

# Issues for a Catholic Bioethic

Proceedings of the International Conference  
to celebrate the Twentieth Anniversary  
of the foundation of The Linacre Centre  
28-31 July 1997

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HIGHSMITH #45110

## Is the 'medical management' of ectopic pregnancy by the administration of methotrexate morally acceptable?

### I.

CHRISTOPHER KACZOR

I BELIEVE THE answer to this question must be a qualified "no." Pope John Paul II in *Evangelium Vitae* wrote: "Therefore, by the authority which Christ conferred upon Peter and his Successors, and in communion with the Bishops of the Catholic Church, I confirm that the direct and voluntary killing of an innocent human being is always gravely immoral."<sup>1</sup> John Paul later applies this principle specifically to the case of abortion: "[B]y the authority which Christ conferred upon Peter and his Successors, in communion with the Bishops – who on various occasions have condemned abortion and who in the aforementioned consultation, albeit dispersed throughout the world, have shown unanimous agreement concerning this doctrine – I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being."<sup>2</sup> He continues: "This evaluation of the morality of abortion is to be applied also to the recent forms of intervention on human embryos..."<sup>3</sup> Arguably these moral principles are infallibly taught in accord with the teaching of *Lumen Gentium* as cited in the notes that follow the proclamations. Although I believe that such teachings are also philosophically defensible, today I will not defend these principles but instead will presuppose that a Catholic answer to the questions raised by ectopic pregnancy must be in accord with these principles.<sup>4</sup> My remarks then will presuppose both that intentionally killing, mutilating, or risking the injury of an innocent person is morally wrong and that human life from the moment of conception should be given the respect accorded to an innocent person.

The application of these norms to concrete cases is in many ways difficult. The word "direct" in the quotation from *Evangelium Vitae* refers to the intention of an

<sup>1</sup> John Paul II, *Evangelium Vitae*, 57, emphasis in the original.

<sup>2</sup> John Paul II, *Evangelium Vitae*, 62, emphasis in the original.

<sup>3</sup> John Paul II, *Evangelium Vitae*, 62.

<sup>4</sup> I assume throughout that the human conceptus implanted in the fallopian tube should receive the respect due innocent human life.

agent and is used in this context in contrast to the "indirect" or the foreseen effects of an agent's act. Hence, one's account of intention determines whether or not a given act resulting in death should be accounted as "direct" or "indirect" killing. In addition, even if one does not intend an evil effect, nevertheless even permitting or allowing an evil effect can, at least at times, be morally wrong.

The first question at hand is the following. Is the use of methotrexate to treat ectopic pregnancy direct or intentional killing? Methotrexate is one non-surgical method of managing ectopic pregnancy. It is also used to treat forms of cancer and arthritis. The drug acts in the case of ectopic pregnancy by inhibiting cellular reproduction in the recently conceived.<sup>5</sup> The drug thus simultaneously injures the conceptus and relieves the possible danger to the mother. Is the negative effect of embryonic death intended or not?

One account of intention, arguably put forward by Aquinas and clearly put forward by later writers in the Catholic tradition, holds that not only the immediate effect desired but also all concomitant effects are intended by the agent. On this 'broad' account of intention, the good desired effects and evil undesired effects, in so far as they are chronologically simultaneous and are always or often connected, are all considered intended. If one goes jogging, one intends all that is necessarily connected with and/or chronologically simultaneous with jogging, i.e., perspiring, increasing one's heart rate, wearing out one's running shoes, becoming more healthy, etc. If one adopts this 'broad' account of intention, then even though the death of the human conceptus caused by the administration of methotrexate is not desired as effecting the end of preserving the life of the mother, the death is nevertheless intended. Given this broad account of intention, the use of methotrexate to treat ectopic pregnancy is intentional or "direct" killing of an innocent person. Hence, it is "gravely immoral."

The other account of intention held by a number of authors in the Catholic tradition has been called the 'narrow' account of intention. On the 'narrow' account of intention, one advocated by Germain Grisez and John Finnis among others, only what is one's goal and what is chosen precisely as contributing to the achievement of one's goal is properly said to be intended. When one jogs with a view to becoming healthy, becoming healthy as a result of jogging and all that contributes in the activity of jogging to becoming healthy, such as a rise in heart-rate, are properly intended by the agent. Other aspects of the act, say wearing out one's running shoes, are not intended, even though these effects may be necessarily connected and chronologically simultaneous with running.

If one adopts a narrow account of intention, then the death of the human conceptus in the use of methotrexate to treat ectopic pregnancy would not be intended. The death as such contributes nothing to the restoration of health in the mother. The cessation of growth and a change in the location of the human conceptus alone are intended. If the narrow account of intention is true, then in

<sup>5</sup> Jean DeBlois CSJ, 'Ectopic Pregnancy' in Jean DeBlois CSJ (ed) *A Primer for Health Care Ethics: Essays for a Pluralistic Society* Washington, D.C.: Georgetown University Press 1996, p. 209.

# 'MEDICAL MANAGEMENT' OF ECTOPIC PREGNANCY

using methotrexate to treat ectopic pregnancy, one does not intentionally or "directly" kill an innocent person.

One does however strictly intend to inhibit the cellular reproduction of the newly conceived and its necessary supporting organ the trophoblast. This intended effect, without further addition, constitutes a serious injury to the health of the fetus. Intending to inflict serious injury on the health of another, except, according to some writers, by those responsible for the common good, is forbidden as a form of mutilation (on the reasons why mutilation is wrong, one may want to look at St Thomas Aquinas, *Summa theologiae* 2a 2ae q.65 art. 1). Hence, although one does not on the narrow account strictly intend to *kill* with the use of methotrexate, one does strictly intend to *mutilate*. Mutilation, like the intentional killing of the innocent, is an intrinsically evil act. Hence, the use of methotrexate is not licit, even if one adopts a narrow account of intention.

Nor can one invoke in this instance the 'principle of totality', as we could for example in the removal of a cancerous organ. For the mother and conceived child are not one being, or one totality, but two. The use of methotrexate is aimed at affecting the newly conceived and not at affecting merely a part of the woman's body, as is the case in the removal of a gravid cancerous uterus. The conceived human person does not belong to the mother nor is the 'value' of the embryo contingent upon its contribution to the mother's health as are the organs of the mother's body.

