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Changing Roman Catholic Attitudes Toward Termination of Life-Sustaining Treatments

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Biomedical developments over the last 20 years may not have removed the sense of loss, finality and mystery of death, but they have made the timing of death more a matter of deliberate decision.

To conform its observation, made in 1983, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research pointed out that there is hardly a life-threatening medical condition for which there is not some intervention to delay the moment of death. And in a deliberate understatement, the Commission concluded that these developments have raised profound ethical and legal questions.

One of the most pressing continues to be whether withholding or withdrawing available life-sustaining treatment from patients in conditions neither terminal nor reversible — persistent vegetative state, for example — would constitute suicide or euthanasia?

As recently as last June, the issue was before the U.S. Supreme Court in the matter of *Cruzan v. Harmon*. But it had already presented itself dramatically in 1976 when the parents of Karen Ann Quinlan challenged American common and constitutional law to secure the right of their permanently comatose daughter to a natural death. Coming from a citizen, the challenge inevitably had to be met by the courts. Coming from a citizen who also happened to be a Roman Catholic, the challenge could not go unaddressed by the Church.

For the courts in 1976, the Quinlan case, the first of its kind ever to be tried in court, represented new departures in common and constitutional

law. For the Catholic Church in America, it represented an opportunity, decisively and effectively taken, to share a rich tradition of medical ethics with a society clearly caught off guard by the moral dilemmas posed by the case. Now, almost 15 years later, those roles appear to be reversed. The courts have developed an impressively consistent body of case law derived from the Quinlan decision. But the Catholic Church in America, at least judged by conflicting statements of its bishops, has been unable to build on its remarkable contribution to the Quinlan case. As a result, now that the ethical and legal debate over the right-to-die resumes, following the Supreme Court's Cruzan decision, the courts are ready, but the Church seems unsure of itself.

The legal outcome of Quinlan is well known in the unanimous decision of the New Jersey Supreme Court to allow the removal of the mechanical respirator which was sustaining Karen's life. A landmark decision, it has served as the precedent in over 60 so-called right-to-die cases adjudicated in the United States since then.

Less well known is the degree to which Catholic teaching informed the New Jersey Supreme Court's decision. Even less well known is the way Karen's bishop, the late Lawrence B. Casey of Paterson, advanced that teaching in the judicial proceedings so that she could, in good conscience be allowed to die a natural death.

Bishop's Intent

Casey's primary purpose in submitting an amicus curiae brief in the Quinlan case was pastoral. By informing the court of Church teaching, he wished to help a Catholic family endure the court's scrutiny of its request to allow Karen to die. But the bishop's persuasive argument for the moral distinction between withdrawing life-sustaining medical treatment and euthanasia; his moral justification of the request to withdraw treatment as something entirely compatible with Catholic teaching, and his compelling explanation of the interrelationship of medicine, law and theology, went far beyond that primary purpose. Ultimately, all three gave shape and substance to the court's precedent-setting decision.

Like all those directly involved in the Quinlan case, Bishop Casey faced the moral dilemmas posed by the use of medical technology which weakens personal control of one's medical treatment. It is clear that Catholic teaching allowed him to make a number of critical assumptions. For one, there are patients whose medical condition can be considered hopeless by competent medical authorities. For another, the distinction between ordinary and extraordinary medical care of such patients is not only useful but necessary to make correct moral decisions, including withholding or withdrawing treatment according to the expressed or implied wishes of the patient. Finally, laws and ethical standards are essential if we are to make decisions of this kind securely.

On the basis of these assumptions, Casey submitted to the court what

Paul W. Armstrong, the Quinlan attorney, describes as a dispositive brief. Pointing out that competent medical authorities had established that Karen was beyond reasonable hope of recovery, and that the continued use of a respirator to sustain her life constituted extraordinary means of treatment, Casey concluded there was no moral obligation to continue it. The request to stop treatment was, therefore, morally correct.

