Beyond the Terri Schiavo Case

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In August of last year [2007] the Congregation for the Doctrine of the Faith issued a *Responses* to questions raised by the US Catholic Bishops in July 2005 on the moral status of artificially administered nutrition and hydration.[1] The *Responses* was accompanied by a *Commentary* also authored by the CDF.[2] The questions raised and clarifications sought by the American Bishops arose from the debate surrounding the care of Terri Schiavo. That case attracted world-wide attention and contributed to the ongoing debate within the Catholic and wider community on the appropriate care of persons in a permanently vegetative state [PVS]. The purpose of this short article is to outline both the general approach of the Catholic moral tradition to the care of the dying and seriously ill and the content of the CDF statement. Finally I will indicate the persistence of some ambiguities and uncertainties in the *Commentary* that accompanied the CDF intervention.

It is important to place the questions raised by the American Bishops, and the response of the CDF, in the wider context of traditional Catholic teaching on the obligation to sustain human life. The Catholic moral tradition has long held that we are obliged to use only 'ordinary' means of treatment to sustain human life. 'Extraordinary' means could be used but were seen as morally optional. The roots of this tradition are located in the natural law tradition and in the Christian understanding of the meaning and purpose of life. The former understanding accepts death as a part of the human condition. Our mortality is an essential and inescapable part of who we are as human persons. Moreover Christian revelation invites us to see life as a gift from God. God is understood as our origin and destiny, we come from God and go

1 Congregation for the *Doctrine of the Faith, Responses to Certain Questions of the United States Conference of Catholic Bishops concerning Artificial Nutrition and Hydration,* www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con-cfaith_doc_20070801_risposte-usa_en.html

2 ———, *Commentary,* www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20070801_nota-commento_en.html

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to God. For Christians life and death are also experienced through the eyes of a resurrection faith. As Christ rose from the dead we too hope to share in that resurrection destiny. This is prayerfully articulated in the Preface of the Mass for the Dead:

> 'Lord for your faithful people life is changed not ended. When the body of our earthly dwelling lies in death we gain an everlasting dwelling place in heaven'.

In the Christian tradition, therefore, death, though always a source of loss and grief, is not seen as a disaster or annihilation. It is rather the entry into eternal life with the very source of our being. This Christian understanding of the meaning of life and death provided the canvas or context out of which Catholic theologians grappled with the moral dilemmas surrounding the care of those seriously ill or dying. Because of this vision of life the Catholic moral tradition, sharpened and clarified over the centuries, could on the one hand affirm the goodness and sacredness of life and on the other hand assert that we are morally obliged to use only 'ordinary means' to sustain human life.

Pius X11 in an address in1957, that is often reproduced in textbooks of moral theology, summed up this Christian world-view very sharply:

> But normally one is held to use only ordinary means – according to circumstances of persons, places, times and cultures –that is to say, means that do not involve any grave burden for oneself or another. A more strict obligation would be too burdensome for most people and would render the attainment of the higher, more important good too difficult. *Life, health, all temporal activities are in fact subordinated to spiritual ends.*[3]

This 'ordinary/extraordinary' approach is clearly and explicitly reflected in recent Church teaching; the *Declaration on Euthanasia*[4] [1980], the *Catechism of the Catholic Church*[5] [1992] and *Evangelium Vitae*[6] [1995]. 'Ordinary' treatment was deemed

3 Pope Pius X11, 'The Prolongation of Life',*The Pope Speaks 4*, no. 4, : 395-398 (1958) Emphasis mine.

4. Declaration on Euthanasia, 'However, is it necessary in all circumstances to have recourse to all possible remedies? In the past moralists replied that one is never obliged to use "extraordinary" means. This reply, which as a principle still holds good, is perhaps less clear today, by reason of the imprecision of the term and the rapid progress made in the treatment of sickness.'

5. Par. 2278. 'Discontinuing medical procedures that are burdensome, dangerous, extraordinary, or disproportionate to the expected outcome can be legitimate; it is the refusal of 'over zealous' treatment. Here one does not will to cause death; one's inability to impede it is merely accepted.'

