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**THE WITHDRAWAL OF ASSISTED NUTRITION AND HYDRATION
AND THE CANONICAL OFFENCE OF HOMICIDE**

by
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Abbreviations

(ed.) (eds.)	editor (editors)
<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
art.	article
CDF	Congregation for the Doctrine of the Faith
<i>CE</i>	<i>The Catholic Encyclopedia</i>
<i>CIC</i>	<i>Codex iuris canonici</i>
CLSA	The Canon Law Society of America
Co.	Company
col. (cols.)	column (columns)
CUA	The Catholic University of America
<i>DDC</i>	<i>Dictionnaire de droit canonique</i> (1935-1965)
<i>DMC</i>	<i>Dictionnaire de morale catholique</i>
ed.	edition
n. (nn.)	number (numbers)
NCCB (see also USCCB)	National Conference of Catholic Bishops (USA)
<i>NCE</i>	<i>New Catholic Encyclopedia</i>
p. (pp.)	page (pages)
rev.	revised
S.C.C.	Sacred Congregation of the Council
SPU	Saint Paul University
t.	Tomus (i)
<i>TPS</i>	<i>The Pope Speaks</i>
USCCB (see also NCCB)	United States Conference of Catholic Bishops
vol. (vols.)	volume (volumes)

Introduction

The task we have set ourselves is the investigation of the canonical repercussions of a controversial procedure, namely, the removal of artificially assisted feeding and hydration from an unconscious patient resulting in the patient's death.

Life-support systems, including assisted feeding and hydration, are able to keep a person alive indefinitely, and the moment of death is often a matter of someone's decision and action. While the problem is not entirely new, there has been little canonical reflection on its implications. The Church's teaching on the sanctity of life is reflected in canon law, and the Code of Canon Law provides penalties and other canonical effects for homicide and abortion. There has been considerable interest in the crime of abortion, but little attention has been given to the crime of homicide, in spite of the fact that medical personnel frequently take steps to end life.

This issue of the removal of artificially assisted feeding and hydration from an unconscious patient has been intensely debated by moral theologians and has been the subject of bishops' statements in many countries, particularly the United States of America. Many of these statements have been about specific cases involving Catholic patients and Catholic hospitals. These cases are significant in the light of the worldwide movement to promote euthanasia, and legislatures in several countries have debated and sometimes passed laws allowing for euthanasia.

This inquiry has a special urgency because the Church is finding itself in a new situation with regard to its law on homicide, a situation that has been evolving for a number of years.¹ The canonical tradition on homicide reflects the historical reality of co-operation and mutuality between canon and civil law. For centuries canonists have presumed that civil law would deal with the crime of homicide. For its part, the Church dealt with homicide in the internal forum or not at all.² The new situation for the Church arises in particular because the doctrine of homicide is being transformed in countries such as the United States, England and Australia in the light of cases brought before courts. The issue in many of these cases is the withdrawal of assisted nutrition and hydration from patients who are comatose or in other ways brain-damaged.

Today, the Church faces new challenges to its teachings on the sanctity of life in light of changing medical technologies and changing views of what constitutes homicide in secular society. In light of these changes, the Church can no longer assume that the civil courts and society at large share its understanding of the crime of homicide. For the remainder of this introduction, we will review several controversial and highly publicised cases in civil courts in England, which are representative of a wider trend in various parts of the world. This discussion will set the stage for the body of this dissertation where we

¹ These remarks apply particularly to the Church in countries of the common law tradition where attitudes to crimes against life are rapidly changing. Homicide is following a trend that started with abortion, which is no longer a crime or is rarely prosecuted.

² The history of the Church's relationship with what may be called "civil" penal jurisdictions is a complex one, but for centuries there was some form of co-operation, albeit with frequent disputes over jurisdiction. This co-operation between Church and secular legal systems was reflected in the 1917 Code that treated homicide as a mixed forum crime. The Church, however, no longer claims jurisdiction over all persons *ratione peccati*, nor does it claim the right to invoke the "secular arm" to enforce its judgments, as reflected in canon 2198 of the 1917 Code.

will see that the Catholic Church has a long and consistent doctrinal and canonical tradition, rooted in the divine natural law, which can bring considerable ethical and legal clarity to the complex issues surrounding difficult cases.

Until recently, the withdrawal of feeding and care leading to death would have been considered manslaughter or even murder in English common law. In a case from 1893, the accused had care of his ill and helpless elderly aunt and gave her no food or nursing care in the ten days prior to her death. He was found guilty of manslaughter because he had failed in his duty of care and his negligence had accelerated her death.³ In another case, the father and his *de facto* partner were found guilty of the murder of a child who had died of starvation. There was no lack of food and the other children had been looked after. The case against the woman was stronger as the evidence showed that she hated the child and had deliberately withheld food from her. The father had no animosity to the child but was afraid of his partner and knew of her hatred for the child. The case against him was based on the fact that he must have known the child's perilous situation and, in not acting to protect her, was considered to have "desired" the harm. The appeal court, citing the *R. v. Instan* case mentioned above, upheld the conviction of murder against both.⁴

³ *R. v. Instan*, 1 Q.B. 450. The case is summarised in R. CROSS and P.A. JONES, *An Introduction to the Criminal Law (=Criminal Law)*, 5th ed., London, Butterworths, 1964, at p. 151. The authors add that the case is almost one of murder, and that the probable reason it was not prosecuted as such is that there was doubt at the time whether a person could be found guilty of murder by omission. This issue of murder by omission featured in the Bland case that will be treated below.

⁴ This case, *R. v. Gibbins and Proctor*, was heard by the Court of Criminal Appeal and is reported in 13 Cr. App. R. 134 (1918). Our source is J.W.C. TURNER and A.L. ARMITAGE, *Cases on Criminal Law*, 3rd ed., Cambridge, Cambridge University Press, 1964, pp. 218-219. In canonical terms, the jury was convinced that *dolus* was present, which implies deliberate intent,

One hundred years later, the House of Lords' 1993 decision in the Bland case involved a major shift in the previously accepted understanding of homicide. In giving their judgement to allow the removal of tube feeding from Bland, three of the five judges acknowledged that what was happening met the traditional requirements for manslaughter, or even murder, in English law, precisely because the purpose of removing the feeding was to bring about his death. As Lord Browne-Wilkinson said:

What is proposed in the present case is to adopt a course with the intention of bringing about Anthony Bland's death. As to the element of intention or *mens rea*, in my judgement there can be no real doubt that it is present in this case: the whole purpose of stopping artificial feeding is to bring about the death of Anthony Bland.⁵

The decision involved making a distinction between acts of commission and acts of omission, and declared that the doctors looking after Bland did not have a duty of care in regard to omissions. In commenting on the decision, L. Gormally summarises English law in the following way:

It is the common law that to cause the death of an innocent person on purpose (or 'intentionally') is to commit the crime of murder. Until the House of Lords' judgements in the Bland case in 1993 it was a clearly understood part of the common law that murder can be committed not only by a positive act but also by omission in situations in which there is a duty to provide what is omitted [...]. Their Lordships claimed that the conduct in question was not murder because it was an omission, while affirming that a positive act with the same intention would clearly be murder. It is evident, however, from their judgements that they found

and not the lesser criminal negligence which is the equivalent of the canonical *culpa*. The appeal court used the term "wicked neglect" (ibid., p. 219). This is a good illustration of the civil and canon law doctrine that, while "malice aforethought" requires some form of deliberation and intention, it does not necessarily involve ill will or malice in the ordinary sense of the word.

⁵ Taken from L. GORMALLY, "Notes on the Winterton Bill," <<http://www.linacre.org/frames.html>> (30 August 2000). The Winterton Bill referred to here was a private member's Bill introduced into the British House of Commons in 1999 "to prohibit the withdrawal or withholding of medical treatment, or the withdrawal or withholding of sustenance, with the intention of causing the death of a patient."

themselves unable to defend the distinction on which they relied between acts and omissions when both types of conduct have the same purpose of ending someone's life.⁶

In canonical terms, the decision introduced a new understanding of the doctrine of voluntary direct homicide by asserting that a certain kind of fatal act, an omission to feed, could be placed without criminal ramifications. In simple and blunt language, the Court distorted legal doctrine to allow the termination of a life considered not worth living.⁷

The shift in doctrine in the Bland case has been reflected in other cases in various jurisdictions.⁸ Another highly publicised case in England in 2000 involved testing the

⁶ Ibid.

⁷ Here what canonists would call voluntary direct homicide is transformed by the indirect method of killing (allowing Bland to die by starvation) into a lawful killing. In effect, the Court changed the doctrine by finding a new type of lawful killing. For further comment on the decision from the legal perspective, see J.M. FINNIS, "Bland: Crossing the Rubicon?" in *The Law Quarterly Review*, 109 (1993), pp. 329-337; and J. KEOWN, "Restoring Moral and Intellectual Shape to the Law after Bland," in *The Law Quarterly Review*, 113 (1997), pp. 481-503. Keown is critical of the Court for a number of reasons; he says that they misunderstood the sanctity of life principle and leaned too far towards the quality of life, leaving the law in a "morally and intellectually misshapen" state by allowing the termination by omission of the lives of people who fall below a certain quality of life (p. 502).

⁸ There have been a number of important cases from the United States, including Quinlan, Herbert, Conroy, Cruzan and Gray. Many of the cases have involved input from theologians and bishops, often arguing for the removal of assisted nutrition. In 1988 a court decision ordered the removal of feeding from Marcia Gray, a case in which Bishop Gelineau had intervened to argue for removal (see fn. 322 for details). Two of Herbert's physicians were charged with murder after removing his feeding and the theologian J.J. Paris spoke in their defence (see B. STEINBOCK, "The Removal of Mr. Herbert's Feeding Tube," in *The Hastings Center Report*, vol. 13, n. 5 [1983], pp. 13-16).

In a recent Australian case the Supreme Court of NSW ordered feeding restored to a young man named John Thompson who had been diagnosed as being in a "chronic vegetative state" within a week of admission to hospital after a drug overdose. Against the wishes of his family, his doctor had ordered cessation of feeding and antibiotics. Later, independent medical experts assessed Thompson and concluded that the diagnosis was premature and wrong as he had minimal consciousness and was able to respond to commands. Justice O'Keefe's judgment dealt with the legal principles concerning a patient's "right to receive ordinary reasonable and appropriate (as opposed to extraordinary, excessively burdensome, intrusive or futile) medical treatment, sustenance and support." (See B. O'KEEFE, [Justice in the Supreme Court of NSW], Judgement in "Northridge v Central Sydney Area Health Service," New South Wales Supreme

doctrine of the sanctity of life in relation to homicide. This case involved the conjoined twins known as Jodie and Mary. The facts of the case are complex, but the essential medical dilemma was that the sisters were born joined at the abdomen and shared a common artery which enabled Jodie, the stronger sister, to circulate life sustaining oxygenated blood for both of them. Separation would require the clamping and severing of that common artery, following which Mary would die within minutes. The medical prognosis was that both children would soon die without separation, that Jodie's prospects for continued life thereafter were good, whereas Mary's were nil, and that Mary's medical condition had been so poor at birth that she had only survived by being joined to Jodie. The parents, who were devout and well informed Catholics, rejected the proposal as they saw it as a direct attack on Mary's life. The doctors then sought a court mandate to allow them to proceed; their request was granted by the High Court with the decision being confirmed by the Court of Appeal.⁹

Court 1241, 29 December 2000, <<http://caselaw.lawlink.nsw.gov.au/ISYSquery/IRL4904.tmp/1/doc>> (08 May 2001).

⁹ The facts of the case were set out in detail in: THE SUPREME COURT OF JUDICATURE COURT OF APPEAL (CIVIL DIVISION), before Lord Justice Ward, Lord Justice Brooke and Lord Justice Walker, Draft Judgment, Case No: B1/2000/2969, 22 September 2000, <http://www.courtservice.gov.uk/info/news_items/siamese.htm> (2 July 2001). This judgment, written for the Court by Lord Justice Ward, contains a comprehensive analysis of the common law tradition relating to medical law and the law of homicide, including related issues such as intent, acts of commission and omission, the doctrine of the sanctity of life, the defence of necessity, and so forth. The judgment also included citations to other cases, particularly Bland and the scholarly reactions to Bland, including those by Finnis and Keown (mentioned above in relation to the Bland case at p. 5). Lord Justice Ward's judgment is summarised and analysed in A. IVEREIGH, "Heartbreaking ruling on conjoined twins," in *National Catholic Reporter*, online edition, 24 November 2000, <http://www.natcath.com/NCR_Online/archives/112400/112400o.htm> (6 December 2000).

There is no denying the complexity of the case and the fact that the Court dealt with the issues in a direct, even confronting way.¹⁰ The Court rejected the statement of the lower court that the operation was in Mary's best interests and admitted that there was no therapeutic benefit for her as the separation would "terminate her life."¹¹ Where this case differed from *Bland* is the acknowledgment by the Court that the operation involved killing by an act of commission and not omission¹² and that to operate, in the words of Lord Justice Ward, "may be to murder Mary."¹³ Nonetheless, the Court authorised this direct and deliberate killing by appealing to the notion of the lesser of two evils.¹⁴ In

¹⁰ For example, Lord Justice Ward, in dealing with the medical evidence, noted that one of the doctors had said that the operation would involve "killing off Mary" (*ibid.*, II, 11). The citations here are from Lord Justice Ward's judgment; the other judges wrote brief conforming decisions, albeit with different reasoning.

¹¹ *Ibid.*

¹² *Ibid.*, III, 7.7.

¹³ *Ibid.*, VI, 3. In his judgment, Lord Justice Ward distinguished between the intention to kill and the desire to kill: "I have to ask myself whether I am satisfied that the doctors recognise that death or serious harm will be virtually certain (barring some unforeseen intervention) to result from carrying out this operation. If so, the doctors intend to kill or to do that serious harm even though they may not have any desire to achieve that result. It is common ground that they appreciate that death to Mary would result from the severance of the common aorta. Unpalatable though it may be - and Mr Whitfield contends it is - to stigmatise the doctors with 'murderous intent,' that is what in law they will have if they perform the operation and Mary dies as a result" (*ibid.*, IV, 8). Here "murderous intent" is used in its technical sense as the intent traditionally required the crime of murder.

¹⁴ This was Lord Justice Ward's central argument: "I can see no other way of dealing with it than by choosing the lesser of the two evils and so finding the least detrimental alternative. A balance has to be struck somehow and I cannot flinch from undertaking that evaluation, horrendously difficult though it is" (*ibid.*, IV, 8). The other judges in their conforming decisions took a different approach: Lord Justice Brooke argued necessity, and Lord Justice Walker used a "quality of life" approach to argue that the operation was in Mary's best interests. These two judgments are not indexed but follow Lord Justice Ward's conclusions.

doing so it rejected the position taken in the *amicus curiae* brief of Archbishop C.

Murphy-O'Connor that reflected Catholic doctrine on this issue.¹⁵

In arguing his decision, Lord Justice Ward dealt with several principles which are central to the theological debate concerning the prolongation of life: the doctrine that it is wrong to take directly the life of an innocent person, the exception to that rule in the case of self defence, the notion of "innocent" life, the principles of the quality and sanctity of life, and the principle of the double effect. The Court, properly in our opinion, rejected the application of double effect in this case on the basis that the good effect for Jodie was being brought about by directly killing Mary.¹⁶

However, Lord Justice Ward's understanding of "innocent" life is at variance with traditional Catholic teaching. He made reference to a joint Catholic and Anglican statement issued after the Bland decision that said "one should never aim to cause an

¹⁵ C. MURPHY-O'CONNOR (Archbishop), Submission to the Court of Appeal, 14 September 2000, at <<http://www.westminsterdiocese.org.uk/arch/>> (8 November 2000). There were opposing opinions on the case from Catholic theologians; see D. SULMASY, "Heart and Soul: The Case of the Conjoined Twins," in *America*, online edition, 2 December 2000, <<http://www.americapress.org/articles/sulmasy.htm>> (31 May 2001); H. WATT, "Conjoined (Siamese) Twins," at <<http://www.linacre.org/frames.html>> (26 November 2000); and C. DOMINIC, "Separating the Twins Jodie and Mary," in *Ethics & Medics*, 26 June 2001, at <<http://www.ethicsandmedics.com/0106-2.html>> (19 June 2001). Sulmasy's argument for allowing the operation is that Mary can be considered Jodie's life-support, and that "this can be considered an extraordinary means of life support, and it would be morally permissible to discontinue this support." In this argument, however, he seems to overlook the fact that the discontinuance of feeding involves direct killing, whereas he had previously rejected the application of double effect precisely because the operation "looks like an Aztec ritual."

¹⁶ Ibid., IV, 4.2. For an article which deals with the case from the perspective of double effect, see A.S. MORACZEWSKI, "Against the Separation of Jodie & Mary," in *Ethics & Medics*, vol. 26, n. 6, (2001), pp. 1-2. Moraczewski points out that the operation involves an act that is objectively immoral (p. 2).

innocent person's death by act or omission."¹⁷ He reluctantly took the view that Mary was not "innocent" because she was killing Jodie, and used the analogy of "a six year old boy indiscriminately shooting all and sundry in the school playground." In his view both can be killed.¹⁸

As in the Bland case, the decision signals a new way of understanding and interpreting the traditional common law doctrine of murder based on the principle of the sanctity of life. However, the conjoined twins case goes even further than Bland by ratifying the killing of an innocent person by a direct act.

Another related trend is the increasing reluctance to prosecute doctors who have acted to kill their patients for allegedly compassionate reasons. The Toronto *Catholic Register* on 21 December 1998 reported the case of a Dr. Nancy Morrison who was accused of mercy killing after she administered a lethal injection of potassium chloride to a dying cancer patient. The facts of the case were not disputed, and her lawyer argued that his client was simply caring for her dying patient. Crown prosecutors in Nova Scotia had brought charges of first-degree murder, but a provincial court judge decided there was not enough evidence to try Morrison on any charge. The Crown appealed that ruling, saying the judge overstepped his authority by not sending the matter to a jury. Nova

¹⁷ This quote is taken from Lord Justice Ward's judgment, under "Summary: A (Children)." The statement referred to is: JOINT COMMITTEE ON BIO-ETHICAL ISSUES OF THE CATHOLIC BISHOPS OF ENGLAND, IRELAND, SCOTLAND AND WALES, Statement in Response to the Law Lords' Judgement in the Case of Airedale NHS Hospital Trust v Bland, 12 August 1993, in *Briefing*, vol. 23, n. 15 (1993), p. 7; and in *Doctrine and Life*, 43 (1993), pp. 492-495.

¹⁸ Lord Justice Ward's judgment, *ibid.* This is certainly an unusual way of understanding "innocent" life, which is a technical term in the Catholic tradition and denotes a person who is not under a legitimate sentence of death or an unjust aggressor. Using the traditional Catholic sense, Mary is "innocent."

Scotia's Supreme Court refused the appeal application, and the Crown eventually dropped the case.

There have been many media reports in recent years that suggest that physicians are frequently involved in the homicidal ending of life. For example, a report on a study of deaths in Belgium in 1998 indicated that some 10% of the deaths could be termed euthanasia.¹⁹ It is reasonable to presume that there would be a similar pattern in other developed countries and that this is no longer being prosecuted as a crime even in those countries whose laws prohibit euthanasia and assisted suicide. It is also reasonable to presume that this is happening in Catholic institutions within those countries.

In pointing out these developments, we should make it clear that there have been other cases where courts have given decisions that reflect a sanctity of life approach. However, the trend is obvious and will have increasing significance for the Church in its health-care ministry. The Church can no longer look to State legislators to back up its natural law teachings, as the erosion and reversals of civil law doctrine on murder in court judgements and precedents reflect attitudes in society at large. This trend signals a shift from a commitment to the doctrine of the sanctity of life as the basis of its legal protection. In particular, the Church can no longer presume, as it once did, that civil law will defend vulnerable patients by prosecuting the crime of homicide.

¹⁹ While "euthanasia" can sometimes be an ambiguous term in media reports, these figures include an estimate that 3.2% of the deaths were from lethal drugs given without the patient's request, and 5.8% were of cases where treatment was withheld with the express intention of ending the patient's life. The source is the Zenit news service, 24 November 2000, ZE001124.

If there is to be a role for Church law in the protection of life, a review of the doctrine of homicide is opportune. Accordingly, we propose to investigate the canonical crime of homicide in the light of a controversial issue. The question we intend to address is: does the canonical crime of homicide apply to the withdrawal of assisted feeding and hydration? If so, to whom does it apply, and in what circumstances?

In Chapter One we will study theological reflection on the issue. In Chapter Two we will survey relevant papal and episcopal teaching regarding the preservation of life and the principles that allow for exceptions to the duty to prolong life. Chapter Three will investigate the canonical crime of homicide. The ambit of our inquiry will be limited to the question of imputability, and we will not take up the related issues of canonical process or penalties unless they help clarify aspects of imputability.

CHAPTER 1

THEOLOGICAL REFLECTION

In this chapter we will survey theological reflection on the wider issue of the prolongation of life and the particular issue of the withdrawal of assisted nutrition and hydration from a patient in the persistent vegetative state. Our starting point will be the way theologians in the twentieth century dealt with difficult cases and the principles they used and developed in doing so. The most important principle is that of the distinction between the ordinary and extraordinary means of preserving life, which was first developed by theologians of the sixteenth to eighteenth centuries. We will look closely at the way this principle developed historically and its implementation by contemporary theologians. Our study will take up a number of issues related to ordinary and extraordinary means of preserving life, such as the burdens and benefits related to these means, quality of life, and the cause of death. We will conclude our survey by looking at how theologians deal with intention as it relates to decisions to forego assisted nutrition and hydration.

The theologians here are, for the most part, authors who identify with the Catholic tradition, or deal with the issues from a Catholic perspective, or are otherwise influential for Catholics. The theological debate is non-denominational, and we will take note of important contributions from non-Catholic commentators, such as Ramsey (Presbyterian) and Meilaender (Lutheran). There are many disciplines (theology, philosophy, history,

law and medicine) with a stake in this debate. Much of the debate crosses these “discipline” lines, and this will be reflected in our survey. The debate, in fact, is as much philosophical as theological.

