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End of Life, or Ending Life?

Robert C. Cetrulo, J.D.

ABSTRACT: In 1973 the U.S. Supreme Court's decision in *Roe v. Wade* ushered in the wholesale destruction of unborn children. Pro-lifers quickly realized that the basis for this decision would spawn further degeneration of the principle that all innocent human life is sacred. In recent years the relativism of this jurisprudence has extended to assisted suicide, euthanasia, and organ-harvesting from those who have not yet died. This paper recounts the experience of a lawyer who has handled cases in this area over many years. It argues that the only chance for adequate protection of patients requires that a person have *both* a well-articulated healthcare proxy and a pro-life living will.

FUTURE HISTORIANS MAY WELL CAPTION the last half of the twentieth century in the United States as "The Flight from Responsibility." In the 1960s "no fault insurance" was developed– the concept being that a person's own insurance company would pay for one's injuries in an automobile accident, regardless of who was to blame. The slogan suggested a kind of entitlement, regardless of responsibility.

At about the same time there developed the concept of "no-fault divorce" in which marriage was treated simply as a contract from which a person might walk away, even as the result of a unilateral choice, without regard to responsibility. Then came the idea of "no-fault sex," i.e., the sense that one could engage in sex without taking responsibility for a child conceived through sexual intercourse, for there was always the option of abortion. Now we have the notion of "no-fault medicine," represented by euthanasia and assisted suicide, with all of the enabling statutes that immunize physicians from criminal and civil responsibility.

Legal and Moral Metamorphosis

As in all human social situations, acceptance is a process rather than a single event. The concept of "death with dignity" is not a construct of 1960s America. Its modern genesis was a book written in the 1920s in Germany by a psychiatrist and a law professor that recommended that a "good" death be furnished to pure blood Germans with painful terminal diseases.[1]

This eugenic movement was pioneered in America by Margaret Sanger, founder of Planned Parenthood of America as well as of its predecessor, the American Birth Control League. Select quotations illustrate her views: "Birth control–more children from the fit, less from the unfit." "Birth control–to create a race of thoroughbreds." "No man or woman should have the right to become a parent without a permit for parenthood."[2]

Eugenics became sufficiently well-accepted in the 1920s in the United States that it was even recognized by the U.S. Supreme Court.[3] In that case the Court upheld a mandatory sterilization statute as applied to the mentally retarded on the mistaken (but then widely accepted) theory that mental infirmity was inherited ("three generations of imbeciles are enough," to quote the indelicate language the Court used).

It ought to be frightening that the U.S. Supreme Court used that decision as supportive authority for its 1973 decision legalizing abortion. One would have thought that such a line of reasoning had been abandoned after the Nazi experience. The Court's decision ushered in the modern medical holocaust of surgical abortion that kills more than a

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[1] Karl Binding and Alfred Hoche, *The Release of Destruction of Life Devoid of Value* (Santa Ana CA: R.L. Sassone, 1975), originally published in German by Felix Meiner Verlag, Leipzig, 1920.

[2] Elasah Drogin, *Margaret Sanger, Father of Modern Society* (New Hope KY: CUL Publications, 1989).

[3] *Buck v. Bell*, 274 U.S. 200 (1927).

million unborn children a year in this country.[4]

This anti-life movement suffered a temporary setback in the United States by reason of the Nazi embrace of the euthanasia concept. By the end of World War II the Nazis were doing away with amputees from World War I and even with children who were chronic bed wetters and those who had badly modeled ears in their insane search for "perfection."[5]

Definitional Dehumanization: The Seeds of Euthanasia

In 1973 the U.S. Supreme Court authorized the killing of a whole class of innocent human beings, the unborn, on the grounds that they were "not persons in the whole sense of the word" (*Roe v. Wade*, supra). Thus began anew the slippery slope. If one may destroy a human being because he is too young, then there is no reason why one may not destroy him because he is too old, unproductive, expensive, and so on. Doing so has depended on a new version of the old euphemistic game or re-naming things of which one ought to be ashamed, such as in the phrase "death with dignity" and the argument about the "right to die," an argument fueled by the concept of cost-containment in medicine. The movement progressed despite the inverted demographic structure that has resulted from abortion and contraception. There are proportionately fewer and fewer people entering the work force to sustain more and more people leaving for retirement, thus undermining the social security system. For the first time in history, people over the age of sixty will outnumber children fourteen years or younger in many industrial countries.[6]

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[4] *Roe v. Wade*, 93 S.Ct. 705 (1973).

[5] Fredric Wertham, M.D., *A Sign for Cain: An Explorationof Human Violence* (New York NY: Macmillan, 1966). See also Fr. Paul Marx, O.S.B., *Death Without Dignity* (Collegeville MN: Liturgical Press, 1978).

