

The Linacre Quarterly

Volume 67 | Number 1

Article 6

February 2000

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Recommended Citation

Irving, Diane N. (2000) "Abortion: Correct Application of Natural Law Theory," *The Linacre Quarterly*: Vol. 67 : No. 1 , Article 6.
Available at: <https://epublications.marquette.edu/lnq/vol67/iss1/6>

Abortion: Correct Application of Natural Law Theory

by

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Introduction

The rhetoric on abortion continues to embattle and confuse “pro-choice” and “pro-life”, “liberals” and “conservatives” alike. Many “liberals” complain that it is irrational and brutal to expect a woman to die so that her unborn child may live. Abortion should be permitted basically on demand, certainly in cases where the health and life of the woman are at risk, and even in cases of incest or rape. Besides, they remind us, it is legal. In contrast, many “conservatives” argue that abortion can never be rationalized or permitted, as it is fundamentally immoral to kill an unborn child who is an innocent human being, no matter what the circumstances or the law – regardless of the woman’s health, life, incest or rape. At times it seems that the advocates of either position are “talking past” each other, oblivious to the possibility of any moral legitimacy in each other’s position. Further, there seems as yet to be no structured or principled means commonly acceptable to both “camps” by which to circumvent this highly politicized standoff or to address these tragic moral dilemmas.

To a significant degree this standoff is often due to misinformation or to a reluctance to make some important *moral* distinctions. One moral distinction is between: (1) inherently bad actions (e.g., abortion) and (2) inherently good (or neutral) medical actions which are permitted, even though bad effects would result, in order to save the life of the mother (e.g.,

the giving of chemotherapy treatments, or the removal of a cancerous uterus, etc.). Another moral distinction is between directly and indirectly voluntary actions (that is, between directly willing an evil, and indirectly allowing an evil to take place). Once these important *moral* distinctions are correctly understood, then conditions allow us to apply a common moral principle to this standoff, rather than leaving such a vital issue up to personal emotions or to unprincipled political compromise. These distinctions can also be applied to the many other issues related to abortion, e.g., destructive human fetal and human embryo research, and human cloning (which inherently requires destructive human embryo research).

The common moral principle often used in these difficult situations is that found in the time-honored theory of natural law¹ known as the principle of double effect.² Properly understood, the principle of double effect evolved in order to address just these types of difficult moral dilemmas – in this case where both of the lives of those affected are innocent, and yet something must be done or will happen which inevitably will endanger one of these two innocent lives. The obvious application for our purposes here is when a woman, who is herself an innocent human being, whose human life is precious and must be respected, is pregnant with an unborn child, who is likewise an innocent human being (from fertilization onwards), and whose life is also precious and must be respected. Since, as natural law theory holds, *one may never directly intend to kill an innocent human being*,³ under what circumstances and conditions is it morally permissible: (1) for a woman to undergo an abortion procedure, or (2) for a physician to help one of these innocents to live, by means of other and different morally legitimate medical actions, and yet permit or allow the other, unfortunately, to die?

These are really two different and separate moral questions, and so must be approached differently. One concerns abortion procedures; the other concerns other medical actions or procedures which could be taken in order to save the life of the mother (and vice versa) when urgent and valid medical circumstances arise. The solutions to these two very different questions, I would suggest, could be applied in helping to resolve at least the extremes of the current abortion debates, without at all compromising long established moral principles. The resolution lies in seeing the moral distinction between these two questions and then properly applying the well-established principle of double effect.

But before developing this often used application of the principle of double effect in more detail, it is important to stave off just a few possible objections by clarifying quite briefly some facts about natural law ethical theory – a theory often misunderstood, misinterpreted, or misapplied down through the years.

Natural Law Ethical Theory⁴

Some examples of what natural law ethical theory is, or is not, and why it could be considered useful in this debate, include the following:

1. It is a *philosophical* ethical theory, not a theological one – although it can be and is related to theology. That is, natural law ethical theory aids us in understanding which human actions are morally right or wrong through the aid of *human reason alone* – without the use of Divine Revelation or the teachings of the Magisterium. It has been studied and refined over the centuries as a means of addressing what is the morally right thing for us to do when faced with genuine moral dilemmas. It is not some new, brash, untried or unscrutinized moral theory. One might agree that although natural law ethical theory is by definition not a case of imposing one's religious or belief system on others, it still might be objected that it is a case of imposing one's ethical system on others.