Our study involves predominantly English-speaking commentators, who are mostly American. This is partly because of the availability of the sources, but also because the debate is most intense in North America. Some European theologians have dealt with assisted nutrition and hydration, but often in terms of the American debate and with mostly English-language references.²⁰ Where appropriate, we have included a number of non-English European references in their original language or in translation.

1.1 – Early cases of artificial nutrition and hydration

Moralists from the middle of the twentieth century were being asked questions about assisted feeding for comatose patients, and in their answers they drew on the theological tradition of ordinary and extraordinary means. We shall now consider the views of these theologians - McCarthy, Donovan, Sullivan, Kelly, Madden, Healy, O'Donnell and O'Callaghan - and the way they understood and applied that tradition.

²⁰ We will give two examples, one French and the other Italian. In a 1998 article by Durand and Saint-Arnaud (G. DURAND et J. SAINT-ARNAUD, “L'Alimentation et l'hydratation artificielles chez les patients qui sont en phase terminale et chez les comateux,” in *Laval théologique et philosophique*, 44 [1988], pp. 293-303) there are four references to French-language magisterial statements with the other references all being to English-language authors. A 1994 Italian dictionary article (S. LEONE, art. “Alimentazione artificiale,” in S. LEONE and S. PRIVITERA [eds.], *Dizionario di bioetica*, Bologna, EDB, 1994, pp. 33-35) has just one Italian reference (to a magisterial text) with all the other references being to English-language literature.

In 1941 J. McCarthy, writing in *The Irish Ecclesiastical Record*, answered a question about foregoing insulin.²¹ The case was not directly related to assisted nutrition and hydration, but McCarthy referred to feeding in his explanation of the principles. A woman needs insulin and later develops cancer. The prognosis is that she will live for six months in great pain. Can she stop the insulin and die in a diabetic coma, so avoiding the pain? His answer was no, using the principles of ordinary and extraordinary means. The insulin of itself is an ordinary and obligatory means, and her change of condition does not change the obligatory nature of the means. He focuses on the means, avoiding what would be now called a “quality of life” argument. The pain comes from the cancer and is extrinsic to the means under discussion. He develops an analogy using starvation: it would be wrong to starve oneself to death to avoid the pain of cancer (food is “more ordinary” than insulin). The situation would be different if the taking of insulin of itself was painful or difficult. What he is saying here, using the burden and benefit calculation, is that the burden must be linked to the means, not the patient.²²

In 1949 J.P. Donovan answered a question about a dying patient who could not eat naturally, lingering for weeks with intravenous feeding keeping him alive.²³ His answer was brief and definite: “I fear that to neglect intravenous feedings is a form of mercy killing rather than a means of sustaining life that is morally impossible to use.”

²¹ J. MCCARTHY, “Notes and Queries: Taking of Insulin to Preserve Life,” in *The Irish Ecclesiastical Record*, 58 (1941), pp. 552-554.

²² The notions of burden and benefit in relation to ordinary and extraordinary means will be taken up in detail later, on pp. 30ff.

²³ J.P. DONOVAN, “Letting Patients Die,” in *The Homiletic and Pastoral Review*, 49 (1949), p. 904.

However, other moralists, relying on the tradition of ordinary and extraordinary means, soon took different positions.

In 1950 J.V. Sullivan, in *The Morality of Mercy Killing*, took the view that, as a general rule, natural means (clothing, housing, good food, and so forth) were ordinary, whereas artificial means (iron lungs, intravenous feeding, and so forth) were extraordinary. However, he made the point that these were not absolute categories and that the judgement about the nature of the means had to be made in relation to the patient's physical condition.²⁴ He gave the case of a terminally ill cancer patient whose pain could not be treated except by ever-increasing doses of medication. The patient was slowly dying but could last for several weeks. Sullivan argued that intravenous feeding was optional "because the patient is beyond all hope of recovery."²⁵ This answer is quite different from McCarthy's in the similar case mentioned above. McCarthy argued that the burden arising from the means (feeding) was minimal. For Sullivan, the painful life was the burden, and this changed the obligatory nature of the means.

The suggestion that feeding be stopped to bring an end to the burdensome life is euthanasia as defined in the *Declaration on Euthanasia*, namely, an action or omission which by intention or effect leads to death to alleviate suffering.²⁶ Sullivan would have

²⁴ J.V. SULLIVAN, *The Morality of Mercy Killing*, Westminster, MD, Newman Press, 1950, p. 65.

²⁵ *Ibid.*, p. 72.

²⁶ SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on Euthanasia Iura et bona* (=Declaration on Euthanasia), 5 May 1980, in *Acta Apostolicae Sedis* (=AAS), 72 (1980), pp. 542-552 (English-language version in A. FLANNERY [gen. ed.], *Vatican Council II: The Conciliar and Post Conciliar Documents*, Grand Rapids, MI, Eerdmans, 1982, pp. 510-517; *The Pope Speaks* [=TPS], 25 (1980), pp. 289-296; and *Origins*, 10 [1980-1981], pp. 154-157). The definition is in the *Declaration on Euthanasia*, II.

been on safer ground arguing (as he does in other cases) for increased doses of pain relief, even if that risked shortening the patient's life. The key to evaluating the moral elements of the act is in the intention. The intention could be to relieve pain at the risk of death, to withdraw a burdensome and useless means, or to aim at death. However, the intention in some of the cases discussed here is sometimes hard to discern because of the way they are presented; important nuances and details are often not clearly explained. In the Sullivan case, for example, the physician makes the decision to withdraw feeding without reference to the (conscious) patient, who dies within a day. These details demand further elaboration if the analysis and answer is to be correctly evaluated. The difference here is not just in the solution but also in the way the principles of ordinary and extraordinary means are interpreted and applied.

The Jesuit theologian Gerald Kelly dealt with the matter of artificial means, and the background issue of the nature of ordinary and extraordinary means, in a series of articles between 1950 and 1957.²⁷ In his first foray into this difficult territory,²⁸ he surveyed the tradition with the purpose of analysing the principles in the light of modern medical problems. He was hesitant in the way he analysed various cases, offering what he termed "tentative" solutions.²⁹ Some of the cases involved intravenous feeding, one involving an unconscious patient in the final stages of a terminal illness. Kelly's careful

²⁷ G. KELLY, "The Duty of Using Artificial Means of Preserving Life," in *Theological Studies*, 11 (1950), pp. 203-220; "Keeping Patients Alive," in *Linacre Quarterly*, vol. 17, n. 3 (1950), pp. 10-12; "The Duty to Preserve Life," in *Theological Studies*, 12 (1951), pp. 550-556; "Medico-Moral Notes: Care of the Dying," in *Linacre Quarterly*, vol. 19, n. 4 (1952), pp. 109-111; "Notes on Moral Theology, 1953," in *Theological Studies*, 15 (1954), pp. 74-75; and "Preserving Life," in *Linacre Quarterly*, vol. 24, n. 1 (1957), pp. 10-12.

²⁸ See *Theological Studies*, 11 (1950), pp. 203-220.

²⁹ *Ibid.*, p. 213.

and precise analysis of the principles and the cases led him to conclude that, if the patient was imminently dying and the means in question was prolonging the dying, the nature of the remedy changed and became optional on the basis that it was “relatively useless.”³⁰

Kelly saw intravenous feeding as a remedy, but he distinguished remedies that supplanted a natural means of sustaining life (such as intravenous feeding and assisted oxygen), from remedies that were intended to cure a disease (such as an operation).³¹ Judged by the standards of classical moralists, these commonly available remedies were in fact ordinary means, but in Kelly’s thinking they were not always obligatory. In “hopeless” cases, when they merely delayed “the hour of death,” they were optional.³²

In the 1950 *Linacre Quarterly* article, Kelly dealt with the case of an incurably ill woman of seventy who had been kept alive in a coma for about a year and a half. He offered his opinion, again tentatively, that her intravenous feeding could be withdrawn.³³ This developed his thinking in two ways: it saw the intravenous feeding of a non-

³⁰ In fact, he argued that, if the illness was properly diagnosed as terminal, the artificial means not only need not but also should not be used (*ibid.*, p. 220).

³¹ *Ibid.*, p. 213.

³² *Ibid.*, p. 215. One of the reasons Kelly gave for being tentative in his answer was the danger of this being perceived as euthanasia: “I think that on purely speculative grounds the analysis just given is valid. Yet I frankly hesitate to give a practical answer (as Fr. Sullivan seems to do) allowing the physician to discontinue the intravenous feeding as a means of putting an end to the suffering. I fear that the abrupt ceasing to nourish a conscious patient might appear to be a sort of ‘Catholic euthanasia’ to many who cannot appreciate the fine distinction between omitting an ordinary means and omitting a useless ordinary means” (*ibid.*, p. 219).

³³ See *Linacre Quarterly*, vol. 17, n. 3 (1950), pp. 11-12. He does not specify the illness, but the case seems to be one where starvation would be the cause of death.

terminally ill comatose patient as extraordinary and optional, and it allowed for the physician to make the decision.³⁴

In 1951, J. Madden, writing in *The Australasian Catholic Record*, answered a question about the obligation to give “nourishment by artificial means to an unconscious senile patient” who had a life expectancy of a few weeks. In giving his answer, Madden applied the ordinary and extraordinary concepts. He thought that, in taxpayer subsidized public hospitals, artificial nourishment would be an ordinary and so obligatory means, unless the patient was dying.³⁵ This response did not focus on the feeding being artificial but on the burdens and the benefits of the feeding for the patient in relation to the condition of the patient. The feeding became extraordinary if it prolonged the patient’s dying.

E. Healy took up the same issues in his *Medical Ethics* of 1956.³⁶ For Healy, natural feeding is ordinary unless “useless.”³⁷ Intravenous feeding is also ordinary, but there are degrees of obligation. It is obligatory if it is effective in saving life, but there must be a proportion between good effects and inconveniences. It is not obligatory if there is “very grave” expense or inconvenience. Feeding is not required for a dying

³⁴ Kelly put it in terms of the decision being made “according to the prudent judgement of conscientious men” (ibid., p. 12). However, this seemed to contradict another principle that he had proposed, that the physician is bound by a greater duty to prolong life than is the patient. The patient has the option to use or forego extraordinary means, but the physician does not (see *Theological Studies*, 11 [1950], p. 216, and *Theological Studies*, 12 [1951], p. 551).

³⁵ See J. MADDEN, “Moral Theology: Some Problems of Nurses,” in *The Australasian Catholic Record*, 28 (1951), pp. 340-350. The case discussed here is on pp. 344-345.

³⁶ E.F. HEALY, *Medical Ethics*, Chicago, Loyola University Press, 1956, pp. 59-90.

³⁷ The example is a cancer patient with three months to live.

patient in a coma. Healy's most interesting case involves what he calls "gavage."³⁸ In this case a defective infant who cannot swallow needs permanent gavage and a full-time nurse to administer it. In Healy's opinion this is extraordinary on the basis of its permanence and because it would involve exceptionally grave inconvenience and cost. Where Healy differs from McCarthy is in the implicit "quality of life" aspect of his analysis, by which the burden of the non-dying patient's debilitated life, rather than the burden of the means of prolonging it, is decisive.³⁹

As noted above, Kelly remained tentative and cautious in his development of the principles and their application in difficult cases, yet other theologians were more confident, even though they were giving different opinions in similar cases. In surveying the tradition and these cases, Thomas O'Donnell remarked (in regard to the application of traditional principles to procedures such as intravenous feeding), that "the moderns go riding madly off in all directions."⁴⁰ O'Donnell set about summarizing the moralists' opinions before formulating his own principles for forgoing life-support. He rejected the opinion that artificial means were by that fact extraordinary, arguing that antibiotics would then be extraordinary. His view was that commonly used means (such as intravenous feeding) were ordinary, yet he followed the opinion of Kelly and Sullivan by

³⁸ Ibid., p. 89. Healy uses "gavage" as an English word, but it is from the French where it means stuffing or forced feeding. Its meaning in English is to introduce nutrition into the stomach by means of a feeding tube.

³⁹ He actually speaks of a "burdensome" life (ibid., p. 69).

⁴⁰ T.J. O'DONNELL, *Morals in Medicine*, Westminster, MD, Newman Press, 1956, p. 61.

proposing that even ordinary means could be discontinued under certain circumstances, specifically when the means prolonged the dying of the patient.⁴¹

D.F. O’Callaghan in 1965 gave an answer to a question about prolonging the life of a permanently unconscious person using intravenous feeding.⁴² In his answer, O’Callaghan reviewed two of Pius XII’s allocutions, including the principles of ordinary and extraordinary means. He distinguished between medically and morally ordinary, and argued (after Kelly) that a means is extraordinary if it does not offer reasonable hope of success or involves excessive inconvenience. While rejecting the idea that mere biological existence cannot be called “life,” he said that the fact of permanent unconsciousness means that the patient cannot return to “operative human life,” which is a factor in calculating burdens and benefits. Hence, the feeding does not achieve a beneficial result, and its inconvenience is very grave.⁴³

In summary, this early reflection on the withdrawal of assisted feeding and hydration reveals significant differences of opinion as to how the principles of ordinary and extraordinary means are to be understood and applied. The theological reflection in the intervening years, which has increased dramatically, has been marked by a similar

⁴¹ Ibid., pp. 64-65.

⁴² D.F. O’CALLAGHAN, “Duty to Prolong Life in the Hopeless Case,” in *The Irish Ecclesiastical Record*, 103 (1965), pp. 330-335.

⁴³ Ibid., p. 334. There is a “quality of life” standard implicit in O’Callaghan’s response. He requires a cure (or return to “operative human life”) and, in doing so, anticipates the arguments of later theologians such as McCormick who used and developed this idea. In response, various theologians have pointed out that the purpose of feeding is to maintain life rather than to restore consciousness.

confusion. There has been a renewed interest in looking at the historical development of the principles; some new ideas have been proposed, but no consensus reached.⁴⁴

1.2 – The development of the principles of ordinary and extraordinary means

In assessing the moral implications of foregoing means of life-support, theologians have frequently made use of the distinction between ordinary and extraordinary means of preserving life.⁴⁵ The distinction has had a long development in the Catholic moral tradition, and has been invoked in major magisterial pronouncements.⁴⁶ In the tradition, ordinary means are obligatory and extraordinary means are optional, and to neglect ordinary means was considered euthanasia. However, the concepts are complex and cannot be applied simplistically to the issue of withdrawing artificial nutrition and hydration. For a correct understanding and application of the principles, it is important to look at the way they developed in the moral tradition.

The most thorough study of the development of the principles relating to ordinary and extraordinary means is the 1958 doctoral dissertation of D. Cronin.⁴⁷ In fact, in the

⁴⁴ As we will see in our next chapter, this confusion is reflected in episcopal statements on the theme as well as in directives and guidelines for Catholic hospitals.

⁴⁵ The distinction has also been crucial in determining whether the act or omission amounted to euthanasia. This has been reflected in the various ethical and religious directives (or guidelines) for Catholic hospitals, such as directive 22 of the 1954 American and Canadian directives, art. 11 of the 1970 Canadian guidelines (the text is on p. 307 of Appendix XII), and directive 28 of the 1971 American directives (the text is on p. 307 of Appendix XII). These statements all declared that to neglect ordinary means to prolong life is the equivalent of euthanasia.

⁴⁶ The most important are Pope Pius XII's allocution, *Le Dr. Haid* (1957), and the *Declaration on Euthanasia* (1980).

⁴⁷ The thesis was published as *The Moral Law in Regard to the Ordinary and Extraordinary Means of Conserving Life*, Rome, Pontificia Universitas Gregoriana, 1958. It was

light of the debate about artificial nutrition and hydration, many other theologians have reviewed this history. In most cases they have reread Cronin to determine the relevance of the principles, relying on his translation and analysis of the source material.⁴⁸

However, they come to different conclusions about the implications and the relevance of this material. We propose to review Cronin's dissertation and will focus on the principles and the cases used by the traditional moralists to illustrate and explain their thinking.

Many of these cases involve food,⁴⁹ and there are a number of significant conclusions to be drawn that have direct implications for our study.⁵⁰

completed in 1956 but not published until 1958, after Pius XII's 1957 allocution *Le Dr. Haid*, which was the first magisterial use of the principles of ordinary and extraordinary means. It has been reprinted in R.E. SMITH (ed.), *Conserving Human Life*, Braintree, MA, Pope John XXIII Medical-Moral Research and Education Center, 1989, Part I, pp. xxii-145. The citations used here will be to the 1958 publication.

⁴⁸ Examples of such studies are: G.M. ATKINSON, "Theological History of Catholic Teaching on Prolonging Life," in D.G. MCCARTHY and A.S. MORACZEWSKI (eds.), *Moral Responsibility in Prolonging Life Decisions*, St. Louis, MO, Pope John Center, 1981, pp. 95-115; A. MORACZEWSKI, "The Moral Option Not to Conserve Life Under Certain Conditions," in R.E. SMITH (ed.), *Conserving Human Life*, Braintree, MA, Pope John XXIII Medical-Moral Research and Education Center, 1989, Part III, pp. 235-275; J.J. MCCARTNEY, "The Development of the Doctrine of Ordinary and Extraordinary Means of Preserving Life in Catholic Moral Theology Before the Karen Quinlan Case," in *Linacre Quarterly*, vol. 47, n. 3 (1980), pp. 215-223; K.D. O'ROURKE and D. BRODEUR, "Development of Church Teaching on Prolonging Life," in K.D. O'ROURKE and D. BRODEUR, *Medical Ethics: Common Ground for Understanding*, vol. II, St. Louis, MO, Catholic Health Association of the United States, 1986, pp. 120-140; and K.W. WILDES, "Ordinary and Extraordinary Means and the Quality of Life," in *Theological Studies*, 57 (1996), pp. 500-512.

⁴⁹ The other major issue discussed in these cases was radical surgery, such as amputation, which was invariably considered to be extraordinary and optional.

⁵⁰ Our study will concentrate on Cronin's second chapter, which he titles "Historical Report of the Opinions in Regard to the Ordinary and Extraordinary Means of Conserving Life." Here he surveys the teaching of the relevant moralists, from Vitoria (died 1546) to those of the twentieth century. His presentation is chronological and traces the historical development of the teaching. Cronin includes the original Latin text in an appendix, using his own translations in the main text. His analysis of the principles follows his second chapter.

We are proposing that two important conclusions can be drawn from this material. The first is that there is a distinction between preserving and prolonging life, and that there is a corresponding greater duty to preserve life. The second conclusion, linked to the first, is that, while there is a greater obligation to use “natural” means than “artificial” means,⁵¹ artificial means were also obligatory insofar as they were necessary to preserve life.⁵²

The first authority cited by Cronin is Thomas Aquinas, whose teaching about the preservation of life influenced the tradition for centuries. The relevant quote is as follows: “A man has the obligation to sustain his body, otherwise he would be a killer of himself . . . by precept, therefore, he is bound to nourish his body and likewise, we are bound to all the other items without which the body can not live.”⁵³ Thomas is talking here about our duty to preserve life. We have a corresponding obligation to use food and every other “means” necessary to live. The language of “means” and the distinction between “ordinary” and “extraordinary” means came later, but this remained the fundamental doctrinal principle for the theologians who later developed more nuanced moral principles for preserving and prolonging life.

⁵¹ The moralists studied by Cronin distinguished “natural” means and “artificial” means. Natural means were those that were *per se* ordered to preserving life, such as food. Artificial means were medicines and the like.

⁵² Modern theologians sometimes claim that an artificial means is always extraordinary and so optional. We hope to establish that this is not the teaching of the moralists who developed the tradition.

⁵³ «Praecipitur autem homini quod corpus suum sustentet, alias, enim est homicida sui ipsius . . . ex praecepto ergo tenetur homo corpus suum nutrire et similiter ad omnia sine quibus corpus non potest vivere, tenemur.» (Cronin, *The Moral Law*, p. 48, fn. 3. The cited text is from *Super Epistolas S. Pauli, II Thess.*, Lec. II, n. 77.) The translation used here and throughout this section is Cronin’s.

This basic distinction between preserving and prolonging life is reflected in the teaching of Vitoria, the first moralist in Cronin's presentation. Vitoria spoke of the necessity of preserving life with food: "I would say secondly that if a sick man can take food or nourishment with a certain hope of life,⁵⁴ he is held to take the food, as he would be held to give it to one who is sick."⁵⁵

Vitoria then takes up the matter of a person who, because of a "depression of spirit," was unable to take food. He speaks of a "certain impossibility" that would partially excuse the patient from eating in this circumstance. Vitoria, however, qualifies this in two ways: first, he is excused from mortal sin, implying that what he does is wrong but less culpable, and, second, he adds, "especially where there is little hope of life, or none at all." Vitoria's qualifications reflect the difficulty he had in agreeing to the notion that food as a means of preserving life could be foregone.

Vitoria puts this case in very simple terms. We do not know the reason for the "depression of spirit," but, given his later remark, "where there is little hope of life, or none at all," it could be associated in Vitoria's mind with a life-threatening illness. Perhaps the case involved something similar to a modern eating disorder, such as anorexia. Another and more extreme case would be the dilemma of shipwreck survivors who can only survive by eating human flesh. Vitoria recognizes the possibility of

⁵⁴ «Ad argumentum in contrarium, ad primum ... Secundo dico quod si aegrotus potest sumere cibum, vel alimentum cum aliqua spe vitae, tenetur sumere cibum, sicut teneretur dare aegrotanti.» (Cronin, *The Moral Law*, appendix n. 5, p. 164.) Vitoria's Latin text and Cronin's translation are in our Appendix I.

⁵⁵ Cronin, *The Moral Law*, p. 48. This passage also illustrates Vitoria's conviction that the duty to preserve life included the obligation to provide what was necessary to preserve another's life.

revulsion for food leading to eating being a “moral impossibility.” However, he is reluctant to conclude that food could be an option. Like Vitoria, while we might acknowledge that there could be a revulsion for food (or a particular food), we would hesitate to say that food was extraordinary and optional for a person with a real choice.⁵⁶

In his explanation, he distinguishes food from drugs. He sees food as *per se* a natural means ordered to life; drugs are not. Man is not held to all means, only to those that are *per se* intended for that purpose.⁵⁷ Drugs would also be obligatory if there is moral certitude that they would restore health and that, without the drug, the patient would die.⁵⁸ This is in keeping with his fundamental premise, that there is a greater obligation to preserve life than to prolong it.

