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# Meeting Ethical Dilemmas in Health Care: Some Basic Criteria

William E. May

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In their efforts to care for the sick and the dying and to protect and improve the health of the public, those engaged in the medical, nursing, and allied professions have traditionally been greatly concerned with moral questions. Nurses and doctors certainly want to apply professional expertise to the treatment of diseases and cases, but in addition, they want to respond to the needs of their patient-persons. They are, moreover, not mechanical robots but sensitive, conscientious, and responsible persons. As such, they want to do what is right and good and not merely what is professionally competent and technically efficient.

The problem they — and all of us — face is to determine just what is really right and good. There are times when this determination is exceedingly difficult. An ethical or moral dilemma arises when there are apparently good reasons for different and, at times, contradictory courses of action, when one is perplexed about what one ought or ought not to do.<sup>1</sup> The development of new medical technologies, made possible by the marvelous achievements of contemporary biomedical science, has undoubtedly contributed to an increase in problematic or dilemmatic situations for health care personnel. Should this newborn child, suffering from spina bifida, be treated immediately or not? Ought we to continue intravenous feedings and the use of the heart-lung machine for this aged comatose patient, or would it be morally right to discontinue such treatment? Is it right to do an amniocentesis to discover whether this fetus is afflicted with Tay-Sachs disease and, if so, to abort it so that it will not suffer and its

parents and others will not be burdened psychologically and economically with its care? The list could continue indefinitely.

The purpose of this paper is to offer some criteria or principles for making good moral judgments and choices. On this matter there is, of course, intense debate and over it there are serious disagreements. Before presenting a normative ethical theory that in my judgment is true and genuinely liberating, it may be helpful first to comment briefly on the subject of freedom and objective truth in matters moral and then to consider a type of normative theory quite popular in contemporary American culture and to show why I consider it erroneous.

### Freedom, Moral Objectivity, and Subjectivism

Precisely because it is, at times, so difficult to determine what one ought or ought not to do and because sincere, reasonable people frequently disagree, and seriously, over judgments of right and wrong, some conclude that it is impossible to determine whose judgments are true or whose are false.<sup>2</sup> Some who reach this conclusion believe that moral judgments are more similar to expressions of personal feelings or emotions than they are to statements having an objective content that can be known. Others who agree with this conclusion may not believe that moral judgments are emotional utterances, but they nonetheless consider them to be devoid of objective truth. They rightly regard morality as something entailing free personal decisions. After all, no one likes someone else to impose his or her values on oneself, and each of us experiences freedom in making moral decisions. At times this freedom is a terrible and awesome reality, but it is a reality nonetheless, and one that most of us value. They fear that if there is an objective truth in moral judgments or norms, then freedom to make one's own decisions is excluded.

People who take these positions on moral questions are subjectivists, because they deny that there are any objective moral norms that can be truthfully known and affirm that ultimately moral judgments must be analyzed in terms of freely chosen values or personal inclinations. Although I believe that subjectivism in morality is erroneous, there is a truth to which those who hold these positions point and it should be recognized even if subjectivism must be rejected.

There is no doubt that we are emotionally affected by moral issues in ways that nonmoral issues do not affect us. Moral arguments are frequently charged with emotion, even passion, and there is a reason for this. In choosing what we are to do or not do we are determining our lives and shaping ourselves, giving to ourselves a moral identity, and in making these choices we are also, to a considerable extent, letting others know what kind of persons we are and what kind of

society we want to live in and hand over to our children. In making moral judgments and choices we are, as it were, making or breaking our lives, so that it is by no means remarkable that such judgments and choices should engage us wholly and emotionally as well as intellectually.

Still this does not compel us to the conclusion that moral judgments are simply emotional utterances. We are capable of analyzing our feelings and emotions intelligently and of asking ourselves whether we *ought* to feel the way we do about the things we do and approve others doing. Our emotional reactions do not determine whether the actions we judge right are really so or not, and we ourselves frequently acknowledge that our judgments have been colored or swayed by our emotions. More importantly, we sometimes conclude that we are obligated to act in ways that we find emotionally distasteful and upsetting and that we ought not to act in ways emotionally appealing to us. This quite common human experience would be utterly inexplicable were emotiveness the correct view of moral matters.

Those who fear that moral freedom and responsibility would be destroyed were there to be objectively true moral norms, properly stress the goodness and value of human freedom, but they actually undermine a respect for human freedom by their insistence that all moral norms and judgments are subjective. *They* value freedom, and in my judgment, rightly so. But there are many who do *not* value freedom and who believe that it is perfectly permissible morally to impose views on others. Here we have two contradictory moral positions. On the subjectivist hypothesis, neither is really, objectively true. Those who value freedom and the toleration of dissenting opinions might seek to persuade others to accept these values, but they could point to no objective norms, to claims transcending personal preference, to support their view.<sup>3</sup>

It has been suggested, and properly so in my judgment, that the appeal to freedom to support a subjectivistic position in morality, while well intentioned, rests upon a failure to distinguish carefully two elements in moral decisions. A moral decision includes both a judgment of what one is to do and a choice to do what one judges one ought to do. Decision as judgment has an objectivity as an expression of moral truth that decision as choice cannot have.<sup>4</sup>

In making moral judgments — and this is what normative ethics or the attempt to provide criteria or principles for making morally good decisions is all about — we are not simply expressing our own personal preferences or private attitudes. We are affirming or denying that a particular course of action is objectively good or bad, right or wrong, and we stand ready to provide evidence and arguments to support these judgments and to convince others of their truth. We can, of course, be mistaken in our judgments, but we will be able to rectify them if others can show us why they are erroneous. We would not be

ready to change them simply on someone's assertion that they are emotionally distasteful or incompatible with his or her set of values. There would be no rational possibility of correcting our judgments, if they are false, were there no objectively true criteria or principles or norms in terms of which the errors in our judgments could be made known to us. Our judgments, unlike our private emotions and personal preferences and even our free choices, are amenable to public scrutiny and discussion. We can argue intelligently over them, and, as Thomas Gilby has remarked, "civilization is formed by men locked in argument."<sup>5</sup> Subjectivism in morality actually erodes civilization, for all it leads to is bitter quarrelling that is eventually settled by superior might, legislative fiat, or judicial decree.<sup>6</sup>

Decision as choice, as the expression of our own freedom to determine our own lives, lacks the objectivity that decision as judgment possesses. We may not, as experience sadly testifies, always choose to act in accord with our own best judgments about what we are to do. We are free to violate our own conscience; we are free to sin. We can, of course, come to repent wicked choices knowingly made, and a better understanding of why those choices were wicked may be of help, but only God's grace can effectively change our hearts and lead us to amend our ways.

