

# The Legal Personality of Conjoined Twins

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## Abstract

In the recent years, there have been related reports appearing in the news media about conjoined twins. Conjoined twins have been the theme of medical study, scientific exhibition, human inquisitiveness and sometimes showbiz. This paper will try to examine the case of conjoined twins from a legal point of view. This is a hot topic with the common medical cases reported lately on conjoined twins. This paper will focus on some well-known cases related to conjoined twins, and how courts considered them; i.e. one individual or two. In doing so, the paper will highlight the different arguments set by the courts in an attempt to answer the main question of this paper.

**Keywords:** Conjoined twins, legal personality, individuals, lesser evil

## 1. Introduction

Conjoined twins result from a rare pregnancy phenomenon when the human ova fails to completely separate during pregnancy resulting in united identical twins like the famous Siamese brothers Chang and Eng Bunker<sup>1</sup>. Chang and Eng Bunker were born in Siam (as referred to then) in 1811.<sup>2</sup> Conjoined twins provoke fascination in both the scientific and legal worlds. The ethical dilemmas and legal battles surrounding conjoined twins have been so significant in the recent years.<sup>3</sup> The primary question in this regard is whether conjoined twins should be viewed as one or two identities. This paper delves into the legal personality of conjoined twins and the relevant laws that focus on the rights and obligations of conjoined twins. *Chang and Eng Bunker* were connected at the Sternum<sup>4</sup> but possessed separate organs and limbs. "Siamese" is what is currently referred to as "conjoined" and conjoined twins are individuals physically joined during conception for reasons that are not yet medically understood.<sup>5</sup> They are linked by flesh, bone or ligaments and can be joined at the chest, abdomen, head or hip. With the recent medical advances, it is possible to separate conjoined twins. However, most twins possess more complex interdependency of limbs and organs which make it difficult to separate them. In most cases, one of the siblings ends up dying after the separation.

An ethical dilemma results when the siblings do not equally contribute resources, but rather one is considered 'parasitic' by the fact of total dependency on the sibling.<sup>6</sup> In this regard, the main legal and ethical question has always been, "should doctors be allowed to sacrifice one of the Siamese twins to save the other."<sup>7</sup> It is the life and death demand that most families with conjoined twins face. They go to the medical specialist with the hope of relief, yet they meet bewilderment, heartaches, and uncertainty. Making that decision of whether to separate the conjoined twins has never been an easy one. In most cases, it hinges on the balancing the survival projections if the twins are left unseparated against the prognosis if detached. The decision-making is left in the capacity of parents and doctors to determine the fate of the conjoined twins.<sup>8</sup> The resolution to detach conjoined twins is mostly hard due to the strain in matching the contending, legal, ethical and medical rights of the kids deprived of bias towards any of them while staying compassionate and rational at the same time. In this perspective, the operating process is as difficult as the legal and ethical features surrounding such scenarios.

## 2. The Plight of Twin Sacrifice: Biologically Essential Detachment

A biologically essential separation is needed once there is a sound substantiation that if the twins stayed conjoined, it would lead to the death of both primarily due to the biological functioning of one, ensuing in a physiological botch of the other because of the shared circulatory mechanisms.<sup>9</sup> In such situations, there is a deep-seated intuition to save life where conceivable, even if this may be at the price of quickening the death of

<sup>1</sup> Jackson Oksana, David W. Low, and Don LaRossa, "Conjoined twin separation: lessons learned," *Plastic and reconstructive surgery* 129, no. 4 (2012): 956.

<sup>2</sup> Sally Sheldon and Stephen Wilkinson, "Conjoined twins: the legality and ethics of sacrifice" *Med. L. Rev.* 5 (1997): 149.

<sup>3</sup> George Annas, "Conjoined twins—the limits of law at the limits of life," (2001): 1104.

<sup>4</sup> *ibid* 149.

<sup>5</sup> Lixin Yang and Li Zhang, "The Legal Personality of Conjoined Twins and the Coordination of their Rights Conflict," *US-China Law Review* 3, no 6 (2006): 1.

<sup>6</sup> Jackson Oksana, David Low, and Don LaRossa, "Conjoined twin separation: lessons learned," *Plastic and reconstructive surgery* 129, no. 4 (2012): 959.

