

“Vital Conflicts” and the Catholic Magisterial Tradition*

*Kevin L. Flannery, S.J.***

ABSTRACT: This article considers Therese Lysaught’s analysis of an apparent abortion that occurred in Phoenix in 2009. Since Lysaught invokes it, the article considers Fr. Martin Rhonheimer’s theory about the bearing of vital conflict situations – in which, for instance, the life of a mother might be spared if her fetus is aborted, otherwise she and the fetus will die – upon the object of the act performed. It argues that the use of vital conflict situations in the way Lysaught and Rhonheimer (and possibly others) do is incompatible with Church teaching. The article concludes by suggesting a way of analyzing certain cases in such a way that the mother’s life is saved and the fetus dies but there is no direct abortion.

A Case in Phoenix

On 5 November 2009, at St. Joseph’s Hospital and Medical Center in Phoenix, Arizona, a procedure was performed that involved the death of a fetus. This eventually led the bishop of the diocese of Phoenix, the Most Reverend Thomas Olmsted, to declare that one of those responsible for the decision to go ahead with the procedure, Sr. Margaret McBride, R.S.M., had incurred an excommunication by her formal consent to the direct taking of the fetus’s life.

* The essay is reprinted with permission from the *National Catholic Bioethics Quarterly* 11.4 (Winter 2011): 691-707. Copyright 2011 by The National Catholic Bioethics Center. This article is a later version of the talk given by Rev. Flannery at the annual conference of the University Faculty for Life at Notre Dame, June 10-11, 2011.

** Rev. Kevin L. Flannery, S.J., D.Phil., is Ordinary Professor of the History of Ancient Philosophy at the Pontifical Gregorian University in Rome. The author thanks for their help Richards Myers, Edward Furton, John Finnis, Fr. Stephen Brock, and especially Fr. Thomas Berg , with whom I debated the Phoenix case as part of the annual conference of the University Faculty for Life at Notre Dame, June 10–11, 2011. Unless otherwise noted, all translations are the author’s.

Because of issues surrounding confidentiality, it is not absolutely clear what occurred at St. Joseph's Hospital on that date, but one gets a fairly good idea by reading Professor M. Therese Lysaught's "Moral Analysis of Procedure at Phoenix Hospital."¹ Lysaught had access to medical charts and to a report on the case written by Catholic Healthcare West (CHW), which manages St. Joseph's Hospital and Medical Center, and to a commentary on the case written by The National Catholic Bioethics Center (NCBC). In studying Lysaught's essay, one is also able to piece together elements of the argument that CHW made in defending the procedure as moral.

Lysaught explains that a woman with worsening of symptoms of pulmonary hypertension was admitted to St. Joseph's Hospital and Medical Center on November 3, 2009:

At this time, the woman was 11 weeks pregnant. A cardiac catheterization revealed that the woman now had "very severe pulmonary arterial hypertension with profoundly reduced cardiac output"; in another part of the record, a different physician confirmed "severe, life-threatening pulmonary hypertension," "right heart failure," and "cardiogenic shock." The chart noted that she had been informed that her risk of mortality "approaches 100%," is "near 100%," and is "close to 100%" if she were to continue the pregnancy. The chart also noted that "surgery is absolutely contraindicated."²

The ethics committee of the hospital, of which Sr. McBride was a member, was asked whether it would be ethical to perform the procedure known as dilation and curettage (D&C); the reply was yes, and two days later the procedure was performed.

At a number of places in her essay, Lysaught suggests that the ethics committee conceived of the procedure as a D&C to detach the placenta.³ She described the procedure as addressing "the pathological interface between the placenta and the mother's cardiovascular system" and as targeting "the

¹ M. Therese Lysaught, "Moral Analysis of Procedure at Phoenix Hospital" in *Origins* 40.33 (January 27, 2011): 537-49. References in this essay are to this document; the essay was originally published as "Moral Analysis of an Intervention Performed at St. Joseph's Hospital and Medical Center," 21, <http://www.commonwealmagazine.org/blog/wp-content/uploads/2010/12/St.-Josephs-Hospital-Analysis.pdf>.

² Ibid., p. 538.

³ Ibid., p. 546.

pathological interface between mother and pregnancy.”⁴ She insists that such a procedure need not involve dismemberment of the fetus.⁵

I would speculate – but I emphasize that this is only speculation – that the doctors performed the D&C *as* what it is recognized as in the medical community in such circumstances: an abortion procedure, not a detaching of the placenta. (Indeed, some medical professionals used the term “dilation and curettage” when they mean dilation and “suction curettage,” although in the latter no curette is involved and the fetus is clearly mutilated in the process.) Presuming, then, that the doctors in the Phoenix simply did what doctors typically do when they perform a D&C, it may be true that as part of the procedure they wanted to detach the placenta, but it would be very difficult to describe the action *as* an act of detaching the placenta. It seems to me, therefore, that Bishop Olmsted was probably correct in judging that what occurred on 5 November 2009, at St. Joseph’s Hospital was a direct abortion.

