In November 2000, at St. Mary’s Hospital in Manchester, England, Jodie and Mary, conjoined since birth, underwent surgery to separate them. As a consequence of this surgery, Jodie lived and, as of this writing, appears to be thriving. Her twin sister, Mary, did not survive the surgery.

Their story begins some eight months earlier on the island of Malta when their mother, who was approximately four months pregnant, had an ultrasound that revealed that she was carrying conjoined twins. A doctor at the hospital, who had trained at St. Mary’s Hospital and knew of its excellence, advised the parents to seek treatment there. Once in England, and at a latter stage of the pregnancy, it became clear that the difficulties with the twins were greater than had originally been thought. In light of these difficulties the doctors advised the parents to terminate the pregnancy. The couple, deeply religious Roman Catholics, refused this option and decided to continue with the pregnancy. The twins were born on August 8, 2000.

From the time of their birth to the day of the surgery some four months later, the case of Jodie and Mary gripped the public interest and their case received intense international coverage in the media. Every aspect of the case, medical, legal, and ethical, was analyzed and commented on.

In this present article, I will deal principally with the ethical issues surrounding the surgery and its aftermath. I will conclude, tentatively, that the surgery was morally permissible under the principle of double effect.

In order to arrive at this tentative conclusion, I will examine first the medical condition of each of the twins prior to the surgery; second, I will look at the nature of the operation to separate the twins. Finally, based on the facts of the surgery, I will

1 Information regarding the medical condition of the twins prior to surgery, and the nature of the surgery itself, can be found in the transcript of the court case that gave per-
conclude that Mary’s death, while foreseen and unfortunate, cannot be classified as a “direct killing,” but rather falls under the rubric of *praeter intentionem* (that is, outside of the intention of the surgeons). In so arguing, I hope that I am not confirming the fears of Richard John Neuhaus by guiding “the unthinkable on its path through the debatable on its way to becoming the justifiable until it is finally established as the unexceptional.”

**Medical Condition of the Twins**

It was clear from birth that the medical status of Jodie and Mary differed significantly. The notes on Jodie record:

- Baby crying and active ... making respiratory effort ... Easily intubated ...
- Baby making spontaneous breathing effort ... Kept intubated in view of condition of other twin.

What, in fact, was the condition of the other twin, Mary? Her notes read as follows:

- Making spontaneous respiratory effort on arrival from theatre. Face mask oxygen given ... Intubated ... Very stiff to ventilate. No audible air entry. Position rechecked and tube replaced to confirm tracheal placement. Still unable to ventilate. No chest movement or breath sounds.

One hour after these observations were made, it was noted that:

- No assistance to breathing being given. No active intervention at the moment. Outlook for Twin 2 still bleak despite surprisingly stable condition at the moment.

Despite her stable condition, Mary’s outlook was indeed bleak. The consultant neonatologist’s testimony at the hearing was stark: “... we never had any evidence that she (Mary) has breathed for herself at all.”

In order to understand what was happening to Jodie and Mary, it is important to examine their physiognomies, individually and with respect to each other.

Jodie and Mary were ischiopagus (joined at the ischium) and had four lower limbs. The lower ends of the spines were fused and the spinal cords joined. There was a continuation of the coverings of the spinal cord between one twin and another. Their bodies were fused from the umbilicus to the sacrum. In spite of this conjoining, Jodie and Mary presented differently. Jodie’s head seemed normal in size, while Mary’s was clearly enlarged due to a swelling in the back of the head and neck. Mary was also facially dysmorphic and blue because of a lack of oxygen.

Not only were Jodie and Mary different physically, they were developing differently as well. Behavior, anatomical studies, and ultrasound scans suggested that Jodie had a normal brain and that at three weeks of age she showed “normal reac-

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3 The ischium is the lower bone which forms the lower and hinder part of the pelvis; the part that bears the weight of the body while sitting.
tions and normal development as expected for a child of her age and gestation.” Indeed, one doctor described her as “very sparkling really, wriggling, very alert, sucking on a dummy and using her upper limbs in an appropriate manner, very much a with-it sort of baby.” This normal development was occurring in spite of the fact that, from the beginning, Jodie’s blood gas analysis was consistently below normal, “probably as a result of admixture with the severely de-oxygenated blood of her sister Mary.”

