



PHILOSOPHY AND THEOLOGY

As baby boomers enter retirement and age, it is likely that end-of-life issues will gain greater and greater public attention. Several recent articles reflect on these issues. In “Making Christian Life and Death Decisions,” Rev. Kevin Flannery, SJ, of the Gregorian University, offers a helpful look at end-of-life issues such as euthanasia, artificial nutrition and hydration, and life-sustaining treatments, making use of the teaching of St. Thomas Aquinas. Aquinas takes up the topic of acts of omission in *Summa theologiae*, where he asks “whether there can be voluntariness without any act” (I-II q. 6, a. 3). Aquinas’s account is relevant in deciding whether the act of omitting life-saving treatment is morally permissible. He holds that an omission of an act is voluntary (in an indirect sense) when the agent can and ought to act but does not act. If an agent can act and ought to act, he can be blamed for an omission to act. On the other hand, if an agent either does not have it in his power to act or could act but has no moral duty to perform the act, then the omission is not attributed to the agent as blameworthy.

Flannery also calls to our attention the distinction between positive precepts (which bind always but not at every moment) and negative precepts (which bind always and at every moment). Aquinas provides an example of a positive precept: “Human beings . . . are always obliged to honor their parents when they ought to,” which implicitly suggests that there are also some times during which it is not proper to perform an act of honoring parents.¹ Negative precepts, such as “Do not intentionally kill an innocent human being,” bind always and at every moment because there is no time in which it is permissible to intentionally kill an innocent human being.²

¹ Thomas Aquinas, *De malo*, q. 2, a. 1, ad 11.

² Kevin L. Flannery, “Making Christian Life and Death Decisions,” *Christian Bioethics* 17.2 (2011): 142.

The nature of precepts and the idea of a negligent omission are related. In considering which omissions are negligent, we must consider particular practices and the precepts governing these practices. Thus, when we turn to questions in medical ethics, we must consider the nature of medicine as a practice. “At its definitional core,” writes Flannery, “medicine consists of physical acts aimed at (1) promoting or protecting the health of the bodies of the persons who are the objects of those acts and (2) removing from those bodies (as best it can) diseases and other maladies. Thus, an abortion is not a medical procedure since it does not promote or protect but rather destroys the health of the body of the human being that falls under the scalpel (or under the suction hose or whatever); but removing a cancerous uterus is a proper medical procedure.”³ Given the nature of medicine, a doctor would violate this practice if the doctor intentionally performed an act in order to undermine someone’s health, but what about acts of omission?

On the basis given above, Flannery explores when an act may be licitly omitted by the medical doctor, for the positive precept of promoting health does not apply at every moment. He also addresses ways in which the Thomistic understanding that he develops applies to disputed cases in medical ethics, such as the administration of artificial nutrition and hydration and how this case is alike but also differs from making use of a ventilator.

Flannery also writes that the doctor’s “primary responsibility is to promote and protect the health of his patient. Of course, he has no responsibility to respect the wishes—or presumed wishes—of the patient himself to forgo that which is genuinely called for medically: procedures he knows, in his position as ‘first mate’ to health, are called for.”⁴ I wonder whether this statement should be qualified a bit more. It is true that the doctor as doctor has no responsibility to respect the wishes of the patient as patient in terms of requests for particular medical treatments. It is the doctor’s responsibility, not the patient’s, to determine which treatments are medically effective in relieving particular diseases. A patient as patient does not have competency in medical matters. But the doctor does have a responsibility to respect the wishes of the patient in forgoing what is called for medically. If a patient does not consent to a particular treatment, even if that treatment is medically indicated, the doctor should not force the treatment on an unwilling patient. Ethically (and legally), if a patient is mentally competent and refuses to give informed consent for a treatment, that treatment should not be administered.

Michael Cholbi’s article “The Duty to Die and the Burdensomeness of Living” takes up the idea of the duty to die, understood as an obligation to intentionally kill oneself. It also treats the idea that if someone has a duty to die, it is ethically permissible for other people to take the life of someone who has a duty to die but is negligent in carrying out this suicidal obligation. The justification for this idea is that, in some cases, one person’s continuing to live is burdensome for others, such that, it is unfair to these other people to continue to live.

³ *Ibid.*, 143.

⁴ *Ibid.*, 145.

Cholbi gives the example of Captain Lawrence Oates, a member of an expeditionary team to the South Pole in 1912. As Oates became weaker on the journey, he became more burdensome for the rest of the expeditionary team whose lives became endangered. Oates was unable to keep pace, but his colleagues did not want to leave him behind. One evening, Oates told his companions, "I am just going outside and may be some time."⁵ He walked out and never returned. Despite Oates's attempt to help his colleagues, the rest of the expeditionary team eventually died also. Cholbi accepts the claim that Oates had a duty to die, and then ponders whether a duty to die also exists for people at the end of life who have become burdensome.