The Thomistic Approach to the Analysis of Human Action

An issue constantly raised in connection with such cases is whether a particular approach to the analysis of human actions is genuinely Thomistic. This is not an issue of merely historical interest, for St. Thomas Aquinas’s approach informs in an especially marked way the Church’s teaching on the morality of particular human actions. As Pope John Paul II says in *Veritatis splendor*, “The morality of the human act depends primarily and fundamentally on the ‘object’ rationally chosen by the deliberate will, as is borne out by the insightful analysis, still valid today, made by Saint Thomas.”⁶ Were the Church to put forward ideas incompatible with Aquinas’s core insights into the nature of human action, she would be contradicting herself, for magisterial history is replete not only with statements about the moral character of particular actions that presuppose a Thomistic analysis but contains also endorsements of that method of analysis itself, endorsements such as the one just quoted from John Paul II.

⁴ Ibid., p. 549, n. 24.

⁵ Ibid., pp. 546-47.

⁶ John Paul II, *Veritatis splendor* (August 6, 1993), n. 78; at this point the Holy Father cites *Summa theologiae* I-II, q. 18, a.6. See also, for instance, *Catechism of the Catholic Church*, 2nd ed., trans. U.S. Conference of Catholic Bishops (Vatican City: Libreria Editrice Vaticana, 1997), n. 1759 and, implicitly, nn. 1749-1756.

Allow me to go out on a limb – a very thick limb – and note that Aquinas takes his principal ideas about the object of a human act from Aristotle, in particular, from his *Physics*.⁷ Both Aristotle and Aquinas maintain that a human action, since it is a movement, received its species (its intelligibility or “what it is”) from its end point or object. Take, for example, a merely physical movement, that is, one that need not have been initiated or intended by a human agent: a rock’s breaking a window receives its species as “a rock’s breaking a window” from the window, which gets broken. If the window does not get broken, there is no event that we might call – no event to which we might assign the species – “a rock’s breaking a window.” Both Aristotle and Aquinas are aware, however, that it is insufficient to regard the *window* as the species-giving object independently of the intelligible context in which it appears as the object. What the window gives species to in this case is a breaking by a rock: the relevant species is not, for instance, a being washed by the rain or heated by the sun.

Now, clearly, a human act is not a merely physical movement, although, since humans are physical beings, many of their acts are physical movements and, as such, exhibit many of the same characteristics as merely physical movements. If we are to say truly that Jones broke a window with a rock, there must have been a window for him to break – and it must then have been broken. The window is again the object, but it is an object *as part of a larger context of intelligibility*, which now includes not only a rock and a breaking but also Jones. And if we are to say that Jones’s breaking the window was a human act in the full sense that he did so deliberately (and not, for instance, because he had a rock in his back pocket, leaned up against a window and broke it), the intention he brings to the act has to be included. The intelligibility of the act of Jones’s breaking the window includes all these elements and can exclude none of them.

Consider now two cases closer (in terms of intelligibility) to the Phoenix case than is the breaking of a window with a rock. The first is craniotomy. In such a procedure, the fetus’s cranium is crushed so that the fetus’s corpse (or its parts) might then pass through the pelvic cavity. The second is that of the removal of a cancerous gravid uterus. Applying Thomistic principles, the first would be immoral because it is an act of killing the fetus. The fetus is the

⁷ *Physics* v. 1-5; see also Stephen L. Brock, *Action and Conduct: Thomas Aquinas and the Theory of Action* (Edinburgh: T&T Clark, 1998), pp. 61-93.

object, giving species to the act; the species it gives (within that particular intelligible context) is a killing. The second is possibly moral, provided that the woman's cancer must be dealt with immediately. Since the object of the act is the cancerous uterus, the species of the act is that of a hysterectomy, not a killing, even though it is known in advance that the fetus will die as a result of the procedure.

The Lysaught-Grisez-Rhonheimer Approach: Situations of “Vital Conflict”

It would appear that the D&C procedure performed in Phoenix in 2009 ought, on Thomistic grounds, to be considered like the craniotomy rather than the hysterectomy. Lysaught, invoking the writings of Prof. Germain Grisez and those of Rev. Martin Rhonheimer, does not agree. What are her arguments? Some of them, as we have seen, talk about the placenta as the object of the procedure performed at St. Joseph's Hospital and Medical Center. But more of them concern the way in which “vital conflicts” (to use a term coined recently by Rhonheimer) determine what the object of an act can be.⁸ A vital conflict – or what I prefer to call a vital conflict situation – is set up when a particular action if performed will likely save one of two lives, but if it is not performed, then both lives will be lost. In such a situation, it is argued, the merely physical structure of the action proposed has no bearing on its moral intelligibility; the action is not, for example, the dismemberment of a fetus but rather the saving of the life of a mother. Any talk about a physical object of such acts is

⁸ See Martin Rhonheimer, *Vital Conflicts in Medical Ethics: A Virtue Approach to Craniotomy and Tubal Pregnancies* (Washington, D.C.: The Catholic Univ. of America, 2009). See also my review of the same: *Gregorianum* 91.3 (2010): 641-43. In the “Author’s Preface” to this book Fr. Rhonheimer writes as follows: “This wide-ranging study was drafted for the Roman Congregation for the Doctrine of the Faith and completed and submitted to the Congregation in 2000. After it was carefully studied in the Congregation 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. Obviously, the observations made here are my personal opinions and not those of the Congregation for the Doctrine of the Faith” (p.xiii). During the discussion after the talk mentioned in n1, the author of the present article called into question these remarks by Fr. Rhonheimer, saying (if memory serves) something like, “I would like to see evidence of this.” During a pleasant meal at “il Ristorante Abruzzi” in Rome, Fr. Rhonheimer kindly provided such evidence in the form of a letter signed by the then-Cardinal Ratzinger. I apologized then, and I apologize now, for having suggested that his remarks were not wholly veridical.

dismissed as physicalism, the proponents of which are often portrayed as not understanding that nothing physical can enter into the moral realm.

