

## THE FUNCTION OF THE PRINCIPLE OF DOUBLE EFFECT

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WITH CONSIDERABLE frequency moral dilemmas have prompted ethicists to turn to the principle of double effect. Questions concerning sterilization, prophylactic devices, hunger-fasts, military strikes, and euthanasia have made us think of the principle as a handy problem-solving device. Raise a moral conflict, and the principle is proffered.

The process of applying the principle is disturbing because it suggests that the principle itself justifies moral solutions. In ordinary use the appeal is made by stating the principle's four conditions, demonstrating that one's proposal conforms to those conditions, and subsequently arguing the licitness of one's position. The appeal presupposes, therefore, that the principle of double effect legitimates moral activity. That presupposition is dangerous, at best.

Many readers can think of occasions when colleagues have invoked the principle to rescue us from otherwise regrettable courses of action. On such occasions the principle is employed to grant permissions, to render certain solutions acceptable, or simply put, to justify the morality of a particular course of action.

The prevalence of this mentality is evident on the eight pages devoted to the principle of double effect in Tom Beauchamp and James Childress's *Principles of Biomedical Ethics*,<sup>1</sup> arguably the most influential textbook today for teaching bioethics at both medical schools and seminaries. After stating the principle's four conditions, Beauchamp and Childress apply them to the case of the cancerous uterus and show how the death of the fetus "is held to be the indirect, unintended effect of a morally legitimate medical procedure." The procedure is legitimated by the principle of double effect. They write that the case of fetal craniotomy in order to save a woman in labor "is disqualified by the principle of double effect." They add that "since a papal decree in 1884, this procedure has been condemned in the Roman Catholic tradition for failing to meet the conditions of the principle of

<sup>1</sup> Tom Beauchamp and James Childress, *Principles of Biomedical Ethics*, 3d ed. (New York: Oxford Univ., 1989) 127–34.

double effect.”<sup>2</sup> On the subject of civilian bombings they write: “Sometimes the principle of double effect is also invoked to justify the deaths of civilians in wartime as the indirect result. . . .” And on administering pain-killers: “If the four conditions of the principle of double effect are met, . . . the patient’s death does not qualify as homicide and is justified.” Discussing theory, they explain: “More generally, appeals to the principle of double effect have been prominent when obligations or values conflict. . . . The double-effect theory is . . . only to determine what is permissible to bring about.” These six instances demonstrate a fairly strong assumption that the principle of double effect is a justifying principle.

In this article I analyze that assumption, asking the question: Does the principle of double effect have a justifying function? By way of response, I first describe how and why the principle was originally articulated. I use the work of Albert Jonsen and Stephen Toulmin in order to show that the simple application of a principle to a case is not the method of true casuistry. Jonsen and Toulmin claim that the method of simple application is geometric, while the method of true casuistry is taxonomic. I build on their evidence and add that the authority of a principle is derived from its genesis, i.e. that the principle is a shorthand expression of the taxonomic relationship among a number of paradigm cases. Next I raise the four most frequently cited cases that use the principle of double effect and apply the principle to the cases geometrically and then taxonomically. I argue that using the principle in the former way vests the principle with unwarranted authority and that, used in the latter way, the principle simply demonstrates that one case is congruent with a paradigm case and that the rightness of the solution is already internal to the case.

#### GEOMETRIES AND TAXONOMIES

Jonsen and Toulmin differentiate two methods for moral reflection. The first is theoretical and finds its prototype in geometry; its arguments are idealized, atemporal, and necessary, and an axiom underpins the particular conclusion. A syllogism is one clear representation of geometric logic. Practical reasoning, on the other hand, uses experience gathered from a variety of cases as a guide for future action. Its arguments are concrete, temporal, and presumptive. It employs “a detailed and methodological map of significant likenesses and differ-

<sup>2</sup> Despite their assertion, I was unable to find any reference to the principle of double effect in any of the many decisions by the Holy Office which during a twenty-year period considered problematic pregnancies and deliveries. Cf. *Acta apostolicae sedis* 17 (1884) 556; 22 (1889) 748; 28 (1895) 383–85; 30 (1897) 703–5; 35 (1902) 162.

ences" between related cases. The authors call this instrument "taxonomy" and, in this case, a "moral taxonomy."<sup>3</sup>

To the extent that the principle of double effect is invoked simply to see whether a case and its solution conform to the four stipulated conditions, to that extent the principle is used geometrically. But, argue Jonsen and Toulmin, contrary to contemporary assumptions, the history of practical reasoning is a history of taxonomic and not geometric method. From antiquity, Aristotle's *Rhetoric*, Cicero's *De inventione*, and the rabbinic *halakhah* demonstrate that the resolution of moral problems occurred through the comparison of cases. Rather than applying a particular rule to a concrete situation, the contours of one case were compared, contrasted and evaluated against other cases that were already held as successfully resolved.<sup>4</sup>

Moral teachers and rabbis, not set prescriptive or prohibitive principles, resolved moral problems. Through their experiential, practical wisdom, they could recognize whether a particular case related to one set of cases or another. Though certain time-honored maxims were invoked, for the most part it was the prudence of the wise that resolved arguments through comparing cases. Their primary wisdom was in the ability to recognize to which set of cases a new case with a new moral problem ought to be compared and measured.<sup>5</sup>

These cases Jonsen and Toulmin call "paradigm" cases.<sup>6</sup> A paradigm case was so called because it enjoyed both "internal and external certitude." The internal certitude was based on the compelling nature of the case's resolution that recommended the case as a clear guidepost; the external certitude was the voice of recognized theologians judging and recommending that the case serve as a paradigm.<sup>7</sup> The paradigm case would set the standard as correct prudential insight and other cases would be measured against the paradigm: if a case was similar to the paradigm, it meant that the solution in the new case was correct. Congruency with a paradigm case, then, highlighted or revealed the fact that the moral logic in the new case was equally correct, that is, congruency made apparent the new case's internal certitude. Moral theologians gave it external certitude by listing the new case within their canons.

<sup>3</sup> Albert Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley: Univ. of California, 1988) 14.

<sup>4</sup> *Ibid.* 47-74.

<sup>5</sup> *Ibid.* 250-66.

<sup>6</sup> *Ibid.* 252.

<sup>7</sup> Yves Congar discusses the authority derived from the *quod* (the argument itself) and the *quo* (the authority figure who articulates the argument) in his important article, "A Brief History of the Forms of the Magisterium and Its Relations with Scholars," in Charles Curran and Richard McCormick, eds. *Readings in Moral Theology 3: The Magisterium and Morality* (New York: Paulist, 1982) 314-31.