<sup>7</sup> Barbara Hewson, "Killing off Mary: was the Court of Appeal right?" *Medical law review* 9, no. 3 (2001): 284.

<sup>8</sup> *ibid* 285.

<sup>9</sup> Reuben Johnson and Philip Weir, "Separation of Craniopagus Twins," *Cambridge Quarterly of Healthcare Ethics* 25, no. 01 (2016): 41.

the other twin. In this regard, biologically essential detachment openly contradicts the two twin's right to well-being and life, which therefore necessitates ethical and legal justification for the involved sacrifice. In *Queensland v. Nolan case*,<sup>1</sup> the conjoined twins *Bethany* and *Alyssa* shared a draining vein but has separate brains. *Bethany* lacked an operational renal tract to eliminate waste products from her circulation thus reliant on *Alyssa* for existence. Ultimately, *Bethany* got pulmonary edema and cardiac failure, which reduced her death to a span of 24 hours. There was substantial evidence indicating that if she dies her twin also dies and surgical separation was the only option remaining for survival with a 20% to 40% possibility of surviving the surgery for *Alyssa*, but for *Bethany* death was inevitable.<sup>2</sup> Therefore, in this circumstance, the projection for *Bethany*, the fragile twin was dreadful just within hours with or without separation. Thus, only *Alyssa* would benefit from the surgery.

When it comes to the detachment of Siamese twins surgically, various ethical principles are employed. For instance, "In planning separation it is unacceptable to sacrifice a priori one twin on behalf of the second. The parents must be informed of the risks of an operation and the possibility that one or both twins may die during it. If they consent to the operation, it is then for the neurosurgeon to decide the best possible management."<sup>3</sup> Undoubtedly, conjoined twins present a deviance from the structural standard, however, does this nonconformity oblige adjustment, or it is a feature that ought to be acknowledged as an uncommon deviation of the ordinary? Undoubtedly, recognizing the conjoined twins has remained the utmost feasible choice in almost all scenarios. However, this is only practical in scenarios that do not entail a countdown biologically to death or functional failure. In such scenarios, researcher pose, "is it acceptable to sacrifice one twin?"<sup>4</sup> Some families decide on the surgical separation once they realize that that is the only reasonable decision for the survival of the other twin. In such regard, twin sacrifice is considered tolerable, and the detachment must be considered if either of the twins will get a chance to live an independent, normal life. In this case, it was agreed upon that the dangers of detachment should be recognized if there was substantial evidence demonstrating that the surgery would enable one of the twins to have an ordinary life experience.

*The case of Re A (Conjoined Twins)*<sup>5</sup> is another a legal and ethical dilemma surrounding twin sacrifice was also evident in the separation of the Siamese twins, *Mary* and *Jodie* were linked at the pelvis with four legs and united spinal cords.<sup>6</sup> The weaker twin, *Mary* was entirely dependent on her twin *Jodie* for survival and was almost viewed to possess anomalous brain and cardiorespiratory systems with a narrow life period even as a Siamese twin. By performing surgical separation, it would mean *Mary* dies, and *Jodie* survives. In this regard, the twins eventually dying without separation was considered as a natural course of their lives. This case was quite a challenge for the Lord Justices of the Court of Appeal as they tried to decide on the contradicting principles of the welfare of children, preservation of life and the essentiality of finding some rationale for the legal murder of one of the twins in an attempt to safeguard the other. In as much as all the three judges agreed with the High Court's pronouncement to detach the twins, their reasoning was dissimilar.<sup>7</sup> Lord Justice *Ward* employed the concept of self-defense in the regard that *Mary* was attacking *Jodie* since their connection had significant effects on *Jodie*'s survival chances and if they are separated, it will be considered as *Jodie* finding assistance to defend herself from *Jodie*, thus, aiding the guiltless victim. He further reasoned that the twins were confronted with only two options yet, both had adverse effects for *Mary* but probable advantage for *Jodie*.<sup>8</sup> Therefore, it would be prudent for the Court to select the 'lesser evil' between the two choices. On the other hand, Lord Justice *Brooke*, idealized necessity as a rationale for authorizing detachment whereby lawfully killing *Mary* was defended by necessity since it was the only way *Jodie*'s life would be saved. Lord Justice *Robert Walker* abridged his outlook as, "The proposed operation would not be unlawful. It would involve the positive active surgery, and *Mary*'s death would be foreseen as an inevitable consequence of the surgery which is intended, and is necessary, to save *Jodie*'s life. But *Mary*'s death would not be the purpose or intention of the surgery, and she would die because tragically her body, on its own, is not and never has been viable."<sup>9</sup>

