



## PHILOSOPHY AND THEOLOGY

These philosophy and theology notes focus on the ethics of removing artificially administered nutrition and hydration (ANH) from patients in permanent coma, post-coma unresponsiveness, or (as it is more commonly but somewhat pejoratively called) persistent vegetative state (PVS). Although the case of Terri Schindler Schiavo brought this situation to national attention, these reflections do not deal with the specific details of her moral, legal, and familial situation. Rather, they focus on five issues raised by responses to the March 20, 2004, address of Pope John Paul II to participants at the conference in Rome on Life-Sustaining Treatments and Vegetative State:

- What is the exact authority of this papal teaching?
- Does the allocution require ANH *in all cases* for PVS patients, in *virtually* all cases, as a general ideal that may be often unrealized, or in some other sense?
- Does this papal allocution represent a rejection or overturning of the long-standing Catholic tradition of distinguishing ordinary and extraordinary means?
- Is human life valuable, worth preserving, even if no higher function is possible?
- Does this allocution, despite its obvious motivation to forward a “culture of life,” in fact undermine such a culture?

While I cannot in the space allotted arrive at definitive conclusions about these matters, nor even a comprehensive review of the literature, I hope to provide an overview of the major issues that have arisen from this address so that readers can get some sense of the current debate.

*The Authority of Pope John Paul II's Allocution*

In "A Burden of Means: Interpreting Recent Catholic Magisterial Teaching on End-of-Life Issues" (*Journal of the Society of Christian Ethics*, 2006), James Bretzke, S.J., begins his discussion of the Pope's allocution with some useful guidelines for exegesis and interpretation of magisterial texts, noting that the character, the frequency, and the manner of the teaching are all relevant in determining the proper interpretation of a magisterial teaching. Although helpful in many ways, Bretzke's emphasis tends to be somewhat reductionary in its account of the obedience due the papal magisterium. Bretzke correctly indicates that this allocution did not claim infallibility, and that any teaching that is not infallible is therefore fallible. By definition, there is no middle ground. Yet the issue of infallibility does not settle the position that should be taken toward this papal teaching. In *Lumen gentium*, the Second Vatican Council notes that

religious submission of mind and will must be shown in a special way to the authentic magisterium of the Roman Pontiff, *even when he is not speaking ex cathedra*; that is, it must be shown in such a way that his supreme magisterium is acknowledged with reverence, the judgments made by him are sincerely adhered to, according to his manifest mind and will. (n. 25, emphasis added)

In discussing the papal allocution, Bretzke—like Kevin O'Rourke in "Reflections on the Papal Allocution Concerning Care for Persistent Vegetative State Patients" (*Christian Bioethics*, April 2006)—mentions in passing various "reversals" of Church teaching, but whether there have been reversals in teaching remains very much a matter in dispute. Lending money at interest and the question of religious liberty are examples of the Church's apparent reversals.<sup>1</sup> Even though the allocution was not an exercise of extraordinary papal infallibility, however, it is properly described as an act of the papal magisterium.

*Is ANH Required for PVS Patients?*

Taking the minority perspective, Bretzke believes that the Pope did *not* in fact affirm that it is mandatory to provide hydration and nutrition (even by artificial means) to patients in a persistent vegetative state. Bretzke writes, "Only when both the *finis operis* and the *finis operantis* are taken together in a set of concrete circumstances can the moral meaning of the action be adequately evaluated."

Much hinges on what is meant by "adequately evaluated." If this phrase means that one cannot come to a *complete* evaluation of the situation morally unless all circumstances are considered, then it is unproblematic. If someone performs an intrinsically evil act, one cannot completely evaluate the situation without knowledge of the concrete circumstances and intention—including the agent's culpabil-

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<sup>1</sup>For those who deny such changes, see, for example, Avery Cardinal Dulles, S.J., "Religious Freedom: Innovation and Development," *First Things* 118 (December 2001): 35–39; Brian Mullady, O.P., "Religious Liberty: Homogeneous or Heterogeneous Development?" *Thomist* 58 (1994): 93–108; and, on usury, John Finnis, *Aquinas: Moral, Political, and Legal Theory* (New York: Oxford University Press, 1998), 205–217.

ity and the degree of departure from the rule of charity—as well as the nature of the act itself. But one can, simply from knowing the *finis operis*, have adequate knowledge of whether that *finis operis* is morally permissible, without knowledge of the further intentions (in the sense of motivations) and circumstances surrounding performance of the act. At least that is the teaching of John Paul II in *Veritatis splendor*: “Consequently, without in the least denying the influence on morality exercised by circumstances and especially by intentions, the Church teaches that ‘there exist acts which per se and in themselves, independently of circumstances, are always seriously wrong by reason of their object’” (n. 80).