[6] Population Research Institute Seminar, featuring insurance industry expert W. Patrick Cunningham, Harvard research specialist Nicholas

LIVING WILLS

In my more than thirty years of involvement in the Pro-Life movement, I had been unequivocally opposed to Living Wills, for I saw them as the opening wedge in the euthanasia movement. They seemed to me to be unnecessary, capable of mischief, and furnished to us by the same people who gave us abortion on demand. They have quite properly been called "designer deaths."

The development of my present stance on this question (that is, support for what Professor Charles Rice calls "Please Don't Kill Me Wills") has been dictated by the unfortunate successes of the pro-death forces in our legislatures and courts. In my own state of Kentucky we had successfully resisted the passage of Living Will statutes until 1998. When the first bill passed, pro-life organizations warned that the death peddlers would return shortly, seeking to legalize the withdrawal of food and water in addition to "extraordinary means" of life support. It only took them one session to do so. In 1990 they passed such an amendment, and I regret to report to you that it was passed with the support of the Kentucky Conference of Catholic Bishops. It contained an incredibly expansive net to catch the unwary, i.e., those who thought that they were safe by not having a Living Will. It mandated that with respect to any patient who is "comatose" (not dying, just "comatose") and who had *not* executed a Living Will, someone else could be appointed to make decisions, including the withdrawal of food and water.

Another reason that a pro-life Living Will is necessary is the Federal Patient Self-Determination Act, enacted by Congress in 1991. It requires hospitals and nursing homes to explain to every person newly admitted their *rights* under state Living Will laws. The practical effect of this is to shove under the noses of these infirm and frequently aged people the "designer death" formula of the state statutes that they should not be furnished extraordinary care, that they should not be furnished food and

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Eberstadt, and World Magazine journalist Mindy Belz.

water, etc., etc. This vulnerable population is given the impression that they *must* execute such a document and many then do so, frequently when it would truly be contrary to their wishes. In default of education and the availability of a better document, they are seduced.

The only way to avoid this death-inducing scheme is to have alternative pro-life documents available. A massive educational effort is imperative to get such documents into the hands of the public, with the understanding that they need to have them in order to protect themselves.

Compassionate Killing

Killing, of course, is never compassionate. Its advocates do not understand the true etymology of the word "compassion" (suffering *with*). It is certainly not "merciful" to cause someone to die from starvation and dehydration. An accurate medical description of the horrors of such a death includes the following:

> Various effects from lack of hydration and nutrition lead ultimately to death–mouth would dry out and become caked or coated with thick material.... Lips would become parched and cracked.... Tongue would swell and might crack.... Eyes would recede back into their orbits and cheeks would become hollow.... Lining of the nose might crack and cause the nose to bleed.... Skin would hang loose on his body and become dry and scaly.... Urine would become highly concentrated, leading to burning of the bladder.... Lining of his stomach would dry out and he would experience dry heaves and vomiting.... Body temperature would dry out into thick secretions that would result in plugging his lungs.... At some point within 5 days to 3 weeks his major organs, including lungs, heart, and brain would give out, and he would die...extremely painful and uncomfortable...cruel and violent.[7]

This incredible brutality has led to the argument, embraced even in the prestigious *New England Journal of Medicine*, contending that the

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[7] *Paul Brophy v. New England Sinai Hospital*, Mass. S. Ct. 1986.

distinction between active and passive euthanasia is philosophically unjustified. If we are killing these people painfully by "omission," then we should frankly kill them painlessly by "commission."[8]

Modern Statutory Approach

Most states have Living Will legislation as well as legislation pertaining to healthcare surrogates (sometimes called "proxy" legislation). Both approaches are fatally flawed. The first involves the patient making healthcare decisions in writing in advance of the onset of disease and before even a diagnosis has been made. Such a decision cannot be well-considered or appropriate to the situation.

The second (the proxy approach) gives *carte blanche* to some other person to make that decision for the patient if the patient becomes comatose or incompetent. Here, of course, there is no application at all of the patient's own wishes, consistent with his own moral philosophy, and no control on the part of the patient–"control" being, ironically, the usual selling feature emphasized by the pro-death movement.

Combining the best features of these approaches while still complying with state statutes can produce legal instruments that articulate a philosophy that will be difficult for the death-dealers to compromise. Such a pro-life directive designates a person whom one individually chooses (someone on the same moral wavelength as the patient) to have authority in the event that one loses decisional capacity, while prescribing the guidelines by which the proxy, one's physician, and any other person who comes to be involved are to be bound. "Human bodily life" is described in such documents as "inherently good and not merely instrumental to other goods." Specifically prohibited is anything being done or omitted such that an act or omission "would be the direct and primary cause of my death." It directs that the patient "be provided medical care and treatment appropriate to my condition that

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[8] See NEJM 292/2 (9 January 1975): 78-80.

offer a reasonable hope of benefit without excessive pain and that do not pose a severe threat to my life."