While her sister was making continuous progress, Mary was not. She was severely abnormal in three respects. First, she had a poorly developed “primitive” brain; such a malformation is not compatible with normal development in postnatal life. The second problem was with her heart. Mary’s heart was enlarged, almost filling the chest with a complex cardiac abnormality and abnormalities of the great vessels. These abnormalities meant that Mary’s heart was doing very little of the pumping of the blood around the body, such that “if Jodie wasn’t covering Mary’s circulation she wouldn’t be alive now if they were separate twins.” The third difficulty Mary faced was the virtual absence of functional lung tissue, leaving her incapable of shifting air at all in and out of the chest. The combination of these abnormalities was such that, had Mary been a separate twin or a single baby, the doctors would have been unable to resuscitate her from the beginning. Indeed, it was said of Mary that she was “living on borrowed time, all of which is borrowed from Jodie.”

Mary’s total dependence on her sister for survival was not without its consequences for Jodie. The cardiologist said that Jodie’s heart provided all of the blood perfusion to Mary’s tissues. As a result, Jodie’s own future cardiac functioning was at risk. In other words, were Jodie and Mary to remain conjoined, Jodie would probably suffer heart failure, the inability of her heart to pump sufficient blood for the needs of her and Mary’s bodies. In short, Mary was alive only because a common artery enabled her sister, Jodie, to circulate life-sustaining oxygenated blood for both of them.

In light of the medical evidence, and the chances that Jodie, if separated from Mary, would have a possibility at a normal life, the hospital sought a declaration that the operation to separate them might be lawfully carried out. Again, this article will not deal with the legalities of the operation. What we are concerned with is its ethical permissibility. While ethics can and does provide us with general norms and principles that guide us in making moral decisions, ethics is also a practical science that must, if it is to be useful, assist us in making practical decisions concerning concrete events. In other words, if we are going to make a moral judgment on the surgery to separate Jodie and Mary, we must attend to the specifics of the operation proposed to do so.

The Operation to Separate Jodie and Mary

An important feature of the surgery to separate Jodie from Mary was that each twin would be treated as an individual. Each would have her own team of physicians and different anesthesiologists. Further, and more importantly, while separation of the twins would necessarily involve exploration of the internal abdominal and pelvic organs of both and particularly the united bladder, the surgery would leave intact
each of the twin’s body structures and organs. As the surgeon explained to the judge, “[i]t is not anticipated or expected to take any structure or organ from either twin to donate to the other ... putting it crudely, no part of Mary would be given to Jodie” or vice versa. Only one essential part of the surgery would favor Jodie, namely, the interruption of the blood supply from Jodie to Mary. This bias would occur at the level of the united sacrococcygeal vertebrae.

The operation itself, as the surgeon explained it to the judge, would be in separate parts. The first part would be exploratory in nature, the purpose of which would be to determine which anatomical structures belonged to each twin, so that they could then know which part to give to whom.

With the exploratory part of the surgery complete, the doctors would then proceed with the separation, first of the bladders, then of the anal rectum. From there, the doctors would begin to separate the pelvic bones, one from the other anteriorly and then proceed to fashion skin and such like as they moved along toward the spine, where the two spinal bones were joined together at their tip. Once the surgeons had reached that stage, they would be left with some possible muscle union at the pelvic floors. This would need to be divided so that each twin would have her own half. Finally, and eventually, there was the question of the major blood vessel, which constituted the continuation of Jodie’s aorta, bringing blood across to Mary; and similarly for the vena cava, which was returning blood from Mary to Jodie. These two vessels would need to be separated. It was at this point in the surgery that Mary, no longer joined in a vital way to her sister, would die.

In light of the manner in which the surgery would be performed, the ethical question we need to ask ourselves is this: would Mary have been killed directly by the surgeons? Given that many people, even the doctors themselves who stated that they would be “killing off Mary” in order to save Jodie, do not often make the distinction between “dying” and “killing,” the answer to the question merits careful analysis. It is to this analysis that we will turn next.