In another passage, Vitoria restates the distinction between preserving and prolonging life: “it is one thing not to protect life and it is another to destroy it: for man is not always held to the first and it is enough that he perform that by which regularly a man

⁵⁶ This distinction between preserving and prolonging is reflected in a 1962 dictionary article: L. BENDER, “Acceleration of Death,” in C. ROBERTI, compiler, and P. PALAZZINI (ed.), *Dictionary of Moral Theology* (= *Dictionary of Moral Theology*), translated from the 2nd Italian ed. under the direction of H.J. YANNONE, Westminster, MD, Newman Press, 1962, p. 18. Bender says one can never intentionally hasten death. However, for reasons of grave necessity or grave usefulness one can lead a life or perform an act that will shorten life or even hasten death. His examples are drinking alcohol or working in an unhealthy place.

⁵⁷ This explanation reflects Vitoria’s underlying philosophical attitudes. This basis, and the need for a precise hermeneutic approach in our way of interpreting and applying the resulting teaching, has been highlighted by D. GRACIA in his “Doctrine of Ordinary and Extraordinary Means,” in K.W. WILDES (ed.), *Critical Choices and Critical Care: Catholic Perspectives on Allocated Resources in Intensive Care Medicine*, Philosophy and Medicine No. 51, Dordrecht, Kluwer Academic Publishers, 1995, pp. 119-125. Gracia points out the Aristotelian and naturalistic philosophical presuppositions of the time.

⁵⁸ Cronin, *The Moral Law*, p. 49. The term used for food is *alimentum* (ibid., appendix n. 5, p. 164).

can live.”⁵⁹ He explains the distinction using the example of food: one is not held to use the best foods, but he is merely held to use that food which suffices for conserving strength.⁶⁰ What was considered extraordinary was the type of food, not food itself.⁶¹

The moralists after Vitoria were content, for the most part, to follow his teaching, often *verbatim*. For example, Sanchez (died 1610) taught that it was licit to fast and abstain from common foods, “as long as the food necessary for the nourishment and conservation of the individual is taken.”⁶²

The next major moralist in this tradition was Cardinal De Lugo (died 1660). De Lugo posited a distinction between the positive and negative ways a person could influence his own death. The example he gives of a positive way is killing oneself with a sword. The example of a negative way is not attempting to escape danger (such as not

⁵⁹ Cronin, *The Moral Law*, p. 49 and appendix, n. 6, p. 164. The text is «Quod aliud est non protelare vitam, aliud est abrumpere: nam ad primum non semper tenetur homo et satis est, quod det operam, per quam homo regulariter potest vivere.»

⁶⁰ Cronin, *The Moral Law*, pp. 49-50. The best foods, according to Vitoria, would be partridges, hens and chickens; common food would be eggs (*ibid.*, p. 50). The principle could be applied to modern eating practices considered significant for prolonging life. One can eat “junk” or “fast” food, not just the most healthful food, but not overeat to the point of death. One can fast or eat in moderation, as long as there is no threat to life itself. Living involves compromise and a certain level of risk, short of recklessly endangering one’s life.

⁶¹ Bañez coined the terminology of ordinary and extraordinary later. See J. JANINI, “La operación quirúrgica, remedio ordinario,” in *Revista española de teología*, 18 (1958), p. 335. Janini’s study deals with the same authors as in Cronin, but from the point of view of surgery. He calls the ordinary and extraordinary distinction “la distinción Bañeciana” (*ibid.*).

⁶² Cronin, *The Moral Law*, p. 55. «Licetum est jejunare et abstinere etiam a communibus cibis, non tantum, quo ad pluralitatem comestionum sed etiam quantum ad quantitatem, dummodo sumatur cibus necessarius ad alimentum et conservationem individui». In the explanation that follows, Sanchez speaks of the intention involved: «Probatur quia hoc non est intendere abbreviare vitam, seu occidere se, sed tantum est uti mediis ordinatis a natura ad sustentationem et non prolongare vitam, ad quod nullus tenetur ut dixi.» (*Ibid.*, appendix, n. 28, p. 167.)

running from a lion or a fire). Somewhat surprisingly, he says that the individual who abstains from easily obtained food necessary for life is in the first category.⁶³ The point is emphasized in a later passage: “. . . he who does not employ the ordinary means which nature has provided for the ordinary conservation of life is considered morally to will his death.”⁶⁴

The distinction between preserving and prolonging is reflected in another case discussed by De Lugo. A man is condemned to death by fire, and while in the fire he discovers he has enough water to put out part of the fire and prolong his life briefly. De Lugo, citing the principle [*parum*] *moraliter pro nihilo reputatur*, argues that he is not bound to use the water. However, if he could extinguish the fire completely, he would be bound. In other words, he is not bound to prolong but is bound to preserve his life.⁶⁵ This case, and De Lugo’s conclusion, points to an important principle related to ordinary and extraordinary means, the principle of benefit. There must be some hope of benefit for a means to be obligatory.

Another of De Lugo’s principles links ordinary means with how men “commonly” live. He posits an obligation for a religious novice that is different from that of someone living in the world. A novice would not be bound to return to the world to eat

⁶³ Cronin, *The Moral Law*, pp. 60-61. The Latin text includes the phrase *abstinere a cibo necessario ad vitam sustentandam*.

⁶⁴ Cronin, *The Moral Law*, p. 63. «Dixi tamen, contra pericula, et mortem ex causis naturalibus provenientem debere hominem mediis ordinariis, vitam tueri quia qui media ordinaria negligit, videtur negligere vitam, atque ideo negligentem se in ejus gubernatione gerere, et moraliter censetur velle mortem, qui mediis ordinariis non utitur, quae natura providit ad ordinariam vitae conservationem.» (Ibid., appendix n. 55, p. 169.)

⁶⁵ Cronin, *The Moral Law*, p. 64 and appendix n. 59, p. 169.

better food for the sake of his health; he is only bound to what is common for those in religion.⁶⁶

The later moralists tend to teach in a similar way. Cronin makes the point that there were no major developments until medical science presented new problems for solution. However, the reflection continued with subtle variations. In his teaching, La Croix (died 1714) maintained the distinction between preserving and prolonging in these words: “the prolongation of life implies a singular assiduity to which we are not held, whereas the non-abbreviation or the conservation of life implies only a common diligence to which we are obliged.”⁶⁷

Cronin, in summarizing the doctrine of ordinary and extraordinary means, makes an observation about the distinction between artificial and natural means that is pertinent to our theme. The earlier diffidence about the obligation to use artificial means was because they were, for the most part, ineffective in prolonging life. As medical science progressed and confidence about the efficacy of the means increased, theologians increasingly urged them as obligatory. As Cronin says in regard to Vitoria’s teaching: “Ordinarily, these artificial means are obligatory too if they can be obtained and used conveniently and with some certitude of benefit.”⁶⁸

⁶⁶ Cronin, *The Moral Law*, p. 66. Could this be applied to another “class” of person, the patient in the persistent vegetative state? The artificial nutrition and hydration needed to sustain life is very different from ordinary nourishment, but it is “commonly” proper to those in that state.

⁶⁷ Cronin, *The Moral Law*, p. 73. «Ratio est vitam prolongare importat singulare studium, ad quod non tenemur, e (sic) contra non abbreviare et conservare importat commune tantum studium ad quod tenemur.» (Ibid., fn. 95, p. 73; the emphases are in Cronin’s text.)

⁶⁸ Cronin, *The Moral Law*, p. 92.

In summary, the moral tradition of the ordinary and extraordinary means as reflected in Cronin's cases distinguishes between preserving and prolonging life. In the matter of preserving life, there is a greater obligation to use the available means. In fact, any means necessary to preserve life is obligatory. In applying the principles to a patient in the persistent vegetative state who needs assisted feeding, we are dealing with preservation rather than prolongation of life. If possible, life must be preserved, whatever the means.⁶⁹ Many of the recent applications of the principles to assisted nutrition and hydration have applied the principles for prolonging life and have overlooked the more basic obligation to preserve life.⁷⁰

There are some other considerations involved in applying the traditional principles. The thinkers who developed the tradition were what we would now call moral theologians, and their chief concern was sin. There are many references to mortal sin and degrees of sinfulness. They were not concerned with the legal consequences of the actions, canonical or civil. Further, they never dealt with permanent unconsciousness, nor assisted nutrition and hydration. They were, for the most part, looking at the moral obligation of a conscious subject in regard to his own life.⁷¹ Hence, there are references

⁶⁹ Naturally, a physical impossibility (for example, the patient being unable to ingest food) or moral impossibility (incapacity to continue supplying the feeding) changes the moral quality of the act of withdrawing feeding. Gracia's summary of the development of the tradition in its historical context is: "It was a mere application of the theory that extremely difficult actions cannot be considered morally obligatory" ("Doctrine of Ordinary and Extraordinary Means," p. 122).

⁷⁰ Gracia holds that many of the interpretations are intuitive and emotional rather than properly rational (*ibid.*, p. 119).

⁷¹ We will take up this point later in our review of the theological discussion regarding burdens and benefits. In brief, theologians such as Gracia and Meilaender argue that a decision that has repercussions for life itself cannot be made for another person.

to suicide but not to homicide. The one exception to this general rule is when they speak about obligations to help others preserve life: a person with the means to preserve another's life is morally bound to share them.

In this tradition, the calculation of what we now call burdens and benefits was linked to the means. Hence, they looked at the benefit of the means in terms of preserving life or healing, and weighed the burdens involved, such as the pain of the surgery, the revulsion to the particular food, and so forth. In applying the principles, we should pay careful attention to the nuance in their earlier exposition. In particular, we should be careful in applying the burdens associated with amputation (and its understandable reaction of *vehemens horror*) to other means such as assisted feeding and hydration. Perhaps with this specific issue we should only apply the principles that can be gleaned from the moralists' teaching on food, and their cases involving food, and a case can be made for the proposition that food necessary to sustain life was always an obligatory means. It is arguable whether the ordinary and extraordinary language can be applied to food at all, natural or assisted.

Finally, there were no "quality of life" arguments. The fundamental principle was what would now be called the sanctity of life, which imposed a duty to both preserve and to prolong life.

1.3 – Burdens and benefits in contemporary theological reflection

In discussing the principles and cases which led to the development of the doctrine of ordinary and extraordinary means of preserving and prolonging life,

theologians have determined the nature of the means by analysing the “benefits” and “burdens” associated with them. Things such as cost, availability, usefulness, and psychological factors were the elements of a “calculus” by which burdens and benefits are weighed to determine whether the means was obligatory. This necessarily involved subjective as well as objective considerations.

Contemporary theologians have continued to use this method in dealing with difficult medical dilemmas.⁷² The basic principle that extraordinary means are optional is quite simple. However, the task of assigning a particular means as belonging to the ordinary or extraordinary category has been exceedingly difficult. It is a moral rather than a medical issue; a means may be medically ordinary but morally extraordinary in the light of the patient’s situation. When it comes to assisted feeding and hydration, there are many different ways of understanding and assessing burdens and benefits, and many different conclusions as to their moral significance.

As with ordinary and extraordinary means, theologians have looked at the moral tradition to assist in the understanding of how burdens and benefits can be understood and applied. Cronin has analysed that tradition and discerned several attributes that characteristically determine means as ordinary or extraordinary; this is the source of most of the subsequent discussion about burdens and benefits.⁷³ In Cronin’s analysis, ordinary

⁷² The terminology and method is reflected in Directive 58 of the 1994 NCCB *Ethical and Religious Directives for Catholic Health Care Services* (17 November 1994, in *Origins*, 24 [1994-1995], p. 449) which reads: “There should be a presumption in favor of providing nutrition and hydration to all patients, including patients who require medically assisted nutrition and hydration, as long as this is of sufficient benefit to outweigh the burdens involved to the patient.”

⁷³ Most of the third chapter of Cronin’s dissertation is spent on this task, and the results are also summarized at the end of the dissertation under the title “Conclusions and Résumé” (Cronin, *The Moral Law*, pp. 160-163).

means must offer some hope of success (*spes salutis* or *spes vitae*) and they must be commonly and easily available in relation to the patient's circumstances and means. Extraordinary means are those that are not commonly available, or, if they are commonly available, there is some physical or moral impossibility in their use, or they offer no proportionate benefit.⁷⁴

The contemporary theological arguments relating to burdens and benefits form two broad groups, those that argue for withdrawal, and those that argue against withdrawal. We will deal first with the way pro-withdrawal arguments deal with burdens and benefits.

1.3.1 – Burdens and benefits in arguments for withdrawal of assisted feeding

Many of the arguments for the withdrawal of assisted nutrition and hydration are thematically linked to the discussion of burdens and benefits or derive from them in one form or another. We will review these arguments in relation to several themes: one is the notion that assisted nutrition and hydration is an artificial and therefore optional means; another has shifted the focus from the patient to evaluate burdens and benefits for the caregiver; a third shifts the focus from the means to the quality of life of the patient. The arguments about quality of life have also been used to justify the withdrawal of life-support of defective newborn infants, and so we need to survey these arguments as well. We will conclude this section with a different type of argument for the withdrawal of

⁷⁴ Cronin, *The Moral Law*, p. 161.

assisted nutrition and hydration, namely, that when such life-support is withdrawn it is the underlying pathology and not starvation that is the cause of death.

We will attempt to present these arguments as accurately as possible, and in the next section we will deal with the arguments, theological and otherwise, for retaining assisted nutrition and hydration. These, quite understandably, will often take up and attempt to rebut the arguments for withdrawal. There are strongly held views and good will on both sides. We have attempted to present the arguments for both sides critically and yet objectively, while acknowledging that it is difficult being objective when the subject matter has life and death implications. At the outset we will acknowledge that, having carefully considered this material, we have taken a position in favour of retaining assisted nutrition and hydration. We hope to be able to propose and defend this position credibly.

1.3.1.1 – Artificial means *per se* optional

Theologians use the burden and benefits analysis in a number of ways. Some focus on the nature of the means in itself. One position taken by a number of theologians is that assisted feeding and hydration, being an artificial means, is extraordinary and so not obligatory.⁷⁵ Bayer argues that any “contrivance” is a burden that, over a long period of time, becomes an extraordinary means.⁷⁶ A similar position was taken in 1956 by

⁷⁵ For example, P. CORKERY, “Ethics for Health Care,” in *The Furrow*, 46 (1995), pp. 407-415. Corkery reviews the debate and gives his own views without presenting arguments for them.

⁷⁶ E.J. BAYER, “Intubation of the Irreversibly Comatose: A Response to Robert Barry, O.P.,” in *Linacre Quarterly*, vol. 55, n. 1 (1988), pp. 77 and 78.

Healy who argued that any “permanent adjunct required to keep the patient alive” was extraordinary.⁷⁷

1.3.1.2 – Emphasis on burdens to the caregiver rather than the patient

We have seen that the theologians who developed the doctrine of the ordinary and extraordinary means of prolonging life focused exclusively on the burdens and benefits of a particular means to the patient. Many contemporary theologians, however, have tended to look more at the burdens to the caregivers and the community. Their views take different forms. Some argue that, since the patient is unconscious, the focus must be exclusively on the burdens experienced by the caregivers. Others acknowledge these burdens as part of the calculation, while giving primary attention to the patient.

B. Ashley represents the first view and argues that it is only the burden to the caregivers, and to the community, which can be considered.⁷⁸ T. Bole argues that any cost at all to the caregiver renders the means extraordinary.⁷⁹ T.F. Schindler goes further than other authors in proposing that, because of the limited resources available for healthcare, assisted feeding and hydration should never be an option for a patient in the

⁷⁷ HEALY, *Medical Ethics*, p. 70.

⁷⁸ B.M. ASHLEY, “Euthanasia and Over-treatment,” in E. SGRECCIA, A.G. SPAGNOLO and M.L. DI PIETRO (eds.), *L’assistenza al morente: Aspetti socio-culturali, medico-assistenziali e pastorali*, Milan, Vita e Pensiero, 1994, p. 350.

⁷⁹ T.J. BOLE, “Why Almost Any Cost to Others to Preserve the Life of the Irreversibly Comatose Constitutes an Extraordinary Burden,” in K.W. WILDES, F. ABEL and J.C. HARVEY (eds.), *Birth, Suffering, and Death: Catholic Perspectives at the Edges of Life*, Philosophy and Medicine, n. 41, 1992, Dordrecht, Kluwer Academic Publishers, pp. 171-187.

persistent vegetative state.⁸⁰ G.K. Donovan takes a more moderate approach: while agreeing that burdens to caregivers must be considered, the burdens to the patient take precedence. This author also points out that Directive 58 of the NCCB 1994 *Ethical and Religious Directives for Catholic Health Care Services* spoke only of benefits and burdens to the patient.⁸¹

1.3.1.3 – The shift of focus from the means to the quality of life

Another shift moves the focus from the means itself (such as the burden of the cost of feeding) to the burdensome condition of the patient. This brings us to the “quality of life” debate. In this debate theologians argue that a minimum quality of life is necessary to justify life-sustaining measures. When it comes to assessing the benefits and burdens of assisted feeding and hydration, they will argue that, because the feeding is unable to restore this basic quality to a patient in the persistent vegetative state, it has no benefit and so is extraordinary.

R. McCormick has proposed this view over many years. McCormick has argued that, whenever we propose a reason for withdrawal of life-support, there is an implicit quality of life dimension to the argument. He would say that Bishop Casey’s brief in the

⁸⁰ T.F. SCHINDLER, “Implications of Prolonging Life,” (letter) in *Health Progress*, vol. 69, n. 4 (1988), p. 12.

⁸¹ G.K. DONOVAN, “Decisions at the End of Life: Catholic Tradition,” in *Christian Bioethics*, 3 (1997), pp. 193, 195.

Quinlan case, with its argument about Quinlan's comatose state, inevitably led to a quality of life analysis.⁸²

Many agree with McCormick and have elaborated specific qualities necessary to justify continued use of life-support means. O'Rourke's position is that the prolonged unconscious life is itself the burden on which the analysis must focus.⁸³ He and many others have argued that there is no benefit if assisted feeding and hydration cannot return the patient to some kind of "meaningful" existence.⁸⁴ O'Callaghan had already proposed this idea in 1965 when he argued that there must be a return to "operative human life."⁸⁵ Theologians have taken up this theme more recently in a number of ways. Ashley argues that "true" benefit to the patient requires that the means restore "specifically human functioning."⁸⁶ Bayer deems that the recognition, at least minimally, of the presence and

⁸² The argument has been developed in a number of McCormick's writings, such as "The Quality of Life, the Sanctity of Life," in R.A. MCCORMICK (ed.), *How Brave a New World: Dilemmas in Bioethics*, New York, Doubleday, 1981, p. 385. Bishop Lawrence Casey was the diocesan bishop of Paterson, New Jersey, Karen Quinlan's diocese, and his *amicus curiae* brief can be found in *Origins*, 5 (1975-1976), pp. 337, 339-342. McCormick would argue that, even if the patient is imminently dying, whether in hours, days or weeks, withdrawal of life-support involves a quality of life decision. A good summary of McCormick's and others' views on the theme is in J.J. WALTER, "The Meaning and Validity of Quality of Life Judgments in Contemporary Roman Catholic Medical Ethics," in *Louvain Studies*, 13 (1988), pp. 195-208.

⁸³ K. O'ROURKE, "The A.M.A. Statement on Tube Feeding: an Ethical Analysis," in *America*, 155 (1986), p. 331.

⁸⁴ See L.S. CAHILL, "A 'Natural Law' Reconsideration of Euthanasia," in *Linacre Quarterly*, vol. 44, n. 1 (1977), pp. 47-63. In this article Cahill, following McCormick, argues the case for the necessity of a meaningful existence. She also tentatively argues for direct intervention to end the life of a suffering patient (p. 53). This is not McCormick's position, but her argument flows from McCormick's analysis of intention and proportionate reasoning. This article appeared before the 1980 *Declaration on Euthanasia*, but Cahill has continued to pursue this line in later publications. (See, for example, "Respecting Life and Causing Death in the Medical Context," in *Concilium*, vol. 179, n. 3 [1985], where she develops the idea at p. 36).

⁸⁵ O'CALLAGHAN, "Duty to Prolong Life in the Hopeless Case," p. 334.

⁸⁶ B.M. ASHLEY, art. "Life, Prolongation of," in *NCE*, vol. 17, p. 352.

workings of other personal beings “marks one as a human being.”⁸⁷ Moraczewski requires consciousness;⁸⁸ Kopfensteiner requires a capacity to communicate;⁸⁹ Boyle, King and O’Rourke require “cognitive-affective” function.⁹⁰ Other authors require restoration of a “spiritual” capacity,⁹¹ a minimal capacity for pursuing the goals of life, or a relationship capacity, specifically, a “loving” relationship.⁹²

Many theologians invoke Pius XII’s teaching that spiritual goals take precedence over the earthly,⁹³ and argue for a superiority of the spiritual.⁹⁴ Another way of

⁸⁷ E.J. BAYER, “Perspectives from Catholic Theology,” in J. LYNN (ed.), *By No Extraordinary Means: The Choice to Forgo Life-Sustaining Food and Water*, Bloomington, Indiana University Press, 1986, p. 93.

⁸⁸ A. MORACZEWSKI, “The Moral Option Not to Conserve Life Under Certain Conditions,” in R.E. SMITH (ed.), *Conserving Human Life*, Braintree, MA, Pope John XXIII Medical-Moral Research and Education Center, 1989, Part III, pp. 252 and 269. This lengthy article is an analysis of the ordinary and extraordinary tradition as found in Cronin’s book. While agreeing that the theologians who developed the principles only dealt with conscious patients, Moraczewski goes on to say that the requirement of benefit (usually seen as recovery) can now be interpreted as the regaining of consciousness (p. 252). It is our view that this is an incorrect interpretation of the tradition.

