

A Pound of Flesh - The Catholic Controversy on Tubal Pregnancies

Pierre Mallia*

Professor, Coordinator, Bioethics Research Programme, Chairman, National Bioethics Consultative Committee, Malta

***Corresponding Author:** Pierre Mallia, Professor, Coordinator, Bioethics Research Programme, Chairman, National Bioethics Consultative Committee, Malta.

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Abstract

The principle of double effect has guided many physicians when a good must be brought about by causing a harm. This guidance is particularly strong among Catholic physicians. In ectopic pregnancies, one can remove the pathological fallopian tube either partially or completely and the death of the fetus within is considered indirect and not intended. Such cannot be assumed for normal abortions or babies caught in the passage during birth which necessitates a direct killing of the fetus.

The use of suction methods to remove a fetus in a tube can replace the possibility of removing the tube. This however is seen as a direct removal of the fetus, and therefore an abortion. Of course the ethical question is ought one to remove the tube of a woman when one can save it for the sake of killing the fetus indirectly instead of directly? Is there a limit to the principle of double effect and can we argue that direct killing can be used in face of newer technologies when formerly a procedure was allowed by invoking the principle of double effect.

The paper looks at this argument, after considering some publications and guidelines in this regard and hopes to propose a solution.

Keywords: *Double Effect; Salpingotomy; Salpingectomy; Abortion*

Introduction

Traditionally if an ectopic pregnancy was seen to be a threat to the life of the mother, salpingectomy (partial or total), that is, the removal of the fallopian tube containing the fetus is allowed through the application of the principle of double effect. The death of the fetus is indirect and unintended; it is merely accepted. However salpingostomy (creating a slit in the tube and removing the fetus alone, thereby preserving the anatomy) or the use of methotrexate - a drug which inhibits the trophoblast, on which, in turn the fetus is dependent, are not yet considered moral as these constituted a direct and intentional killing of the fetus. This controversy is of particular importance in Catholic doctrine and Catholic hospitals and physicians. It is also important for prospective parents seeking advice on such conditions.

More recently respected theologians have argued that these latter conditions can be used legitimately because they either question whether the principle of double effect is not being respected, or because they say that the definition of what we mean by abortion has changed. This paper will review these positions and will introduce new arguments which may contribute to the dialogue on the legitimacy of salpingotomy and methotrexate.

The Catholic position

It should be noted that the Catholic position on this issue is still undecided. May argues that the magisterium (of the Catholic Church) has not resolved this controversy and hence neither the Church teaching nor the ERDs forbid these approaches so long as it can be argued that these procedures are not abortions. Both opinions are currently in play. The article also points out the U.S.'s National Catholic Bioethics Centre's Catholic Health Care Ethics note that since there is no specific magisterial teaching then the decision makers may licitly act on either opinion until such time that the magisterium has resolved the question [1].

In an article entitled 'Coping with Ectopic Pregnancies', William E. May, a respected Catholic theologian [2], argues that what constitutes a direct abortion is questionable since John Paul II, in *Evangelium Vitae*, n.58 defined abortion as the direct and deliberate killing by whatever means it is procured. He argues that such theologians as Angel Rodriguez Luno have pointed out that this differs from the Church's formally held position which defined abortion as the removal of a non-viable embryo from its site within the mother's body, who in turn used other sources to support his argument. Whether the position of John Paul II was indeed made to be more reflective on these issues and to effect a change, it is significant that he omitted the use of 'remove'; May argues that this implies that some removals do not have the specific intention of 'killing': "It is conceivable that some 'removals' or 'expulsions' of a non-viable embryo/fetus do not have as their morally specifying object (i.e., the directly intended specifying object of the act - cf. *Veritatis Splendor*, n.78, either as end or as means) the death of the unborn". He asserts that 'with others loyal to Magisterial teaching' salpingotomy can be justified as the 'removal' of a non-viable fetus and not as a killing of an innocent human being. He correctly points out that if it were possible to transfer the fetus in an artificial womb, removing the fetus would be better than allowing it to die. (The definition of abortion is discussed again further down).

