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Ethical Opinions in Regard to the Question of Early Delivery of Anencephalic Infants

by

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I.

Recently, a group of obstetricians, neonatal care nurses, social and ethicists representing health care facilities with neonatal care units gathered to discuss the early delivery of anencephalic infants. Over a period of six months, the group discussed the issue from medical, nursing, family and ethical perspectives. The following is a paper submitted to the study group concerning the issue from an ethical perspective grounded in the Catholic tradition.

II. Prenotes

1. The following discussion presumes a certain diagnosis of anencephaly has been made, i.e. the cerebral cortex of the infant has not and will not develop sufficiently to ever perform human acts.

2. Human act, (*actus humanus*) i.e. acts of intellect and will, are distinguished from acts of man (*actus hominis*), i.e., acts of the autonomic nervous system (*Sum Theol.* I-II, 6, 1.c). Given that the goal of human life is to know and love God, self, and neighbor, the distinction between human acts and acts of man is significant when determining whether or not there exists a moral obligation to prolong life for another person. If one cannot perform human acts, one cannot strive to fulfill the purpose of human life. Therefore, there is no moral obligation to prolong life for other persons in this situation.

3. An anencephalic infant is a human being; a human person (*Donum Vitae* 1987; Cataldo, 1993). An anencephalic infant is a severely impaired human person because its bodily development does not allow it to ever perform human acts. Thus, there is no moral obligation to prolong the life of an anencephalic infant through life-prolonging therapy. Indeed, such efforts would seem to be

immoral and unethical. rather, the proper care of such infants would be "comfort care" as death approaches. This is the customary method of caring for anencephalic infants in neonatal care facilities.

4. In moral matters, it is important to distinguish between the goal (or object) of the action (*finis operis*), and the goal (or object) of the agent (*finis operantis*). The goal of the action is often different from the goal of the agent, but often these goals coincide; e.g. if one gives money to a poor man, this act of generosity is a good act (*finis operis*). But it may be performed for many different reasons (*finis operantis*). Maybe the person giving money wanted to help the poor man; maybe the donor wanted to gain public approval.

When speaking about human acts, the term "intention" is often used. In moral matters, it is imperative to distinguish between the intention inherent in the act (*finis operis*; object of the act) and the ulterior intention of an act (*finis operantis*; object of the agent). Hopefully, the following quotations will help clarify the distinction:

- a. G.E.M. Anscombe in *The Collected Philosophical Papers*, Vol. III: Ethics, Religion and Politics, Oxford, England: Basil Blackwell, 1981, p. 86.

"Whatever ulterior intentions you may or may not have, the question first arises: what intention is inherent in the action you are actually performing? . . . what are you here and now doing on purpose - whatever your ulterior aims? What one is here and now doing on purpose and this means what one is intentionally doing this precisely is called the object of the act."

- b. Thomas Aquinas. I-II, 18, 6, c. *"Now, in a voluntary action, there is a twofold action, viz., the interior action of the will, and the external action; and, each of these actions has its object. The end is properly the object of the interior act of will [object of the agent*]; while the object of the external action, is that on which the intention is brought to bear [object of the act*]. Therefore, just as the external action takes its species from the object which it bears: so the interior act of the will takes its species from the end, as from its own proper object."* *added by author

5. The discussion about early delivery of anencephalic infants does not concern the ulterior intention (*finis operantis*) of early delivery. We all agree that the ulterior intention of all persons involved in early delivery would usually be a morally good intention; e.g. eliminate anxiety on the part of prospective parents.

Our concern is with the intention inherent in the act of early delivery of an anencephalic infant (*finis operis*; object of the act). What are "*we here and now doing on purpose*" when we deliver an anencephalic infant early?

6. The difference between a direct and an indirect abortion is significant in this study. The persons putting forward opinions which justify an early delivery are not trying to justify a direct abortion. Church teaching prohibits as immoral direct abortions, but it has not declared that early delivery of anencephalic infants constitutes direct abortion. Rather, they are saying for one reason or another that the early delivery of an anencephalic infant is not a direct abortion. A direct

abortion occurs when the *finis operis*, the direct object of the act, is the death of the fetus (infant). Other goods may be accomplished by this action (*finis operantis*) but the moral object of the act in question is the death of the infant.