⁸⁹ T.R. KOPFENSTEINER, “Death With Dignity: A Roman Catholic Perspective,” in *Linacre Quarterly*, vol. 63, n. 4 (1996), pp. 64-75.

⁹⁰ P. BOYLE, L. KING and K. O’ROURKE, “The Brophy Case: The Use of Artificial Nutrition and Hydration,” in *Linacre Quarterly*, vol. 54, n. 2 (1987), p. 68; see also K. O’ROURKE, “The A.M.A. Statement,” p. 322.

⁹¹ This group includes SCHINDLER, “Implications of Prolonging Life,” p. 12; ASHLEY, “Euthanasia and Over-treatment,” p. 349; G. COLEMAN, “Basic Issues in The Debate Over Dying,” in *Origins*, 27 (1997-1998), p. 665; O’ROURKE, “The A.M.A. Statement on Tube Feeding,” p. 322; and O’ROURKE, “Open Letter to Bishop McHugh: Father Kevin O’Rourke on Hydration and Nutrition,” in *Origins*, 19 (1989-1990), p. 352.

⁹² R.M. GULA, “Quality of Life: A Focus of the Patient’s Total Good,” in *Health Progress*, vol. 69, n. 6 (1988), p. 36.

⁹³ Pius XII said that “life, health, all temporal activities are in fact subordinated to spiritual ends,” (1957 allocution, *Le Dr. Haid*, *TPS*, 4 [1958], p. 396).

⁹⁴ E. MCMILLAN, “The Catholic Moral Tradition on Providing Food and Fluids,” in *Linacre Quarterly*, vol. 54, n. 4 (1987), p. 62.

strengthening this argument is to assert that maintaining merely biological functioning is not in keeping with faith in the resurrection.⁹⁵ Paris, in arguing against maintaining merely biological existence, goes as far as saying that the idolatry of life is a “Christian heresy.”⁹⁶

1.3.1.4 – Quality of life and defective new-borns

Quality of life issues feature prominently in the debate about defective newborn infants, who are often left to die of starvation. This is by no means a modern problem; leaving children to die of exposure and starvation has had a long history, with its attendant Church prohibitions and sanctions.⁹⁷ There is a long canonical tradition linking this with the exposure of the sick leading to their death.⁹⁸ A relatively recent example is

⁹⁵ R. CASPAR, “Food and Water: Symbol and Reality,” in *Health Progress*, vol. 69, n. 4 (1988), p. 58.

⁹⁶ J.J. PARIS, “Withholding or Withdrawing Nutrition and Fluids, What Are the Real Issues?” in *Health Progress*, vol. 66, n. 10, (1985), p. 23. Gula speaks of an “idolatrous reverence of the body” (“Quality of Life: A Focus of the Patient’s Total Good,” in *Health Progress*, vol. 69, n. 6 [1988], p. 36). These ideas reflect a philosophy of the person that, at first glance, seems opposed to the Christian anthropology of *Evangelium vitae* n. 87 that rejects dualism and affirms the sanctity of life “at every stage and in every situation.” Pope John Paul II develops this further when he describes human life as an “indivisible good.” S. Leone takes up these philosophical aspects from an historical perspective in his “Qualità della vita,” in *Dizionario di bioetica*, pp. 812-815. The idea is further developed in the CDF *Declaration on Procured Abortion* which acknowledges that temporal life may sometimes be risked for higher values, and then adds: “but man can never be treated simply as a means to be disposed of in order to obtain a higher end.”

⁹⁷ There is an extensive literature on this topic. For an overview, see P. PALAZZINI, art. “Exposure of Infants,” in *Dictionary of Moral Theology*, pp. 491-493; C. KULANECK, art. “Infanticidium,” in P. PALAZZINI (ed.), *Dictionarium morale et canonicum*, (= *Dictionarium morale et canonicum*), 4 vols., Rome, Catholic Book Agency, 1962-1968, vol. II, pp. 701-703; J.A. RYAN, art. “Foundling Asylums,” in *The Catholic Encyclopedia* (= *CE*), 1999 online edition, <<http://www.newadvent.org/cathen/06159a.htm>> (12 March 2001).

⁹⁸ In the canonical tradition this is called “qualified” homicide. P. Palazzini distinguishes *homicidium qualificatum* from *homicidium simplex*; its special character derives from the additional evil arising from the type of victim or the place of the crime («Si ipso homicidio

the canonical treatise of E. Grandclaude in 1883.⁹⁹ In explaining the problem he makes reference to *exponendo mortis periculo alimentis destitutos, vel alimenta negando ad quae tamen omni iure tenentur*.¹⁰⁰ Later he says: «Si languidus exponatur cum periculo vitae et pereat, est formale homicidium.»¹⁰¹

accedit specialis malitia vel sacrilegii personalis aut localis,» from art. “Homicidium,” in *Dictionarium morale et canonicum*, vol. 2, pp. 556-558). The best-known example is parricide (referring not just to the killing of the father but to the killing of any close relative). Parricide involves a violation of the virtue of piety. Similarly, the killing of a priest or religious violates the virtue of religion and justice. (See BENDER, art. “Murder,” in *Dictionary of Moral Theology*, p. 804.) Other qualified homicides include regicide, infanticide and feticide. There is a vestige of the concept in canon 1370 that provides penalties for physical attacks on the Pope, bishops, clerics and religious. This is listed as a crime against the freedom of the Church, and canon 1397 adds further penalties for homicide against those same persons, this time under the category of crimes against human life and freedom. The concept is reflected in the *Catechism* n. 2268, which lists several crimes under the title “wilful homicide” that come under the general category of parricide. (The list is taken directly from *Gaudium et spes* 51 §3). See also J. CHELODI, *Ius canonicum de delictis et poenis et de iudiciis criminalibus*, ed. V, recognita et aucta a P. CIPROTTI, Vicenza, Società Anonima Tipografica, 1943, p. 115; and A. BRIDE art. “Homicide” in R. NAZ, director, *Dictionnaire de droit canonique* (=DDC followed by the volume number), 7 vols., Paris, Librairie Letouzey et Ané, 1935-1965, vol. 5, col. 1163.

There is a similar civil law crime in NSW: “Whosoever by threats or force prevents, or endeavours to prevent, any member of the clergy, or other person duly authorised in that behalf, from officiating in a place of divine worship, or from the performance of his or her duty in the lawful burial of the dead in a burial-place, or strikes, or offers any violence to, any member of the clergy, or minister engaged in, or to the knowledge of the offender about to engage in, any of the duties aforesaid, or going to perform the same, shall be liable to imprisonment for two years” (an amendment to the NSW Crimes Act which became effective 17 March 1998).

⁹⁹ E. GRANDCLAUDE, *Ius canonicum juxta ordinem Decretalium, recentioribus Sedis Apostolicae decretis et rectae rationi in omnibus consonum* (=Ius canonicum followed by the volume number), 3 vols., Paris, V. Lecoffre, 1882-1883. Grandclaude treats this theme under titulus XI, “de infantibus et languidis expositis,” t. 3, pp. 348-350.

¹⁰⁰ Ibid., p. 348.

¹⁰¹ Ibid., p. 349.

The modern debate about children takes up many of the same issues. Quality of life criteria, both for the infant and the parents, are a feature of this debate.¹⁰² McCormick has been prominent here, and has argued his position in an influential article first published in 1974 and republished in 1981.¹⁰³ In this article McCormick proposed guidelines to determine which defective infants should be treated, and, by inference, which should not. He discussed the well-publicized “Baby Boy Houle” and “Johns Hopkins” cases. “Baby Boy Houle” had been born terribly deformed and needed a minor operation, which his parents refused. Similarly, the “Johns Hopkins case” involved a Down’s syndrome baby who also needed a minor operation. McCormick agreed with the decision in the first, but not the second. He argued that we need to analyse the means (here the means refers to the operation) in relation to the sort of life that would follow.

¹⁰² In our next chapter we will deal with papal statements that take up this theme. The most important is *Evangelium vitae* n. 14, in which the Pope condemns the custom of denying “the most basic care, even nourishment . . . to babies born with serious handicaps or illnesses.”

¹⁰³ R.A. MCCORMICK, “To Save or Let Die: The Dilemma of Modern Medicine,” in *America*, 130 (1974), pp. 6-10; and in idem (ed.), *How Brave a New World: Dilemmas in Bioethics*, New York, Doubleday, 1981, pp. 339-351. The *America* article elicited many responses, and several, with McCormick’s detailed reply, were printed in *America*, 131 (1974), pp. 169-173. According to M. Allsopp, McCormick’s principles enunciated in this article were used by the University of Oklahoma Health Sciences Center to determine which infants born with spina bifida were to receive treatment, resulting in legal action against the Center over the deaths of twenty-four infants. (See M. ALLSOPP, “Early Management and Decision-Making for the Treatment of Myelomeningocele at the University of Oklahoma Health Sciences Center: Observations Clinical and Ethical,” in *Linacre Quarterly*, vol. 53, n. 1 [1986], pp. 56-65.) Allsopp’s article says the infants died “without benefit of surgery, antibiotics or sedation,” but does not mention feeding (ibid., p. 56). In most of the celebrated cases the children have been starved to death.

Two situations or “qualities” would render the means optional: if it resulted in “one long oppressive convalescence,” and if there was no capacity for (future) relationships.¹⁰⁴

McCormick did not discuss assisted feeding and hydration as a means in this article, but mentioned as a matter of fact that, in the “Johns Hopkins” case, the child died of starvation fifteen days after the decision was made.¹⁰⁵ However, he did take up the feeding issue when he addressed the theme again (this time with J.J. Paris) in 1983.¹⁰⁶ In this article McCormick and Paris argue that potential for human relationship is necessary for any means to be used. Life-sustaining interventions may be omitted if there is excessive hardship combined with poor prognosis, or if the expected life is very brief and can only continue with artificial nutrition.¹⁰⁷

These arguments for the withdrawal of assisted nutrition and hydration, and the others we have outlined above, deal with burdens and benefits in ways that are opposed by theologians who argue for the retention of assisted nutrition and hydration, and we will shortly review these arguments.

¹⁰⁴ MCCORMICK, “To Save or Let Die,” in *How Brave a New World*, p. 348. McCormick acknowledges that, in grappling with this sort of decision, mistakes will be made, and says that, “if err we must at times, it is better to err on the side of life” (ibid., p. 350).

¹⁰⁵ Ibid., p. 340.

¹⁰⁶ J.J. PARIS and R.A. MCCORMICK, “Saving Defective Infants: Options for Life or Death,” in *America*, 148 (1983), pp. 313-317.

¹⁰⁷ “Life-sustaining interventions may be omitted or withdrawn at a point when it becomes clear that expected life can be had only for a relatively brief time and only with the continued use of artificial feeding (e.g., some case of necrotizing enterocolitis)” (ibid., p. 316).

1.3.1.5 – The underlying pathology as the cause of death

We need to look at one final argument for the withdrawal of assisted nutrition and hydration, although it is not directly related to burdens and benefits. Many proponents of the withdrawal of assisted feeding and hydration argue that the death which ensues results not from starvation but from the underlying “pathology” that led to the patient being comatose in the first place. To remove assisted feeding and hydration, then, is to allow the fatal pathology to run its course. The best-known proponent of this view is K. O’Rourke, who has argued his position in many articles.¹⁰⁸ A number of theologians support O’Rourke’s view that the inability to swallow is the pathology.¹⁰⁹ For other

¹⁰⁸ O’Rourke has argued this position in his 1986 *America* article “The A.M.A. Statement on Tube Feeding,” p. 322, and “Open Letter to Bishop McHugh,” p. 352. In his 1986 *America* article he says, “By definition, a patient in an irreversible coma cannot eat and swallow and thus will die of that pathology in a short time unless life-prolonging devices are utilized.” W.E. May claims that O’Rourke’s *America* article has been reprinted and distributed by the Society for the Right to Die, a pro-euthanasia lobby group (see MAY, “Caring for Persons in the ‘Persistent Vegetative State’,” *Anthropotes*, 13 [1997], p. 323, fn. 17). For another critique of O’Rourke’s views from a medical perspective, see E.F. DIAMOND, “Medical Issues When Discontinuing AHN,” in *Ethics & Medics*, vol. 24, no. 9 (1999), pp. 1-2. Diamond argues that patients in the persistent vegetative state can, in fact, chew and swallow. They are fed through tubes simply because it is easier. Diamond also cautions that medical science knows very little about the persistent vegetative state, and that expert opinion holds that the diagnosis of a permanent vegetative state should not be made for at least a year (*ibid.*, p. 2).

The opposite view was taken by Bishop McHugh in his “Principles in Regard to Withholding or Withdrawing Artificially Assisted Nutrition/Hydration,” in *Origins*, 19 (1989-1990), p. 316. McHugh said that to withdraw assisted feeding and hydration was to introduce a new cause of death. This statement of Bishop McHugh formed the basis for the policy of the dioceses of New Jersey and the Archdiocese of New York (for more details of this, see fn. 678, p. 300). Over a number of years, O’Rourke and McHugh have debated the thesis of the underlying pathology as the cause of death. For a summary of this debate, see M.A. VACCARI, “The Inability to Swallow as a Fatal Pathology: Comments on the McHugh/O’Rourke Correspondence and the Removal of Life-Sustaining Treatment,” in *Issues in Law & Medicine*, 7 (1991), pp. 155-167. Vaccari (a lawyer and philosopher) is critical of O’Rourke’s views.

¹⁰⁹ See BOYLE, KING and O’ROURKE, “The Brophy Case,” p. 65. These authors liken assisted nutrition and hydration to respirator-assisted breathing. The inability to swallow is just as much a “fatal pathology” as a malfunction of the cardiopulmonary system. They argue that withholding assisted nutrition and hydration does not introduce any new fatal pathology. See also K. KELLY, “A Medical and Moral Dilemma,” in *The Month*, vol. 26, n. 4 (1993), p. 141, who

theologians, the fatal pathology is inferred from other aspects of the patient's condition. Kopfensteiner simply asserts that the patient is dying.¹¹⁰ The idea is also developed by Ashley¹¹¹ and Bayer.¹¹²

The issue of the cause of death has also been given attention in civil courts. In 1981 two physicians were charged with murder in the Herbert case. There was no formal trial, but several courts in California reviewed the case. In dismissing the charges, the court of appeal took account of expert testimony that the proximate cause of death was lack of oxygen to the brain, not removal of assisted nutrition and hydration.¹¹³

agrees with O'Rourke. MORACZEWSKI, in "The Moral Option Not to Conserve Life," asserts that it is the "concurrent pathology" which kills the patient if feeding is withdrawn (ibid., p. 257). He later becomes contradictory and confusing when he tries to develop the idea further by contrasting withdrawal of feeding to a hunger striker's wilful death by starvation. In doing so he seems to paint himself into a corner and concludes by asserting that the moral obligation, and not the cause of death, is the key issue (ibid., pp. 266-267).

¹¹⁰ KOPFENSTEINER, "Death With Dignity," pp. 64-75. This author's methodology, with its use of "metaphor," "cognitive taxonomy," "topography" and "tutorism," does not allow a simple rendering of his approach. He seems to imply that feeding can be withdrawn because the patient is dying and cannot relate to and communicate with his surroundings (p. 73).

¹¹¹ B.M. ASHLEY, "Euthanasia and Over-treatment," in E. SGRECCIA, A.G. SPAGNOLO and M.L. DI PIETRO (eds.), *L'assistenza al morente: aspetti socio-culturali, medico-assistenziali e pastorali*, Atti del Congresso Internazionale Roma, 15-18 marzo 1992, Milan, Vita e Pensiero, 1994, p. 355. Ashley, in answering the objection that withdrawing feeding is a direct act of killing by omission, replied: "the cause of death is the patient's pathological inability to eat and drink normally, while the withdrawal of the artificial procedure is only a *removens prohibens*, justified by the lack of real benefit" (ibid.).

¹¹² BAYER, "Perspectives from Catholic Theology," pp. 89-98. Bayer's argument is that an irreversibly comatose patient has lost the capacity to engage in "typically human activity," that this capacity is rooted in the physiology of the brain, but the brain is now dead. Therefore, "in a true sense, the person is fast dying, and we are not obliged to prolong the process by artificial means" (pp. 92-93).

¹¹³ See R.M. GULA, *What Are They Saying About Euthanasia?*, New York/Mahwah, Paulist Press, 1994, pp. 49-50. Vaccari lists several other cases, including Brophy and Bouvia, where courts have made similar rulings ("The Inability to Swallow as a Fatal Pathology," p. 156, fn. 3).

Some theologians and other authors oppose the “fatal pathology” view. The most comprehensive treatment of the theme is by M. Vaccari who opposes O’Rourke’s views.¹¹⁴ Barry’s view is that to remove assisted feeding and hydration is “to kill the patient by omission through their denial.”¹¹⁵ Other authors who reject the fatal pathology notion are Grondelski,¹¹⁶ Grisez,¹¹⁷ May,¹¹⁸ and Mikochik.¹¹⁹ This approach tends to reject the position that assisted feeding can be withdrawn for the same reasons that a respirator can be withdrawn.¹²⁰

¹¹⁴ “The Inability to Swallow as a Fatal Pathology,” pp. 155-157. Vaccari is critical of several aspects of O’Rourke’s thinking, including his definition of pathology (“an illness, disease, or lesion which will cause death unless it is removed or circumvented”). This is different from the medical definition of the term, which describes a fatal pathology as an illness or disease for which no cure or treatment exists (ibid., p. 158). Vaccari argues that a fatal pathology cannot be removed or circumvented by any means. Hence, O’Rourke’s argument that removal of assisted feeding and hydration allows the fatal pathology to take its course is medically and logically flawed.

¹¹⁵ R. BARRY, “Feeding the Comatose and the Common Good in the Catholic Tradition,” in *The Thomist*, vol. 53, n. 1 (1989), p. 30. He goes on to say, “Removing them does not allow an underlying pathological condition to be set free, but sets the process of dying immediately into motion” (ibid.).

¹¹⁶ J.M. GRONDELSKI, “Removal of Artificially Supplied Nutrition and Hydration: A Moral Analysis,” in *The Irish Theological Quarterly*, 55 (1989), p. 298.

¹¹⁷ G. GRISEZ, “Should Nutrition and Hydration Be Provided to Permanently Comatose and Other Mentally Disabled Persons?” in *Linacre Quarterly*, vol. 57, n. 2 (1990), p. 41.

¹¹⁸ W.E. MAY, “Tube Feeding and the ‘Vegetative’ State,” Part I, *Ethics & Medics*, vol. 23, n. 12 (1998), p. 2. May refers to medical opinion to support his view.

¹¹⁹ S.L. MIKOSCHIK, “When Life Becomes Optional: A Comment on Kevin O’Rourke’s Approach to Forgoing Life Support,” in *Issues in Law & Medicine*, 10 (1994), pp. 343-351.

¹²⁰ This case is argued at length by M.A. VACCARI, “Artificial Respiration and AHN: Some Similarities and Differences,” in *Linacre Quarterly*, vol. 59, n. 2 (1992), pp. 48-62. In this article Vaccari presents and contrasts the arguments of both sides. His position is that the differences are significant and that withdrawal of assisted feeding and hydration introduces a new cause of death, namely, malnutrition and dehydration (ibid., p. 50).

1.3.2 – Burdens and benefits in arguments for retaining assisted feeding and hydration

The arguments for withdrawal, with their analysis of burdens and benefits, have been opposed by the theologians who, for the most part, argue against withdrawal of assisted feeding and hydration. These theologians interpret burdens and benefits differently.

1.3.2.1 – Objections to quality of life arguments

The major objection to quality of life arguments is that it ignores relevant magisterial teaching, such as the 1981 Holy See Statement on the Disabled Person¹²¹ and *Evangelium vitae*,¹²² which preclude judgements based on quality of life factors as proposed in this debate. The one exception, which we will take up in detail in our next chapter, is when quality of life refers to the dying process, the “the last phase of an incurable disease.”¹²³ Bishop Myers, writing then as Bishop of Peoria and citing the *Declaration on Euthanasia*, was a strong episcopal voice urging that the assessment of burdens must focus on those introduced by the means rather than “the presence of burdens or misery which arise *independent* of the medical intervention in question.”¹²⁴

¹²¹ We will deal with this statement and other relevant magisterial texts in Chapter Two. In summary, the statement stresses the human dignity of disabled persons (including those disabled because of “chronic illness or accident, or from any mental or physical deficiency”) and rejects the idea that these patients could be “eliminated.”

¹²² The Pope condemned the custom of denying “the most basic care, even nourishment [...] to babies born with serious handicaps or illnesses” (*Evangelium vitae*, n. 14). Much of the quality of life debate focuses on defective new-borns.

¹²³ This is how the Pontifical Council *Cor unum* understood the term “quality of life” in its 1981 *Question of Ethics Regarding the Fatally Ill and the Dying*.

¹²⁴ J. MYERS (Bishop), “Instruction for Healthcare Administrators,” 14 September 1991, in *Linacre Quarterly*, vol. 59, n. 1 (1992), p. 45. The emphases are in the original text.

Another objection to these arguments arises out of an analysis of intention and motive. In the civil and canonical tradition there is a distinction between intention and motive that is often lost in dealing with complex cases. If death is intended, it is a homicidal action no matter what the motive. Quality of life considerations are related to motive: the life not worth living leads to an action that aims at death.¹²⁵

A practical difficulty in assessing the viability of quality of life arguments is that the theologians who propose quality of life standards reach different conclusions regarding the criteria that constitute “quality of life.” In 1985 McCormick used the metaphor of drawing a line to highlight this dilemma:

We have moved from Quinlan (persistent vegetative state—removal of respirator) to Herbert (persistent vegetative state—removal of respirator, nasogastric tube and I.V. lines) to Conroy (incompetent but noncomatose—removal of nasogastric tube). The progression is obvious, and obviously dangerous, unless we draw clear lines based on clear criteria. If we do not, we will not long be confined within the limits set forth in cases like Conroy.¹²⁶

¹²⁵ This notion has been developed in a number of places by J.R. Connery, including “Quality of Means, Quality of Life and Euthanasia,” in *Linacre Quarterly*, vol. 59, n. 2 (1992), pp. 5-9. Connery argues that, while euthanasia is condemned by those who advocate withdrawal of feeding, they tend to think of euthanasia as involving only a positive act, not an omission. The key to understanding the moral nature of the act is the intention involved. If death is intended as the solution to a problem, and results from withdrawal, the elements of euthanasia are there even if mercy is the motive.

