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[Book Review of] TWO VIEWS ON: *Health Care Ethics*, by Benedict M. Ashley, O.P. and Kevin D. O'Rourke, O.P.

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world is "the Holy Spirit's power to bring about an earthquake in contemporary moral opinion." Understandable though it is, Ramsey's position is not one that commends itself to those who seriously hope to influence and transform society rather than merely lament its condition or wait in fear and trembling for God to intervene. Moreover, it is hardly the stance of one open to the genuine dialogue proposed in the preface.

We may conclude by quoting from an earlier comment of Richard McCormick: "In an excellent book, *The Patient as Person*, Ramsey's description of the duty of caring for the dying is the most beautiful and Christian available." That book, to date, has not been improved upon and, hopefully, will continue to overshadow this sad exercise in polemics, nit-picking, and intramural sparing. In sum, Ramsey still has much to contribute to the ongoing debate in medical-legal ethics, but unfortunately, not in this publication which he promises will be his "last book in medical ethics."

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TWO VIEWS ON:

Health Care Ethics

Benedict M. Ashley, O.P. and Kevin D. O'Rourke, O.P.

Catholic Hospital Association, 1438 Grand Blvd., St. Louis, Mo. 63104, 1978. xii + 507 pp, $13.00, soft cover.

Christian medical practitioners and health care professionals stand to benefit greatly from this careful and comprehensive study of current medical-moral and bioethical problems written by Fathers Ashley and O'Rourke. Father O'Rourke is the present medical-moral advisor for the Catholic Hospital Association. Father Ashley is a professor of moral theology at Aquinas Institute, and was recently granted the prestigious Master of Sacred Theology degree from the Dominican Order. Both authors are highly skilled theologians, as well as philosophers and moralists, who have combined their substantial skills to create this comprehensive, well organized and well-written study of moral problems in current health care. This study thoroughly investigates philosophical, theological and moral aspects of bioethical reasoning, abortion, contraception, triage, psychotherapy and pastoral care. The primary value of the work is that it integrates the latest and most advanced theological and philosophical developments with moral analyses of problems in these areas. While it is often difficult to distinguish the work of many moral theologians from that of bioethicists and medical moralists, the distinctive theological character of this work is quite evident. This work is clearly a work of moral theology, and it is written for the explicit purpose of providing guidelines for Christian health care.

Of significant value in this work is the notion of human totality and integrity, for this principle makes it possible to deduce the grounds for the claim of human persons to an absolute and unconditional right to life. The integrity of the human person rests upon a capacity for integrating orders of meaning, logic and value for the purposes of generating richer and more complex orders. The class of persons is the only class possessing this active capability of synthesis and integration for that purpose. This enables persons to actualize meanings and values that are morally

protected from positive acts of destruction. The rightful existence of these orders warrants the absolute and unconditional right of this class of agents to exist, regardless of the degree of integration accomplished. This right must exist because it necessarily presupposes the unconditionally rightful existence of the richer and higher orders of value and meaning actualized by the class of persons.

Ashley and O'Rourke's work, however, is not without its flaws. The critical problem of the conditions required for the valid identification of the point of actualization of the human person is not sufficiently treated. This is because the definition of the human person offered is imprecise. The human person is defined as "embodied intelligent freedom" (pp. 10-12) and no specific functions or operations of the person are included in this definition that would permit facile identification. It is not logically possible to identify clearly any specific functions entailed by this definition that would mark the point at which the person actualizes and terminates. For it is not analytic that personhood actualizes or terminates when freedom or intelligence actualize in an embodied form; indeed, personhood may exist prior to man's fully developed physical being, or exist after its extinction. The person is not the embodiment of these states, but is the causal subject to which these states, in their actualization and termination, are ascribed. The person is actualized when this causal subject comes to be, and can terminate only when it ceases to be. If the person were identified with embodied intelligent freedom, then the termination of these states would entail the termination of the person, and this is evidently not true. The person must be identified as the causal agent of these states.

Questions also can be raised about the logical adequacy of the definition of natural law offered by Ashley and O'Rourke. They contend that natural law prohibitions and prescriptions are grounded on generalizations made from human experience (p. 167). This does not reflect the logical foundations of the natural law, because generalizations from the opinions of a community concerning the moral quality of acts do not entail the validity of these judgments. Acts are prohibited by natural law, not because of the general experience of humanity, but because the exercise of these acts necessarily entails the actualization of morally prohibited states of affairs. Acts are immoral because the causal chain actualized by them prohibits the highest orders of value to be achieved.

Finally, the discussion of the moral permissibility of artificial contraception is clear and concise, but also not without its faults. Ashley and O'Rourke suggest that marital acts performed during sterile periods are indirectly and remotely ordered to procreation, while acts of artificial contraception are directly and proximately contrary to procreation (p. 274). This is doubtful, for a close examination of the necessary entailments of both of these acts reveals them to be identical in the procreative conditions they entail. It is not logically or practically possible for acts of either type to be directly or indirectly, proximately or remotely, ordered to procreation. Infertility is necessarily entailed in the performance of both types, and conception is not a foreseen but unintended consequence of either type of act. If a relation of indirection and remoteness existed between sterile marital acts and procreation, then the intervention of external causal chains would permit these acts to remain unchanged in their logical structure while causing conception. But that is not the case. Artificially contraceptive acts cannot be condemned because they entail directly and proximately infertile marital acts, for sterile marital acts entail the same states of affairs. Alternate grounds for prohibiting these acts must be found.