In response one could point to several facts: first, natural law ethical theory can well hold its own in complicated academic and heated debates compared to other philosophical ethical theories (although I will not get into that here). Second, there is simply no such thing as a “neutral” ethics which might be “perfect” for our pluralistic society – no matter how convenient such “neutrality” might be. This includes the ethical theories of utilitarianism, relativism or communitarianism – none of which are “neutral” and all of which are normative ethical theories. Therefore we are in fact constantly “forcing” some non-neutral philosophical or social ethical theory on others in this country, whether we want to acknowledge that fact or not. Finally, as pointed out in the *Declaration on Procured Abortion*: “It is true that it is not the task of the law to choose between points of view or to impose one rather than another. **But the life of the child takes precedence over all opinions.** One cannot invoke **freedom of thought** to destroy **this life.**”⁵

2. In counter-distinction to many other ethical theories, natural law ethical theory is proximately and *objectively* grounded in our objectively knowable human nature, i.e., on what is really good or bad for us as human beings – as individuals and as members of our human communities.⁶ It is not simply deduced from non-empirically derived and questionable “philosophical” premises or religious dogmas, or from variable emotions or personal opinions. For example, it is wrong to use cocaine *because* our human natures *are such* that cocaine eventually seriously harms, sometimes even destroys us – body, mind, and spirit. It can also seriously harm others close to us as well as to our human society at large. That is just the way we

human beings are “made”; and we can know this fact objectively and empirically.

3. Because the basic precepts of natural law theory are proximately grounded on an objectively knowable human nature, they are applicable to *all* human beings, precisely because we all possess such human natures. The possession of natures which are specifically human is precisely what we all have in common. This is true regardless of time, culture, background, race, sex, religion or political affiliation.

4. Thus, if properly understood and applied, natural law theory should be ideal for our “pluralistic” society – since all of our citizens are human beings, and hold at least that in common. What is fundamentally good or bad for human beings in general will hold for us all. Certainly secondary differences must be taken into consideration; but the primary precepts of the natural law will be the same for all of our citizens by virtue of their common humanity, and these precepts cannot be changed because our human natures, and what is objectively and fundamentally good or bad for them, cannot change. It calls, indeed, for simply minimal moral requirements to guide a human polity.

Finally, in natural law ethical theory, there are three determinants of a human action which determine its rightness or wrongness, and all three determinants must be good in order for an action to be considered good.⁷

1. the **act itself** (what the agent wills), which is either good or evil by its very nature (a major tenet of natural law ethical theory which is rejected by contemporary “proportionalist” interpretations of natural law theory)⁸ – e.g., the act of abortion is inherently wrong; the acts of administering chemotherapy or performing a hysterectomy are inherently good (or indifferent) actions.

2. the motive or **intention** (consciously willed), which is what the agent wants to achieve by the act – i.e., the end, purpose or goal of the action; why the action is performed – e.g., in order to kill a person; or in order to evade social disgrace, better spacing of children, or cure a deadly disease.

3. the **circumstances**, which are the accidental surroundings of the act, which include the consequences of the act – e.g., the act of intercourse with a willing spouse or forcibly with a stranger or one’s child; or that there are no other medical treatments available.

It is critical to understand that an action which is evil in itself (by its nature) cannot be made good or indifferent by any intentions, goals or circumstances – no matter how good or praiseworthy these are per se. On the other hand, an action which is good in itself (by its nature) can be morally ruined by any gravely bad intentions or circumstances. These three

determinants of a moral act are explicitly incorporated into the following short explication and clarification of the principle of double effect.

The Principle of Double Effect

That part of natural law ethical theory referred to as the principle of double effect was gradually refined over the centuries in order to meet the unfortunate but very real moral dilemmas in which, no matter what is reasonably done, one or more innocent human beings may be harmed or even die in the process of resolving the dilemma. The following explication of the principle of double effect, as well as its four necessary conditions, are taken almost verbatim from the work of Austin Fagothey, *Right and Reason*. Its application to the abortion debate will be specifically indicated under each condition of the principle.

