Case Study:

**Did the Principle of Double Effect Justify the Separation?**

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Life can present us with predicaments we wish God would have consigned forever to the archives of speculative moral theology, or better yet, to the realm of the purely hypothetical. The moral dilemma facing the parents of conjoined twins is such a case. Nevertheless, the burden of the “what must we do?” dilemma, places an opportunity before us, albeit, an unsolicited one, to test the depth of our capacity to know the truth and, thus, to do what is good and avoid evil.

On September 22, 2000, the British Court of Appeals granted the medical team of Saint Mary’s Hospital in Manchester, England, permission to separate the conjoined twins, Jodie and Mary. On November 7, 2000, the twins were separated. Jodie has survived; Mary died immediately. The matter that remains yet to be determined is whether this surgical operation was morally licit. This essay will begin by presenting the most pertinent facts of the case, examine the essential moral principles, and then apply those principles to the facts presented. My primary aim will be to show that the principle of double effect cannot provide a moral justification for the surgical procedure that was performed.

**Facts of the Case**

Those familiar with Jodie and Mary’s former situation know that the twins were born August 8, 2000, to a Catholic couple from Malta. After a successful delivery in England, where the parents had gone to receive the best treatment available to them, the doctors concluded that separating the twins was the most ethical course because this would allow the stronger twin, Jodie, to live a relatively normal
life. The expressed desire of the parents, however, was to let the twins remain conjoined in the hopes that good medical treatment might best prolong the lives of their two children. The tragedy was that, conjoined, both were likely to die within six months; while if they were separated, Mary would be incapable of surviving on her own because of her dependence upon Jodie. Thus, Mary was certain to die from the procedure.

According to the official court records, the two were classified as *ischiopagus tetrapus*, meaning that they were joined at the pelvis (which included a fusion at the base of the spine), but they each had their own arms and legs. Both girls had their own set of vital organs, except for a shared bladder. Jodie was clearly the stronger and more developed of the two, while Mary showed strong evidence for serious bodily defects and a nonfunctioning pulmonary system. Mary’s life was sustained primarily by her use of Jodie’s aorta, which provided a venous return from her to Jodie.

At issue in the court proceedings were two considerations, one legal and the other moral. First, did the parents have the legal right to allow the twins to remain conjoined and thus, likely suffer death within the year? Did the hospital have the legal right to act against the parents’ wishes? Second, if the team of doctors could secure legal permission to perform the surgery without the expressed consent of the parents, was this procedure morally good or evil? The first question will not be addressed in depth. I will only acknowledge my agreement with Cardinal Murphy O’Connor that, “It is the parents’ right to withhold consent to such lethal treatment.”¹ No legal argument from British law can justify the court’s decision to go against the parents’ wishes. As legal scholar George J. Annas has pointed out, the “most important shortcoming of the decision of the judges is that it did not rest on any legal principle.”² Even the Court of Appeals admitted that, “... it would ... have been a perfectly acceptable response for the hospital to bow to the weight of the parental wish however fundamentally the medical team disagreed with it .... Had St. Mary’s done so, there would not have been the slightest criticism of them for letting nature takes it course in accordance with the parents’ wishes.”³

As for the second issue, the moral question, the doctors determined that by remaining conjoined, the death of the twins was imminent, but that if separated, Jodie had a reasonable chance of living a relatively normal life. The doctors and the courts concluded therefore that the medical procedure of separating the twins was morally licit, regardless of Mary’s immediate death. The following excerpt from the court’s judgement of the case expresses the rationale of the doctors and the circumstances quite clearly:

³ This quote is cited from Dr. Michael Jarmulowics, “Legal and Medical Judgements Concerning the Manchester Conjoined (Siamese) Twins.” Available at www.lifeuk.org/speech7.htm.
Q. The phrase you used, which is a harsh one, but the reality nonetheless has to be faced, is that effectively during this operation you would be, to use your own words, killing off Mary.