6. Par, 65. 'To forego extraordinary or disproportionate means is not the equivalent of suicide or euthanasia; it rather expresses acceptance of the human condition in the face of death.'

to be obligatory because it was of benefit to the person while not imposing too great a burden on him/her or their family. Extraordinary treatments were those that carried no clear benefit to the patient or imposed too great a burden on him/her or their family. 'Benefit' and 'burden' were central criteria in the approach developed by moral theologians and included in Catholic teaching documents.

This 'ordinary'/'extraordinary' approach provides a very useful framework for patients and those caring for them. It does not claim to provide a ready list of interventions that are 'ordinary' or 'extraordinary' or facile solutions to complex dilemmas. It is rather a person-centred approach that strives to determine the appropriate level of care for this *particular person* in these *particular circumstances*. Consequently what may be morally obligatory for one person could be morally optional for another because of their differing physical and moral resources.

THE CASE OF THOSE IN A PVS: PRE 2004

In recent decades the traditional framework of 'ordinary/extraordinary' treatments, that has served the Catholic faith community over the centuries, has been confronted by the case of persons in a PVS. Persons in a 'vegetative state', though permanently unconscious, breathe spontaneously and digest food naturally. However, they are not able to feed themselves. The central question asked is whether the provision of artificially administered nutrition and hydration is 'ordinary' care and hence morally obligatory or 'extraordinary care' and hence morally optional. In well documented cases – Tony Bland [England], Ward of Court [Ireland], Nancy Cruzan and Terri Schiavo [USA] – there has been division among courts, medical organizations, Bishops Conferences and theologians on what kind of care is morally mandated.

An analysis of the theological and legal responses to the above cases point to at least five areas of disagreement:

i) How do we categorise artificially administrated nutrition and hydration? Is it a *basic human care* that all persons are entitled to? Can it be compared to the obligation to keep patients warm and clean? Or is it a *medical treatment* that needs to be evaluated on a case by case basis using the criteria of benefit and burden? Can it be compared to respirators or other mechanical interventions that are employed if they are beneficial and discontinued if they are futile?

ii) How do we understand the consequences of the removal of the nutrition and hydration? Does the removal of the nutrition and hydration cause the death of the person? Or is there an existing fatal pathology that, once the nutrition/hydration is removed,

leads inevitably to death? In other words do we cause death through the removal of the nutrition/hydration or *allow* death to occur?

iii) How do we apply the traditional criterion of 'benefit' to this case? Is the prolonging of life a benefit? Or should benefit be measured against some understanding of the purpose of life? From the perspective of the Christian tradition can we argue that the goal of life is more than mere existence and should be understood in terms of our relationship with God and others?

iv) Are persons in a PVS dying or just seriously ill? Is it a misnomer to classify them as 'dying' if by the simple provision of nutrition/hydration such persons can live for a significant number of years?

v) Given that persons in a PVS cannot decide for themselves and if there is no indication of their wishes, in a 'Living Will' or otherwise, who should make decisions about their care? Their families? The courts? The healthcare team in consultation with the family?

Disagreement on these issues was evident among the moral, legal and medical experts who commented on cases like Tony Bland, Terri Schiavo and others. Though all of this is well documented in academic journals and publications world-wide a few examples may be helpful. In the Tony Bland case the English Bishops were clear that it was unacceptable to remove nutrition/hydration with the intention of causing death. However they were uncertain whether nutrition/ hydration was a medical treatment or a basic care. They also agreed that such feeding could be withdrawn if it was too burdensome.[7] In the USA the American Catholic Conference in 1992 argued for a 'presumption in favour of providing medically assisted nutrition and hydration to patients who need it'.[8] This presumption 'would yield in cases where such procedures have no medically reasonable hope of sustaining life or pose excessive risks or burdens'.[9] Earlier [1990] the Texan Bishops had judged such feeding to be a medical treatment and morally optional. They argued that the 'morally appropriate foregoing or withdrawing of artificial nutrition and hydration from a permanently unconscious person is not abandoning that person.