The position adopted here, that moral norms can be objectively true, in no way entails intolerance for the liberty and views of others. We can respect the freedom of choice of those with whom we disagree in moral judgments. We may argue, and rightly so, that their judgments are mistaken, but we do not necessarily hold that they are the result of either stupidity or viciousness. At times we may even, for the sake of the good of personal liberty, judge that some forms of overt behavior which we personally judge to be morally wrong, can and perhaps ought to be tolerated by society. Nor are we necessarily intolerant and enemies of the good of personal liberty when we judge that there are some sorts or kinds of behavior which simply cannot be tolerated in a just society. A person, for example, who holds that no one should ever be permitted to use children as subjects of hard core pornographic plays and films is not necessarily an intolerant, insensitive, ruthless fanatic bent on imposing his will tyrannically on others. Similarly, I would argue (although this is not the place to do so) that the effort to extend the equal protection of law to those members of the human species who are living, yet unborn, is by no means inimical to the values of liberty and justice for all.<sup>7</sup>

With these preliminary observations on freedom and moral objectivity in mind, I propose now to turn to the subject of normative ethics. I shall first present and criticize a type of normative ethics widely popular in our culture, then propose and defend a much different sort, one that is, in my opinion, true and therefore genuinely liberating.

## Consequentialism

A type of normative ethics or moral methodology advocated by many in America today is consequentialism.<sup>8</sup> There are many types of consequentialism. Some versions, in particular utilitarianism and the situation ethics proposed by Joseph Fletcher, are purely consequential. They claim that *all* moral norms and values are grounded in consequentialist considerations alone.<sup>9</sup> Other forms of consequentialism, including the "proportionate good" or "proportionate reason" approach articulated by several prominent Roman Catholic moral theologians,<sup>10</sup> are variously called "mixed" or "mediating" consequentialistic approaches.<sup>11</sup> These versions hold that some, or even all moral norms and values, can be established only if consequentialistic considerations are fittingly supplemented by nonconsequentialistic ones.<sup>12</sup>

Despite differences, and at times these are very great, in different forms of consequentialistic normative theories, all agree in claiming that the proper way to arrive at a good moral judgment in problematic or dilemmatic situations is to assess the consequences of the various alternatives and then choose that alternative which promises to bring about the greatest good, even if the "greatest good" in some cases is simply the "lesser evil."<sup>13</sup> As one advocate of consequentialism puts it,

How do we discover the right thing to do? We discover it by balancing the various "goods" and "bads" that are part of the situation and by trying to achieve the greatest proportion of goods to bads. What constitutes right action? It is that action which contains the proportionally greatest maximization of good and minimization of evil.<sup>14</sup>

All versions of consequentialism likewise agree in holding that there are no kinds of human behavior, describable in nonmoral terms, which are *always* immoral.<sup>15</sup> A consequentialist would grant that "*murder* is always wrong," because by definition *murder* means an "unjust killing." But the consequentialist would then argue that in order to determine whether the killing is unjust or not, one must discover whether or not there is some achievable good that can justify it. Thus the consequentialist would deny that it is *always* wrong deliberately and intentionally to kill an innocent human being. It all depends on whether choosing this alternative will serve to maximize good or minimize evil.

We can see from this that in certain kinds of ethical dilemmas faced by health-care personnel, for instance in cases concerning the abortion of unborn children afflicted by genetic disorders, the treatment of severely crippled newborns or the care to be given to terminally ill patients, the consequentialist would seek to discover what action is called for by evaluating the consequences and by trying to determine whether lethal action or, at times, benign neglect might not be the

morally proper course to follow. Different consequentialists would reach different judgments in similar cases, however, because there would be a disagreement among them concerning the determination of the "greatest good." Thus Joseph Fletcher would have no difficulties in judging that an abortion is justifiable whenever the child might be "unwanted,"<sup>16</sup> and he would likewise judge, on a calculus of consequences, that it would be morally right to "allow" Down's syndrome infants suffering from intestinal disorders to die or even actively to kill them.<sup>17</sup> There are other consequentialists, for instance H. Tristram Engelhardt, who would substantively agree with these moral conclusions.<sup>18</sup> Other consequentialists, of course, would vigorously repudiate judgments of this sort as erroneous and immoral.<sup>19</sup>

What this shows us is that different consequentialists will come to different normative rules and conclusions from their general principle that we can resolve dilemmatic situations by assessing the various alternative courses of action and then choose that one which will lead to the greater good. This in itself is a purely descriptive and factual consideration, but I believe that it is also a strong indication that any kind of consequentialistic normative moral theory is beset with insuperable difficulties and is thus erroneous and incapable of providing us with the criteria or principles we need if we are to cope humanly and intelligently with ethical dilemmas in health care or in any area of human life.<sup>20</sup>

An obvious difficulty with consequentialism is the problem of identifying the "greater good." All consequentialists will agree, for example, that we ought not to go about killing innocent human beings for no reason. They argue that there must be some "greater good" or "proportionate good" that such an act can serve for it to be morally justifiable or that there must be some terrible evil that could be averted by doing this sort of deed so that choosing to do it would be the "lesser evil." Yet they find it very difficult to determine the nature of the "greater good." Some, and Joseph Fletcher and act utilitarians in general are illustrative of these, would attempt to discover this greater good by means of a quantitative calculus. According to them, we discover the deed that will serve the greater good by counting the number of persons who will be benefitted by the deed and the number of those who will be harmed. If more people are helped than harmed by the action in question, then it is the one that will bring about the greater good.<sup>21</sup> The less simple and more complex varieties of consequentialist thinking repudiate this quantitative calculus. In its stead they propose that certain kinds of human goods, for instance personal dignity and integrity, liberty and the ability to communicate, are "higher" or "greater" than such goods as physical life, so that the choice to destroy physical life can be morally justifiable when doing so serves these higher goods of persons and communities.<sup>22</sup> Nonetheless, they have serious difficulties in "weighing"



and "balancing" the various goods of persons and communities. Still they are operating on the assumption that it is possible, at least theoretically, to discover the "greater" or "proportionate" good, for this is the basic assumption of consequentialist thought, one required by its fundamental principle that we can resolve moral dilemmas by weighing alternative courses of action, examining their consequences and then choosing the alternative which promises the greatest maximization of good and minimization of evil.

