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Book Reviews

TWO VIEWS ON:

Ethics at the Edges of Life: Medical and Legal Intersections

Paul Ramsey

Yale University Press, New Haven, Conn., 1978. xvii + 353 pp., \$15.00.

An unusually penetrating and deservedly respected voice in contemporary theological ethics again brings logic to bear on literally "life and death" choices. This work, based on the 1975 Bampton Lectures at Columbia University, includes an impressively thorough review and interpretation of pertinent law and public policy. Ramsey's standard of ethical assessment is the principle of equality specified as care for each human person according to his or her need, rather than merit or usefulness (161, 205). He appeals to the Judaeo-Christian respect for the dignity and value of all persons, and to the law's traditional protection of each individual's life, in an effort to reestablish the Western pro-life bias which he perceives to be slipping through the unravelling "moral fabric of this nation" (4, 9).

As in his influential *The Patient as Person* (1970), Ramsey surveys the medical-moral scene from a theological vantage point, but acknowledges a diverse audience, and anticipates the "convergence" of religious and humanistic outlooks at the level of special moral problems. An interesting twist is Ramsey's assertion that our Western culture is so imbued with Christian values that a theoretical bridge from religious to secular ethics is not in need of construction (xiii-xiv). Affirming life as a gift and a trust from the Creator, Ramsey enjoins covenant love or *agape* and steadfast fidelity to persons as constitutive of "care" in medical practice (146-147, 161, 218-219). Reformulations of the author's previously published positions (on abortion, mercy-killing, withholding treatment) exhibit a renewed conservatism toward the protection of life, whether born or unborn, "wanted" or aborted, normal or abnormal, nondying or dying, competent or incompetent.

The first of the book's two parts deals with ethics at "The First of Life." Therein Ramsey criticizes the 1976 United States Supreme Court decision that a Missouri statute requiring spousal or parental consent for an abortion was unconstitutional (*Planned Parenthood v. Danforth*); statutory and institutional "conscience clauses" exempting conscientious objectors from participation in abortions, ostensibly without penalty; and the Edelin case and its implications for responsibilities to aborted fetuses. Central to the section is Ramsey's affirmation of the equality principle in abortion as in other medical matters. In his concern for the protection of fetal human life, he vehemently renounces the creeping "atomistic individualism" (9, 12, 15) which he perceives to be root decisions to abort, procedures for securing and performing abortions, and standards of care for or disposal of fetuses.

Roman Catholic medical professionals may be interested to note and evaluate Ramsey's faulting of recent Catholic discussions of "cooperation" in a pluralistic society (*Catholic Hospital Ethics*, a report of a commission of the Catholic Theological Society of America; arguments of Charles E. Curran about sterilization from which Ramsey analogizes, however legitimately, to abortion) as excessively

concerned with rights of the individual patient to the detriment of institutional protection of the professional medical conscience (84).

The second section of the book, "The Last of Life," in part develops and revises insights published in *The Patient as Person*. This half treats of "euthanasia," and allowing to die or "only caring" for the dying; of care for defective newborns; and of the ethical assumptions and implications of legal landmarks such as the Quinlan and Saikewicz cases and the California Natural Death Act. Ramsey's primary project is to replace traditional standards for administering or withholding treatment, including the classificatory distinction between ordinary and extraordinary means, with a "medical indications policy" of care (153-155, 165). He rejects any "quality of life" assessments and establishes an "objective" or "physiological" medical basis for treatment (159, 206). In general, physically beneficial treatments should be provided to competent and incompetent, normal and abnormal patients alike. The only legitimate distinction is between patients who are dying and those who are not. For the person near death, "only caring" or "comforting" may become more appropriate than life-sustaining procedures (165).