Hence, given a broad account of intention, the use of methotrexate is illicit under the description of the intentional killing of the innocent. Given a narrow account of intention, the use of methotrexate to treat ectopic pregnancy is illicit under the description of mutilation of the conceptus.

There is, however, one kind of case described as "ectopic pregnancy" in the literature in which the use of methotrexate *per se* is not morally objectionable. These are cases of what is called "persistent ectopic pregnancy."<sup>6</sup> Sometimes, although the human conceptus is no longer present, the trophoblast (the layer of tissue which normally nourishes the newly conceived) continues to develop. This continued growth can lead to hemorrhaging, just as in the case of the growth of the human embryo in the tube. Use of methotrexate in cases of "persistent ectopic pregnancy" would be neither intentional killing nor intentional mutilation, and hence would be, other things being equal, licit.

It is far from clear however that other things are indeed equal. Counterfactually let us suppose that the use of methotrexate in order to effect the human conceptus was neither intentional killing nor intentional mutilation. This alone could not allow one to conclude that the use of methotrexate is licit. It would seem clear that on either account of intention, an agent ought to avoid foreseen evil effects, if this can be reasonably done. Thomas's account of self-defense as offered in *Summa theologiae* 2a 2ae, question 64, article 7 is helpful

<sup>6</sup> Hans-Göran Hagström MD, Mats Hahlin MD, Barbro Bennegard-Eden MD, Peter Sjöblom PhD, Jande Thorburn MD, and Bo Lindblom MD, 'Prediction of Persistent Ectopic Pregnancy after Salpingostomy' 84 (1994) *Obstetrics and Gynecology*, pp. 798-802.

here. "[I]t can happen that some act proceeding from a good intention, be rendered illicit, if it is not proportioned to the end (*proportionatus fini*). Therefore," Thomas writes, "if someone for the sake of defending his life uses *more force than is necessary* it will be illicit." If one can defend one's life from attack by fleeing rather than fighting, one ought to flee. If one has to fight, one ought to use lighter force rather than deadly force if both will secure self-defense.

The treatment of ectopic pregnancy by methotrexate may be such a case of using deadly force when lighter force can achieve the same end. Methotrexate can be used only in early ectopic pregnancy before rupture or other serious damage to the fallopian tube. At this stage of ectopic pregnancy, there are other options available that will both secure the protection of the mother's health and preserve the mother's fertility in the affected fallopian tube.

There are three such options. The first option is known as salpingostomy, that is, the surgical removal of the embryo alone leaving the tube intact. If one adopts a narrow account of intention, salpingostomy, that is the opening of the tube and the "gentle" removal of the conceptus,<sup>7</sup> may be seen as licit. The death itself contributes nothing to the goal of preserving the mother's life, but only the alteration in the location of the human embryo. In fact, salpingostomy will often, *but not necessarily*, bring about the death of the conceptus. In the majority of cases the newly conceived does die. Still, there is one documented case of a salpingostomy resulting in the live birth of a healthy baby boy.<sup>8</sup> Advances in microsurgery could make salpingostomy an even more attractive option for preserving the newly conceived life while also retaining the functional capacity of the fallopian tube.

The second option is the removal of the segment of the tube containing the pregnancy with subsequent anastomosis or reconnection of the two sections of the tube. This technique, a form of the longstandingly approved "salpingectomy," that is, the removal of the entire tube along with the human embryo, is fully licit on either a wide or a narrow account of intention. The death of the embryo is not, in these cases, a means or an end to preserving the mother's life. At the same time, this form of salpingectomy preserves the mother's fertility.

Nor can we assume in an attempt at a *reductio ad absurdum*, following James Keenan, that even salpingectomy fails to fit the Principle of Double Effect paradigm of the removal of a cancerous gravid uterus. On this view, if we applied traditional Catholic teaching to the question of ectopic pregnancy, we would be forced to simply stand by and hope that the conceptus spontaneously aborted, knowingly doing nothing to prevent the likely death of the mother. Hence, traditional principles cannot be applied to this case.

Although it is true that in the case of ectopic pregnancy the presence of the embryo is not 'accidental' to the excision of the tube, i.e., "the embryo's removal is intrinsic to the order of activity; the only part of the tube to be removed is that in

<sup>7</sup> Jean DeBlois CSJ, 'Ectopic Pregnancy' in *op. cit.*, p. 209.

<sup>8</sup> C J Wallace MD, 'Transplantation of Ectopic Pregnancy from Fallopian Tube to Cavity of Uterus', 24 (1917) *Surgery, Gynecology, and Obstetrics* pp. 578-579.

which the embryo adheres", it does not follow that salpingectomy is illicit according to traditional principles. Indeed, the two cases are not perfectly analogous. In one case the womb is removed because of cancer and in the other case the tube is removed because of the embryo. However, in both cases – and here the analogy between the cancerous uterus case and the ectopic pregnancy case holds – though the causes are different the result is the same – a pathological organ. The tube is a damaged one, one that threatens the life of the mother now through uncontrolled bleeding and threatens in the future through increased likelihood of recurring ectopic pregnancy. Even if the embryo were dead, the tube would often still need to be removed. The presence of the embryo is in this way, the relevant way, directly analogous to the presence of the fetus in the case of the cancerous uterus.

Finally, there is the "milking" or "squeezing" technique. Medical doctors Diamond and DeCherney describe this technique as follows: "In this procedure, the tube is grasped just proximal to the site of dilation and then compressed, advancing toward the infundibular aspect of the tube. In this manner, the products of conception are excluded from the fimbria."<sup>9</sup> Like the salpingectomy, the "milking" technique avoids the intentional bringing about of the evil effect on either a broad or a narrow account of intention. This "squeezing" technique leaves open the possibility of the pregnancy proceeding in a normal way. Most often the newly conceived dies, but implantation in the uterus is not a possibility which can be altogether excluded.