At the center of Casey's argument is the fundamental belief that every person's life is sacred. In keeping with that inviolability, and as an essential responsibility toward it, Casey also emphasized the notion of personal stewardship of one's life. Since human life is not limitless, individuals must be responsible stewards of their bodies, particularly when they are making decisions about medical care at the end of life or under irreversible medical conditions. To assist meeting the responsibilities of stewardship, Casey offered the distinguishing concepts of ordinary and extraordinary medical care, combined with a calculation of their respective benefits and burdens in relation to specific medical conditions. Finally, underpinning the idea of responsible stewardship was the assertion that each person is vested with the moral authority to make decisions about withholding or withdrawing medical treatment at the end of life.

It is clear that the court found this persuasive. Nowhere is this more evident than in its use of the constitutional right of privacy to resolve the legal problems posed by Karen Quinlan.

We think that the state's interest (in the preservation of life) weakens and the individual's right to privacy grows as the degree of bodily invasion increases (extraordinary medical care) and the prognosis dims (calculation of benefit and burden). Ultimately, there comes a point at which the individual's rights (moral authority) overcome the State interest.

Parallel Not Difficult to See

The parallel between the court's constitutional argument and Bishop Casey's theological argument is not too difficult to see. confronted with the plight of Karen Ann Quinlan, Bishop Casey identified moral prerogatives in the exercise of the right to a natural death. Similarly, the court was moved to recognize a constitutional right to a natural death. Both agreed that there are transcendent rights — moral and constitutional — to aspire to higher purposes than simply maintaining life as its own end. As a result, the court confirmed constitutionally what the bishop presented as a moral right to a natural death.

How unusual is it that an argument, derived from theological premises, should have been so persuasive in a secular court? Such an outcome does not surprise Daniel Callahan, director of the Hastings Center in New York. "I think there are certain basic concepts used in these debates, particularly on the withdrawing of care, that have come heavily from the Catholic tradition. So, historically there has been a major contribution in that regard." Moreover, according to Kevin O'Rourke, O.P., director of the Center for Health Care Ethics, St. Louis University Medical Center,

Missouri, it is appropriate for a pluralistic society, like the United States, to use Catholic thinking to address the ethical problems facing it. "We have a very sound policy and a very sound philosophy, founded on natural law reasoning," he said. As a result, O'Rourke thinks that Catholic arguments on many ethical issues today should present no inherent difficulties for a society essentially secular in its orientation. "Being a pluralistic society does not mean it is a value-free society," he noted, adding that we have, as a society, to reach a consensus, and the best way to do that is through natural law thinking.

The framework of a reasonable consensus emerged from Bishop Casey's interpretation of the relationship of theology to law and medicine. In his brief, he went to considerable lengths to demonstrate the nature of this relationship as it revealed itself in the right to a natural death. Medicine, using advanced technology, can prolong biological life. Law works to secure each person's right to life out his life span until it ends naturally and inevitably. Theology, while it acknowledges man's dissatisfaction with biological life as an end in itself, insists on the sacredness of human life and defends it from all direct assault.

For Casey, there was a very practical application of the relationship, indeed as he understood it — the interdependence of theology, law and medicine, to the case of Karen Quinlan. Civil law, his argument went, is not expected to assert a belief in eternal life. At the same time, it may not ignore the right of someone to such a belief and to manage the circumstances of his death according to it. Medical science may not directly cause natural death. But neither should it prevent death when all hope of restoration of even some minimum exercise of human life is irretrievably gone. Finally, religion is not expected to define biological death, but it should do all it can to form a correct conscience to accept natural death when medical science has determined that it is inevitable, and there is no hope other than preserving biological life in a merely vegetative state. From this relationship, Casey asserted, theological, legal and medical reasons can be drawn to justify the removal of the respirator sustaining Karen Quinlan's life.