With regard to Methotrexate, May points out in *Zenit* [3] that this is directed towards impeding the trophoblast on which the fetus depends and therefore can be conceived as an indirect killing, just as removal of the tube is. He refrains from adjoining this argument to the principle of double effect, but still sees it as equivalent to 'removing', rather than killing. Others however (Clarke, in [4] p24) assert that by attacking the trophoblast, which is the future placenta, the killing is indirect and therefore satisfies the principle of double effect. Conversely, some consider that it is an intrinsic part of the embryo necessary for its well-being (Bowring p.24).

Anderson, *et al.* [5] take on the positions of May, Kaczor and Rhonheimer. They point out that May, previously contrary to the procedures was converted by Kaczor's arguments who says that removing a fetus from an inflamed tube may be circumstantially evil but not intrinsically so. One can indeed, if it were possible, put the embryo in a safe haven and this shows the overall intention not being that to kill deliberately the embryo. Anderson, *et al.* say however that the fact that a safe haven is not in fact sought (as it is not feasible) changes the moral object. They provide the analogy that to remove someone from a burning house to a safe haven is different than removing someone from a burning house and putting him in a gas chamber. This analogy is flawed in the sense that if it were to compare like with like, the person being removed from the burning house would have to be the same person causing the fire and even though we may wish to save the life (and transfer the person to a prison) the person may need to be shot down. Analogies are not very useful unless they compare equivalent situations.

Moreover, towards the end of their analysis Anderson, *et al.* do indeed recommend that the development of techniques which assist the embryo to be transferred to the womb should be encouraged. But if such techniques ought to be researched one has to intrinsically accept the risks and inherent uncertainty of such research; that is, during this kind of research many fetuses will be lost. For the research to be morally licit one must accept this loss beforehand. If one does not at least accept the moral possibility of allowing salpingotomy with the concurrent attempt of developing techniques, such techniques cannot be developed in the first place. This is where new development in Catholic Trinitarian dialogue can help.

Before one discusses this one must also mention Anderson, *et al.*'s criticism of Martin Rhonheimer who poses an argument through virtue ethics on Justice. Rhonheimer in fact draws on the historical questions of craniotomies before caesarian sections were available. In

this procedure the skull of the baby had to be dissected in order to bring it out and to save the mother. The Church at the time (1884 and 1889) did not condone such a method and Anderson, *et al.* go on to explain correctly what is meant by 'cannot be safely taught'; namely meaning that the Church's position was against it. Nevertheless it seems that it was a tolerated procedure and certainly based on a sense of Justice.

However, Rhonheimer's equating salpingotomy with craniotomy cannot hold, even though he only points to it as 'instructive', as there are alternative, albeit difficult to the woman. Had he adhered to the position that once it is feasible to sacrifice the tube there would have been a more intuitive sense of justice. Anderson, *et al.* also point out that methotrexate also attacks the fetus and not the trophoblast alone. Double effect cannot therefore hold true as there is also a direct attack on the embryo. Moreover, they also assert that the fact one sacrifices an indirect killing for a more direct approach means that our reasoning will be more in the sense of proportionalism and utilitarian. But then, even end of life arguments of foregoing futile and extraordinary care are considered on merit of proportionality (or disproportionality) and one cannot assert that all utilitarian choices are wrong. Public health admits of compulsory treatment based on utility and so do most triage mechanisms in disaster situations.

Principles of dialogue

Given this summary of arguments it is clear that Catholics are in need of more dialogue in this area. If there has been a flaw in bioethics it is that people adhere to their positions and it is indeed rare that scholars such as in the case of May are convinced to the reality of another side to the argument. Indeed such scholars have to withstand criticism on their own part. This is certainly the way of philosophy but in clinical ethics one needs answers to the plight of people. The Magisterium of the Church and indeed many Episcopal conferences have changed positions, given this open dialogue, on ethical issues. The most quoted is the 1985 Belgian Episcopal Conference which invoked double effect and gave a choice for ill pregnant mothers to be able to get treatment even in the face of harming the fetus.

