When to Withdraw Life Support?

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Many recent cases concerning withholding or withdrawing of life support have caused public controversy. In the past fifteen years, some who comment on these cases, and who claim to be guided by Catholic tradition and teaching, maintain that life support—that is, medical procedures or mechanisms which prolong life—may not be withheld or withdrawn unless the death of the person in question is "imminent and inevitable."[1] Death, they say, must be safely predicted to occur within a few hours or days, in spite of any medical efforts to preserve or prolong life. Hence, the fatal illness or disease can no longer be abated or resisted, and death will occur no matter what medications or medical procedures might be employed.

Sometimes this thought is expressed by stating that life support may not be withdrawn unless the patient "is in a terminal condition." The desire to continue the use of life support until death is imminent and inevitable is a natural outcome of physicians' desire to "never give up." Thomas O'Donnell, an eminent Catholic bioethicist, remarked, "There is in the medical profession an ideal which demands the fighting off of pain and death until the last possible moment."[2] Moreover, Gerald

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[1] Judith Graham, "Schiavo Case Puts Priest on Hot Seat," *Chicago Tribune*, final edition, April 24, 2005, 1; available at http://www.accessmylibrary.com/coms2/summary_0286-31615812_ITM.

[2] Thomas Joseph O'Donnell, *Medicine and Christian Morality* (New York: Alba House, 1996), 67.

Kelly, in one of his more prominent articles on the subject, pointed out that physicians and moral theologians interpret the term "ordinary and extraordinary means" in diverse manners.[3] Moral theologians use hope of benefit and degree of burden as criteria for discerning the difference between the two terms. Physicians consider the effectiveness and availability of medical means in making this distinction.

In this essay, I wish to consider the opinion that life support may be withheld or withdrawn only if the patient is in danger of imminent and inevitable death in light of the tradition of Catholic teaching in regard to the use or forgoing of the means to prolong life.

Traditional Teaching of the Church

There is no doubt that some recent statements of Church teaching utilize the term "imminent and inevitable death" when discussing the withholding and withdrawing of life support. Most prominent among these statements are the words of Pope John Paul II in the encyclical *Evangelium vitae*, when he distinguishes between euthanasia and

> the decision to forgo so-called "aggressive medical treatment," in other words, medical procedures which no longer correspond to the real situation of the patient either because they are now disproportionate to any expected result or because they impose an excessive burden upon the patient or his family. In such situations when *death is clearly imminent and inevitable*, one can in conscience "refuse forms of treatment that would only secure a precarious and burdensome prolongation of life so long as the normal care to the sick person in similar cases is not interrupted."[4]

Shortly after the encyclical was promulgated, a symposium was organized at Georgetown University for the purpose of reading, discussing, and interpreting the document. The scholars and Church leaders participating agreed that, while life support may be removed if death is imminent and inevitable, Catholic tradition has never required that one wait until death is imminent and inevitable before removing life support.[5]

Used as a basis for the statement in *Evangelium vitae* is the *Declaration on Euthanasia*.[6] The *Declaration* does indicate that life support may be withdrawn if death is imminent and inevitable, but it also indicates that life support may be withheld or withdrawn in less dire circumstances, thus asking the question, "Is it necessary in all circumstances to have recourse to all possible remedies?" In cases of terminal illness, guidance for withholding or withdrawing life support in general

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[3] See Gerald Kelly, "The Duty of Using Artificial Means of Preserving Life," *Theological Studies* 11 (June 1950): 203–220, and "The Duty to Preserve Life," *Theological Studies* 12 (December 1951): 550–556.

[4] Pope John Paul II, E*vangelium vitae* (March 25, 1995), n. 65, emphasis added.

[5] Kevin W. Wildes and Alan C. Mitchell, eds., *Choosing Life, A Dialogue on* Evangelium vitae (Washington, D.C.: Georgetown University Press, 1997), xi–xii, 259.