**Direct or Indirect Killing?**

Apart from the legal and medical concerns raised by the surgery and its expected outcome, the court also posed a number of questions of a more philosophical and ethical nature. These questions and the responses to them indicate that neither the court nor the doctors were insensitive to the dilemma they faced. If anything, queries show that the court was interested in three things: 1) the sanctity of human life, which imposes a strong presumption in favor of taking all steps to preserve life, save in exceptional circumstances (and how to define those circumstances); 2) the recognition that it is unlawful for the court to sanction steps to terminate life or accelerate death even in the case of the most horrendous disability, the concern of the court being restricted only to those circumstances in which steps should not be taken to prolong life; 3) whether or not the surgery would, in fact, lead to the direct killing of Mary. Let us examine more closely the court’s concerns through the kinds of questions it asked.

Was it in Mary’s best interests to maintain the status quo, her continued attachment to Jodie? Clearly it would be, the doctor responded, given her only means of
survival would be the continued use of Jodie’s oxygen supply and her circulatory pump.

Was there any therapeutic benefit for Mary in the operation that was performed? In response to this question, the doctor stated that there was no therapeutic benefit for Mary because she would die. But, he went on to say, “[i]f you look at it in terms of what Mary’s life would be like attached forever to her sister, then it is not a benefit for her to remain attached to her sister: she will be much happier if she is separate.” Here, two issues stand behind the question, “Should Mary undergo a type of surgery that will be of no benefit to her?” In terms of medical ethics, this would not be permissible if Mary were not conjoined to her sister; a point to which I will return later in this analysis. So can “benefit” be understood in a broader sense? Clearly, the doctor thought so. Whether one agrees with him or not, he believed that Mary would be “happier” separated from her sister. But, we may ask, what can “happier” mean for someone who has been described previously as having a primitive brain? And even if Mary could experience happiness on some level, she would be dead and unable to experience such happiness. The doctor’s remarks appear to us, therefore, to be disingenuous.

Apparently, the court felt the same way. And so when asked again, the doctor responded with the starker and more candid statement: “I think I come back to the fact that the quality of any life that she will have will be so poor that, yes, I feel it is appropriate to terminate her life.” This phraseology (“to terminate her life”) need not be understood as 

primae facie

evidence that the doctors “intended” to “kill” Mary in order to save Jodie as subsequent testimony will make clear.

Thus far, the discussion has centered around Mary and her plight. But the court was cognizant of the fact that there was another person involved as well, viz., Jodie. While it is true that the surgery would have as a consequence the death of Mary, it would also have as a consequence the saving of Jodie’s life. In other words, it would be in Jodie’s best interests to proceed with the surgery and the therapeutic benefit for her would spell life.

And so the court asked: Would not performing the surgery be an act of omission with respect to Jodie? This question raises the issue of act and omission. To act would lead to Mary’s dying and Jodie’s living; not to act would lead to Mary’s living for a short time and Jodie and Mary’s certain death. Archbishop Murphy-O’Connor stated this in ethical terms: “To aim at ending an innocent person’s life is just as wrong when one does it by omission as when one does it by a positive act.”4 The Archbishop’s statement, for all of its pointedness, does little, however, to resolve what the court saw as a conflict of duty. “What,” it was argued, “are the doctors to do if the law imposes upon them a duty which they cannot perform without being in breach of Mary’s right to life if at the same time the respecting of her right puts them in breach of the equally serious duty of respecting Jodie’s right to life?” While those arguing for Jodie were uncomfortable with the language of “unjust aggression” on the part of Mary, which was felt to be “wholly inappropriate language for the sad and helpless position in which Mary finds herself,” such was not the case with the plea of

“quasi self-defense, modified to meet the exceptional circumstances nature has inflicted on the twins . . . ”

While I agree with the inappropriateness of the language of “unjust aggression” as applied to Mary, I am just as troubled by the term “quasi self-defense” with respect to Jodie. Because of her age, Jodie was incapable of positing an act of self-defense. Even if done by a person capable of such an act, self-defense would require, for ethical permissibility, that only such force as is necessary to preserve one’s life be used, even if that force were lethal.5 Another caveat is that the death of the aggressor be praeter intentionem, outside of the intention, (and thus outside of the choice of the will) of the person defending him or herself.6 At her age, Jodie was incapable of forming such an intention.