In new developments of social dialogue using Trinitarian principles of kenosis and perichoresis, Coda and others [6-8] are developing a social model which instigates philosophers not merely to produce moral arguments and counter argument, but to practice a process of empathic dialogue. Gambon [7] lists a number of characteristics of Trinitarian social dialogue. Kenosis is an 'openness to others' and a seeking to eliminate prejudices and fixed positions. This is complemented by perichoresis, which is a seeking of unity with the other; this requires a sense of 'plurality', which more importantly, he describes as a necessity 'if one is to support God's plan on earth'. It therefore is a true plurality, an acceptance that only in unity we find the truth; a plurality which is not merely accepted because one cannot do otherwise, or a plurality simply based on lip service or some form of respect whilst maintaining one's ground. 'Imago dei' can be described also as the possibility of man living in a Trinitarian sense – certainly, Coda (quote and REF). Also(Recent Um. Nuova). God is not mere an image of human form; we are created in the image of God because of our possibility of living in Trinitarian unity - Jesus on the cross emptied himself completely to the extent of feeling abandoned by the father himself; although remaining divine He experienced a certain loss, an emptiness. In this 'space' he took on all that is bad; in allowing Himself in His Father's hands he united himself with the Father and the Holy Spirit¹.

There are several areas in bioethics which merit further dialogue in Catholic Ethics. This does not mean that the Magisterium needs some form of 'updating' and neither that it has to catch up with the times in some way. Humans evolve; one can compare this to a young girl who has a nice dress. The girl grows. The dress is still nice; but it does not fit her any longer. She needs a bigger dress - just as nice.

¹For a more detailed explanation see section on kenosis and perichoresis in Mallia, P and Ten Have, H.....

There is a sense of evolutionary ethics which Hegel (REF) was referring to. Even though Karl Popper criticized this point of view, he was more concerned in human liberty (REF). Hegel is not denying any liberty but he saw that humans are tending towards an order. Certainly, there were more wars in the past; reasons for wars have also changed and so has the ethics of warfare. Globalization is bringing about a more uniform understanding of issues like Justice. Everything from media, business, economics, and academia help push in this regard. Debates in bioethics merely reflect that the dress, still nice and appropriate, may perhaps be stretching at the seams and needs adjustment or a larger size. We accept our humanity through our own involvement. Even resistance to change is important because it elicits dialogue with the more progressive. This does not mean that morality is found only on one side or that in some way we are moving to a better morality. Rather, dialogue allows people to see what is essential and where they may be differing in the way they define certain concepts. Thus, whilst abortion is always wrong, we may perhaps see that we are not broadening the definition of abortion whilst others are restricting it too much.

Other important factors to consider in Trinitarian dialogue are: a sense of freedom to talk without feeling judged or risking set backs; an ability to evaluate an argument and not being prejudiced by who is giving that argument; a sense of liberty to disagree, but only after having gone through both the kenotic and perichoretic principles. In essence dialogue is neither argument nor debates. It is a profound reflection which evaluates not only the reasoning but 'sees' the person as an end in himself or herself. For the Christian the person also has the presence of Jesus (who is reflected either as resurrection or indeed abandonment). The Christian according to Lubich (REF) arrives to God through others. Agape, love, charity are all reflected in this (see again Chiara's definition of Charity).

Portia's paradox - is a drop of blood enough?

Therefore, prepare thee to cut off the flesh.

Shed thou no blood; nor cut thou less nor more

But just a pound of flesh: if thou tak'st more

Or less than a just pound, - be it but so much

As makes it light or heavy in the substance

Or the division of the twentieth part

Of one poor scruple, nay, if the scale do turn

But in the estimation of a hair,

Thou diest, and all they goods are confiscate [9].