This "milking" technique when compared with the use of methotrexate is better not only for the newly conceived but also for the mother. The milking technique avoids the side effects associated with the use of methotrexate while also being effective in preserving both maternal health and respect for the human conceptus. A study by Capi and Sherman concludes: "[T]he postoperative results [of the milking technique] are remarkably good, even when compared with the more popular salpingostomy. When tissue is handled gently and vigorous 'milking' efforts are avoided, this procedure is not only harmless but may technically prove to be the simplest and the most beneficial in terms of subsequent fertility."<sup>10</sup> Although other studies suggest an increase in the rate of future ectopic pregnancies as a result of this technique,<sup>11</sup> this option at present seems like the most promising way of treating ectopic pregnancy detected at an early stage.

Although the use of methotrexate is advantageous in not being a surgical intervention, the use of such a powerful drug may be in the end even more disadvantageous than surgery. Methotrexate, as is well known, has many side

<sup>9</sup> Diamond and DeCherney, 'Surgical Management of Ectopic Pregnancy' in 30 (1987) *Clinical Obstetrics and Gynecology* p. 205.

<sup>10</sup> Capi and Sherman, 'Tubal Abortion and Infundibular Ectopic Pregnancy' in 30 (1987) *Clinical Obstetrics and Gynecology* p. 162.

<sup>11</sup> Some studies report an increase in the rate of future extrauterine pregnancies (Oelsner, 'Ectopic Pregnancy in the Remaining Tube and the Management of the Patient with Multiple Ectopic Pregnancies' 30 (1987) *Clinical Obstetrics and Gynecology* pp. 225–229, at 226) others do not (Capi and Sherman, *op. cit.*, p. 162).

effects avoided by the other options about which we have spoken. The reported side-effects of methotrexate in the treatment of ectopic pregnancy include upset stomach, nausea, vomiting, sleeplessness, hot flushes, sores in the mouth, abdominal pain, loss of appetite, diarrhea, dizziness, mood alterations, decrease in red blood cell count requiring blood transfusion, and, rarely, lung and liver damage. Of course, the side effects vary from person to person and some side effects may be decreased or eliminated with the use of other drugs. Still, these side effects of methotrexate have resulted in hospital stays, documented in one study, of between 8 and 25 days.<sup>12</sup> These powerful side-effects have caused some medical doctors to question the usefulness of methotrexate in treating ectopic pregnancy: "At this point in time, chemotherapy [by means of methotrexate] offers a viable alternative to surgery in a small select number of cases as mentioned above. Its routine use is not yet justified, however, where conservative surgery [i.e., salpingostomy] has proven efficacy."<sup>13</sup> Louis Weinstein, in the *American Journal of Gynecology*, wrote: "Simply stated, the use of a potent antineoplastic, anti-metabolite drug, methotrexate, for treatment of an ectopic pregnancy is inappropriate and potentially dangerous."<sup>14</sup>

In conclusion, the use of methotrexate to treat ectopic pregnancy is not morally justified. If the broad account of intention is adopted, then its use is morally excluded under the description of intentionally killing an innocent person. If the narrow account of intention is adopted, then its use is morally excluded under the description of intentionally mutilating an innocent person. Finally, even if the use of methotrexate is not illicit as intentional killing or mutilating, it is disproportionate to its end. Given the other options of treatment available, options less harmful to both mother and child, the use of methotrexate brings about foreseen evil effects that one could have and should have avoided.

<sup>12</sup> Steven J Ory MD, Alelei L Villanueva MD, Peter K Sand MD, and Ralph K Tumura MD, 'Conservative Treatment of Ectopic Pregnancy with Methotrexate' *American Journal of Obstetrics and Gynecology* (June 1986) pp. 1299-1306, at 1304.

<sup>13</sup> Bruce S Shapiro MD, 'The Nonsurgical Management of Ectopic Pregnancy' 30 (1987) *Clinical Obstetrics and Gynecology* pp. 230-235, at 232.

<sup>14</sup> Quoted in Steven J Ory MD et al., *op. cit.*, p. 1304.

GERALD GLEESON

DR CHRISTOPHER KACZOR's argument that methotrexate ought not be used in the treatment of an ectopic pregnancy is a powerful one. Given that methotrexate (MTX) prevents the continued development of the embryo, it is not difficult to see why one would conclude that its use constitutes a direct killing of the embryo in the interests of the mother's health and future fertility. Nonetheless, many people do not think that "directly killing or harming the embryo" is always the appropriate description for this use of MTX. They regard an ectopic pregnancy as a pathological situation which threatens the lives of both mother and embryo, and they simply look to whatever surgical or chemical intervention is indicated as the most effective and least invasive way of resolving this situation, while doing minimal harm to the mother's future reproductive capacity.

In this response I explore points of unresolved tension in Catholic moral theology which might provide a basis for justifying the latter view. I will consider three issues of method in moral theology which are relevant to this and to other difficult moral questions, such as the early induction of a fetus which is unable to live independently, methods of fertility testing for males, ways of assisting human conception, the withdrawal of nutrition and hydration, the use of condoms to prevent transmission of HIV, and so on. The resolution of all these disputed questions turns on crucial judgments about the correct description of an agent's moral object, of what an agent is actually doing, and about what constitutes an "intrinsically disordered" kind of action. The three issues I will consider are: (a) the relationship between moral principles and particular cases; (b) the characterisation of the moral object in direct killing; and (c) the principle of double effect.

In the course of my discussion it will become clear why I am considering the justification of the use of MTX only in those cases in which it is morally certain that the life of the embryo cannot be saved. I agree, of course, that to the extent to which it is possible, without endangering a mother's health or life, either to wait or to intervene in order to give a developing embryo a chance of survival one should do so (e.g. by using the squeezing technique mentioned by Dr Kaczor). As early diagnosis and micro-surgery techniques advance further, we may expect the possibilities for saving embryos which have not implanted correctly to increase markedly. Accordingly, I will argue that the most decisive consideration with respect to the moral evaluation of MTX is not so much the physical effect of the drug, but whether, in the circumstances of its proposed use, there is an obligation to give the embryo an opportunity to continue to develop.