Here is how Lysaught expounds – and endorses – Rhonheimer’s approach to these matters. She first notes that Rhonheimer, in accordance with Catholic teaching, holds that it is immoral to weigh two lives, one against the other. Lysaught then says,

While many cases of obstetric conflict do present such a possibility – the possibility of choosing against the life of the mother or the life of the child – in certain instances the child’s chance of survival is negligibly small or, in fact, non-existent. These cases, [Rhonheimer] argues, have a distinguishing, morally relevant feature, namely, that “*only the life of the mother* is at the disposal of another human being – the fetus is no longer even subject to a decision between ‘killing or allowing to live’; the only morally good thing that can be *chosen* here is to save the life of the mother.” With respect to the life or death of the embryo, the question “to kill or let live” can no longer be decided about or chosen. The only practical and moral question that remains regards the mother: “to let die or save?” He also states clearly that “the decision to allow both mother *and* child to die – at least when the mother can be saved and the child will die *in any case* – is simply irrational”; this is not an *ad hominem* comment but rather a very specific Thomistic critique, based on the critical role of reason in moral discernment and action.⁹

Regarding Grisez, Lysaught quotes the second volume of his *The Way of the Lord Jesus*, where his position certainly appears to incorporate and depend on the concept of vital conflict (or of the vital conflict situation):

Sometimes four conditions are simultaneously fulfilled: (i) some pathology threatens the lives of both a pregnant woman and her child, (ii) it is not safe to wait or waiting will surely result in the death of both, (iii) there is no way to save the child, and (iv) an operation that can save the mother’s life will result in the child’s death. ...Assuming the four conditions are met, the baby’s death need not be included in the proposal adopted in choosing to do a craniotomy. The proposal can be simply to alter the child’s physical dimensions and remove him or her because, as a physical object, this body cannot remain where it is without ending in both the baby’s and the mother’s deaths. To understand this proposal, it helps to notice that the baby’s death contributes nothing to the objective sought; indeed, the procedure is exactly the same if the baby has already

⁹ Lysaught, “Moral Analysis,” p. 543, original emphasis.

died.¹⁰

Lysaught not unreasonably concludes, “It appears that Grisez wants to suggest that not only are cases meeting these four criteria properly identified as ‘indirect,’ but that their object is not ‘abortion’ but rather ‘saving the mother’s life.’”¹¹

It must be acknowledged that Grisez’s theory does not depend on the concept ‘vital conflict situation’ quite as directly as Rhonheimer’s. More central to Grisez’s (and his colleagues’) action theory is the concept of a “proposal.” According to the Grisez school, if the death of another person is not part of an agent’s proposal in acting, the agent’s act cannot be described as a direct killing.¹² This theory itself might be criticized, but this is not the place to do so.¹³ But vital conflict situations do also come into the Grisez theory. In their most explicit presentation of their action theory, Grisez and John Finnis and Joseph Boyle, while defending the possible morality of craniotomy, speak a number of times of an “obstetrical crisis” or an “obstetrical predicament.” At

¹⁰ Germain Grisez, *The Way of the Lord Jesus*, vol. 2, *Living a Christian Life* (Quincy, IL: Franciscan Press, 1993), p. 502. This is quoted in Lysaught, “Moral Analysis,” p. 545.

¹¹ Lysaught, “Moral Analysis,” p. 545. “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 or its corpse can be removed from the birth canal.” John Finnis, Germain Grisez, and John Boyle, “‘Direct and ‘Indirect’: A Reply to Critics of Our Action Theory,” *Thomist* 65.1 (2001): 25.

¹² Finnis, Grisez, and Boyle acknowledge that the Church “makes it perfectly clear that direct killing of the unborn, even to save the life of the mother, is always wrong” But the three then add: “Our position is that a doctor could do a craniotomy, even one involving emptying the baby’s skull, without intending to kill the baby – that is, without the craniotomy being a direct killing” (“Direct and ‘56 Indirect,”” 27). The doctor would not be intending – in a central sense of intending (see pp.16-17) – to kill the baby because that is, presumably, not part of his proposal. They then quote from Grisez’s *Living a Christian Life*, “The baby’s death need not be included in the proposal adopted in choosing to do a craniotomy. The proposal can be simply to alter the child’s physical dimensions and remove him or her, because, as a physical object, this body cannot remain where it is without ending in both the baby’s and the mother’s deaths” (40). (This passage is also quoted in Lysaught, “Moral Analysis,” p. 545)

