

The Tragic Case of Jodie and Mary: Questions about Separating Conjoined Twins

by

Christopher Kaczor, Ph.D.

*The author is affiliated with Loyola Marymount University, Los Angeles,
in the Department of Philosophy*

The tragic case of conjoined twins Mary and Jodie made news around the world and sent ethicists into speculation. Born in Manchester, England on August 8, 2000, Mary and Jodie's appearance was so unusual and their disabilities so severe that several doctors had to excuse themselves from giving care to the twins. Jodie and Mary were joined at the lower abdomen and shared a spine. Though both twins had nearly a full complement of organs, Jodie's heart and lungs maintained both of their lives since Mary's were not sufficiently developed to pump oxygenated blood. Doctors predicted that Jodie's circulatory system would give out in a matter of weeks under the strain of supporting both girls.

It was a decision to rival Solomon's: Should one twin be sacrificed in order to save the other or should both be allowed to perish? In light of medical testimony, a British high court judge ordered that the twins be separated against the wishes of their Catholic parents and the Catholic archbishop of Westminster, Cormac Murphy-O'Connor, who objected to the procedure for a variety of reasons in a tightly argued submission to the court. On November 7, 2000, surgeons in St. Mary's Hospital, following the judge's ruling, separated the twins and Mary died.

The case raises profound ethical and, indeed, metaphysical questions. Obviously, not all these issues can be addressed here. I will limit myself to these three questions:

1) Was the separation of Mary and Jodie intentional killing?

2) Was the separation of Mary and Jodie intentional mutilation?

and

3) Was the separation of Mary and Jodie obligatory?

Answers to these questions led Murphy-O'Connor to the judgment that the twins *must not* be separated. Different answers to the same questions led Lord Justice Ward of the appeals court to the judgment that the twins *must* be separated. My answers to these questions have led to the conclusion that Jodie and Mary may be licitly separated but that there is no obligation to separate them.

1. Was the Separation of Mary and Jodie Intentional Killing?

Some have argued that separating conjoined twins violates the principle that human life is sacred, that it is inviolable, so that no one should ever intend to cause an innocent person's death by act or omission. David C. Thomasma, et al. note arguments that construe the separation of conjoined twins as killing one to save another. "(T)he double effect doctrine includes a strong proviso that the 'evil' effect cannot be the means of achieving the good one, since we cannot condone an evil means to accomplish a good end (the ends do not justify the means). Under this principle, directly killing one twin is a bad effect and cannot be used as the means to accomplish the good effect, a chance for the other one to live."¹

However, in the case of Jodie and Mary, as with the Lakeburg twins,² it is not the *death* of one twin that secures the life of the other, even though in both cases the surgeons themselves did not seem to view the death of the weaker twin in negative terms. Suppose that the twins were separated and the weaker twin received donated organs that secured her life. The fact that the weaker twin did not die would not in any way hinder (or help) the survival of the stronger. It is not the death of the weaker twin that is the means of survival for the stronger twin, any more than the death of the fetus is the means of securing the life of the mother in the case of a gravid cancerous uterus. In both cases, the death is not a means but rather is a foreseen side effect.

However, some philosophers have argued that if a side effect is fully foreseen or even if it is only highly likely, then it must also be included in the means as intended.³ This view, however, cannot be held by those who have long treated the removal of a cancerous uterus gravid with a previable fetus as the paradigm case of foreseeing, rather than intending an evil effect, since in this case the death of the fetus is inevitable. Since one

desires what one intends, this view would also lead to the implausible conclusion that doctors *desire* all the harmful foreseen side effects of the medications, surgeries, and treatments that they prescribe.⁴

Thomas D. Kennedy proposes another standard for distinguishing what is intended from what is merely foreseen. Following many authors, he suggests that in the removal of an ectopic pregnancy the embryonic death, though certain and fully foreseen, is nevertheless not intended. However, he believes that the case of Mary and Jodie differs significantly. Kennedy writes:

In the case of ectopic pregnancy, the death of the fetus does not save the life of her mother. We could imagine a removal of the fallopian tube in which the fetus lives and the immediate transfer of the fetus to an artificial womb in which the baby might develop through "birth." Unlikely, indeed, but possible. It is not unreasonable, thus, to consider ~~the death of the fetus an undesirable effect,~~ rather than the means to the mother's preservation in the removal of the fallopian tubes. We cannot think of the removal of Mary analogously. Mary has no functioning heart or lungs. To surgically separate the twins is, thus, to separate Mary from the function of vital organs. We cannot imagine a human being living without vital organs. Thus, to aim at the separation of Mary from her vital organs is to aim at her death, to intend that she die so that her sister may live.⁵

Just as separating someone from food and water is intending to kill them, so too, argues Kennedy, is separating someone from the function of vital organs.

About the case of ectopic pregnancy, Kennedy is absolutely correct. Not only is it possible to conceive of the fetus being removed and surviving initial implantation outside the uterus, in fact there are several documented cases of healthy children born from such a transplantation from a fallopian tube.⁷ Clearly, removing an ectopic pregnancy from a fallopian tube is not necessarily intentional killing.

However, Kennedy seems to be mistaken that one cannot imagine a human being living without vital organs. Unlike, say a married bachelor, or a square circle, a human being living without vital organs is certainly a *logical* possibility. Imagine a person living without vital organs through divine intervention. In fact, one might argue that a human embryo at an early stage of development is a living human being but lacking any vital organs. In addition, separating someone from *his or her* vital organs does not in fact always result in death. Mary, for instance, was living without her vital organs, using instead Jodie's. Similarly, those who use kidney dialysis

machines, iron lungs, respirators, colostomies, etc., all survive without vital organs. Separating a person from vital organs cannot in itself be considered killing, without casting doubt on the moral licitness of artificial heart transplants. Finally, comparing the separated conjoined twins to the removal of food and water from a person would seem to strengthen the case *against* considering the separation as intentional killing. Kennedy writes: "As surely as refusing me access to food and water is to aim at my death, so surely is removing Mary from the vital organs she shares with Jodie to aim at her death."⁷ However, were I to remove all food and water from myself on a hunger strike, few would consider my actions suicidal. If a family in grave danger of starvation were to refuse access to food and water to a stranger, they would nevertheless not be intending the stranger's death, even if they knew he would die. This suggests that Kennedy has not properly distinguished intention from foresight.

The question of distinguishing intention from foresight is a vexing one. What is included in a means to an end? What falls within intention and what lies outside intention? This is a complex and delicate question. Let me just propose for the sake of argument that the following characteristics may help determine what lies within intention and is included in the means. An effect is intended if:

- 1) The achievement of the effect presents a problem for the agent that occasions deliberation.
- 2) The achievement of the effect constrains other intentions of the agent.
- 3) The agent endeavors to achieve the effect, perhaps being forced to return to deliberation if circumstances change

and

- 4) The failure of the agent to realize the effect is a failure in the agent's plan.⁸

If one were to distinguish intention from foresight in the way proposed, then the separation of conjoined twins would not be intentional killing, even if one foresaw that one twin should die. In separating Jodie and Mary, the achievement of Mary's death does not present a problem for the doctors that prompts deliberation. If Mary's death were the goal, there would be more efficient ways of achieving the lethal effect that would also be less dangerous to Jodie. Secondly, achievement of the effect of Mary's death does not constrain the other intentions of the doctors. They would not hesitate to follow a given means of separating the children because it risked

the possibility of Mary's living. Thirdly, the doctors do not endeavor to achieve the death of Mary nor would they "finish the job" if by some miracle Mary survived. Finally, were Mary, *per impossible*, to survive, the original plan of the doctors would have been in no way thwarted. Thus, in separating Mary and Jodie, the death of the weaker twin is an unfortunate side effect, but not an intended means, of saving the stronger twin.