### 1. The relationship between principles and cases

The straightforward moral objection to the use of MTX is that it involves an assault on the developing embryo, since it inhibits DNA synthesis, and the development of



the trophoblastic cells, as the embryo embeds itself in the tissue of the mother's fallopian tube. The central moral question, therefore, is whether this use of MTX involves "direct killing" of the developing embryo. The relevant magisterial teaching was most recently affirmed in *Evangelium Vitae* s.57: "the direct and voluntary killing of an innocent human being is always gravely immoral". Although the application of this teaching to the present issue may seem obvious enough, the first question I wish to raise concerns the explanatory relationship between principles and prudential judgments about particular cases. Do principles explain prudential judgments, or do prudential judgments about what ought to be done in particular cases shed light on the meaning of the principles?

Along with many Catholic moralists, I am inclined to the latter view. Principles articulate and summarise the practical wisdom exhibited in particular judgments, they manifest the congruency of moral rationale between like cases.<sup>15</sup> Abortion and euthanasia both involve "direct killing of the innocent", but we do not, I suggest, deduce that abortion and euthanasia are wrong because they involve direct killing of the innocent. Rather, understanding why abortion and euthanasia are wrong, along with understanding why some killings in warfare or self-defence may not be wrong, contributes to our understanding of what the direct killing of the innocent consists in. This is why the authoritative teaching in *Evangelium Vitae* does not, without further inquiry, settle such complex moral issues as the treatment of an ectopic pregnancy or the early induction of a fetus whose condition is incompatible with independent life. The key terms such as 'direct', 'voluntary' and 'innocent' are the subject of legitimate theological and philosophical debate, and this as part of a wider debate about the correct way to describe and evaluate human actions.

The treatment of ectopic pregnancy raises 'borderline issues' about what constitutes a 'direct' killing. Moreover, right reasoning and prudential judgment on such issues involves evaluation: in concluding that a particular killing is 'direct', we are thereby judging it to be wrong. This does not mean that 'direct killing' cannot, for the most part, be identified in a non-evaluative or descriptive way, viz. as killing the innocent. There is not usually any doubt about whether a voluntary action is a killing, or about whether the victim is innocent. However, the existence of borderline cases in which the descriptive explication of a moral category needs further refinement suggests that such moral categories cannot be reduced to wholly descriptive categories.<sup>16</sup>

That the concept of 'direct killing' is ultimately a moral category is, I think, reflected in *Evangelium Vitae* s.55, where it is said that in legitimate self defence "the fatal outcome is attributable to the aggressor whose action brought it about". Pope John Paul II seems to be suggesting that the direct responsibility for a lethal defensive act lies with the aggressor; it is this moral consideration

<sup>15</sup> See for example: James F. Keenan, 'The Function of the Principle of Double Effect', 54 (1993) *Theological Studies*, pp. 294-315, and Jean Porter, *Moral Action and Christian Ethics* Cambridge: Cambridge University Press 1995, pp. 1-40.

<sup>16</sup> See J. M. Brennan, *The Open Texture of Moral Concepts* New York: Barnes and Noble 1977.

which makes the lethal act of the defender an 'indirect' killing (even when, presumably, the chosen defensive act will certainly be lethal, will be, with respect to its causality, a 'direct' killing).<sup>17</sup>

## 2. How is direct killing to be understood?

This brings me to my second question, namely about the correct description of human actions. As *Veritatis Splendor* s.78 reminds us, in the Catholic tradition moral description and evaluation go hand in hand, and centre on the identification of the 'moral object' of one's activity. Yet the concept of the moral object is 'essentially contested' in that it is the focus for continuing debates between rival ethical theories within Catholic moral theology. The Church does not endorse any one ethical theory (*Veritatis Splendor* s.29), though it does direct us to the thought of St Thomas. But, since moral action shares in the mystery of the human person, it may be supposed that absolute clarity about an agent's moral object will not always be attainable. The moral object (and hence the evaluation) of some kinds of action might always remain 'essentially contested'.

For Catholic theologians the priority of the 'moral object', after the mind of St Thomas, requires that direct killing be identified and understood from the viewpoint of the acting subject, that is, in terms of the agent's intended purpose, not in terms of the physical causality of an action. The 'object' is the 'subject matter' of an action as revealed in the purposeful reasoning by which the agent gives intelligibility to what he or she actually does. For this reason, Thomas distinguishes between the agent's "inner object" (the object of reason accepted and intended by the will) and the "external action" in which that object is realised. Inner object and external object are related as form and matter, as the *materia circa quam* and the *materia ex qua* which together constitute a particular moral act.

Accordingly, the different ways in which human actions are described may be located on a spectrum between the poles of formal and material description (as "inner" object and as "external realisation" respectively). Some action descriptions are ambiguous between these two modes of description, e.g. 'direct killing' is ambiguous between directly causing death and directly intended to cause death. I believe that the tension between material and formal action descriptions is central to the moral debate about the use of MTX to resolve an ectopic pregnancy, and to the other vexed moral issues noted above.

Viewed in its physical causality, MTX is about as 'directly lethal' to the embryo as any intervention could be. But, viewed in its moral intelligibility, many people regard the use of MTX not as a killing, but as a minimally invasive intervention to counter a life-threatening pathology in a situation where the embryo cannot be saved. Are people entitled to invoke this description despite the evidence as to

<sup>17</sup> But cf. Thomas A. Cavanaugh, 'Aquinas's Account of Double Effect', 61 (1997) *The Thomist*, pp. 107-121, who argues that Thomas did not permit certainly lethal defensive actions.

how MTX works? Or: Is the way in which MTX is lethal to the embryo sufficient to establish that its use must involve the evil of direct killing? In order to answer these questions, we need to address the more general question about the relationship between, on the one hand, the meaning and intention an agent gives to his or her action and, on the other hand, the external actions the agent performs. Is an agent's moral object ultimately determined by the external action performed, or is the agent's formal intention able to determine, and finally re-shape, the meaning of his or her external actions? This issue is at the heart of some current debates in Catholic moral theology, and two approaches to it can be identified.

