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BOOK REVIEWS

TWO REVIEWS OF:

Selective Nontreatment of Handicapped Newborns

Robert F. Weir

Oxford University Press, 200 Madison Ave., New York, NY 10016, 1984. xii + 275 pp., \$27.95.

I.

(Reprinted with permission of *The Thomist*.)

For the past 15 years, Western society has witnessed the progressive devaluation of innocent, troublesome human life. *Roe v. Wade* gave women the legal right to devalue and destroy innocent unborn human life. But this right could not long be restricted to pregnant women alone, for the Baby Doe cases extended this right to others and gave them the legal right to devalue and terminate innocent, troublesome newborn human lives. The Clarence Herbert case provided physicians with the legal right to prematurely shorten the lives of difficult adult unconscious patients, and in the summer of 1984, we await the outcome of the *Matter of Claire Conroy* to see if American courts will give physicians, family members and institutions the legal right to shorten the lives of the chronically ill, bedridden and handicapped. Robert Weir's book marks the epitome of the current secular craze to devalue and eliminate innocent human life. This book is not remarkable for its scholarly contribution, but for its audacity in arguing for the direct intentional killing of seriously ill newborns, and also because Oxford University Press has wrapped its mantle around this philosophy.

This is not an ill-informed book. Weir demonstrates that he knows a great deal about newborn intensive care units and congenital diseases. He studies the history of the practice of infanticide and notes that infanticide has been regularly practiced by society throughout history to solve social problems. He wrongly implies that the Catholic Church has looked benignly on infanticide, for, in fact, the Church regularly condemned it as an exceedingly grave action. He implies that medieval law did not consider the killing of infants to be as grave as the killing of adults. In fact, medieval law did regard infanticide as very grave, even though it did not involve disturbing the king's peace, or the social order as the killing of adults did. Nonetheless, infanticide was a very grave crime and was anything but a small misdemeanor.

Weir notes that, in recent years, there has been a great deal of pressure exerted by physicians, attorneys and various interest groups to change the laws prohibiting the killing of infants and regulating the withdrawal of life-sustaining medical treatments. Various physicians have expressed worry over the fact that numerous handicapped unborn children are escaping abortion and are being allowed to live. Weir discusses the views of leading pediatricians, pediatric surgeons and neonatologists on the withdrawal of medical treatments from infants with congenital illnesses. In general, he presents their views very accurately and precisely. In his discussion of the views of various legal scholars, he notes that some attorneys are suggesting that handicapped newborns should be legally classified as potential persons and not have a legal right to life ascribed to them immediately after birth. And these attorneys suggest that not all acts of involuntary euthanasia should be considered as either acts of malice or negligence.

Even though Weir has a rather clear understanding of the legal and historical

issues and current views, he adopts some of the most extreme ethical principles of the past decade to judge the morality of infanticide and neonatal euthanasia. He asserts that all newborns should be regarded only as potential persons, because they are indistinguishable from late term unborn children. They should also be regarded as only potential persons because they do not meet all of Joseph Fletcher's "indicators of humanhood" when they are first born. Only when it is clear that newborns can meet these criteria should they be considered as possessing all the rights of a person. He also holds that the right to life should only be considered as a *prima facie* right that can be nullified when other rights or duties are judged to be more weighty. Weir claims that human life is not always a good and should not always and everywhere be seen as a benefit to newborns. Congenital illness can create such burdens that life can be a harm and death can be a benefit for some children. Weir argues correctly that medical treatments should be administered according to the "best interests" standard, so that treatments are only administered when they are judged to be of benefit to the child. If treatments cannot alleviate the suffering caused by congenital illnesses and give only an existence marked by continuous suffering, then they do harm rather than good and should be withdrawn, according to Weir. He uses the principle of nonmaleficence to support his claim that medical treatments which cannot cure, but only palliate congenital illnesses and only continue a painful existence, should be withdrawn because they are doing harm rather than good. Since he denies that there is any significance to the killing/letting die distinction, he concludes that deliberate, positive acts of intentional killing are justifiable in some circumstances. When continued existence is determined to no longer be of benefit to a congenitally ill newborn because that existence is marked by intractable suffering, Weir holds that positive acts of direct killing should be undertaken because they will bring death swiftly and painlessly. This direct killing should be a group project which would include the death-dispensing physicians, the NICU and the ethics committee of the hospital. Weir's principle implies that newborns diagnosed as having Lesch-Nyhan or Tay Sachs disease should be intentionally killed by positive measures because the administration of medical treatments only causes them "harm" by continuing their painful existence.