Shakespeare's 'A Merchant of Venice' remains famous for the judgment Portia, disguised as a judge, passes on Shylock. In summary Portia's fiancé is indebted to Shylock for money on pain of a pound of flesh if he does not pay up in time. This indeed comes to pass and they appear before a judge; only Portia, in coming to the rescue, disguises herself as the judge and in the end passes the above verdict. Shylock is allowed his pound of flesh but not a drop more. Any spilled drop will be accounted for by his own death.

It can be argued that in using a salpingotomy, converse to Portia's extra drop of blood being penalised, one can say that one always obtains some microscopic portion of tissue from the tube. Do we really therefore have to be able to 'see' and 'weigh' the amount of tube removed? In sucking out the fetus, some tissue of the tube will inevitably be there as well. (This is not the case for methotrexate). In procuring just a small part of the tube we inadvertently also effect an albeit microscopic 'partial' removal of the tube. Of course such an argument is ridiculous in the sense that the intention is not to remove any part of the tube and the operator does not really care whether an extra drop of blood or tissue is removed. It remains a direct removal of the fetus. This argument therefore prima facie comes across as unfair and unjust.

But Portia's argument was indeed unjust to Shylock who only wanted his pound of flesh - how could he guarantee not taking a drop of blood more. It is indeed a reverse of the argument - we cannot guarantee that no part of the tube (especially the trophoblast, half of which comes from the mother) will be sucked along with the fetus. Portia's argument is rendered just not so much in the face of taking exactly a pound of flesh. It was clear to all that Shylock did not want the flesh but intended the death of his victim. We see justice not because Shylock was tricked, but because he was the perpetrator and the true villain. We are not even concerned that Portia unjustly takes the place of judge; we tolerate it. If we consider abortion wrong, the true villain is one who intentionally wishes to terminate the pregnancy for reasons which are not considered unjustified and perhaps frivolous. This is certainly not the case for an ectopic pregnancy where it is indeed considered just to terminate the pregnancy (with the condition of at least a partial salpingectomy is fulfilled, rendering it indirect); what is contended that we are forced to take 'the pound of flesh', in an interesting twist to Portia's case (hence my dubbing it Portia's paradix) causing surgical morbidity in the process, when it has already been determined that the life of the fetus can be justly terminated. Perhaps the difficulty lies in our misuse of the term 'abortion'? Perhaps we adhere to concepts of 'direct' and 'indirect' too strictly. If the intention is to cause less harm, cannot we still say, once the fetus is inappropriately placed anatomically, that the termination is still indirect? Would a small partial removal of the wall overlying the fetus still be considered 'partial' removal, or would it be considered merely as a way to get around the problem by avoiding an incision?

Must we refine what we mean by abortion?

Anderson., *et al.* define abortion as a sin (Ibid., p 680). This of course means the intentional killing of any fetus in the body. Therefore, salpingotomy and methotrexate will fall under this category of direct and intentional killing, thus constituting an abortion. Bowring (Op. Cit. p33) quotes Thomas J O'Donnell as saying that aborting a fetus from a fallopian tube is no different than aborting it from a uterus. Whilst this is technically true, and therefore the principle of double effect cannot be used, it is certainly not true if one considers what we actually mean by the words 'abortion', 'direct', and 'intentional'. Whilst we have already examined what May has to say with regard to John Paul II's statement, from the point of view of analytical philosophy one would have to agree with the logic of these arguments. Yet philosophy is fraught with people who recognize the meaning of words and the way they are used by people. Wittgenstein, in his *Philosophical Investigations*, is perhaps the pioneer of this work. Whilst it is beyond the scope here to delve deeply into this, it is worth considering what we actually mean when we use words.

'Abortion' is a word which the general population use when they want to terminate what otherwise would be a 'normal' pregnancy. The usual reasons for an abortion are not biological, but psychological or social. We refer to a fetus implanted *in utero* and the general term of an abortion, and indeed the controversy and political battles, all refer to a pregnancy which would develop normally in a uterus were it not for the fact that the pro-choice position advocates rights and other reasons which they see as legitimate in terminating a pregnancy. All would agree that the general use of the term abortion and indeed the methods used for bringing it about, other than methotrexate, are not aimed at an ectopic pregnancy.