For instance, a classic paradigm emerged concerning abortion: the pregnant woman who flees from a charging bull, even as her flight prompts a spontaneous abortion. The case was first presented by Peter of Navarre (d. 1594) who illustrated the position of Antonius de Corduba (1485–1578) that a woman had a “right to protect her life even at the cost of causing an abortion.”<sup>8</sup> Gabriel Vasquez (1551–1604) later employed the same case precisely to deny Corduba’s position: the woman’s flight was an attempt to save both her life and her fetus’s, therefore her flight may result in the fetus’s death, but she may not have an abortion to save her own life.<sup>9</sup> Ioannes Azor (d. 1603) used the case (changing the bull to a raging fire) to argue that a woman could intend to protect her life and use certain means that are not of necessity aimed at abortion.<sup>10</sup> Thomas Sanchez (1550–1610) expanded on the case, considering whether a pregnant woman can take a drug with doubtful effects when she and her fetus are both doomed to death and no other drugs are available. He added the case of the fleeing woman who can escape the bull only by jumping from a cliff.<sup>11</sup>

That case, with its internal and external certitude, became the source for recognizing whether other cases were correctly resolved. Sanchez, Vasquez, Navarre, and Azor each used it as such a guidepost. The resolutions for these new cases were accepted on the grounds of their congruity with the paradigm case. Jonsen and Toulmin name this method “high casuistry”; it antedates any expression of the principle of double effect.

Before the principle’s formulation and after it, the paradigm case (and not the principle) was used to confirm the legitimacy of new moral solutions. But the paradigm case did not justify; it did not give the case authority but revealed the authority the case already enjoyed by its correct internal reasoning. If the moral reasoning was similar to the paradigm, then the case had internal certitude, just as the paradigm case did. Acknowledgement from the moral theologians provided it with external certitude.

Interesting, then, is the way in which seemingly different paradigm cases were involved. For instance, Sanchez wanted to demonstrate that

<sup>8</sup> John Connery, *Abortion: The Development of the Roman Catholic Perspective* (Chicago: Loyola Univ., 1977) 124–29; Navarre makes the case in *De ablaturum restitutione* b. 2, c. 3 (Brescia, 1605).

<sup>9</sup> Connery, *Abortion* 129–31; Vasquez, *De restitutione* c. 2, dub. 7, nos. 27–28 (Lyons, 1631).

<sup>10</sup> Connery, *Abortion* 133; Ioannes Azor, *Institutiones morales* Pars 3, b. 2, c. 3 (Rome, 1610).

<sup>11</sup> Connery, *Abortion* 134–41; Sanchez, *De matrimonio* b. 9, d. 17, n. 15; d. 20, n. 6 (Antwerp, 1620).

a woman, in order to be saved from a life-threatening condition, could be treated with medical "weapons" that could accidentally cause the death of the fetus. He did not use the case of the fleeing woman. In that case, the woman's actions were "indirect." In Sanchez's case the woman was deciding to have action taken against her body, and this positive action would have as a possible side effect the death of her fetus. Thus, Sanchez looked to another paradigm, the case from a just war, on which "all agree": setting "fire to legitimate military targets even though innocent people may perish in the attack."<sup>12</sup> The question of therapeutic abortion was resolved by appeal to a military paradigm.

Before the principle was articulated, Sanchez was able to legitimate a solution by appeal not to the geometric application of the principle of double effect, but rather to a taxonomy of cases. The taxonomy between a paradigm and other cases constituted the method for confirming the resolution of the other cases. Moreover, a taxonomy among several cases revealed a congruency among cases that could be expressed in shorthand. In this way the principles of double effect, toleration, cooperation,<sup>13</sup> and others developed.

We should note that no one looked for a principle that enjoyed its own internal coherence which could be used as a validating principle giving justification to some solutions that conformed to the principle. On the contrary, theologians developed principles like cooperation and double effect by articulating points of agreement among a variety of related cases that enjoyed internal and external certitude. They established the principle of double effect, for instance, by naming some four conditions derived from common and key insights found in the right logic of several cases; the conditions of the principle itself have no necessary, a priori internal coherence.

That the principle of double effect derives from cases can be demonstrated from a variety of sources. First, Jonsen and Toulmin note that in some historical periods formal casuistry was replaced by more structured, abbreviated expressions of moral reasoning. Dependency on the wise personnel evolved into a dependency on formulated methods and rules. On those occasions, a shortage of teachers led to the formulation of such rules to guide the judgments of the less skilled and the less experienced.

The authors describe the transition in classical Roman society from an arbitrating society to a more rule-based one, from pontiffs to stat-

<sup>12</sup> Connery, *Abortion* 139.

<sup>13</sup> See the conclusion in James Keenan, "Prophylactics, Toleration, and Cooperation: Contemporary Problems and Traditional Principles," *International Philosophical Quarterly* 29 (1989) 205-20.

utes. First, as Rome expanded so did the caseload, and less experienced judges had to settle disputes. Since their judgments were not always trusted, rules were articulated to measure the correctness of their decisions. Second, since rules were needed, law schools were established that found the teaching of rules more expeditious than the formation of prudential character. Third, the entrance of non-Romans into Roman society required a concordance between the laws of the new peoples and Roman law itself. Fourth, as the empire grew, so did its bureaucracy, and its operating procedures made further appeal to rules a form of life.<sup>14</sup>

The validity of these rules, then, was derived from their genesis,<sup>15</sup> the prudential insights of the pontiffs. The pontiffs articulated into common denominators the points of congruency among successfully resolved cases. These points of agreement became the foundations and then validating insights for the rules. The argument that a particular principle like double effect is derived from common insights in particular cases of reasoning belongs, then, to the general evolution of many legal devices.

Second, an historical investigation into the principle also testifies to its source. Though Joseph Mangan once argued that Thomas Aquinas first expressed the principle of double effect,<sup>16</sup> Josef Ghooos proved otherwise.<sup>17</sup> Ghooos showed that the moral solutions from the thirteenth through the sixteenth century were of isolated concrete cases. In the sixteenth century Bartolomeo Medina (1528–1580) and Vasquez began to name the common factors among the paradigm cases. Finally, John of St. Thomas (1589–1644) articulated the factors into the conditions of the principle as such.

The argument that the principle derives from cases is made not only from a study of law and the principle's own history, but from philosophy as well. John Kekes provides three arguments against the "received opinion . . . that moral conduct is guided primarily by principles." First, principles simply express already accepted conduct; they

<sup>14</sup> Jonsen and Toulmin, *The Abuse of Casuistry* 54.

<sup>15</sup> See Klaus Demmer, "Sittlich handeln als Zeugnis geben," *Gregorianum* 64 (1983) 453–85. On the other hand, from another perspective, Bruno Schüller argues to differentiate the validity of a norm from its genesis in his "The Debate on the Specific Character of Christian Ethics," Charles Curran and Richard McCormick, eds., *Readings in Moral Theology, 2: The Distinctiveness of Christian Ethics* (New York: Paulist, 1980) 207–33.

<sup>16</sup> Joseph Mangan, "An Historical Analysis of the Principle of Double Effect," *TS* 10 (1949) 41–61. Curiously, Beauchamp and Childress claim Thomas as the original proponent of the principle (*Principles of Biomedical Ethics* 185).