An indirect abortion occurs when the goal of the act (*finis operis*) is of therapeutic benefit to the pregnant woman and the death of the fetus is a necessary but unintentional effect of the therapeutic procedure. The example usually used to demonstrate the indirect abortion occurs in the case of a pregnant woman with a cancerous uterus. In seeking to circumvent the cancer, the uterus will be removed. An unwanted side-effect of this surgical procedure to date will be the death of the fetus.

The distinction between direct and indirect abortion is an application of the principal of double effect.

III. Various Ethical Opinions Concerning Early Delivery of an Anencephalic Infant

1. Anencephalic infants are not persons; i.e. are not ensouled beings. Thus, they may be removed from the womb anytime after diagnosis of anencephaly. This is the opinion expressed in the article by Bole (1992). This seems to be untenable in light of prenote 3 and the teaching of the Church contained in *Donum Vitae*.

2. An anencephalic infant is a human person, but may be delivered as soon as it is viable, ie, 25 weeks, because it will not develop further as a human person (Drane, 1992).

Abortion is not measured in light of viability but rather in light of the object of the act. Delivering an anencephalic infant after viability will still result in its death. Hence, the *finis operis* of delivery after viability seems to be killing an innocent human being; an immoral act by reason of the *finis operis*. Moreover, early delivery of a viable infant is justified only if the infant can no longer live in the womb (Ethical and Religious Directives, 1994).

3. There are several *potential* pathologies that accompany a full term delivery of anencephalic infants (cf. NEJM article on anencephaly). In order to avoid these pathologies, could the anencephalic infant be delivered early? This opinion seeks to invoke the principle of double effect, (cf. article in *Kennedy Institute of Ethics Journal* 4:1 by O'Rourke and deBlois). However, in order to legitimately use the principle of double effect, early delivery must be an *indirect* effect of a physical procedure to avoid potential pathologies, i.e. direct killing of fetus cannot be a means to avoiding pathologies (cf. *Ethical and Religious Directives*, 1994, n.47). It seems that early delivery of anencephalic infants could not be considered a direct therapy for potential pathologies. Hence, application of the principle of double effect in early delivery does not seem tenable. (A reversal of my previous opinion in this regard).

4. Another opinion is often discussed and defended as follows: The natural purposes of pregnancy is to allow the fetus to develop into a person who will be able to perform human acts. At the time of diagnosis of anencephaly, the purpose of the pregnancy is complete because the infant will never have the potential to perform human acts. Thus, prolonging the pregnancy is useless. Because the

pregnancy is "useless," it may be terminated by removing the fetus and surrounding matter from the womb of the mother. Hence, upon diagnosis of anencephaly, the natural goal of pregnancy can never be achieved and termination of the pregnancy would be allowed because one is never obliged to useless activity.

The problem with this opinion is whether terminating the "useless activity" (the pregnancy) is direct killing of a human being. To put it in other words: Is the human life of an anencephalic infant a fundamental human good? To act directly contrary to a fundamental human good is intrinsically immoral (*Veritatis Splendor* 1993; Grisez 1983).

Clearly, one need not prolong the life of an anencephalic infant because he or she will not benefit from prolonged life. But is one allowed to kill directly an anencephalic infant? If anencephalic infants could be delivered early, (killing; by reason of *finis operis*) then it seems PVS patients could be smothered or poisoned without moral fault.

5. In order to avoid spiritual or emotional harm to the mother and father, pregnancy may be terminated after diagnosis of anencephaly. This is an inaccurate application of principle of totality. Therapy for emotional harm (*finis operantis*) does not allow direct killing of infants (*finis operis*) (cf. Drane, 1992).

6. The womb of the pregnant woman may be considered a life support device (cf. Daniels, 1984). Just as life-prolonging therapy such as a respirator may be removed, to allow a person to die of an underlying pathology which cannot be circumvented, so the infant may be removed from the womb. Considering the womb to be life support therapy seems to be a gross equivocation. Natural organs may not be excised or rendered inoperative unless they threaten the life of a person. Anencephaly may threaten the life of the infant but does not threaten the life of the mother.

7. Because intervention in the pregnancy of an anencephalic infant results in a direct killing of an innocent human being, the only suitable, ethical opinion seems to be to allow the pregnancy to go to term, baptizing the infant and allowing parents to hold the infant as it is allowed to die (cf. Diamond, 1992). This seems to be the only conclusion in accord with traditional Catholic teaching.

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