These are not to be considered as fatal flaws. *Health Care Ethics* remains an extremely valuable work in the field that should be in the library of all concerned with establishing Christian health care.

— Rev. Robert Barry, O.P.
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Health Care Ethics, a new text by Benedict Ashley, O.P. (professor of moral theology at the Aquinas Institute in Dubuque) and Kevin O'Rourke, O.P. (vice president of the Catholic Hospital Association) has been recently published. It is a notable addition to the field of medical-moral literature in its scope, detail, and clarity of presentation. The authors frankly admit that they propose a Christian and Roman Catholic set of values and point out that: "Catholics reason ethically in terms of a value system rooted in a view of reality given by the Christian gospel, interpreted by the Church in its life of faith, and authoritatively formulated by the Pope and the Bishops." They go on to observe that Catholics accept such teaching with religious assent, even when this lacks the final authority of a solemn definition. They state, however, that this is not meant to exclude an ecumenical assessment of other value systems, by which they hope to achieve "an openness to the options of others and a deepening of our own Christian and Catholic identity." And while this assessment is very well done in their text, their evaluation of another recent type of pluralism, which claims to remain within the parameters of Catholic teaching, seems to be a bit less perceptive and perhaps too benign.

But before commenting further on that, it should be stressed that their treatment of the basic determinants of morality is both especially good and particularly needed at this time when a certain basic confusion has beclouded this question. Because these "determinants of morality" are part of the trade language of ethics and moral theology and because certain modifications of their accepted meaning is the point of departure for much of the confusion we see today, some detailed comment on them may prove helpful to those interested in the medical-moral field.

The "determinants of morality," commonly referred to as *moral object*, *motive*, and *circumstances* are labels to identify what is true of any human action: that something is done, for some reason (or reasons), in some concrete circumstances. By *moral object* (what is done) is not meant just a physical action, but rather a physical action that is sufficiently determined as to have an identity in the moral order. Thus, for example, "language regarding God" merely describes a physical action which, as a moral object, could be either prayer, in one case, or blasphemy in another. Likewise "carnal intercourse" is a physical action and, considered only as a physical action without any further determination has no specific identification in the moral order. But carnal intercourse between the unmarried is described by the moral term "fornication" (a moral object). Thus the words "blasphemy" or "fornication" describe not merely a physical action, but rather an identifiable moral object — i.e., a physical action with an intentionality or a formality that determines the act itself, aside for any motive for which it is done.

Perhaps this concept can be somewhat clarified by a brief reflection on how philosophers talk about the finality (and formality) of *things* as well as actions. A thing can have two distinct purposes, one of which is built into it (called the *finis operis*, or the purpose of the thing itself) and this may be different from the purpose of the individual who uses it (called the *finis operantis*, or the purpose of the agent). For example, a clock is a collocation of metal and plastic parts constructed into a functional configuration *designed to* indicate the correct time. That is the *finis operis* of the clock. If someone uses the clock as a hammer, to tap a thumbtack into a wall, the purpose of the agent in such a case *(finis operantis)* differs from the *finis operis* of the clock (i.e., what the clock is in itself and what it is designed to do). Nonetheless it still remains a clock, albeit now being used as a hammer. In such a case we might say that its *materiality* is metal and plastic, its *formality* is clock, and that the motive or purpose for which one uses it is not necessarily identical with its own internal formality (or built-in intentionality).

Since an *action* is likewise a thing, as we convert these terms to the moral order it is important to note that the "reason why" or the "motive for which" some-

body does something (the *finis operantis)* is not necessarily sufficient to explain the finality (*finis operis*) or formality of the action itself. An action may have its own finality, in the moral order, which is quite distinct from the motive for which one does it.

Thus we could say that carnal intercourse, considered only as a physical action, is a *materiality* (an action, considered only in itself, without moral reference or specification). When, however, it is extra-marital intercourse (fornication or adultery) it is now said to have a *finis operis,* which is to say that its physical *materiality* has become a moral *formality,* no matter who does it, or when, or where, or why. Thus a purely physical action (such as language regarding God or carnal intercourse) can acquire an intentionality or formality (blasphemy or fornication) which is distinct from the motive for which it is done in a particular set of circumstances. Such would be referred to as a seriously wrong moral object (*finis operis* — "intrinsically evil" which cannot become good even if done for a good motive or under supposedly mitigating circumstances.