Casey Advanced Argument

But Casey also advanced this argument more generally in the interest of laws and ethical standards which would enable society in future to deal with the kind of problems posed by Karen Quinlan. In the course of the public discussion of her case, it had become common knowledge that responsible medical professionals, patients and their families were exercising what Casey defined as a freedom to stop treatment where there was no realistic hope of some recovery. As if to anticipate the court's correct observation that there were then no civil laws to sanction such freedom, he insisted that there had always been solid ethical and theological justification. To confirm this, Casey pointed out that the practice of stopping treatment when there was no realistic hope of recovery had it no way undermined society's sense

of reverence for human life. All of which, he believed, gave urgency to the need for laws underwriting moral arguments and medical practice which embrace the right to a natural death.

The legal resolution of the Quinlan case is a remarkable blend of theological and judicial thinking. According to attorney Armstrong, "Catholic teaching was woven into the very fiber of the court's decision." Theologically, there was the longstanding tradition that saw human life as finite. Originating from the hands of a loving God, it is expected to surrender itself naturally in death to His ultimate providence.

For its part, the court found in the Constitution the principle of privacy by which an individual can assert his autonomy to stop technologically applied medical care which artificially prolongs life beyond the point of reasonable personal control. Theological tradition allowed Casey to claim for Karen Quinlan the right to a natural death. The Constitution allowed the court to endorse the bishop's claim.

This particular outcome demonstrated that both court and Church understood the underlying moral and legal questions posed in Quinlan and, by sharing their insights, they were able to provide a most effective solution. Subsequently, faced with similar cases, courts around the country borrowed heavily from the seminal thinking found in Quinlan. In marked contrast, however, American Catholic bishops have been much less certain about the continued application of that judicial thinking, albeit thinking substantially informed by Catholic theology, to cases involving the right to a natural death. Casey, out of pastoral concern for Karen Quinlan, was prepared to embrace the fullness of Catholic thinking on the right to a natural death. Bishops dealing with the issue after him have appeared preoccupied with shaping public opinion. To this end, they have seen fit to pick and choose selectively from their theological tradition. The result has been a series of mixed messages which, unlike Bishop Casey's intervention, has done little to serve the needs of public policy or pastoral care.

Jobs Case

This development began to emerge particularly clearly in 1985 with the case, again in New Jersey, of Nancy Ellen Jobs. As the result of a medical malpractice, she had been in a persistent vegetative state for five years when her husband petitioned the court for permission to remove the feeding tube keeping Nancy alive. The court, in granting the petition, returned to its seminal Quinlan decision and the Catholic teaching with which it was informed. However, the New Jersey bishops submitted a friend of the court brief opposing the request. In Quinlan, Bishop Casey had argued for the acceptance of natural death when medical science has confirmed its inevitability beyond any hope other than preserving biological life in a merely vegetative state, thereby accepting "quality of life" as a valid criterion. In 1981, a Pontifical Commission, *Cor Unum*, released a report on the issue of "quality of life" which said essentially the same thing. In part,

the report concluded that among all the criteria for decisions regarding withdrawal of nutrition and hydration, of particular importance is the quality of the life to be saved by the treatment. But in *Jobes*, the New Jersey bishops took a different approach. They argued that the quality of the patient's life must not be the basis for deciding to withdraw or withhold treatment, and asserted that food and water should generally be considered ordinary means of maintaining the life of someone in *Jobes's* medical condition. The bishops of Florida came to the same judgment in 1989 when they declared, "We can never justify the withdrawal of sustenance on the basis of the quality of life of the patient." Understandably, bishops might disagree among themselves over whether there is a real distinction between withdrawing a respirator and withdrawing a feeding tube. That continues to be a debatable question even within medical circles, though increasingly it is seen as a distinction without a difference. But the disagreement over "quality of life" as a legitimate criterion in deciding to withdraw or withhold life-sustaining measures is a disagreement in principle. Why would such a disagreement among the bishops emerge at such a serious level?