One can make a list of differences:

1. Abortions in the traditional sense are carried out in abortion clinics.
2. These clinics do not usually perform procedures for ectopic pregnancies; even if they did they themselves would not understand it as an abortion.
3. An ectopic pregnancy is a pathological state which necessitates special management.
4. There is no controversy on bringing about the death of the fetus by salpingectomy.
5. The controversy is on the method and not on the end result with regard to the fetus and the possibility of leaving an intact anatomy in the woman.
6. Indeed proceeding with salpingectomy when a salpingotomy is possible raises the question of whether it is morally right to mutilate a body when the controversy is simply on method of bringing about the harm and not the harm itself.

7. People who need salpingotomy are not 'requesting' an abortion.
8. Removal of the fetus by suction is being advocated in tubal pregnancies only, and not for uterine pregnancies. There is no risk of slippery slope, even though some may think that there is.
9. If it were possible to remove the fetus and put it in the womb, this would be done, clearly showing the intention is not to kill.

Imagine a theoretical possibility of a pregnancy developing under the skin of a woman's arm (the palm, for example), rather than the 'arm' of the uterus. Imagine that this is also a pathology which if left alone may result in the death of the woman. In other words, imagine all parallels with a tubal pregnancy. Before the possibility of incising the skin and removing the fetus, one had to remove partially (or whole) the arm of the woman. When a technology comes along to remove the fetus only, is it morally correct to remove the arm? But in reality we are speaking of the same thing; we simply see the arm as part of an external anatomy; whilst a tube is not seen at all. But removing a tube can handicap a woman as well by increasing infertility. Ought we to chop off an arm when there are simpler ways of resolving the problem? Even though proportionality may seem utilitarian, it smacks of countries where they still cut off the hand that steals.

Conclusion

It would seem that a logical answer is not readily acceptable to many not because they are looking at the overall morality but because of a broadened definition of the word 'abortion'. Of course the fear is the extrapolation (or slippery slope) which can happen if this is allowed. One may argue that once you allow a direct killing in the tube, you then will be faced with the question of allowing direct killings in the womb. It is precisely because of how we have come to define abortion that this question is posed. People who have ectopic pregnancies would not, under normal circumstances, have requested an abortion if the fetus implanted itself safely. They may have planned the pregnancy but the doctors tell them about the pathology. We also need to consider whether it is right to pose a decision between salpingotomy and salpingectomy when in such a semi-emergency or emergency situation. Can one obtain valid informed consent?

The onus is therefore on moralists to solve this problem. If we insist on calling a salpingotomy for diagnosis of an ectopic pregnancy an abortion, this is not possible. One submits that this is immoral in and of itself as it requests a mutilation when one can be avoided and changes the definition of the death of the fetus when this is inevitable. Slippery slopes can be avoided by arguing that once, under normal circumstances, it has been accepted that the loss of the fetus is almost always inevitable, then how that loss is brought about need not be of much concern. If it were a question of being more humane on the fetus if one were to do a salpingectomy, then there would be a valid argument. But the argument of abortion in the case of ectopic pregnancy is not about the fetus per se; it is more about our way of reasoning logically. It is not about the fetus; it is about us.

In the general and accepted version of the word 'abortion', both for those who are pro-life and those who are pro-choice, the definition is an intention to terminate a pregnancy when there is nothing biologically wrong with the pregnancy. This is clear even to the common person on the road, irrespective of their position on abortion. It is a question of choice (or at most of danger to the life of the woman); but the pregnancy is largely normal. To call suction of a fetus from a uterus is rightly called an abortion; to call the same procedure for a legitimate reason of saving the tube when the fetus will be lost anyway is extending the definition of abortion beyond reasonable use of language. It is perhaps unfair and inconsiderate. It is not the action itself which ought to be considered direct, it is the intention. In this sense May's argument of 'removal' seems to hold best.

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