(a) *The primacy of the intentional*

On the one side are those authors who question the derivation of the moral object from the external action. James F. Keenan, for example, argues that for St Thomas actions are defined in terms of agency, such that "the object" of one's action is the "proximate content of one's intention rather than the physical action" one performs. The object of one's intention is prior to and able to inform one's external action.<sup>18</sup> "One is hard pressed to find anywhere in Thomas's writings an explicit derivation of an 'object' from an exterior act."<sup>19</sup> For this reason, Keenan argues, it is easier to identify wrong or disordered intentions than it is to identify precisely which external actions are the embodiment of disordered objects and intentions. For example: whereas the intention to exercise dominion over a child as a commodity, and the intention to subordinate the conception of a child to the prowess of technology, are clearly disordered intentions, Keenan says it is less obvious which particular procedures to achieve conception must constitute wrong actions because they embody these disordered intentions.<sup>20</sup> Likewise, we may ask whether the use of MTX to resolve an ectopic pregnancy must embody the disordered intention to kill an embryo in order to save the mother's life.

Of course, every action has many descriptions. The challenge for those who give primacy to intention is to explain how intention governs the correct description of action. The most noteworthy response to this challenge is that of Germain Grisez, who accounts for the content of an intention in terms of a theory of practical reasoning with respect to basic goods. He argues that the primacy of the agent's intention requires us to describe the agent's external action under the precise description it has as intended by the agent as a means to achieving the good end-state which is the agent's goal. In this vein, Grisez

<sup>18</sup> James F. Keenan, 'Moral Horizons in Health Care: Reproductive Technologies and Catholic Identity', in K. Wm. Wildes (ed.) *Infertility: A Crossroad of Faith, Medicine, and Technology* Dordrecht: Kluwer Academic 1997, pp. 53-71, at 55.

<sup>19</sup> James F. Keenan, *Goodness and Rightness in Thomas Aquinas's Summa Theologiae* Washington, DC: Georgetown University Press 1992, p. 81.

<sup>20</sup> Keenan, 'Moral Horizons', pp. 55, 64.

supposes that a woman could simply want the end-state of not being pregnant and, without in any way desiring or intending the death of the fetus, have an abortion, where this is understood and formally chosen not as an act of killing, but as an act of ending the state of pregnancy.<sup>21</sup> Grisez believes such an abortion would be wrong because unjust; nonetheless, he does not think the woman would be guilty of directly intending to kill the fetus, for "someone might choose to abort without choosing to kill". Likewise, it has been suggested that a doctor crushing a baby's head to resolve a situation in which prolonged labour is life-threatening to mother and child, may be choosing merely to "re-size" the baby's head, but not to kill it, since "re-sizing" is all that is strictly required as a means to ending labour.<sup>22</sup> On Grisez's account, the death of the fetus in these examples would be "indirect" with respect to the agent's formally intended end, and hence the actions would not be direct killings.

The explanation of the 'direct' and 'indirect' distinction which is central to Grisez's theory has been strongly criticised.<sup>23</sup> Two criticisms are relevant to my discussion. First, Grisez's focus on the selective description of actions in formally intended terms has the paradoxical consequence that an agent's chosen actions do not have moral meaning in themselves, but only insofar as they are associated with the attitude of the agent's will towards an end or good.<sup>24</sup> Secondly, Grisez's account of intention focuses on the psychology of the agent, on the agent's stated understanding of what he or she is doing. This approach allows an agent to override what may be, from the moral viewpoint, the more accurate description of an action chosen as a means, when in reality it is a mark of moral maturity and virtue to recognise with lucidity what one is actually doing in pursuit of one's ends.

Pace Grisez, the distinction between 'direct' and 'indirect' killing is ultimately a moral distinction. That in the mind of a particular agent a death causing action is only 'indirectly' related to the goal sought, is not enough to establish that morally the action is an 'indirect' killing. As much as a person might truthfully say, "I only intended to end this pregnancy, I didn't intend the fetus to die", in some cases it will be a ground for moral criticism that the person supposed he was entitled to describe his action in this narrow way. A critic could rightly object, "You may not say, 'I'm just ending a pregnancy', for in these circumstances ending a pregnancy is (directly) killing a fetus." It follows that although moral action must be understood "from the perspective of the acting subject", moral action and evaluation is rightly understood, not from the perspective of just any subject, but only from the perspective of the virtuous subject, the *phronimos* or person of

<sup>21</sup> Germain Grisez, *The Way of the Lord Jesus*, Vol II. *Living a Christian Life* Quincy, IL: Franciscan Press, 1993, p. 500.

<sup>22</sup> See Joseph M. Boyle, 'Double Effect and a Certain Type of Embryotomy', 44 (1977) *Irish Theological Quarterly*, pp. 303-318. For a critique of this view, see Kevin Flannery, 'What is Included in a Means to an End?', 74 (1993) *Gregorianum*, pp. 499-513.

<sup>23</sup> See Flannery, 'What is Included', and, most recently, Jean Porter, '"Direct" and "Indirect" in Grisez's Moral Theory', 57 (1996) *Theological Studies*, pp. 611-632.

<sup>24</sup> I owe this point to Stephen J. Jensen, 'A Defense of Physicalism', 61 (1997) *The Thomist*, pp. 377-404, at 399.

practical wisdom. The moral judgment on what one is actually doing and (formally intending) is, for St Thomas, a matter of 'right reasoning' (*recta ratio*) by which the acting subject aspires to that 'objective' judgment on action which the person of practical wisdom would make.<sup>25</sup>

The distinction between one's rightly intended object and the various intentional features of one's action is normally clear-cut: the doctor removing a cancerous uterus may truly say, "The death of the fetus is not my intention, it is neither my goal nor a means to it". But on some occasions, only right reasoning and prudential judgment can determine whether circumstances and features of an action truly belong to an agent's object or whether they are indeed incidental, and 'outside' the intention. At all times, of course, the side-effects and incidental effects of one's action remain intentional in the broad sense, and so morally relevant, precisely because they need to be acknowledged and evaluated in relation to the agent's formal purpose.