¹³ For my criticism of Finnis’s attempt to show that the Finnis-Grisez-Boyle “proposal theory” is Thomistic, see “John Finnis on Thomas Aquinas on human action” in *Reason, Morality and Law: The Philosophy of John Finnis* (Oxford UK: Oxford Univ. Press, 2013), 118-32.

one point, for instance, they write, “Our contention...is that when someone chooses to do a craniotomy on a baby to save his or her mother’s life in an obstetrical predicament, the morally relevant description of the act would not include killing the baby.”¹⁴

Incompatibility with the Thomistic Approach to the Analysis of Human Action

But this general approach is incompatible with Aquinas’s way of analyzing human action. In the first place, nowhere in his works do we find mention of such criteria as having a bearing on the object of an action. On the contrary, while insisting that the intention with which an agent performs an action enjoys a certain primacy in its analysis, he also insists that the object of the action is distinct from it and very often has a wholly distinct proper intelligibility.

In his *Summa theologiae* I-II, q. 18, a. 7, Aquinas acknowledges that in certain cases the “external act” performed by an agent shares in a very direct way in the more remote intention with which it is performed, as when a soldier’s fighting shares in the more remote goal of victory. The intelligibility of fighting with a particular enemy soldier is bound up with the intelligibility of an army’s quest for victory. But even here the soldier’s particular action has its proper intelligibility, dependent for its species on its object: the enemy soldier. But there are other cases in which there is no such direct intelligible connection, for example, when a man steals in order to commit adultery. It remains true that the more remote end enjoys primacy – it is the prospect of adultery that leads the man to steal – but the stealing obviously enjoys an intelligibility of its own.

This is the example that Aquinas actually uses in I-II, q. 18, a. 7, but it can be altered, giving the thief a nobler intention, without altering the way in which Aquinas would analyze the action. The thief may steal, for instance, in order to pay his daughter’s tuition fees, but he still *steals*. Similarly, when a surgeon performs a craniotomy, he may do so in order to save the mother who would otherwise die, but he still performs a craniotomy. That action is distinct from (although, in a sense, part of) saving the mother, because it has its own object: not the mother but the fetus.

¹⁴ Finnis, Grisez, and Boyle, “Direct and ‘Indirect,’” 29; see also 21 (note 32), 22, and 24. See also the appended note at the end of this essay.

Aquinas discusses this issue in I-II, q.18, a. 2, where he asks whether an action receives its goodness or badness from its object. His answer is yes: "Just as a natural thing has its species from its form, so an action has its species from its object, as a movement from its terminus." (The reference to Aristotle's *Physics* is left implicit.) If the object is faulty in some way (that is, it does not comport well with reasonable action in such a context), then so is the species; and to have a faulty species is to be bad. Aquinas employs two examples in this regard: using one's own things (which in itself is a good action), receiving things that belong to another (which in itself is bad). In both cases, the object is a "thing," a *res*. In answer to the first objection, which argues that an object cannot make an action good or bad since an object is a thing and badness is not in things, which are all good, Aquinas replies: "In themselves exterior things [*res*] are good, but they do not always have the proper proportion [*debitam proportionem*] to this or that action." He is employing here the type of analysis he knows from Aristotle's *Physics*. Although the species of an action depends on its object (the thing on the receiving end of the action), it is an object of that action only *as* fitting into an intelligible structure to which it might be proportioned properly or improperly. The presence of such an intelligible structure depends on the action's being voluntary. But this does not alter the fact that the object is "a thing" – even, for example, a physical thing, such as a fetus's cranium; and it remains a thing of that sort even if the reason for which it is performed is well intended.

Finally, I might mention I-II, q. 18, a. 6, which is the article cited in the note appended to John Paul II's remark in *Veritatis splendor* n. 78 that "the morality of the human act depends primarily and fundamentally on the 'object' rationally chosen by the deliberate will."¹⁵ In that article, Aquinas speaks of two objects (or *termini*): the end, which is the object of the interior act of the will, and the object properly speaking, which gives species to the exterior act. These objects are quite distinct, as are their acts; the exterior act remains what it is as long as its object remains what it is – which is to be *that* act's object. As always, the object of the interior act (the end) enjoys analytic primacy, and so Aquinas says that "the species of a human act is considered formally according to its end, but materially according to its object."¹⁶ He adds that, according to Aristotle, "he who steals in order to commit adultery, speaking per se is more

¹⁵ John Paul II, *Veritatis splendor* (August 6, 1993), n. 78.

¹⁶ Aquinas, *Summa theologiae*, I-II, q. 18, a. 6.

adulterer than thief.”¹⁷ But he is still a thief.