7. *The Tablet* August 1993 'There is debate about whether it is correct to classify tube feeding as medical treatment. However the debate is resolved, it can be reasonable to stop tube feeding if a patient is in the final phase of dying or if the method of tube feeding involves excessive risks or burdens for a patient. But it can never be morally acceptable to withdraw tube feeding precisely to end a patient's life.'
8. Kevin O'Rourke & Philip Boyle, *Medical Ethics: Sources of Catholic Teaching* (Second Edition), Georgetown University Press, 1993, 159-160
9. Ibid, 160

Rather, it is accepting the fact that the person has come to the end of his or her pilgrimage and should not be impeded from taking the final step.'[10] In the Ward of Court case the Irish Catholic Bishops did not make a statement though the Irish Medical Council and Bord Altranais did. In their statements they judged medically assisted nutrition and hydration to be a basis human care and not a medical treatment. Both organizations argued that the removal of such care in the Ward case would be unethical. Theological journals in this time period featured a lively debate among Catholic moral theologians as they wrestled with this complex moral issue.[11]

It is also worth noting that both the *Catechism of the Catholic Church* and *Evangelium Vitae* did not comment on the moral debate surrounding these cases even though this debate was well advanced at the time of their publication. Both documents simply proposed the traditional framework of 'ordinary/extraordinary' treatment without applying it to the particular case of persons in a PVS.[12]

It is important to highlight that there were also significant areas of agreement among Catholic moralists, during this time, as they reflected on this complex human drama. Even though they held conflicting views on the morality of withdrawing nutrition and hydration from persons in a PVS they were united in their acceptance of the following principles:

1. At the heart of the debate is the question of how best to care for vulnerable persons who are in a PVS. An adequate response must acknowledge, respect and promote the dignity of such persons.

2. All agreed that those in a PVS are persons and must be respected as persons. In this regard many commentators found the term *vegetative state* regrettable and dangerous. It could be understood in a reductionist way that gives the impression that we are dealing with sub-personal life. Catholic authors consistently argued that those in a PVS are persons with an innate dignity and rights. The central question that needs to be addressed is how best the dignity of persons in a PVS can be respected and promoted.

3. Catholic contributors were also in agreement that it is not morally acceptable to withdraw nutrition and hydration with the *intention* of causing the person's death. Catholic authors who

10. Ibid, 161-2.
11. See for example the contrasting approaches and conclusions of Kevin Kelly, 'A Medical and Moral Dilemma', *The Month* 26: 138-144 (April, 1993), John M Grondelski, 'Removal of Artificially Supplied Nutrition and Hydration: A Moral Analysis.' *Irish Theological Quarterly* 55: 291-302 (1989) and Anthony Fisher, 'On not starving the unconscious.', *New Blackfriars* 74 : 130-145 (March 1993).
12. *Catechism of the Catholic Church*, par 2278-9, *Evangelium Vitae*, par 65

favoured the withdrawal of nutrition/hydration argued that the intention was to relieve the person of an intervention that was burdensome or of no benefit thus allowing the person to die of their underlying fatal pathology. Their death was, therefore, not intended but permitted.

CONTRIBUTION OF POPE JOHN PAUL II

In an address in March 2004 Pope John Paul 11 made a significant, if not decisive, contribution to the debate within the Catholic faith community on the care of persons in a PVS. In particular he argued that nutrition and hydration should always be seen as a normal care and hence morally obligatory:

> I should like particularly to underline how the administration of water and food, even when provided by artificial means, always represents a *natural means* of preserving life, not a *medical act*. Its use ... should be considered, in principle, *ordinary* and *proportionate* and as such morally obligatory, insofar as and until it is seen to have attained its proper finality, which in the present case consists in providing nourishment to the patient and alleviation of his suffering ... Death by starvation or dehydration is in fact the only possible outcome ... In this sense it ends up becoming, if done knowingly and willingly, true and proper euthanasia by omission.[13]

In terms of the areas of disagreement already identified the statement of Pope John Paul 11 took a definite position on questions i and ii:

i] He concluded that artificially administered nutrition and hydration is a basic care rather than a medical treatment. As such it is a care that every person is entitled to as a right.

ii] He concluded that it is the withdrawal of the nutrition/hydration that causes the death of the person rather than the underlying pathology. Furthermore, in his analysis, the withdrawal of such feeding, if done knowingly and willingly, is euthanasia by omission.