In short, I am arguing that, *pace* Grisez, it is not possible to develop a morally neutral, or pre-moral, account of what is or is not formally and directly intended by an agent. There is often a tension between the intended subject matter of one's action and its external realisation, between the formal intentionality embodied in an action, what is "strictly required" (in Grisez's sense) for the achievement of one's purpose, and the many other descriptions of an action under which it is knowingly and intentionally undertaken. That the resolution of this tension is the work of prudence and right reasoning is confirmed by consideration of an alternative approach to the determination of the moral object.

#### (b) *The primacy of the physical*

On the other side of the debate over the meaning of the moral object are those who argue that we cannot always "confine the agent's actual [i.e. formal] intention to what is strictly required" (in Grisez's sense).<sup>26</sup> For how, it might be asked, can an agent's intentions be characterised other than in terms of a description of the very actions he or she chooses to perform?<sup>27</sup> That an agent knowingly and voluntarily does what is certain to be lethal is surely strong evidence that the agent is intending to kill. Some effects of what one does are simply "too close" to the realisation of one's formal intention to be merely incidental effects. In self-defence, for example, the degree of force necessary in the circumstances and the foreseen death of the assailant may not be distinguishable effects of the same act. This is the thought which underlies William E. May's argument against the use of both MTX and salpingostomy (surgical removal of the embryo) in treating the ectopic pregnancy:

<sup>25</sup> See my study, 'A Living Catholic Conscience' in Richard Lennan (ed.) *Redefining the Church* Sydney: E J Dwyer, 1995, pp. 103-128.

<sup>26</sup> Suzanne Uniacke, *Permissible Killing - The self-defence justification of homicide* Cambridge: Cambridge University Press, 1994, p. 109.

<sup>27</sup> See Jensen, 'A Defense of Physicalism', pp. 394-404.

the death dealing effects of these treatments, he argues, are so immediate and so closely connected with the good effect of ending the ectopic pregnancy that they must constitute 'intentional' and 'direct' killing as a means to one's end.<sup>28</sup>

Despite its appeal to commonsense, emphasis on the physical nature of the actions one performs is also problematic. Firstly, it is out of keeping with the spirit of St Thomas's approach, in which "the notion of object is a primary notion: it is not derived from the external act or from the end; rather it gives meaning to both".<sup>29</sup> Knowing an agent's immediate purpose is often essential to knowing what an agent is doing, particularly when an action has several effects, only some of which are intended. In any case, appeal to the physical effects of an action as determinative of an agent's moral object is often inconclusive precisely because the physical facts are open to various interpretations. Where William E. May thinks it quite evident that salpingostomy involves direct killing, other moralists such as Albert S. Moraczewski conclude that salpingostomy "is the removal of damaged tissue and detachment of the trophoblast (of the embryo) from the abnormal site. The specific focus of the surgical action is the removal of damaged tubal tissue and damaging trophoblastic tissue, not the destruction or death of the embryo".<sup>30</sup> Similarly, Moraczewski's reading of the scientific evidence is that MTX does not directly kill the embryo by destroying the trophoblast; it rather stops the DNA synthesis by which the trophoblast grows and implants in the tissue of the fallopian tube.<sup>31</sup> On Moraczewski's interpretation, the physical action of stopping protein synthesis is distinct from the physical action of attacking the trophoblast/embryo. For many, of course, this is a distinction without a difference.

If neither Grisez's 'intentionalist' account of the object in terms of the agent's attitude to good end-states, nor May's 'physicalist' account of the object in terms of natural causality are satisfactory, we have reason to conclude that right reasoning and prudential judgment cannot be reduced either to abstract intentions or to physical causality. The tension between an agent's intended meaning and his or her external action is fundamental, and while often resolved without difficulty, this tension can sometimes only be resolved by prudential judgment. Grisez has suggested that Thomas's account of inner and external action is 'incoherent'.<sup>32</sup> I am suggesting that Thomas's account provides the flexibility needed for understanding how the same external action may embody diverse moral objects. This flexibility provides the necessary scope for those moral

<sup>28</sup> William E. May, 'The Management of Ectopic Pregnancies: A Moral Analysis', in Peter J. Cat-aldo & Albert S. Moraczewski (eds.) *The Fetal Tissue Issue - Medical and Ethical Issues* Braintree, MA: The Pope John Center, 1994, pp. 121-147.

<sup>29</sup> Keenan, *Goodness and Rightness*, p. 81.

<sup>30</sup> Albert S. Moraczewski, 'Managing Tubal Pregnancies: Part I', 21 (June 1996) *Ethics and Medics*, p. 4.

<sup>31</sup> Albert S. Moraczewski, 'Managing Tubal Pregnancies: Part II', 21 (August 1996) *Ethics and Medics*, pp. 3-4.

<sup>32</sup> Germain Grisez, *The Way of the Lord Jesus*, Vol I. *Christian Moral Principles* Chicago: Franciscan Herald Press 1983, p. 247.

judgments by which a virtuous agent makes the final determination as to what he or she is doing.

In terms of the form/matter analogy favoured by Thomas, "the matter" of an external action will be such as to exclude some formal meanings or intentions, while also being able to accept a wider range of formal meanings than may be conventionally recognised. Thus, the physical effect of MTX is such that its use could not embody an agent's intention to treat a mother without lessening the embryo's chance of survival. If used at a time when the embryo ought be given a chance to continue its development, the use of MTX could not but constitute a pre-emptive intervention, which would be unjustified because lethal to the embryo. But in circumstances in which the judgment is rightly made that nothing can be done to save the embryo, and that an intervention to protect the mother from the invasive action of implantation is necessary, the use of MTX might embody the prudential judgment that it is the minimally invasive treatment, clinically indicated with respect to effectiveness and side-effects.