[6] Congregation for the Doctrine of the Faith (CDF), *Declaration on Euthanasia* (May 5, 1980).

is offered before decisions are even discussed. The document states, "In any case, it will be possible to make a correct judgment as to the means by studying the type of treatment to be used, its degree of complexity or risk, its cost and the probabilities of using it, and comparing these elements with the result that can be expected, taking into account the state of sick person and his or her physical and moral resources."[7]

A more traditional way to express the teaching of the Church in this regard is to say that life support may be withdrawn if it does not offer hope of benefit or if it imposes an excessive burden. These criteria are stated in the *Ethical and Religious Directives for Catholic Health Care Facilities*,[8] which provide ethical norms for Catholic health care providers in the United States. The ERDs give no indication that one must wait until death is imminent and inevitable before removing life support.

The criteria for forgoing life support among the earliest theologians to consider the issue, as discussed at length by Daniel Cronin in his monumental work on the means to preserve human life,[9] are the same as those stated in the ERDs. In neither the ERDs nor the writings of the traditional Catholic theologians considered in Cronin's study is it even hinted that a patient, or the proxy for a patient, must wait until death is imminent and inevitable or that a patient must be in a terminal condition before life support may be withheld or removed. As John Connery stated when interpreting the *Declaration on Euthanasia* in light of Catholic tradition, "Use of the distinction between ordinary and extraordinary means was not limited to terminal cases."[10]

Moreover, the criteria of hope of benefit and degree of burden are to be judged by the patient or the proxy for the patient. Others may give advice, but the final decision is the responsibility of the patient or proxy. As the *Declaration on Euthanasia* states, "In the final analysis it pertains to the conscience either of the sick person, or those qualified to speak in the sick person's name . . . to decide in the light of moral obligations and the various aspects of the case."[11] As a result, moral theologians who have studied and applied the teaching of the Church in this regard speak of a "relative application" of these criteria, that is, an application which is always determined *relative* to the circumstances of an individual patient and by the patient or a proxy.[12]

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[7] Ibid., IV.

[8] U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, 4th ed. (Washington, D.C: USCCB, 2001), nn. 56–57, http://www.usccb.org/bishops/directives.shtml.

[9] Daniel A. Cronin, "The Moral Law in regard to the Ordinary and Extraordinary Means of Conserving Life" (doctoral dissertation, Pontifical Gregorian University, 1956), in *Conserving Human Life*, ed. Russell E. Smith (Braintree, MA: Pope John XXIII Medical-Moral Research and Educational Center, 1989), part 1.

[10] John R. Connery, "Prolonging Life: The Duty and Its Limits," *Linacre Quarterly* 47.2 (May 1980): 151–165.

[11] CDF, *Declaration on Euthanasia*, IV.

[12] Thomas Joseph O'Donnell, *Medicine and Christian Morality* (New York: Alba House, 1996), 64; and Cronin, "Moral Law," 90.

There is no attempt to frame strictly objective and apodictic norms. Consideration of the individual person even extends to the psychological reaction of the patient. The classical authors spoke of *horror mentis* or *vehemens horror* as a cause for rejecting a means which might prolong life.[13] "Psychic aversion" is a modern term used to designate these traditional phrases.

The relative application of the criteria for forgoing life support seems to coincide with a statement of Pope Pius XII allowing the removal of a respirator because it imposed an excessive burden: "Life, health, and all temporal activities are subordinate to spiritual ends."[14] This also corresponds to the teaching of Aquinas that all human activity should be ordered to attaining the ultimate end of human life: friendship with God.[15] Thus, the tendency to consider the subjective or relative response to any means of prolonging life has long been part of the Catholic tradition.

But recent documents seem to assume that simply prolonging life is sufficient reason to apply and continue life support, no matter what might be the ability of a person to function in regard to the ultimate purpose of human life. In response to this tendency, Kevin Wildes points out that "benefit does not mean simply the prolongation of life. Cronin explores the idea of a treatment offering a benefit. That a treatment must offer some benefit accords with common sense; the real question is how much benefit and what type of benefit must be realized. *The idea of benefit, as understood in traditional teaching is not merely the conservation of life*."[16]

When Wildes writes that the "idea of benefit … is not merely the conservation of life," he is not saying anything new or challenging. He is simply repeating the teachings of moral theologians of the time, such as Gerald Kelly, Charles McFadden, John Connery, and Thomas O'Donnell, which are affirmed by the moral theologians of the past as quoted in the dissertation of Daniel Cronin.