But what about the doctors? After all, they were the ones performing the surgery. Could it be argued that they were coming to Jodie’s defense in the same way, say, that a mother would come to the defense of her children if an armed aggressor had entered the house? I think a case can be made for that. But the same intentionality applies in the case of coming to the defense of someone else as it does in defending one’s own person. One may not, in the defense of another, intend (choose) the death of the aggressor as the means to save another’s life. But even if the same intentionality obtained in the twins’ case, it remains questionable whether Mary could be considered as an aggressor against whom the doctors must defend Jodie. There is something counter-intuitive in perceiving Mary as an “unjust aggressor” with respect to her sister. While she was a threat to Jodie in the medical sense, Mary did not intend to be one in the moral sense and, therefore, is considered “innocent,” a word not generally ascribed to unjust, adult aggression. It is because of this that I do not find the language of “self-defense” or “defense” to be terribly fruitful in coming to a decision about whether or not to perform the surgery.

Regardless of the language one chooses to frame this dilemma, we are left in the end with the decision about whether or not to perform the surgery to separate the twins. In conflict situations such as these, the traditional approach has been to invoke the principle of double effect. The question we need to answer is whether or not the principle applies in this case.

Double Effect

The court itself was not ignorant of the principle of double effect. In fact, lawyers in support of the surgery invoked this principle during a discussion of the phrase “intent to kill.” While their interest in invoking double effect was out of concern for possible criminal liability for the surgeons, the discussion raises issues that are appropriate for us to consider when examining ethical permissibility. It should be reiterated from the outset that we are concerned with the moral, not the legal, ramifications of the surgery. What may not be permissible in law may, in fact, be allowed ethically.

5 Summa Theologiae I–II, q. 1, a. 3, ad 3 and In II Sent., d. 40, q. 1, a. 2 and 4.

6 Summa Theologiae II–II, q. 64, 7: “morales autem actus recipiunt speciem secundum id quod intenditur, non autem ab eo est praeter intentionem.”
According to British law, a person acts intentionally with respect to a result when it is his purpose to cause it or, although it is not his purpose to cause that result, he knows that it will occur in the ordinary course of events if he were to succeed in his purpose of causing some other result. So in the case of the conjoined twins, while the doctors may not have chosen to act with the purpose of causing Mary’s death, the fact that the clamping of Jodie’s aorta would inevitably lead to her death, meant that the doctors would intend to kill Mary in the eyes of the law.

At this point in the proceedings, the lawyers arguing for the surgery introduced the principle of double effect. They claimed that the true meaning of intention is purpose. Now one may purpose means or ends, but one does not purpose a side-effect. Therefore a consequence, even if prohibited, is not intended if it is a side effect. In the case of Jodie and Mary, the side effect, but not the means or end to saving Jodie, would be Mary’s death.

Those opposed to the surgery made the counterclaim that the principle of double effect had no possible application in this case, as the judge observed, because “by no stretch of the imagination could it be said that the surgeons would be acting in good faith in Mary’s best interests when they prepared an operation which would benefit Jodie but kill Mary.”

This opinion was bolstered by a submission from the Archbishop of Westminster who argued that “[a] person’s bodily integrity should not be invaded when the consequences of so doing are of no benefit to that person; this is most particularly the case if the consequences are foreseeably lethal.” This principle, were it not followed in the case of Mary and Jodie, would constitute a grave injustice, according to the Archbishop, who wrote that, “if what is envisaged is the killing of, or a deliberate lethal assault on, one of the twins, Mary, in order to save the other, Jodie, there is a grave injustice involved. The good end would not justify the means.”

In terms of the principle, I am led to agree with the Archbishop. But we must determine whether or not the principle applies to the case of Jodie and Mary. In other words, do the surgeons envisage an invasion of Mary’s bodily integrity that would lead to the killing of, or a deliberate lethal assault on her?