The principle of double effect is based on the fact that evil must never be directly and voluntarily willed for its own sake, and must never be willed either as an end or as a means to an end. Nor may evil ever be directly willed as a foreseen but unwanted consequence. But evil can be reduced to an incidental and unavoidable by-product in the achievement of some morally licit good the person is rightfully seeking.⁹

Thus, although I am never allowed to will evil,¹⁰ I am not always bound to prevent the existence of evil. Just as I may tolerate the existence of evils in the world at large, since I could not cure them without bringing other evils on myself or my neighbor, so I may sometimes tolerate evil consequences from my own actions, if to abstain from such actions would bring a grave evil on myself or others. Unfortunately then, as is sometimes the case, I cannot realistically in fact will a legitimate good, without at the same time permitting the existence of an evil which in the very nature of things is inseparably bound up with the good I will. But I must not do so indiscriminately. In short, sometimes I am bound to prevent evil, and in these cases it would be wrong for me to permit it. But sometimes I am permitted to allow evil effects to take place. How can we distinguish between these two different cases?¹¹ This is where the principle of double effect comes in.

The principle of double effect holds that it is morally allowable to perform an action that has a bad effect only under the following conditions:

1. Once again, **the action to be performed must be good in itself, or at least indifferent.**

This is evident, for if the act is evil of its very nature, nothing can make it good or indifferent. Evil would then be chosen directly, either as an end or as a means to an end, and there could be no question of merely permitting

or tolerating it.¹² If the action is fundamentally and inherently morally illicit, then it cannot be morally permitted regardless of any good intentions or goals, or under any good circumstances.

Application: *The act of abortion of its very nature is inherently evil*, because it is the intentional and direct killing of an innocent human being. This would apply to all abortions, including those in the case of rape and incest (and to those involving human fetal and human embryo research, and human cloning). Therefore it is never morally permissible to undergo an abortion procedure. The principle of double effect as applied to the case of abortion renders abortion procedures morally illicit, since the action by its very nature is evil. However, *other possible medical actions*, e.g., the giving of chemotherapy or the removal of a cancerous uterus – morally good or at least neutral acts – could be permitted in order to save the life of the mother, even if it could possibly result in the unintended death of the unborn child, as long as *all of the other three* following conditions are also met.¹³

2. The evil effect must not be directly intended for itself but only permitted to happen as an accidental by-product of the act performed.¹⁴

Application: In the case of abortion procedures, the death of the unborn child is directly intended and therefore is morally illicit. On the other hand, in the use of chemotherapy or the performance of a hysterectomy to remove a cancerous uterus, etc., the death of the unborn child may not be directly intended, but only permitted or allowed as a possible by-product.¹⁵

3. The good intended must not be obtained by means of the evil effects. The evil must not be an actual factor in the accomplishment of the good.¹⁶

Application: In the case of abortion procedures, the death of the unborn child may not be used as a *means* of limiting family size, preventing birth defects, enhancing a career, etc. (all legitimately good or neutral ends in themselves).¹⁷ On the other hand, the curing of the potentially deadly disease of cancer could be obtained by *means* of the morally acceptable actions of the administration of chemotherapy or the performance of a hysterectomy. The death of the unborn child is *not* the means used to cure the cancer.

4. There must be a reasonably grave reason for permitting the evil effect.

If the good is slight and the evil great, the evil can hardly be called incidental. If there is any other way of getting the good effect without the bad effect, this other way must be taken.¹⁸

Application: In the case of abortion procedures, to maintain a slim figure, to have a child of a certain sex, to prevent the birth of a child with defects, or to evade social embarrassment would *not* be reasonably grave reasons for permitting the unintended and unavoidable death of the unborn child. On the other hand, to give chemotherapy or to perform a hysterectomy in order to remove a cancerous uterus, etc., to preserve the life of the mother (who is also an innocent human being) would be a reasonably grave reason for permitting or allowing the unintended and unavoidable death of the unborn child. If there is any other reasonable medical treatment available to save the life of the mother which would not entail undue harm or death to the unborn child, then it *must* be chosen instead.¹⁹

And finally, note that these examples of “other medical actions” are not morally licit unless *all four conditions* of the principle of double effect are fulfilled. If any one of them is not satisfied, even though the other three are, those medical actions are morally wrong.

Conclusion

In short, a pregnant woman who is faced with the grim reality of impending death short of the use of, e.g., chemotherapy or hysterectomy, may use these and other morally licit medical treatments and procedures for the reasonably grave reason of saving her life, as long as the death of her unborn child is not directly intended as the end (or purpose) of using these procedures, or is the means by which her life is saved, and no other reasonable medical treatment is available. However, the directly intended death of an unborn child by means of procured abortion remains morally indefensible – even to save the life of the mother, or for the best of intentions, or under very difficult circumstances – even in the case of incest and rape.