Applying this principle to the case at hand is more complicated, however, since removal of ANH is not per se evil (as is adultery or perjury) unless it is performed with the intention of killing as an act of euthanasia by omission. Most agree that ANH can be removed licitly in cases when a person can no longer assimilate nutrients, or in cases when death is imminent and nutrition and hydration no longer benefit the patient. Bretzke views the removal of Schiavo’s tube as such a case. “Terri Schiavo’s feeding tube could be morally removed [because] its removal was not intended to cause her death, but rather that the *finis operis/operantis* of the withdrawal of the ANH was the intended removal of the last artificial obstacle to the completion of the dying process.” In the April 2006 issue of *Christian Bioethics*, John C. Harvey makes a similar claim (“The Burdens-Benefits Ratio Consideration for Medical Administration of Nutrition and Hydration to Persons in the Persistent Vegetative State”) and asserts that such individuals in a PVS have a “fatal pathology” because “they die of starvation and dehydration if medical intervention is not made.” Peter Clark makes a similar point in the same issue (“Tube Feedings and Persistent Vegetative State Patients: Ordinary or Extraordinary Means?”).

This analysis does not seem to comport with the facts of the case. Schiavo was not in the process of dying, at least as commonly understood. As far as I am aware, if ANH had been continued, she could have survived years longer. Her death was in no sense imminent until ANH was removed, nor was it directly caused by the injuries she sustained years earlier; rather, she died from dehydration caused by the removal of ANH. To call PVS from anoxia a fatal pathology because one will die without ANH is like calling diabetes a fatal pathology because one will die without insulin. It is true that death follows without intervention, but a fatal pathology is, it would seem by definition, not something that one can live with for years—in some cases of PVS, up to thirty-five years.<sup>2</sup>

In an article defending the allocation, William E. May described the experience learned from those who care for PVS patients:

We learned that individuals in this condition are *not* suffering from a fatal pathology, that they are in a relatively stable condition and are capable of living for some time so long as they receive food and hydration. We learned that at the beginning they are capable of swallowing, but that feeding them orally takes a great deal of

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<sup>2</sup>Robert D. Orr and Gilbert Meilander, “Ethics & Life’s Ending: An Exchange,” *First Things* 145 (August/September 2004): 31–38.

time and that using tubes to feed them lightens the burdens of their caregivers. We also learned that the cost of feeding them is very reasonable, and that they do not have to be kept in expensive institutions but can be cared for at home if someone is there to provide care and who can be helped by visiting nurses, etc.<sup>3</sup>

Indeed, if the medical facts are as May describes, one could logically say that healthy newborns suffer from a fatal pathology, since they can survive only if provided with nourishment.

In his reading of the papal statement (to allow for the removal of ANH), Harvey interprets the allocution's phrase "proper finality" as the restoration of full function, which is impossible for PVS patients whose condition was caused by anoxia (though not for PVS patients whose conditions were caused by drug overdose). Thus, ANH would be required for PVS patients who could recover full function, but not for those who could not. In cases of permanent PVS, removal is warranted because the proper finality of the medical treatment, the cure of the PVS, is impossible, so all treatments aimed at this goal are futile.

A difficulty with this reading of the allocution is that John Paul II expressly denies that ANH is a "medical treatment," but rather asserts that it constitutes ordinary care. Another difficulty is that the allocution simply does not distinguish between these two conditions (permanent PVS caused by anoxia and potentially reversible PVS caused by drug overdose); thus, making this distinction to interpret the teaching could arguably be viewed more as eisegesis than exegesis.

Most interpreters have read the allocution as requiring ANH for all PVS patients so long as the ANH is achieving the goal of sustaining human life—its proper finality. They have faulted or praised the speech on this basis.<sup>4</sup>

#### *Papal Allocution and Catholic Tradition*

Among those who fault the allocution as too restrictive, some see a contradiction between the allocution and the Catholic tradition of judgment with respect to which means of preserving life are obligatory and which are not required. Most of these authors draw on the 1958 Gregorian doctoral dissertation of Daniel A. Cronin, *The Moral Law in Regard to the Ordinary and Extraordinary Means of Conserving Life*. (See, for example, the articles by Harvey and O'Rourke, as well as those by James Drane and Thomas Shannon, in the April 2006 *Christian Bioethics*.) Citing such venerable authorities as Francisco de Vitoria (d. 1546), Domingo de Soto (d. 1560), Gregory Sayrus (d. 1602), Domingo Bañez (d. 1604), and Jean-Pierre Gury (d. 1866), supporters of ANH withdrawal argue that the papal allocution contradicts

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<sup>3</sup>William E. May, "Caring for Persons in the 'Persistent Vegetative State' and John Paul II's March 20, 2004 Address," *Medicina e Morale: Rivista internazionale di Bioetica* 55 (May/June 2005): 535–555.

<sup>4</sup>Arguing for a more permissive interpretation of the allocution and for the point that discontinuing care requires special justification, see Jorge L. A. Garcia, "A Catholic Perspective on the Ethics of Artificially Providing Food and Water," *Linacre Quarterly* 73.2 (May 2006): 132–152.

these earlier understandings of what constitutes extraordinary (and thus nonobligatory) means of preserving life.