¹²⁶ R.A. MCCORMICK, “Caring or Starving? The Case of Claire Conroy,” in *America*, 152 (1985), p. 273. What McCormick does not mention in this article is that John Paris, S.J., who has co-authored articles with McCormick on this theme, was an expert witness in the Conroy case, drawing his line, it would seem, where McCormick was hesitant. McCormick’s review of the Conroy case leads him to say that he could justify withdrawal of feeding from “some comatose but elderly incompetent patients” (*ibid.*, p. 273). He does not give his opinion on the Conroy case but flags his concern at the developments. He seems to approve of the decision in the Herbert case, notwithstanding the fact that Herbert was diagnosed as “likely” being in the “permanent vegetative state” after being on life-support for just three days (*ibid.*, p. 271). See also PARIS, “Withholding or Withdrawing Nutrition and Fluids,” pp. 22-25; Paris’ involvement in a number of high-profile cases is outlined on p. 22 of this article.

The lines and the criteria are far from clear. While most Catholic theologians confine their discussion to the withdrawal of extraordinary means, others have argued for hastening death. The best known of the Catholic theologians arguing for assisted dying is D. Maguire.¹²⁷ Another theologian who took up the notion of positive assistance of dying is K. Nolan, who suggests that the doctor might give more of the painkiller, or somehow act to “positively assist and accelerate the dying process.” He calls this a “definite act of Christian service” and suggests quality of life aspects may assist in the decision.¹²⁸ C. Curran’s position on hastening death was summarized in a Memorandum published as one of the documents in Curran’s dealings with the CDF.¹²⁹ For a dying person, Curran sees little difference between an act of omission (not using extraordinary means) and a positive act bringing about death. The notion has been taken one step further by L.S. Cahill who argues that a “choice about euthanasia” arises “in either the presence of gross suffering or the absence of consciousness.” She argues that, for these patients, “life can fail to constitute a sufficient condition for the fulfilment of human value.”¹³⁰

¹²⁷ Maguire proposed this in *Death by Choice*, Garden City, NY, Doubleday, 1974. A second and revised edition was published in 1984 by Image Books. Both books were met with strong criticism, such as W.E. MAY, in *Linacre Quarterly*, vol. 41, n. 2 (1974), pp. 135-140, and M.A. ALLSOPP, “On Playing God: The Theological Center of Daniel Maguire’s *Death by Choice*,” in *Linacre Quarterly*, 52, (1985), pp. 343-348.

¹²⁸ “The Problem of Care for the Dying,” in C.E. CURRAN (ed.), *Absolutes in Moral Theology?* Washington, Corpus Books, 1968, pp. 249-260. Nolan develops his ideas on pp. 259-260.

¹²⁹ This memorandum, dated 11 March 1986, was published in *Origins*, 15 (1985-1986), p. 669b.

¹³⁰ “A ‘Natural Law’ Reconsideration of Euthanasia,” in *Linacre Quarterly*, vol. 44, n. 1 (1977), pp. 47-63; the quotation is from p. 60.

McCormick has not argued for positively hastening death, but has spoken of “mistakes” being made.¹³¹ However, a mistake, even by McCormick’s criteria, involves a homicidal action. Further, the line as drawn by some theologians would not stop at foregoing extraordinary means or acts of omission. As we have seen, Maguire, Curran, and others have already proposed taking the next step, which would involve acts of commission in speeding the death of a dying or unconscious person.¹³² “Holding the line” is difficult enough in terms of theological reflection and next to impossible in practice.¹³³

¹³¹ This was in the context of decisions about prolonging life for defective newborn children in his “To Save or Let Die,” p. 350. McCormick and Paris expanded this idea in their “Saving Defective Infants” when they admitted that loving and good parents can and do make “mistakes” (ibid., p. 316). They argued the need for criteria for judging these actions as right or wrong: “But doubts and agonizing problems will remain. Hence a certain range of choices must be allowed to parents, a certain margin of error, a certain space. Guidelines can be developed which aid us to judge when parents have exceeded the limits of human discretion. They cannot cover every instance where human discretion must intervene to decide. The margin of error tolerable should reflect not only the utter finality of the decision (which tends to narrow it), but also the unavoidable uncertainty and doubt (which tends to broaden it)” (ibid. p. 316). They went on to say that they were open to the idea of criminal prosecution, which suggests that they realized that these “mistakes” will sometimes be homicidal in character. R.R. Roach, in dealing with a decision not to operate a similar case, emphatically declared it a murder (R.R. ROACH, “Consequentialism and the Fifth Commandment,” in D.G. MCCARTHY and A.S. MORACZEWSKI (eds.), *Moral Responsibility in Prolonging Life Decisions*, St. Louis, MO, Pope John Center, 1981, p. 32).

¹³² Curran says “in practice this position would differ only slightly from the official hierarchical teaching” (Memorandum, 11 March 1986, in *Origins*, 15 (1985-1986), p. 669b). However, official teaching would describe any such act as a homicide. Curran speaks of possible “abuses,” but does not acknowledge the homicidal nature of these abuses.

¹³³ Theological opinions have become quite influential in civil cases involving prolongation of life and hospital futility policies. In this regard, see D.J. HORAN and E.R. GRANT, “Catholic Ethical Teaching and Public Policy: How Do They Relate?” in *Linacre Quarterly*, vol. 53, n. 4 (1986), pp. 28-38. The authors are lawyers, and the article contains a plea to the Church’s magisterium to take a more consistent and stricter approach. They argue that opinions, such as that of Bishop Casey in the Quinlan case and those of other theologians in court cases, do not translate well when turned into legal doctrine. The nuance of moral theology may be defensible, but when taken out of the context of the Church’s commitment to the protection of life, there needs to be more clarity and careful distinctions, especially for vulnerable patients.

The line is shifting in other ways. We have already noted the opinion of T.F. Schindler who proposes that, because of the limited resources available for healthcare, assisted feeding and hydration should never be an option for a patient in the persistent vegetative state.¹³⁴ Here the option to feed, argued by many bishops and theologians as a presumption in favour of feeding, becomes an obligation never to feed.

1.3.2.2 – Burdens and benefits in relation to the means itself

Theologians who argue for retaining assisted feeding and hydration tend to reject quality of life arguments. They argue that the assessment of the means should focus on the benefits given by the means, taking into account the burdens arising from their use. We have already seen that McCarthy took this position in 1941.¹³⁵ The position was articulated at length in the W.E. May (et. al.) 1990 position paper.¹³⁶ The statement argued that the judgement about foregoing means must be about the means itself, not the patient's life. A useless means is one that bestows no benefits. However, the purpose of feeding is to keep a person alive, which is a benefit. Burdens should refer to the negative effects introduced by the means, such as restrictions to the patient's movement caused by

¹³⁴ T.F. SCHINDLER, "Implications of Prolonging Life," (letter) in *Health Progress*, vol. 69, n. 4 (1988), p. 12.

¹³⁵ MCCARTHY, "Taking of Insulin to Preserve Life," pp. 552-554.

¹³⁶ W.E. MAY et al., "Feeding and Hydrating the Permanently Unconscious and Other Vulnerable Persons," in *Issues in Law & Medicine*, 3 (1987), pp. 203-217; and in J.J. WALTER and T.A. SHANNON (eds.), *Quality of Life, The New Medical Dilemma*, New York, Mahwah, Paulist Press, 1990, pp. 195-202. This statement was prepared by an eleven-person interfaith and interdisciplinary group (the disciplines were medicine, law and theology, and the Catholic theologians included May, Barry, Giese, Johnstone, Grisez, McHugh, and W.E. Smith). It was signed by over eighty persons, including many other Catholic theologians and Catholics working in medicine and law. It was a response to the way courts were handling assisted feeding and hydration issues.

the feeding apparatus. May refined and developed his thinking in a 1990 paper in which he proposed objective criteria for making decisions for withholding treatment.¹³⁷ Others who take similar positions are Meilaender,¹³⁸ Connery,¹³⁹ and Donovan.¹⁴⁰

1.3.2.3 – The benefit of feeding: life itself

The benefit of assisted feeding is that it preserves life. We should not demand a cure, as the purpose of nutrition in any form is not to cure but to preserve life.¹⁴¹ The method of assistance may involve medical techniques, but this does not of itself render the means extraordinary.¹⁴² J.J. McCartney claims that the “utilitarian” arguments

¹³⁷ W.E. MAY, “Criteria for Withholding or Withdrawing Treatment,” in *Linacre Quarterly*, vol. 57, n. 3 (1990), p. 87. May argues that there should be no quality of life judgements, unless the quality of life is itself related directly to the means in question.

¹³⁸ G. MEILAENDER, “*Quaestio disputata*: Ordinary and Extraordinary Treatments: When Does Quality of Life Count?” in *Theological Studies*, 58 (1997), pp. 527-531.

¹³⁹ J.R. CONNERY, “In the Matter of Clare Conroy,” in *Linacre Quarterly*, vol. 52, (1985), pp. 321-328. Connery argues that, traditionally, theologians have always related the burdens to the means itself, and not the patient’s life (*ibid.*, p. 324).

¹⁴⁰ G.K. DONOVAN, “Decisions at the End of Life: Catholic Tradition,” in *Christian Bioethics*, 3 (1997), pp. 188-203. Donovan’s reference point is Directive 58 of the 1994 NCCB Guidelines, which links burdens and benefits to the patient: “There should be a presumption in favor of providing nutrition and hydration to all patients, including patients who require medically assisted nutrition and hydration, as long as this is of sufficient benefit to outweigh the burdens involved to the patient” (*Ethical and Religious Directives for Catholic Health Care Services*, 17 November 1994, in *Origins*, 24 [1994-1995], p. 459).

¹⁴¹ This is argued by DONOVAN, “Decisions at the End of Life,” p. 193. He adds that, if the patient cannot ingest, the benefits are reduced. See also J.R. CONNERY, “The Ethical Standards for Withholding/Withdrawing Nutrition and Hydration,” in *Issues in Law & Medicine*, 2 (1986), p. 89; J.M. GRONDELSKI, “Catholicism and the ‘Right’ to Die,” in *Linacre Quarterly*, vol. 59, n. 4 (1992), p. 54; and BARRY, “Feeding the Comatose and the Common Good,” p. 30.

¹⁴² Several authors have rejected the comparison between assisted feeding and assisted breathing (using a respirator) as simplistic. Hinkley argues that, even if assisted feeding is to be considered a treatment, it is not by that fact interchangeable with other treatments, such as a respirator (*The Moral Duty to Provide Nutrition and Hydration*, p. 158). M.L. Lussier (a

requiring restoration of qualities such as the capacity to form relationship is predominantly an American notion that is not found in European literature.¹⁴³

1.3.2.4 – Burdens and benefits not commensurate with life

G. Grisez is very critical of any kind of “proportionalist” calculation of burdens and benefits, arguing that the value of a life cannot be weighed against other values such as cost, freedom or dignity.¹⁴⁴ A similar critique comes from G. Meilaender, who argues that the decision to forego a life-sustaining means because of a particular burden is a personal one. What one person judges a burden for himself may not be a burden for another. These decisions are subjective and relative to one’s situation. By that very fact, they cannot be made for others.¹⁴⁵ Gracia argues a similar point, though from a different

physician) makes the same point in “An Approach to Weighing the Benefits and Burdens of Artificial Nutrition and Hydration,” in *Linacre Quarterly*, vol. 54, n. 4 (1987), pp. 67-78. She says some treatments are always medically and morally obligatory.

¹⁴³ J.J. MCCARTNEY, “The Development of the Doctrine of Ordinary and Extraordinary Means of Preserving Life in Catholic Moral Theology Before the Karen Quinlan Case,” in *Linacre Quarterly*, vol. 47, n. 3 (1980), pp. 215-223. In this article he surveys (continental) European literature on the subject and compares it with American authors.

¹⁴⁴ Proportionalism is a moral theory that rejects the idea that an action, such as the direct killing of an innocent person, can be declared to be wrong in itself. In a difficult moral situation, a proportionalist looks at the circumstance, intention and consequences associated with the action to arrive at its true moral value. It can be summarized as “choosing the lesser evil.” Grisez has an extended analysis and critique of proportionalism in *Christian Moral Principles, The Way of the Lord Jesus*, vol. 1, Chicago, Franciscan Herald Press, 1983, chapter 6, “Critique of the Proportionalist Method of Moral Judgment,” pp. 141-171 (with summary, pp. 159-161). A major part of the critique is that proportionalism lacks an objective base.

¹⁴⁵ G. MEILAENDER, “*Quaestio disputata: Ordinary and Extraordinary Treatments*,” pp. 527-531. He also urges a clear focus on the precise nature of the means and the burdens attached. He uses the example of someone choosing not to have a needle simply because of a subjective fear of needles. If the person was 25, and the needle would save his life, the decision would involve choosing death. Meilaender then questions whether in some cases decisions to forego assisted feeding and hydration, whether for oneself or another, are in fact decisions choosing death (ibid., p. 529).

perspective. He questions the way the doctrine of ordinary and extraordinary means has been understood and applied. His view is that we have lost sight of the theological and philosophical perspectives that influenced the development of the doctrine, and he argues that, in light of the tradition, decisions about extraordinary means are purely subjective and can only be made by the patient.¹⁴⁶

1.3.2.5 – Burdens and the cost factor

Several commentators insist that it is the burden added by the means that must be evaluated, and they argue that the cost has often been exaggerated. Grisez, for example, says that cost is a factor, but feeding itself is only a small part of the total cost of caring for a patient. To choose to stop feeding to save the total cost of care is a “homicidal” choice, as it involves killing to achieve an end.¹⁴⁷

¹⁴⁶ Gracia calls these decisions “intransitive,” because they can only be made by the person who suffers the consequences (“Doctrine of Ordinary and Extraordinary Means,” p. 123). Gracia points out that medieval theologians and jurists dealt with doubt differently. Theologians of the time dealt with the reality of complex cases involving moral doubt, but universally taught that it was sinful to act while in doubt, and that one had to follow the safest course. The jurists, on the other hand, analysed the effect of ignorance on imputability (ibid., p. 124, fn. 3). For more on this theme, see F.J. CONNELL, art. “Moral Doubt,” in *NCE*, vol. 4, p. 1024. Grisez is another theologian who argues that the patient alone can make a choice to forego life-support, and that caregivers have no right to concede such care for a comatose patient; see “Should Nutrition and Hydration Be Provided?” p. 34.

¹⁴⁷ Ibid., p. 35. Grisez develops these ideas more thoroughly in his discussion of a case in his *Difficult Moral Questions*, The Way of the Lord Jesus, vol. 3, Quincy, Franciscan Press, 1997, pp. 218-225. He suggests, to the husband of a comatose wife in a nursing home, a number of strategies, including bringing his wife home. This is based on the principle that one is only required to do what is reasonable while keeping costs within available means. Another author who deals with this theme is T. Marzen, general counsel for the National Legal Center for the Medically Dependent and Disabled, Inc. He says that the cost of assisted feeding and general nursing of a comatose patient is generally less than “ordinary” nursing care; see T.J. MARZEN, “Intubation of the Permanently Unconscious: A Rejoinder to Rev. Edward Bayer, S.T.D.,” in *Linacre Quarterly*, vol. 55, n. 2 (1988), p. 36.

1.3.2.6 – Burdens not experienced by comatose patients

Authors who analyse burdens in relation to the patient, as distinct from the caregivers, and who insist that we look at the burden added by the means, make the obvious point that the unconscious patient is not aware of any burden and that the talk of invasive technology, indignity and so forth is irrelevant.¹⁴⁸ Related to this is the argument that feeding, insofar as it nourishes and maintains life, is not a burden. The disadvantages of the method of delivery are to be weighed in the light of this benefit.¹⁴⁹

Burdens, benefits and feeding: conclusion

In reviewing the debate about burdens and benefits we have taken the position that the arguments for retaining assisted nutrition and hydration are more convincing. We now need to take up another important issue in the debate about feeding, the role of intention.

Many factors can be at work when decisions about life are made in the light of dwindling resources, as illustrated in a highly publicised case involving Terri Schiavo, a woman who has been comatose since 1990. Michael Schiavo, Terri's husband, won \$700,000 in a malpractice suit on behalf of his wife. The money was to have been used to care for Terri, but Michael has been using the money to have Terri's feeding stopped. He now wishes to remarry, but will not divorce Terri as the money would then go to her parents, who are fighting to keep her alive. At one point a lower instance court ordered the feeding stopped, and this was overturned in the U.S. Supreme Court. When Terri's brother tried to feed her by hand after the tube feeding stopped, Michael was able to have him barred from coming to the hospice. This case has generated a lot of media interest, and the protagonists have their own web-sites (see, for example, <http://www.cnn.com/TRANSCRIPTS/0105/03/bp.00.html> [3 May 2001]; and <http://www.terrisfight.org/terri's.htm> [1 September 2001]).

¹⁴⁸ See GRISEZ, "Should Nutrition and Hydration Be Provided?" p. 34.

¹⁴⁹ See MEILAENDER, "*Quaestio disputata*: Ordinary and Extraordinary Treatments," p. 529.

1.4 – Intention in contemporary theological reflection

In dealing with decisions to prolong life, theologians have taken up the matter of the intention involved. There is universal agreement that an intention to omit extraordinary means must be distinguished from an intention to kill by omission, and that to intend to take life is euthanasia. However, just as there is disagreement as to what constitutes extraordinary means, so there are significant differences of opinion concerning the intention involved when assisted feeding and hydration is removed.

As with the other aspects of the debate, opinions about the precise nature of the intention fall into two broad categories. Theologians who tend to be permissive about withdrawal argue that the intention is to forego an unnecessary means. Many have invoked a reworking of the principle of the double effect to advance their arguments. Their theological opponents argue that the intention to forego will often be homicidal. In reviewing these arguments, we will use the same approach as with the debate about burdens and benefits. We will first present those arguments in favour of withdrawal, and then the arguments opposed to withdrawal.

The broad theme of intention includes discussion about the principle of the double effect and other principles and moral theories dealing with the morality of the human act. Our treatment of intention, then, necessarily involves these issues as well. The moral theory known as proportionalism has been very influential in this debate and we will look at this theory and that part of the teaching of the encyclical *Veritatis splendor* that was a response to proportionalism and other approaches broadly classified as teleological.

This debate is sometimes extremely technical and difficult for the non-specialist, and the academic literature encompasses philosophical, legal, linguistic and theological perspectives.¹⁵⁰ It is a polarised debate and, from the outset, we will acknowledge that we have found those arguments against withdrawal more convincing. While we hope that we have presented the various arguments clearly and objectively, we have been critical of many of them.

1.4.1 – Intention in arguments for withdrawal of feeding

Theologians who argue for withdrawal of assisted feeding and hydration tend to see the intention to forego an extraordinary means as clearly different from an intention to kill by omission. Ashley, for example, says that there is no intention to kill, but the intention is to omit an extraordinary means.¹⁵¹ In another article, he says that the magisterium has confirmed the position taken by some theologians that to forego extraordinary means is not wrong, as long as there is “no direct intention to kill.”¹⁵² In magisterial teaching on life “direct” means that the killing is intended either as a means or an end.¹⁵³ Ashley, however, seems to use the term in a different sense, namely, as

¹⁵⁰ For an article on the theme that deals with the legal, philosophical, linguistic and theological aspects of the debate, see J. FINNIS, G. GRISEZ and J. BOYLE, “‘Direct’ and ‘Indirect’: A Reply to Critics of Our Action Theory,” in *The Thomist*, 65 (2001), pp. 1-44.

¹⁵¹ “Euthanasia and Over-treatment,” p. 350; other theologians who take this position are BOYLE, KING and O’ROURKE, “The Brophy Case,” p. 65.

¹⁵² “Does ‘The Splendor of Truth’ Shine on Bioethics,” in *Ethics & Medics*, vol. 19, n. 1 (1994), p. 4.

¹⁵³ For example, John Paul II condemned abortion in these terms: “I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder” (*Evangelium vitae*, n. 62).

killing by direct action as compared to killing by omission. Some acts of foregoing life-preserving means are aimed at death and are “direct” in the traditional sense.¹⁵⁴

1.4.2 – Intention in arguments for maintaining feeding

Those who see feeding as an ordinary means argue the need to look more closely at the implications of the withdrawal of feeding. They claim that the intention becomes homicidal when the decision to withdraw feeding itself leads to death. This has been proposed a number of times by Connery, who argues that to omit artificial nutrition because of a low quality of life is to intend death and is euthanasia. Withdrawal would be morally acceptable only *in extremis*, and only when the omission is not the cause of death.¹⁵⁵

A more exacting philosophical analysis of intention has been given by May. For May, the means to the end as well as the end itself have moral significance. The cause of death is the key to understanding the moral significance of the act of withdrawal. One can do nothing that leads directly to a patient’s death, but one can choose to forgo a means

¹⁵⁴ For more on the meaning of “direct” as it is understood in magisterial teaching and moral theology, see G. GRISEZ, *Living a Christian Life, The Way of the Lord Jesus*, vol. 2, Quincy, Franciscan Press, 1993, pp. 473-474.

