveness to bring about healing and strength. He needs to be gentle; the physician does not need to be condemned. In the end, however, the priest can do this without sacrificing the truth.

He can do this without denying that, as the Servant of God Pope John Paul II put it in his words of counsel to women who had had an abortion, "what happened was and remains terribly wrong."[5]

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[1]USCCB Committee on Doctrine, "The Distinction between Direct Abortion and Legitimate Medical Procedures," June 23, 2010, http://usccb.org/doctrine/direct-abortion-statement2010-06-23.pdf.

[2]Ibid., 2–3, original emphases.

[3]Ibid., quoting Pius XII, Discourse to the Saint Luke Union of Italian Doctors (November 12, 1944), as cited in Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion* (November 18, 1974), note 15.

[4]Martin Rhonheimer, "Natural Law and the Thomistic Roots of John Paul II's Ethics of Human Life," *National Catholic Bioethics Quarterly* 9.3 (Autumn 2009): 536.

[5]John Paul II, *Evangelium vitae* (March 25, 1995), n. 99.

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## Bias in Plan B Studies

*To the Editor:* I would like to thank Deacon Thomas Davis and Father Nicanor Austriaco, OP, for taking the time to reply to my essay "Emergency Contraception: Can It Be Morally Justified?" which appeared in the Spring 2010 issue of the *NCBQ*.[1] Both Deacon Davis and Fr. Austriaco have spent significant time and effort researching various aspects of this issue, and I welcome the opportunity to discuss it with them in this forum.

Fr. Austriaco maintains that Plan B is not an abortifacient. While he, like Deacon Davis, cites studies that point to such evidence (including some studies published after my essay was submitted to the *NCBQ*), I would make the case that the evidence is still not definitive enough to remove doubt about the postfertilization effects of Plan B. In their responses to Fr. Austriaco's 2007 article "Is Plan B an Abortifacient? A Critical Look at the Scientific Evidence," Marie Hilliard and Patrick Yeung, Erica Laethem, and Fr. Joseph Tham, LC, provide excellent critiques of the scientific claims that Plan B is not abortifacient.[2] These authors carefully delineate problems in the research that cast not-insignificant doubt on those claims, and their work must be given serious consideration.

Moreover, regardless of the merit of the studies that suggest Plan B is not abortifacient, and notwithstanding their contribution to the scientific literature, there is a question that I have not yet seen anyone bring to the discussion: what are the sources of these studies? Evidence suggests that not all the researchers' interests align with our foundational principles of protecting human life and respecting the dignity of the human person.

The Association of Reproductive Health Professionals was founded by Alan Guttmacher in 1963 as the education arm of the Planned Parenthood Federation of America. In 2007, ARHP became an accredited provider of education for pharmacists.[3] *Contraception* is the official journal of the Society of Family Planning, part of the ARHP. According to their Web site, the SFP is an academic society that

> advances family planning research and education, providing evidence-based insight to improve clinical care in the areas of contraception and abortion. SFP also seeks to cultivate a collaborative and supportive environment to foster scholarly activity and leadership in the areas of reproductive health and family planning.[4]

In a debate as sensitive as this one, we must turn to the words of Christ: "You will know them by their fruits" (Matt. 7:20). It is not unreasonable for us to question the motives of studies published in journals that may be promoting an anti-life agenda, as evidenced by the fruits of Planned Parenthood.

By contrast, the research of Dr. Walter Larimore and his colleagues has a history of being more objective. In an author's comment at the end of the article "Postfertilization

Effects of Oral Contraceptives and Their Relationship to Informed Consent"—which was published in the American Medical Association's *Archives of Family Medicine*—Dr. Larimore explains the reason for his research.[5] He describes how the study came about when a colleague showed him a patient information brochure claiming the pill had a postfertilization effect. Dr. Larimore thought this claim was rather outlandish and decided to do a literature search to disprove it. Contrary to his expectations, his research demonstrated that the abortifacient effects of the pill do indeed exist. The findings changed his life and his practice of medicine.

The Church tells us that the victim of rape has the right to defend her bodily integrity from further violation, and rightly so. Both the woman who has suffered an incomprehensible trauma and the baby who may have been conceived deserve our utmost support and respect. We do a woman no service by providing a drug that may kill her unborn child. This only perpetuates the violence, and it does not heal her anguish.

I am especially appreciative that Deacon Davis, while noting the additional contributions of more recent scientific studies that were not referenced in my article, has also understood that my conclusion is not meant to be based on science alone, but it respects the scientific contributions to the debate insofar as they inform faith and reason and are important and helpful in moral decision making.

Fr. Austriaco defends his position on the basis of selected recent scientific studies that claim Plan B is not abortifacient. Whether these studies are correct beyond the shadow of a doubt is still in question.

Knowing of his extensive work on the Connecticut Plan B case, I am grateful that Deacon Davis has understood the point of my argument in its intended moral context: we cannot proceed in doubt when a human life may be at stake.

As I pointed out in my essay, in *Fides et ratio* Pope John Paul II expresses his admiration and encouragement to scientists, and calls for them to continue their efforts and to not abandon the search for truth.

For us to be truly faithful to directive 36 of the *Ethical and Religious Directives for Catholic Health Care Services,* a morally acceptable solution must be found.[6] I again propose that testing for fertilization may be a viable answer to the dilemma, and I urge scientists to help find such a solution that will best serve God's gift of human life and dignity.

As the spiritual battle between the culture of life and the culture of death rages on, may we err on the side of life.

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[1]Nicanor Pier Giorgio Austriaco and Thomas J. Davis Jr., letters to the editor, *National Catholic Bioethics Quarterly* 10.2 (Summer 2010): 221–224.

[2]Nicanor Pier Giorgio Austriaco, "Is Plan B an Abortifacient? A Critical Look at the Scientific Evidence," *National Catholic Bioethics Quarterly* 7.4 (Winter 2007): 703–707. Marie T. Hilliard, letter to the editor, *National Catholic Bioethics Quarterly* 8.1 (Spring 2008): 9–12; and Patrick Yeung Jr., Erica Laethem, and Joseph Tham, letter to the editor, *National Catholic Bioethics Quarterly* 8.2 (Summer 2008): 217–218.

[3]Association of Reproductive Health Professionals Web site, "About ARHP," http://www.arhp.org/about-us/about-arhp.

[4]Society of Family Planning Web site, home page, http://www.societyfp.org.

[5]Walter L. Larimore and Joseph B. Stanford, "Postfertilization Effects of Oral Contraceptives and Their Relationship to Informed Consent," *Archives of Family Medicine* 9.2 (February 2000): 133.

[6]5th ed. (Washington, DC: USCCB, 2009).