The intricacies, in this case, were so complex and complicated including the fact that should *Jodie* stay alive after the operation; then she would be left with substantial incapacities which would necessitate complex continuing therapeutic necessities for which treatment is unavailable in their home country. There was a

<sup>1</sup> *Queensland v. Nolan*, Supreme Court of Queensland: Chesterman J. [2001].

<sup>2</sup> *ibid* 41.

<sup>3</sup> *ibid*.

<sup>4</sup> *ibid*.

<sup>5</sup> [2001] 2 WLR 480; *Re A (Children)* [2000] EWCA civ254 (22 September 2000), at I.13; available at [www.baillii.org](http://www.baillii.org).

<sup>6</sup> Charles Lugosi, "Playing God: *Mary* must die so *Jodie* may live longer," *Issues L. & Med.* 17 (2001): 126.

<sup>7</sup> Reuben Johnson and Philip Weir, "Separation of Craniopagus Twins," *Cambridge Quarterly of Healthcare Ethics* 25, no. 01 (2016): 42.

<sup>8</sup> George Annas, "Conjoined twins—the limits of law at the limits of life," (2001): 1104.

<sup>9</sup> Mark Bratton and Susan Beryl Chetwynd. "One into two will not go: Conceptualizing conjoined twins." *Journal of medical ethics* 30, no. 3 (2004): 280.

possibility that her parents would have to leave her in a foster home or under the care of the state. The underlying question in this regard is, ‘if the Court orders intervention against the wishes of the parents and oblige them to take care of the surviving child for what may be many years with potentially significant emotional, financial, medical, practical and social effect on them, other family members and the child itself. Does the court or the state have any responsibility to provide ongoing care to the child?’<sup>1</sup> What if the parents disregard their responsibility of taking care of the child since their moral, religious, and parental views were not considered, will they be justified? It was a landmark twin separation case, and clearly, the Court of Appeal grappled with determining the contending opinions of the welfare of children, preservation of life and the need to find rational to authorize the killing of Mary to save Jodie.

### **2.1 Siamese Twins: The Bounds of Law at the Limit of Life**

Until 2000, during the determination of the case of *Mary* and Jodie, Siamese twins had never been subjected to the legal battle.<sup>2</sup> This case illustrated the struggle of employing legal principles to the extraordinary life-and-death decision encompassing recommended medical intervention for twins whose parents and doctors differ on the best thing to be done. If this case was presented in the United States, the parent’s judgment would be ultimate except if the state or physician proved to the judge that it was an act of child neglect.<sup>3</sup> The U.S still operates on the provisions used in the 1993 American case of the two Siamese girls who unfortunately did not survive the surgery.<sup>4</sup> In England, the applicable law is dissimilar since once the judge is presented with such a case, the judge needs to resolve in what is the best interest or welfare of the child by employing objective and independent judgment. The judge only considers the parent’s decision as one piece of evidence to be used in the determination of the case. The legal reasoning of the different judges on the panel was conflicting which can be explained by the extraordinary characteristics of the case as well dependence on legal correlations that were impractical in this case.

On one hand , after providing the medical intricacies of the case, Lord Justice Ward notes that while “every instinct of the medical team has been to save life where it can be saved,” it would also have been acceptable if the medical team respected the parents’ wish.<sup>5</sup> Ward evaluates the existing law and states that “it would be utterly fanciful to classify the operation as an omission treatment rather than as an active surgical intervention.” He concludes by declaring that the viable legal path in this case that is characterized by the conflict of interest between the conjoined twins, is to choose “the lesser of the two evils.”<sup>6</sup> Ward further used the most dramatic terms to condemn the parents for refusing to pick life for Jodie by stating, “In my judgment, parents who are placed on the horns of such a terrible dilemma simply have to choose the lesser of their inevitable loss.” Ward finally focuses his judgment on the principle of self-defense by condemning Mary of murdering Jodie in what is referred to as “quasi-self-defense”.