Weir asserts that he wants all clinical categories to be treated equally. But he backs away from that position and later holds that treatments should be optional for various categories of patients for whom treatments should be obligatory. This exception would seem to destroy his claim that he is concerned with assuring equal treatment for newborns with the same clinical picture.

The author is eager to keep the courts as far away as possible from decisions to withdraw treatments from seriously ill newborns. Only if the physician and family and institutional review board cannot come to an agreement on the treatment of a seriously ill newborn should the courts be allowed to intervene. His preference, however, is for physicians to have the liberty to treat handicapped newborns as they please, in consultation with the parents.

Weir never seems to give serious consideration to the rights of newborns in his discussions. Even though he is a professor of religious studies, he completely fails to understand the nature of the sacredness of human life, for he sees human life as a value existing on the same scale as other values, even though higher up on the scale. He assumes that death can be of benefit to some infants, and ignores the words of Chief Justice Weintraub: "Man, who knows nothing of death or nothingness, cannot possibly know whether that is so." Weir fails to see that the human being is a spiritual creature and is set apart from all other material creatures which means that certain actions cannot be taken against the human being. Had Weir understood the nature of the sanctity of human life better, he probably never would have said that human life itself could become impossibly burdensome. Diseases and ailments from which persons might suffer can create severe burdens,

but life itself cannot become a burden as it is a gift and treasure from God. Weir shows a complete ignorance of the traditional role of the physician as a healer/counselor, not executioner. He invokes a complete paradox, that "the principle of nonmaleficence . . . call(s) for the intentional killing of an untreated, suffering infant." But how can a principle of not harming, require killing — the ultimate harm one human being can do to another? He overlooks completely the advances in pain control. Practically every newborn can be kept comfortable and relatively pain-free. It seems that Weir's real concern is for the suffering family and the frustrated medical staff.

It has been stated that while there are "untreatable diseases, there are no untreatable patients." Even though our technological armamentarium has failed us, we still have the resources upon which physicians have relied for thousands of years — empathy, support and compassion. Physicians are to enter into a healing covenant with their patients, not only for the welfare of the patient, but also for the benefit of the physician. In this covenant, the physician is to accompany the patient either to his or her healing or death and not abandon the patient along the way. It is necessary for the physician to do this so that he or she can declare in truth at the end of the relationship that he or she has acted responsibly toward the patient and did not abandon the patient in frustration. Weir's proposals ultimately make the physician a technologist who not only abandons the patient when technological "fixes" are insufficient, but who also becomes a killer when technology fails.

We should not be surprised that Weir's defense of nonvoluntary euthanasia for handicapped newborns has been put forth so boldly, for this form of euthanasia has been practiced for years against the unborn. For more than a decade, the unborn have had to pay the highest price in order to allow our permissive, self-oriented society to continue. The appearance of this book causes us to believe that handicapped newborns will soon have to begin paying that price as well.

— Kathryn L. Moseley, M.D.
St. Louis University Medical School

II

This book is far-reaching and comprehensive in its coverage of issues related to the care of handicapped newborns. This is both its strength and weakness. The book contributes to a balanced presentation of certain controversies, but it also contributes to a lack of resolution and an amorphousness in the discussion of these controversies.

The thorough treatment of the historical aspects of infanticide helps to establish the continuity of the present infanticide crisis with those crises of ancient and presumably less civilized cultures. There is a marked reluctance on the part of society to admit that selective nontreatment can constitute infanticide, even in such flagrant cases as the Bloomington Baby Doe matter.