This fundamental assumption or presupposition of consequentialism is its basic weakness, one that has been noted by many writers, most recently in important essays by Paul Ramsey<sup>23</sup> and Germain G. Grisez.<sup>24</sup> Each of us would obviously agree with the maxim that one ought to choose the alternative that promises the greater good if by *good* is understood what is *morally* good, for the morally good choice is, after all, the one we are seeking to make in our endeavor to shape our lives responsibly. The truth of this maxim, so understood, is what makes consequentialism initially plausible to many people. But when the consequentialist proposes this as the fundamental principle for resolving moral dilemmas, he is not using the term *good* in a moral sense. He is referring to *good* in the sense that it designates some perfection or set of perfections contributing to the flourishing of human persons and communities, to *good* in the sense that life and health, liberty and justice, human dignity and friendship, knowledge and peace, are "good." He assumes that we can weigh or measure these goods, when a conflict arises, thus determining which among them is greater so that pursuing it is justifiable even if its pursuit requires us deliberately and of set purpose to destroy other goods.<sup>25</sup>

The difficulty, of course, is that the basic goods of the human person are not measurable quantities which can be compared and balanced off against each other in any clearly unambiguous way. They refer to a different dimension of our being and are simply not capable of being quantified and measured.<sup>26</sup> How, for example, is it possible to compare the good of knowledge pursued for its own sake with the good of being treated justly, being in a state of good health or being alive? The fact is that all of these are goods of human persons and contribute to human flourishing. Human beings commit themselves to the pursuit of these goods, and their doing so is intelligent and appropriate.

Health care personnel have committed themselves to the good of human life and health, as lawyers and others have committed themselves to the good of justice, and as teachers and others have committed themselves to the good of knowledge. It would be arrogant for a doctor to claim that the good of health is measurably superior to the good of justice or knowledge, just as it would be for lawyers to claim that in pursuing the good of justice they are pursuing a good measurably superior to the good of health that a doctor seeks to serve or the



good of knowledge that others seek to pursue. Yet for consequentialism to be true, there must be some way to measure the goods which go to make up the whole human good, to compare them in such a way that one can clearly determine, in situations when various goods appeal to us in different ways, which is the "better" or "higher." The attempt to do so is doomed to failure, and this helps us understand why consequentialists disagree so sharply among themselves in the determination of the greater good. Because the goods of the human person are in truth incomparable there is no clearly unambiguous way to weigh and balance them off against each other. Thus consequentialists end up by arbitrarily asserting that one or another good is measurably greater than another.

Other objections can be raised against consequentialism as a method for resolving ethical dilemmas in addition to the fact that it is predicated upon an attempt to measure the incommensurable and compare the incomparable.<sup>27</sup> One which in my view is telling is the fact that consequentialism is a form of extrinsicism. By this I mean that it determines the rightness or wrongness of human acts by factors extrinsic to the acts themselves, namely by their consequences or effects.<sup>28</sup> The consequentialist, in other words, seeks to determine whether a proposed course of human action is morally good or morally evil by attempting to discover what that act will get done or achieve. But as many authors point out, our acts not only get something done, they also get something said.<sup>29</sup> They have something to tell us about ourselves and the kind of persons we are. They are, in other words, intelligible, and we can discover their meaning and intelligibility. By our willingness to do the deeds we do, we take on, as part of our moral identity, the identity of doers of certain sorts of deeds. Thus if we are willing to do what is in truth an act of killing a fellow human being, we take on, as part of our identity, the identity of killers, even if we seek to conceal this identity from ourselves. And, I submit, we ought not to be willing to take on this identity, for in giving freely to ourselves this kind of identity we are failing to become the beings that we are meant to be.<sup>30</sup> The consequentialist, by identifying the moral meaning of our acts with their results or consequences, is really engaging in a form of self-deception, for the consequentialist succumbs to the temptation to *redescribe* the actions one chooses to do in terms of their intended consequences, so that the very nature of the act is ignored or kept hidden from the mind and from public scrutiny.<sup>31</sup> Thus the consequentialist will redescribe the act of starving a crippled newborn to death as an act of beneficent euthanasia or of kindness, or the act of using a mentally incompetent person as the subject of an experiment of no possible benefit to that person as an act of scientific research advancing human knowledge.

If a normative ethics or methodology predicated upon consequentialistic premises is erroneous, as I hope that I have shown, then what

approach can be recommended? My desire now is to articulate a type of normative ethics that can provide us with the principles we need in order to cope with ethical dilemmas, whether in health care or in any other area of human life, intelligently, responsibly, and morally.