Limitations of the Traditional Teaching

The tendency to require that death be imminent and inevitable before life support can be removed and that hope of benefit become a strictly objective norm, not relative to the good of the individual patient, seems to have developed in the 1980s and early 1990s. Daniel Callahan, in private correspondence in 1988, remarked that some seemed to be overlooking an important element of the Catholic tradition in regard to the use of life support. "My own sense is that the Catholic pro-life forces are moving in a regressive direction, in effect repudiating some long-standing positions and teaching—but I don't think it is being recognized just how extensive that tendency is."[17] Later, in a 1994 article, he wrote,

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[13] Cronin, "Moral Law," 71, 110.

[14] Pius XII, "The Prolongation of Life," address to an international congress of anesthesiologists (November 24, 1957), in *The Pope Speaks* 4.4 (Spring 1958): 393–398.

[15] Thomas Aquinas, *Summa theologiae* I-II, q. 1, a. 1; II-II, q. 126, a. 1; II-II, q. 23, a. 1.

[16] Kevin W. Wildes, "Ordinary and Extraordinary Means and Quality of Life," *Theological Studies* 57.3 (September 1996): 510 (emphasis added).

[17] Letter to Kevin O'Rourke, February 9, 1988.

> Death by disease has, in an age that cannot accept human finitude or mortality, become the equivalent to death by malicious intent. Correspondingly, many of those who uphold the sanctity of life seem now to believe that they must follow technology *wherever it goes so long as it preserves life*. Medical technology, the child of the Enlightenment, has coopted the ancient principle of sanctity of life and turned it into its handmaiden.[18]

Wildes traces this change of attitude to a resource paper issued in 1992 by the U.S. Bishops' Committee for Pro-Life Activities that discusses the moral and pastoral issues related nutrition and hydration at the end of life.[19] But the tendency to eliminate the relative approach and treat the prolongation of human life as an absolute good for everyone seems to have begun before this document was issued. In 1987, William May and others published an article that considered the use of artificial nutrition and hydration (ANH) for permanently unconscious patients.[20] This was a complete reversal of a statement May had written a few months earlier in response to a paper issued in 1985 by a Vatican study group for the Pontifical Academy of Sciences.[21] At that time May and others had organized a group of theologians and philosophers who opposed the statement of the Vatican study group.

In the 1987 article, rather than discuss the hope of benefit, May and others examined the idea of "useless treatment." They agree that "useless or excessively burdensome treatment" may be refused and they point out that a treatment may also be "psychologically repugnant to the patient."[22] But when they apply these criteria, they maintain that prolonging life for people in a permanently comatose condition "is a great benefit, namely, the preservation of their lives," and thus they imply that treatment that simply keeps people alive is never useless. In effect, they eliminate the consideration of hope of benefit for the comatose patient relative to striving for the purpose of life. They seek to present the prolonging of life, no matter the condition of the patient, as a good that must be pursued. If life can be prolonged, no matter

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[18]D. Callahan et al., "The Sanctity of Life Seduced," *First Things* 42 (April 1994): 13–27, emphasis added.

[19]NCCB Committee for Pro-Life Activities, "Nutrition and Hydration: Moral and Pastoral Reflections," 1992, http://www.usccb.org/prolife/issues/euthanas/nutindex.shtml.

[20]William E. May et al., "Feeding and Hydrating the Permanently Unconscious and Other Vulnerable Persons," *Issues in Law and Medicine* 3:3 (Winter 1987): 203–217.

[21]William M. May, "Euthanasia and the Feeding of Irreversibly Comatose Persons," unpublished, 1985. The Pontifical Academy for Sciences paper was the "Report on the Artificial Prolongation of Life," *Origins* (December 5, 1985), reprinted in *Conserving Human Life*, ed. Smith, 305–307. In *Medicina e Morale* (May–June 2005), May describes meeting in 1986 with other scholars, a physician, and nurses "to study the issue and to prepare a final paper": "As a result of the new knowledge, two of us who had previously thought that [ANH] constituted extraordinary care and hence could be morally omitted, changed our minds—Germain Grisez and I." "Caring for Persons in the Persistent Vegetative State and Pope John Paul II's March 20, 2004, Address on Life-Sustaining Treatments and the Vegetative State," 535.