Such an approach short-circuits the pro-euthanasia concept (often developed under the term "futile care") and provides that "while certain treatments may be futile in combating or curing a disease, treatment or care that sustains life is not futile." It insists that "pain relief and basic nursing care, specifically including food and fluids, are to be provided as well as ordinary nursing and medicare care appropriate to my condition." Admittedly, there is no panacea in this complicated field. Many years ago I recall learning that the marvelous Christian convert, Malcolm Muggeridge, indicated that his prayer was that in his final days he would "be delivered into the hands of a Christian physician." Unfortunately, in this post-Christian era in the United States, and with the degeneration of legal, medical, and moral standards, the defense stratagem needs to be a little more thorough.

Powers of Attorney

Most everyone is familiar with the concept that you can execute a document that gives authority to another person to make decisions for you. For people of advanced years, the use of a Durable Power of Attorney is recommended. This gives that authority to a person who shares your moral values. One can add therein the healthcare decision guidelines described above. The authority granted to the attorney-in-fact by the Durable Power of Attorney continues even after the principal becomes disabled, because this document contains an additional paragraph that states: "This power of Attorney shall not become ineffective upon my disability." This point guarantees continuity of decision-making authority in the person in whom you have trust–but limited by the guidelines you have specified. The Durable Power of Attorney avoids the intervention of a court-appointed guardian who may or may not follow your wishes.

For those who are young and in good health and who do not need to have another presently take care of their affairs, a Springing Power of

Attorney is recommended. Such a document gives the same authority and the same healthcare decision guidelines, but postpones the effectiveness of that grant of authority until such time as disability arises, which can be confirmed by the affidavit of the treating physician.

The genesis of these principles can be found in various ecclesial documents, including the following: *Catechism of the Catholic Church* §2276-79, Pope John Paul II's Address to the Pontifical Academy of Sciences (21 October 1985), "Guidelines on Life-Sustaining Treatment" by the National Conference of Catholic Bishops' Committee on Pro-Life Activities (January 1985), and *Declaration on Euthanasia* by the Sacred Congregation for the Doctrine of the Faith (5 May 1980).

Pro-Life Lawyers

Pro-life lawyers are essential. The term is not an oxymoron, for they do exist and they have such great patron saints as Thomas More, Robert Bellarmine, Robert Ives, and Francis de Sales. It is *crucial* to select a pro-life lawyer and make sure that this attorney is on the same moral wavelength. Such an attorney can then apply these principles to the statutes of the state in which you live and can produce protective and principled pro-life documents.

Hospice vs. Assisted Suicide

An early pioneer in the hospice movement (founded originally in the middle of the nineteenth century by the Irish Sisters of Charity) was the English physician Richard Lamerton, M.D., who writes: "Deep in our common mind and heart, as old as our civilization itself, is the knowledge that hospitality is a duty owed to the weary traveler and to the sick." Dr. Lamerton also warns against euthanasia and assisted suicide:

> Once a patient feels welcome, and not a burden to others, once his pain is controlled and other symptoms have been at least reduced to manageable proportions, then the cry for euthanasia disappears.... It is our duty so to care for these patients that they never ask for euthanasia. A patient who is longing

to die is not being treated properly.[9]

A modern expert on the subject, Dr. Ira Byock, president of the American Academy of Palliative Medicine, points out that the control of pain "can *always* be done."[10] And, of course, individual and intentional termination of innocent human life is always prohibited: "One may not do evil, even to accomplish good."[11] The same principles were reiterated recently by Pope Benedict XVI.[12] In our increasingly amoral society, the devil is in the details, and one must determine the specific moral principles operative in any given hospice. Many of them have become "death camps," as Bobby Schindler stated while he helplessly watched the court-ordered execution by dehydration of his sister Terri Schiavo, who was prohibited by armed guards from even having her lips moistened.

The German Experience

We need here to consider the observations of Dr. Leo Alexander, a psychiatric consultant to the Nazi war crimes trials of physicians at Nuremberg:

> Whatever proportions these [German war] crimes finally assumed, it becomes evident to all who investigated them that they had started from small beginnings. These beginnings at first were merely a subtle shift in emphasis in the basic attitude of the physicians. It started with the acceptance of the

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[9] Remarks by Dr Ira Ryock, Prsident of the American Academy of Hospice and Palliative Medicine, at the Kentucky Association of Hospices Symposium, Louisville KY (June 9-11, 1999). See also his article in *The Wall Street Journal* (27 June 1997).

[10] Ira Byock, M.D., *Dying Well* (New York NY: Riverhead Books, 1997), p. 245.

[11] Romans 3:8; see *Catechism of the Catholic Church*, §2280-83.

[12] *Catholic World Report* (January 2009): 29ff.; Pope Benedict XVI, Address to Conference on Organ Donation (11/7/08) in *Catholic World Report* (January 2009): 32.

attitude, basic in the euthanasia movement, that there is such a thing as a life not worthy to be lived. This attitude in its early stages concerned itself merely with the severely and chronically sick. Gradually the sphere of these unproductive, the ideologically unwanted, the racially unwanted, and finally all non-Germans. But it is important to realize that the infinitely small wedged-in level from which this entire trend of mind received its impetus was the attitude toward the non-rehabilitatible sick.