A. Yes, and that is a very serious worry for all of us involved in such an act and we would only look to taking it on if we felt that there were really and truly in the best interest, taking the whole situation as it is, of Jodie and if Mary’s long-term survival was so poor that it was not really a sensible proposition; also leaving them united together detracts markedly and severely from the quality of life for both really.

Q. Is there any therapeutic benefit for Mary in the operation being performed?

A. If you look at it in terms of Mary dying, no, there is not a therapeutic benefit. If 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.

The Neonatologist expressed himself slightly differently. In his report he said:

A. It is sadly therefore in Mary’s best interest that the ultimate aim should be planned separation of these twins, accepting the fact that this would terminate the life of Mary.

Asked about that, he said in evidence:

A. I think my perception of the quality of her life is that it would be so poor that I do not feel that it is a life that she will enjoy ....

Q. I do not think you have quite answered my question. Is it really your view that the best option for Mary is to terminate her life?

A. 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 that it is appropriate to terminate her life. 4

One doctor was also asked whether it was possible to sustain Mary’s life by attaching her to a heart-lung machine immediately after the common aorta was severed. He answered in the affirmative, but concluded that doing so would be futile since Mary could never ultimately survive. 5

From the prognosis given, Mary had no possibility of sustaining her own existence. In point of fact, the technology does not yet exist that would have replaced her dysfunctional organs. Thus, to attach her to a heart-lung machine would have been merely an act of prolonging her inevitable death. Without Jodie, Mary could not survive. Yet, with Mary attached to her, Jodie could not survive, either. This was the tragic reality facing everyone involved.

Having considered the facts of the case, the most essential principles for getting at the moral quality of the surgical act must now be addressed. The first principle concerns the difference between direct and indirect killing. The second is the prin-

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4 Case No: B1/2000/2969, In the Supreme Court of Judicature Court of Appeal (Civil Division) On Appeal From Family Division. Available at: www.courtservice.gove.uk/info/news_items/siamese.htm.

5 Ibid.
ciple of double effect. It is around these two principles that most of the debate seems to revolve.

**Direct versus Indirect Killing**

In a recent article in *The Thomist*, written by Germain Grisez, John Finnis, and Joseph Boyle, the authors advance their theory of human action by examining the difference between direct and indirect killing. They establish in the very first paragraph a preference for getting at this distinction by speaking of “what is intended and what is accepted as a side effect ...” instead of using the terms direct and indirect. This shift in terminology emphasizes the importance of analyzing the morality of a human act from the perspective of the acting person, as opposed to the perspective of an outside observer. They point out that the moral quality of an act cannot be readily ascertained by focusing on cause-and-effect relationships or by focusing on how the act effects the world ‘out there.’ Rather, “morally significant acts get their species [species] ... from precisely what it is that one intends [per se intentum].”

The difference between direct and indirect killing, they hold, can be best determined by focusing upon the intentionality of the acting person. As St. Thomas Aquinas noted centuries ago, intentionality can be spoken of in two ways. First, we can speak about the intention of the acting person as the end for which an act is being done, i.e., the reason for acting. This intention is remote to the act. Second, intentionality can be understood as the adopted proposal for achieving an end, i.e., the object of the act. The intention here is proximate to the act. Both aspects of intentionality are essential to determining what the act is and if it is good or evil.

The relevance for us in considering the remarks of Grisez *et al.* is to accept that we cannot determine if an act of killing is direct by simply focusing on what the act appears to be to an outside observer. By looking at cause-and-effect relationships within an act, or by focusing exclusively upon the end of an act, we generally miss what the acting person is, in fact, choosing. For an act of killing to be direct, one of two things needs to occur. Either the death of the person must be an end for which the agent acts, or the killing itself has to be employed by the agent as a means for achieving whatever end he or she has in mind.