[22]May et al., "Feeding and Hydrating the Permanently Unconscious," 208.

what the quality of function, the only cause for forgoing life support becomes an excessive burden. But they limit the possibility of invoking excessive burden by declaring that ANH "is not excessively burdensome and the provision of food and fluids by tube is not too difficult or complicated."[23]

In 1989, Germain Grisez published an article in response to May's article seeking "to clarify certain philosophical issues underlying the moral norms articulated."[24] He began by describing his own reasons for changing his opinion in regard to the care of people who are permanently comatose. These reasons are similar to the statements made in the May article. May's revised opinion departs from the traditional teaching and maintains that preserving the life of any person, no matter what the ability to function, is beneficial simply because it "keeps them alive."[25] Unlike May, Grisez does discuss the withdrawal of ANH if the patient has "a psychological repugnance toward being fed by tube." But he allows this only if the desire to forgo ANH has been expressed in an advance directive. Thus, he does not allow a proxy to withdraw this care unless the comatose patient has expressed this desire in advance.[26]

While the opinions in regard to prolonging life in comatose patients expressed by authors of the aforementioned articles seem to have been adopted by some, these opinions were opposed by several Catholic theologians and professional organizations.[27] In sum, many Catholic authors maintained that prolonging life should be evaluated in regard to the patient's ability to strive for the purpose of life.

It seems the main reason both Grisez and May changed their opinions in regard to the use of ANH for people in permanent coma is because they maintain that human life is a basic good, *an incommensurable good*, and one may never act directly contrary to a basic or incommensurable good.[28] They seem to miss the distinction that removing life support is not a direct attack upon human life if the reason for removal is no hope of benefit or an excessive burden. Grisez does not accept the relational ordering of human goods followed by Aquinas. As a result, he makes prolonging life, no matter what the quality of function, almost an absolute good.

Speaking of those who would remove life support from persons who can no longer strive for the purpose of human life, Grisez accuses them of dualism, that is,

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[23] Ibid., 210.

[24] Germain Grisez, "Should Nutrition and Hydration Be Provided to Permanently Unconscious and Other Mentally Disabled Persons?" *Issues in Law and Medicine* 5.2 (Fall 1989): 165–180.

[25] May et al., "Feeding and Hydrating the Permanently Unconscious," 209.

[26] Ibid., 204.

[27] See Lisa Cahill, "Moral Notes 2006: Bioethics" *Theological Studies* 67.1 (March 2006): 124–132. For citations to several Catholic authors, see also chapter 6 in Bryan Jennet, *The Vegetative State* (Cambridge University Press, 2004); and D. Casarett et al., "Appropriate Use of Artificial Nutrition and Hydration: Fundamental Principles and Recommendations," *New England Journal of Medicine* 353.24 (December 15, 2005): 2607–2612.

[28] Germain Grisez, *The Way of the Lord Jesus*, vol. 1, *Christian Moral Principles* (Quincy, IL: Franciscan Press, 1983), 196–198.

of considering bodily life an "instrumental good," not a substantial element of the human person. Benedict Ashley has refuted this accusation: "The human body is human precisely because it is a body made for and used by human intelligence. Why then should it be 'dualism' to unify the human person by subordinating the goods of the body to the goods of the immaterial, free and contemplative intelligence. This subordination implies mensuration of the subordinate by the superordinate, not the incommensurability of ends as posited by [Grisez]."[29] Moreover, Ashley has pointed out that in opposition to Grisez's opinion that the body cannot be considered a means to an end because it is an "incommensurable good," Aquinas maintains that a good considered as an end in one order can still be a means in another (a *bonum honestum*).[30]

The main document emanating from a bishops committee, to which Wildes referred, is the statement of the Committee on Pro-Life Activities of the National Conference of Catholic Bishops (NCCB) issued in 1992.[31] "Nutrition and Hydration: Moral and Pastoral Reflections" was never approved by the administrative committee of the bishops' conference, nor by the NCCB as a whole; hence, it has limited authority. Bishop James McHugh, who was chair of the pro-life committee, was also a signer of the 1987 article by May mentioned above ("Feeding and Hydrating the Permanently Unconscious") and the author of a 1989 statement addressed to priests of the diocese of Camden, New Jersey,[32] containing the same thoughts that would appear in the document of the pro-life committee.