Those who argue that assisted suicide can be effectively limited and controlled must confront the naive statement of U.S. Chief Justice Warren Burger, expressed in *Roe v. Wade* in 1973: "Clearly the court today does not authorize abortion on demand." If Burger were alive today, how would he react to the surgical slaughter of four thousand babies a day in the United States–more than forty-eight million since 1973–most performed for reasons having nothing to do with even the most strained and farfetched medical argumentation?

The Dutch Experience

From a practical standpoint, the consequence of blurring the line between "healing" and "killing" by the healthcare profession has resulted in a disastrous slide down the slippery slope. In the 1970s, the Dutch courts began to tolerate physician-assisted suicide for terminally ill but competent patients. By the early 1980s, the medical profession had established guidelines for physicians to perform assisted suicide and euthanasia.

In 1984 the Netherlands Supreme Court accepted physician-assisted suicide and euthanasia not only for terminally ill patients but also for chronically ill and elderly patients whose deaths were not otherwise imminent. In 1986 the Dutch Medical Association established "guidelines for euthanasia." And in 1990 the official Remmelink Report confirmed that "non-voluntary euthanasia was being widely performed in the Netherlands: 2,300 cases of euthanasia at the patient's request, 400 cases of physician-assisted suicide, and more than 1,000 cases in which physicians terminated patients' lives *without their consent*. Fourteen

percent of the patients who were killed without consent were fully competent and eleven percent were partially competent. These were patients who could have made their own decisions about whether to live or die but were never given the opportunity to decide for themselves."[13] This has euphemistically been referred to as "termination of patients without explicit request."

In her landmark book *Deadly Compassion*,[14] Rita Marker points out how Anne Humphry was hounded to her suicide by her pro-death husband Derrick Humphry, the founder of the Hemlock Society, and how he had earlier killed his first wife and well as his parents. As Marker points out, these statistics from Holland demonstrate that in a nation of only some fifteen million people, whose total death count each year is about 130,000, Dutch physicians have deliberately ended the lives of some 11,800 people each year by administering or providing lethal doses or lethal injections. This accounts for more than nine percent of the total annual deaths in the nation.

This modern downward spiral has predictably and unavoidably proceeded "from assisted suicide to active euthanasia, from terminally ill to chronically ill, from voluntary to non-voluntary, and from physical illness to mental suffering.[15] In twenty-three years we have gone from tolerance of the practice of physician-assisted suicide for physically suffering, terminally ill, competent patients to the judicial and medical approval of the non-consensual termination of patient lives. The camel is never content with only his nose in the tent! Ironically, it was Dutch physicians who were most resistant to Hitler's euthanasia initiatives.

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[13] *Issues in Law & Medicine* 14/3 (1998): 302.

[14] Rita Marker, *Deadly Compassion: The Death of Anne Humphry and the Truth about Euthanasia* (New York NY: William Morrow, 1993).

[15] *Issues in Law and Medicine* 14/4 (Winter 1998).

Death Without Dignity: Starvation and Dehydration (Modern Euthanasia, American Style)

Capital punishment for the innocent, by the cruel and barbaric method of starvation and dehydration, was judicially established as a method to get rid of the inconveniently ill, in the now famous Florida case involving Terri Schiavo. Mrs. Schiavo was admitted to a Florida hospital by her husband Michael after a mysterious collapse. She was comatose and never able to describe what had occurred to her, although a bone scan taken within months after her admission revealed multiple fractures in her ribs and hip joints, upper thighs, and both knees and ankles, even though she had not been involved in an automobile accident or anything of that kind. Her husband was named as her legal guardian and was successful in a $2.25 million medical malpractice suit on her behalf. He used the funds not for her care but for litigation as he sought to have her killed. Mr. Schiavo took up living with another woman and fathered a child by her, and ultimately succeeded in having the courts authorize the withdrawal of food and water from her, resulting in her slow and painful death. These facts are documented in *Terri's Story* by Diana Lynne.[16]

As pointed out by Fr. Frank Pavone, National Director of Priests for Life, who spent much of the last two weeks of Terri's life at her bedside as she was being starved and dehydrated to death (the official cause of death reported on her autopsy report):

> She is not dying. She has no terminal illness. She is not on a life support system. She is not alone, but rather has loving parents and siblings ready to care for her the rest of her life. She has not requested death.... Terri's death was not at all peaceful and beautiful. It was quite horrifying. She is dehydrating to death, and looked it. Her face had an expression of dread and sorrow. In my 16 years as a priest, I never saw anything like it before.[17]

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[16] Diana Lynne, *Terri's Story: The Court-Ordered Death of an American Woman* (Nashville TN: WND Books, 2005).

[17] Online at http://www.priestsforlife.org/euthanasia/terri.htm, accessed 24 February 2005.