During the 1970's, however, there has been a revisionist movement among some Catholic moral theologians both in Europe and in the United States which seems to discredit any idea of an intrinsically evil moral object, and seeks to determine the morality of an action only by a simultaneous consideration of the physical action itself (devoid of any intentionality [moral formality] or *finis operis*) together with the *finis operantis*(the motive for which it is done) and the other circumstances of the act. Joseph Fuchs was one of the prime innovators of this revisionist movement and, as Ashley and O'Rourke point out in *Health Care Ethics,* "Fuchs' position implies that no act considered in its intrinsic nature solely according to its moral object can be judged 'intrinsically evil' (*malum per se*). Hence he (Fuchs) logically concludes, we must abandon the classical notion of 'absolute moral norms' since all moral rules may admit of exception given some special combination of object, circumstance and intention" (p. 189). Ashley and O'Rourke, of course, do not agree with this revisionist error, nor do the majority of Catholic moral theologians, nor indeed (it is interesting to note), did Fuchs himself, prior to the publication of *Humanae Vitae* (cf. J. Fuchs, *Theologia Moralis Generalis,* Rome: Gregorian University Press, 1966/67). The error of this revisionist movement can perhaps best be appreciated in its "bottom line," reached last year in a book by Anthony Kosnik *et al.* where one finds a proposed defense for such actions as fornication, adultery, homosexuality, contraception, etc. as able to be morally acceptable if done for proper motives and under sufficiently fulfilling or demanding circumstances (A. Kosnik *et al., Human Sexuality,* New York: Paulist Press, 1977). This can scarcely be called Catholic moral teaching.

While it is true that Ashley and O'Rourke thus propose solidly Catholic principles in *Health Care Ethics,* they seem to weaken somewhat in their treatment of the controversial subject of contraception. Although faithfully staying within the doctrinal limits of the encyclicals *Casti Connubii* and *Humanae Vitae,* they state that: "it is clear that these documents do not claim to give a definitive decision about a revealed truth of faith or morals, which is all that the first Vatican Council declared to be an object of infallibility, a declaration confirmed by the second Vatican Council" (p. 270). That statement, as it stands, is simply too compressed to be a complete or even adequate statement regarding the force of the Church's teaching on contraception. Nor is it enough to say, as they do, that there may be revealed truths in some encyclicals which "may later be solemnly defined" (*ibidem*). There is not adequate development of the teaching of Vatican II that a *de fide* definition by a Pope, or even by a Council, is not the only source of infallible teaching. Vatican II states that: "Although the individual bishops do not enjoy the prerogative of infallibility, they can nevertheless proclaim Christ's doctrine infallibly. This is so, even when they are dispersed throughout the world,

provided that while maintaining the bond of unity among themselves and with Peter's successor, and while teaching authentically on a matter of faith or morals, they concur in a single viewpoint as the one which must be held conclusively" (*Lumen Gentium*, no.25). To appreciate the profound significance of that teaching, with regard to the Church's teaching on contraception, one might consult the long and scholarly article recently published by John Ford and Germain Grisez (*Theological Studies*, 39:2, June 1978, pp. 258-312). The final conclusion of these two eminent scholars is: "We think there is an extremely strong case for the position that the received Catholic teaching on the immorality of contraception has been infallibly proposed by the ordinary magisterium" (i.e., by the long standing teaching of the bishops in union with the Roman Pontiff as described above).

All of this clearly demonstrates that the teaching of the Church on contraception is, even if not certainly infallible, certainly more than just encyclical teaching and certainly less open to the facile dissent of some theologians which, as the Holy See has recently pointed out: "cannot be considered as a 'theological source' which the faithful might invoke and thereby abandon the authentic magisterium and follow the opinions of private theologians which dissent from it" (Congregation for the Doctrine of the Faith, Prot. 2027/69, March 13, 1975). Ashley and O'Rourke have made a genuine effort to soften the edges of the controversy over contraception and blend the various elements of dissent into a reasonable synthesis with the teaching of the Church, but the result is more of a compromise than a commentary; and fails to reflect the unambiguous teaching of the Church in this regard.

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Current Literature

Material appearing below is thought to be of particular interest to Linacre Quarterly *readers because of its moral, religious, or philosophic content. The medical literature constitutes the primary, but not the sole source of such material. In general, abstracts are intended to reflect the substance of the original article. Contributions and comments from readers are invited. (E. G. Laforet, M.D., 2000 Washington St., Newton Lower Falls, MA 02162)*

Black P McL: Brain death. *New Engl J Med* **299:338-344 17 Aug 1978; 299:393-401 24 Aug 1978 (and related editorial: Sweet WH: Brain death.** *New Engl J Med* **299:410-411 24 Aug 1978).**

Written by a neurosurgeon, this is a comprehensive survey of the concept of brain death. Medical, historical, legal, social, and ethical concepts are presented.

McCormick RA: Abortion: rules for debate. *America* **139:26-30 22 July 1978.**

Legalized abortion is a topic which has polarized Americans and there seems little hope of reaching any kind of national consensus. Because of its intrinsic emotional aspect, "the level of conversation (on the subject) is deplorably low." The following suggestions are therefore offered in an