¹⁵⁵ “The Ethical Standards for Withholding/Withdrawing Nutrition and Hydration,” in *Issues in Law & Medicine*, 2 (1986), pp. 87-97; and in *Linacre Quarterly*, vol. 54, n. 1 (1987), pp. 17-26. In “Quality of Means, Quality of Life and Euthanasia,” in *Linacre Quarterly*, vol. 59, n. 2 (1992), pp. 5-9, Connery analyses the withdrawal of feeding in relation to the principle of the double effect and the 1980 CDF *Declaration on Euthanasia*. He argues that if death results from withdrawal of feeding, it is euthanasia (p. 7).

that has become useless. The means becomes useless only when the process of death has begun, and only then if it prolongs the dying.¹⁵⁶

P. Ramsey has been very influential in this debate. He urges clear thinking and a precise use of language in his presentation of the issues surrounding the withdrawal of life-support.¹⁵⁷ He proposes one basic distinction: that between euthanasia and dying well.¹⁵⁸ Dying well means one does not choose death as either a means or an end, but accepts the dying process already begun.¹⁵⁹ He briefly takes up the theme of double effect but avoids that term, preferring to speak instead of two effects, one direct and one indirect. In decisions about prolonging life, the only proper use of the concept of the two effects relates to pain relief. Apart from this medical decision, the only alternatives are either choosing to die well, or choosing death as an end and the means thereto. The word "choose" makes redundant qualifiers and verbal distinctions, such as "direct" and "deliberate," acts of "commission" or "omission," and so forth. Choosing death is

¹⁵⁶ W.E. MAY, "Euthanasia, Benemortasia, and the Dying," in *Linacre Quarterly*, vol. 41, n. 2 (1974), pp. 114-123. May uses self-defence as an analogy. One must use only that force necessary to repel the attacker. To intend to kill the assailant changes the moral nature of the act. The attacker's death then becomes the means to the end and is an act of homicide (p. 121).

¹⁵⁷ P. RAMSEY, "'Euthanasia' and Dying Well Enough," in *Linacre Quarterly*, vol. 44, n. 1 (1977), pp. 37-46. Ramsey is not a Catholic (he is Presbyterian) but his insistence on clear concepts leads him to define euthanasia in a way quite similar to the definition proposed in the *Declaration on Euthanasia*, which came three years after Ramsey's article. This involves a rejection of the categories of direct and indirect killing, and the terms "active" and "passive" euthanasia.

¹⁵⁸ By euthanasia, Ramsey means choosing death as an end.

¹⁵⁹ In Ramsey's argument, to choose the end also means choosing the means, (*ibid.*, p. 38).

euthanasia, but to choose to help in dying is different. Here death's cause is not advanced by acts of commission or omission but by the disease itself.¹⁶⁰

Others who argue that the intention to withdraw is often homicidal are Barry,¹⁶¹ Donovan,¹⁶² Grondelski,¹⁶³ Marzen,¹⁶⁴ and Meilaender.¹⁶⁵ A magisterial endorsement of this view came in the document of the Pontifical Council *Cor unum, Question of Ethics Regarding the Fatally Ill and the Dying*, which said "...to interrupt these minimal measures would, in practice, be equivalent to wishing to put an end to the patient's

¹⁶⁰ Grisez takes a similar approach to Ramsey ("Should Nutrition and Hydration Be Provided to Permanently Comatose and Other Mentally Disabled Persons?" p. 34.) He argues that to choose to stop feeding to save the total cost of care is a homicidal choice, as it involves killing to achieve the end.

¹⁶¹ "The critical issue in decisions to provide assisted feeding to the medically stable comatose is that when the provision of food and water through routine and customary nursing procedures can meet the needs of the body in a meaningful way the failure to provide them is morally equivalent to killing by omission," R.L. BARRY, "Catholic Ethics and Feeding the Comatose," in R.L. BARRY, *Medical Ethics: Essays on Abortion and Euthanasia*, Theology and Religion, Series VII, vol. 45, New York, Peter Lang, 1989, pp. 179-197.

¹⁶² DONOVAN, "Decisions at the End of Life," pp. 193, 195.

¹⁶³ GRONDELSKI, "Removal of Artificially Supplied Nutrition and Hydration," p. 298. Another European perspective comes in a dictionary article that surveys the opinions and magisterial teaching and concludes by saying that most Catholic moralists hold that suspension is truly and properly euthanasia; G. FASANELLA, N. SILVESTRI and E. SGRECCIA, art. "Coma," in *Dizionario di bioetica*, p. 161.

¹⁶⁴ MARZEN, "Intubation of the Permanently Unconscious," pp. 35-38. Marzen argues that, if the burden is relieved by seeking cessation of innocent life, the intention is homicidal (p. 36).

¹⁶⁵ We have already mentioned (in fn. 145, p. 51) Meilaender's thoughts on foregoing a means as choosing death ("*Quaestio disputata: Ordinary and Extraordinary Treatments*," p. 529.) See also "The Distinction Between Killing and Allowing to Die," in *Theological Studies*, 37 (1976), pp. 467-470.

life.”¹⁶⁶ An episcopal document which takes up the theme of intention is the 1992 NCCB statement, “Nutrition and Hydration: Moral and Pastoral Reflections.”¹⁶⁷

For these thinkers, there is an intrinsic link between the action of withdrawal and its intended and foreseen results. The cause of death is the key to determining the nature of the intention. Quality of life factors, in this analysis, pertain to motives. If the intention is death, as a means or an end, motives cannot transform the moral nature of the act.

1.5 – The principle of the double effect and proportionalism

The discussion about intention is also being carried on in the contemporary debate about the relevance of the principle of the double effect. Garcia has given an excellent overview of this debate.¹⁶⁸ The principle of the double effect has traditionally provided a

¹⁶⁶ We will deal with this document in our next chapter.

¹⁶⁷ “Even here, however, we must try to think through carefully what we intend by withdrawing medically assisted nutrition and hydration. Are we deliberately trying to make sure that the patient dies in order to relieve the caregivers of the financial and emotional burdens that will fall upon them if the patient survives? Are we really implementing a decision to withdraw all other forms of care, precisely because the patient offers so little response to the efforts of the caregivers?” (NCCB COMMITTEE FOR PRO-LIFE ACTIVITIES, “Nutrition and Hydration: Moral and Pastoral Reflections,” 2 April 1992, in *Origins*, 21 (1991-1992), p. 708, col. 3.

¹⁶⁸ J.L. GARCIA, art. “Double Effect,” in *Encyclopedia of Bioethics*, vol. 2, pp. 636-641. Garcia deals specifically with the debate within the Catholic tradition. Another brief overview of the theme is in S. PRIVITERA, art. “Duplice effetto,” in *Dizionario di bioetica*, pp. 308-309. A major historical treatment can be found in J.T. MANGAN, “An Historical Analysis of the Principle of Double Effect,” in *Theological Studies*, 10 (1949), pp. 41-61. The principle as applied in medical ethics is explained and critiqued in B.M. ASHLEY and K.D. O’ROURKE, *Healthcare Ethics, A Theological Analysis*, 3rd ed., St. Louis, MO, The Catholic Health Association of the United States, 1989, pp. 184-188. Other studies include: J. BOYLE, “On Killing and Letting Die,” in *The New Scholasticism*, vol. 51 (1977), pp. 433-452; P.J. CATALDO, “The Principle of the Double Effect,” in *Ethics & Medics*, vol. 20, n. 3 (1995), pp. 1-3; W. CONWAY, “The Act of Two Effects,” in *The Irish Theological Quarterly*, vol. 18 (1951), pp. 125-137; J.F. KEENAN, “The Function of The Principle of Double Effect,” in *Theological Studies*, vol. 54 (1993), pp. 294-315; P. KNAUER, “The Hermeneutic Function of the Principle of Double Effect,” in *Natural Law Forum*, vol. 12 (1967), pp. 132-162, reprinted in C. CURRAN and R.A. MCCORMICK (eds.),

conceptual framework to take account of the complexity of certain difficult moral decisions. It recognises that an action can have several effects, some intended, and some unintended but expected. Hence, it contrasts intention with expectations and allows for an evil result, as long as this is not directly intended and does not result from an evil action. An illustration of the principle involving the prolongation of life is giving pain relief to a dying patient. The intended and good effect is the relief of pain; the unintended evil effect is the shortening of the patient's life. By contrast, if the physician injects poison into the same patient, the act has an entirely different moral quality. Here, the physician intends to kill the patient to relieve his suffering. The traditional formulation of the principle of the double effect precludes directly intending the death, or bringing it about by an objectively evil means.¹⁶⁹

Traditionally, the principle relied on the acceptance of objective moral norms, such as the direct killing of an innocent person always being wrong.¹⁷⁰ However, the principle has been "revisioned" in the last thirty years by a number of theologians who stress the personal dimension of complex moral choices and who give greater weight to circumstances and reasons than to the objective standards of right and wrong of

Readings in Moral Theology, n. 1, New York, Paulist Press, 1979, pp. 1-39. A recent doctoral dissertation has reviewed the attempts to rework the principle: G.M. MIGLIETTA, *Il principio del duplice effetto nel dibattito della teologia morale contemporanea*, Rome, Pontificia Universitas Urbaniana Facultas Theologiae, 1997.

¹⁶⁹ Pius XII in his 1957 allocution *Le Dr. Bruno Haid* invoked the principle in dealing with the morality of removing an artificial respirator when it has become extraordinary and futile as a means. In summary, he said that such a removal would not be a case of direct disposal of life but "an indirect cause of the cessation of life, and one must apply the principle of double effect and *voluntarium in causa*."

¹⁷⁰ This concept of objective evil is reflected in canons 1323, 4° and 1324, §1, 5° with the phrase *intrinsece malus*. These canons provide norms for imposing penalties on delinquents, and penalties will not be waived or reduced if the crime is intrinsically evil.

traditional Catholic teaching.¹⁷¹ For these theologians, the direct killing of an innocent person is not always wrong in itself. Such a killing is an “ontic” or “pre-moral” evil, and may be morally good or evil according to the particular circumstances.¹⁷² This approach places greater emphasis on one of the traditional conditions of the principle of the double effect, namely, the need for a proportion between the action and its effects.¹⁷³

“Eventually, the revisionists, with their stress on intention, effectively rejected the methodology of double effect for a different, ‘proportionalist’ one that, like utilitarianism, focused on the comparison of those goods and evils that agents realize in or as a result of their behavior.”¹⁷⁴

Proportionalism can be categorised as part of the teleological school of ethical analysis and has thematic links to situation ethics and consequentialism. When it comes

¹⁷¹ For an historical overview of this process, see C.E. CURRAN, art. “Roman Catholicism,” in *Encyclopedia of Bioethics*, vol. 4, pp. 2321-2331, especially p. 2329. Curran describes himself in this article as a revisionist, and also applies the term to McCormick, Häring, Maguire, Shannon, and Cahill. However, McCormick is the most prominent of the theologians associated with the reworking of the principle of the double effect in the English language. Historically, the revisionist project started with objections to the teaching of *Humane vitae*, followed by similar objections to magisterial statements on sterilization, abortion, and so forth. See also C.E. CURRAN, “The Catholic Hospital Code, The Catholic Believer and a Pluralistic Society,” in C.E. CURRAN, *Issues in Sexual and Medical Ethics*, Notre Dame, University of Notre Dame Press, 1978, pp. 139-167. In this article, Curran acknowledges that the arguments used to dissent from magisterial teaching on contraception and sterilisation can be used to dissent from the teaching on abortion and euthanasia.

¹⁷² McCormick, in a discussion about the morality of contraception, explains the origin of these terms with the thinking of several European theologians. The generic word he uses is “disvalue,” which means nonmoral evil (Schüller), premoral evil (Fuchs), or ontic evil (Janssens). See R.A. MCCORMICK, *Health and Medicine in the Catholic Tradition: Tradition in Transition*, New York, Crossroad, 1984, p. 98.

¹⁷³ In doing so, they reject other conditions, such as the need for the act to be good in itself (or at least morally neutral), and the need for the intention only to focus on the good effect.

¹⁷⁴ GARCIA, “Double Effect,” p. 638a. See also J-L BRUGUÈS, art. “Proportionnalisme,” in J-L. BRUGUÈS, *Dictionnaire de morale catholique (=DMC)*, Chambray, C.L.D., 1991, pp. 343-344.

to questions of life-prolongation, proponents of these related theories analyse situations in similar ways. W.E. May presents such an analysis in these terms:

All versions of consequentialism likewise agree in holding that there are no kinds of human behavior, describable in nonmoral terms, which are always immoral. A consequentialist would grant that "murder is always wrong," because by definition murder means an "unjust killing." But the consequentialist would then argue that in order to determine whether the killing is unjust or not, one must discover whether or not there is some achievable good that can justify it. Thus the consequentialist would deny that it is always wrong deliberately and intentionally to kill an innocent human being. It all depends on whether choosing this alternative will serve to maximize good or minimize evil.¹⁷⁵

This type of thinking, and the method of the teleological systems, was condemned by John Paul II in the encyclical *Veritatis splendor*.¹⁷⁶ This encyclical demands that moral theologians of the Catholic tradition adhere to an analytical method that puts greater emphasis on objective norms than teleological considerations, such as intention

¹⁷⁵ W.E. MAY, "Meeting Ethical Dilemmas in Health Care: Some Basic Criteria," in *Linacre Quarterly*, 49 (1982), pp. 252. He adds:

We can see from this that in certain kinds of ethical dilemmas faced by health-care personnel, for instance in cases concerning the abortion of unborn children afflicted by genetic disorders, the treatment of severely crippled newborns or the care to be given to terminally ill patients, the consequentialist would seek to discover what action is called for by evaluating the consequences and by trying to determine whether lethal action or, at times, benign neglect might not be the morally proper course to follow. Different consequentialists would reach different judgments in similar cases, however, because there would be a disagreement among them concerning the determination of the "greatest good (ibid., pp. 252-253).

R.R. Roach also takes up killing in medical situations in his "Consequentialism and the Fifth Commandment," pp. 20-43. The thematic link between consequentialism, proportionalism and situation ethics has been developed by J.E. SMITH, in "Moral Methodologies: Proportionalism," in *Ethics & Medics*, vol. 19, n. 6 (1994), pp. 1-3.

¹⁷⁶ We will deal with this encyclical in our next chapter. See also J. RATZINGER, "Dissent and Proportionalism in Moral Theology," in *Origins*, 13 (1983-1984), pp. 666-669.

and circumstances.¹⁷⁷ In doing so it explicitly rejected the proportionalist method, and implicitly rejected the method of many theologians involved in the debate about assisted feeding. Once the principles of ordinary and extraordinary means are detached from their historical origins with its doctrinal commitment to the sanctity of life, they easily become tools in a proportionalist calculus. The same can be said of burdens and benefits, when the analysis shifts from burdens associated with a means and becomes applied to the burdensome life.

1.6 – The Curran Case and the “Catholic tradition”

An issue in the Curran case was his teaching on euthanasia.¹⁷⁸ In a memorandum dated 11 March 1986, Curran summarises his position on euthanasia:

I have never done an in-depth study on euthanasia, but have occasionally referred to euthanasia as an illustration of other points I was making [...]. Here I tentatively proposed that when the dying process begins there seems to be no difference between the act of omission (not using extraordinary means) and the positive act of bringing about death. I point out that in practice this position would differ only slightly from the official hierarchical teaching, and I also recognize possible abuses which may be sufficient reason not to adopt this position in practice.¹⁷⁹

¹⁷⁷ For a more “traditional” analysis of the human act in terms of its object (*finis operis*), its intention (*finis operantis*), and circumstances, see J-L. BRUGUÈS, art. “Acte humain,” in *DMC*, pp. 19-23.

¹⁷⁸ For a brief overview of the case, see “On File,” in *Origins*, 15 (1985-1986), p. 650, and M.S. FEELEY, “A Historical Account of the Curran Controversy,” in *The Catholic Lawyer*, 32 (1988), pp. 1-26.

¹⁷⁹ C.E. CURRAN, Memorandum, 11 March 1986, in *Origins*, 15 (1985-1986), p. 669b.

However, the CDF listed euthanasia as one of the areas of Curran's teaching that it considered was "clear dissent."¹⁸⁰ In another document, Cardinal Ratzinger included euthanasia as one of several issues where there were points of difference.¹⁸¹ The differences are more than with conclusions in difficult moral issues; they relate to moral method and to the role of the magisterium. Curran's views on euthanasia do not preclude directly killing a patient, because he does not accept the doctrine that it is always wrong to directly take the life of an innocent person.

In his debate with the CDF, Curran admits his dissent on a number of issues, including euthanasia, but justifies public dissent from authoritative but non-infallible teaching. He takes the view that public dissent in America over contraception, and the number of Catholics who have "sharply" dissented from magisterial teaching on sterilization and the indissolubility of marriage, bolster his position. He concludes, "it should be evident that the positions taken by me are neither radical nor rebellious, but are in the mainstream of contemporary Roman Catholic theology."¹⁸² This view that dissenting opinions can be considered part of the "mainstream of contemporary Roman

¹⁸⁰ CONGREGATION FOR THE DOCTRINE OF THE FAITH, "Observations on the Position of Father Charles Curran," April 1983, in *Origins*, 15 (1985-1986), pp. 670-672. The quote is on p. 671b.

¹⁸¹ J. RATZINGER, Letter to Father Charles Curran, delivered 18 August 1986, in *Origins*, 16 (1986-1987), pp. 201-203. In this letter he summarized the Church's teaching on euthanasia (p. 668b). See also Curran's "Response to Observations of the Congregation for the Doctrine of the Faith," 10 August 1983, in *Origins*, 15 (1985-1986), pp. 672-675.

¹⁸² C.E. CURRAN, Press Statement, 11 March 1986, in *Origins*, 15 (1985-1986), p. 666b. In this statement Curran omitted references to abortion and euthanasia, but elsewhere admits that the theological method he uses could lead to dissenting opinions with those issues as well.

Catholic theology” is echoed by other theologians who assert that their views, which are at odds with the magisterium, are within the “Catholic tradition.”¹⁸³

1.7 – Direct and indirect killing, a theological perspective

The arguments about intention are philosophical in nature, in keeping with the traditional analysis of the nature of the moral act. G. Meilaender is one theologian who has an explicitly theological perspective on the issue, developed in a response to some ideas of McCormick (and Hughes) on the distinction between killing and allowing to die.¹⁸⁴ He takes up Ramsey’s notion that there is theological basis for the distinction, which traditionally made the distinction possible and morally relevant. Death, theologically speaking, results from sin and is the triumph of Satan. It is also the means by which God achieves his victory. The enemy (death) must be resisted, but there comes a time when we must accept it and acknowledge its seeming finality.¹⁸⁵ This acceptance involves allowing inevitable death to take its course, which is morally very different from positively acting to bring on death.

¹⁸³ McCormick takes a similar position but in a very nuanced way. In offering his own “Ethical Guidelines for Catholic Health Care Institutions,” he admits they have no official status but says “they can lay claim to representing a contemporary Catholic consciousness” (*Health and Medicine in the Catholic Tradition: Tradition in Transition*, New York, Crossroad, 1984, p. 6; the emphasis is his). He sees the Catholic tradition as being wider than the “so-called official teaching” (ibid.). McCormick’s views were criticized in an unaccredited book review in *Linacre Quarterly*, vol. 53, n. 3 (1986), pp. 85-91.

¹⁸⁴ From *Theological Studies*, 37 (1976), pp. 100-107.

¹⁸⁵ “The Distinction Between Killing and Allowing to Die,” pp. 467-470.

Chapter One: Conclusion

The arguments for withdrawal of assisted nutrition and hydration take many forms and we have found them deficient for a number of reasons. First, they have deviated from a traditional application of the principle of ordinary and extraordinary means. This principle rested on the doctrine that it was morally necessary to use any possible means of preserving life, and a number of contemporary theologians have shifted the focus by applying the lesser standards, traditionally used in arguments about shortening life, to argue that we do not have to preserve life. We have found that contemporary theologians have also frequently varied from the tradition by analysing burdens and benefits in regard to the quality of life of the patient, as distinct from the burdens and benefits associated with the means itself (in our case, the means is assisted nutrition and hydration). Hence, the burdensome condition of a stricken patient justifies removing his life-support, a distortion of authentic Catholic doctrine. Finally, we have analysed arguments about the intention of a person who withdraws necessary assisted nutrition and hydration. Once again, we have found those arguments more convincing that claim that the intention to withdraw assisted nutrition and hydration is often tantamount to an intention to commit suicide or equivalent to homicide.

CHAPTER 2

ARTIFICIAL NUTRITION AND HYDRATION IN THE TEACHING OF THE MAGISTERIUM

The doctrine about life and its preservation has been a major concern of the Church's magisterium during the twentieth century. This doctrine has frequently been taught in the context of issues arising from the practice of medicine.¹⁸⁶ The doctrine is not an absolute one allowing no exceptions. On the contrary, it has developed principles articulating the circumstances in which a patient may choose not to use every possible

¹⁸⁶ These issues were frequently addressed by popes prior to the Second Vatican Council, particularly Pius XII, and several collections of such papal statements have been published: R. KOTHEN, *Directives récentes de l'Église concernant l'exercice de la médecine*, Louvain, Em. Warny, 1952; R. KOTHEN, *L'Église et les problèmes médicaux modernes, édition canadienne des Directives récentes de l'Église concernant l'exercice de la médecine*, Québec, Éditions du Renouveau, 1954; PIUS XII, *Pio XII: discorsi ai medici*, F. ANGELINI (ed.), 3rd ed., Roma, Edizione "Orizzonte Medico," 1959; THE MONKS OF SOLESMES (eds.), *The Human Body*, "Papal Teachings" Series, Boston, St. Paul Editions, 1960; PIUS XII, *Pio XII y los médicos*, P. Santiago Navarro (ed.), 2nd ed., Madrid, Editorial Cocusa, 1964.

Since the Council further collections have appeared, such as: J. VISSER, "Pronunziamento ufficiale della S. Sede sull'eutanasia," in *Medicina e morale* 31(1981/3), pp. 358-372; P. VERSPIEREN (ed.), *Biologie, médecine et éthique: Textes du Magistère catholique*, Les dossiers de la Documentation catholique 2, Paris, Le Centurion, 1987. Other works also provide comprehensive lists of magisterial sources: M.F.X. HINKLEY, *A Catholic Analysis of a Current Medical-Moral Dilemma in Health Care: The Moral Duty to Provide Nutrition and Hydration to Patients in the Persistent Vegetative State*, Rome, Pontificia Universitas Lateranensis Academia Alfonsiana, 1993; E. BARBÁRA, *Donum Vitae: Continuity and Development in Church Teaching*, Rome, Pontificia Universitas Lateranensis Academia Alfonsiana, 1994; J. CIUPINSKI, *Il principio della Signoria di Dio sulla vita e il problema dell'eutanasia: Tradizione, Magistero, Teologia*, Rome, Pontificia Universitas Lateranensis Academia Alfonsiana, 1996; M.J. MCCABE, *The Hospice Movement, An Alternative to Euthanasia*, Rome, Pontificia Universitas Lateranensis Academia Alfonsiana, 1994.

means to preserve life. These principles will be the main focus of our study of magisterial texts.