In "Nutrition and Hydration," the pro-life committee sets as a first principle that medical care should seek to sustain and foster life. ANH, even though it may not remedy pathological conditions, benefits patients in several ways, mainly by sustaining life and expressing loving concern and solidarity. The document allows for consideration of subjective factors when assessing the use of ANH, but immediately offers "practical cautions to help prevent abuse" that limit the consideration of subjective factors. The bishops' statement recognizes that some moral theologians allow for the withdrawal of ANH from patients who most likely will not recover consciousness, because ANH does not offer hope of benefit; they state, however, that they are opposed to this opinion, but they do not attempt to refute it. Rather, they are in favor of an opinion held by other moral theologians, which holds that "while life is not the highest good, it is always and everywhere a basic good of the human person and not merely a means to other goods." The document concludes with the statement, "We hold for a presumption in favor of providing medically assisted nutri-

[29] "What is the End of the Human Person? The Vision of God and Integral Human Fulfillment," in *Moral Truth and Moral Tradition,* ed. Luke Gormally (Dublin: Four Court Press, 1994), 73.

[30] Benedict Ashley, letter, *National Catholic Bioethics Quarterly* 7.4 (Winter 2007): 654. See *Summa theologiae* I-II, q. 13, a. 1, and q. 14, a. 2.

[31] NCCB Committee for Pro-Life Activities, "Nutrition and Hydration."

[32] J. McHugh, "Principles in Regard to Artificially Assisted Nutrition and Hydration" (September 21, 1989), in *Origins* 19.19 (October 12, 1989): 314–316.

tion and hydration to patients who need it, which presumption would yield in cases where such procedures have no medically reasonable hope of sustaining life or pose excessive risks or burdens." Hope of benefit is identified with merely sustaining life, and thus subjective judgments concerning excessive burden are severely limited. Because medical therapy and procedures which prolong life are considered a great benefit, even in patients with highly impaired function, it follows that life support may be withheld or removed only if death is imminent and inevitable.

The tendency of some to identify the sanctity of life with prolonging it in any condition as an ultimate norm in the determination of removing life support is also evidenced in the case of "Ms. 'B' and the Vatican."[33] In 2002, a woman in Britain obtained a court order allowing her to discontinue life support in the form of a ventilator. The ethics committee of the Conference of Bishops of England and Wales stated that she was acting ethically and within her rights: "It is important to be clear that this case did not involve questions of euthanasia or assisted suicide and has set no precedents in regard to either."

However, two theologians teaching in Rome and closely identified with the Pontifical Council on Life declared that the case of Ms. B. was one of passive euthanasia, and should not have been sanctioned by the court in Britain. Traditionally, euthanasia has been distinguished from withholding or removing life support when medical therapy does not offer hope of benefit or imposes an excessive burden upon patient, loved ones of the patient, or the community.[34] Euthanasia results when the intention of the act (*finis operis*) is to kill the patient and the intention of the agent (*finis operantis*) is to eliminate pain or suffering.[35] But it seems that the opinion of the Roman theologians is that any physical act which removes life support and after which death results is implicitly an act of passive euthanasia. They seem to forget that every foreseen effect is not an intended effect. Thus, their implication is that the intention of the act (*finis operis*) is death and that the only intention (*finis operis*) involved in removing life support is the death of the patient. In the traditional thought of Catholic theologians, when life support is removed because it no longer offers hope of benefit or imposes an excessive burden, the cause of death is not the removal of life support but the fatal pathology which is no longer being abated: "The cause of death if a respirator is turned off is the very cause that would have brought it on if the respirator had not been used."[36]

At the time this controversy over Ms. B occurred, because of the prestige of the Roman theologians, I thought it might indicate a change in papal teaching in regard to ordinary and extraordinary means.[37] But on further reflection, it seems to

[33]Kevin O'Rourke, "Ms. 'B' and the Vatican," *National Catholic Bioethics Quarterly* 2.4 (Winter 2002): 595–599.

