

THE THING ON WEDNESDAY

(Fr Philip's room, Wednesday at 1pm – bring a sandwich and talk for an hour)

Mary And Jodie Are Sisters

The Siamese twins born recently in this country have presented the whole country with a deeply-moving and disturbing dilemma. Both sisters have vital organs; but the stronger twin Jodie's aorta feeds into Mary's, and she is therefore dependent for her bloodstream on her sister. At the moment Jodie's heart and lungs are working for both of them, and as soon as the twins are separated Mary will die.

The Parents: "Everyone has the right to life: so why should we kill one of our daughters to enable the other one to survive? That is not God's will."

The couple live in Gozo, a dependency of Malta, where the medical facilities are much more basic than those in St Mary's Hospital, Manchester. They have an orthodox Catholic attitude to the situation (which was why they refused to contemplate an abortion when the abnormality of their children was discerned) and came to England in hopes of a medical miracle. Their feeling now is that their children should not be separated, but that nature should be allowed to take its course. Because the operation is possible, the medical profession has sought legal guidance on their correct course of treatment.

The Judge: "To prolong Mary's life for those few months would in my judgment be very seriously to her disadvantage."

The case was tried and Mr Justice Johnson ruled (in ten pages) that the operation should go ahead. He remarked that having no lungs, Mary could not cry, and that her brain was suffering from oxygen-deprivation: he concluded that "her (further) life would not simply be worth nothing to her, it would be hurtful"- in other words, she would be better dead than alive.

The assumption of the doctors is that there is a sense in which the parents may need to be saved from their own religious views, which is why the case has come to court. Because the first judgment conflicted with their views, the parents appealed. The Court of Appeal judges accordingly called for an authoritative statement, from the Archbishop of Westminster in the role of *amicus curiae*, of the Catholic position on surgery in these circumstances.

The Archbishop: Christian beliefs about the special value and nature of human life lie at the root of the Western humanist tradition, which underpins the English legal system.

The Archbishop said (a) that human life is inviolable: no one should ever aim to cause another person's death by act or omission. (b) A person's bodily integrity should not be invaded when the consequences of doing so are of no benefit to that person, and especially when the consequences are foreseeably lethal. (c) The duty to preserve life does not apply when the only available means to preserving life involve a grave injustice, as in this case, where what is envisaged is a deliberate lethal assault on Mary. (d) The therapeutic measures for Jodie are likely to cause excessive burdens on the patient and her carers. (e) The court may only override the natural authority of the parents where there is clear evidence that they are acting contrary to the interest of their children: in this case they have simply adopted the

only position they felt was consistent with their love for both their children. (f) Mary enjoys the same right to bodily integrity and the same legal protection from assault and homicide as other legal persons.

The Court of Appeal: “The issue between the two children could not be more acute...I can see no way of dealing with it than by choosing the lesser of two evils, and so finding the least detrimental alternative.”

The senior judge, Lord Justice Ward, gave a 69-page judgment concluding that the intrinsic value of *both* the twins' life is equal, and therefore the category does not help to decide what to do. The judgment must therefore rest on the value of the various medical options. Here “the balance is heavily in Jodie's favour”. This is the eventual consideration which decided the judges' verdict.

Here are a few of the statements from the acta of the case which we could consider:

“If a family at the gates of a concentration-camp were told they might free one of their children, but if no choice were made both would die, compassionate parents with equal love for their twins would elect to save the stronger and see the weak one destined for death pass through the gates.”

“Mary may have a right to life, but she has no right to be alive...Mary's parasitic living will be the cause of Jodie's ceasing to live. If Jodie could speak she would surely protest, *Stop it, Mary, you're killing me*. Mary would have no answer to that.”

“If the courts respect parents who *refuse* consent to surgery, because they do not think a life-saving operation is in the child's best interests, then the courts should *a fortiori* respect these parents' refusal of consent because they do not believe a life-taking operation to be in the best interests of one of their daughters – Mary.”

A comment from Simon Lee, Emeritus Professor of Jurisprudence, Queen's University, Belfast

The best arguments (each way) have not so far been fully articulated by the courts: In arguing *for* the operation, the ethical argument is lost once one adopts the rhetoric of the rights or best interests of the more vulnerable twin. This way of thinking cannot allow for a decision which deliberately takes Mary's life...More cogent would be (to) ask instead, *What would she decide, were she capable of analysing her predicament, but were otherwise the person she is now?* Would she not choose heroic self-sacrifice (greater love hath no sister, than to lay down her life for her twin)?

“The best argument for the parents' position...is that the new Human Rights Act requires judges to have particular regard to the importance of freedom of thought, conscience and religion. It would be a missed opportunity if this case, with its profound moral challenges, were not illuminated by judicial reflection on the importance of religion. Trumping parental wishes is not to be undertaken lightly...and it is difficult to see how, once the Act is fully in force, parental wishes could be trumped at all in these circumstances.”

The Human Rights Act (1998) came into force on Monday, October 2nd 2000.