On the other hand, Lord Justice Brooke suggests that in some circumstances the principle of necessity should be allowed even when the British law rejects it. He provides several examples to support his claims of applying the principle of necessity in this regard. He quotes many legal authorities but ultimately concluded by stating that in this case, the objection to the necessity paradigm offered in the *Dudley* case cannot apply since, “Mary is, sadly, self-designated for a very early death.”<sup>7</sup>

Finally, Lord Justice coincides with Brooke on the employment of intention and necessity to lawfully kill Mary. Eventually, Walker defines that the doctor’s duty to the children is conflicting. Nevertheless, he believed the quandary does not encompass picking “the relative worth of two human beings” but rather “undertaking surgery without which neither life will have the bodily integrity (or wholeness) which is its due.”<sup>8</sup> To conclude, he states that physicians should separate the twins not intending to kill Mary, although with the intention of creation each twin complete and performing in the superlative welfares of both.

### **2.2 Individual Right and Perceptions of conflict**

The disparity in the opinions given by the judges indicates the complexity of the legal and moral dilemma that had to be resolved. Throughout the case of *Mary* and *Jodie*, it is interesting how all the three judges indisputably ascribed full personal position to each twin and regarded them as persons. In this case, both twins including *Mary*, the weaker twin that was going to face the collateral damage of the surgery were accorded full legal

<sup>1</sup> Reuben Johnson and Philip Weir, "Separation of Craniopagus Twins," *Cambridge Quarterly of Healthcare Ethics* 25, no. 01 (2016): 42.

<sup>2</sup> George Annas, "Conjoined twins—the limits of law at the limits of life," (2001): 1104.

<sup>3</sup> *ibid* .

<sup>4</sup> *ibid* .

<sup>5</sup> *ibid* .

<sup>6</sup> *ibid* .

<sup>7</sup> Charles Lugosi, "Playing God: Mary must die so Jodie may live longer," *Issues L. & Med.* 17 (2001): 132.

<sup>8</sup> *ibid* 35.

status.<sup>1</sup> There was a strong support contradicting the Courts decision, but the panel unanimously considered those arguments ethically ill-advised and counter-intuitive. Regarding the legal complexities of cases dealing with conjoined twins, *Wilkinson* and *Sheldon* argued that “one reason why the issues raised by cases of conjoined twins appear so intractable is that law and ethics have developed along a model of physically separate, individual human beings with competing needs and interests. It is the individual which often provides our basic unit in considering the ethical and legal rights and wrongs.”<sup>2</sup>

The acknowledgment of such independently legal rights to each twin provides for unavoidable conflict between the two. Although *Mary* and *Jodie*'s case was peculiar and majorly involved connection rather than conflict, the perception of conflict was more pronounced during the determination of the case. By considering *Mary* as the aggressive parasite sucking her sister's lifeblood, the Court randomly prioritized the experience of conflict and self-interest over connection and concern.

The Court removed the power of decision from the parents by recognizing that “while there is now no rule of law that the rights and wishes of unimpeachable parents must prevail over other considerations, such rights and wishes, recognized as they are by nature and society, can be capable of ministering to the total welfare of the child in a special way and must therefore preponderate in many cases.”<sup>3</sup> In this case, the court undermined the rights the law ascribed to the parents and portrayed the parental assessment of the best interest of the twins as contrary to their legitimate welfare and fundamentally flawed which was in itself conflicting. The judges tried to justify their approach to the case by alluding to the employment of the consequential utilitarian principle by stating that they had to select ‘lesser of the two evils.’ In a case of conjoined twins, it is almost impractical to regard a legal person as radically autonomous, and it would be unwise if the judges considered that in their judgment.