While we do have obligations not to impose unfair burdens upon others, I would challenge the presupposition of Cholbi's essay. Oates did not in fact *impose* burdens on others. Rather, the expeditionary team accepted the burden themselves. The lead of the expeditionary team could have said to Oates, "We are so sorry, but it is clear that if we slow our progress enough to include you, we will all die. In order to save the lives of the rest of our expeditionary team, we will have to move much more quickly, and since you are incapable of doing this, you will be left behind." It would have been morally permissible to make this decision, a decision to let die, which is not the same as the decision to intentionally kill. If Oates had replied, "No, I insist that you take me with you, even though my slow progress will end up leading to all of our deaths," such a reply would be selfish, unreasonable, and rightly rejected. But this is not what took place at all. Similarly, it can be selfish, unreasonable, and unfair of a person at the end of life to disproportionately consume resources at the expense of others. But this does not give rise to a "duty to die." Rather, it gives rise to a duty to decline extraordinary means of prolonging life which, as a side effect that is accepted but not intended, may lead to death.

In "A Costly Separation between Withdrawing and Withholding Treatment in Intensive Care," Dominic Wilkinson and Julian Savulescu consider objections to the Equivalence Thesis, which is: "If it is ethical to withhold treatment, it would be ethical to withdraw the same treatment."⁶ Wilkinson and Savulescu note that most philosophers, bioethicists, legal guidelines, and professional standards endorse this thesis, and yet most physicians in practice do not. Some of the arguments for the Equivalence Thesis, surveyed by Wilkinson and Savulescu, are stronger than others:

If it is not in his best interests to provide treatment, the doctor appears just as justified in a decision to withhold treatment as in one to withdraw treatment. Conversely, if it were actually in Mr W's interests to receive treatment, then it would be just as wrong to withdraw treatment as to withhold it. Importantly, there are no necessary differences in the intentions of the doctor who withholds treatment compared to the one who withdraws it, no differences in consequences for the patient, no differences in the ultimate cause of their

⁵ Michael Cholbi, "The Duty to Die and the Burdensomeness of Living," *Bioethics* 24.8 (October 2010): 415.

⁶ Dominic Wilkinson and Julian Savulescu, "A Costly Separation between Withdrawing and Withholding Treatment in Intensive Care," *Bioethics* 28.3 (March 2014): 127.

death, nor any difference in the moral responsibility of the doctor for his or her decision.⁷

Wilkinson and Savulescu also provide several reasons why the Equivalence Thesis might not be correct, at least in situations in which resource allocation is an important consideration. Given the expense of health care, it is difficult to conceive of a plausible and realistic scenario in which judicious use of resources is not a morally relevant consideration.

First, one consideration raised by Wilkinson and Savulescu is the “first come, first served” principle. Even though others might benefit if treatment was withdrawn and given to others, those who are treated first, in virtue of being first, should not be put at a disadvantage. This principle treats all patients fairly, is unambiguous, easy to apply, and avoids biases that could prejudice other kinds of judgments.

Second, a rejection of the Equivalence Thesis could lead to conflicts of interest. If a doctor is seeing one patient but is aware that another potential patient could benefit if treatment is removed, the doctor’s duty to care for one patient would be put at cross purposes with the other potential patient. Medical professionals should not shoulder the additional responsibility of acting as triage officers at the bedside.

Third, they raise a slippery slope concern. Wilkinson and Savulescu write,

For example, if doctors were allowed to stop life-prolonging treatment because another patient would have a greater chance of benefit, this might allow doctors to discriminate, consciously or subconsciously, on the basis of race, gender, age or disability. Alternatively, it might lead doctors to seek to actively end the lives of patients with a lower chance of survival, or a lower predicted quality of life than other existing or potential patients.⁸

Fourth, there are differences of consent that justify a rejection of the Equivalence Thesis. In order to discontinue treatment, consent from the person treated (or proxy consent if the person treated is not able to give consent) is needed in order to remove treatment. By contrast, if no treatment is offered, no consent is needed.

Finally, legal vulnerability is also an issue. Medical professionals fear that withdrawing treatment in order to treat others may subject them to legal liability in ways in which simply not offering treatment would not.

Wilkinson and Savulescu critically examine each of these five considerations, offering perhaps compelling objections to each, but it is unclear to me whether these counter-objections might not themselves be countered. For example, they note that a Rawlsian approach to fairness might end in an endorsement of the Equivalence Thesis, but such an approach might not and a person might reasonably reject a Rawlsian approach to fairness.

Jan Jans’s article “Until the End Willed by God? Moral Theology and the Debate on ‘Euthanasia’” has the feel of a paper written in the mid-1980s at the height, arguably, of anti-Roman sentiment among Catholic theologians. Despite its frequent carping tone, it does raise some interesting issues that deserve comment. Jans detects

⁷ *Ibid.*, 128.