[34]USCCB, *Ethical and Religious Directives*, nn. 56–57.

[35]CDF, *Declaration on Euthanasia*, I.

[36]Connery, "Prolonging Life, 65. See also Thomas Joseph O'Donnell, "Fatal Pathology, Not Removal of Life Support," *Medical-Moral Newsletter* (February 1995): 7.

[37]Ashley, "What Is the End of the Human Person?" 73.

simply be an interpretation in accord with the tendency to treat the prolongation of human life as an absolute good, no matter how debilitated the function due to the fatal pathology.

The Traditional Time to Decide on Life Support

Since human beings have a responsibility to prolong life, they have a moral obligation to seek to abate or overcome illness and disease. Church teaching emphasizes, however, that prolonging life is not an absolute mandate.[38] Hence, there are no consistent teachings offered by theologians or the magisterium indicating that the use of some forms of life support is an absolute necessity. The traditional teaching has always outlined the physical and moral impediments which indicate that in certain circumstances some forms of life support may be withheld or withdrawn. When a decision to use life support has been made, it may always be re-evaluated, depending on the ongoing effect of the therapy. The teaching of theologians and Church magisterium has always allowed for withdrawal of medical therapy if the evaluation of hope of benefit or degree of burden changes over time.[39]

When a less serious illness is present, we often rely on the homeostasis of the body to resist and in time overcome it. For example, many people do not take medicines or antibiotics if they incur a respiratory infection, relying instead on rest, liquids, and the natural resistance of the immune system to gradually restore health. However, if a more serious illness or disease threatens a fatal or lethal pathology, one that might cause death if not abated or eliminated, the prudent person seeks medical assistance and follows medical advice in an effort to overcome the lethal pathology.[40]

Thus, the logical time to make decisions in regard to the use or forgoing of medical assistance is when a person becomes aware of serious illness. Usually, the initial reaction of a person with a serious pathology, one that might cause death if not abated or eliminated, will be to utilize the medical or surgical means recommended by competent physicians. But in time, if the means to prolong life does not offer hope of benefit or if it imposes an excessive burden, it may be rejected. In recent documents concerning the care of patients in need of ANH, the assumption has been that once ANH has been utilized, since the patient is not dying or is in "a stable condition," no decision can be made to discontinue ANH.[41]

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[38] CDF, *Declaration on Euthanasia*, I; and USCCB, *Ethical and Religious Directives*, nn. 55–59, 61.

[39] CDF, *Declaration on Euthanasia*, IV; and Connery, "Prolonging Life," 45.

[40] When speaking about fatal pathologies, it is important to distinguish them from physical or mental disabilities which may give rise to human dysfunction but are not life threatening.

[41] CDF, Commentary on "Responses to Certain Questions of the USCCB Concerning Artificial Nutrition and Hydration" (August 2007), reprinted in *National Catholic Bioethics Quarterly* 8.1 (Spring 2008): 124–127.

Worry for a Long Life

Francis de Vittoria, O.P., was one of the first theologians to consider the moral norms for prolonging life. As we consider the question of whether to withhold or withdraw life support, his words are relevant: "Neither indeed, did God intend us to be so worried about a long life."[42] Prolonging life no matter what the degree of human function seems to be the goal of many in our generation. For them, death is not a part of life but rather an implacable tragedy. The thought of Leon Kass in this regard is also relevant: "To argue that human life would be better without death is to argue that human life would be better without being human."[43]

[42]Francisco de Vitoria, *On Homicide, and Commentary on* Summa theologiae IIa-IIae Q. 64 *(Thomas Aquinas)*, trans. John P. Doyle (Milwaukee, WI: Marquette University Press, 1997), 105.

[43]Nicolas Wade, "Arguments over Life and the Need for Death," *New York Times*, March 7, 2000, F7.