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# Intubation of the Permanently Unconscious: A Rejoinder to Rev. Edward Bayer, S.T.D.

Thomas J. Marzen

*Mr. Marzen, general counsel for the National Legal Center for the Medically Dependent and Disabled, Inc., wrote this as a Letter to the Editor, but suggested that it might also be used as an article, which is what Linacre chose to do.*

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I am unable to judge properly whether or not the "principles" which Rev. Edward Bayer states to justify foregoing tube feeding and hydration of irreversibly unconscious people are rooted in "Catholic moral tradition over the centuries." (See Bayer, "Intubation of the Irreversibly Comatose: A Response to Fr. Robert Barry, O.P., *Linacre Quarterly*, Feb., 1988, 77). As an attorney whose occupation is to defend the medical treatment rights of people with disabilities, however, I found his analysis of the matter unsatisfactory and even disturbing.

First, Father Bayer states that "any man-made contrivance" (such as a feeding tube) that "replaces a natural function is of necessity a burden." This is obviously not the case. Otherwise, the use of an automobile is a "burden" because this replaces the "natural function" of walking. Is the use of a wheelchair a "burden" to those who cannot walk or those who can only walk with great difficulty or pain? To the contrary; it is clearly a benefit.

Not only is Bayer's principle overbroad, it seems to presume that there is some relevant metaphysical distinction between the use of "man-made contrivances" and the natural order in their absence, as though human creations were not part of creation. One might just as easily argue that wearing clothing against the cold constitutes a "burden" because clothes are human "contrivances". Is Rousseau's man in the "state of nature" the bottom line in Bayer's (and the Catholic) ethical universe?

Second, Bayer compares the "normal human reaction" to eating meals in the usual fashion and sustaining life by feeding through a stomach tube, concluding that tube feeding is "intrinsically burdensome" because the

“sentiment and conviction in the common estimate of the human race” look forward to one, but not the other.

It seems strange for a Catholic theologian to rely so heavily on an opinion poll, or its moral equivalent, to reach a conclusion on what is ethical or not. But in any event, the actual alternative for people who cannot eat in the usual fashion is either to accept tube feeding or to die—not to dine on fine cuisine. I have no survey to support me, but I suggest that almost everyone would choose to accept tube feeding rather than to die of thirst and starvation *unless* there were some *other* factor present which adversely affects the “quality” of life so that death might seem preferable (*e.g.*, unless one is also in pain or also has some other permanent mental or physical disability accompanying inability to eat normally).

But refusal to accept feeding or hydration because life is *otherwise* unacceptable evidences intent to cause one’s death because it is deemed to lack sufficient quality, rather than intent to relieve oneself of a burden caused by the tube feeding itself. And I presume that an intention to bring about death by dehydration or malnutrition is as ethically unacceptable as effecting the same intent by taking a drug overdose.

In this regard, Bayer’s attitude toward the usual instance in which food and fluids are foregone for those with diminished mental states is simply naive. The body of law in this area is characterized as “right to die” litigation for good reason: The death of the person is often directly intended by those involved — even if this lethal purpose is sometimes masked by pious euphemisms designed to mitigate the discomfort of guilty consciences. The transcript of the usual Grandma Doe/Baby Doe case on feeding contains ample evidence of homicidal or suicidal intent: The objective is to get the person dead, not to relieve any special burden caused by feeding.

### **Tube Feeding Generally Less Costly**

Tube feeding, which generally involves pouring the adult equivalent of infant formula down a simple plastic tube four times a day, is generally *less* costly and otherwise burdensome than continuing to provide the patient with ordinary nursing care or a bed in a heated and air-conditioned room. So why not withdraw these forms of care instead and let the patient die from infected bed sores or hypothermia, rather than from dehydration or malnutrition? Or why not withdraw all treatment and care?

In fact, it is the *overall* burden of care for the patient whose continued life seems to some to be devoid of value that fuels the impulse to withhold feeding. The focus is on the tube feeding because its removal efficiently and certainly will result in death, and hence relieve the overall burden of caring for the patient.

But since when does the *end* of relieving a burden justify the *means* of directly seeking cessation of the innocent life that occasions the burden?

And why, incidentally, is so much theological and pastoral energy being

spent on making excuses and apologizing for withholding food and fluids — and so little on underscoring the impermissibility of suicidal or homicidal intent so evident in many of these cases?

Third, Bayer states that what is “*always* a burden” (like tube feeding) becomes a “*significant* burden if it must be continued over a *long period of time*.” (His emphasis.) Yet most anything from nurturing a child in this society to securing housing to protect against life-threatening elements involves the use of “man-made contrivances” for “a long period of time” that thus become “significant burdens”.

Bayer’s proposition would justify doing almost nothing for almost everyone. Care of those with mental disabilities or illnesses and with physical disabilities represents a far greater “burden” over a “long period of time” than the care of those who require tube feeding. And providing these people with food and fluids bestows precisely the same “benefit” on them as it does for people who are unconscious: It provides sustenance necessary for life. So why not deprive them *all* of food and fluids? Unless Bayer’s ethical analysis rests on an unexpressed “quality of life” criterion, I cannot see how he could logically object that this should not be done.

### **‘Burden’ Not Necessarily a ‘Significant Burden’**

In any event, it is not the case that what is a “burden” necessarily becomes a “significant burden” over time. The opposite is just as likely to be true, since time may distribute and diffuse the weight of a burden. After all, homes are purchased through loans paid over a long period of time precisely because it would be a difficult or impossible “burden” to purchase them entirely at once.

I have a friend who must now wear braces on both knees in order to walk because of old football injuries. He must wear them the rest of his life. It is “burdensome” for him to put on and take off these “man-made contrivances”. But it is hardly so significant a burden on a day-to-day basis that he would lie in bed and starve to death for failure to put them on in order to make a trip to the grocery store. What may be a “significant” burden when its elements are artificially gathered from an anticipated future is often an insignificant burden as it is actually experienced in the present.

Finally, Bayer admits that whether tube feeding should be regarded as mandatory or optional is open to debate and is a matter yet to be finally resolved by the “Magisterium”. But if the proper conclusion has not been certainly reached on whether, in fact, tube feeding is unduly burdensome or whether, in fact, people in unconscious states cannot benefit from it, and if human life itself is at stake, should not one choose the “safer course” in practice by continuing to feed and hydrate?

The question is hardly academic. There has been an explosion of litigation in the past several years, much of it involving Catholics, in which it is demanded that tube feeding be withdrawn from people in a variety of

mental and physical states. At the same time, Catholic theologians and health-care ethicists are treating the matter in the public forum as though entirely resolved in favor of the legitimacy of the practice. I fail to comprehend why it is deemed so urgent to baptize what is questionable when the safer course is plainly to continue to feed and hydrate these people.

To paraphrase Father Bayer, someday someone may offer a convincing argument that tube feeding is *not* normally ethically required to sustain the life of disabled patients in this society. But I have yet to see such an argument that is both coherent and does not threaten the entire class of people dependent upon others for their survival once its premises are accepted.

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## **Marriage/Family Institute To Open in U.S.**

The Pontifical John Paul II Institute for Studies on Marriage and Family will open a North American campus in Washington, DC in fall, offering a two-year study program leading to a specialized licentiate in Sacred Theology of Marriage and Family.

Direct funding of the North American campus is being provided by the Knights of Columbus who are also offering full and partial scholarships. Interested applicants may obtain further information from Carl A. Anderson, Director, Washington Office, Knights of Columbus, 1275 Pennsylvania Ave., N.W., Washington, DC, 20004.