<sup>17</sup> Josef Ghooos, "L'Acte à double effet: Etude de théologie positive," *Ephemerides Theologicae Lovanienses* 27 (1951) 30–52.

are "extracted from conventional conduct prevailing in the society." Second, the principles are revised or rejected to the extent that they continue to conform with our "prevailing practice." Their developments are conditioned by the social practices that originally validated them. Third, it is only to the degree that the practice is commonly accepted that the principle has force, and vice versa. In sum, principles are derived from conventional conduct: "practice is primary and principles are secondary."<sup>18</sup>

Martha Nussbaum makes a similar point and writes with an Aristotelian assumption that "principles are perspicuous descriptive summaries of good judgments, valid only to the extent to which they correctly describe such judgments."<sup>19</sup> Elsewhere she writes, "a good rule is a good summary of wise particular choices and not a court of last resort."<sup>20</sup>

The principle of double effect is a shorthand expression for the congruency among cases that enjoy in themselves internal certitude and were recognized as such through the external authority of moral theologians like Medina and Vasquez. In a word, the principle is the expression of successful taxonomies and, therefore, should be used as such. Its more common use, however, has been geometrical. To demonstrate the difference we now examine four standard cases, using the two methods.

#### GEOMETRICAL APPLICATION OF THE PRINCIPLE

Since the seventeenth century, the principle of double effect has been interpreted to mean that an act with two effects, one right and one wrong, can be performed when four conditions are met. Those conditions address respectively the object of activity, the intention, the material cause of the act, and proportionate reason. The conditions can be enunciated as follows:

1. The object of the action must be right or indifferent in itself; it cannot be intrinsically wrong.
2. The wrong effect, though foreseen, cannot be intended.
3. The wrong effect cannot be the means to the right effect.
4. There must be proportionate reason for allowing the wrong effect to occur.<sup>21</sup>

<sup>18</sup> John Kekes, *The Examined Life* (Lewisburg: Bucknell Univ., 1988) 50.

<sup>19</sup> Martha Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (New York: Cambridge Univ., 1986) 299.

<sup>20</sup> Martha Nussbaum, "Non-Relative Virtues: An Aristotelian Approach," *Midwest Studies in Philosophy* 13: *Ethical Theory: Character and Virtue*, ed. P. French, T. Uehling, and H. Wettstein (Notre Dame: Univ. of Notre Dame, 1988) 44.

<sup>21</sup> See Richard McCormick, "The Principle of Double Effect," in *How Brave a New World?* (London: SCM, 1981) 413-29.

Investigation into the principle of double effect prompts two concerns that need to be noted before proceeding. First, a few writers in recent years argue that the first three conditions are incidental to the principle, and that it is reducible to the fourth condition, proportionate reason. Peter Knauer,<sup>22</sup> Haig Katchadourian,<sup>23</sup> and L. Cornerotte,<sup>24</sup> for example, hold that the principle is really an early expression of proportionate reasoning. Against them, Bruno Schüller notes that the principle is sensible only within a moral method (e.g. deontology) that asserts the possibility of the first condition.<sup>25</sup> Because the first condition excludes intrinsically wrong activity, the principle assumes a reasoning method that recognizes such a category of moral description.<sup>26</sup> Schüller's student Lucius Ugorji provides exhaustive historical research to substantiate his mentor's position.<sup>27</sup>

Thus, in agreement with Schüller and others,<sup>28</sup> I presume that the principle can be used only within a system of moral thought that describes certain activities as prohibited in themselves, i.e. as intrinsically wrong.<sup>29</sup> It was, after all, only on this point that Ghooos agreed

<sup>22</sup> Peter Knauer, "La détermination du bien et du mal moral par le principe de double effet," *Nouvelle revue théologique* 87 (1965) 356–76. See also his "Das rechtverstandene Prinzip von der Doppelwirkung als Grundnorm jeder Gewissensentscheidung," *Theologie und Glaube* 57 (1967) 107–33; "The Hermeneutic Function of the Principle of Double-Effect," in Charles Curran and Richard McCormick, eds., *Readings in Moral Theology 1: Moral Norms and Catholic Tradition* (New York: Paulist, 1979) 1–39.

<sup>23</sup> Haig Katchadourian, "Is the Principle of Double Effect Morally Acceptable?" *IPQ* 27 (1988) 21–30.

<sup>24</sup> L. Cornerotte, "Loi morale, valeurs humaines et situations de conflit," *Nouvelle revue théologique* 100 (1978) 502–32.

<sup>25</sup> Bruno Schüller, "The Double Effect in Catholic Thought: A Reevaluation," in *Doing Evil to Achieve Good*, ed. Richard McCormick and Paul Ramsey (Chicago: Loyola Univ., 1978) 165–91.

<sup>26</sup> Thus the first condition is the foundation for the second and third; the intrinsically wrong activity cannot be engaged as object of activity (first condition), intention (second condition), or material cause (third condition). Thus the principle applies only to those cases where the object, the intention and the cause each approximates but is distinguishable from acting, intending, or causing the intrinsically wrong. These instances are few, Schüller concludes, and therefore the principle has narrow application.

<sup>27</sup> Lucius Ugorji, *The Principle of Double Effect* (Frankfurt am Main: Peter Lang, 1985).

<sup>28</sup> In support of Schüller, see James Keenan, "Taking Aim at the Principle of Double Effect," *IPQ* 28 (1988) 201–6; Richard McCormick, *Notes on Moral Theology: 1965 through 1980* (Washington: Univ. Press of America, 1981) 751–56; Joseph Selling, "The Problem of Reinterpreting the Principle of Double Effect," *Lowain Studies* 8 (1980) 47–62. Beauchamp and Childress also argue that the principle has no significance if it is reduced to consequentialism (*Principles of Biomedical Ethics* 128–29).

<sup>29</sup> On the historical development of the concept "intrinsically evil," see John Dedek, "Intrinsically Evil Acts: The Emergence of a Doctrine," *Recherches de théologie ancienne*



with Mangan,<sup>30</sup> otherwise, the principle would be superfluous and proportionate reason would be sufficient.

Here, however, the second concern emerges. In asserting that the principle only functions within such a moral method,<sup>31</sup> I am not suggesting that the descriptive category, "intrinsically wrong," is epistemologically, philosophically, or theologically legitimate.<sup>32</sup> I cannot contest or affirm here the validity of that category. Yet, because the principle of double effect operated precisely with such a presumption, I distinguish in each of the cases the morally licit activities from "intrinsically wrong" ones. The investigation at hand, then, is not about the validity of the presumption behind the first, second, and third conditions.<sup>33</sup> Rather it asks whether the principle of double effect so understood functions in the mode of justifying moral solutions. We now examine the four cases that are most frequently used in demonstrating the principle of double effect, each of which has its own history.