The Doctrinal Background

It ought also to be noted that making vital conflict situations determinative of a human action’s object is incompatible with a strong and identifiable magisterial tradition. In the 1930 encyclical letter *Casti connubii*, Pope Pius XI writes:

As to the “medical and therapeutic indication” to which, using their own words, we have made reference,¹⁸ Venerable Brethren, however much We may feel compassion for the mother whose health and even life is gravely imperiled in the performance of the duty allotted to her by nature, nevertheless what could ever be a sufficient reason for excusing in any way the direct murder of the innocent? This is precisely what we are dealing with here. Whether inflicted upon the mother or upon the child, it is against the precept of God and the law of nature: “Thou shalt not kill.”¹⁹ The life of each is equally sacred, and no one has the power, not even the public authority, to destroy it. It is of no use to appeal to the right of the sword [*ius gladii*], for here it is a question of the innocent, whereas that right has regard only to the guilty; nor is there here question of defense by bloodshed against an unjust aggressor (for who would call an innocent child an unjust aggressor?); again there is not question here of what is called the “law of extreme necessity” which could even extend to the direct killing of the innocent. Upright and skillful doctors strive most praiseworthily to guard and preserve the lives of both mother and child; on the contrary, those show themselves most unworthy of the noble medical profession who purpose the death of one or the other, through a pretense at practicing medicine or moved by false compassion.²⁰

¹⁷ Ibid.

¹⁸ Pius is referring here to the previous paragraph (n. 63), in which he has spoken of “weighty reasons which [certain individuals] call by the name of medical, social, or eugenic ‘indication’” [“pergraves..... causae, quas medicae, socialis, eugenicae *indicationis* nomine appellant”]. A footnote does not appear here in *Casti connubii*.

¹⁹ The footnote here cites *Exod.* 20,13. The same note appears in *AAS* 22 (1930): 563 n1 and refers to three decrees. I discuss these decrees below.

²⁰ I have made some minor changes to the Vatican’s English translation of the encyclical. The Latin is as follows: “Quod vero attinet ad «indicationem medicam et therapeutican» – ut eorum verbis utamur – iam diximus, Venerabiles Fratres, quantopere Nos misereat matris, cui ex naturae officio gravia imminent sanitatis, immo ipsius vitae pericula: at quae possit umquam causa valere ad ullo modo excusandam directam innocentis necem? De hac enim hoc loco agitur. Sive ea matri infertur sive proli, contra Dei praeceptum est vocemque naturae: «Non occides!». Res enim aequa sacra utriusque vita, cuius opprimenda nulla esse unquam poterit ne publicae quidem auctorati facultas. Ineptissime autem haec contra innocentes repetitur e iure gladii,

It is apparent in this paragraph that Pius XI is rejecting the very principle that informs Lysaught's, Rhonheimer's, and, to some extent, Grisez's approach: that vital conflict situations are determinative of the moral object.

This becomes even more apparent when one considers two of the decrees cited by Pius XI in the note appended to the words, "Thou shalt not kill."²¹ The third cited (but first in chronological order), 31 May 1884, is about craniotomy. A *dubium* asks whether it is licit to teach in Catholic schools that craniotomy is permissible when, if it is omitted, the mother and infant will die, but, if it is performed, the mother will be saved but the infant die. The response is negative: *Tuto doceri non posse*. This decree is important because it speaks explicitly about the operation that the Grisez and his colleagues accept as possibly moral. They are, of course, aware of the decree, and they originally argued that it does not apply to them because it merely assumes what they reject: that craniotomy is a direct killing.²² But eventually they changed their approach and argue now that the decree does not affect them because it does not say that craniotomy is immoral but only that it cannot safely be taught that

quod in solos reos valet; neque ullum viget hic cruentae defensionis ius contra iniustum aggressorem (nam quis innocentem parvulum iniustum aggressorem vocet?); neque ullum adest «extremae necessitatis ius» quod vocant, quodque usque ad innocentis directam occisionem pervenire possit. In utraque igitur et matris et prolis vita tuenda ac servanda probi expertique medici cum laude enituntur; contra, nobili medicorum nomine et laude indignissimos se li probarent, quotquot alterutri, per speciem medicandi, vel falsa misericordia moti, ad mortem insidiarentur." *ASS* 22, 562-63.

²¹ Pius XI cites, in the following order, three decrees issued by the Holy Office (or, as it was called when they were issued, the Sacred Congregation of the Inquisition): (1) May 4, 1897 [*ASS* 30, 703-04], (2) July 24, 1895 [*ASS* 28, 383-84], and (3) May 31, 1884 [*ASS* 17, 556]. Decree 1 has to do with accelerated labor; it allows that it is permissible, if sufficient care is taken for the life of both the mother and the child. It adds that, when accelerated labor is impossible because of the narrowness (*arctitudo*) of the mother, it is not licit to bring about an abortion (*abortum provocare*); in this latter regard, it refers to decree 2. There is no mention here of an exception to be made should it be impossible to save both lives but possible to save one.

²² "It appears that the Holy Office, along with those who posed the questions to it, assumed that a craniotomy is always and necessarily a case of direct killing." Joseph Boyle, "Double-Effect and a Certain Type of Embryotomy," *Irish Theological Quarterly* 44.4 (1977): 304. See also Kevin L. Flannery, "What Is Included in a Means to an End?" *Gregorianum* 74.3 (1993): 508-10.

it is moral.²³ But in *Casti connubii* n. 64, Pius XI is not speaking of what can safely be taught but about what procedures are immoral – and he cites the craniotomy decree in connection with this. And, just as importantly, he cites craniotomy as the type of procedure whose permissibility cannot be argued for on the grounds that, if the procedure is performed, one of the two (mother or child) can be saved but, if it is not performed, both will die.” His reason would be that craniotomy is a “direct killing of the innocent.” A vital conflict situation does not alter the object of the act nor therefore the intelligibility of the external act.