While trying to be equally thorough in the discussion of the neonatal intensive care unit, Weir mentions innumerable instances in which the issue of nontreatment should never arise, and makes of them a mixed bag with true problem cases. Similarly, his case reports are given pejorative resolutions. For example, he cites a Down's syndrome case in which surgical correction of duodenal atresia is followed "in ten days" by a transfer to a state institution. No one would suggest this kind of management for a child with Down's syndrome, with or without intestinal obstruction. Such a resolution of the problem tends to suggest that the surgical intervention was ill-advised. Similarly, a meningomyelocele case is not treated, dies within one week of transfer to a nursing home and is found, at autopsy, to

show evidence confirming a prognosis of a "horrible future." Meningomyelocele cases are simply not resolved in this way and the use of such a case suggests a bias.

In a chapter quoting seven pediatric opinions, Weir accurately contrasts their views on selective nontreatment (aside from an inclination to parody the opinion of Koop), but he is less than satisfactory in his attempt to distill and define the issues in the current debate.

Two chapters on the law and on criminal liability are very comprehensive reviews of the literature on these subjects. A model for the development of a new law, based on the writings of Robertson and others, aims at a satisfactory resolution of the current ambivalence in the opinions of courts responding to conflict cases.

Weir defines as ethical options currently suggested by a review of the writings of ethicists of varying hues, the following:

- 1) treat all nondying neonates;
- 2) terminate the lives of selected nonpersons;
- 3) withhold treatment according to parental discretion;
- 4) withhold treatment according to quality-of-life projections;
- 5) withhold treatment judged not in the child's best interest.

The discussions of these various options is, in general, nonjudgmental and even-handed. There are many inferences drawn about individual viewpoints which are open to rebuttal. The most unsatisfactory points in this chapter relate to Weir's taking seriously the repugnant and offensive views of "animal liberationist" Peter Singer. The inclusion of such views in an otherwise serious evaluation of valid perspectives is a source of unmitigated dismay.

Weir is less persuasive in chapters relating to clinical applications than in his chapters related to ethics. He is, of course, a professor of religious studies and can be excused for lapses related to the imprecision of his own analysis (or that of his medical consultants).

On balance, this is an intellectually honest appraisal of the elements of the current controversy. It includes pro-life perspectives without favoring them over anti-life sources such as Duff, Joseph Fletcher, Singer, etc. This coincides with what is, no doubt, the author's intention, i.e., to produce a textbook-style coverage without polemics. Considering the book's price, it might be better to check it out of the library, rather than buy it.

— Eugene F. Diamond, M.D.
Loyola University
Stritch School of Medicine

Fundamentals of Ethics

John Finnis

Georgetown University Press, Washington, D.C., 1983, 163 pp.

Current debates in ethics and moral theology not infrequently lead to an impasse where mutually irreconcilable theories and methods of decision-making are brought to bear on perplexing conflict situations and yield diverse and often contradictory conclusions. There is a crying need for a systematic study of the foundations of ethics and a thorough critique of the most significant contemporary methodologies. In this relatively short work, John Finnis has undertaken this task. Readers of his earlier work on *Natural Law and Natural Rights* will

anticipate detailed analysis, a close attention to classic authors and complex, finely wrought argument. They will not be disappointed in this work.

The first chapter argues that the understanding we seek in ethics is practical. One's understanding of human good is not derived from a theoretical knowledge of what it is to be human, but from considering what would be worth while to have and to be. What we do when we do ethics is display possibilities of human fulfillment. This is not done in abstraction from human experience, but serves to remind those engaged in the inquiry of their own experience and practical, philosophical grasp of goods. Thus, the inquiry would proceed through the participants' examining critically whether the formulations offered adequately correspond to and interpret that experience. In so doing, they may be led to reinterpret that experience, and/or modify the interpretations offered. The basic move is not from a theory of human nature to an abstract theory of practical reason, as a source of normativity outside and beyond practice, but to the nature of the practical inquiry itself.