2. Was the Separation of Mary and Jodie Intentional Mutilation?

A second question about the intervention has to do with a person's bodily integrity, that arguably should not be invaded when the consequences of doing so are of no benefit to that person. This is most particularly the case if the consequences are foreseeably lethal. Some have argued that in separating Jodie and Mary, doctors violated Mary's bodily integrity. As William May wrote: "Thus even if Mary's death were merely 'foreseen' and 'not intended,' the invasion of her bodily integrity clearly is. This consideration seems to me to clinch the matter ... Even if Mary's death were not directly intended, surgery intentionally performed on *her body*, for someone else's benefit and *her harm*, clearly is involved."⁹ In other words, though the surgery may not have been intentional killing, it was intentional mutilation. Clearly, to harvest one person's organs to save another person's life would be wrong.

Here is where the metaphysical questions begin. Did Jodie and Mary share just one human body? Did they have two human bodies? Did they have two human bodies with a portion shared? It would seem that they do not simply share one human body since a single human body does not have four arms, four legs and two heads.

Even if this implausible description were adopted, "double effect" reasoning would be in play where one act has two effects — one positive and one negative. However, Lord Justice Ward argued that double effect reasoning is not appropriate in this case: "I can readily see how the doctrine works when doctors are treating one patient administering pain-killing drugs for the sole good of relieving pain, yet appreciating the bad side-effect that it will hasten the patient's death. I simply fail to see how it can apply here where the side-effect to the good cure for Jodie is another patient's, Mary's, death, and when the treatment cannot have been undertaken to effect any benefit for Mary."¹⁰

Although the Lord Justice is correct that double effect has been often used in medical ethics for cases in which the harmful and the helpful effects are borne by the same person, the origin of double effect reasoning came from lethal self-defense, and its consistent application for hundreds of years in cases such as ectopic pregnancy and the gravid cancerous uterus has often involved effects that would benefit one person but harm another.

Thus, applying this kind of reasoning to conjoined twins is not a departure from established uses of double effect. But more on how double effect would apply to this situation later.

Do Jodie and Mary have two distinct human bodies? In some cases of conjoined twins, this is clearly the case. Consider conjoined twins by linked arms that could be easily separated. It would be fairly easy to distinguish clearly between the twins' bodies. William May's assumption, and the Court's, was that Jodie and Mary fall into this category. Where Mary's body ends and Jodie's starts is clearly distinct and according to May, the surgery was on Mary's side of the divide. According to a surgeon testifying to the court, however, the division was right in the divide between them:

Separation of the twins would necessarily involve exploration of the internal abdominal and pelvic organs of both twins and particularly the united bladder. It is expected however that each twin would have all its own body structure and organs. It is not anticipated or expected to take any structure or organ from either twin to donate to the other.... Interruption of the blood supply from Jodie supporting Mary would occur at the level of the united sacrococcygeal vertebrae. This site could be biased towards Jodie.¹¹

On this analysis, it would seem that no mutilation is taking place. The body cavity of both girls is explored and then Mary's body is separated from Jodie's. This exploration and separation is for Jodie's sake and not Mary's, but the same is true in cases of organ donation.

However, a third possibility would be that Jodie and Mary had two distinct bodies with a shared portion. One could clearly distinguish Jodie's head from Mary's, Jodie's arms from Mary's arms, and yet they shared a torso, aorta, bladder, and spinal cord. Even if one accepts the surgeon's description of the proposed separation, clearly there is some shared portion where Mary's half touches Jodie's. The surgery was performed on this shared portion, and not merely on Mary. Would then it be permissible to "invade" the shared portion?

Consider sisters who jointly owned some real estate where selling the land would benefit one, but harm the other. Presumably, the sale would go through only if *both* agreed to it. But let us say that the shared property was a life preserver, and the situation was the sinking *Titanic*. They could share the life preserver and both surely die. Or perhaps they would agree that whoever has the greater chance at life should take the life preserver. It is plausible to suggest that the more fragile sister, if she were generous or even if she were just sensible, would let the sister with the greater chance at

life have the life preserver. Indeed, few would blame and most would pity the stronger sister if she simply took the life preserver from the weaker in a desperate act of self-defense. The life preserver, after all, also belonged to the stronger sister and both weaker and stronger would soon no longer be able to use it. Imagine, however, that the life preserver clearly belonged to the stronger sister with the weaker sister holding on to *the jointly owned strap of the life preserver*. The case for the weaker deferring to the stronger becomes even greater. This situation is analogous to Mary and Jodie because the heart and lungs that were preserving life belonged to Jodie, though they did have in common a shared portion.