Ramsey's main concern in this section is to avoid slipping down the slope toward direct involuntary euthanasia, through a policy of "substituted judgment" whereby death is the imputed interest of abnormal and incompetent but non-dying individuals (332). He rejects "quality of life" arguments against treatment because they might also be employed to justify direct killing; he rejects "substituted judgments" for nontreatment or death in the interest of the non-dying patient because such judgments might also be made to justify deaths of the abnormal in the interests of others. Ramsey asserts that any decision made for an incompetent patient should as a "rule of practice" favor life (165). While this is certainly a valid claim, it might still be asked whether Richard McCormick's proposal of relational potential as a minimal quality of life criterion, for allowing some viable patients to die, is more meritorious and less sinister than Ramsey concedes. Certainly McCormick does not mean that our duty to protect life as valuable ever ceases, but that what is indicated as genuinely beneficial to the patient incapable of relationship may change. Ramsey's proposal of a physical standard of benefit and therefore of "medically indicated" treatment may purchase objectivity at the price of a more refined ethical sensitivity to the needs of the most vulnerable claimers of care.

Need the validity of evaluations of life's quality in treatment decisions about incompetent patients be negated by Ramsey's fear of directing "the edge of the wedge" toward involuntary euthanasia? First, it must yet be shown either that there is justification for direct killing as well as omitting treatment, or that there is no morally relevant distinction between the two acts. Second, if consent by proxy is a good mode in which to meet the needs of incompetents, it must be shown both that adequate safeguards of their interests cannot be built into the decision-making process, and that the social danger of making substituted judgments on the basis of worth to others is great enough to justify depriving incompetent persons of proxies who will act for their welfare even when that includes death.

Ramsey's own tentative exceptions to the pro-life practice which prohibits euthanasia are based on an evaluation of some individuals as not "living persons" (e.g., anencephalic infants) and of other persons as "beyond care" (e.g., victims of Lesch-Nyhan syndrome), a move perhaps not entirely consistent with his principle that medical care (if not life-prolonging treatment) be unceasing (215, 219). While Ramsey concedes that such patients might morally be permitted to die or even directly be killed, choice of death always remains exceptional and ought never evolve into a general practice of euthanasia for specifiable categories of patients.

Ethics at the Edges of Life is ethical analysis in Ramsey's characteristically careful, rigorous, and precise style. While much of it is directed at "opponents" past and present, and it is too detailed to serve as an overview of the issues, most ethicists, legal scholars, and medical professionals will appreciate Ramsey's painstaking attention to the complexities of each question he addresses. Ramsey is a rare theologian who can reflect and publish rapidly and competently on current technical and legal developments, thereby writing not, as he himself allows, "for ages to come," but for the possibility of intervention in the headlong course of events toward them.

— Lisa Sowle Cahill
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Issues of life and death, law and medicine, ethics and public policy are the subject of profound and prolonged debate on the contemporary scene. It is with a certain sense of excitement then that we find the probing mind of Paul Ramsey addressing these subjects. *Ethics at the Edge of Life*, a series of essays developed from the 1975 Brampton Lectures at Columbia University, is Ramsey's vehicle for exploring the medical and legal intersections at what he labels "the first and the last of life."

The framework is an interesting one because the last decade has seen an enormous development of legal and moral problems surrounding birth and death: abortion, euthanasia, treatment of defective newborns, termination of medical care for incompetents, etc. It is to these issues that Ramsey applies his analysis in the hope, as he puts it, of engaging doctors, lawyers, ethicists and the general public in a dialogue of the specific dilemmas posed by these problems. Any hope of dialogue, though, quickly evaporates as Ramsey utilizes his relentless logic and biting sarcasm to drive a wedge between him and those whom he seeks to influence.

Ramsey's well-known and skillfully argued opposition to abortion is reduced here to snide attacks on the logic of the Supreme Court's post-*Wade* decisions, as if merely noting the inconsistencies, incongruities, and inadequacies of the opinions will overturn the decisions. He reaches the worst of these tendencies in a chapter on the *Edelin* decision, an aberrant case of a Boston City Hospital doctor whose conviction of manslaughter of a viable aborted fetus was overturned (on procedural grounds) by the Massachusetts Supreme Judicial Court.

The court itself concluded that the value of the case as precedent was minimal because it arose in an "interregnum — a kind of time not likely to be repeated," i.e., when the Commonwealth had no abortion statute. Even though the court split three ways and there was no clear rule of law resulting from it, Ramsey devoted nearly 50 pages of tedious text to the various opinions.