### **2.3 What are the conceptual possibilities that could be functional?**

In any incident of Siamese twins, three conceptual possibilities could be functional. Using *Mary* and *Jodie*'s case, the first likelihood will only consider *Jodie* as an individual and *Mary* just certain additional flesh. Using the medical term “parasitic conjoined twin,” it shows that only *Jodie*'s life and welfare should be considered.<sup>4</sup> The second likelihood regards *Mary* and *Jodie* as two physically detached individuals (singletons) and are accidentally linked. In this regard, *Jodie* and *Mary* have contending interests regarding the use or possession of body structures. The final possibility perceives the two as two detached individuals but with a common body. In this case, they are competing for the body, but none has exclusive rights over it. The conjoined body is what gives them their individuality, and by separation, the underlying issue is will they be considered different or same individual?<sup>5</sup>

#### **1. *Mary* as a ‘parasitic’ Siamese twin**

The central question is whether the courts should or did consider *Mary* as a portion of *Jodie*'s frame. As a matter of law, this elucidation was open to the Court. In this regard, each twin had an operational brain, but medical substantiation showed that *Mary* had brain impairment. In the High Court, Mr. Justice Johnson alluded to the disparity by giving consideration to *Jodie*'s alertness and brightness, but *Mary* had a “very poorly developed primitive brain and reduced cortical development.”<sup>6</sup> Nonetheless, the law provides that both *Jodie* and *Mary* be accorded appropriate legal protection for liveborn children.

In philosophical perspective, *Mary* and *Jodie* would be classified as the same. In this case, either both would be regarded as persons since they are alive and human. But still, employing theories that regard human beings as persons only if they have particular mental capabilities including the ability to make moral judgments, make plans for their lives and be self-reflective, their personhood would be disregarded.<sup>7</sup> Most of the philosophical analogies on the characteristics of a person come forth in the abortion debate context. *Mary* and *Jodie* can only be viewed as individuals by considering their potential of attaining the capacity of a person. Arguing that *Jodie* has the potential to grow up into independent person shows that we are only considering the different moral status. This argument has problems in the sense that there are healthy, typically burgeoning fetus with a much advanced moral rank compared to some adults with psychological issues yet we do not

<sup>1</sup> Vanessa Munro. "Square pegs in round holes: the dilemma of conjoined twins and individual rights." *Social & legal studies* 10, no. 4 (2001): 465.

<sup>2</sup> *ibid* 466.

<sup>3</sup> *ibid* 469.

<sup>4</sup> Mark Bratton and Susan Beryl Chetwynd, "One into two will not go: Conceptualizing conjoined twins," *Journal of medical ethics* 30, no. 3 (2004): 280.

<sup>5</sup> Cathleen Kaveny, "The case of conjoined twins: Embodiment, individuality, and dependence," *Theological Studies* 62, no. 4 (2001): 755.

<sup>6</sup> Mark Bratton and Susan Beryl Chetwynd, "One into two will not go: Conceptualizing conjoined twins," *Journal of medical ethics* 30, no. 3 (2004): 281.

<sup>7</sup> *ibid* 281.



consider them less human or even question their personhood. In this regard, it is hard to prioritize Jodie's interests over Mary's unless she classified as mere flesh.<sup>1</sup> Its whole issue is complex because it also it would also be improper to consider them as two people because of the body issue.

## 2. Mary and Jodie as two entangled singletons

In this regard, how should the courts view Mary and Jody, as two physically detached individuals? Clearly, Jodie and Mary were never two detached persons before the separation that resulted in Mary's death. They resulted from an incomplete separation during the pregnancy period, and the argument remains were they "intended to be physically separated" or "meant never to be physically separated?"<sup>2</sup> However, the Court of Appeal it would be best to consider Mary and Jodie as singletons to provide a proper determination of the case. According to the panel, they were two detached persons that were inopportunately fused and applied the paradigm of physically distinct individuals to offer their opinions regarding the best welfares of the twins.

The model of "one brain, one body" accords with sound reiteration in the Western ethical and legal tradition of personal sovereignty. The ethical principle of self-determination and autonomy is loosely interpreted as the right to non-meddling.<sup>3</sup> Inside this model, the idea of personhood is connected to a detached body, and anything else appears unreasonable and improbable. For a life of self-worth, bodily separateness appears to be an indispensable entity. Therefore, bodily detachment appears to be the central objective in the incident of two individuals in one body although in some circumstances it results in the demise of one of the twins.<sup>4</sup> In this regard, the body parts are considered to belong to one of the twins, and the other is believed to be interfering with the perceived owner's rights. Clearly, the Court of Appeal's interpretation of the case was based on the Western ethical and traditional tradition between bodily circumscription and individuality.