### A Nonconsequentialist Theory of the Human Good

The position that I hope to articulate is rooted in the thought of Thomas Aquinas and in the whole Judeo-Christian tradition and is today developed by a number of writers, in particular by Germain Grisez,<sup>32</sup> John Finnis,<sup>33</sup> and Paul Ramsey.<sup>34</sup> This position agrees with St. Paul that we ought not freely choose to do evil so that good may come about (cf. Romans 3.8), and with Socrates it holds that we ought rather to suffer injustice than to choose to do an injustice. It rejects, therefore, the view, irremediably present in all forms of consequentialism, that the end justifies the means.<sup>35</sup>

This nonconsequentialist theory begins with the principle that *good is to be done and pursued and that evil is to be avoided*.<sup>36</sup> This principle is accepted as a truth needing no demonstration and incapable of being demonstrated, for its truth is evident once one understands what is meant by *good* and by *evil*. For *good* means what is truly perfective of a being, what any being needs if that being is to be what it is meant to be, and *evil* means the deprivation of good. This principle, moreover, is the starting point or beginning for all intelligent behavior. No matter what any of us does, whether it is morally right or morally wrong, we do it because we believe we are achieving something good. No one chooses evil for the sake of evil. We may choose what we know to be morally wicked or evil, but even in choices of this sort we are seeking some good, and we attempt to justify our choices both to ourselves and to others by appealing to some good that we hope to achieve through the act we choose to do.<sup>37</sup>

The human good, moreover, is pluriform. We have already seen this in our consideration of consequentialism. There are many goods of the human person, each contributing in its own way to the flourishing of human existence and human communities. Among these are the goods of life and health, truth, justice, peace, friendship, knowledge.<sup>38</sup> As such, these goods are nonmoral, for after all a person is not a morally wicked person because he or she lacks friends or is sick or is treated unjustly or is ignorant. Still, these goods are real goods of human persons and as such are worthy of human choice; we need these goods if we are to be fully ourselves, and we have a right to participate in these goods.<sup>39</sup>

Moral considerations arise when we relate these goods to the human will or, to speak biblically, to the human heart. The person whose heart is open to God — the morally upright person — is the one who is open to these real goods of human persons and to their realization,

both in himself and in others. None of these goods is the highest good (the *summum bonum*) or "absolute" good in the sense of being the be-all and end-all of human existence, for only God is the highest good or *summum bonum*. But a human person determines his or her moral identity, his or her moral being, by his or her attitude toward these real goods of human persons. Since these goods are truly goods of the human person, we ought to be ready to acknowledge them as such. They specify the sorts or kinds of good that we are to do and pursue, and the evils depriving us and others of them are the evils that we are to avoid in our actions.<sup>40</sup> Each of these goods (life and health, truth, justice, peace, friendship, knowledge, etc.) is really worthy of human choice because each is a good *of* persons, not a good *for* persons. These goods, in other words, are what older theologians and philosophers called *bona honesta* or noble goods, because each is incomparably precious and priceless, because each is something intrinsically perfective of our being and a created participation in the goodness of the uncreated and supreme good, God Himself. None is a purely useful good (a *bonum utile*), something good only *for* something else.

Since none of these basic human goods is the absolute, unlimited good, the be-all and the end-all of our existence, none ought to be regarded as such and made to function as the key to solving dilemmatic situations; none, in short, is the measurably "greater" or "greatest" good postulated by consequentialism for whose sake we are to be willing deliberately and of set purpose to destroy other goods of the human person, to close our hearts to their goodness.<sup>41</sup>

Although we cannot pursue all of these goods all the time, they are the goods that we are to do and to which we are to commit ourselves, and the evils destructive of them are the evils that we are to avoid. We may, in tragic circumstances, have to suffer their loss or destruction in ourselves and in others when the effort to protect them would necessarily entail the choice to repudiate other real goods of human persons. We may also rightly choose to do an act that is itself targeted on the protection of a basic good when this is being imperiled even if the act will foreseeably lead to the loss of some other good when there are no other alternatives for protecting the imperiled good and there are no morally compelling reasons for us to refrain from acting.<sup>42</sup>

Because each of these goods is really something good and hence worthy of human choice and love, we ought to be unwilling to set our wills, our hearts, our persons, against any one of them and to say, effectively through our actions, that any one of them is, here and now, not a good but an evil. This means that we ought to be unwilling to choose, deliberately and of set purpose, acts in which we propose to destroy any of these goods, to do evil so that good may come about.

The nonconsequentialistic moral theory here proposed for your consideration is, in brief, one that accepts completely the truth that

*good is to be done and pursued and evil is to be avoided.* It holds that we are acting unreasonably<sup>43</sup> when we choose to regard any real good of human persons as something that here and now ought to be destroyed of set purpose because its continued flourishing in a human person inhibits participation in some other human good, a good that we arbitrarily regard as a measurably greater good and for whose sake we close our hearts and person to the claims of some other real good of the human person.

I should like now to illustrate this nonconsequentialistic normative theory by reflecting on some dilemmas in health care. According to the principles grounded in a recognition of and love for the basic goods of human persons (and of the persons in whom these goods are realized) there are some sorts or kinds of deeds that we ought not to be willing to do freely and deliberately. These are the sorts or kinds of deeds in which of necessity we turn against or repudiate basic human goods. Among these goods is the good of life itself.<sup>44</sup> Thus, according to the principles of this nonconsequentialistic ethics, we ought not to be willing to choose to do deeds that can truthfully be described as acts of killing human life. We ought not, therefore, choose to kill unborn children because other persons do not want them or assert that their lives will not be meaningful. We may take action to protect the life of an unborn child's mother when her life is in danger of being lost even if we foresee that in taking this action the life of her unborn child will tragically be lost. In such instances our deed is not one of killing life but of saving life that merits protection and can be protected only by the deed we choose. In choosing this deed, we are not closing our hearts to the life of her unborn child, for the death of the unborn child is not what we are intending to bring about, although we realize that it will result as a nonintended and tragic concomitant of the saving act that we have chosen to do.

On this nonconsequentialistic ethics, we ought not choose to kill newborn children or dying patients either by benign neglect or by taking lethal action against them;<sup>45</sup> if any alternative that we propose to ourselves in deliberating about what we are to do in caring for these fellow human beings includes the proposal to kill them because their lives, in our estimation or in that of others, are of no value, then this is an alternative that ought not to be chosen, for in choosing it we are choosing death, not life — an evil, not a good.<sup>46</sup>

This does not in any way mean that we may not rightly choose to withhold or discontinue treatment for those patient-persons, or that we may not rightly elect, for ourselves, not to consent to certain sorts of treatments. We may, in other words, allow others to die their own death and accept our own, and it can even be wicked to burden others with "treatments" that serve only to prolong their dying and are of no benefit to them.<sup>47</sup> There is an enormous difference (one that many consequentialists endeavor mightily to reject as meaning-

less)<sup>48</sup> between choosing to kill someone or oneself and choosing to allow another to die or to accept death for oneself.<sup>49</sup> Moreover, we need to recall that we can kill someone just as efficiently by omitting to do what we are obliged to do as we can by taking affirmative action. If your baby slips in the bathtub and is submerged in water and you do nothing to help, you are killing your baby by your failure to act just as effectively as you would by strangling it. Similarly the mentally retarded newborn in need of an operation to correct an intestinal blockage is killed and not merely allowed to die when nothing is done and he is starved by "benign neglect."