The second chapter explores the relationship between desire, understanding and human goods. The argument may be summarized in two main points. The thesis to be challenged is that: 1) human ends are established independently of intelligence by "desire"; 2) the role of reason is limited to deliberating about the means to attain these ends; 3) to assert that X is a good is simply to assert that I experience a desire for X. The assertion is about my experiential state and that is all. The counter-thesis is 1) being desirable is intrinsic to something, being a human good (or end), but it is not simply its being desired or desirable which constitutes it as worth pursuing; 2) the role of reason extends to understanding certain possibilities of activity, of shaping one's identity through this activity, of communicating with reality and with real persons through the activity; 3) to assert that X is a good and, in some cases, a basic human good, is to assert that X is objectively fulfilling. That is, it is not merely productive of an experiential state, but consists in a real achievement of human flourishing. The argument is persuasive and the conclusion sound. There are, however, some points which could be debated. For example, the author places Bernard Lonergan among those who would hold the first thesis. I would suggest that this may be less than fair to Lonergan. The "intentional response" in which values are apprehended in Lonergan's account are not mere emotive states which are produced. Rather, the intentional response answers to what is intended, apprehended and represented. There may well be inadequacies in Lonergan's account of value, but I am not convinced that grounding value in mere emotive states is one of them.

The author repeats and supports his well-known thesis that there are many basic forms of human good, all equally or incommensurably basic and none reducible to any or all of the others. The master principle of ethical reasoning is this: make one's choices open to human fulfillment, i.e., avoid unnecessary limitations on human fulfillment.

On the basis of his positive thesis, Finnis takes issue with utilitarianism, consequentialism and especially with what has come to be called "proportionalism." The debate between the supporters of a "basic human goods" theory and "proportionalism" has been going on for some time and Finnis's contribution to the controversy is important. There are two background points worthy of special note. The first is historical. The author argues that the doctrine cannot be found in Aquinas where some authors have claimed to find it. This, I believe, is correct. The second is theoretical, namely, that the dichotomy between "teleological" and "deontological" theories is misplaced and confusing. This also is a valid point.

There are, nevertheless, some features in the argument which may need further clarification. Finnis responds to a criticism of his earlier work, namely, that he treats consequences as of no account. One of the intermediary principles he proposes is, "... do not overlook the foreseeable bad consequences of your

choices." He rejects the "irrational extrapolation" of this into utilitarian or proportionalist "rationalizations." But it seems rather unclear what would be entailed in "not overlooking" bad consequences. The precise place of consequences in ethical thinking needs to be explained more fully.

In his perceptive and closely argued critique of "proportionalism," Finnis takes the supporters of the latter theory to mean by "consequences" any states of affairs which may arise by any concatenation of events following on the act. Would proportionalists accept this account of their position? For example, how would they answer the question: should Socrates help to liquidate Leon? If I understand their position correctly, they would not proceed by attempting an evaluative weighing of the event of Leon's death against the event of Socrates's death (which would probably be the penalty for his refusal to cooperate). Rather, they would ask whether or not there was a proportionate reason for participating in the killing of Leon. It might be argued that such a killing would undermine the value pursued, i.e., life, and furthermore, that there is no intrinsic connection between killing Leon and preserving Socrates's life, since the latter would be the outcome of a distinct free choice by others. This may not be a very good argument, but it is not the same as a mere weighing of disparate events against each other. Some of the issues in the debate seem to be clouded by terminological disparities. For example, Richard McCormick has written that a life-saving amputation is an *imperfect act*. Finnis counters that this is not an imperfect act at all; it is in no way a doing of evil. "Act" for Finnis, appears to mean that which is specified by the object directly intended. In this sense, the life-saving amputation is an act of saving life. McCormick means by "act," the act itself, together with its attendant implications which include the loss of the limb. However, the differences are certainly deeper than terminology.

There is a final chapter on free choice, ultimate human destiny and God.

The merit of the work is, above all, that it compels the reader to think very hard, to resist obfuscation and to confront some of the most fundamental questions. Both on this count and for the positive theory presented, it merits serious attention from anyone concerned with the enterprise of ethics.

— Brian V. Johnstone
The Catholic University of America

The Way of the Lord Jesus

Volume One: Christian Moral Principles

Germain Grisez

Franciscan Herald Press, 1434 West 51st Street, Chicago, Ill., 1983, xxxiii + 971 pp., \$35.

For more than two decades, Catholic moral theology has been in disarray. Vatican II called for a major renewal in moral theology. Shallow legalism was to be avoided. Scholarly presentations of moral theology were to exhibit more clearly how Catholic moral teaching is grounded in scripture, how moral precepts are rooted in divine love; in "the obligation to bring forth fruit in charity for the

life of the World" (*Decree on Priestly Formation*, no. 16).