However, this reasoning results into some problems. Since Jodie and Mary were treated as singletons, the judgment was biased and was for one twin, Jodie. Critics would argue that the separation would be disadvantageous to either twin since they will lose a part of them in the procedure. The conceptualization of Mary only as a 'parasite' also suggests that Mary only connected herself to Jodie to her advantage. The courts make the conjecture that Mary and Jodie ought to be physically independent 'by nature' and 'by right.'<sup>5</sup> Treating them as individuals with discrete interests, the interests could be balanced and set off against each other resulting in severe repercussions for Mary. By inferring to legal and moral underpinnings based on human psychology, the Courts experienced hardship to evade perceiving the children as opponents. Lord Justice Ward alluded to the conflicting by saying that Josie could have uttered, "Stop it, Mary, you're killing me," and the rest of the panel also employed various analogies to demonstrate the predicament.<sup>6</sup>

To this end, persons are conceptualized as singletons with two separate bodies. Both the law and medicine apply this paradigm, and in an attempt to deal with people's medical problems then they should be perceived as they are supposed to be. However, there are no provisions on what should be considered defective in humans and if the physically separate body is should be considered as human defects.

## 3. Two individuals with a shared body

*Dreger* wrote an article where she claimed that there is the need for a paradigm shift where the medical and legal team, as well as the populaces, should envision Siamese twins. Her claims included the fact that the medical team is overly obsessed with surgery which is supported by strong cultural projections about what it is to be a person and sometimes works in contradiction to the welfare of the Siamese twins.<sup>7</sup> Her exploration can aid in elucidating some of the hidden norms that may have formed the basis of case determination regarding Jodie and Mary in the English Court. Her argument was there is a strong relationship between physical separateness and individuality, and it is generally, culturally mediated by the medical fraternity. In the medical world, when presented with cases of deformity, look for connection between identity and anatomy.<sup>8</sup> The meaning of individuality and 'normal' physiology is interpreted and reified via surgery by conforming to this predominant cultural assumption.

The Western world puts more prominence on bodily separation that the health practitioners cannot fathom a healthy, fulfilling life in the conjoined form. *Dreger* puts across the observation that "Many twins old enough to do so express a desire never to be separated because it will result in such a profound change of identity or even the death of one's other half. (Imagine having a vibrant part of your body amputated and lost forever, or

<sup>1</sup> *ibid* .

<sup>2</sup> *ibid* .

<sup>3</sup> *ibid* .

<sup>4</sup> *ibid* 281.

<sup>5</sup> *ibid* 282.

<sup>6</sup> *ibid* 282.

<sup>7</sup> Alice Dreger Domurat, "The limits of individuality: ritual and sacrifice in the lives and medical treatment of conjoined twins." *Studies in History and Philosophy of Science Part C: Studies in History and Philosophy of Biological and Biomedical Sciences* 29, no. 1 (1998): 1.

<sup>8</sup> *ibid* 2.

else separated and left to lead an independent life!”<sup>1</sup> Even with evidence showing that some conjoined twins leave a rather fulfilling life in their state, the medical team still consider that undesirable. The physicians are willing to perform the catastrophic surgery at all odds and pushing the contemporary surgical expertise to its limit. To this end, Dreger poses such a fundamental question, “for whose sake is the surgery operation carried out?” she states, “The paradoxical fact is that being conjoined is part of conjoined twins’ individuality. If we singletons cannot understand that—if we cannot comprehend a life of two souls in one continuum of skin—that says something more about us than about them.”<sup>2</sup>

With regards to conjoined twins, the limits of individuality go beyond the ‘standard’ body boundaries. Dreger further states that as a flexible model, the body cannot be categorized into a separate form. The inadvertent fact of Siamese twins places the description of personhood into an issue. “Rather than looking at conjoined twins and noticing how much or how little autonomy singleton’s minds and bodies really possess—rather than letting their bodies challenge ours, rather than struggling with the question of what it ever means to have an individual mind or body in an intimate society—we choose to eliminate conjoined twins, to eliminate their accidental and profound questioning of the very concept of human individuality.”<sup>3</sup> In this regard, the individualism of conjoined twins is constituted in the conjoined form. Rather than conceptualizing them as accidentally joined, it should be viewed as their essentiality. In this case, when faced with a dilemma, the decision should be based on the fact that the twins face a mutual challenge and with shared interests.