There is too much at stake to leave the lives of so many millions of innocents – both women and unborn children – up to mere personal whimsy or political bartering. The social fiber in this country has been shattered and stretched to the limit. Presented here is at least a common moral means of considerably reducing the rancor and misinformation swirling about these abortion debates. The proper understanding and application of the principle of double effect offers a commonly accepted, morally legitimate, objectively grounded basis for clarifying the important

moral distinctions which need to be made within these very tragic and difficult moral dilemmas – one on which most of us could reasonably agree.

References

1. Although many of the quotations below are derived from traditional Catholic documents, the truth of these statements has been acknowledged by most thoughtful persons and religions over the centuries.
2. For a simple, brief summary of the Principle see Austin Fagothey, S.J., *Right and Reason* (second or third editions only) (St. Louis: The C.V. Mosby Company, 1963), pp.107-110. For a brief but accurate explication of the Principle, see Peter J. Cataldo, "The Principle of the Double Effect," *Ethics and Medics* (Braintree, MA: Pope John Center, March 1995), 20(3):1-2. See also Kevin O'Rourke and Philip Boyle, "Double Effect", *Medical Ethics: Sources of Catholic Teachings* (St. Louis, MO: The Catholic Health Association of the United States, pp. 102,103 (hereafter referred to as *Sources...*)).
3. Pope Pius XI, "Encyclical Letter on Christian Marriage" (Dec. 31, 1930), *The Human Body: Papal Teachings*, 1960, pp. 31-34, in *Sources...*, p. 35, 36: "...Whether inflicted upon the mother or upon the child, [direct abortion] is against the precept of God, and the law of nature: 'Thou shalt not kill'. The life of each is equally sacred, and no one has the power, not even the public authority, to destroy it...Those who hold the reins of government should not forget that it is the duty of public authority by appropriate laws and sanctions to defend the lives of the innocent, and this all the more so since those whose lives are endangered and assailed cannot defend themselves. Among whom we must mention in the first place infants hidden in the mother's womb." See also "Declaration on Procured Abortion" (Nov. 18, 1974), *Vatican Council II*, Vol. 2, 1982, pp. 441-443, in *Sources...* P. 38; "Divine law and natural reason, therefore, exclude all right to the direct killing of an innocent man."
4. For examples of several classic explications of natural law theory, see A. Fagothey (note 2) esp. pp. 124-139; also, Vernon J. Bourke, *Ethics* (NY: The Macmillan Col., 1953); Ralph McInerny, *Ethica Thomistica* (Washington, DC: The Catholic University of America Press, 1982); McInerny, *Aquinas on Human Action* (Ibid, 1992); Charles Rice, *50 Questions on the Natural Law* (San Francisco: Ignatius Press, 1993).

5. Sacred Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion* (1974) (Alexandria, VA: St. Paul Books & Media), p. 19 (emphasis mine).

6. See Fagothey (note 2), pp. 128-131. See also Pope John Paul II, Encyclical Letter, *Veritatis Splendor* (Boston, MA: St. Paul Books & Media, 1993), #72 (P. 91): "Acting is morally good when the choices of freedom are in conformity with man's true good and thus expresses the voluntary ordering of the person towards his ultimate end [good]."; also, *ibid.*, p. 92.

7. Fagothey (note 2) p. 112. See also *Veritatis Splendor*, #74, p. 93: "But on what does the moral assessment of man's free acts depend?...[It is] the intention of the acting subject, the circumstances - and in particular the consequences of his action [and] the object itself [i.e., the *kind* of action, i.e., inherently right or wrong or neutral]..."