The second decree cited in the note, a *dubium* resolved by the Holy Office on 24 July 1895, concerns a doctor who says he is regularly called on to treat pregnant but ill women and not infrequently finds that the cause of their illness is none other than the pregnancy itself, “that is, the presence of the fetus in the uterus.” (One thinks immediately of the Phoenix case; indeed, it seems quite likely that the doctor is speaking about pulmonary arterial hypertension brought on by the presence of the fetus in the womb.) Available to the doctor, he maintains, is just one way by which he can save the mother from a “certain and imminent death.” According to the description presented to the Holy Office, he employs no procedures that “per se and immediately tend toward killing the fetus in the womb of the mother” but only such as might, if possible, allow the fetus to be born alive, even though it will die shortly because of its extreme prematurity. The *dubium* recalls that on 19 August 1888, the Holy See had decreed that it is never safe to teach that an operation directly lethal for a fetus is licit, “even if it should be necessary to save the life of the mother.”²⁴ But it asks whether the operation described might be licit. The response is negative; it cites the same decree of 19 August 1888, and also the decree of 31 May 1884 (the decree considered just above).²⁵ Important here is the fact that

²³ Finnis, Grisez, and Boyle, “Direct and ‘Indirect,’” 26-27.

²⁴ See ASS 22, 748.

²⁵ The text of the *dubium* of July 24, 1895 (ASS 28, 383-84), reads as follows, “*DUBIUM quoad operationes chirurgicas, non directe tendentes ad occisionem foetus in sinu materno, sed ut vivus edatur, quamvis proxime moriturus Stephanus Maria Alphonsus Sounois, Archiepiscopus Cameracensis, ad pedes Sanctitatis Tuae devotissime provolutus, quae sequuntur humiliiter exponit: Titius medicus, cum ad praegnantem graviter decumbentem vocabatur, passim animadvertebat lethalis morbi causam aliam non subesse praeter ipsam praegnationem, hoc est, foetus in utero praesentia. Una igitur, ut matrem a certa atque imminentia morte salvaret, praesto ipsi*

the Holy Office never suggests that it is teaching (or *only* teaching) that such a procedure is moral which is not safe; it speaks rather about the surgical operation itself. The Holy Office replies negatively to the question as formulated in the *dubium*: “whether the described operations, in the said frequent circumstances, can safely be performed.” The safety referred to here is obviously not medical but rather moral and doctrinal.²⁶ But just as important, again, is the decree’s rejection of the reason the doctor gives for performing such operations: that this is the one way in which he can save at least the mother from a “certain and imminent death.” The fact that an agent finds himself in a vital conflict situation does not alter the intelligibility of the external act he performs. Pius XI cites the decree *as* support for his own rejection of such reasoning. The decree itself was approved by Pope Leo XIII (as were the other two decrees cited in *Casti connubii* n. 64).

The very same teaching turns up in at least three discourses by Pius XII. On 20 May 1948, he spoke to the participants at the International Congress of Surgeons. In the course of speaking about the delicacy of advising patients

erat via, procurandi scilicet abortum seu foetus ejectionem. Viam hanc consueto ipse inibat, adhibitis tamen mediis et operationibus, per se atque immediate non quidem ad id tendentibus, ut in materno sinu foetum occiderent, sed solummodo ut vivus, si fieri posset, ad lucem ederetur, quamvis proxime moriturus, utpote qui immaturus omnino adhuc esset. Iamvero lectis quae die 19 Augusti 1888 Sancta Sedes ad Cameracenses Archiepiscopos rescripsit: *tuto doceri non posse* licitam esse quancumque operationem directe occisivam foetus, etiam si hoc necessarium foret ad matrem salvandam: dubius haeret Titius circa liceitatem operationum chirurgicarum, quibus non raro ipse abortum hucusque procurabat, ut praegnantes graviter aegrotantes salvaret. Quare, ut conscientiae suae consulat supplex Titius petit: Utrum enuntiatas operationes in repetitis dictis circumstantiis instaurare tuto possit. Feria IV die 24 Iulii 1895: In Congregatione generali S. Romanae et Universalis Inquisitionis, proposita suprascripta instantia, Eminentissimi ac Reverendissimimi Domini Cardinales in rebus Fidei et morum Inquisidores generales, praehabito RR. DD. Consultorum voto, respondendum decreverunt: *Negative*, iuxta alias decreta, diei scilicet 28 Maii 1884 et 19 Augusti 1888 [ASS 17, 556, ASS 22, 748]. Sequenti vero feria V die 25 Iulii, in Audientia R. P. D. Assessori impertita, Sanctissimus Dominus noster relatam sibi Eminentissimorum Patrum resolutionem approbavit.