Even though a portion in common is shared, the question is not simply of benefiting one person and harming another. The real options are benefiting one party and harming another, or harming *both* parties. One might even argue with Lord Justice Brooke that Mary and Jodie both receive some benefit from the operation insofar as each receives her rightful bodily integrity and physical anatomy through the separation of what nature had misjoined together.¹²

Would this reasoning justify the ghastly possibility that a doctor might remove the organs of a person with severe head trauma and implant them in several waiting subjects? Sacrifice one person to save five others? There are several differences between the cases. A person with severe head injury may live for years; doctors predicted that the twins would die within months. Arguably, they were already in the process of dying. Just as foregoing health care resources is permissible, so too for a person in the process of dying it would be permissible, indeed heroic, for such a person to donate their organs though he or she foresaw (but did not intend!) that this would hasten death. Secondly, the organs of the person with a severe head injury indisputably “belong” to that person. The heart and lungs in question with the conjoined twins perhaps belong to both but it is more accurate to describe them as belonging to the stronger twin, Jodie.

Hence, the case of Mary and Jodie is more like Judith Thompson’s famous violinist who survives through using another person as a kidney dialysis machine. Even if not a good argument for abortion, it does seem plausible that a person would not act wrongly ending the connection with the violinist. Finally, in the case of harvesting the organs of one person to give to others, the person whose organs may be taken does not undermine the well being of those who need the organs.

On the other hand, Mary posed two real threats to Jodie’s well being in addition to the strain put on Jodie’s heart. In the words of Lord Justice Brooke: “(P)ersistent hypoxia in Mary might lead to the release of cytokines which would be capable of crossing over into Jodie’s circulation. Such cytokines are known to be damaging to the brain and might lead to white matter damage, which in turn might lead to the development of

irreversible cerebral palsy. Persistent hypoxia in Mary might also lead to the generation of thromboplastins which would enter Jodie's circulation and cause an abnormality in coagulation, causing a prolongation in clotting time and a tendency to bleed."¹³ Clearly, it would be cruel and inaccurate to portray the innocent and pitiful Mary as an "aggressor." However, allowing blood to flow between them would indeed endanger Jodie's well being unlike the case of taking one living person's organs to save five others.

The objection that separating Jodie and Mary is intentional mutilation might be handled by the principle of double effect or, more accurately since more than one principle is involved, double effect reasoning. Developing the teaching of Thomas Aquinas on lethal self-defense, Jean Pierre Gury offered the most influential formulation of the conditions of double effect reasoning:

It is permitted to posit a good or indifferent cause, from which a two-fold effect follows, one good, but the other bad, if there is present a proportionately grave reason (*causa proportionate gravis*), the end of the agent is honest, and the good effect follows from that [good or indifferent] cause not from a mediating bad one.¹⁴

The act done, exploring the body cavity and separating the twins, is not intrinsically evil. Clearly there are many cases in which it is permissible to separate conjoined twins in which no mutilation or invasion of bodily integrity is present. Nor is exploring the body cavity of Mary intrinsically evil, for in the case of organ donation the body cavity is explored not for the good of the donor but for the good of the receiver.

The good effect is the cessation of the strain on Jodie's heart and lungs; the bad effect is the cessation of oxygenated blood to Mary. It is not the cessation of oxygenated blood to Mary that per se aids Jodie. If Mary's heart and lungs had been sufficiently developed, the bad effect would not have materialized. In fact, a surgeon involved was asked before the operation whether Mary could be kept alive if she were immediately hooked up to a heart and lung machine. He answered that artificial support of Mary's life was indeed possible. The surgeons had not considered that option because there was "no point" in artificial support of Mary's life in light of her gravely disabled condition, the lack of technical feasibility in child organ transplants, and the lack of an available heart and lungs to transplant for such a small patient.¹⁵