Dr. James Dobson, Chairman of Focus on the Family, also argued against the killing of Terri Schiavo, by pointing out the recent return to memory and speech of another lady who was comatose for twenty years after being struck by a drunken driver: "Mental disabilities do not damage a person's worth–the preciousness of life is not defined by one's abilities."[18]

PAPAL TEACHING

The ethical principles concerning the furnishing of food and water to all patients, including the comatose, were re-stated by His Holiness Pope John Paul II in "Life Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas" (20 March 2004). After rejecting the non-diagnostic phrase "vegetative state" as "demeaning the value and personal dignity of a person,[19] the pope pointed out that "the administration of food and water, even when provided by artificial means, always represents a *natural means* of preserving life, not a *medical act*...and as such is morally obligatory" [his emphasis]. Both Pope John Paul II and Terri Schiavo went home to the Lord in Holy Week of 2005, he dying by natural means, she a painful victim of modern mendacity.

What is needed is for the courts to acknowledge this fundamental moral truth, that food and water constitute human care, not medical treatment, and thus that it is always morally obligatory to provide them to every human being, regardless of their condition. If the courts fail to do this, then the legislative and executive branches need to address the abuse of power in the courts. In the meantime, everyone should execute pro-life documents about the end-of-life (both living will and medical

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[18] Christian Communication Network, February 11, 2005.

[19] "A man, even if seriously ill or disabled in the exercise of his highest functions, is and always will be a man, and he will never become a 'vegetable' or an 'animal'."

power of attorney) that express this principle, so as to protect themselves from the horrible death of starvation and dehydration.

Living Will or Surrogate Proxy?

Most states have legislation authorizing these approaches. Taken singly, each of these approaches is fatally flawed. The first (the living will) involves the patient making specific healthcare decisions in writing, in advance of the onset of the disease and before even a diagnosis has been made. Such a decision, therefore, cannot be well-considered or appropriate to all situations. The second (surrogate proxy) gives *carte blanche* to some other person to make that decision for the patient if the patient becomes comatose or incompetent.

Had Terri Schiavo followed the "proxy only" approach, she most likely would have designated her husband Michael in that role. Hindsight clearly demonstrates that we cannot be "certain" that any given individual will comply with our "unspecified" wishes or with moral law. Michael would presumably have killed her by dehydration under such a proxy, as he did in fact under his power of guardianship. Had she had *an appropriate pro-life living will*, she would not have been subjected to the painful death that she actually experienced.

There exists another flaw to the "proxy only" strategy. Even if a person executes a proper pro-life healthcare surrogate document that spells out the mandatory provision of food and water, and so on, years later he may be taken to a hospital under a dramatic healthcare situation, at which time he and his family members will be asked by the hospital clerk whether the patient has a living will. When advised in the negative, a "designer death formula" form will likely be presented, providing that food and water shall not be artificially furnished. In the urgencies of the situation, it will often be the case that the document will be signed without careful reading or full explanation. I advise readers that these documents are being widely circulated and in fact are in use even at the "Catholic" Saint Elizabeth Hospital near my own home in northern Kentucky, even though we have complained to the hospital and to the

bishop.

When the patient becomes comatose and when a dispute arises at the hospital level, with a healthcare surrogate document that is several years old that specifies that food and water be provided and a one-day-old living will that specifies that food and water not be given, the matter could well be taken to court, where the resulting decision is not likely to be a good one. The most recent document will be held to be applicable.

As a lawyer with personal experience of in-depth research on this subject over many years and with experience in handling these cases at a counseling level, at a level of medical confrontation, and at the level of litigation before the Kentucky Supreme court, I suggest that the only chance for adequate protection of a patient requires that a person have *both* the healthcare proxy and a pro-life living will, each of which must name a person in whom the patient has the best opportunity for trust to see to the execution of these documents. But these documents must also spell out the specific provisions of care and must make clear that such provisions are binding upon physicians, hospitals, and the surrogate himself. Food and water must be mandatorily provided, without exception, unless death is immediately imminent, as noted in the recent statement by Pope John Paul II in 2004.

While there is no panacea in this field, the combination of the best of each of these approaches results in a protection plan of legal instruments that articulate a philosophy that will be difficult for the death-dealers to circumvent: "Human bodily life is inherently good and not merely instrumental to other goods.... Nothing shall be done or omitted that would become the direct and primary cause of my death.... The patient is to be provided medical care and treatment appropriate to his condition, which offer a reasonable hope of benefit without excessive pain and do not pose a severe threat to his life," and so on.[20]

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[20] Appropriate language can be found in *Catechism of the Catholic Church* and in the documents that I have drafted and explain in more depth in my book, *That Reminds Me of a Story.... Reflections of a Pro-Life Warrior*,

While it is true that the concept of the Living Will was initiated by the same people who gave us abortion on demand, my personal metamorphosis to the belief that we need to prepare what Prof. Charles Rice calls "Please Don't Kill Me Wills" has been dictated by the unfortunate successes of the pro-death forces in our legislatures and courts. It is absolutely indispensable that we provide this essential protection to our aged and our ill, a vulnerable population in this age of fractured families and moral de-sensitization.