²⁶ Finnis, Grisez, and Boyle refer to this as advice: “Receiving this advice, faithful and prudent teachers and doctors would have realized that, though craniotomy might possibly be morally acceptable, their moral responsibility was to proceed on the assumption that it was not. But a good deal of pastoral guidance wisely given in the nineteenth century could not be rightly followed today” (“Direct and ‘Indirect,’” p. 27).

about various surgeries, he changes tack briefly in order to note that

other cases present themselves – we do not wish to say “more embarrassing,” for here the obligation is clear – but rather “more painful” because of the tragic consequences that sometimes come of observing this obligation. These are cases in which the moral law imposes its veto. ...And yet the principle is inviolable: God alone is Lord of life and of man’s bodily integrity: of his limbs, of his organs, of his capacities – of those, in particular, that associate him with the work of creation. Neither parents, nor a spouse, not even the person himself has the free disposition of such things. If it is wrong to mutilate a man, even at his insistent request, in order to avoid the duty of fighting for the defense of the fatherland, or to kill an innocent person in order to save another, it is no less illicit, even to save the mother, directly to cause the death of a small being called, if not to a life here below, then in any case to a future life: to a high and sublime destiny.²⁷

Similarly, on 29 October 1951, Pius XII addressed the participants at a congress of the Italian Catholic Union of Midwives. At one point, he speaks of man’s nobility and then notes that

the child, even the child not yet born, is “man” in the same degree and under the same title as the mother. Moreover, every human being, even the child in the womb of the mother has directly from God the right to life: not from its parents, nor from any society or human authority. So, there is no man, no human authority, no science, no medical, eugenic, social, economic or moral “indication,” that might bring to light or bestow a valid juridical title to the *direct* deliberate disposition of an innocent human life, that is to say, a disposition that aims at its destruction either as an end or as a means to another end, which is perhaps in itself in no way illicit. Thus, for example, saving the life of the mother is a noble end; but the direct killing of the child as a means to such an end is not licit.²⁸

Finally, on 26 November 1951, Pius XII addressed the participants at the Convention of *Fronte della famiglia* (“Family Front”) and the Federation of Associations of Large Families. Having first spoken of a fundamental right to life, he says that this principle or right “holds both for the life yet hidden from

²⁷ Pius XII, “Ai partecipanti al VI Congresso Internazionale di Chirurgia [21.v.1948],” *Discorsi e radiomessaggi di Sua Santità Pio XII*, vol. 10 (Vatican City: Tipografia Poliglotta Vaticana, 1949), 98-99.

²⁸ Pius XII, “Alle partecipanti al Congresso della Unione Cattolica Italiana Ostetriche [29.x.1951],” *Discorsi e radiomessaggi di Sua Santità Pio XII*, vol. 13 (Vatican City: Tipografia Poliglotta Vaticana, 1955), p. 336.

sight in the womb of the mother and for the life once it has issued from her; it is opposed both to direct abortion and to the direct killing of the child before, during and after birth.” He continues along the same lines:

This principle holds both for the life of the child and that of the mother. In no instance has the Church ever taught that the life of the child must be preferred to that of the mother. It is an error to frame the question in terms of such alternatives: either the life of the child or that of the mother. No, neither the life of the mother nor that of the child can be subjected to an act of direct suppression. In either case, the obligation is one and the same: expend every effort to save the life of both, of the mother and the child (see Pius XI, *Castic connubii* (31 December 1930); *AAS* 22 (1930): 562–563). It is one of the most beautiful and noble aspirations of medicine ever to seek new ways to ensure the life of both. If, despite all the progress of science, there still remain and will remain in the future cases in which one must accept the mother’s death, when she wants to bring the life within her to term and not destroy it in violation of God’s commandment, “Thou shalt not kill!” – nothing is left to man except to strive until the very last moment to help and to save, and to bow in respect before the laws of nature and the dispositions of Divine Providence.²⁹

The passage from Pius XI’s *Casti connubii* to which Pius XII refers here is the passage discussed above in note 20.

A Possible Thomistic Solution to the Phoenix Case

It is very apparent, therefore, that the type of analysis that Rhonheimer and Lysaught and Grisez adopt in order to deal with Phoenix-type cases is incompatible with Church teaching. It *may*, however, be possible to resolve such cases by performing an operation – perhaps using microsurgery – in which the decidua basalis (the properly maternal portion of the placenta) is targeted. As I conceive of the proposal, the placenta would be detached at the decidua basalis, thereby eliminating the pulmonary hypertension, and the fetus would die soon after, because of the interrupted supply of blood. At that point, the body of the fetus would be expelled by either natural or by surgical means.

Such a procedure could possibly be analyzed along the general lines of the case of the removal of the cancerous gravid uterus (considered above). As in

²⁹ Pius XII, “Ai partecipanti al Convegno del ‘Fronte della Famiglia’ e della Federazione delle Associazioni delle Famiglie [26.xi.1951],” *Discorsi e radiomessaggi di Sua Santità Pio XII*, vol. 13 (Vatican City: Tipografia Poliglotta Vaticana, 1955), 415–16.

that case, the object here is not the fetus but something else: the decidua basalis. In my opinion, it is sometimes permissible to perform a procedure that gives the use of a shared organ to one of the two persons sharing it. Such an act is permissible in the case of conjoined twins who share a vital organ which can no longer support the lives of both of them. The object of such an action would be the shared organ, and the system of intelligibility within which it serves as object is a procedure of detaching an organ from what will eventually impede its functioning as an organ of that type. But the placenta cannot be considered a shared organ in this sense. A grown woman does not need a placenta in order to survive; the placenta is *for* the child in the womb. But it does seem reasonable to say (or, at least, to consider as a hypothesis) that the decidua basalis belongs to the mother and can therefore be the object of a legitimate medical procedure.