Callahan's Reasoning

According to Daniel Callahan, one reason is that many of the Catholics speaking out on this issue have become much more conservative than Catholic tradition itself. By way of explanation, Callahan said, "I think they see slippery slopes all over the place." He added that many conservatives have, for example, been opposed to legislation for living wills, not because it is bad in itself, but because they see it as the opening wedge in a campaign for the legalization of euthanasia. Callahan believes that, for similar reasons, the opposition to withholding or withdrawing nutrition and fluids is more tactical than principled. He points out that many of those in opposition will acknowledge the Church's long established teaching that, under certain circumstances, there is no moral obligation to sustain life. "Nevertheless, they justify their opposition with a statement like, 'we know what the other side is up to. This is the opening salvo, and if we don't draw the line here, they'll take us farther down the road,'" Callahan said.

This, apparently, is the position of John Cardinal O'Connor. Writing in *Catholic New York*, the New York diocesan paper, immediately after the *Jobes* decision, he said, "As far as I can see, the New Jersey Supreme Court has gone a long distance down the slippery slope and made my 'consistent ethic of death' frighteningly plausible." As O'Connor presented it in his article, the court decision broadened the justification for withholding or withdrawing artificial nutrition and fluids, and extended to family members and friends the right to make such decisions for incompetent patients. Lamenting this, O'Connor concluded that the court had guaranteed the right to die, or suicide, as he said he would prefer to call it.

The cardinal's purpose, writing as he does, appears to be polemical. He presents, unfortunately quite inaccurately, the case of Nancy *Jobes* as a

precedent for one day putting out of their misery "the retarded, the wheel-chaired, the cancer-ridden, and all sorts of useless or annoying persons." Indeed, his preoccupation with the "slippery slope" he sees here is so great that he allows it to exclude considerations which, from a pastoral perspective at least, are critical. Of these, the most obvious would be an acknowledgement of the right to a natural death which figured so forcefully in Bishop Casey's thinking as something entirely consistent with traditional Catholic belief. In marked contrast, Cardinal O'Connor emphasizes what might be called "biological vitalism" when, in the same article, he said, "Isn't it any longer 'self-evident' that you can be neither free nor happy unless you're alive?"

O'Connor took the strongest exception to the court considering artificially provided nutrition and fluids as medical treatment, and therefore something that could be withdrawn from Nancy Jobes. "I cannot accept the notion that food and hydration constitute medical treatment simply because they may be given, in certain instances, by artificial means under medical supervision."

A Difficult Reconciliation

It is difficult to reconcile this position with that of Bishop Louis E. Gelineau of Providence, Rhode Island. In 1989, Gelineau declared publicly that the provision of nutrition and fluids through a feeding tube is a medical treatment. He therefore concluded that, in the case of Rhode Island resident Marcia Gray, a comatose patient beyond reasonable hope of recovery, the continuation of artificial feeding was disproportionate to any expected medical benefit. As something unduly burdensome to the patient, it could, the bishop determined, be withdrawn. Since the medical condition and prognosis of Nancy Jobes and Marcia Gray were almost the same, Gelineau would not, presumably, have objected to the Jobes decision.

Yet another case very similar to that of Nancy Jobes has prompted statements from individual Catholic bishops. Writing in his diocesan newspaper in December, 1989, Bishop John Leibrecht of Missouri addressed the question of withdrawing artificial feeding from Nancy Cruzan who had been in a persistent vegetative state, the result of a car accident, since 1983. He pointed out that Catholic moral theology offers two approaches to this particular case. In one, there are moral principles coalescing around respect for human life as something over which only God has absolute dominion. They lead "to a valid Catholic position which opposes removal of Nancy Cruzan's gastrostomy tube," Leibrecht said. But there are other moral principles coalescing around respect for the person and God's gift of personhood. These constitute the basis for a second approach and would justify the withdrawal of treatment from Cruzan. Leibrecht concluded that since neither the Vatican nor the National Conference of Catholic Bishops has chosen definitively between the two, either is morally acceptable in the case of Cruzan.