We will first examine the magisterial texts of the Holy See relevant to our theme. No major document has dealt explicitly with assisted nutrition and hydration, but we will argue that documents such as the *Catechism of the Catholic Church* and the encyclical *Evangelium vitae* provide the general principles for decision making in regard to the prolongation of life. Further, the CDF *Declaration on Euthanasia* of 1980 provides a detailed protocol for the foregoing of life-support that can be applied in situations where removal of assisted nutrition and hydration is an issue.

We will then survey relevant episcopal statements. There has been considerable interest in the withdrawal of assisted nutrition and hydration in recent episcopal documents, many of which have dealt with specific cases. However, there is considerable disagreement in these documents, and the teaching of bishops tends to reflect the polarised theological debate. As with the theological debate, we have found that those episcopal statements that urge the retention of assisted nutrition and hydration are better argued and in keeping with the papal magisterium. One of the surprising features of the statements that allow withdrawal of feeding is that they have failed to implement or even reflect the protocol for removal of life-support proposed authoritatively in the *Declaration on Euthanasia*.

2.1 – Magisterial texts of the Holy See

For several centuries theologians had developed the concept of the obligation of using only ordinary means to preserve life, but the principle did not have explicit formulation in doctrinal statements of the papal magisterium until the nineteenth and twentieth centuries.¹⁸⁷ There are two expressions of the general doctrine concerning preservation of life in the 1891 encyclical *Rerum novarum* of Leo XIII.¹⁸⁸ In 1957 Pope Pius XII issued a very important and influential teaching on the question of the prolongation of life and its necessary limits.¹⁸⁹

Since the Second Vatican Council there has been a greater interest in this theme in papal documents that have developed the principles of Pius XII. These statements have enunciated principles to be applied in difficult cases involving exceptions to the general duty to prolong life. Of particular importance are the Congregation for the Doctrine of the Faith's 1980 *Declaration on Euthanasia*,¹⁹⁰ John Paul II's encyclical

¹⁸⁷ We have already surveyed the development of the concept in Cronin's *The Moral Law in Regard to the Ordinary and Extraordinary Means of Conserving Life*. Cronin links the doctrine regarding conservation of life with that regarding suicide and, to a lesser extent, duelling (pp. 14-24). His analysis of the history of the doctrine concentrates on its theological development. There are few magisterial texts, except those regarding suicide and duelling. Hinkley also develops the history of the development of the theme in *The Moral Duty to Provide Nutrition and Hydration*, pp. 76-87.

¹⁸⁸ LEO XIII, Encyclical Letter *Rerum novarum*, 15 May 1891, in *Acta Leonis XIII Pontificis Maximi*, vol. XI, Rome, Ex Typographia Vaticana, 1892, pp. 97-144; English translation in C. CARLEN compiler, *The Papal Encyclicals 1878-1903*, Wilmington, McGrath Publishing Company, 1981, pp. 242-261. This encyclical deals with work, and the statements concerning the duty to preserve life are made in the context of developing the notion that the purpose of labor is to procure what is necessary for life. There are two such statements to be found in *Acta Leonis XIII Pontificis Maximi*, vol. XI, p. 130.

¹⁸⁹ PIUS XII, Allocution to an International Congress of Anesthesiologists *Le Dr. Bruno Haid*, 24 November 1957, in *AAS*, 49 (1957), pp. 1027-1033 (French-language original text, English-language translation in *TPS*, 4 [1958], pp. 393-398).

¹⁹⁰ The full reference to the *Declaration on Euthanasia* is in fn. 26.

Evangelium vitae (1995),¹⁹¹ and the *Catechism of the Catholic Church* (1997),¹⁹² all of which have developed the theme in detail. None of these statements deals explicitly with the withdrawal of assisted nutrition and hydration.

The first explicit treatment of assisted nutrition and hydration in a major papal statement came with Pope John Paul II in a 1998 *ad limina* address to a group of bishops from the Western United States.¹⁹³ However, there have been several statements about assisted nutrition and hydration from the dicasteries of the Holy See that have dealt with the issue without attempting to resolve every related question. Another important magisterial pronouncement was the 1993 Encyclical *Veritatis splendor*, which took up issues to do with moral reasoning.¹⁹⁴

These documents, to be dealt with chronologically, convey a cohesive doctrine concerning the duty to conserve life and the principles to be applied in difficult cases involving the withdrawal of life-support systems, including assisted nutrition and hydration.

¹⁹¹ JOHN PAUL II, Encyclical Letter *Evangelium vitae*, 25 March 1995, in *AAS*, 87 (1995), pp. 401-522 (English-language version JOHN PAUL II, *The Gospel of Life*, Sherbrooke, Médiaspaul, Magisterium Series 28, 1995).

¹⁹² *Catechismus Catholicae Ecclesiae auctoritate Ioannis Pauli PP. II promulgatus*, Libreria editrice Vaticana, 1997 (English-language version *Catechism of the Catholic Church: Second Edition* [=Catechism], St Pauls Publications, Strathfield, NSW, 2000).

¹⁹³ JOHN PAUL II, *ad limina* address to bishops from the Western United States, 2 October 1998, in *Origins*, 28 (1998-1999), pp. 314-316.

¹⁹⁴ JOHN PAUL II, Encyclical Letter *Veritatis splendor*, 6 August 1993, in *AAS*, 85 (1993), pp. 1133-1228 (English-language version in Vatican translation, JOHN PAUL II, *Veritatis splendor*, Vatican City, Libreria Editrice Vaticana, 1993; *The Splendor of Truth*, Sherbrooke, Editions Paulines, Magisterium Series 18, 1993; *Origins*, 23 [1993-1994], pp. 297-334).

2.1.1 – Leo XIII, *Rerum novarum* (1891)

This encyclical deals with work, and the statements concerning the duty to preserve life are made in the context of developing the notion that the purpose of labour is to procure what is necessary for life: "... man's labor is necessary; for without the result of labor a man cannot live, and self-preservation is a law of nature, which it is wrong to disobey."¹⁹⁵ The pope adds: "The preservation of life is the bounden duty of one and all, and to be wanting therein is a crime."¹⁹⁶ The context here is work and not illness. In expounding the doctrine of the preservation of life there are frequent references to the natural law, which can be deduced using "natural reason."¹⁹⁷

2.1.2 – Pope Pius XII, allocution, *Le Dr. Haid* (1957)

This allocution was a response to three questions submitted to the Pope by Dr. Bruno Haid, chief of the anaesthesia section of the surgery clinic of the University of Innsbruck.¹⁹⁸ It was delivered to an international group of anaesthesiologists gathered in Rome. The general topic was resuscitation (*la réanimation* in the French-language original). However, as explained by the Pope in his development of the questions, this referred to several procedures commonly undertaken by the anaesthesiologist in the

¹⁹⁵ «...vitam autem tueri ipsa rerum, cui maxime parendum, natura iubet» (*Acta Leonis XIII Pontificis Maximi*, vol. XI, p. 130).

¹⁹⁶ «Reapse manere in vita, commune singulis officium est, cui scelus est deesse» (ibid.).

¹⁹⁷ Pius XII also invoked natural law as he dealt with the issue of prolongation of life. An example can be found in the excerpt from his address on reanimation that is on p. 277 of our Appendix II.

¹⁹⁸ The full reference is in fn. 189, p. 69. For a commentary and application, see M. HUFTIER, "Usage de soins extraordinaires," in *L'Ami du clergé*, 75 (1966), pp. 455-456.

context of serious brain damage and states of deep unconsciousness: removing breathing blockages, remedying partial and total respiratory paralysis, restoring breathing manually or artificially and providing for the “artificial feeding of the patient.”¹⁹⁹ The issue addressed by the Pope relates to the withdrawal of such “resuscitation processes” when the severely brain-damaged patient “will very probably, and even most certainly, not survive” or when it becomes clear that the “automatic artificial respiration” is keeping the patient alive.²⁰⁰

In his response to the question, Pius first elaborates the general principle of the moral duty to preserve life²⁰¹ and then, using the concept of ordinary and extraordinary means, the morally acceptable exception to that principle.²⁰² The duty to preserve life is not absolute and demands only the use of ordinary means. The Pope did not attempt to delineate ordinary from extraordinary means, except to say that ordinary means are those that “do not involve any grave burden for oneself or another.” There is a subjective element; it is judged according to one’s own circumstances.²⁰³

As to the question of removing an artificial respirator in a case of “deep unconsciousness” considered “completely hopeless” by a competent doctor, the Pope judges this means to be extraordinary and optional. To remove such a means would not

¹⁹⁹ See *TPS*, 4 (1958), p. 394. For further comment, see E. TESSON, “Réanimation et casuistique,” in *Études*, 296 (1958), pp. 96-98.

²⁰⁰ See *TPS*, 4 (1958), p. 394.

²⁰¹ The passage, beginning with “Natural reason...,” is in our Appendix II, p. 277.

²⁰² This passage, beginning “But normally one is held to use only ordinary means...,” is in our Appendix II at p. 277.

²⁰³ *TPS*, 4 (1958), pp. 395-396.

be a case of direct disposal of life, nor of euthanasia, but “an indirect cause of the cessation of life, and one must apply the principle of double effect and *voluntarium in causa*.”²⁰⁴

There are a number of observations to be made about this teaching. Pius XII dealt with the removal of the “artificial respiration apparatus” in the context of imminent or actual death.²⁰⁵ While he mentioned artificial feeding as one of the means of keeping a person alive, he did not take up the possibility of a patient continuing to live, with or without long-term artificial feeding. This creates a difficulty in applying the principle to the removal of feeding from patients who are not dying.

Another important principle developed here concerns the duties and rights of the patient’s doctor and family. They are “correlative” to those of the patient, as long as the patient is of age and *sui iuris*.²⁰⁶ However, the grave burden for another is one of the factors in determining the obligatory nature of a treatment.

²⁰⁴ Ibid., p. 397.

²⁰⁵ Much of the allocution was devoted to other questions relating to death (actual, imminent or doubtful), such as determining the moment of death and the conditional administering of Extreme Unction.

²⁰⁶ «S’il est majeur et *sui iuris*,» *AAS*, 49 (1957), p. 1032; *TPS*, 4 (1958), p. 397. This has become an issue in the light of many hospital “futile care” policies by which the decision can be made to terminate life-support. A survey of the policies of 26 California hospitals reveals that many people, apart from the patient or his family, can make such a decision.

With respect to who makes the final treatment decision after all efforts to resolve disputes have failed, the hospital policies took varied positions. Sometimes the position was not clearly spelled out. Nine (or possibly ten) policies assigned the final decision-making authority to the responsible physician. Seven policies specifically stated the patient or patient representative had the final decision-making authority. Others assigned the decision elsewhere, for example to an intra-institutional Optimum Care Committee (one), the court (one), or the

This teaching of Pius XII is a watershed for several reasons. From the time of Pius XII, the magisterium of the Church has increasingly dealt with difficult issues arising from the practice of medicine and, in doing so, has developed, refined, and applied the basic principles of Pius XII.²⁰⁷

2.1.3 – CDF, *Declaration on Procured Abortion* (1974)²⁰⁸

The teaching on life in this Declaration is relevant to our theme. The Declaration proper begins with a development of the theological understanding of life and the corresponding duty to preserve and respect it from its beginning.²⁰⁹ Then, in a section titled “In the Additional Light of Reason,” the Declaration develops principles of respect

chief of staff (one). Three listed various combinations of providers, ethics committees, court, hospital administration, and patient/surrogates without specifying the ultimate decision-maker. (See L.J. SCHNEIDERMAN and A.M. CAPRON, “How Can Hospital Futility Policies Contribute to Establishing Standards of Practice?” in *Cambridge Quarterly of Healthcare Ethics*, vol. 9, n. 4 [2000], p. 527.)

²⁰⁷ This is a point made in the preface to the *Charter for Health Care Workers*:

“The extraordinary advances of science and technology in the very vast field of health and medicine have produced an independent discipline called bioethics, or ethics of life. This explains why, especially from Pius XII onwards, the Magisterium of the Church has intervened with increasing interest, with consistent firmness, and ever more explicit directives concerning all the complex problems arising from the indissoluble bond between medicine and morality.” (See PONTIFICAL COUNCIL FOR PASTORAL ASSISTANCE TO HEALTH CARE WORKERS, *Charter for Health Care Workers*, Vatican City, Vatican Press, 1995, p. 5.)

²⁰⁸ CDF, *Declaration on Procured Abortion*, 28 November 1974, in *AAS*, 66 (1974), pp. 730-747 (English-language version in *Origins*, 4 [1974-1975], pp. 385, 387-392).

²⁰⁹ *Ibid.*, nn. 5-6.

for life based on reason and the natural law.²¹⁰ Here it takes up the difficult notion of the relationship between man's temporal life and his eternal destiny guaranteed by his immortal soul. While man's temporal life lived in this world is not identified with the person, bodily life is a "fundamental good" here below and the condition of all other goods. There are higher values for which it could be legitimate or even necessary to risk losing bodily life, "but man can never be treated simply as a means to be disposed of in order to obtain a higher end."²¹¹

Man's first right is his life. He has other rights, but this is fundamental and the condition for all the others. Hence, it must be protected above all others, and no society or public authority can determine otherwise. Furthermore, no discrimination based on the various stages of life, or on a person's weakened condition, can be justified. "It is not lost by one who is incurably sick."²¹²

The Declaration develops another important principle pertaining to a situation of doubt. Here the doubt is whether human life exists from the moment of conception, and the principle is: "From a moral point of view this is certain: even if a doubt existed concerning whether the fruit of conception is already a human person, it is objectively a

²¹⁰ This is part III, nn. 8-13.

²¹¹ Ibid., n. 9.

²¹² Ibid., nn. 11-12.

grave sin to dare to risk murder.”²¹³ However, the principle could be applied in other situations of doubt where life is at risk.²¹⁴

The *Declaration on Procured Abortion*, then, develops general principles relating to the value of life and our duty to preserve it that are relevant to a number of aspects of the debate on assisted nutrition and hydration.

2.1.4 – CDF, *Declaration on Euthanasia Iura et bona*, (1980)

This Declaration contains the Holy See’s most thorough treatment to date of the relevant principles relating to the prolongation of life. Its definition of euthanasia and its analysis of the principles relating to ordinary and extraordinary means of preserving life have been a major influence on subsequent magisterial documents.²¹⁵ While not dealing explicitly with the withdrawal of assisted nutrition and hydration, it speaks of the difficult problems posed by medical advances and refers to “the incurably sick from the prolongation, perhaps for many years of a miserable life, which could impose too heavy

²¹³ Ibid., n. 13.

²¹⁴ The most important application of this principle is in the theological debate concerning the withdrawal of assisted nutrition and hydration. Some theologians have argued that, in the light of different opinions and doubt, Catholics can choose to forego or withdraw. The canonical axiom is that a doubtful law is no law (canon 14). However, this axiom does not apply to a doubt concerning a moral obligation of the natural law. Another possible application of the principle is in the debate about quality of life in which some theologians that a means of life-support can be withdrawn if a patient cannot be restored from unconsciousness to some kind of “operative human life.”

²¹⁵ This includes John Paul II’s encyclical *Evangelium vitae* and his allocution “The Mystery of Life and Death” (JOHN PAUL II, Address to two groups of scientists, 21 October 1985, in *AAS*, 78 (1986), pp. 313-316; *Origins*, 15 (1985-1986), pp. 415-417), the *Catechism* (especially n. 2277), the *Charter for Health Care Workers*, and many documents of the episcopal magisterium.

a burden on their families or on society.”²¹⁶ The Declaration provides principles that can be applied to the withdrawal of assisted nutrition and hydration from such a person.

The definition of euthanasia in this document has been used in many subsequent magisterial documents: “By euthanasia is understood an action or an omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated. Euthanasia’s terms of reference, therefore, are to be found in the intention of the will and in the methods used.”²¹⁷

In describing and defining euthanasia as it is to be understood in Catholic teaching, the Declaration explicitly rejects the distinction between “active” euthanasia (directly causing the patient’s death) and “passive” euthanasia (allowing the patient to die). The “active” and “passive” distinctions are simplistic and fail to take account of the situations in which the moral obligation to prolong life is relaxed. Hence, allowing a person to die should not always be categorised as euthanasia.

The Declaration develops the principle of the duty to preserve life, declaring: “Those whose task it is to care for the sick must do so conscientiously and administer the remedies that seem necessary or useful.”²¹⁸ It then takes up the theme of the ordinary

²¹⁶ See *Declaration on Euthanasia*, II.

²¹⁷ Ibid. The definition is used in the *Catechism* (n. 2277) and *Evangelium vitae* (n. 65).

²¹⁸ See *Declaration on Euthanasia*, IV. Bishop John Myers has analysed the Declaration in detail (“Instruction for Healthcare Administrators,” pp. 37-48). He describes this translation (the phrase “must do so conscientiously”) as an under-translation of the stronger official Latin text “*omni cum diligentia operam suam praestare debent*” (ibid., fn. 23, p. 48).

and extraordinary means of preserving life.²¹⁹ The concept is complex, both in the light of its historical development and in its application to new situations. The CDF elaborates the principles that were developed and refined for centuries, but finds the traditional categories inadequate. It suggests that the terms “proportionate” and “disproportionate” may be better able to convey the essential distinction, but these terms are also inadequate. They have a moral and a medical meaning and it is difficult defining which techniques are extraordinary, medically or morally. Further, what is medically ordinary may be morally extraordinary (and hence optional), and *vice versa*. The term “proportionate” focuses on the patient’s condition and the related circumstances, rather than on the medical technology as such. The Declaration is not stating a preference for the new terminology but posits a preference, as a methodological approach, for looking directly at the means in question and analysing it in its wider context of complexity, risk, and so forth.²²⁰

The Declaration then develops the principles as they apply to decisions about using or foregoing treatment for the dying person.²²¹ In doing so it distinguishes between the earlier phase of the dying person and the final stage, when the patient is *in extremis*. It also distinguishes between various means, some medical and others non-medical.

²¹⁹ For the full reference, see the text beginning “In the past...” in our Appendix III at p. 279.

²²⁰ The language of proportionality is now common in bioethical reflection; see M.L. ROMANO, art. “Proportionalità delle cure,” in *Dizionario di bioetica*, pp. 768-772.

²²¹ For the complete text, see the sentence beginning “If there are no other sufficient remedies [...],” in our Appendix III, p. 279. The first four paragraphs develop the theme for the

In the earlier phase, the dying person is always bound to use the “normal” means medicine can offer. He or she is permitted to use the “most advanced” means, but can choose not to use them or to later forego them. In making this decision the patient can seek advice from competent physicians. One of the criteria is the proportion between the cost²²² of the treatment and the actual or perceived benefits. The means referred to here (“normal” and the “most advanced” medicine can offer) are medical. Both are to be distinguished from the “normal care due to the sick person in similar cases,” as this is explained in the next paragraph.

When inevitable death is imminent in spite of the means used, it is permitted in conscience to take the decision to refuse forms of treatment that would only secure a precarious and burdensome prolongation of life,²²³ so long as the normal care due to the sick person in similar cases is not interrupted. In such circumstances the doctor has no reason to reproach himself with failing to help the person in danger.²²⁴

The Declaration, in this precisely worded paragraph, provides an application of the principle for the last phase of the dying process. The words used to delineate this from the earlier phase of dying are carefully nuanced. Death is imminent and cannot be

patient in the earlier phase of dying; the fifth paragraph applies the principle to someone *in extremis*.

²²² This is a cost in the wider sense and refers to the use of resources, such as personnel and instruments, as well as the financial cost to the patient, the patient’s family and the community.

²²³ Bishop Myers contrasts this phrase “burdensome prolongation of life” with a similar expression earlier in the Declaration that spoke of the “prolongation, perhaps for many years, of a miserable life.” “The contrast between the parallel phrases (the prolongation of a miserable life vs. the burdensome prolongation of life) points to a subtle distinction which is precisely the heart of the matter. It is euthanasia to intend to bring an end (through action or omission) to human life that is burdensome or miserable. It is not euthanasia to bring an end to a burdensome means of prolonging life” (MYERS, “Instruction for Healthcare Administrators,” pp. 43-44; the emphasis in italic typeface is the author’s).

²²⁴ Declaration on Euthanasia, IV.

prevented, no matter what the means. Those means which hitherto prolonged life but are now slowing the dying process become extraordinary and optional. Normal care must always be provided, but the careful wording here (“so long as the normal care due to the sick person in similar cases is not interrupted”) implies that normal care must be judged in relation to the dying person’s condition.

The Declaration does not attempt to classify any specific means, but its categorisation of medical means as “most advanced” and “normal” implies that assisted nutrition and hydration, which can hardly be seen as extraordinary from the medical perspective, would fall into the normal category. Even if it is considered “normal care,” as distinct from a normal medical means, it may still be optional *in extremis* if it prolongs the imminent death. Normal care cannot be interrupted, but the needs and capacities of the dying person determine what is normal.²²⁵ The judgement about the nature of the means is done by “studying the type of treatment to be used, its degree of complexity or risk, its cost and the possibilities of using it, and comparing these elements with the result that can be expected, taking into account the state of the sick person and his or her physical and moral resources.”²²⁶

The Declaration, then, deals with three “means,” that is, types of treatment or care due to a dying person. Each has a corresponding moral obligation. The first means is treatment involving the “most advanced medical techniques;” this is an extraordinary means which is optional at any stage of the terminal illness. The second means is also a

²²⁵ For example, a dying person often cannot ingest assisted nutrition.