Brain Death and Organ Donation

The complexity of this topic makes impossible a thorough discussion of this problem here. One needs, however, to be aware of the tension that exists between Judeo-Christian principles of maintaining life, on the one hand, and the demand for organs, on the other. Priot to 1968, a patient was pronounced dead by a physician who observed the absence of circulation, breathing, and reflexes. But in 1968 a committee at Harvard Medical School recommended using irreversible cessation of all brain activity as the sole criterion for determining brain-death. This change allowed doctors to take organs from people whose heart and lungs were kept going artificially, a process essential to the protection of the conditions of the organs so that they would be useful for transplantation.[21]

Most people would be shocked at some of the "protocols" (procedures) established at some hospitals for the harvesting of organs. One requires the injection of morphine! Why a painkiller, if the patient is already dead? Three-quarters of the hospitals surveyed permitted doctors to take organs from patients who are not even brain-dead! Some of these shocking facts were highlighted on a "60 Minutes" CBS documentary on

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available at Northern Kentucky Right to Life Educational Foundation, Inc., P.O. Box 1202, Covington KY 41012, www.nkyrtl.org ($12.95).

[21] *Understanding Brain Death* by Paul Byrne, M.D. Chairman of the Department of Pediatrics, St Vincent Medical Center, Bridgeport CT.

13 April 1997, "Not Quite Dead." In one case, the records show that the heartbeat of the patient shot up during the time when the organs were being cut out. In another it acknowledged that death did not occur until vital organs were removed from a gunshot victim.

These truths have now been widely documented in professional and secular publications. As Dr. Stuart Younger wrote in a letter to the editor of the *New England Journal of Medicine* on 14 November 1994, "The signs of life in brain-dead patients...are very real and cannot be discounted in human terms, even if we have done so in public policy."

Given all this, it is crucial to re-examine the practice of signing one's driver's license, for in many states that signature authorizes the donation of organs. Many organs do not survive a person's death, and thus harvesting them in effect causes the death of the person. One may not morally give them away without being responsible for causing the death.

One way of building up "an authentic culture of life," suggested Pope John Paul II in his encyclical *Evangelium vitae*, is restricting the donation of organs to situations in which it can be "performed in an authentically acceptable manner" (§86). In the name of fraternal charity, the Church does encourage certain kinds of organ translation. But under moral law the Church sees the need to observe certain restrictions on this practice. There is need to distinguish between organ transplants *inter vivos* and *post mortem*. An example of the first category would be a donation of bone marrow or of one of two healthy kidneys. Organ transplants such as these do not threaten the life or health of the donor. On the other hand, organs that are necessary for sustaining life can be donated only after the true death of the donor. These would include such vital organs as the heart, lung, and liver.

As set out in the *Catechism of the Catholic Church* §2296, there are three requirements that must be met: (1) there must be informed consent given by the donor or someone who can legitimately make such a decision, (2) "the physical and psychological dangers and risks incurred by the donor are proportionate to the good sought for the recipient," and

(3) "it is morally inadmissible directly to bring about the disabling mutilation or death of a human being, even in order to delay the death of the other persons." In other words, if the removal of the vital organs from the donor causes or hastens his death, then the organ transplant is morally impermissible, regardless of any good intended. The immanence or inevitability of the donor's death is not moral authority to cause or hasten it. The end does not justify the means (see Romans 3:8).

As reported in *Catholic World Report* in 2000, Pope John Paul II stated: "Vital organs which occur singly in the body can be removed only after death–that is, from the body of someone who is certainly dead."[22] The problem arises that if doctors wait to make sure that a person is "certainly dead," the vital organ may also die and would no longer be beneficial. Can it be determined with certainty that death has occurred prior to the deterioration of the vital organs to a state where they can no longer be used for transplantation?

Writing in *Catholic World Report* in March 2001, Bishop Fabian Wendelin Bruskewitz and Bishop Robert T. Vasa, joined by members of the medical community, stated (pp. 50ff.):

> We maintain that the present human transplantation procedures promote the intrinsic good of the recipient while *not* preserving, but rather extinguishing, the life of the donor. However, the medical community know that unpaired vital organs taken from a "certainly dead" donor are unsuitable for transplantation.... When healthy vital organs are taken in accordance with the legal common practice of medicine, the donor is killed.