**The Principle of Double Effect**

The principle of double effect is likewise crucial for determining the morality of the surgical procedure. The most important truth to grasp when considering double effect is that it does not admit exceptions to a moral norm. Rather, it simply helps us to better analyze the nature of an act that happens to have two effects—one that is good and one that is evil. The principle of double effect, then, is simply a tool for deeper analysis.

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7 Ibid., 12; 19.

8 Ibid., 19.
Double effect consists of at least three general criteria. No defender of the principle reduces it to fewer and some indicate as many as five. Hence, use of the principle of double effect must at least pass the following three-fold test. The first criterion is that the evil effect can never be intended; it must be an unintended effect of a fundamentally good act. The second criterion is that the object of the act must be good. In other words, one cannot employ a bad means to achieve a good end. And third, the gravity of the evil effect must be equal to or less than the good that is intended.

Some who defend the surgical separation of Jodie and Mary hold that double effect applies in this case because the evil effect of Mary’s death was a foreseen yet unintended effect of separating the twins. That is, Mary’s death was not intended as an end, nor was killing her chosen as a means to extending Jodie’s life. Their conclusion therefore is that the surgical procedure was not a direct killing. They arrive at this conclusion in the following manner:

The doctors did not intend Mary’s death, only Jodie’s survival (good intention).

The chosen means for saving Jodie was to separate the twins, not to kill Mary (good object).

Mary’s death was merely accepted as a foreseen but unintended effect of a good act that was no greater than the intended good effect of Jodie’s survival (evil was = or < the good).

Therefore, according to the principle of double effect, the surgery was morally licit.

Common to most of the arguments that I have reviewed for justifying the surgery on the grounds of double effect is a premise stating that, because Mary’s death did not contribute in any way to Jodie’s survival, her death could not have been the object of the act. Philosopher Christopher Kaczor gives us a good illustration of this premise:

... as with the Lakeburg twins, it is not the death of one twin that secures the life of the other even though in both cases the surgeons themselves did not seem to view the death of the weaker twin in negative terms. Suppose that the twins were separated and the weaker twin received donated organs that secured her life. The fact that the weaker twin did not die would not in any way

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hinder (or help) the survival of the stronger. It is not the death of the weaker twin that is the means of survival for the stronger twin ....

The logic in his defense is, I admit, convincing on its face. This method of reasoning is similar to the manner in which Germain Grisez discusses the separation of the Lakeberg twins. In his analysis, Grisez states that “There is no reason to think the surgeon intended the weaker twin’s death as an end and there was no need to choose her death as a means ... her death was an effect of chosen means that in no way contributed to the end sought.”

Those who make this argument are absolutely correct; the death of the weaker twin in both cases did not contribute in any way to the survival of the stronger twin. However, this is not the point that has to be proven. The question that needs to be answered is not: “Did Mary’s death contribute to Jodie’s survival?” But, rather, “Was the surgery an act of killing? And, if so, was it direct or indirect?” If it was a direct act of killing, then the surgery was a bad means to a good end.

Arguing that death could ever be the object of an act, or that death and killing are one and the same thing, is absurd. Killing and death are distinct realities insofar as killing is always a cause of the effect, death; and thus, death is always an effect. What this means is that death can never be chosen as a means to an end; properly speaking, it can only be an end or an unintended effect. In other words, the fact that Mary’s death was not the object of the act should be obvious; but this in no way proves that the surgery was not a direct act of killing. Thus, it is possible to maintain that Mary’s death contributed in no way to Jodie’s survival while at the same time maintaining that the surgery involved the direct killing of Mary. Kaczor and others who employ this argument seem to miss the more central concern of those opposed to the surgery, “Was the surgery a direct act of killing Mary?”

Appealing to an Invalid Premise

One of the difficulties with applying double effect to cases like this is that the conclusion is often validated by appealing to a false premise of one kind or another. While this does not necessarily prove that a conclusion is false, it certainly does not prove that it is correct.