In an interesting scenario, Ramsey recreates in story form a conversation he had with a Massachusetts lawyer friend on the *Edelin* case and then reveals his "feeling a little threatened" when the lawyer "presumed to go behind the robes of mystery." The friend suggested "there may have been an aura surrounding this case which highlighted the wisdom, propriety, and maybe even the necessity of making a final determination at the appellate level to forego further rendering of the social fabric by a second trial. Perhaps, this was all the more wise, proper, and necessary because of South Boston school situation. . . . Here I stopped his sociological speculations."

The reaction reveals much of Ramsey's failure to understand the judicial process. As Robert McClosky reminds us in his insightful *The American Supreme*

Court: The first lesson to be learned of the Court is that "it is a political institution." To be aware of that fact is to save oneself hours of painstaking sifting of arguments which, in fact, have little to do with the actual outcome of the case.

In his chapter on euthanasia, Ramsey calls for the scrapping of the traditional distinction between ordinary/extraordinary treatments and substituting of "a medical indications policy." He does this to avoid what he sees as an increasing tendency to utilize "a quality-of-life" standard. The difficulty is that his translation is highly ambiguous, e.g., "a conscious, competent, 'incurable' patient would have a *relative* right to refuse treatment in the course of shared decision-making concerning his or her case." What does that mean?

One principle pervades all of Ramsey's thinking: the need for an undiminished obligation to sustain life. The problem is that Ramsey elevates the principle into an absolute and thus has an easy out from what, in fact, are difficult moral and medical dilemmas. He flees to his absolute rather than face the agonizing struggle Richard McCormick graphically presents in his now famous *JAMA* article on defective newborns, "To Save or Let Die" (July 8, 1974). Ramsey does this because he is afraid of the slippery slope. His reason for never not treating severely defective newborns is that "to begin to introduce death as a practice would be one more step in the erosion of the moral distinction between voluntary and involuntary euthanasia." But as McCormick notes, with the development of modern technology, we must shift the question from "Can we keep this patient alive?" to "What kind of a life are we saving?" Such questions, despite Ramsey's fears and protests, are irretrievably "quality-of-life" judgments and there is no avoiding them.

Along with his argumentation from absolutes, Ramsey has an irritating tendency to push every legal statement to its logical extreme and then some, e.g., he would read the *Quinlan* opinion to mean that the court could order the respirator turned off over the parents' objections if it determined that Karen Ann and "the overwhelming majority" would want it off. In doing so, Ramsey forgets Justice Oliver Wendell Holmes' admonition that "It is experience not logic that is the life of the law."

For one who scrutinizes legal cases with exacting care, Ramsey is a decidedly poor interpreter of legal phrases and a yet poorer prognosticator of judicial rulings. He clearly misinterprets — or simply misunderstands — so basic a concept in the law as "substituted judgment" when he writes, "This means (in the case of incompetents) in treatment decisions to use as a norm the treatment offered to normal patients" (p. 286, n. 19). As the Supreme Judicial Court's *Saikewicz* opinion made clear, it means no such thing!

Ramsey wanted that result in *Saikewicz* and so read his own desires into the phrase. He then confidently predicted, "Substituted judgment cannot as such be extended to the *Saikewicz* case." It was, as readers familiar with the case know, the basis for the Supreme Judicial Court's unanimous opinion in *Saikewicz*. Such a grievous misreading of the court seriously undermines both Ramsey's credibility and his dispassioned "legal scholarship."

Perhaps the clearest insight into Ramsey's thinking is his open admission that his theology is fashioned from the Reformation emphasis on the "total depravity" of man. That Lutheran emphasis overshadows all other considerations of human nature. Given the corruption, Ramsey believes we can never trust men to behave in a "correct" manner. Instead, he argues, we must rely on absolute rules and rigidly enforced laws to prevent men from slipping into their natural propensity to sin.

His outlook explains, in part, the constant attacks that appear throughout the text on judges as ignorant, prosecutors as cowards, doctors as uninformed, moralists as misguided, and the public as untrustworthy. Of such is the vision of a self-professed "cynic about the ethos of present society," whose only hope for the

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 sparring. 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