Thus, considering them as singletons directly points to separation as the viable option that the medical team should execute. But when regarded as two psychologically detached persons with a shared body, physical separation is not considered a principal goal, in fact, it places more emphasis on what is lost during separation.<sup>4</sup> At such, it requests for trying to make decisions in the best interests of both twins but not considering the interest of one twin against the other automatically.

### 3. Are Conjoined twins autonomous individuals?

The issue of autonomy with regards to conjoined twins and if should be viewed as persons with separate rights and wills is quite fascinating. For instance, what are the implications if one of the twins demands to be separated even with the knowledge that the separation would kill the other weaker twin?<sup>5</sup> Consider this, John is a stronger twin and has all the important organs while Kevin, is the fragile twin and depends on John for survival. John goes ahead to demand for a separation knowing very well that it will result in Kevin’s death. In such cases, Himma argue that although John did not give Kevin any authority to use his crucial organs, there is a significant twist in the sense that the two are autonomous distinct moral individuals yet not independent.<sup>6</sup> They share a body thus, no clear demarcation regarding where John’s body ends, and Kevin’s body begins.

In literature, there is no enough evidence showing adult conjoined twins sharing varied reviews regarding their separation. Some of the examples include the two twins from Iran, *Laleh* and *Ladan Bijani* who asked for detachment while in their twenties.<sup>7</sup> They grew up developing different interests. They felt like their personalities were significantly different and even after both studying Law at the University of Tehran, they wanted to take on different career paths. *Laleh* was more into journalism while *Ladan* wanted to focus on law. There sought surgery in German but were declined. However, Dr. Goh, from Singapore who has successfully separate the Nepalese conjoined twins granted them surgery, unfortunately, they did not survive.<sup>8</sup> In this case, the two were not unwell and depended on the surgery for survival, but rather they desire to live independently and own their true personality. In some scenarios, conjoined grow into adulthood and do not wish to be separated, and in some cases, if they ask for a separation it is because the society imposes it on them with the ideologies of what is considered normal.

The English law provides that any individual of sound mind and adult age is legally protected regarding what can be done to his or her body, even if those decisions are considered irrational.<sup>9</sup> To this end, there are no clearly defined stipulations on how the principle of autonomy applies to conjoined twins who hold different views. Ideally, most medical separations are invited when the conjoined twins are below a year old whereby the parents have the authority to offer the treatment consent. Generally, there are the primary decision makers with

<sup>1</sup> ibid 10.

<sup>2</sup> ibid 26.

<sup>3</sup> ibid 25.

<sup>4</sup> Mark Bratton and Susan Beryl Chetwynd, "One into two will not go: Conceptualizing conjoined twins," *Journal of medical ethics* 30, no. 3 (2004): 283

<sup>5</sup> Arthur Zucker, "Law and Ethics," *Death Studies* 25, (2001): 199.

<sup>6</sup> Kenneth Einar Himma, "Thomson’s violinist and conjoined twins," *Cambridge Quarterly of Healthcare Ethics* 8(1999): 430.

<sup>7</sup> Reuben Johnson and Philip Weir, "Separation of Craniopagus Twins," *Cambridge Quarterly of Healthcare Ethics* 25, no. 01 (2016): 43.

<sup>8</sup> ibid 43.

<sup>9</sup> ibid .

since they are the caretakers and the law also assumes that the children would like to adopt same characteristics from their parents. But in the event the parent's decision puts the children's welfare at risk, then the Courts would overrule their decision. The English Children's Act 1989 gives the parents the author to give consent for their child's treatment.<sup>1</sup> Both the father and mother have equal rights to consent but whatever decision taken must be in the best interest of the children. Here, the parent acts on behalf of the child, and if he or she refuses to consent to treatment that negatively affects the child, he or she will be culpable of omission. Doctors have the power to overturn the parents' decision if experience and evidence prove that it is not rational for instance, in Mary and Jodie's' situation. The Court of Appeal's judgment on the case was a review of the legislation particularly the Children's Act 1989 in the sense that the parent's decision is not ultimate if it negatively affects the child's prognosis. With the application of the *Re A Children 2000 doctrine*, the Court is considered the final decision maker regarding the reasonability and appropriateness of the parental decision. The Children's Act 1989 provides that the Court should make the child welfare the absolute determinant, although the concept of wellbeing remains debatable and varies with regards to the circumstances around the incident.<sup>2</sup> However, it is important to note that, in the English law, the child best interest involves but not limited to medical benefits and also entails emotional and other issues relating to welfare.