Thus, in this case, the removal of the evil effect was not only a theoretical possibility but also an actual possibility. Thus, the bad effect was not the means to the good. Was there a serious reason for allowing the evil effect? This is one aspect of the next difficult question:

3. Was There an Obligation to Separate Mary and Jodie?

The classic reason that justifies allowing one person to die is saving another. In self-defense, one may preserve innocent life even by means that one foresees will take the attacker's life. In the case of a gravid cancerous uterus and ectopic pregnancy, defending the life of the mother justifies allowing the fetus to die. It would seem that efforts to save Jodie would justify the foreseen (but not intended) lethal effect of Mary. If it is justified to separate the twins, is it also obligatory?

An answer to this question must take into account more than just the two lives at stake. In preserving life, one must avoid two extremes. On the one hand, some would say that without a certain quality of life a person should not live. But as Cormac Murphy-O'Connor wrote:

It is seriously unreasonable to seek to justify the ending of someone's life on the grounds that that human being's life lacks value or worth, [note omitted] so that he or she would be better off dead. Judgments of that kind should not be admitted as justifications of intentional killing since they are both arbitrary and admit of no principled way of containing their extension to a variety of other conditions, and so are incompatible with the justice which the law should uphold. The indispensable foundation of justice is the basic equality in worth of every human being.¹⁶

On the other hand, a "vitalistic" ethic which promotes and preserves human life at any and all cost without consideration of other values also misses the mark. There is no obligation to preserve human life regardless of the burdens on others and the one whose life is preserved. Again, in the words of Murphy-O'Connor:

There is no duty to adopt particular therapeutic measures to preserve life when these are likely to impose excessive burdens and the patient and the patients' carers. Would the operation that is involved in the separation involve such "extraordinary means"? If so, then quite apart from its effect on Mary, there can be no moral obligation on doctors to carry out the operation to save Jodie, or on the parents to consent to it.¹⁷

Like so many issues, what is to count as "ordinary" as opposed to "extraordinary" means is itself the subject of some debate.

Let me simply propose, though I cannot here defend, a standard. William E. May, in his article, "Criteria for Withholding or Withdrawing Treatment," writes:

(M)edical treatment is “extraordinary” or “disproportionate” and hence not morally obligatory if *objectively discernible features in the treatment itself, its side-effects, and its negative consequences impose grave burdens on the person being treated or on others*. Excessive burdensomeness is the major criterion, therefore, for determining whether or not to withhold or withdraw medical treatments. Excessive burdensomeness is, one could say, the genus. Species of excessive burdensomeness include riskiness of the treatment, excessive pain of the treatment, the severely negative impact the treatment will have on the subject’s life, treatments judged morally or psychologically repugnant, and treatments that would be too costly and severely imperil the economic security of the patient, the patient’s family, or the community.¹⁸

In the case of conjoined twins, most of these kinds of burdensomeness were in play. Although the surgeons said that treatment would not be excessively risky for Jodie (they projected a 94% likelihood of survival), it was not only risky but also certainly lethal to Mary. And even though Jodie is alive at the moment I write, one study suggests that there is no case in which one twin was sacrificed and the other twin survived more than a year.¹⁹ Although Jodie’s quality of life might be reasonably good, doctors fear that Jodie will experience incontinence, difficulty in walking, and the need for protracted reconstructive surgery.²⁰ The treatment was judged morally and psychologically repugnant by the parents whose love and care for both children were not questioned but assumed by the court. The treatment was costly and severely imperiled the economic security of the children’s family. The father of the twins had been unemployed for eight years; the mother stopped working when she found out she was pregnant. They foresaw years of expensive treatments and disruption to their family if the twins were separated. In fact, they predicted that they would have to place Jodie in an adoptive family living nearer to needed medical care. According to May’s standard, the separation of Jodie and Mary was a paradigm case of extraordinary means, and there is never a duty, even though it may be permissible, to use extraordinary means to preserve human life.