John F. Whealon, Archbishop of Hartford, Connecticut, is in essential agreement with Leibrecht. However, in a statement in his diocesan paper in February, Whealon declared that Catholic moral theology is not certain whether the means used to feed Nancy Cruzan were ordinary or extraordinary. Given that doubt, he concluded that in her case the presumption should favor the continuation of treatment.

Of all the Catholic bishops speaking publicly on this issue, Joseph Cardinal Bernardin of Chicago preeminently seems able to bring the full range of Catholic thinking persuasively into play in a pluralistic society. In his 1988 address to the Center for Clinical Medical Ethics at the University of Chicago, Bernardin unequivocally supported the right to a natural death. "We . . . may not develop a policy to keep alive those who should be allowed a natural death, that is, those who are terminally ill, or, to preclude a decision — informed by our ethical principles and on a case by case basis — that the artificial provision of nutrition and hydration has become useless or unduly burdensome."

Bernardin's Statement Differs

Bernardin's statement is noticeably different from that of O'Connor, but in tone and content it reflects one of the essential thrusts of the Vatican's 1980 "Declaration on Euthanasia". There the Vatican confirmed that treatment could, with the permission of the patient, be interrupted when the results were less than expected. Asserting that withdrawing treatment is not equivalent to suicide, the Vatican said, "On the contrary, it should be considered as an acceptance of the human condition, or a wish to avoid the application of a medical procedure disproportionate to the results that can be expected."

According to John J. Paris, S.J., associate professor of medical ethics at the College of the Holy Cross, Worcester, Massachusetts, the treatments referred to in the Declaration include artificially-provided nutrition and fluids. Evidence for that, he maintains, is found in the most recent policy statement of the Pro-Life Committee of the U.S. Catholic Conference. In its discussion of the rights of the terminally ill, the Committee stated, "Laws dealing with medical treatment may have to take account of exceptional circumstances where even means of providing nourishment may be too ineffective or burdensome to be obligatory."

In June, the U.S. Supreme Court ruled in the case of *Cruzan v. Harmon*. It declared that the Missouri State Supreme Court had not acted unconstitutionally when it refused permission to withdraw nutrition and fluids from Nancy Cruzan on the grounds that there was not clear and convincing evidence that this is what Cruzan herself would have wanted. Apart from that, the Supreme Court clearly distanced itself from the Missouri Court on several critical points. For the first time, it said that competent patients have the constitutional right to refuse life support treatment. It also found that there is no difference between artificially

provided nutrition and fluids and other life-sustaining measures. Finally, the Supreme Court declared that individuals who have provided clear and convincing evidence of their intention to refuse life-sustaining measures —by means of a living will, for example — may have a constitutional right to have those wishes honored. In her concurring but separate decision, Justice Sandra Day O'Connor declared that there may well be a constitutional requirement to protect the patient's liberty interest in refusing medical treatment by giving effect to the decisions of surrogates.

The net effect of the Supreme Court's decision has been far from definitive. If anything, it has made inevitable a re-examination of the issues central to the so-called right to die. As this proceeds, the Catholic Church will, as in *Quinlan*, have the opportunity to put at the disposal of all participating a rich and nuanced tradition. But there is a legitimate concern that unless the sharp differences among the bishops can be overcome and replaced by a full and forthright declaration of Church teaching, the opportunity will be lost.

And, according to Cardinal Bernardin, lost with serious consequences. "If we do not resolve this critical issue in a way that resonates with the common sense of people good will, then we may contribute to the sense of desperation that will lead people to consider euthanasia as an alternative solution to the problem."

Should his fellow bishops take Bernardin's warning seriously, they now have the opportunity to follow where Bishop Casey led, mindful of the gospel's vision of the meaning of life which transcends any sense of loss, finality and mystery death undeniably possesses.