8. Note that Pope John Paul II has clarified in *Veritatis Splendor* that "proportionalism", an ethical theory proposed by dissident moral theologians, is not properly natural law or morally acceptable - in particular because it rejects the very possibility of actions which are morally good or morally bad *per se*, i.e., by their natures - see *Veritatis Splendor* #79-80, pp. 100-102: "One must reject the thesis, characteristic of teleological [consequentialist, e.g., utilitarian] and proportionalist theories, which holds that it is impossible to qualify as morally evil according to its species - its "object" - the deliberate choice of certain kinds of behavior or specific acts apart from a consideration of the intention for which the choice is made or the totality of the foreseeable consequences of that act for all persons concerned...There exist acts which *per se* and in themselves, independent of circumstances, are always seriously wrong by reason of their object [i.e., the *kind* of act willed]...[E]xamples of such acts: 'whatever is hostile to life itself, such as any kind of homicide, genocide, abortion, euthanasia and voluntary suicide; whatever violates the integrity of the human person, such as mutilation, physical and mental torture and attempts to coerce the spirit; whatever is offensive to human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution and trafficking in women and children; degrading conditions of work which treat laborers as mere instruments of profit, and not as free responsible persons; all these acts and the like are a disgrace, and so long as they infect human civilization they contaminate those who inflict them more than those who suffer injustice...' ". See also *ibid.*, #75 (p. 94), #76 (p. 77), #77 (p. 98), #78 (p. 99), #90 (p. 112), #96 (p. 119), #97 (p. 119). See also John Finnis, *Moral Absolutes* (Washington, DC: The Catholic University of America Press, 1991).

9. Fagothey (note 2), p. 107.

10. Pope Pius XI, "Encyclical Letter on Christian Marriage" (Dec. 31, 1930), *The Human Body: Papal Teachings*, 1960 in *Sources...* (note 2), p. 36: "Evil is not to be done that good may come of it." See also, Pope Paul VI, *Humanae Vitae* (1968)

(Boston, MA: St. Paul Books & Media), p. 7, "If it is sometimes licit to tolerate a lesser evil in order to avoid a greater evil or to promote a greater good, it is not licit, even for the gravest reasons, to do evil so that good may follow therefrom." See also *Veritatis Splendor*, #80, pp. 102-103.

11. Fagothey (note 2), p. 107.

12. Fagothey (note 2), pp. 107-108.

13. Pope Pius XII, "The Attempt on Innocent Human Life" (Nov. 26, 1951), in *Sources...* (note 2), p. 103: "...Deliberately, we have always used the expression 'direct attempt on the life of an innocent person', 'direct killing'. Because if, for example, the saving of the life of the future mother, independently of her pregnant condition, should urgently require a surgical act or other therapeutic treatment which would have an accessory consequence, in no way desired nor intended, but inevitable, the death of the fetus, such an act could no longer be called a direct attempt on an innocent human life. Under these conditions the operation can be lawful, like other similar medical interventions - granted always that a good of high worth is concerned, such as life, and that it is not possible to postpone the operation until after birth of the child, nor to have recourse to other efficacious remedies." See also, Pontifical Council for Pastoral Assistance, *Charter For Health Care Workers* (Boston: St. Paul Books & Media, 1995), pp. 122-123: "If the abortion follows as a foreseen but not intended or willed but merely tolerated consequence of a therapeutic act essential for the mother's health, this is morally legitimate. The abortion in this case is the indirect result of an act which is not itself abortive" (from Pius XII, *To "Face of the Family" and the "Associations of Large Families"* Nov. 27, 1951 in *AAS* 43 (1951) p. 859). See also, *Ethical and Religious Directives for Catholic Health Care Services*, (Washington, DC, 1995), pp. 19-20: #47, "Operations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child."

14. Fagothey (note 2), p. 108.

15. See note 13.

16. Fagothey (note 2), p. 108. See also *Veritatis Splendor*, #81, pp. 102-103: "If acts are intrinsically evil, a good intention or particular circumstances can diminish their evil, but they cannot remove it. They remain 'irremediably' evil acts *per se* and in themselves... Consequently, circumstances or intentions can never transform an act intrinsically evil by nature of its object [the *kind* of act willed] into an act 'subjectively' good or defensible as a choice."

17. "Declaration on Procured Abortion" (note 5), pp. 14-15: "...We do not deny these very great difficulties. It may be a serious question of health, sometimes of

life or death, for the mother; it may be the burden represented by an additional child, especially if there are good reasons to fear that the child will be abnormal or retarded; it may be the importance attributed in different classes of society to considerations of honor or dishonor, of loss of social standing, and so forth. We proclaim only that none of these reasons can ever objectively confer the right to dispose of another's life, even when that life is only beginning."

18. Fagothey (note 2), p. 108.

19. See notes 13, 14.