Unfortunately, renewal in moral theology became confused with many other things. The Church lives in the world, and in the years after Vatican II, the world was passing through chaotic times. The spiritual chaos of those years mingled many good and bad things. Rich ideas of the Gospel were sometimes adulterated with baser ideas drawn from inadequate contemporary philosophies. Terms of relativism and subjectivism were confused with freedom and Christian personalism. Efforts to find liberation from unjust structures and from modes of thinking which hinder growth in love and truth were used to justify hostility to the legitimate authority in Christ's Church, and to defend forms of dissent incompatible with the liberating duties of one who has found Christ teaching and ruling in his Catholic Church.

This book brings order to a field that has been in chaos. The author reveals a tranquil mastery of the immense literature that had to be analyzed to write a balanced and deeply satisfying synthesis of Catholic moral principles today.

Thoughtful Catholics have been disturbed at the great harm done by the confusion in moral thinking experienced in the Church over recent years. Young people find neither light to see nor courage to follow faithfully the excellent but difficult requirements of the gospel, if their teachers are uncertain of the most basic principles of Catholic living. And many teachers of the young have been profoundly uncertain, because the debates on basic principles among competing moralists seemed to be in no way resolved. Catholics in every area of professional life, certainly not least in medicine, have seen many of their peers turn in despair from seeking light from Catholic moral teaching. Everywhere they encountered contradictions which darkened, rather than illumined, the spiritual disorder of the times.

The many citations of Pope John Paul II in this book, remind the reader of how important this pope has been to restoring clarity in Catholic moral thinking. He has shown great courage and warmth in presenting the central principles of Christian life, principles which are, in a way, difficult and which always confront the worldly mind and imagination, but which are essential to the basic liberation of the human spirit. Under his pastoral direction, recent world synods of bishops have shown the Church's firm commitment to the principles of Catholic thinking which have been rejected by a prominent school of dissenting theologians. He has made the witness of the authentic teaching of the faith and morals far clearer in a world needing such bracing support.

But scholarly work of the most rigorous kind was also needed, especially in the area of Catholic moral principles, the area splendidly covered by this book. Attacks on received Catholic moral teaching have been so unsettling, not because of their profound depth but because of their scope and their constancy. One weak argument after another was brought forth over the last decades to argue that the insistent voice of the teaching Church need not be accepted in moral matters, even when the Magisterium was confirming immemorial and most firm teaching of the Church. One bad argument after another was brought forth to persuade the faithful that mortal sin is not so serious or likely a danger. To take sin as seriously as the saints did was looked down upon as a form of negative thinking. It was not the force of any of the arguments which did the most damage; it was the confusion generated by so many well-publicized voices. People began to get the opinion that there must be something valid to this dissent, if it appeared so insistently in so many forms.

Grisez has done the patient good work of a great moralist on two fronts. On the one hand, he shows that the arguments used against the received teaching of the Church (we refer here to teachings insistently proposed by the Holy Father with the bishops) are, in fact, not good arguments. He shows immense patience in working through the many forms in which radical dissent has expressed itself. He

is always clear and always presents the arguments of others with fairness and patience.

His second task was more important: the presentation of a positive moral theology in the spirit of Vatican II. In doing this, he reveals how much creative and excellent work has been done in the last decades also. Dissent has driven those moral theologians who have been faithful to Catholic principles to think through their positions more carefully, to do the work that John Paul II has required of them: to show with intellectual rigor and with human attractiveness the "biblical foundations, the ethical grounds, and the personalistic reasons" (*Familiaris Consortio*, n. 31) for Church teaching in moral matters.

This astonishing book is a large, systematic treatise of all the questions touching Catholic moral principles. The author begins by showing why Vatican II called for a renewal in moral theology; and the kind of renewal it called for. He studies in depth all the live questions of the day — questions of the freedom of man generally, and of freedom of conscience; the attractiveness (and the human disastrousness) of modern forms of subjectivism, cultural relativism, and emotivism.

His criticism of the form of moral theory favored by most dissenting theologians ("proportionalism") is clear, penetrating, fair — and devastating. One who reads this will understand well why Cardinal Ratzinger told the American bishops that proportionalism is radically unacceptable.