The role of tradition remains an important one for Catholic ethics, yet the uses of that tradition are not always consistent. The tradition—especially the more recent tradition—is hardly uniform on the proper uses of ANH. As Lisa Sowle Cahill notes, “Over the past several years, different theologians, bishops and bishops’ conferences have offered differing views about whether and when artificial nutrition should be considered an extraordinary or disproportionate means.”<sup>5</sup> Indeed, none of the scholastic authors cited had to deal with the issue of providing ANH for PVS patients, so what they would say about this matter is conjecture based on their teachings at the time. In my view, there is indeed some tension between the allocution and the teaching of the scholastic authorities.

It is curious, however, that so many contemporary authors come to the defense of the scholastic tradition against the papacy, when most if not all of these venerable authorities would endorse Thomas Aquinas’s teaching on the relationship between the theologians and the magisterium: “We ought to abide by the authority of the Church rather than by that of an Augustine or a Jerome or of any doctor whatever” (*Summa theologiae* II-II, Q 10.12). Likewise, many contemporary theologians endorse changing Church teaching on contraception, despite a more historical, widespread, and explicit condemnation of the practice in the Roman Catholic tradition.<sup>6</sup> Moreover, contemporary theologians have not criticized other (apparent) papal departures from the tradition, such as Pope John Paul II’s teaching on capital punishment.<sup>7</sup> These uses of tradition in contemporary theology do not seem entirely consistent.

### *Human Life as Intrinsic Good*

Many critics of the papal allocution accuse the Pope of “vitalism,” a virtual idolatry of human life. Like O’Rourke, they hold that to continue life in such a condition as a PVS does not constitute a great benefit; indeed, it does not constitute a benefit at all. For example, Sowle Cahill writes, “Leaving the tubes in place cannot be simplistically equated with acting in [the patient’s] interests, since it could reasonably be argued that fifteen or more years of existence in a ‘vegetative’ state neither serves human dignity nor presents a fate that most reasonable people would obviously prefer to death.”<sup>8</sup>

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<sup>5</sup>Lisa Sowle Cahill, “Catholicism, Death and Modern Medicine,” *America* 192.14 (April 25, 2005): 14–17.

<sup>6</sup>The most definitive record of the condemnation, spread over many centuries, places, and theological approaches, remains John T. Noonan, Jr., *Contraception: A History of Its Treatment by the Catholic Theologians and Canonists* (Cambridge, MA: Harvard University Press, 1965).

<sup>7</sup>I do not view Pope John Paul II’s teaching as *inconsistent* with tradition, although I think it is a *development*. See Christopher Kaczor, “Capital Punishment and the Catholic Tradition: Contradiction, Circumstantial Application, or Development of Doctrine?” *Nova et Vetera*, English Edition 2.2 (Fall 2004): 279–304.

<sup>8</sup>Sowle Cahill, “Catholicism, Death and Modern Medicine,” 17.

All defenders of the allocation, as far as I can tell, hold that life always constitutes a benefit for the person. Criticizing Sowle Cahill, Jorge Garcia writes,

I think it incoherent to deny that life is always a benefit to a human being and can discern no disservice to human dignity in preserving a human life, in which dignity inheres as such and irrespective of the blocking of many normal capacities. On the contrary, to deem such a life as beneath preservation is to deny its inherent status. Whether many reasonable people would prefer death to a long life in PVS is morally irrelevant, since they may seek escape in death out of despair and incomprehension before the prospect of such a limited existence. Even reasonable people, of course, form some preferences from irrational parts of the self.<sup>9</sup>

The obvious importance of the question of whether human life is always valuable, as well as its anthropological implications for one's conception of the human person, is beyond the scope of these brief reflections. However, any anthropology that even implicitly drives a dualistic wedge between the "biological" (or "vegetative") life and the "human" (or "personal") life of the human being risks a dualism incompatible with a sound understanding of the human person. A frank discussion of this matter among philosophers and theologians in the Catholic tradition may clarify not only disputes about the papal allocation and the Schiavo case, but fundamental approaches to some of the most important questions of our time.

*The Allocation and the Culture of Life*

Finally, despite the Pope's obvious intentions to the contrary, some writers, like Clark, criticize the papal allocation for undermining a culture of life, driving greater numbers of people toward direct euthanasia and physician-assisted suicide as a backlash to guidelines that are too restrictive.<sup>10</sup> I think it more likely that permitting the removal of ANH from PVS patients in order to kill them will hasten the call for more expeditious forms of euthanasia and physician-assisted suicide. After all, it seems more compassionate—toward the patient and those who watch the end of the patient's life—to quickly and easily dispatch a PVS patient with an injection rather than watch the slow deterioration from dehydration over the course of five to thirteen days.

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<sup>9</sup>Garcia, "Catholic Perspective," 151.

<sup>10</sup>See also Sowle Cahill, "Catholicism, Death and Modern Medicine," 17.