Case 1 concerns the liceity of bombing a military target in a civilian population, a position accepted since 1570. The practice came under considerable scrutiny during World War II and more recently during the Vietnam war and the war with Iraq.<sup>34</sup> At those times some tried to justify obliteration bombing of civilian areas as military targets by using the principle. Those attempts were rejected by several ethicists

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*et médiévale* 50 (1983) 191–226; "Intrinsically Evil Acts: An Historical Study of the Mind of St. Thomas," *The Thomist* 43 (1979) 385–413; "Moral Absolutes in the Predecessors of St. Thomas," *TS* 38 (1977) 654–80. Dedek argues that the fourteenth century opponent of Thomas Aquinas's writings, Durandus of St. Pourcain, fathered the concept.

<sup>30</sup> Josef Ghoos: "Sous l'influence de Medina tous les auteurs formulent du moins une règle fondamentale, à savoir: quand l'acte causal est mauvais, toute discussion sur la licéité de l'effet nuisible devient superflue" ("L'acte à double effet" 43). Joseph Mangan writes that the first condition of the principle of double effect excludes "the question of performing licitly actions that are evil in themselves, but only those that are good in themselves or at least indifferent, even though these may be vitiated by their effects" ("An Historical Analysis of the Principle of Double Effect" 57). Cf. Salmanticenses, *Cursus Theologicus* t. 7, tr. 13, disp. 10, dub. 6, nos. 211–213.

<sup>31</sup> Gerhard Stanke, *Die Lehre von den "Quellen der Moralität"* (Regensburg: Friedrich Pustet, 1984). See also Brian Mullady, *The Meaning of the Term "Moral" in St. Thomas Aquinas* (Vatican City: Libreria Editrice Vaticana, 1986).

<sup>32</sup> The most important article against the concept remains, I think, Josef Fuchs, "The Absoluteness of Behavioral Moral Norms," in his *Personal Responsibility and Christian Morality* (Washington: Georgetown Univ., 1983) 115–52. See also Bernard Hoose, *Proportionalism: The American Debate and Its European Roots* (Washington: Georgetown Univ., 1987).

<sup>33</sup> Schüller argues throughout his essays that the principle was developed as a way of responding compassionately to some otherwise hurtful solutions. In fact, precisely because some theologians and some magisterial figures continue to define some activity as "intrinsically evil," the principle is still necessary.

<sup>34</sup> John Langan, "The Just-War Theory after the Gulf War," *TS* 53 (1992) 95–112.

and moral theologians.<sup>35</sup> Like them, I consider the restricted, more arguable case: a military target existing *within* the civilian population.<sup>36</sup>

Case 2 concerns the liceity of administering dangerous amounts of painkillers to the terminally ill. This case is considerably popular and its solution was sanctioned by Pope Pius XII,<sup>37</sup> who issued several other medical decisions invoking the double-effect principle.<sup>38</sup>

With arguments again rooted in the late sixteenth century, Augustine Lehmkuhl in 1910 proposed Case 3, the removal of a cancerous uterus, even during a pregnancy. He argued that the procedure corrects a pathological condition and saves the mother's life, while it indirectly kills the fetus.<sup>39</sup> Arthur Vermeersch later supported Lehmkuhl, demonstrating that it was a clear case of double effect.<sup>40</sup> Soon afterwards a debate ensued between Agostino Gemelli and Vermeersch. The former argued that, inasmuch as the removal of the uterus in every case of pregnancy results in the death of a fetus, the surgery is a direct abortion.<sup>41</sup> The latter argued that the removal of the cancerous uterus is medically indicated whether there is a pregnancy or not; thus the abortion is indirect and not direct.<sup>42</sup> John Connery noted in 1977 that Vermeersch's position had met with "general acceptance."<sup>43</sup>

Case 4, the ectopic pregnancy, had a problematic history. Before the end of the nineteenth century, the direct removal of the embryo in

<sup>35</sup> John Ford, "The Morality of Obliteration Bombing," *TS* 5 (1944) 261–309. For a different point of view, Suzanne Uniacke, "The Doctrine of Double Effect," *The Thomist* 48 (1984) 188–218.

<sup>36</sup> Mangan, for instance, gives a dozen seventeenth-century moralists, including, Molina, Becanus, Azor, and Laymann, who cite the case ("An Historical Analysis of the Principle of Double Effect" n. 26).

<sup>37</sup> Pius XII, "Address to Delegates to the Ninth National Congress of the Italian Society of the Science of Anesthetics," *Catholic Mind* 55 (1957) 260–78.

<sup>38</sup> Pius XII, "Allocution to Participants of the VII International Congress of Hematologists," *Acta apostolicae sedis* 91 (1958) 732–33; "The Prolongation of Life," *The Pope Speaks* 4 (1958) 397. See also Leandro Rossi, "Duplice effetto," *Dizionario Enciclopedico di Teologia Morale*, ed. Leandro Rossi and Ambrogio Valsecchi (Milan: Edizioni Paoline, 1987) 293–308.

<sup>39</sup> Augustine Lehmkuhl, *Theologiae moralis I* (Freiburg, 1910) n. 1010.

<sup>40</sup> Arthur Vermeersch, "Avortement direct ou indirect," *Nouvelle revue théologique* 60 (1933) 600–20.

<sup>41</sup> Agostino Gemelli, "Application à l'avortement des notions de causalité per accidens et de causalité per se," *Nouvelle revue théologique* 60 (1933) 500–27; "De l'avortement indirect," *ibid.* 577–99; "Encore l'avortement indirect," *ibid.* 687–93.

<sup>42</sup> Arthur Vermeersch, "Une courte conclusion," *Nouvelle revue théologique* 60 (1933) 694–95.

<sup>43</sup> Connery, *Abortion* 300.

certain situations was considered licit by some moralists. Aloysius Sabetti, for instance, argued on grounds of the woman's right to self-defense against a (material) unjust aggressor.<sup>44</sup> Lehmkuhl argued that in removing the embryo the intention is not directed against the fetus but rather toward saving the mother's life.<sup>45</sup> In 1898 the Holy Office, however, declared that the removal of the fetus is permitted only when provision is made for the lives of each.<sup>46</sup> Then in 1902, to clarify further, the Holy Office stated that the direct removal of the fetus before viability was unacceptable.<sup>47</sup>

Before 1902, several theologians attacked Lehmkuhl's use of the word "direct" as descriptive of the intention rather than of the actual activity. After 1902, Lehmkuhl abandoned this description but, as John Noonan writes, he "refused to accept defeat on the moral propriety of terminating an ectopic pregnancy."<sup>48</sup> Lehmkuhl's new position stated that the ectopic pregnancy was itself a tumor and its removal was an indirect abortion.<sup>49</sup> His position was accepted by Noldin-Schmitt<sup>50</sup> and Sabetti-Barrett,<sup>51</sup> and eventually by Vermeersch as well.<sup>52</sup> T. Lincoln Bouscaren refined it and claimed that in an ectopic pregnancy the tube itself was pathological. Its removal was a simple act of surgery, not a direct killing of the embryo.<sup>53</sup> This solution required, therefore, not the simple removal of the embryo as held earlier, but now, in order to avoid a direct abortion, the excision of the tube as well as the embryo within it. Bouscaren admitted that he "did not think that the analogy between this case and that of the cancerous uterus was perfect."<sup>54</sup>

In the geometric method, each case is measured against the four

<sup>44</sup> Aloysius Sabetti, "De conceptis ectopicis seu extrauterinis," *American Ecclesiastical Review* 9 (1893) 343-60.