In other words, attention to the details of what one is actually choosing to do, viz. about how MTX works, is necessary, but not sufficient for moral evaluation. What matters most in the Thomistic perspective is the evaluation of the agent's object or intention. Should the agent be attempting to save the embryo or should the agent be attempting to care for the mother, knowing that the embryo cannot be saved? This is the primary issue which establishes the "trajectory" of the agent's purpose, for which the agent then seeks a "trajectory of realisation" in appropriate external actions.<sup>33</sup> Neither MTX nor salpingostomy could be a suitable realisation of the former object, but given the primacy of intention their physical causality (or "matter") does not of itself rule out MTX or salpingostomy as suitable realisations of the latter object. This proposal is thoroughly Thomistic insofar as the primary concern is whether the practical reasoning embodied in the choice to use MTX involves any injustice to the developing embryo.

### 3. The principle of double effect (PDE)

This proposal is reinforced by consideration of my third question, namely about the use of double effect reasoning in relation to the treatment of ectopic pregnancies. Double effect is usually regarded as the only acceptable way of justifying interventions to resolve an ectopic pregnancy. But is treatment of an ectopic pregnancy really congruous with such paradigm cases of double effect as removing a cancerous uterus while a woman is pregnant? Whereas a cancerous uterus would need to be removed whether a woman was pregnant or not, in the case of the ectopic pregnancy, "we are cutting the tube [e.g. in salpingostomy] only because the embryo is there...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

<sup>33</sup> The metaphor of trajectory is used by Keenan, *Goodness and Rightness*, p. 78.

the embryo adheres".<sup>34</sup> William E. May concludes from this fact that salpingostomy is not permissible. James Keenan, on the other hand, seeks a justification for salpingostomy by analogy with other cases of defensive activity which occasion harm. "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."<sup>35</sup>

So the final question I wish to consider is whether there can be a justification for defensive actions which cause harm, other than in terms of double effect. I have space here for just two points. First, I would again draw attention to James Keenan's landmark study of the function of the PDE, in which he contrasts two styles of moral reasoning: the 'geometrical' method of justification by appeal to principles such as the PDE which are 'extrinsic' to individual cases, and the 'taxonomic' method of prudential justification (or casuistry) which seeks to shed light on the inherent moral rightness of a kind of action by considering its congruency of rationale with like cases.<sup>36</sup> Keenan argues that it is a mistake to think the PDE functions as a justification, let alone as the only form of justification when causing harm, and his study should dissuade us from thinking that the only way in which harmful effects can be justified is by forcing them to fit within a double effect framework.

Secondly, I note that, once again, what is at stake is the correct identification of the agent's moral object. The manualists who developed the PDE used physicalist descriptions of human actions and so found ways of identifying "the action in itself" as good or morally neutral. But once we retrieve Thomas's understanding of action as intentional, the first condition of the PDE must be taken to refer to properly moral actions: one's action in itself must be morally upright. The PDE is relevant on those occasions in which one's upright action has a side-effect which is no part of the agent's intended course of action. The paradigm cases for PDE are those in which one is doing something one would or could rightly be doing anyway, such that the bad side-effects are merely permitted: e.g. when excising a cancerous uterus or a haemorrhaging fallopian tube, one does what one would need to do irrespective of whether a woman is pregnant. So the PDE holds that when, in the course of acting rightly, one foresees bad side-effects, these need to be acknowledged and a judgment made about whether one has a proportionate reason to continue with one's upright action. When a pregnant woman is diagnosed with cancer of the uterus, PDE reasoning helps us determine whether and when it would be right to remove her uterus, given the foreseen effect of surgery on the life of the fetus.

But is PDE-reasoning the key to the prior question of whether hysterectomy is an appropriate treatment for a woman with cancer of the uterus? I believe not – because what is at stake here is a judgment about the most effective way of

<sup>34</sup> Keenan, 'The Function of the Principle of Double Effect', p. 309.

<sup>35</sup> Keenan, 'The Function of the Principle of Double Effect', p. 314.

<sup>36</sup> Keenan, 'The Function of the Principle of Double Effect', 54 (1993) *Theological Studies*, pp. 294–315.



treating an illness in view of the good of the whole person. To be sure, the intervention will have good and bad effects which need to be considered, but one's "act in itself" is neither "morally indifferent" nor can it be characterised in isolation from those good and bad effects. It is a "direct" response to a threatening illness, and the "means" one has to employ involve an evil (e.g. hysterectomy) which is "not arbitrarily chosen, but ... dictated by the evil that one is resisting"?<sup>37</sup> There is no need to re-configure one's intervention in terms of double effect in order to determine that it is morally upright.

It is at this point that the correct characterisation of practical reasoning becomes crucial. As noted above, Grisez does this in terms of one's attitude towards good end-states, rather than in terms of the concrete actions one performs.<sup>38</sup> This enables him to re-configure some cases in which an action causing evil seems to be directly intended as cases in which the evil caused is only indirectly intended. But given the doubts about whether Grisez's account of direct and indirect intention stands up, and given that at times his account seems to require a tendentious re-description of what one is actually doing, I believe we have an incentive to explore an alternative account which acknowledges that in some circumstances one may have to cause evil when defending goods from attack.

If we are to eschew the re-description of actions, we need to find a way of explaining what occurs when an action that would normally be the embodiment of a wrong intention becomes the realisation of an upright intention. I suggest that in circumstances of "defensive action", we think of a moral action which is generically (and normally) bad, having its moral species altered to become specifically good.<sup>39</sup> Paradigm cases of this transformation of a generically bad kind of action to a specifically good kind of action include interventions usually justified in terms of totality and live organ donation.<sup>40</sup> I am proposing that, in those cases in which treatment of an ectopic pregnancy has its sole meaning as a defence against life-threatening pathology, it is more closely analogous to cases of direct intervention (e.g. treatment of cancer) than it is to cases of double effect.

I am thus contrasting two kinds of evil effects: those which are truly 'outside' one's moral object and course of action, and those which are inevitably a part of

<sup>37</sup> William Daniel, 'Double Effect and Resisting Evil', 56 (1979) *The Australasian Catholic Record*, p. 382.

<sup>38</sup> See Grisez, *The Way of the Lord Jesus*, Vol. II, p. 542, footnote 143. For the contrast between choice of end-states and actions, see Jensen, 'A Defense of Physicalism', p. 399.