Unfortunately, the court turned what was permissible into what was obligatory. The court noted: “every instinct of the medical team has been to save life where it can be saved... [S]incere professionals could not allay a collective medical conscience and see children in their care die when they know one was capable of being saved.”²¹ Since the operation could not take place against the wishes of the parents unless ordered by the court, the

hospital asked the court to let the doctors fulfill their vitalistic ambitions. Unfortunately, the court obliged them.

The case of Jodie and Mary prompts many questions, and I have tried to answer only three here. Was the separation intentional killing? Was the separation intentional mutilation? Was the separation obligatory? The answer to each of these questions is the result of complex considerations, uncertain assumptions, and careful deliberations, but I believe the deceptively simple conclusion to each question is the same: No.

References

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2. For background on this case see David C. Thomasma, et al., "The Ethics of Caring for Conjoined Twins: The Lakeburg Twins," *Hastings Center Report* 26, no. 4 (1996): 4-12.
3. Roderick Chisholm, "The Structure of Intention," *The Journal of Philosophy* 67 (1970): 636.
4. Philosophers have also contested this view for other reasons. See Joseph M. Boyle, Jr. and Thomas D. Sullivan, "The Diffusiveness of Intention: A Counter-Example," *Philosophical Studies* 31 (1977): 358; Christopher Kaczor, "Distinguishing Intention from Foresight: What is Included in Means to an End," *International Philosophical Quarterly* XLI, No. 1, (March 2001): 77-89.
5. Thomas D. Kennedy, "Shall We Do Evil... The British Siamese Twin Dilemma," A Center for Bioethics and Human Dignity Paper, <http://www.cbhd.org/resources/aps/tdkcomment1.htm>, p. 3
6. C.J. Wallace, M.D., "Transplantation of Ectopic Pregnancy from Fallopian Tube to Cavity of Uterus," *Surgery, Gynecology, and Obstetrics* 24 (1917): 578-579; L. Shettles, "Tubal Embryo Successfully Transplanted in Utero," *American Journal of Obstetrics and Gynecology* 163 (1990): 20-26. In an article in preparation at this writing, Dr. John O'Neill has reported four other cases more recently.
7. Thomas D. Kennedy, "Shall We Do Evil... The British Siamese Twin Dilemma," A Center for Bioethics and Human Dignity Paper <http://www.cbhd.org/resources/aps/tdkcomment1.htm>, pg. 4.

8. For a defense of this view, see Christopher Kaczor, "Distinguishing Intention from Foresight: What is Included in Means to an End," *International Philosophical Quarterly* XLI, No. 1, (March 2001): 77-89.
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10. Lord Justice Ward, *Central Manchester Healthcare Trust vs. Mr. and Mrs. A* section 4.2; the same reasoning is found in the index to the judgment of Lord Justice Brooke, *Central Manchester Healthcare Trust vs. Mr. and Mrs. A* section 15 and Lord Justice Robert Walker, *Central Manchester Healthcare Trust vs. Mr. and Mrs. A* section 31.
11. Lord Justice Ward, *Central Manchester Healthcare Trust vs. Mr. and Mrs. A* section 34.
12. Lord Justice Brooke, ~~*Central Manchester Healthcare Trust vs. Mr. and Mrs. A*~~ section 34.
13. Lord Justice Brooke, *Central Manchester Healthcare Trust vs. Mr. and Mrs. A* section 9.
14. Jean P. Gury, *Compendium theologiae moralis*, 1874, vol. 1, c.2, n.9, pg.5.
15. Lord Justice Ward, *Central Manchester Healthcare Trust vs. Mr. and Mrs. A* section 11.
16. Archbishop Murphy-O'Connor, *A Submission by Archbishop Murphy O'Connor, Archbishop of Westminster, to the court of appeal in the case of Central Manchester Healthcare Trust vs. Mr. and Mrs. A and Re a Child*, 17. For the full submission see: <http://www.westminsterdiocese.org.uk/arch/subtwins.htm>
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20. Lord Justice Robert Walker, *Central Manchester Healthcare Trust vs. Mr. and Mrs. A* section 28.
21. *Central Manchester Healthcare Trust vs. Mr. and Mrs. A* 14, p. 21.