<sup>45</sup> Augustine Lehmkuhl, "Excisio foetus atque eius directa occisio," *American Ecclesiastical Review* 10 (1894) 67.

<sup>46</sup> "To the Archbishop of Sinaloa," May 4, 1898, *Acta apostolicae sedis* 30 (1897-98) 703-4.

<sup>47</sup> "To the Dean of the Faculty of Theology of the University of Montreal", March 5, 1902, Denzinger-Schönmetzer, *Enchiridion Symbolorum*, 36th ed. (1976) 1890c.

<sup>48</sup> John T. Noonan, Jr., "An Almost Absolute Value in History," in *The Morality of Abortion*, ed. John T. Noonan, Jr. (Cambridge: Harvard Univ., 1970) 47.

<sup>49</sup> The account appears in T. Lincoln Bouscaren, *Ethics of Ectopic Operations* (Milwaukee: Bruce, 1944) 33.

<sup>50</sup> Noldin-Schmitt, *Summa Theologiae Moralis II* (Rome, 1929) no. 341.

<sup>51</sup> Sabetti-Barrett, *Summa Theologiae Moralis* (New York, 1920) no. 273.

<sup>52</sup> Arthur Vermeersch, *Theologia Moralis* (Bruges, 1928) no. 628. Noonan notes that Vermeersch did not decide in its favor in the 1924 edition.

<sup>53</sup> Bouscaren, *Ethics of Ectopic Operations* 167.

<sup>54</sup> Connery, *Abortion* 303.

conditions of the principle of double effect.<sup>55</sup> Inasmuch as the geometric method requires conformity to each of the conditions, the conditions provide a kind of check list; if the case meets all of them, then the principle justifies the case's solution.

In Case 1, *the military target*, the first condition (object of activity) holds that the direct bombing of a civilian area is the direct killing of the innocent and therefore "intrinsically wrong." The bombing of a military target, however, is permitted in just war. The bombing of a military target in a civilian area is also permitted in just war, because the object of activity is the bombing of a military installation, not the civilian area. This singular act of bombing, then, has two distinct effects: destroying the enemy's war machine and the almost-certain death of some civilians.

The second condition (intention) does not permit the bombing if it is launched for some reason other than destroying the military target, e.g. as an excuse to kill civilians. If, however, the attack is launched, acknowledging though not intending possible civilian deaths, the attack is permitted.

The third condition (material cause) prohibits using the wrong effects as means to the right effects. The right effect in a just war is defeating the enemy. One could not bomb the civilian area simply as a means to defeating the enemy, because that bombing would be intrinsically wrong. But one can still bomb the military target.

The final condition (proportionate reason) argues that the strategic importance of bombing the military target must be weighed against the possible loss of life. If the bombing of the target is important for ending the war (and thereby presumably diminishing the possibility of further loss of life), then the fourth and final condition is fulfilled, and thus the bombing of a military target in a civilian area is permitted by the principle of double effect.

In Case 2, *the use of painkillers*, the first condition (object of activity) rules out a cyanide injection; such an injection by itself directly kills an innocent, and therefore it is intrinsically wrong. But injecting painkillers is not in itself life-taking, and therefore it is permitted. This act has two effects: alleviating the pain of the patient, while endangering the patient's life.

The second condition (intention) prohibits using the painkillers as

<sup>55</sup> In making the application I request a certain tolerance from the reader. Those who are familiar with the volume of writings on how each of these cases conforms satisfactorily or not with the four conditions will realize that it is impossible to engage all the distinctions that have appeared in the course of the discussions. My aim is only to demonstrate the general method employed.

an excuse to kill the patient. Still, though the amount of painkillers needed to alleviate a dying person's pain may endanger the person's life, the injection is permissible as long as death is not intended. Nonetheless, were the pain to subside, an additional injection would be unwarranted and would betray a wrong intention.

The third condition (material cause) proscribes the wrong effect as a means for achieving the right effect; for example, one cannot simply inject cyanide as a means to alleviate a patient's pain. In the permitted case, however, the right effect is not caused by the wrong one: the patient's pain is alleviated by the drugs, not by the patient's death.

The final condition (proportionate reason) maintains that more and stronger dosages are permitted to the extent that the pain is intolerable and the hope of recovery negligible. Thus, since it conforms to all four conditions, the case is justified by the principle.

In Case 3, the case of *the cancerous uterus*, the first condition (object of activity) does not permit a therapeutic abortion because that action would be the direct killing of an innocent and, therefore, intrinsically wrong. But the removal of a cancerous uterus is life-saving surgery and is indicated whether during a pregnancy or not. This morally permitted activity has two effects: saving the mother's life and, during pregnancy, probable death to the fetus.

The second condition (intention) forbids surgery which is done to end the pregnancy; the condition is met when those involved in the activity intend the surgery as life-saving. The third condition (material cause) is met, because the removal of the uterus is causally antecedent to the death of the fetus. Finally, the fourth condition (proportionate reason) is met, because the danger to the mother's life is grave. Thus this case, too, is permitted by the principle of double effect.

In Case 4, the *ectopic pregnancy*, the first condition (object of activity) prohibits any direct abortion as intrinsically wrong. The activity here, however, is the excision of a tube declared to be pathological, and removing a pathological tube is not a direct abortion. Though excising the tube causes additional harm by affecting the woman's chances for fertility, still it avoids the direct removal of the embryo, which was forbidden by the 1902 decision. Responding to the first condition, Lehmkuhl presents a neutral act with two effects: saving the mother's life and the certain death of the embryo.

The second condition (intention) prohibits the surgery if the agents intend the death of the embryo. The third condition (material cause), like the first, departs from Lehmkuhl's earlier resolution. In the earlier case, the removal of the embryo was the means for the mother's cure. But in this newer case, the removal of the tube causes two effects, restoring the mother's health and the death of the embryo. The fourth

condition (proportionate reason) allows for the surgery, because the embryo's life is already doomed and the mother's life is also doomed if nothing is done. Thus the new solution conforms to the principle and is therefore permitted.

Each case meets the required conditions of the principle of double effect. By geometric measurement, conformity to the four conditions legitimates their solutions. In this way each case is related to the other cases only indirectly: their relationship is solely constituted by the fact that each claims to be justified by the same principle. Any congruency is mediated by the four conditions.