In order to facilitate organ donations, there have been numerous attempts to redefine death in an arbitrary fashion that is divorced from true biological facts. Bishop Bruskewitz and his co-authors warn: "Every transplant center agrees that death is whatever and whenever a doctor says it is." In November 2008 Pope Benedict XVI praised the meritorious nature of the act of organ donation but condemned the abuses

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[22] Address to the International Congress on Transplants (29 August 2000).

prevalent in the organ transplant industry:

> It is helpful to remember, however, that the individual vital organs cannot be extracted except *ex cadavere*.... In these years science has accomplished further progress in certifying the death of the patient. It is good, therefore, that the results attained receive the consent of the entire scientific community in order to further research for solutions that give certainty to all. In an area such as this, in fact, there cannot be the slightest suspicion of arbitration, and where certainty has not been attained the principle of precaution must prevail.... However, in these cases the principal criterion of respect for the life of the donor must always prevail so that the extraction of organs be performed only in the case of his true death.[23]

Alan Shewmon, M.D., professor of neurology and pediatrics at UCLA, after praising the pope's references to "the entire scientific community" and "certainty," stated:

> It can hardly be claimed that there is a "consensus of the entire scientific community" and "certainty" regarding the diagnosis of brain death when some countries define it in terms of the whole brain while others in terms of only the brain stem.... There is a persistent current of publications in the medical and philosophical literatures questioning whether any sort of purely neurological "death" is true death.... Until a true professional consensus is reached on such important aspects, "the principle of caution should prevail."[24]

Christians must not be misled by "legal" definitions of death. Just because a law, or an "accepted" medical "ethic" may assert some moment when death occurs, the definition cannot change the reality of when death does in fact occur. In determining what is right and what is wrong, an individual must look to reality and not to an arbitrary definition, e.g., when the pro-abortion American College of Obstetrics and Gynecology arbitrarily changed the definition of the beginning of

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[23] *Catholic World Report* (January 2009): 32-33.

[24] *Catholic World Report* (January 2009): 33; "Recovery from Brain Death: A Neurologists's Apologia," *Linacre Quarterly* (1997).

life. It has been known for decades to be at "conception," that is, the fertilization of the egg by the sperm, but this association began to claim the moment to be that of the "implantation" of the conceptus in the womb, so as to legalize chemical abortion through the pill.

Paul A. Byrne, M.D., former president of the Catholic Medical Association, writing in *Celebrate Life*,[25] warns that patients have been declared "brain dead" and yet are alive today. He relates the story of twenty-one-year-old Zack Dunlap, who was declared "brain dead" four hours after an accident. As they were preparing to remove his organs, a nurse scraped his foot and beneath one of his fingernails, whereupon he moved. He later stated that he heard the doctors pronounce him dead twice.[26]

Moral Entropy

Entropy, a fundamental principle of physics, tells us that all physical things deteriorate. In the moral realm also, I would submit that things either improve or deteriorate–they never just stay the same. And that reminds me of a story–of the family that lived in an isolated cabin on top of a mountain. The grandfather was dying. The father called in the twelve-year-old son and instructed him to put his grandfather on an old rickety cart that was out in the barn and take him to the edge of the cliff and push him over. When the son returned with the empty cart, the father inquired why the son hadn't just pushed the old cart over the hill with his grandfather, and the son responded, "But Dad, won't I be needing that for you?"

Why do we assume that this present generation can abort our

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[25] July-August 2008.

[26] For an excellent discussion of this topic, I refer the reader to "Life, Life Support, and Death," authored by nine eminent pro-life physicians and a pro-life lawyer, led by Paul A. Byrne, M.D., past president of the Catholic Medical Association of the United States and available through the American life League, Inc., P.O. Box 1350, Stafford VA 22555.

children's siblings and euthanize their grandparents, without simultaneously affirming to our children the appropriateness of such conduct? We can be assured that unless we effectively restore the fundamental principle of the dignity and inviolability of each individual human life, from conception to natural death, we are guaranteed further erosion in other aspects of life.

In 1993 the Kentucky Supreme Court approved the killing of a comatose patient by starvation and dehydration in the case of *DeGrella v. Elston*.[27] The rationale used by the court was that this longtime comatose patient had been heard, by witnesses, to express prior to her comatose state a desire not to be kept alive should that occur to her. The Majority Opinion declared that it was not approving a death decision made by another for a patient based upon the patient's "quality of life" and issued this disclaimer: "Nothing in this Opinion should be construed as sanctioning or supporting euthanasia, or mercy killing."

The slippery slope of evolutionary aggression continues, however, with a more recent decision of the Kentucky Supreme Court in a case for which I served as an *amicus curiae*, involving the proposed action of the Attorney General to order the removal of tube feeding from a comatose but non-dying retarded patient. To get rid of him, it was necessary to "push the envelope" and create a new anti-life doctrine, the dangerous test of "substituted judgment" (which had been specifically rejected in *DeGrella*, by which one person or entity (here, the State) presumes to have the wisdom to decide for another that this other person will not recover and that death is better than life. The court approved the killing action, even though this preceded the Schiavo decision.[28] The slippery slope get ever more slippery and steeper!