I believe that these reflections may help us to gain an understanding of what the terms "ordinary" and "extraordinary" care mean. They do not refer to standard treatment; rather they are moral, not medical, terms. Ordinary means obligatory care, and extraordinary means elective or nonobligatory care.<sup>50</sup> I suggest that a crucial way for distinguishing between them is to ask whether failure to employ or continue a certain means is equivalent to a proposal to kill the person in question. If it is, then the means is "ordinary" and morally obligatory; if it is not, then the means is "extraordinary" and elective and non-obligatory.

These comments, I hope, may have served to give an understanding of the vast differences between consequentialistic and nonconsequentialistic theories of normative ethics and their relevance to some basic questions in health care. I know that many questions can and ought to be raised about the nonconsequentialistic theory of human goods proposed and commended here. Nonetheless, this theory is, in my judgment, one that will enable us to confront ethical dilemmas rightly and to become "locked in argument" should disagreements arise, with the possibility of settling these disagreements by an appeal to normative principles of human choice and action that are universally true.

## REFERENCES

1. On the nature of a moral or ethical dilemma, it is useful to consult Tom Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, 1979), pp. 3, 4. These authors, however, apparently believe that in some sorts of dilemmas one must act in a way that violates some basic normative principle, and in their actual resolution of some dilemmas it is evident that they adopt a type of consequentialism discussed later in this paper.
2. Those who hold that moral judgments are devoid of objective truth and thus can be said to be neither true nor false are called *noncognitivists* in ethics. A representative of an emotivistic understanding of moral propositions is A. J. Ayer (cf. his *Language, Truth, and Logic* [New York: Dover, 1956], pp. 107, 108), while the leading proponent of *prescriptivism* in ethics is R. M. Hare (cf. his *The Language of Morals* [Oxford: Oxford University Press, 1952], and his *Freedom and Reason* [Oxford: Oxford University Press, 1963]). A sympathetic and brilliant critique of these approaches is given by Ronald D. Lawler, *Analytic Philosophy and Ethics* (Milwaukee: Bruce Publishing Co., 1968).



3. This problem is poignantly illustrated by Hare himself in his own analyses of the difficulties that a liberal encounters in attempting to convince a segregationist or racist to adopt prescriptions in accord with liberal ideals. See his *Freedom and Reason*, *op. cit.*, pp. 192-195. Those interested in pursuing the difficulties of noncognitivist theories will find the following material helpful: Henry Veatch, *Rational Man* (Bloomington, Ind.: Indiana University Press, 1962), pp. 17-46; Mortimer Adler, *The Time of Our Lives* (New York: Holt, Rinehart, and Winston, 1970), pp. 84-136; C. S. Lewis, *The Abolition of Man* (New York: Collier Books, 1962).

4. Cf. Germain G. Grisez and Joseph M. Boyle, Jr., *Life and Death with Liberty and Justice: A Contribution to the Euthanasia Debate* (Notre Dame, Ind.: University of Notre Dame Press, 1979), pp. 341, 342.

5. Gilby, Thomas, *Between Community and Society* (New York: Longmans, Green, and Co., 1953), p. 93.

6. Here it can be noted that the decisions of the Supreme Court in *Roe v. Wade* and *Doe v. Bolton* (the 1973 abortion decisions) were an exercise in raw judicial power. On this, see Grisez and Boyle, *op. cit.*, pp. 238-242; see also Robert A. Destro, "Abortion and the Constitution: The Need for a Life-Protective Amendment," *California Law Review* 63 (1975), pp. 1250-1992 and 1331-1341; Joseph W. Dellapenna, "Nor Piety Nor Wit: The Supreme Court on Abortion," *Columbia Human Rights Law Review* 6 (1974), pp. 389-409; Robert M. Byrn, "An American Tragedy: The Supreme Court on Abortion," *Fordham Law Review* 41 (1973), pp. 807-862.

7. The most extensive and compelling arguments to support this claim are provided by Grisez and Boyle, *op. cit.*

8. Many authors refer to consequentialism as a *teleological* ethics (for this, cf. William Frankena, *Ethics*, 2nd Ed. [Englewood-Cliffs, N.J.: Prentice-Hall, 1973], Beauchamp and Childress, *op. cit.*, pp. 20-33). This language is acceptable so long as it is recognized that by *teleological* they mean a system which justifies moral norms and judgments by assessing the consequences of human acts. However, since these writers likewise distinguish teleological approaches from deontological approaches on the grounds that the former consider the concept of the good to be prior to and more central in ethics than the concept of duty whereas the latter stress the notion of duty (on this, cf., for instance, Beauchamp and Childress, *op. cit.*, pp. 20, 21), others — and I am in agreement with them — prefer to use the term *consequentialism* to refer to those normative ethical systems that locate the right-making or wrong-making features of human acts in their consequences (on this cf. Grisez and Boyle, *op. cit.*, p. 346 ff). The term *teleological* can also be used to describe a normative ethics that is non-consequentialistic in nature but nevertheless grounds moral norms in the notion of the good (on this cf. Grisez and Boyle, *op. cit.*, pp. 358-361, and Frederick S. Carney, "McCormick on Teleology," *The Journal of Religious Ethics* 6 (1978), pp. 81-107). Since this is precisely the sort of normative ethical theory to be advocated later in this paper, I believe that it is preferable to use the term *consequentialism* to describe the type of normative ethical theory under consideration in this section.

9. On this see Frankena, *op. cit.*, (under his analysis of "teleological" systems), pp. 14, 15; and Beauchamp and Childress, *op. cit.*, p. 33.