<sup>39</sup> See Brian Byron, 'The Catholic Tradition of Intrinsic Morality', in 29 (1995) *Compass Theology Review*, pp. 41-45. Byron notes one manualist in support of this terminology: Aertnys-C. Damen CSSR, *Theologia moralis, Secundum doctrinam S. Alfonsi De Ligurio Doctoris Ecclesiae*, Editio XVII (J. Visser CSSR) Turin: Marietti 1956.

<sup>40</sup> St Thomas held that the species of generically bad actions could be altered by the command of God. As Patrick Lee argues, this did not involve God authorising an intrinsically evil action. In terms of the account I am suggesting, the moral species of the action is altered such that an external action (e.g. Abraham killing Isaac) becomes the realisation of an upright moral object (viz. obedience to God). See Patrick Lee, 'Permanence of the Ten Commandments: St Thomas and his modern commentators', 42 (1981) *Theological Studies*, pp. 422-443.

one's moral object and course of action. PDE-reasoning is appropriate with respect to the former (e.g. the death of the fetus following life-saving hysterectomy), but it is not appropriate with respect to the latter (e.g. to life-saving hysterectomy in itself). PDE-reasoning does not exhibit the agent's moral rationale for life-saving surgery, or for self-defence, or for 'defensive' situations more generally, where the agent's moral object is ordered precisely by the intention to combat evil. In these defensive situations one would not be acting at all but for the presence of the evil 'threat' and, typically, the bad effects one foresees are part and parcel of one's defensive action (e.g. defending myself by the use of force which harms my assailant; excising healthy tissue to prevent the spread of cancer, and so on). In these cases, the good and bad effects of one's action are often such closely linked results of one's action that it is implausible to speak merely of 'permitting' the evil effects one causes.

With respect to the agent's moral object, what is crucial to the justification of defensive actions which involve causing harm is whether the agent's purpose and object are rightly ordered. Assuming one's immediate purpose really is good, how is the rightness of the actions one chooses as a means to be determined? How can I determine that I am not, albeit in response to evil, myself "doing evil that good may come"? Sometimes there is an option available which is clearly upright or morally neutral (e.g. I might simply be free to avoid visiting a place where the risk of infection was high). But in other cases, "evil is already at work" and one's "freedom of choice is restricted. [One] can act or not act. But if [one] does act there is likely to be only one course open."<sup>41</sup>

I recognise the force of the objection that, even when the range of options is restricted, the only way of ensuring that one's response to evil does not involve doing evil will be to ensure that one is not intending evil as an end or a means. But this returns us to the problematic issue at the heart of this whole discussion, as to what it is to intend evil in the morally objectionable sense. I am recommending that we recognise that not all cases in which one causes harm in the course of doing good should be assimilated to the kind of intention involved in the PDE. The PDE rationale is not the key to questions of legitimate material cooperation,<sup>42</sup> nor to those 'defensive actions' in which consideration of both the evil to be repelled and the harm one causes in repelling it, enter essentially into the formation of the agent's moral object in itself. In these cases, we require another way of understanding the causation of evil in the pursuit of an upright moral object in response to threatening evil. The key to this understanding is prudence and right reasoning as to the moral meaning and object which ought be ascribed to one's action, despite its causation of evil.

If this defensive model is applied to the case of the ectopic pregnancy, the reasoning might run as follows: We should not think of the embryo as an aggressor, for the embryo is as much a victim of the pathological situation as is

<sup>41</sup> Daniel, 'Double Effect', p. 383.

<sup>42</sup> James F. Keenan and Thomas R. Kopfensterner, 'The Principle of Cooperation', 76/4 (1995) *Health Progress*, pp. 23-27, at 26.

the mother. The threat ultimately derives from the pathological condition of the mother's fallopian tube. The end is to protect a mother from the grave threat to her life and reproductive health posed by the fact that the embryo has implanted where it has. Prudential judgment about the necessary and appropriate means to this end determines what needs to be done, viz. to halt the destructive process of implantation in the least invasive way. In cases where nothing can be done to help the embryo to survive, the only way in which harm can be minimised is with respect to the mother. Whether the intervention should be surgical or chemical depends on a clinical judgment as to effectiveness and side-effects. The foreseen death of the embryo is not part of what is being sought, it is outside the agent's intention and does not render the action one of intentional killing.

Like St Thomas, this approach emphasises first, the agent's intended end, and then the necessity and appropriateness of the means chosen to realise that end. In using MTX or salpingostomy to resolve an ectopic pregnancy, it need not be the case that one intends to kill the embryo: that is to say, one's intervention does not arise from an intention to kill, and what one chooses to do is not chosen because it is lethal to the embryo. It is chosen in circumstances in which there is a necessity to act, and on the assumption that the intervention is, from the clinical evidence, a more effective and less harmful option than the alternatives. This is not strictly speaking an act of self-defence against the embryo, but it is a defensive act in which the evil results of the defensive measures one needs to take are intentionally accepted. William Daniel suggests that the traditional distinction between 'directly' and 'indirectly' bringing about evil may correspond to the difference between the 'exploitative' and the 'defensive' use of evil means. The 'direct' intending of evil would imply the attacking of a value, the 'indirect' occasioning of evil would arise when the agent is resisting a disvalue.<sup>43</sup>

My argument for the use of MTX in treating some ectopic pregnancies is tentative, since I agree that the more obvious interpretation of this treatment is that it involves the choice to directly harm the embryo. Nonetheless, I have drawn attention to three topics of continuing debate in Catholic moral theology which raise doubts about whether this judgment applies to every use of MTX. On the account proposed here, the crucial issue for moral judgment is whether circumstances are such as to require the embryo to be given a chance to develop further. The use of MTX at a time when one should still be trying to save the embryo would indeed constitute an unjustified, pre-emptive intervention. It is less clear, however, that the use of MTX in circumstances in which the embryo cannot be saved should be regarded morally as a direct killing. In these circumstances, the agent's moral object would be governed by considerations of effectiveness and side-effects in meeting a grave, life-threatening pathology, rather than by the physical effect of MTX on the doomed embryo.

<sup>43</sup> Daniel, 'Double Effect', p. 387.