The conjoined twins' quandary comes from the term 'twin' which implies that there are two detached persons but fused.<sup>3</sup> A certain research done had a case report of a fetal detachment that the patient did not consent to and the twins were regarded as one human being and the operation was aimed at creating typical human beings. In this case, once we view joined bodies as a single person then the separation is irrelevant and if there would be the removal of one part to create a whole human being it is considered as amputation.<sup>4</sup> If it meant removing a limb it would not be very uncomfortable, but once it involves removing another brain/head, the whole situation is entirely different. For instance, in a hypothetical scenario whereby a fully established human being with a completely developed head with the ability of producing cognizance but still has an ancillary head connected to it and totally reliant on the body of the main head. What is there is a possibility that this head can independently think and could be detached and attached to a cloned frame?<sup>5</sup> In such a scenario, this is considered separation of individuals and not amputation. This suggests that to a significant degree, personhood is determined by the mind or brain and thus with dual brains, it depicts dual minds and two individuals thus in legal terms; the law would, in this case, protect two individuals.

However, the bioethicists and the medical team have sometimes regarded the siamese twins with a single head and a 'parasitic' twin as a single individual. Some researchers suggest that the conjoined form is part of the twins' eccentricity and to be a person is a concept projected onto the twins by society and other people. "The paradoxical fact is that being conjoined is part of conjoined twins' individuality....The separation of conjoined twins is invariably at least in part an issue of the predominant culture's ill ease with continuity."<sup>6</sup> The controversy surrounding the determination of Jody and Mary's case portrayed a deadlock particularly with the Western ethical and legal tradition which reiterates on personal sovereignty and some of the assumption made during the case created some of these problems. Critiques of the judgment considered it as being determined on the basis of a failure of ethical and legal imagination and an anthropological founding that persons should be physically detached. In incidences in which the fragile twin's pending death places an unwarranted tension on the other, the argument could be, although there is no total competition over biological resources, one twin may be placing an additional tension and weight on the other, and, considering that the law is probable to regard conjoined twins as detached persons with different lawful rights, moral opinions are adequate to rationalize human legitimate judgments must be grounded on this idea.<sup>7</sup>

#### 4. Conclusion

As civil subjects, conjoined twins have remained minority extremely among all natural people, but in reality, they independently exist. The civil law theory places little attention on their legal personality challenges, lacks the relevant research as well as the standard of the legislation. With such situations, it becomes challenging when protecting their legal personality and their legal rights. The challenge faced when determining Jodie and Mary's case was a perfect demonstration of the deficiencies in the legal system when it comes to dealing with conjoined twins. The panel could not agree on a standard doctrine or principle to base their judgment. It left so many questions rather than answers regarding what is the legal personality of conjoined twins and what is the

<sup>1</sup> *ibid* .

<sup>2</sup> Children Act 1989, London: HMSO

<sup>3</sup> Reuben Johnson and Philip Weir, "Separation of Craniopagus Twins," *Cambridge Quarterly of Healthcare Ethics* 25, no. 01 (2016): 46.

<sup>4</sup> *ibid* 46.

<sup>5</sup> *ibid* 47.

<sup>6</sup> *ibid* .

<sup>7</sup> *ibid* .

applicable law.

Conjoined twins as civil subjects belong to the category of natural persons. Regarding the legal personality of conjoined twins, there have been numerous studies done to determine if their individual is of one or two people. From combined perspective of psychology, physiology, law and sociology, any separate of the conjoined twins is considered an independent will as long as he or she possesses a separate brain and thus, assumes a definable social role and should enjoy sovereign legal rights. Such individuals can include those with the capability for civil rights but without the civil conducts capacity or those with civil rights capability but with scarce or limited civil conducts capacity necessitating the amendment of guardianship systems. The exercise of their birth rights and separation rights may lead to legal conflicts, therefore, requires legal coordination. The cases of conjoined twins might be rare but in future cases such as Jodie's and Mary's should be handled differently probably with the Western laws establishing legal provisions to guide such cases.

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