10. This form of consequentialism, which can be called the "ethics of the proportionate good," has been developed by a number of Roman Catholic moralists in the past 15 years, including William Van der Marck, Cornelius Van der Poel, Louis Janssens, Josef Fuchs, Bruno Schuller, and Richard McCormick. The pertinent literature here is extensive. McCormick has surveyed it both in his *Ambiguity in Moral Choice* (Milwaukee: Marquette University Theology Department, 1973), in his "Notes on Moral Theology" for *Theological Studies* 33 (1972), pp. 68-86; 36 (1975), pp. 85-100; 38 (1977), pp. 70-84; and 40 (1979), pp. 59-80;



and in his essay, "A Commentary on the Commentaries," in *Doing Evil to Achieve Good*, ed. by Richard A. McCormick and Paul Ramsey (Chicago: Loyola University Press, 1978), pp. 193-267. (This volume reprints *Ambiguity in Moral Choice* as the first chapter.) These works should be consulted for bibliographical entries. I have sought to criticize this development in several places. See, for instance, my *Becoming Human: An Invitation to Christian Ethics* (Dayton: Pflaum, 1974), chap. 4; "Modern Catholic Ethics: The New Situationism," *Faith and Reason* 4 (Fall, 1978), pp. 21-38; and "The Moral Meaning of Human Acts," *Homiletic and Pastoral Review* 79.1 (Oct., 1978), pp. 10-21.

11. In his *Ethics*, Frankena uses the term "mixed deontologisms" (p. 43) to designate normative ethical systems of this kind. McCormick uses the term "mediating approaches" to describe these systems, of which his own is a variant, in his essay "Genetic Medicine: Notes on the Moral Literature," *Theological Studies*, 33 (Sept., 1972), p. 531. This "mixed" or "mediating" approach is the one followed by Beauchamp and Childress in their *Principles of Biomedical Ethics*. What is remarkable about their work is that one of the contributors professes to adopt a rule-utilitarian approach (a purely consequentialistic one) whereas the other professes to adopt a rule-deontological approach (one that grounds norms in considerations other than consequences), but both agree that there are no sorts or kinds of acts that are *always* wicked and that particular norms can be violated for the attainment of the higher good. The reader is not informed which author is the rule-utilitarian or which is the rule-deontologist (cf. p. 40). As do many "mixed" consequentialists, Beauchamp and Childress hold that some moral norms are "virtually" exceptionless, in the sense that it is hardly conceivable that some "greater good" could justify violating them (e.g., a norm proscribing devastating an entire city with its population), but the possibility of justifying an act proscribed by such a "virtually exceptionless" norm remains in principle.

12. To see this, it is only necessary to read carefully the descriptions of "mediating" or "mixed" positions given by McCormick, "Genetic Medicine . . .," *loc. cit.* and the literature therein cited, along with the proposals one finds in Beauchamp and Childress.

13. On the "lesser evil" as equivalent in function in some instances to the "greater good," see McCormick, *Ambiguity in Moral Choice*, *op. cit.*, p. 76.

14. O'Connell, Timothy E., *Principles for a Catholic Morality* (New York: Seabury, 1978), p. 153.

15. This point is brought out forcefully by McCormick in many places. See, for instance, his "Notes on Moral Theology," *Theological Studies* 39 (1978), pp. 77-104. There he stresses that he and others who argue for a teleological-consequentialist grounding of all concrete moral norms understand a concrete moral norm as one that can be expressed in nonmoral terms.

16. See Joseph Fletcher, *Situation Ethics: The New Morality* (Philadelphia: Westminster, 1965), p. 39. There Fletcher proposes an *absolute rule* (something unusual for an ethicist who denies that there are any absolutes!) to the effect that "no unwanted child ought ever to be born."

17. For Fletcher a "Down's" child is a nonperson, as are others who fail to meet his criteria for personhood. See his "The Right to Die," *Atlantic Monthly*, 221 (April, 1968), pp. 63, 64, where he says that "a Down's is not a person," and his "Indicators of Humanhood: A Tentative Profile of Man," *Hastings Center Report*, 2 (Nov., 1972), p. 1 and "Four Indicators of Humanhood — The Enquiry Matures," *Hastings Center Report*, 4 (Dec., 1974), p. 7.

18. Engelhardt, H. Tristram, Jr., "Ethical Issues in Aiding the Death of Young Children," in *Beneficent Euthanasia*, ed. by Marvin Kohl (Buffalo: Prometheus Books, 1975), pp. 180-192. "Aiding the death of young children" is Engelhardt's euphemism for killing them. Young children are, in his estimate, non-persons and are "defined by their place in social roles" (p. 183).

19. Thus James F. Gustafson would dissent from the judgment that it is morally permissible to let a Down's baby suffering from an intestinal blockage to die. See his "Mongolism, Parental Desires, and the Right to Life," *Perspectives in Biology and Medicine* 16 (1973), pp. 529-557.

20. For an analysis of the difficulties consequentialists face in attempting to cope with this problem see Dan Brock, "Recent Work in Utilitarianism," *American Philosophical Quarterly* 10 (1973), pp. 241-269. See also Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), pp. 172-209.

