

August 1992

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Recommended Citation

McMahon, Kevin T. (1992) "What the Pennsylvania Bishops Really Said (A Reply To Rev. Richard A. McCormick, S.J.)," *The Linacre Quarterly*: Vol. 59: No. 3, Article 3.

Available at: <http://epublications.marquette.edu/lnq/vol59/iss3/3>

What the Pennsylvania Bishops Really Said

(A Reply To Rev. Richard A. McCormick, S.J.)

by

Rev. Kevin T. McMahan, STD

Introduction

While it would be too much to expect Fr. McCormick to offer a full analysis of the Pennsylvania bishops' statement "Nutrition and Hydration: Moral Considerations" (*Origins*, Jan. 30, 1992) in the *America* format, it would surely not be considered unfair to expect that, in offering his criticism, he be accurate and objective. Nevertheless, Fr. McCormick's " 'Moral Considerations' Ill Considered" (*America*, March 14, 1992), while rhetorically clever, falls short in these respects. It is unfortunate that rhetoric which unfairly characterizes the bishops' statement as an authoritarian imposition of a questionable moral teaching might discourage the readers of *America* from examining the statement itself. I say unfortunate because the statement is, as one physician active in the debate remarks, "the most helpful yet published as a set of guidelines for conscientious practitioners." (Eugene Diamond, M.D., *Linacre Quarterly*, February, 1992).

Since they are neither documented nor particularly relevant, I will not comment on Fr. McCormick's use of personally conducted informal surveys, nor on his suggestion that Jesuit Father John Connery reversed his opinion shortly before his death. Since it is not the topic at hand, I will prescind from a discussion of Fr. McCormick's views on the teaching role of the theologian and that of the magisterium, the prerogatives of each and their interrelatedness. I wish instead to point out certain significant inaccuracies in his reading of the PA statement, and the tendentious argumentation that brought them about.

A brief summary of the PA statement will help to clarify the bishops' actual position and demonstrate why particular points Fr. McCormick highlights for criticism are simply not found there.

The Pennsylvania Bishops' Statement

Purpose

In their discussion of the moral question about withdrawing nutrition and hydration (NH) from patients who are in what is termed a persistent vegetative

state (PVS), the bishops begin by presenting the "State of the Question." They point out the absence of a universal teaching of the magisterium on this issue and that it is theologically controverted. They note that this climate of controversy is reflected in the confusion that Catholics and others experience with regard to this issue, and the reason so many need and seek *moral guidance*. The need for such guidance, the bishops suggest, has been intensified by some pressing questions regarding advance medical directives occasioned by the December 1, 1991 federal regulation, "The Patient Self-Determination Act." Consequently, while they undoubtedly know that the controversy may go on for many years on the academic level, they know also that some practical prudential judgment must be offered now.

As they put it: "We, as Catholic Bishops and fellow Pennsylvanians, hope that what follows will be of help to those who are confused about the present situation, but we especially seek to offer guidance to the Catholic faithful entrusted to our pastoral care." In light of this intention and that expressed by Anthony Cardinal Bevilacqua in the *Foreword*: "Our statement is intended to express, *as well as we are currently able*, the teaching of the Catholic Church *as it affects these admittedly difficult cases*" (emphasis added), Fr. McCormick's accusation that the bishops' teaching is an "authoritarian imposition" is inaccurate.

Place In The Controversy

The PA bishops are neither alone in offering guidance, nor peculiarly rigorist in offering it. In fact a passing examination of the literature on the topic will reveal many such judgments representing two contradictory views.

First, that the supply of NH to the PVS patient is of *no real benefit* to the patient since it merely preserves the *physical* life of someone unable to pursue truly human activities, i.e., the pursuit of the higher goals of life through human acts which require cognitive ability. Because of this judged lack of benefit to the patient, the proponents of this opinion conclude that the supply of NH for such patients is *extraordinary* means and not morally obligatory. Moreover, they judge the PVS patient to suffer from a fatal pathology which one has no reason to circumvent. (This is the position of Kevin O'Rourke, OP, *et al.*, and those Texas bishops who signed the Texas Bishops' Statement.)

Second, that the supply of NH which sustains the life of the PVS patient *is a real benefit* to the patient since life, irrespective of its quality, is a personal good with inherent value. Moreover, this opinion argues that a condition which causes only unconsciousness is not *per se* a fatal pathology, and that the PVS patient — *without any such fatal pathology* — will live for an indeterminate period of time as long as he or she is given nutrition and hydration, along with other nursing care. They note further that to withdraw NH from patients *who are not dying* constitutes an explicit choice to end their lives. This they judge to be a violation of the absolute prohibition against the taking of innocent human life — a case of passive euthanasia. (This is the position of William E. May, *et al.* Its conclusions are supported, in varying degrees, by the bishops of Florida, New Jersey,

Washington/Oregon, and Pennsylvania.)

Fr. McCormick's inference that the PA bishops are singular in what they teach is inaccurate. For, while the PA statement differs from that of the Texas bishops, its conclusion that there is a presumption in favor of supplying NH to PVS patients — except for when it is clearly *extraordinary* means — joins the positions taken by the bishops of Florida, New Jersey (which he omits), and Washington/Oregon. These conferences are now joined by the NCCB Pro-life Committee's statement *Nutrition and Hydration: Moral and Pastoral Reflections* (April, 1992).