This statement by Pope John Paul 11 generated a lot of discussion among Catholic moralists.[14] Important questions were raised

13. Pope John Paul 11, 'Life-sustaining Treatments and the Vegetative State: Scientific advances and Ethical Dilemmas.' www.vatican.va/holy_father/john_paul_ii/speeches/2004/march/documents/hf_jp-ii_spe_20040320_congress-fiamc_en.html

14. Eg, Thomas Shannon & James Walter, 'Assisted Nutrition and Hydration and the Catholic Tradition', *Theological Studies* 66: 651-662 [2005], John J Paris et al, 'Quaestio Disputata: Did Pope John Paul 11's Allocution on Life-Sustaining Treatments Revise Tradition?', *Theological Studies* 67: 163-174 [2006], Norman Ford, 'The Debate goes on', *The Tablet*, 1 May 2004, p8.

about the content, status and binding force of his contribution. Its impact can be seen in the contributions made by the Catholic Bishops of Florida in the Terri Schiavo case. In a statement issued *before* Pope John Paul's intervention they argued:

> If Mrs Schiavo's feeding tube were to be removed because the nutrition she receives is of no use to her, or because she is near death, or because it is unreasonably burdensome for her, her family, or caregivers, it could be seen as permissible.[15]

Here the Bishops identify three circumstances where the use of nutrition/hydration becomes morally optional. The last example of *unreasonably burdensome* reflects the language of traditional moral theology and allows in practice for a wide range of circumstances in which withdrawal could be morally appropriate.

In the same statement they also identified motives that they deemed morally unacceptable:

> But if her feeding tube were to be removed to *intentionally* cause her death, or because her life is perceived to be useless, or because it is believed that the quality of her life is such that she would be better off, this would be wrong.[16]

Their statement published *after* the papal intervention reflects the moral analysis and conclusions of that statement and is, therefore, far more restrictive. They argued that nutrition/hydration 'as long as they effectively provide nourishment and help provide comfort' should be seen 'as part of what we owe to all who are helpless and in our care.'[17]

THE CDF STATEMENT

The questions submitted to the CDF by the American Bishops are short and focused and the *Responses* equally so. For that reason I will present the complete text.

First Question: *Is the administration of food and water (whether by natural or artificial means) to a patient in a 'vegetative state' morally obligatory except when they cannot be assimilated by the patient's body or cannot be administered to the patient without causing significant physical discomfort?*

Response: Yes. The administration of food and water even by artificial means is, in principle, an ordinary and proportionate means of preserving life. It is therefore obligatory to the extent to which, and for as long as, it is shown to accomplish its proper

15. Catholic Bishops of Florida, August 27, 2003. This statement is published in *The Case of Terri Schiavo*, edited by Arthur L Caplan, James J McCartney and Dominic A Sisti, Prometheus Books, 2006,94-5

16. Ibid. Emphasis mine.

17. Ibid. 96-7. This statement was given on Feb 28, 2005

finality, which is the hydration and nourishment of the patient. In this way suffering and death by starvation and dehydration are prevented.

Second Question: *When nutrition and hydration are being supplied by artificial means to a patient in a 'permanent vegetative state', may they be disconnected when competent physicians judge with moral certainty that the patient will never recover consciousness?*

Response: No. A patient in a 'permanent vegetative state' is a person with fundamental human dignity and must, therefore, receive ordinary and proportionate care which includes, in principle, the administration of water and food even by artificial means.

The position advanced by the CDF was not unexpected in light of the intervention of Pope John Paul 11 in 2004. The *Responses* appear on first reading to be clear and unambiguous. The administration of food and water, even artificially, is 'normal' treatment and hence morally obligatory except in the case where the patient is unable to assimilate them. It is worth noting, however, at this stage that the second possible exception raised by the American Bishops in question 1 – when food and water cannot be administered to the patient without causing significant physical discomfort – was not explicitly addressed by the CDF. We must assume that the failure to address this exception was deliberate and not an omission. It is reasonable to conclude therefore that this exception is not permitted. The provision of nutrition and hydration is therefore morally obligatory in all circumstances other than when such nutrition and hydration cannot 'accomplish its proper finality.'

REMAINING UNCERTAINTIES

When issuing the *Responses* the Congregation for the Doctrine of the Faith also issued a *Commentary*.[18] This text provides some useful clarifications and background information. It is, unfortunately, also the source of some confusion since it allows for exceptions that go beyond those admitted in the *Responses*. It also employs the criterion of burden which is not used in the *Responses* or in the intervention of Pope John Paul 11.