21. For Fletcher's expression of this, see his *Situation Ethics*, pp. 95-99.

22. A dualism subordinating the body to the "person" and conceiving bodily life as a merely instrumental good, valuable as a condition for higher goods of the person, goods that need to be consciously experienced in order to exist, is evident in the writings of many consequentialists. Thus Joseph Fletcher writes: "Physical nature — the body and its members, our organs and their functions — of these things are a part of 'what is over against us,' and if we live by the rules and conditions set in physiology or any other it we are not *thou* . . . Freedom, knowledge, choice, responsibility — all these things of personal or moral stature are in us, not *out there*. Physical nature is what is over against us, out there. It represents the world of *its*." (*Morals and Medicine* [Boston: Beacon Press, 1960], p. 211.) In an essay arguing for the moral right to kill oneself and others for merciful reasons Daniel C. Maguire says: "Birth control was for a long time impeded by the physicalistic ethic that left moral man at the mercy of his biology . . . Only gradually did technological man discover that he was morally free to intervene creatively and to achieve birth control by choice. The question now arising is whether we may intervene creatively to achieve death by choice or whether mortal man must in all cases await the good pleasure of biochemical and organic factors and allow these to determine the time and manner of his demise." ("The Freedom to Die," in *New Theology*, No. 10, ed. by Martin E. Marty and Dean Peerman [New York: Macmillan Co., 1973], p. 189. This essay originally appeared in the Aug. 11, 1972 issue of *Commonweal*.) Again, Richard A. McCormick proposes that bodily "life is a value to be preserved only insofar as it contains some potentiality for human relationships. When in human judgment this potentiality is totally absent or would be, because of the condition of the individual, totally subordinate to the mere effort for survival, that life can be said to have achieved its potential" ("To Save or Let Die," *Journal of the American Medical Association*, 229.2 [July 8, 1974], pp. 172-176; reprinted in *America*, July 13, 1974, pp. 6-10). While McCormick seeks to attribute some goodness to life as such, it is difficult to say what this value is, since he seems to make life a value or good only as a condition for higher goods of the person. For the problems that McCormick's position poses, see Paul Ramsey, *Ethics at the Edges of Life* (New Haven: Yale University Press, 1978), pp. 171-181 and 220-227. For a critique of the dualism of the consequentialists see Germain G. Grisez, "Dualism and the New Morality," *Atti del Congresso Internazionale* (Rome and Naples, April 17-24, 1974), *Tommaso d'Aquino nel suo Settimo Centenario*, vol. 5, *L'Agir Morale* (Naples: Edizioni Domenicane Italiane, 1977).

23. Ramsey, Paul, "Incommensurability and Indeterminacy in Moral Choice," in *Doing Evil to Achieve Good*, *op. cit.*, pp. 69-144.

24. Grisez, Germain G., "Against Consequentialism," *American Journal of Jurisprudence*, 23 (1978).

25. McCormick lucidly articulates this cardinal principal of the consequentialists. Thus he writes that "where a higher good is at stake and the only means to protect it is to choose to do a non-moral evil [i.e., destroy some true basic good of the human person, such as life and health] then the will remains properly disposed to the values constitutive of human good" (*Ambiguity in Moral Choice*, pp. 78, 79; cf. his "Notes on Moral Theology," *Theological Studies* 33 [1972], pp.

74, 75. In his more recent "A Commentary on the Commentaries," McCormick now admits that it is not possible strictly to "measure" the various human goods. Still he claims that the goods are "associated" in such a way that we can determine whether or not a "greater good" would be served only by the necessary but still deliberate and directly intended destruction of an associated good. He contends that when we directly intend evil in this way, we are merely tolerating or accepting the evil, not consenting to it or endorsing it. To make this claim is to abolish, in my judgment, the significance of the difference between an intending will and a merely permissive will, a distinction that McCormick elsewhere accepts.

26. This is brought out quite well by Ramsey and Grisez in the works cited in notes 23 and 24.

27. A very substantive objection is developed by Germain Grisez in his article "Against Consequentialism," (cf. note 24) and in the work he co-authored with Joseph Boyle, *Life and Death With Liberty and Justice*, pp. 346-354. It shows that the commensurability of human goods demanded by consequentialism renders freedom of choice illusory.

28. For the distinction between acts and consequences see the brilliant discussion provided by Eric D'Arcy in his book, *Human Acts: An Essay in Their Moral Evaluation* (Oxford: Oxford University Press, 1963), pp. 1-40.

29. This is beautifully brought out by Herbert McCabe in his work *What Is Ethics All About?* (published in England under the title, *Love, Law, and Language*) (Washington, D.C.: Corpus, 1969), pp. 90-94. See also my *Becoming Human*, *op. cit.*, pp. 79-84.

30. I have sought to develop this idea in "Ethics and Human Identity: The Challenge of the New Biology," *Horizons: Journal of the College Theology Society*, 3 (1976), pp. 17-36.

31. This is brilliantly brought out by D'Arcy, *op. cit.*, pp. 1-40 and by Paul Ramsey, *Deeds and Rules in Christian Ethics* (New York: Charles Scribner's Sons, 1967), pp. 193-226.

32. Grisez has developed his theory in several places. The most important are the following: *Contraception and Natural Law* (Milwaukee: Bruce Publishing Co., 1964), chap. 3; "The First Principle of Natural Law: A Commentary on *Summa Theologiae*, 1-2, Q. 94, A. 2," *Natural Law Forum*, 10 (1965), pp. 168-201; *Abortion: The Myths, the Realities, and the Arguments* (New York: Corpus, 1970), chap. 6; "Toward a Consistent Natural-Law Ethics of Killing," *American Journal of Jurisprudence* (= the new title of *Natural Law Forum*), 15 (1970), pp. 64-96; "Against Consequentialism," *loc. cit.*; and in the work he recently co-authored with Joseph M. Boyle, *Life and Death with Liberty and Justice*, pp. 358-442.

33. Finnis, John, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980).

34. Ramsey has developed his thought in many places. See in particular his *War and the Christian Conscience* (Durham, N.C.: Duke University Press, 1961); *Deeds and Rules in Christian Ethics*; "The Case of the Curious Exception," in *Norm and Context in Christian Ethics*, ed. by Gene Outka and Paul Ramsey (New York: Charles Scribner's Sons, 1968); "Incommensurability and Indeterminacy in Moral Choice," *loc. cit.*

This position is also developed by such writers as Peter T. Geach and Elizabeth Anscombe. See Geach's *The Virtues* (Cambridge: Cambridge University Press, 1977); *God and the Soul* (New York: Schocken Books, 1969); Anscombe's *Intention* (Oxford: Oxford University Press, 1968).

35. Thus McCormick writes that "it is legitimate to intend premoral evil [e.g., the death of a human person] *in ordine ad finem proportionatum*." See "Notes on Moral Theology," *Theological Studies* 33 (1972), pp. 74, 75. Thus, too, O'Connell writes that the "maxim," "the end does not justify the means," must be rejected

if by "end" we mean "consequences," for it is the consequences and the consequences alone, that justify the means, *op. cit.*, p. 172.

36. This is precisely the way that St. Thomas formulates the very first principle or precept of practical reason in *Summa Theologiae*, 1-2, 94, 2. On the significance of this, see the essay on this Thomistic text by Grisez, cited in note 32. See also my "The Nature and Meaning of Natural Law in St. Thomas," *American Journal of Jurisprudence*, 22 (1977).