For example, Kaczor argues that Mary’s death was not necessary for Jodie’s survival, thus attempting to show that it was not intended as a means. When we examine his reasoning carefully, however, we can see that he bases his major premise (that Mary’s death was not necessary) on the introduction of a hypothetical scenario that is introduced by the word “suppose.” Kaczor argues that since we can suppose a situation in which Mary could have survived (organ transplant), we can conclude that her death was not chosen as a means. He concludes that if Mary could have survived with the aid of an organ transplant (or any other means, for that matter, I suspect), that would demonstrate that her death was unnecessary for Jodie’s survival.

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The problem with his argument is that introducing a hypothetical scenario does not help us determine the object of this act because it dramatically changes the actual circumstances of the case. In his hypothesis, he changes both the object of the act and the end for which the doctors are acting. Had the hypothetical factor (organ transplant) been included in the actual procedure, the doctors would have intended to save both Jodie and Mary by choosing to separate them and then give Mary an organ transplant. Kaczor’s argument is predicated upon a very subtle but false analogy, in which a conclusion is drawn from a hypothetical scenario and then applied to the actual set of circumstances. The problem is in comparing two scenarios that are not similar enough to each other to be analogous.

One other example that might be helpful to examine does not immediately address the case of Jodie and Mary but is related, nonetheless, because the example and the reasoning involved in it have, I suspect, contributed to people’s reflections on the case of Mary and Jodie. The example, which is taken up in the article by Grisez, Finnis, and Boyle, is the medical procedure known as craniotomy. In their article, these three claim that, according to their theory of action, craniotomy can be morally justified.

The craniotomy example, however, employs a similar fallacy to that used by Kaczor. The authors draw their conclusion by introducing a false premise. Consider the following quote:

Craniotomy might well be physically indistinguishable from “partial-birth abortion.” But the proposals adopted by the two kinds of choices, and thus the objects of the two procedures, are entirely different. In partial-birth abortion ... the object of the act is to kill the baby before the killing would be classified as infanticide. In craniotomy done for the purpose of saving at least the mother’s life, the object of the act is to reduce the size of the baby’s head so that the baby ... can be removed ... No partial-birth abortion would be performed if the baby were already dead. If the baby stuck in the birth canal were already dead, craniotomy would always be performed. This difference is an important sign of the difference between the two kinds of operations....

While it is very subtle, indeed, the flaw in the reasoning appears as soon as they try to validate their conclusion by introducing a scenario in which the baby is already dead prior to the procedure.

My point is this: If the baby were dead prior to performing craniotomy, could it even be possible for the doctors to will the death of the baby as an end or to intend the killing as a means? No, because one cannot will an event that is already completed and in the past. Certainly, craniotomy performed on an already-dead baby would be perfectly licit and even morally obligatory; but that is not the set of circumstances they initially set out to address. In the end, they are supporting their conclusion by comparing two different acts as determined by the difference in the circumstances within which each act is performed. They then argue their case, in part, by applying the conclusion arrived at in one scenario to the other scenario, but the two cases are different from each other in an essential way.

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12 Finnis, Grisez, Boyle, “‘Direct’ and ‘Indirect’,” *Thomist*, 25.
Thus, they do not prove that if the baby were alive, the doctors would not be willing the death of the baby as an end or intending the killing of the baby as a means for saving the mother. I admit that this logical oversight does not prove that craniotomy is necessarily immoral. What would determine this is if the death of the baby was necessary in the sense that I shall describe below. This error is typical of those who defend the principle of double effect in the case of Jodie and Mary. The principle of double effect, however, could only be applied to the case of Mary and Jodie if Mary’s survival would have been reasonably possible and then had been chosen by the doctors, even though she may ultimately have died.

**Application to the Case**

Given the circumstances within which both the courts and the doctors made their judgement, given the expressed reasons of the doctors for performing the surgery, and given the actual procedure itself, the separation of Jodie and Mary was morally evil. The principle of double effect does not apply in this case. The surgical procedure involved the intended death of an innocent person as an end (though it was not the exclusive end), and employed the direct killing of an innocent human being as a means to save Jodie’s life. The particular circumstances of the case made this completely unavoidable.