This case is like yet another case frequently mentioned in the literature, that of a mountain climber who will surely die unless he cuts a lifeline from which dangles his fellow climber, who is severely injured (but still alive) and cannot help himself. If there is no way that the healthy climber can save both himself and his fellow climber and if he can save himself by cutting the rope (thereby bringing about the death of the other), this is permissible because the intelligible structure of the act is that of ‘an eliminating of a weight (by cutting the rope) that would otherwise eventually cause death.’ Had it been a rock causing the pressure, cutting the rope would be uncontroversial.

We can even tweak this case slightly in order to make it more like a case involving a pregnant woman with pulmonary hypertension. Suppose that, for some reason, the climber cannot get to the rope, and his only hope of survival is to cut off his own leg below the knee (think: decidua basalis), thereby loosening a rope, thereby allowing the other climber to fall. Given the dire circumstances, his act would be permissible since he is not directly attacking his fellow climber – if anything, he is attacking himself – and, according to the principle of totality, it is sometimes permissible to amputate a limb in order to save a person’s life. The healthy climber’s act of severing a rope or even a leg would be quite different from his pulling out a pistol and shooting the injured climber so that he lets go of the rope. This latter action is like the craniotomy: its object is the other climber himself, even though the further motive (the saving of a life) in either case is the same.

Obviously, such a distinction depends essentially on differences in the physical structure of the act – which is not distinct from what I have been

speaking of as the intelligible structure of the act, which includes also the intention of the person performing the act and his knowledge of what the act will effect. (If he accidentally cuts the rope or if he believes that the other climber will only fall a short, non-lethal distance, the intelligibility of the act changes quite dramatically.) But, as we have already seen, differences in the physical structure of human acts can be morally significant. One cannot break a neighbor's window if the neighbor has no windows. This significance for the moral is because of the fact that ultimately we are physical beings – physical beings with souls, of course, but still physical beings. As such, many of our actions are movements, and movements get their species from their objects.

Another pertinent case would be that of salpingectomy in the case of ectopic pregnancy. In such a case, an embryo has become lodged in a fallopian tube (a salpinx), which becomes inflamed and threatens the health of the mother. The embryo will die in any case and standard medical practice regarding any such inflammation calls for some remedy to be applied to the fallopian tube itself. One such remedy is cutting the inflamed section of the tube away, even though this entails separating the embryo from the means of life. Almost all Catholic moralists accept that a salpingectomy in such circumstances is permissible.³⁰ Salpingectomy in such circumstances is often presented as analogous to the removal of the cancerous gravid uterus.

The arguments in favor of the actions described in these two cases (cutting the rope and cutting away a portion of the fallopian tube) do not go against the magisterial tradition, outlined above, that insists that situations of vital conflict do not entail that whatever procedure, even if its object is the innocent fetus, is permissible. It is true that neither action is permissible unless the situation is dire in the ways described (a climber, for instance, may not cut away his fellow climber if *both* might otherwise survive), but what makes the actions permissible is their respective intelligibilities, which depend on their objects as understood within those contexts. As we have seen, Pius XII in his discourse of 26 November 1951, remarked that it is “one of the most beautiful and noble aspirations of medicine ever to seek new ways to ensure the life of both” (mother and child), even though such aspirations are not always satisfied.³¹

³⁰ The standard work on this is T. Lincoln Bouscaren, *Ethics of Ectopic Operations* (Milwaukee WI: Bruce, 1944).

³¹ Pius XII, “Ai partecipanti al Convegno del ‘Fronte della Famiglia’ e della Federazione delle Associazioni delle Famiglie.”

Sixty years ago, the thought of performing microsurgery solely on the decidua basalis would not have occurred to either medical personnel or ethicists; such a procedure may not be feasible even today. But, should it be possible, it would save the lives of certain young mothers without violating the moral law.

Conclusion

To sum up very briefly, it appears to me that the operation performed on 5 November 2009, at St. Joseph's Hospital and Medical Center in Phoenix, Arizona, was an act directly taking the life of an innocent human being and therefore was immoral. Its immorality can be demonstrated in Thomistic terms by properly identifying the action's object, which was the fetus at whom the D&C procedure was aimed. An analysis of the action that argues that, in vital conflict situations, such actions are not immoral because the situation itself determines the object in such a way that the external action performed is different than it would be otherwise, is neither sound nor Thomistic. Moreover, arguing on such grounds that such an operation is not immoral is incompatible with consistent and reiterated Church teaching.

In my opinion, however, given advances especially in microsurgery, it may be possible in the future to develop procedures that, in similar cases, would not be immoral. Such a development (if possible and if the procedures are verified as moral) would obviously be a good thing since it would allow health care workers to save lives without violating the precept of natural law that prohibits the direct killing of the innocent.