Even more precious is the positive exposition of the central structure of a Catholic moral vision. Grisez's moral theory draws heavily on Aquinas, and the central Catholic tradition. But his work states the received positions with great freshness, creatively responding to all the new questions which have arisen in modern times and have demanded clear answers. His position avoids every kind of legalism, physicalism, or minimalism, but it defends magnificently the bracing Catholic teaching on moral absolutes. It is based entirely on the requirements of love, and of respect for the human person. But it develops this without any falling into relativism, or pretending to find any conflict between the transcendent dignity of the human person and the human duty to respect the demands of truth and goodness.

His chapters on sin, especially mortal sin, and on related questions (such as "fundamental option") are models of forceful clarity. Patterns of thinking in conflict situations are traced out with great precision.

With Vatican II and contemporary concerns generally, he wished to remind us that the moral life aims at the fullness of love. The pursuit of Christian holiness cannot be separated from a sound moral treatise. Here there is much creative work on the question of vocation, on grace, on the distinctive characteristics of a Christian morality, on the beatitudes and the sacraments. These chapters are full of precious insights. It is true that in some of them certain novel theories are presented which will deservedly receive some sharp criticism.

But Grisez writes always as a responsible Catholic theologian. If he, on any occasion, feels that theoretical explanations he has given might lead the reader to practical judgments which would contradict Church directives, he takes care to point out the limitations of the theologian's authority. "However, if my theory and the Church's teaching should in a particular case lead to inconsistent conclusions, I would follow and urge others to follow the Church's teaching rather than my own theory" (p. 299).

His last two chapters are by themselves worth the substantial cost of this book. Chapter 35 ("The Truth of Christ Lives in His Church") speaks with great clarity of the Church's role as a moral teacher. First, he gives a splendid presentation of the meaning and application of the Church's infallibility in moral matters. Then he speaks of the reasons why the Catholic faith has always required — and must require — religious assent to and personal life in accord with, authoritative Catholic moral teaching, even when this is not presented in an infallible mode.

Chapter 36 is a splendid analysis and critique of contemporary biological dissent.

While the book is somewhat intimidating by its sheer size, the author has used every editorial skill to make it easy to use. Each chapter is divided into several "Questions." The briefest answer to the question is signified in the text by bold print. Numbered paragraphs, in larger print, provide answers to the questions in sufficient detail for the ordinary student. More detailed analyses and explanations are given in finer print. The summaries at the end of each chapter are helpful. The table of contents itself is sufficiently detailed to provide a preliminary overview of the book, and the indices are well constructed.

This publication is one which no one seriously interested in contemporary moral questions can ignore.

— Ronald D. Lawler, O. M. Cap.
St. John's University

Current Literature

Material appearing below is thought to be of particular interest to Linacre Quarterly readers because of its moral, religious, or philosophic content. The medical literature constitutes the primary, but not the sole source of such material. In general, abstracts are intended to reflect the substance of the original article. Contributions and comments from readers are invited. (E. G. Laforet, M.D., 2000 Washington St., Newton Lower Falls, MA 02162)

To have suggested, a decade ago, that fiscal matters had any major relevance to medical ethical dialogue would have been considered crass at best. Today, in the era of cost-containment and DRGs, the situation has changed dramatically. Witness the following trio of items.

Owen D: Medicine, morality and the market. *Lancet* pp. 30-31 7 July 1984.

Physicians have been major economic decision-makers in health-care systems. The emphasis, however, has been on treatment of sickness rather than on the maintenance of health. This has led to an enormous expenditure of capital without a proportionate yield. In the USA, for example, life-expectancy of adults has not increased between 1950, when the national medical care budget was \$12 billion, and

1982, when it was \$275 billion. Resources must be redistributed using, *inter alia*, self-help programs for different populations of patients. An aging population requires a reorientation of attitudes on the part of physicians. "The traditional, moral values of medicine should be a counterweight to the mechanistic, technological, cost-effectiveness of the market place."

Wall CA: Economics and ethics: issues of the eighties. *Am J Surg* 148:186-190 Aug 1984.

Massively escalating health care costs resulted in deregulation of the industry. This has resulted in a smaller market place for surgeons; this can be increased only by expanding the indications for surgery. This economic issue obviously results in an ethical conflict for the surgeon. The new realities require a new marketing approach.