Rationale

The PA statement does not appeal to the authority of the bishops for its validity, but demonstrates the reasonableness of its judgment and guidance by offering a comprehensive examination of medical facts concerning "States of Unconsciousness" and "Methods of Supplying NH" to patients who are in such states. This examination is conducted in light of two fundamental principles of the Catholic moral tradition: (1) the non-absolute duty to preserve human life; (2) the absolute proscription against the intentional taking of innocent human life. These principles preclude *vitalism*, which considers life an absolute good; they also preclude "an action which of itself or by intention causes death" (SCDF, *Jura et Bona*, May 5, 1980) for any reason.

The bishops then carefully detail and explain the distinction between *ordinary* and *extraordinary* means as defined by the Catholic moral tradition. They evaluate the supply of NH to unconscious patients, especially to those diagnosed as being in a PVS. Their conclusion is that unless it can be shown that the supply of NH to a particular patient is *extraordinary and morally non-obligatory*, either because it provides no benefit to the patient or does so only by causing excessive burdens, it is to be considered *ordinary and morally obligatory*. In their resolute defense of the absolute right of all innocent persons, especially those who are most vulnerable, *not to be killed*, the PA bishops see the burden of proof resting on those who maintain that a means is *extraordinary*.

The bishops state: "We find no moral problem in the withdrawing even of nutrition and hydration from the patient if the supplying of them is futile or excessively burdensome." In the accompanying footnote 36, the bishops go on to present two examples of cases in which it has been demonstrated that the supply of NH is extraordinary. They write: "The supply of nutrition and hydration can rightly be judged an extraordinary means because of futility, *for example*, when death is imminent (provided it no longer serves even as a palliative); and in cases where the patient is unable to assimilate what is being supplied" (emphasis added). Nowhere are these *examples* presented as exhaustive, and so Fr. McCormick's assertion that the bishops allow *only* two exceptions is a serious misrepresentation of their position.

Informed Consent

The bishops affirm that "Respect for personal autonomy is a basic principle of medical ethics. This principle reinforces the duty of hospital personnel to secure

the consent of patients or their surrogates before initiating or discontinuing treatment." The bishops teach that this right is exercised properly only when it is informed and guided by moral principles. They hold that it is not morally permissible for any person to refuse *ordinary* means of preserving life. Again, Fr. McCormick is inaccurate in paraphrasing their position when he asserts "the bishops state that it is immoral to specify in one's living will or to one's durable attorney 'no artificial nutrition and hydration if I am in a P.V.S.'" Rather, what the bishops say is that one is not free to make provision in an advance medical directive to forego means which are *ordinary*, and the mere fact that one is in a PVS does not make NH or any means *automatically extraordinary*.

Tendentious Argumentation

Fr. McCormick begins his criticism of the PA bishops' statement demonstrating a degree of annoyance with the reappearance of the ethical controversy about the supply of medically assisted nutrition and hydration to the patient in the persistent vegetative state. Fr. McCormick considers this controversy settled and so its reemergence is likened to recurrent house pests. Nevertheless he will later chide the bishops for teaching as though to settle a legitimately debated question.

Fr. McCormick never does identify who, if anyone, has competence to settle the ethical question, but he is very clear that the Pennsylvania bishops do not. Since there is to date no universal teaching of the magisterium on this specific issue, and Fr. McCormick still considers the matter closed, one can only wonder who might have closed it. Since Fr. McCormick accepts the conclusions of some theologians and some bishops, and locates these on the side of the settled question, they must be the ones with authority. But how could this be? Why would O'Rourke *et al.* enjoy a competence that May *et al.* do not? Why, in Fr. McCormick's estimation, would Bishops Leibrecht, Bullock, and those who signed the Texas statement have the authority that the Florida, Washington/Oregon, and Pennsylvania bishops lack?

It seems that Fr. McCormick's standard for competent authority is agreement with him. With such a standard it is only natural that he inclines to treat a reassertion of an opposing view as some annoying house pest in need of extermination. Fr. McCormick, it seems, wishes to exterminate disagreement.

A New House Pest

On April 2, 1992 the National Conference of Catholic Bishops' Committee for Pro-life Activities published a resource paper entitled *Nutrition and Hydration: Moral and Pastoral Reflections*. In this document the bishops revisit this "settled" controversy; they give a careful exposition of the two opposing theological views on the supply of NH to those in a PVS, and reach the same conclusion as the bishops of Florida, New Jersey, Washington/Oregon and Pennsylvania.

The bishops accept what they identify as the "more carefully limited conclusion" of those who hold that, absent some other factor which would render

the supply of NH to the PVS patient futile or excessively burdensome, it is to be considered *ordinary* means. They put it this way: “We reject any omission of nutrition and hydration intended to cause a patient’s death. We hold for a presumption in favor of providing medically assisted nutrition 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” (page 32; emphasis added).

With regard to the position Fr. McCormick favors, the bishops conclude: “While this rationale is convincing to some, *it is not theologically conclusive and we are not persuaded by it*” (pages 25-26; emphasis added).

Conclusion

The statement made by the Pennsylvania bishops last December is hardly an extremist position, which would have warranted the dismissal given it by Fr. McCormick. As a more objective reading of the statement will show, the guidance offered by the Pennsylvania bishops is faithful to the Catholic moral tradition, cognizant of the current medical state of affairs, resilient enough to be applied rationally and charitably in myriad sets of diverse circumstances, and pastoral in its orientation and expression. The bishops’ words add a strong voice to those already raised for the protection of the lives of all vulnerable persons. Notwithstanding Fr. McCormick’s disagreement and annoyance, this pastoral guidance merits careful and serious attention.