*The Surgical Procedure Was an Act of Killing*

I defend this thesis by first insisting that we be honest in accepting the fact that the surgery was an act of killing Mary. The doctors did not simply allow her death ‘to happen.’ They acted in a way that led immediately to her death—they killed her. If we say otherwise, we will never move beyond the semantics of this debate and get to the crux of the matter. Germain Grisez makes an identical claim when discussing the case of separating the Lakeberg twins. He admits that, “The attempt to separate the Lakeberg twins involved the physically immediate causing of the weaker twin’s death, so that the surgeon directly killed her in the sense that the surgery straightaway brought about her death.”

To argue in defense of double effect in this case, some have avoided this uncomfortable admission by attempting to distinguish between the surgical procedure and the killing of Mary as though these things were not synonymous descriptions of the same procedure. Though I am not certain that she is trying to make this distinction, ethicist Catherine Dominic seems to come close to making it when she states, “In my view the separation did not involve a direct attack on the life of Mary; rather, the separation was properly described as restoring Jodie’s organs to her with the result that Mary die.” The problem here is that making this distinction really does not prove that the surgery was not, in fact, an act of killing Mary, much less a direct act of killing.

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In some ways, this distinction appears reasonable precisely because we can distinguish the two in our minds. This, however, is where the difficulty with this argument begins. What we have here is a pure abstraction that describes nothing other than a hermeneutical distinction—namely, two interpretations of the same procedure. One interpretation is that the doctors restored Jodie’s organs to her (the positive view). The other interpretation is that the doctors were killing Mary (the negative view). Both are correct because they both, in fact, describe the event at least from the perspective of an outside observer. Interestingly, even the doctors themselves used both interpretations. Yet as Grisez, Finnis, and Boyle point out, making these kinds of observations does not ultimately contribute to our grasp of the act being chosen.

Having said this, it is reasonable to hold that the act of separation was an act of killing Mary, even while it is true to claim that the act of separation was also an act of saving Jodie. After all, it was an act that had two effects. However, the fact that Mary was killed—and this is the important point—is not enough to make the act immoral. As Grisez, Finnis, and Boyle explain, we must look at this act from the perspective of the acting person by determining both the proximate and remote intention of the team of doctors. In other words, what needs to be demonstrated is that a) the death of Mary was not intended as an end of the surgery; and that b) the killing of Mary, itself, was not the means chosen to save Jodie’s life. To use the church’s distinction, was the killing of Mary direct? If it was, then the act was gravely immoral. If it was indirect, then the doctors could not have intended either the death or the killing. In fact, if it were indirect, neither aspect would have been part of the chosen act at all (strictly speaking). To put it another way, these two things—the killing and the death—would have been accidental to the act, thus making the act morally permissible.

The Act of Killing Mary Was a Direct Act of Killing

To help us establish whether Mary’s death resulted from an act of direct or indirect killing, we have to determine whether killing her was necessary for saving Jodie. If killing Mary was necessary, then it had to be a direct act of killing because the doctors could not have avoided willing either her death as an end, or avoided killing her as a means to saving Jodie. It is here that the particular circumstances of the case become enormously relevant. Yet we must first establish why the necessity of killing Mary made the killing of Mary the object of the act. It is because it is impossible for a person to actually intend anything as an object other than what the given circumstances, in fact, allow one to choose. This is what I would term, circumstantial necessity. Certainly, we can assert that the doctors did not intend to kill Mary—even though they knew and admitted that this is what they were doing. But mere assertion does not prove anything. By this assertion, nothing more can be affirmed than that the doctors regretted the fact that Mary would die. This, however, is more of a psychological or emotive sense of intentionality than a volitional one.