#### THE CASES COMPARED TAXONOMICALLY

A taxonomy among these cases first recognizes that the cases can stand on their own; looked at separately, the cases illustrate the prudence intrinsic to them. In one case, someone is concerned about handling a person's pain in extraordinary circumstances without practicing euthanasia as a means, while still pushing the limits of pain relief to its boundary. In another, someone tries both to distinguish the critical conflict between a woman's life-threatening cancer and her pregnancy and to avoid confusing the case's solution with an exception for abortion. In yet another, someone is trying to determine the limits of war but is faced with a modern world, where the boundaries between civilian and military concerns are geographically blurred, and thus attempts to respect the immunity of civilians while also recognizing the legitimacy of just pursuit in war. Each of these is a paradigm, that is, a suitable model of prudential reasoning enjoying, because of that prudence, internal certitude, and also, because that prudence has been recognized by the frequent appeal theologians make to the case, external certitude.

They are paradigms, too, because they serve as prudential guideposts for other cases. For instance, we saw the case of the fleeing pregnant woman evolve from one situation into another. Likewise, our case of the military target is really a modern development from the sixteenth century case of the right pursuit of enemies and villains through gulches and onto roadways inhabited by the poor. To what extent could a local sheriff on horseback endanger the lives of those living in narrow passageways when a villain was fleeing? For example, could the sheriff trample a civilian in pursuit of the criminal? Likewise, by extension, the military-target case enters into urban life: At what speeds and how long can the police chase a criminal in highly populated areas? Each of the cases serves as a paradigm in its own area of concern.

So these cases have a life of their own, quite apart from and antecedent to the principle of double effect. When juxtaposed, Cases 1, 2, and 3 highlight at first glance just how extraordinarily supple prudence is. Faced with problematic activity, prudence guides the agent through difficult waters, avoiding activity that is always explosive, yet still aiming at what must be done. Together they affirm our belief in the power of prudence, which gives these cases their internal certitude.

Certain already of their rightness, we find further points of congruency that emerge as we further compare them taxonomically. First, in each case someone is seeking to perform a morally permitted act: to strike a military installation, alleviate pain, heal a cancer. Yet, second, the activity prompts possible effects that ought never be intended: killing civilians, or a patient, or a fetus. Third, these effects, these killings, are not aimed at by the agent. Fourth, and just as importantly, the activity does not itself include the wrong effects; that is, the effects are accidental, not only to the intention of the agent but to the object of the act itself, for we do, on some occasions, bomb a military installation, administer morphine, and remove a cancerous uterus without ever killing a civilian, a patient, or a fetus. These killings only occur when civilians happen to be in the military installation, when a patient's respirating cannot take the medication, and when the woman with the cancerous uterus is also pregnant.

About the fourth point, however, some may contend that the removal of a cancerous uterus in a pregnancy always results in the death of the fetus, whereas not every attack on a military installation or every administration of morphine leads to certain death. Gemelli argued this way, as we have seen. But here the objection is based on confusing an effect with the object of the activity. Removing a cancerous uterus has no necessary connection with a fetus, nor does bombing a military installation have a necessary connection with civilians. If a fetus is in a cancerous uterus or if civilians are in or near a military installation, they are affected only as effects of the activity. Thus Vermeersch demonstrated Gemelli's error.<sup>56</sup>

This exercise ought not to lead us to the mistaken belief that these cases are right because they have these four points of agreement. Rather, the cases were already recognized for their prudence and then they were juxtaposed so as to find common points that could serve as guideposts for future decision making. I argue, in concert with the central insights of high casuistry, that moral solutions must have pru-

<sup>56</sup> Connery, in agreement with Vermeersch, states that "the distinction between direct and indirect does not depend on the certainty of the effect" (ibid. 297).

dence within them. A solution cannot be made right, justified, or permitted, from without; external certitude is only a declared recognition of an evident internal or prudential certitude.

Yet the taxonomy helps us to confirm our belief that any restrictions on these activities are unwarranted. We argue against new prohibitions such as the following: we can always bomb a military installation, except when there could be civilians there; we can always administer morphine to dying patients in intractable pain, except when their lungs are failing; we can always remove a cancerous uterus, except when there could be a fetus there. Rather we simply say that, so long as proportionate reasons exist, we can bomb military targets, administer morphine, and remove cancerous uteruses. In fact, precisely because civilians, weak lungs, and fetuses enter the picture we do taxonomies to see whether prudence is evident.

Turning to Case 4, the ectopic pregnancy, we may still think that if the removal of the cancerous uterus during pregnancy is legitimate, so is the removal of the defective tube. Introducing a pregnancy into the case of the cancerous uterus is no different than introducing civilians into the military installation. Is not the presence of the embryo just as "accidental" in the excision of the fallopian tube as it is in these other cases? No, and we should see why not.

Admittedly one can cut a fallopian tube at times other than pregnancy. Certainly, just as we can bomb military installations or remove uteruses at times when no innocent life is endangered, so we can cut fallopian tubes. But, in the case of the ectopic pregnancy, we are cutting the tube only because the embryo is there. This case diverges from the other three. We do not bomb the military installation only because it contains civilians, nor do we remove the cancerous uterus only because it contains a fetus. Yet, one's reason for cutting the fallopian tube includes the removal of the embryo.<sup>57</sup> The object of the activity cannot exclude as "accidental" the effect of the embryo's removal, precisely because the embryo's removal is not an effect. Rather, the embryo's removal is intrinsic to the object of the activity: the only part of the tube to be removed is that in which the embryo adheres.<sup>58</sup> Thus the taxonomy highlights the first incongruity.

Comparing this case taxonomically with another one highlights how using the principle geometrically can obfuscate what Lehmkuhl has done. Imagine that the only way a nation can avoid certain annihila-

<sup>57</sup> A similar argument is found in Uniacke, "The Doctrine of Double Effect" 210.

<sup>58</sup> For use of the object in scholastic theology, see Mullady and Stanke's works cited above, and Thomas R. Kopfensteiner, "Historical Epistemology and Moral Progress," *Heythrop Journal* 33 (1992) 45-60.



tion is by complying with its enemy's demands to surrender the bodies of six specific civilians. Could the nation kill those six in order to avoid certain catastrophe? The theologian who follows Lehmkuhl's reasoning responds that, even were we to kill them, we would not be intending their deaths but only intending to end the war. The Holy Office reacts by declaring that this would be direct killing. Then this theologian makes another proposal. Knowing that the six are hiding in an abandoned submarine in a local naval park, he urges bombing the military target. He then reminds us that our intention is directed at ending the war and that the object of our activity is not like the direct killing of the six, which was proposed earlier. The object of the activity now is the destruction of the military target.<sup>59</sup>

Such a theologian thinks that by changing one's activity one changes the object of the activity. What is at stake in each case, however, is a question regarding not our activity but the object of our activity. Though the sinking of a submarine is different from another kind of attack, the object of activity remains the same, assassination. The tube cutting is as much a direct abortion as the sub sinking is a direct assassination.

The new method in the sub sinking is like Lehmkuhl's new method in the tube cutting: it tries to obfuscate what one is doing. While one certainly does not want these killings, one tries to reconfigure the description of activity so as to avoid any incompatibility with the first condition. The attempt was successful when argued geometrically; taxonomically, the attempt is revealed as misleading.