In Appendix III to my book I have provided pro-life documents that I have drafted: Pro-Life Living Will Directive, Durable Power of Attorney, and Springing Power of Attorney. These can be taken to a

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[27] *DeGrella v. Elston*, Ky. 858 S.W.2d 698 (1993).
[28] *Woods v. Commonwealth*, 142 S.W.3d 24 (2004).

local pro-life attorney to be adapted for the particular state statutes, so as to make sure that they qualify. *Never assume* that an attorney is pro-life, even if such an assumption seems normal because of his religion or some other affiliation. The attorney needs to be interrogated along the lines of the principles contained in these documents. The life one saves may well be one's own!

What Are We to Do?

As with so many things in life, the solution is simple but not easy. We are to trust in God. Rest assured that He will send us other and stronger calls to return to Him. We are to keep the faith, communicate the truth, and pray, but recognize that until enough people recognize that "it ain't the economy, stupid, it's the morals," things will continue to worsen.

As individuals, we must remember always to keep our eye on the goal. I heard a gifted clergyman recently preach a message that each of us probably needs to hear repeated frequently. He said that every day is a Day of Judgment. We judge whether to follow Christ or to sin against Him, whether to choose life or to choose death, and we approach a day closer to that final gate through which we will pass into eternity, either Heaven or Hell. Hence we should heed the advice of St. Paul:

> Do you not know that those who run in a race, all indeed run, but one receives the prize? So run as to obtain it. And everyone in a contest abstains from all things, and they indeed to receive a perishable crown, but we an imperishable one. I, therefore, so run as not without a purpose. I so fight as not beating the air, but I chastise my body and bring it into submission, lest perhaps after preaching to others I myself should be rejected.[29]

Remember, too, the words of Winston Churchill: "Never, never, never, never, never give up!" Further, to paraphrase the admonition of St. Paul:

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[29] 1 Cor. 9:24-27.

Always, always, always keep your eye on the goal – horizontal and immanent, yes, but more importantly, vertical and transcendent!

LETTING GO

In 2001 *Homiletic & Pastoral Review* published an article of mine on euthanasia,[30] tracing the modern history of this tragic movement for the past hundred years as it has wound its way into our modern American society. I captioned the article "Euthanasia: Hell's Last Sacrament" after the title that George A. Kendall gave to a marvelous article that he published years earlier in *The Wanderer* (12/11/86).

Kendall's article contains some of the finest philosophical and theological indictments of the pro-death movement that I have ever read, including this passage:

> For the Christian, the meaning of life, its value is love. From this perspective, life is one long process of letting go of self. Not, of course, the genuine self which God created in love, but of the sovereignty of the ego. It is one long process of giving the self to others and ultimately of surrendering the self to God in love. The process of dying is simply the last stage of this process. The affirmation of God's sovereignty by surrendering oneself, one's life to His life. It is the final letting go of every egotistical and self-centered attachment in allowing one's self to fall at last into the void.... The Christian facing death fears Satan's last efforts to draw him into evil. He receives the last sacraments. The unbeliever, in contrast, faces his Enemy's last attack and chooses suicide as a defense. Euthanasia, assisted suicide, self-deliverance, aid in dying must therefore be understood in spiritual terms as a kind of Satanic last sacrament of evil, a kind of final right of passage by which the man who has chosen the outer darkness over God's light of love passes through the last threat and finds his rightful place in that eternal darkness.

Consider the striking parallels between the ages of man and the seasons of the year. Our youth is springtime, bursting forth with the energy of new life, filled with the excitement of learning, and accepting, and

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[30] *Homiletic & Pastoral Review* (March 2001): 14-21.

beginning our vocation. Then comes summer, mankind's maturing years, busily devoted with enthusiasm and idealism to important goals–busily and avidly pursuing and attempting to implement these goals. Next comes perhaps the most beautiful season of all, autumn, with the breathtaking display of God's beauty in nature in the foliage. Here we are in the position of attempting to benefit others and ourselves by the experiences and opportunities that have been given to us–teaching both by word and example and passing on to the generations behind us the accumulated wisdom of the ages of which we have been the beneficiaries. These can and should be very productive years.

Finally, winter has its own quiet beauty and significant importance. In nature things are going dormant and indeed dying. Here again God teaches, as the energy and busyness of summer have faded through autumn, that now it is the time of preparation for the end, with its solemn dignity. This can be an opportunity for the most important work of all. In nature it is the snow that feeds the rose beneath the soil. In human development we are preparing for the second most important day of our lives–the day of our death, when we must given an accounting to our Maker. In these last stages the way in which we prepare ourselves can be eloquent testimony to others.

To cut short this crucial time by euthanasia, assisted suicide, or the like is to deprive the soul of this most important opportunity for tremendous spiritual progress, and to deprive the person of that essential opportunity to make his final peace and say his final goodbyes to others, to attempt to do better with others than he has heretofore done with them, and to permit them the same opportunity with respect to him.

For the dying patient who needs to make peace with himself, with his loved ones, and with his God, the five last words suggested by Hospice are recommended: "I forgive you–forgive me–thank you–I love you–goodbye." To these must be added, "Pray for me, as I do for you."