It affirms that the provision of nutrition-hydration is morally obligatory *in principle*. However it acknowledges three circumstances where such provision is not morally mandated. The first two are not problematic and indeed one of them is dealt with in the *Responses*. The first involves circumstances of poverty and underdevelopment where the provision of such nutrition and

18. Congregation for the Doctrine of the Faith,*Commentary*,www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20070801_nota-commento_en.html

hydration 'may be physically impossible, and then *ad impossibilia nemo tenetur.*'[19] The second circumstance is already mentioned explicitly in the *Responses*. It deals with the situation where 'a patient may be unable to assimilate food and liquids, so that their provision becomes altogether useless.'[20] The third circumstance mentioned is one that introduces the traditional theological language of burden and would seem to allow for a range of exceptions that go beyond those identified in the *Responses* and in the contribution of Pope John Paul 11. For the sake of accuracy it is important to reproduce the text itself:

> Finally, the possibility is not absolutely excluded that, in rare cases, artificial nourishment and hydration may be excessively *burdensome* for the patient or may cause significant physical discomfort, for example resulting from complications in the use of the means employed.[21]

There are two distinct exceptions allowed here that go beyond those deemed permissible in the *Responses*. The language of burden reflects the traditional language of moral theology as it attempted to measure the impact of a medical intervention on a person. As indicated already this term has found its way into magisterial teaching in the *Catechism, Evangelium Vitae* and elsewhere. The term does, of course, need to be 'unpacked' and 'measured'. Traditionally theologians understood burden in broad terms – physical discomfort, psychological and spiritual distress, and financial considerations. It allowed for the possibility that because of differing physical, spiritual, emotional and financial resources an intervention may be burdensome for one person and not for another in somewhat similar medical circumstances. In the case of those in a PVS it could allow for an approach that is more open-ended, sensitive and person-centred. Could continued feeding be seen as an excessive burden for someone who, working out of a Christian faith vision, had expressed a desire to be allowed to die peacefully unattached to artificial aids?

The second exception mentioned – *significant physical discomfort* – was raised by the American Bishops in their questions but not explicitly dealt with in the *Responses*. Does its acceptance here indicate a less rigid approach to that proposed in the *Responses?*

The *Commentary*, in my estimation, introduces an element of confusion into the discussion. Though it is not part of the *Responses*, and therefore its doctrinal status is uncertain, it was published by the same Congregation and accompanied the former

19. Ibid, p3.
20. Ibid.
21. Ibid. Emphasis mine.

document. On the one hand it allows for exceptions that go beyond those explicitly approved by the *Responses* and employs the criterion of *burden* which was noticeably absent from that statement. On the other hand in its concluding paragraph it contends that

> these exceptional cases, however, take nothing away from the géneral ethical criterion, according to which the provision of water and food, even by artificial means, always represents a natural means for preserving life, and is not a *therapeutic treatment*. Its use should therefore be considered *ordinary and proportionate*, even when the 'vegetative state' is prolonged.[22]

CONCLUSION

The questions submitted by the American Bishops for clarification are important. The care of persons in a PVS is a significant pastoral issue for the Church in America and elsewhere. The central challenge is to respond to their plight in a way that is respectful of their dignity as persons. The *Responses* from the Congregation for the Doctrine of the Faith are clear and unambiguous on an important question that was disputed by commentators, Catholic and otherwise. The stance of the CDF is that, in the case of persons in a PVS, artificially administrated nutrition/hydration is a basic human care and not a medical treatment. It is therefore morally obligatory. The only exception is when the nutrition/hydration is unable to achieve its purpose because the person cannot assimilate it. The approach adopted by the CDF excludes, therefore, considering the burden [psychological, spiritual, financial, physical] that continued feeding may impose on the person or his/her family.

The *Commentary* provided by the CDF affirms the central insights and thrust of the *Responses*. However in one regard it deviates significantly from the parameters proposed in that document. By suggesting that feeding could be withdrawn if it was too *burdensome* for the person it allows for a wide range of considerations to be taken on board. It could be argued that the *Commentary* works out of a broader canvas than that of the *Responses*; a canvas that, maybe, is more in keeping with the Catholic moral tradition.

22. Ibid, emphasis in original text.