Lehmkuhl's tube cutting highlights the second incongruity, that is, the price of exacting additional and unnecessary harm in order to get the solution to conform to the principle of double effect. In the geometric method, the first key condition of the principle requires that the object of the activity not be morally wrong. Thus, direct excision and direct shootings are excluded. In order to avoid these "direct" actions and in order to meet this condition, one now proposes that we excise the fallopian tube instead of just the embryo, that we bomb the abandoned naval boat instead of shooting the six point blank.<sup>60</sup> In the hope

<sup>59</sup> There is one important incongruency here: the six civilians are not the direct material cause of the nation's destruction; the embryo developing in the tube will be the direct material cause of the mother's death. Two less significant incongruencies are that the six civilians, unlike the embryo, are not necessarily doomed to death and questions about personhood would not be debated in the case of the six civilians.

<sup>60</sup> In a way the two cases are also concerned about the third condition which examines causal connections. Thus the death of the embryo by direct shelling or the deaths of the six by direct shooting would be means to the right effects in both cases and are therefore to be avoided.

of getting the solution legitimated, in both cases we cause unnecessary harm precisely in these newly restructured activities. Yet, taxonomically, we see that prices have been exacted for activities that have the same object but are more costly: endangering the woman's fertility and destroying a military vessel. This is a significant departure from that which gives the paradigm cases such authority: prudence. Any solution that deliberately causes more harm than is necessary manifestly lacks the internal certitude needed for right decision.

Third, not only do the boat bombing and the tube cutting require useless harm, but that requirement was based on something that Sanchez, at least, would find disturbing. The harm was required, because it was thought that by fulfilling the conditions the proposed solution would be acceptable. Justification is sought by conforming expressly to the principle; that is, the solution is seeking its certitude only externally. But the other three cases were already internally certain; their congruency with one another only highlighted that. They did not seek justification; their certitude was recognized. Thus the final incongruity—the belief that law makes right.

The frequent contemporary urge to invoke the principle for certain problems and to offer solutions that are convoluted simply to conform to the principle's conditions is disturbing. The paradigm for this method is found, I think, in the Lehmkuhl case or in my "six men in the submarine" case, but there are related cases, e.g. using perforated condoms for fertility testing or for artificial insemination by a husband. Faced with an obstacle, e.g. no direct abortion, no self-stimulation, etc., a moral theologian tries to find a compassionate solution, but the solution itself lacks right reasoning and, therefore, internal certitude. When we hear proposed solutions in these cases, a doubt arises, a suspicion about "who's fooling whom," a realization that the compelling insights of the paradigm cases are lacking in these newfangled methods. When we try to get a solution that the principle's four conditions will justify, so that the introduction of new techniques will make the solution conform to the principle of double effect, we have a sure sign that something is amuck with our moral reasoning. And indeed there is. By turning to the geometric method, we have replaced prudence as the arbiter for moral judgment with a principle that lacks justifying authority.

#### THE FUNCTION OF THE PRINCIPLE OF DOUBLE EFFECT

The incongruities between the case of the ectopic pregnancy and the paradigm cases highlight how the geometric method vests the principle with unwarranted and unfounded authority. More exactly, the

incongruities highlight the lack of internal certitude in that case. In the absence of internal certitude, one cannot expect the principle of double effect to impose certitude from outside. External certitude is always subsequent to, and therefore conditioned by, internal certitude.

To argue that the principle's function is to justify is to assume that the moral certitude of a case is derived from without. Mangan, for instance, assumed this in his treatment of the complex account of Eleazar in *1 Maccabees* 6. There Eleazar ran under an elephant bearing the king of the enemy. He killed the elephant knowing it would crush him, even in his very act of delivering the king to his fellow Jews. Mangan wrote, "This brave deed is one of the scriptural deeds justifiable under the principle of double effect."<sup>61</sup> Francis O'Connell, likewise, called the episode "a striking example of a lawful application of the principle of double effect."<sup>62</sup> John P. Noonan does the same.<sup>63</sup>

If Eleazar needed justification, who else does? Do the Egyptian midwives who "lied" to protect the baby Moses? Does Moses when he visits plagues on the Egyptians? Does Abraham for his statement that Sarah is his sister or for his intention to slay Isaac? Does Jesus when he allows himself to be crucified? Are these among those "scriptural deeds justifiable under the principle of double effect"?

The assumption is troubling on two points. First, by seeking justification it implies that right ways of acting may not be right and so undermines the internal (and other external) authority that right ways of acting already possess. Second, by attempting to justify them we reduce these significant acts to nothing more than "lawful applications" of the principle of double effect. The intrusion of legalisms into moral theology is no less problematic when they intrude into biblical theology.

If the function of the principle of double effect is not justifying, it may be an exception-granting principle.<sup>64</sup> But when the principle is exception making, an error is apparent.<sup>65</sup> The first three cases are not exception making. Their solutions are not exempt from the prohibition against the direct attack on civilians, the practice of euthanasia, or direct abortion. Curiously, inasmuch as Lehmkuhl's solution is the

<sup>61</sup> Mangan, "An Historical Analysis" 42.

<sup>62</sup> Francis O'Connell, "Double Effect, Principle of," *New Catholic Encyclopedia* (New York: McGraw-Hill, 1967) 4.1021.

<sup>63</sup> John P. Noonan, *Ethics* (Chicago: Loyola Univ., 1947) 41-42.

<sup>64</sup> Richard McCormick, *Notes on Moral Theology 1981 through 1984* (Lanham, Md.: Univ. Press of America, 1984) 10. McCormick generally treats the principle as confirming; see his *Notes on Moral Theology 1965 through 1980* 711-23.

<sup>65</sup> Important here is Paul Ramsey's "The Case of the Curious Exception," in *Norm and Context*, ed. Gene Outka and Paul Ramsey (New York: Charles Scribner's Sons, 1968) 67-135.

same as a direct abortion, his solution appears in reality to be an exception to the prohibition.<sup>66</sup> (This is another sign that the case is not congruent with the first three cases.) But any argument that the principle is exception granting instills the principle with a justifying function, because the exception is only granted when the solution meets the four conditions of the principle. But I hope I have demonstrated that the principle does not have the function of justifying.

The principle has a heuristic and confirming function.<sup>67</sup> If a new case "meets" the principle's conditions, the principle provides the heuristic insight that the case's logic seems comparable to the logic in the paradigm cases. That suggested congruency then directs us to ask further whether the case's solution is prudential. If the case enjoys internal certitude, we can return to the principle, or better, to the paradigm cases; if the new case successfully compares with the paradigms, then the principle confirms the internal certitude that it highlights.

