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Artificial Nutrition and Hydration

The New Catholic Debate

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ARTIFICIAL NUTRITION AND HYDRATION

THE NEW CATHOLIC DEBATE

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Preface

Pope John Paul II surprised much of the medical world in 2004 with his strongly worded statement insisting that patients in a persistent vegetative state should be provided nutrition and hydration (John Paul II, 2004). While many Catholic bioethicists defended the Pope's claim that the life of all human beings, even those in a persistent vegetative state or a coma, was worth protecting, others argued that the Pope's position marked a shift from the traditional Catholic teaching on the withdrawal of medical treatment at the end of life.

The debate among Catholic bioethicists over the Pope's statement only grew more intense during the controversy surrounding Terri Schiavo's death in 2005, as bioethicists on both sides of the debate argued about the legitimacy of removing her feeding tubes. Many Catholics were troubled by the Florida courts' reliance on the testimony of Schiavo's husband regarding her wishes, given his apparent neglect of her, and his new relationship with another woman. Moreover, Schiavo's family expressed repeatedly and strongly their willingness to provide care for her. Accordingly, to many, it seemed that the removal of her feeding tubes was an act of euthanasia.

Nevertheless, the Catholic tradition firmly asserts the right of patients to refuse medical treatment when such treatment is "extraordinary" or "disproportionate" (Pius XII, 1957). So, while Schiavo's treatment seemed egregious, and not in accordance with John Paul II's allocution, it still seemed open to some Catholic theologians and philosophers to argue for the legitimacy of removal in her case, and others. The controversy thus continued.

This volume takes stock of that controversy, and the Papal *Allocution* that played a considerable part in its generation. In this volume, philosophers and moral theologians address both the interpretive issue: What, precisely, was the Pope forbidding, and requiring? And they address the moral issue: What, precisely, is owed to patients in a persistent vegetative state? When, if ever, is it permissible to remove their feeding tubes? When is such removal tantamount to euthanasia? Philosophers and theologians on both sides of the issue take stock of the Pope's *Allocution*, the weight of tradition, and the strength of the arguments (see especially Gomez-Lobo, 2008; Boyle, 2008; Garcia, 2008; Cataldo, 2008). *Artificial Nutrition and Hydration: The New Catholic Debate* thus provides a helpful roadmap to one of the most difficult issues of Catholic bioethics today.

The essays in this volume do more than this, however. The essays in this book go beyond the philosophical and theological controversies concerning ANH, in some cases to situate the debate in terms of Catholic and moral understandings of the importance of food for community, or the relationship between a community and its disabled (Fisher, 2008; Degnan, 2008). Other essays provide an account of the history of the debate and the status of the law regarding the feeding of patients in a vegetative state (May, 2008; Laing, 2008). There is also a symposium on the position of Fr. Kevin O'Rourke, whose work on ANH has been extremely influential, but also controversial, over the past two decades (O'Rourke, 2008a; 2008b; Latkovic, 2008; Lee, 2008).

In sum, *Artificial Nutrition and Hydration: The New Catholic Debate* provides a comprehensive introduction to the issue, and illustrates the work of some of the Church's finest philosophical and theological minds at work in resolving the moral issues at stake in this difficult problem.

It is important to note one development in the discussion which has occurred while this book was being put in press, and which has thus not been addressed by any of its contributors. On August 1, 2007, the Congregation for the Doctrine of the Faith released a brief document titled "Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration" (CDF, 2007). Approved by Pope Benedict XVI, the document answers two questions. First, as to the question of whether "the administration of food and water (whether by natural or artificial means) to a patient in a 'vegetative state' [is] morally obligatory except when they cannot be assimilated by the patient's body or cannot be administered to the patient without causing significant physical discomfort" (CDF, 2007, q. 1), the document answers affirmatively.

In its answer to this question, the CDF follows John Paul II in affirming that "the administration of food and water even by artificial means is, in principle, an ordinary and proportionate means of preserving life. It is therefore obligatory to the extent to which, and for as long as, it is shown to accomplish its proper finality, which is the hydration and nourishment of the patient" (CDF, 2007, r. 1).

The document then asks, "When nutrition and hydration are being supplied by artificial means to a patient in a 'permanent vegetative state,' may they be discontinued when competent physicians judge with moral certainty that the patient will never recover consciousness" (CDF, 2007, q. 2)? The document denies this: "A patient in a 'permanent vegetative state' is a person with fundamental human dignity and must, therefore, receive ordinary and proportionate care which includes, in principle, the administration of water and food even by artificial means" (CDF, 2007, r.2).

These two responses appear to confirm many claims made by contributors to this volume regarding the proper interpretation of the Papal *Allocution*, and the obligation to provide nutrition and hydration to the permanently unresponsive. At the same time, it is important to note a question that arises about the CDF document: does it consider only the narrow of question of patients who are in a permanent vegetative state and their caregivers as such, without making a judgment about advance directives from patients regarding termination of their nutrition and hydration? The document seems to assert unequivocally a duty to feed as long as it is not futile; one important question is thus whether that duty would override a duty to respect a patient's advance directive in case

of conflict. Whether the CDF document prescinds from this, and similar questions, or implicitly answers them, remains to be discussed.