The lawyers arguing for the surgery asked the court to consider a similar case involving the Lakeberg twins, in order to claim applicability of the principle of double effect. Like Jodie and Mary, Amy and Angela Lakeberg were conjoined twins. Unlike Jodie and Mary, however, the Lakeberg twins shared one heart and one liver. The decision was made to separate Amy and Angela whose shared six-chambered heart was malformed, dooming them to a short life. The Catholic nurses at the Children’s Hospital in Philadelphia, where the surgery was performed, consulted their archdiocesan authorities. The archdiocese replied that they could proceed with

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7 Origins 30 (17) (October 5, 2000): 269.
the surgery based on the principle of double effect. The court rejected this method of applying the principle of double effect in the case of Jodie and Mary, with no further explanation. But let us go where the court did not go, and examine the case of Jodie and Mary using the principle of double effect.

Two of the four criteria for a legitimate application of the principle of double effect are clearly present in the case of Jodie and Mary. First, the motive (or what is sometimes called the “further intention,” or simply “intention”) of the surgeons was good, namely, the saving of a human life: in this case Jodie’s. Second, the two effects of the surgery, the harmful and the beneficial, are proportionate: the loss of the life of Mary did not exceed the saving of the life of Jodie.

But what about the third criterion, that the beneficial effect (saving Jodie’s life) cannot be brought about by means of the harmful effect (Mary’s death)? Recall that the surgery was performed in two parts: first, the separation of the twins to determine what parts of the anatomy belonged separately to each of the twins so that the surgeons could then know which part to give to whom; second, the separation of the major blood vessel, which was the continuation of Jodie’s aorta that brought blood across to Mary, as well as the vena cava, which was returning blood from Mary to Jodie. What is clear from the way the surgery was performed is that the saving of Jodie’s life was not brought about by Mary’s death. Rather, Jodie’s life was saved (the beneficial effect) by means of a surgical procedure that restored her bodily integrity. And so, the third criteria is satisfied.

Now we turn to the fourth criterion which requires that the act (in this case, the surgical procedure) itself not be morally evil. The surgical procedure would be morally evil if Mary’s bodily integrity had been violated with no benefit to her. In such an instance, the surgery would, as the Archbishop reminded the court, constitute a grave injustice to Mary. Now while it is true that the surgery was of no benefit to her, was Mary’s bodily integrity violated in such a way as to constitute an injustice to her? It is evident from the way the surgery was performed that it was not. In fact, the doctors treated each of the twins as separately as they could given their conjoined status: each had her own team of surgeons and anesthesiologists; the surgery was meant to restore the bodily integrity of each twin.

Recall the surgeon’s explanation to the judge: “[i]t is not anticipated or expected to take any structure or organ from either twin to donate to the other ... putting it crudely, no part of Mary would be given to Jodie” or vice versa. Only one essential part of the surgery favored Jodie, viz., the interruption of the blood supply from

Jodie supporting Mary. This bias occurred at the level of the united sacrococcygeal vertebrae. Did this bias render the surgery morally evil? I do not think so. From the physiological description of the twins, it is clear that Mary had severe cardiac abnormalities as well as abnormalities of the great vessels, which abnormalities were incompatible with supporting life. It was Jodie’s normal heart and normal vessels that circulated life-sustaining oxygenated blood for both of them. While the clamping of the major blood vessel ultimately led to Mary’s demise, the major blood vessel in question was a continuation of Jodie’s aorta. As a consequence of surgically restoring Jodie and Mary’s bodily integrity, a morally good act, Mary died, being incapable, as a separate twin, of sustaining her own life. So while Mary’s death was foreseen, it was *praeter intentionem*, nonintentional in the ethical sense (though maybe not in the British legal sense). As a result, Mary’s death, according to my analysis, was indirect and therefore morally permissible.\footnote{On the question of moral responsibility in cases where one foresees the consequences of one’s actions without directly intending them, see Denis F. Sullivan, “The Doctrine of Double Effect and the Domains of Moral Responsibility” in *The Thomist* 64 (2000): 423–48.}

**One Unanswered Question**

As I noted at the outset of the article, the case of Jodie and Mary presents a complex and oftentimes overlapping blend of medical, legal, and ethical questions. This overlap is present in my analysis. There remains an important question that I did not undertake to address here. Did the court have the authority to override the parents’ wishes not to have surgery performed and to let Jodie and Mary die together as they were born? The answer to this question is both legal and moral. According to British law, and all things being equal, the court did have the authority to act in Jodie’s best interests in spite of the parents’ wishes to the contrary. But did it have the moral authority to make such a decision? The answer to that question is for another time.