Given the facts described above, I maintain that the doctors directly killed Mary because no other viable alternative to saving Jodie existed at the time. Put another way, “Can it be demonstrated that Jodie’s prolonged life could have been
achieved without terminating Mary’s life, that is, without killing Mary?” The answer is no. Under the circumstances of this particular case, terminating Mary’s life was necessary and therefore, by default, the chosen means for granting Jodie a relatively normal life. In other words, killing her was the freely chosen proposal adopted by the doctors for saving Jodie. They thought there was no other alternative.

Furthermore, because circumstantial necessity required the doctors to save Jodie by killing Mary, that is, because killing Mary was the object of the act, they also had to intend Mary’s death as an end. An important clarification needs to be made, however. Mary’s death was only intended secondarily. Without question, Jodie’s survival was the primary end toward which the doctors were acting. What this finally means, however, is that Mary’s death could never have been, at least within the actual conditions, an unintended side effect that was passively accepted.

The doctors knew that they were directly killing Mary and necessarily intended this means, but thought this would be morally acceptable because their primary end was to save Jodie. They justified the killing by appealing to a utilitarian calculation—a proportionalist argument, to be exact—and knew that they needed legal permission to do so. Thus, the so-called evil effect was intended, and a bad means was employed to achieve the good effect. Put in the simplest of terms, Mary was directly killed to save Jodie’s life and this killing was justified on purely proportionalist grounds. As those opposed to this surgery have maintained from the beginning, a judgment was made by the doctors and the courts that Mary be sacrificed for the sake of granting Jodie a reasonable chance to live a normal life.

For the death of Mary to have been an unintended side effect, it would have to be demonstrated that killing her was not, in fact, necessary for achieving the primary end of saving Jodie. Yet, unless some attempt could have been made and, in fact, had been made to save Mary’s life, killing Mary has to be understood as a necessary means to Jodie’s survival. If Mary had died after the doctors had made a serious attempt to preserve her life, the object of the surgery would not have been killing Mary at all, but only the separation of the twins. What this means is that the surgery in this particular case was an intrinsically evil act because the circumstances did not give the doctors the possibility of saving Mary’s life. In the end, to justify the separation of conjoined twins, the reasonable possibility and the attempt to save both lives affected by the surgery is an essential condition that absolutely must be satisfied. To say the contrary is to undermine the inviolability of human life.

This is not to say that Mary’s survival had to be certain, only that it had to be possible, as would have been evident if the doctors had made a genuine and reasonable attempt to save her life. Yet from the beginning of the case, the intention for performing the surgery was and could only have been to act exclusively for Jodie’s good by killing Mary. Because Mary could only be discarded in the surgical separation—because her death was certain—the surgery was not and could not have been performed for the benefit or the good of both twins, only Jodie.

It is true that Mary could have been attached to a heart-lung machine, yet the doctors maintained that this would only have prolonged her inevitable death. Because the technology was not available, she would never have been able to survive
the operation. Therefore, the surgical separation could not confer any benefit to Mary. Her death was certain and immediate.

**Natural Death as God’s Will**

Because of what I would term *circumstantial necessity*, it is not possible to justify the separation of Jodie and Mary by appealing to the principle of double effect. The doctors did intend Mary’s death as an end in a secondary sense and did choose to kill Mary as a means to achieving their primary end, which was to save Jodie. Certainly, the decision that confronted the parents, judges, and doctors who were designated by Providence to choose the fate of the twins was about as difficult a moral dilemma as we can imagine. Unfortunately, the decision by the courts to grant legal permission for the doctors to separate the twins was gravely imprudent because it legally sanctioned the direct killing of an innocent human being.

In humility, as we stand before God, we must accept predicaments in life that can only be resolved by sheer endurance. There is not always a morally good way to rectify a natural, or even, a chosen evil. Faith-filled acceptance and loving perseverance is all that can be done, and it is, as we know, infinitely more efficacious than doing evil that good might come of it. Ultimately, it is in faith that I believe that good would truly have been done if all involved would simply have allowed the twins to die a natural death and if all had cleaved more closely to a God whose ways are, in the end, unsearchable.