It has been a pleasure to work with each of the authors here represented. In addition to giving them my sincere thanks, I would also like to thank Lisa Rasmussen, whose help is always invaluable, and H. Tristram Engelhardt, without whom the Catholic Studies in Bioethics series would not exist.

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Part I
The Issue

Chapter 1
Why do Unresponsive Patients Still Matter?[1]

Bishop Anthony Fisher, O.P.

1.1 Civilization After Schiavo?

1.1.1 Introduction to the Contest

She was not brain-dead, not dying, not comatose, not on 'life-support.' A potassium imbalance in 1990 had led to a collapse and a coma from which she emerged severely cognitively impaired, if otherwise quite healthy. She was diagnosed as being in a 'persistent vegetative state' ('PVS') though some believed she responded in a rudimentary way to her family and environment. What no-one contested was that she was being fed and hydrated through a tube. Her estranged husband-guardian wanted that feeding stopped; her parents and other family members wanted it continued. Her husband said he thought she had had enough and clearly had had enough himself; her family thought the pious Catholic woman would have wanted to follow Church-teaching and receive 'ordinary' care.

Despite ignorant talk about 'brain failure' and insensitive talk about her being 'a vegetable' and 'as good as dead', her heart kept beating, her lungs kept breathing, all her bodily functions continued, all without 'life-support' or like assistance. With basic nursing care she might have lived for years. No-one seriously suggested that her assisted feeding was not working: the problem, from some people's point of view, was that it was working all too well! Nor was her assisted feeding a burden to her, physically or psychologically: she was unaware of it. Nor was it a great financial or logistical difficulty: her nursing care was covered by a trust fund, her feeding cost less than the average American spends on food and water, and it could easily have been administered at home by a family member.

The issue came to courts, legislatures and governments, and a media circus ensued. Ronald Cranford, a strong advocate of euthanasia and assisted suicide, described her case as 'the highlight of my career.' The courts directed that her feeding

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tube be removed and with it all nutrition and hydration; after some dispute about whether she could still swallow, the court also forbade spoon feeding and water by mouth. Her parents and priest were allowed only restricted access and were prevented from being with her at the end. On March 31 2005, just after nine in the morning, Theresa Marie Schindler Schiavo died, aged 41.

Terri Schiavo joined a string of prominent cases in the United States, Britain and Australia over whether to withdraw assisted feeding and hydration.[2] Because they demonstrate the deep philosophical divides in contemporary society—the so-called 'culture wars'—these cases were given a high profile. Post-modern cultures are intensely conflicted over issues of human nature, life and death, dignity and rights, relationships and social responsibilities. Even the most basic ideas of all—such as that there is a way things are; that things have a *nature*, essence or intrinsic way of being; that there is good and evil and that certain courses of action might be universally right or wrong or objectively so in a particular case—are hotly disputed. Fundamental differences which might once have been recognized as arguments in metaphysics, ethics and religion are now played out in hospitals, courts and the media, without yielding much insight. As a result underlying conflicts of values and beliefs are often left unidentified and people talk at cross-purposes, each assuming the other is homicidal or vitalist, authoritarian or uncompassionate.

Why the current enthusiasm of some health authorities and providers, public guardians and ethicists for withdrawing assisted nutrition and hydration from those at a very low ebb—ideally with the patient's prior consent through an advance directive, or at least with their family's consensus, but if needs be by force of law? Diverse motives converge here. One is euthanasist: by the time people need long-term assistance with nutrition and hydration they are presumed to be better off dead. There are also economic and logistical motives, as people conclude that such patients are not deserving of finite health resources and other energies. Also at play here is genuine concern for the freedom of patients (and their guardians) to say no to being over-treated now or in the future, and perhaps to being treated at all. All recognize the importance of being able to deliberate in healthcare on the basis of appropriate information and choose for oneself. All too often, however, this concern for freedom has become in today's world an *idolatry of the will*.

This idolatry is in fact one of the permanent possibilities in human culture and philosophy. From time to time in human history, the careful balance between practical rationality and strong will clarified by the great ancient and medieval thinkers is sacrificed, almost always in favour of will. Early twentieth century existentialism, 1930s and '40s fascism, mid-century consumerism, the sexual revolution of the 1960s and '70s, the 1980s and '90s triumph of democratic individualism over tyrannical communism—all these strands of twentieth century experience made the late twentieth century just such a time. In health and aged care it has meant a shift from professional paternalism to an absolutist notion of patient autonomy. Also in many other areas of life today individual will trumps reason and community. Where there is consensus that will rules, this is usually because there are strong wills behind it. It *suits* governments, health insurers, medibusiness, taxpayers and consumers to equate being human with having a will: for long-drawn-out and costly care of others