37. Here it is instructive to note how the work of contemporary psychologists, such as Lawrence Kohlberg, helps to verify the judgment that we always act for some good and seek to justify our actions in terms of the good that we intend to achieve as a *consequence* of our actions. For a discussion of this, see my "Natural Law, Conscience, and Developmental Psychology," *Communio*, 3 (1975), pp. 3-31. See also the second part of Mortimer Adler's *The Time of Our Lives*, *op. cit.*

38. Grisez (cf. the works cited in note 32) believes that the basic human goods can be analytically reduced to eight in number. I am not necessarily in agreement with him on this matter. The point is that such goods as life and health and the others noted are definitely goods that we seek for their own sake and not merely for the sake of something else. On the intrinsic goodness of life itself, see the discussion by Grisez and Boyle, *op. cit.*, pp. 372-380.

39. On real goods as the basis for true human rights, see Jacques Maritain, *Man and the State* (Chicago: University of Chicago Press, 1958) and Adler, *op. cit.*

40. Thus in *Summa Theologiae*, 1-2, 94, 2, after showing why the first principle of practical reason is that good is to be done and pursued and that evil is to be avoided, St. Thomas goes on to note that there are many "first" principles insofar as there are many basic goods of the human person corresponding to natural inclinations or tendencies pertaining to the human person by virtue of the person's being a substantive reality, a living, bodily being, and an intelligent being. These other "first" principles of practical reason or of "natural law" are not derived in any kind of deductive, rationalistic way but are rather specifications of the good to which we are directed by this precept and of the evils that we are to avoid. For more detailed comments and justifications of this, see Grisez's essay on this text cited in note 32, my own essay cited in note 36, and R. A. Armstrong's excellent study, *Primary and Secondary Precepts in Thomistic Natural Law Teaching* (The Hague: Martinus Nijhoff, 1965).

41. Basically, the consequentialists arbitrarily select one or another of the human goods and erect it into an "exception-making" criterion that will enable them to justify (I would say "rationalize") their choice to do evil for the sake of a greater good. On an exception-making criterion and the mischief it creates, see David Lyons, *The Forms and Limits of Utilitarianism* (Oxford: Oxford University Press, 1965), p. 125 ff and Paul Ramsey, "The Case of the Curious Exception," *op. cit.*, pp. 82-93. On p. 86, Ramsey states: "The fact is that if one attaches an exception-making criterion at any point along a line of reasoning from the more general to the more specific moral principles, all the moral insight that went before the scale is immediately suspended."

42. Here I am paraphrasing the essential conditions for the principle of double effect. For an understanding of this key principle, one that Ramsey says (in his *War and Christian Conscience*) is rooted in Christian love, see the following: Joseph T. Mangan, "An Historical Analysis of the Principle of Double Effect," *Theological Studies*, 10 (1949), pp. 40-61; J. Ghooes, "L'Acte a double effet: Etude de Theologie Positive," *Ephemerides Theologicae Lovanienses*, 27 (1951), pp. 30-52; Grisez, in *Abortion*, pp. 273-346, in "Toward a Consistent Natural Law Ethics of Killing," *loc. cit.*, and in the Grisez and Boyle book cited already, pp. 404-407; and my essay, "Double Effect, Principle of," in *Encyclopedia of Bioethics*, ed. by Warren T. Reich (New York: Macmillan Free Press, 1978). The principle is rooted in St. Thomas's thought as developed in *Summa Theologiae*,

2-2, 64, 7, and it focuses on the centrality of intention in moral choice.

43. To act unreasonably is different from acting irrationally. The sinner is unreasonable; he is not irrational.

44. It has already been noted (cf. note 22) that many consequentialists manifest a dualistic concept of man, whereby they regard physical life as something subhuman and subpersonal. Were they right, then life itself would not be a basic good of the human person. But dualism as an account of the human reality is not acceptable.

45. A brilliant summary and devastating critique of those who seek to judge the "meaningfulness" of the lives of crippled newborns and to help them die by benign neglect is provided by Paul Ramsey in his *Ethics at the Edges of Life*, pp. 189-267. One must read these pages to understand properly what is going on today and why it is imperative to act to prevent the continuation of practices now widely accepted.

46. Writers like Maguire (cf. note 22) speak of death as a "friend" and a "good." Incisive criticism of this sort of language is provided by Ramsey in his "The Indignity of 'Death with Dignity,'" in *Death, Dying, and Euthanasia*, ed. by David Horan and David Mall (Washington, D.C.: University Publications of America, 1977), pp. 306-313.

47. For the validity of the distinction between killing and allowing to die, see Ramsey, *Patient as Person* (New Haven: Yale University Press, 1971), chap. 6; Arthur Dyck, "An Alternative to an Ethics of Euthanasia," in *To Live or To Die*, ed. by Robert Williams (New York: Springer-Verlag, 1973); Grisez and Boyle, *op. cit.*, pp. 414-422.

48. Thus Fletcher, in "An Ethics of Euthanasia," in Williams, *op. cit.*, argues that there is no difference between killing someone and letting someone die because the result is the same, a corpse. Of course, Fletcher fails to note that it can at times be obligatory to prevent a person's death. Another essay disparaging (and caricaturing) this distinction is James Rachels's, "Active and Passive Euthanasia," *New England Journal of Medicine*, 292 (1975), pp. 78-80.

49. In addition to the works cited in note 47, see my *Human Existence, Medicine and Ethics: Reflections on Human Life* (Chicago: Franciscan Herald Press, 1977), pp. 145-147.

50. This distinction is made by many writers, e.g., Ramsey, in *Patient as Person*, Dyck, in *art. cit.* In his recent *Ethics at the Edges of Life*, Ramsey seeks to substitute the terminology "medically indicated" and "medically nonindicated" for "ordinary" and "extraordinary." His purpose is "to provide terminology that will direct attention to *objective* features and away from subjective judgments predicated on someone's concept of "meaningful life." See *Ethics at the Edges of Life*, pp. 153-159, and 235-245, and elsewhere (cf. index, under "medical indications policy").

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