⁸ *Ibid.*, 133.

rival definitions of euthanasia in official magisterial statements, specifically two different definitions by the Congregation for the Doctrine of the Faith (CDF) in its *Declaration on Euthanasia*:

I would suggest that [there is] a certain tension between the first formulation of the Congregation for the Doctrine of the Faith, “an action or an omission which by itself or by intention causes death” and the second, “euthanasia’s terms of reference are to be found in the intention of the will *and* in the methods used.” There is no explanation for this difference although it seems to be important in the application of the teaching: according to the first sentence of the definition, euthanasia could occur under two forms: firstly as an action or an omission which of itself causes death and secondly as an action or an omission which by intention causes death. But if one reads the second sentence, both this intention and the methods used must be present in order to be able to speak of euthanasia.⁹

On Jans’s view, we have, on the one hand, a disjunctive definition: to count as euthanasia there must be *either* an act (or omission) which by itself causes death *or* an intention to cause death. On the other hand, we have a conjunctive definition: to count as euthanasia there must be *both* an act (or omission) which by itself causes death *and* an intention to cause death.

However, when interpreted in a more charitable manner, the citation that Jans uses to establish the theory of two rival definitions does not seem to provide much support for the theory. The passage in which he finds two rival definitions reads, “By euthanasia is understood an action or an omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated. Euthanasia’s terms of reference, therefore, are to be found in the intention of the will and in the methods used.”¹⁰ In noting that two terms are used in the predicate of the definition, the declaration is not supplying a rival definition but simply clarifying the principle elements of the only definition given. It is an implausible and captious reading to interpret the text as providing a rival definition in the very next sentence following the first definition.

Jans also sees a tension between the CDF’s definition of euthanasia and the definition given by Pope St. John Paul II in *Evangelium vitae*, which states, “For a correct moral judgment on euthanasia, in the first place a clear definition is required. *Euthanasia in the strict sense* is understood to be an action or omission which of itself and by intention causes death, with the purpose of eliminating all suffering. ‘Euthanasia’s terms of reference, therefore, are to be found in the intention of the will and in the methods used.’”¹¹ The footnote to this passage cites the CDF’s *Declaration on Euthanasia*. Jans comments on this passage as follows:

Compared with the definition of 1980 given by the Sacred Congregation for the Doctrine of the Faith, the change is obvious since now in the first

⁹ Jan Jans, “Until the End Willed by God? Moral Theology and the Debate on ‘Euthanasia,’” *Studies in Christian Ethics* 24.4 (2011): 479.

¹⁰ Congregation for the Doctrine of the Faith, *Declaration on Euthanasia* (May 5, 1980), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19800505_euthanasia_en.html.

¹¹ John Paul II, *Evangelium vitae* (March 25, 1995), n. 65, emphasis added.

sentence of this definition in *Evangelium vitae*, the “or” between “of itself” and “by intention” has been substituted by “and.” Furthermore, that this is not a mistake can be demonstrated from the way the encyclical is referring to the text of the Sacred Congregation for the Doctrine of the Faith: only the last sentence on the terms of reference is a direct quotation from this Declaration. It is worth pointing out that this kind of change comes to a degree as a surprise: *Evangelium vitae* now teaches that in order to be able to make a moral judgement, both the intention of the will to cause death and the methods effectively doing so must be present. In the classical terminology of the so-called “sources of morality”—as used by the *Catechism of the Catholic Church* in §175014—this would mean that both the intention and the object of the act must be scrutinised in order to reach a moral conclusion.¹²

On Jans’s view, *Evangelium vitae* contradicts not only the *Catechism of the Catholic Church* but also the view expressed in *Veritatis splendor* that certain acts, such as euthanasia, are intrinsically evil regardless of the intention with which they are performed.¹³

Again, I think that a more charitable reading of the texts dissolves the alleged contradiction. Note that John Paul II speaks of “euthanasia in the strict sense” to qualify his remarks. We could distinguish euthanasia in the strict sense—one might say a paradigm case of euthanasia—from euthanasia in a broader, less paradigmatic sense. Similar differentiations take place with other moral acts that the tradition investigates. For example, one could hold with St. Augustine that lying in the strict sense, a paradigm case of lying, is speaking what you believe to be an untruth with the motivation of deception. This leaves open the possibility of a less paradigmatic case also counting as lying such as that held by Aquinas: speaking what you believe to be false regardless of the motivation of the act.

The other part of Jans’s view, that *Evangelium vitae* contradicts the view expressed in *Veritatis splendor* in holding that “intention” is part of the definition of euthanasia, also can be resolved. One must distinguish between proximate and remote intentions. In condemning certain actions as intrinsically evil, *Veritatis splendor* recognizes that some of these acts are partially constituted by their proximate intention. For example, for an act to be suicidal, the agent must be intending, either as a means or as a more remote end, his own death. A death in which this intention is lacking, such as jumping on a hand grenade to save colleagues who would otherwise be killed, is not suicide. Likewise, euthanasia, in the strict sense mentioned in *Evangelium vitae*, involves the proximate intention to kill. There is nothing contradictory in saying that acts such as these are intrinsically evil and therefore cannot be justified by any remote intention or motivation whatsoever.

CHRISTOPHER KACZOR

¹² Jans, “Until the End Willed by God?,” 480.

¹³ John Paul II, *Veritatis splendor* (August 6, 1993), n. 80.