The three paradigm cases have their validity confirmed by their mutual congruency, which further affirms their internal and external certitude; they do not need to be justified by the principle of double effect. Though Pope Pius XII, for instance, invoked the principle to demonstrate the legitimacy of the second case, the case was already legitimated, first by its internal certitude, second by its congruency with the other cases, and third by Pius XII's own (external) certitude about its solution. The principle, then, only served as a vehicle to express what was already evident in the congruency of the cases. Unless the case suggests at least its own internal certitude and can be found congruent with related cases, there can be no subsequent confirmation. The principle of double effect helps highlight that one case is congruent with a paradigm, that it enjoys both internal and external certitude.

#### THE ECTOPIC PREGNANCY

I have used one case, Lehmkuhl and Bouscaren's solution to the case of the ectopic pregnancy, to illustrate the proper function of the prin-

<sup>66</sup> Denis O'Callaghan, "Moral Principles and Exception," *Furrow* 22 (1971) 686-96. Cf. Richard McCormick, "A Commentary on the Commentaries," in *Doing Evil to Achieve Good* 210-12.

<sup>67</sup> This is recognized by Benedict Ashley and Kevin O'Rourke, *Healthcare Ethics: A Theological Analysis* (St. Louis: Catholic Health Assoc. of the U.S., 1989) 187; Philippa Foot, "The Problem of Abortion and the Doctrine of Double Effect," *Virtues and Vices* (Oxford: Basil Blackwell, 1981) 19-32; Bruno Schüller, "The Double Effect in Catholic Thought"; Joseph Selling, "The Problem of Reinterpreting the Principle of Double Effect."

ciple of double effect. I argue that the case is not congruent with the cases that ground and legitimate the principle. In doing that, however, I do not believe that ending an ectopic pregnancy is wrong. I only deny Lehmkuhl and Bouscaren's solution.<sup>68</sup> To confirm that ending an ectopic pregnancy is morally right, we can look for congruency with other internally-certain cases that belong to a rubric other than double effect.

One set of cases involves self-defense in the case of the material unjust aggressor. Despite protests against such an analogy,<sup>69</sup> any number of moralists have considered it. Sanchez on one occasion called the fetus a "quasi-aggressor."<sup>70</sup> Paul Laymann (1574–1635) argued that in life-threatening situations the fetus is an unjust aggressor, and that therefore the woman has a right to defend herself.<sup>71</sup> Theophile Raynaud (1582–1663) stated that the fetus is obviously not a formal unjust aggressor, that is, it does not *intend* to threaten her life, but that it is a material unjust aggressor, because, intention aside, the fetus is *de facto* a threat to her life.<sup>72</sup>

These kinds of solutions were again raised in the nineteenth and twentieth centuries in the craniotomy controversy.<sup>73</sup> Moralists then affirmed or denied any comparison of the fetus to the unjust aggressor. Curiously, however, the unjust-aggressor position was abandoned when it was argued that in the craniotomy case the fetus was not anywhere that it should not be, and that therefore the mother's body, not the fetus's, threatened the mother's life.<sup>74</sup>

What distinguishes the ectopic pregnancy from the case of the cra-

<sup>68</sup> Just as problematic is extending the principle to the direct removal of the ectopic pregnancy; see Jean deBlois, "New Therapies for Ectopic Pregnancy," a proposal circulated with the monograph *Ethical Issue in Health Care* 10.9 (Center for Health Care Ethics, St. Louis University Medical Center, n.d.).

<sup>69</sup> Suzanne Uniacke ("The Doctrine of Double Effect" 211) cites H. J. McCloskey as saying that this suggestion by an "ingenious exponent" "has been rejected by most exponents of the theory" (*Meta-Ethics and Normative Ethics* [The Hague: Nijhoff, 1969] 216). This is a gross oversimplification.

<sup>70</sup> Connery, *Abortion* 136–38; Sanchez, *De matrimonio*, b. 9, d. 20, no. 6 (Antwerp, 1620). Notice, however, how Sanchez is wrongly taken out of context in Connery 157–159.

<sup>71</sup> Connery, *Abortion* 159; Laymann, *Theologia moralis*, b. 3, t. 3, p. 3, c. 4, no. 2, q. 2 (Lyons, 1681).

<sup>72</sup> Connery, *Abortion* 160–62; Theophile Raynaud, *De ortu infantium* c. 9 (Lyons, 1665).

<sup>73</sup> In the eighteenth century the position was rarely cited, though the moralists still considered ways of saving the mother at the fetus's expense (see Connery, *Abortion* 168–88, 201). Still, the position surfaced: Concina (1687–1756) and Mazzotta (1669–1746) held that only an unanimated fetus could be an unjust aggressor.

<sup>74</sup> Connery, *Abortion* 225–303; see J. G. Waffelaert's arguments at 270–83.

niotomy is precisely that in the former the embryo has implanted itself where it should not be. Thus the arguments used to dismiss identifying the fetus as the material unjust aggressor in the craniotomy case are precisely the reasons for accepting it in the ectopic pregnancy. Had that same debate been held on the ectopic pregnancy, the material-unjust aggressor argument might have won external certitude. Consequently Sabetti's position and not Lehmkuhl's might have won the day: ending an ectopic pregnancy would be like acting in self-defense.<sup>75</sup> Moreover, this suggestion has precedence. Sanchez drew an analogy between the woman's right directly to attack disease in her body and the case of legitimately striking military targets where civilians may be killed. He thus paved the way for the case of the cancerous uterus being congruent with the case of the attack on military installations.

Invoking such bellicose analogies, however, may be inappropriate in explaining why a woman has no obligation to die during her pregnancy.<sup>76</sup> Analogies from warfare that require us to identify a woman's fetus as her enemy may stretch the limits of possible congruency. Abandoning that military approach, we may want to look at the case of the cancerous uterus and the original paradigm, the fleeing woman. Perhaps the question of saving a pregnant woman's life is unique enough to deserve its own constellation of cases.

To these we can add a third case with internal certitude, the ectopic pregnancy. After all, Bouscaren, Lehmkuhl, and Vermeersch knew that ending the ectopic pregnancy was morally right activity. As Noonan noted earlier, "Lehmkuhl refused to accept defeat on the moral propriety of terminating an ectopic pregnancy." The internal certitude that that case enjoyed is precisely what prompted those who wanted to admit their external certitude to look for a confirming principle in the first place.

If we took these certain cases and their attendant external certitude, we could join others like John T. Noonan, Jr., who writes of these cases that "the principle that can be discerned in them is, whenever the embryo is a danger to the life of the mother, an abortion is permissible. At the level of reason nothing more can be asked of the mother."<sup>77</sup> We can only add that the justification for that rule already exists. The justification lies in the internal and subsequent external certitude of the three cases.

<sup>75</sup> Pius XII in the second part of *Casti connubi* asks how one could call a fetus an unjust aggressor.

<sup>76</sup> Lisa Sowle Cahill, "Abortion and Argument by Analogy," *Horizons* 9 (1982) 271-87.

<sup>77</sup> John T. Noonan, Jr., "How to Argue about Abortion," in *Life or Death—Who Controls?* ed. Nancy C. Ostheimer and John M. Ostheimer (New York: Springer, 1976) 125.