²²⁶ *Declaration on Euthanasia*, IV.

treatment and involves the “normal means that medicine can offer;” this means is obligatory until the patient enters the final phase of the dying process, when it can no longer prevent death but merely prolong it. It then becomes optional. The third means is the “normal care due to the sick person,” which is always obligatory.

Many theologians involved in the debate about assisted nutrition and hydration cite the Declaration but miss the nuance of its teaching.²²⁷ On the basis of the teaching of the *Declaration on Euthanasia*, assisted nutrition and hydration are obligatory until the final phase of dying and can only be withdrawn if they prolong the dying process.

2.1.5 – Holy See, *Statement on the Disabled Person* (1981)²²⁸

Several elements of this statement have implications for our theme. First, the statement stresses the human dignity of disabled persons. These include those disabled because of “chronic illness or accident, or from any mental or physical deficiency.”²²⁹ Clearly, this would include those patients in the persistent vegetative state or any similar state.

²²⁷ One example is R. Barry, who strongly opposes withdrawal of assisted nutrition and hydration, has said that the Declaration “held that ordinary means had to be provided” (R. BARRY, “Feeding the Comatose and the Common Good in the Catholic Tradition,” in *The Thomist*, 53 [1989], p. 26). This statement implies feeding is always ordinary and obligatory. The Declaration’s teaching is more complex and allows for the possibility of feeding becoming extraordinary and optional.

²²⁸ Document of the Holy See, “To all who work for the disabled,” *From the very beginning*, 4 March 1981, in *Enchiridion Vaticanum* 7, pp. 1040-1067 (on facing pages with the Italian-language version; both versions have identical margin nn. 1138-1170); *Origins*, 10 (1980-1981), pp. 747-750. The statement was issued by the Secretary of State on the occasion of the United Nations International Year of the Disabled.

²²⁹ *Enchiridion Vaticanum* 7, n. 1143, p. 1044; *Origins*, p. 747. For the full text, see our Appendix IV, the paragraph beginning “The first principle...,” p. 280.

The Holy See then rejects the idea that these patients could be “eliminated.”²³⁰ In applying these principles to an unconscious person, we can say that “quality of life” considerations must be avoided in evaluating the prolongation of life. A person diagnosed as being in the “persistent vegetative state,” or someone who is chronically ill or demented, should not be treated differently than any other patient. However, theologians and some bishops have argued that the patient’s history, present condition and future prospects are factors in the decision to remove assisted feeding.²³¹

The statement later condemns abortion of disabled fetuses and the “suppression” of new-born disabled persons: “Furthermore, the deliberate failure to provide assistance or any act which leads to the suppression of the new-born disabled person represents a breach not only of medical ethics but also of the fundamental and inalienable right to life.”²³² There is no explicit mention of withdrawal of nutrition and

²³⁰ *Enchiridion Vaticanum* 7, n. 1145, p. 1046; *Origins*, p. 748. See our Appendix IV, the paragraph beginning “A perfect technological society...,” p. 281.

²³¹ Two examples of bishop’s statements with an underlying “quality of life” analysis are: W. BULLOCK, Pastoral Statement on the Provision of Nutrition and Fluids to Dying or Comatose Patients, 16 January 1992, in *Origins*, 21 (1991-1992), pp. 553-555, and L. GELINEAU, Statement on Removing Nutrition and Water from a Comatose Woman, 10 January 1988, in *Origins*, 17 (1987-1988), pp. 545, 547.

²³² *Enchiridion Vaticanum* 7, n. 1150, p. 1048; *Origins*, p. 748. There have been many highly publicized cases of infants being allowed to die, and these have their own literature, ethical concerns and interventions from bishops. See NCCB, “The Law and the Protection of Handicapped Infants,” 7 April 1983, in *Origins*, 12 (1982-1983), pp. 770-772. This document was issued by E. Bryce, as executive director of the NCCB Committee for Pro-Life Activities, after a U.S. District Court hearing of a case concerning a federal government rule forbidding federally assisted hospitals to withhold food and customary care from handicapped infants. The Court struck down the regulation on 14 April 1983. See also the NCCB Pastoral Statement on the Handicapped, 16 November 1978, in *Origins*, 8 (1978-1979), pp. 372-377; the NCCB DOCTRINE COMMITTEE, Statement of Moral Principles Concerning Infants with Anencephaly, 20 September 1996, in *Origins* 26 (1996-1997), p. 276; and *Medicine e morale*, 49 (1997), pp. 984-985; the NCCB COMMITTEE FOR PRO-LIFE ACTIVITIES, Letter to Members of Congress on the Born-Again Infants Protection Act, 25 July 2000, <<http://www.nccbuscc.org/prolife/issues/abortion/bornalive.htm>> (29 October 2000).

hydration but the statement is broad (“deliberate failure” and “any act”) and would include failure to provide nutrition. The principles apply to all persons, not just to infants.

The document goes on to say: “One can never claim that one wishes to bring comfort to a family by suppressing one of its members.”²³³ This touches on another aspect of the theological debate relating to what is ordinary and extraordinary for chronically ill patients who require assisted feeding. Many theologians have argued, and bishops have taught, that the Catholic tradition allows the withdrawal of assisted feeding when the burdens (including the cost to the family) outweigh the benefits of the feeding. This statement of the Holy See acknowledges the burdens involved in caring for a chronically ill person, but its teaching on this point demands a cautious approach when it comes to weighing these burdens (“comfort” in the broad sense) against the life of the patient. The major consideration is the burden of assisted feeding to the patient. This is not to say that the cost of treatment and other burdens cannot be considered. Various magisterial texts have taught that cost is a factor in determining whether a particular treatment is extraordinary,²³⁴ and a family or community may be unable to keep a patient alive for a number of reasons. However, the burdens and benefits to be considered relate primarily to the patient.

²³³ *Enchiridion Vaticanum* 7, n. 1150, p. 1050; *Origins*, p. 748. The text is in our Appendix IV, the paragraph beginning “One cannot...,” p. 281.

²³⁴ For example, Pius XII in his allocution *Le Dr. Haid*, said that ordinary means are those which do not involve any grave burden for oneself or another (*TPS*, 4 [1958], p. 396).

In summary, the teaching of the Holy See in relation to disabled people precludes withdrawal of assisted nutrition and hydration from a patient in the persistent vegetative state for quality of life reasons, and demands that the life of a disabled patient not be weighed against the needs of his family.

2.1.6 – Pontifical Council *Cor unum*, *Question of Ethics Regarding the Fatally Ill and the Dying* (1981)

This document is the report of a group of theologians, medical personnel and other experts convened by the Pontifical Council *Cor unum* (which in 1975 had become the Holy See's Council on Health Affairs) to discuss issues related to death and dying.²³⁵ The group was convened in 1976 but did not issue its report until after the publication of the *Declaration on Euthanasia* in 1980. The report acknowledges that this Declaration had set forth the relevant doctrinal and moral principles. Its more modest aim is to “analyse basic concepts, point out certain distinctions which must be understood clearly, and formulate practical answers to questions brought up by pastoral directives and by the treatment of the dying.”²³⁶ Hence, it does not claim to be authoritative or binding.

²³⁵ PONTIFICAL COUNCIL COR UNUM, “Quelques questions d’éthique relatives aux grands malades et aux mourants,” *Dans le cadre*, 27 June 1981, in *Enchiridion Vaticanum* 7, pp. 1132-1173, nn. 1234-1281. The Italian-language version is reproduced on facing pages and with identical column numbers; the English-language version, “Question of Ethics Regarding the Fatally Ill and the Dying,” is reproduced in its entirety in R.E. SMITH (ed.), *Conserving Human Life*, Braintree, MA, Pope John XXIII Medical-Moral Research and Education Center, 1989, Appendix II, pp. 286-304. For commentary in this same volume on the report and background information about the working group, see O.N. GRIESE, “Church Pronouncements on Feeding the Hopeless and the Helpless,” *ibid.*, pp. 172-174.

²³⁶ This is taken from n. 1.2, “The Subject Discussed by the Working Group.”

The Report covers a number of issues related to death and dying, such as determining the moment of death, the use of painkillers, and so forth. It says that Christians have a duty to preserve life. However, this is not an absolute duty and “we must demarcate the limits of the obligation to keep oneself alive.”²³⁷ Ordinary and extraordinary “measures” or “therapies” are treated in this context. The Report offers guidelines for distinguishing extraordinary measures; some are objective (the type of treatment, its cost, and so forth) and some subjective (the patient’s anxiety, unease, and the like).²³⁸

What is new in this Report is that “alimentation” is listed as an obligatory, minimal “therapeutic measure,”²³⁹ with the assertion that: “...to interrupt these minimal measures would, in practice, be equivalent to wishing to put an end to the patient’s life.”²⁴⁰ There are a number of difficulties in this passage as it stands. First of all, “alimentation” as used here is ambiguous. The qualifying phrase “normally and

²³⁷ The statement about the duty to preserve life is n. 2.1.1; the quote is from n. 2.4.1.

²³⁸ This text is in n. 2.4.2. and is included in our Appendix V at p. 282. Somewhat surprisingly, there is a reference to “quality of life” as one of the criteria for distinguishing ordinary from extraordinary measures. However, the quality referred to here has a specific meaning, which emerges in the question: “Would it not be a useless torture, in many cases, to impose vegetative reanimation during the last phase of an incurable disease?” This quality, the “the last phase of an incurable disease,” is quite different from qualities such as capacity for affectivity, relationship or pursuing the spiritual goals of life, which are the ones normally posited as pertaining to quality of life.

²³⁹ For the full text, see our Appendix V, n. 2.4.2., p. 282. “Alimentation” is the English word used to render the French-original *alimentation*. “Nourishment” is a more commonly used English word and would be preferable here.

²⁴⁰ This passage has attracted considerable interest, reflected in its wide publication. The relevant section can be found in *La Civiltà cattolica*, 3280 (2 February 1987), p. 324 and in K.D. O’ROURKE and P. BOYLE (eds.), *Medical Ethics: Sources of Catholic Teachings* (=O’ROURKE and BOYLE, *Sources of Catholic Teachings*), St. Louis, MO, The Catholic Health Association of the United States, 1989, p. 156.

customarily” suggests normal rather than assisted feeding. However, alimentation is linked here with blood transfusions and injections, which could not be said to be normal and customary except from a medical perspective.

Second, if there is a “strict obligation” “under all circumstances” to maintain alimentation, then the obligation would remain even in the final phase of a terminal illness. This is not the teaching of the *Declaration on Euthanasia*, which allows for the withdrawal of any therapy that prolongs the inevitable dying process. However, as noted above, this report claims no authority and must be read in the light of the teaching of the *Declaration on Euthanasia*. The Report offers nothing new by way of principle, but its statement that alimentation, assisted or natural, is to be considered an ordinary means of preserving life is significant in the debate about application of the principles.

2.1.7 – John Paul II, *The Mystery of Life and Death* (1985)²⁴¹

This address of 1985 was given by the Pope to a study group convened by the Pontifical Academy of Sciences to discuss the artificial prolongation of life, the determination of the exact moment of death and other related issues. In his address, the

²⁴¹ JOHN PAUL II, Address to two groups of scientists, 21 October 1985, in *Discourses of the Popes from Pius XI to John Paul II to the Pontifical Academy of Sciences: 1936-1986*, Pontificia Academiae Scientiarum Scripta Varia 66, Vatican City, Pontifical Academy of Sciences, 1986, pp. 183-186; *AAS*, 78 (1986), pp. 313-316; *Origins*, 15 (1985-1986), pp. 415-417; and *Health Progress*, vol. 66, n. 10 (1985), pp. 31, 72 (excerpt).

Pope raised the issue of the ordinary and extraordinary means of prolonging life and restated the principles of the *Declaration on Euthanasia* relating to these means.²⁴²

2.1.8 – Pontifical Academy of Sciences, *The Artificial Prolongation of Life* (1985)²⁴³

This very brief Report was prepared for Pope John Paul II by an international group of twenty doctors and scientists convened by the Pontifical Academy of Sciences to study the artificial prolongation of life and the exact moment of death. It was published by the Academy but claims no authoritative status.

Two significant aspects of the Report are its descriptions of treatment and care and its recommendation for dealing with patients in an irreversible coma. It clearly distinguishes treatment and care and gives a brief description of each. Treatments are medical interventions, whatever their complexity. Care is ordinary help due to sick patients, “such as compassion and affective and spiritual support.”²⁴⁴ The Report deals explicitly with the situation of a patient in a permanent, irreversible coma: “If the patient is in a permanent coma, irreversible as far as it is possible to predict, treatment is not required, but all care should be lavished on him including feeding.” Treatment can be

²⁴² The Pope quoted a long section from the Declaration: the passage beginning “If there are no other sufficient remedies...” and ending with “...so long as the normal care due to the sick person is not interrupted.” The full text is in our Appendix III, p. 279.

²⁴³ PONTIFICAL ACADEMY OF SCIENCES, “Vita artificiale e trapianti” *Su invito*, 21 October 1985, in *Enchiridion Vaticanum* 9, pp. 1726-1727, nn. 1766-1769 (English-language translation in *Origins*, 15 [1985-1986], p. 415; *Health Progress*, vol. 66, n. 10 [1985], p. 31; and O’ROURKE and BOYLE, *Sources of Catholic Teachings*, p. 155; note that this text was omitted from the 3rd ed. of this book). For the relevant text, see our Appendix VI, page 284.

²⁴⁴ See *Origins*, 15 (1985-1986), p. 415.

interrupted if it is of “no benefit” to the patient, but not care.²⁴⁵ Given the fact that nutrition for patients in a permanent coma in most cases must be medically assisted, the Report is taking the view that assisted nutrition and hydration is obligatory care. It is another example of a dicastery of the Holy See specifying how the principles of ordinary and extraordinary means are to be applied in the matter of feeding a patient in an irreversible coma.

2.1.9 – The *Catechism of the Catholic Church* (1993 and 1997)²⁴⁶

The *Catechism* deals briefly with issues relating to prolonging life. In n. 2280 the duty to preserve life is taught in relation to suicide. The section on euthanasia (nn. 2276-2279) takes up the principles already common in papal teaching, using the terminology of ordinary and extraordinary means, and medical procedures and care. As with the *Declaration on Euthanasia*, which is referred to here in n. 2277, the principles are enunciated in the context of imminent death. While there is no explicit mention of feeding, the *Catechism* teaches that the ordinary care owed to a sick person cannot be interrupted (n. 2279).

The *Catechism* also has a section on the morality of human acts, a theme taken up more thoroughly in *Veritatis splendor*. The *Catechism* in nn. 1749-1756 deals with the nature of the moral act in traditional terms (object, intention and circumstances). It speaks

²⁴⁵ Ibid. This is echoed in the *Catechism*, n. 2279, which teaches that the ordinary care owed to a sick person cannot be interrupted.

²⁴⁶ The full reference is in fn. 192.

of objective norms and the fact that some acts are always wrong to choose.²⁴⁷ It is an error to judge the morality of human acts by the intention that inspired them or the circumstances which supply their context.²⁴⁸

2.1.10 – John Paul II, *Veritatis splendor* (1993)²⁴⁹

This encyclical dealt with moral theology in the Church and touched on many issues relevant to the theme of homicide, particularly in its treatment of the moral theories of the “teleological” schools.

There are several references to killing in the encyclical. The first comes in the first section, which is a meditation on the Gospel story of the rich young man, from Mt 19:16-21. In this story, Jesus reminds the young man of the commandment: “You shall not murder.”²⁵⁰ This Gospel text is used several other times in the encyclical; twice in n. 13, where there is another reference to homicide in the teaching of Augustine, and then in nn. 15, 17 and 52. In n. 52 there is added: “The Church has always taught that one may never choose kinds of behaviour prohibited by the moral commandments expressed in negative form in the Old and New Testaments. As we have seen, Jesus himself reaffirms that these prohibitions allow no exceptions.”

²⁴⁷ The example given is fornication (n. 1755). *Veritatis splendor*, the next document in our survey, uses homicide as an illustration.

²⁴⁸ *Catechism*, n. 1756.

²⁴⁹ The full reference is in our fn. 194. For some background to the encyclical, see J.M. MILLER, “*Veritatis splendor*: Editor’s Introduction,” in J.M. MILLER (ed. and introductions), *The Encyclicals of John Paul II*, Huntington, Our Sunday Visitor Publishing Division, 1996, pp. 651-671. Relevant sections of the encyclical are in our Appendix VII, pp. 285ff.

Another use of homicide is as an illustration of actions that are always and everywhere intrinsically evil, regardless of intention. This comes later in the encyclical when John Paul II lists several crimes against life taken from *Gaudium et spes* 27: "Whatever is hostile to life itself, such as any kind of homicide, genocide, abortion, euthanasia and voluntary suicide; whatever violates the integrity of the human person . . . all these and the like are a disgrace."²⁵¹

However, the purpose of the encyclical was not to proclaim moral absolutes but to use them as illustrations of the authentic Catholic moral tradition. Most of the encyclical deals with moral method and is critical of theories of the teleological school, particularly proportionalism. As Curran acknowledges: "all these in their own way have called into question the existence of some intrinsically evil acts," including those acts condemned by the Pope.²⁵² Hence, the encyclical is concerned with moral reasoning, particularly with a view to presenting a correct balance between the three elements that have traditionally

²⁵⁰ *Veritatis splendor*, n. 6.

²⁵¹ *Veritatis splendor*, n. 80. C. Curran speaks of an anomaly in the English translations of these texts. The Latin text uses *homicidium* in these references, but this is translated as "murder" in every case, except for n. 80 where it is rendered as "homicide" in the Vatican English translation. For Curran, the different terminology is evidence of the difficulty in proclaiming moral absolutes (see "*Veritatis splendor*: A Revisionist Perspective," in C.E. CURRAN [ed.], *History and Contemporary Issues: Studies in Moral Theology*, New York, Continuum, 1996, p. 225). However, both English terms refer to unlawful killing, which can take various forms.

²⁵² "*Veritatis splendor*: A Revisionist Perspective," p. 218. Curran includes in this group of theories "an autonomous ethic, the charge of physicalism made against the accepted Catholic teaching in sexual and medical ethics, the theory of fundamental option, and the ethical theory of proportionalism" (ibid.). Curran designates the general trend as "revisionism," and describes himself as a "revisionist" theologian (ibid., p. 219). Many authors have explored the historical development of these various moral systems (they include situation ethics, consequentialism, relativism, and even casuistry); see, for example, G. KOPACZYNSKI, "Moral Methodologies: Relativism," in *Ethics & Medics*, vol. 19, n. 7 (1994), pp. 1-2; and R. CESSARIO, "From Casuistry to Virtue-Ethics," in *Ethics & Medics*, vol. 19, n. 10 (1994), pp. 1-2.

been considered as key indicators of the moral nature of the act: object, intention, and circumstances. The encyclical criticises proportionalism for its faulty method and, while acknowledging the role of intention and circumstances, affirms that the primary focus for a correct moral analysis is the object of the act.²⁵³

The encyclical received considerable attention in the theological community.²⁵⁴ Many of the responses to the encyclical took up issues to do with life and death. We have already mentioned McCormick's and Curran's critiques, which dealt with these issues. Ashley, in responding to the encyclical, wondered if the Church in the future may have to define "murder" more exactly in the light of new questions. Ashley asks the question in relation to his discussion of modern medicine's capacity to prolong life with various

²⁵³ This is developed at length in *Veritatis splendor*, nn. 72-79 (the text is in Appendix VII, p. 285ff.). Proportionalism stresses the intention and circumstances and argues that human acts cannot be described as objectively evil *in se*. This thesis is rejected in *Veritatis splendor*, n. 79 (the text is in our Appendix VII, p. 289). For an extended commentary on *Veritatis splendor*, reviewing the many responses and taking up the issues involved, see R. McCormick, "Some Early Reactions to *Veritatis splendor*," in C.E. Curran and R. A. McCormick (eds.), *John Paul II and Moral Theology*, Readings in Moral Theology, No. 10, New York, Paulist Press, 1998, pp. 5-34. In this article McCormick refers occasionally to life issues (homicide and abortion), which are frequently used as illustrations of the moral principles under review. However, he seems more comfortable choosing other examples, such as lying and stealing. However, McCormick himself has used the method of proportionalism to analyse difficult issues concerning the prolongation of life (for example, in "Caring or Starving? The Case of Claire Conroy," in *America*, 152 [1985], pp. 269-273).

²⁵⁴ Many of the responses have been published in collections. J. Wilkins, the editor of *The Tablet*, published several responses from that journal in J. WILKINS (ed.), *Considering Veritatis splendor*, Cleveland, Pilgrim Press, 1994. See also M.E. ALLSOPP and J.J. O'KEEFE (eds.), *Veritatis splendor: American Responses*, Kansas City, MO, Sheed and Ward, 1995. See also J. QUINN (Archbishop), "Perspectives on '*Veritatis splendor*'," in *Origins*, 23 (1993-1994), pp. 398-399; J. HEALY, "*Veritatis splendor* and the Human Person," in *Linacre Quarterly*, vol. 61, n. 4 (1994), pp. 16-26; K.M. WILDES, "In the Light of the Splendor: *Veritatis splendor* and Moral Theology," in *Kennedy Institute of Ethics Journal*, 4 (1994), pp. 13-25; A. MEREDITH, "Reflections on *Veritatis splendor*," in *The Month*, 26 (1993), pp. 428-431; S. PINCKAERS, "*Veritatis splendor*: the New Law and the Role of the Holy Spirit," in *Ethics & Medics*, vol. 20, n. 1 (1995), pp. 3-4; and S. PINCKAERS, "*Veritatis splendor*: Consequentialism, Proportionalism and Christian Morality," in *Ethics & Medics*, vol. 20, n. 3 (1995), pp. 3-4.

means, including assisted feeding and hydration.²⁵⁵ M.P. McQuillen, a professor of neurology, welcomed the encyclical. In his view, the encyclical, with its emphasis on truth and objective moral values, has particular meaning in the United States where there has been a revolution in decision-making and where all of the “intrinsically evil” acts mentioned in *Veritatis splendor*, such as abortion, suicide and euthanasia, are now common.²⁵⁶

The influence of *Veritatis splendor* on decision-making in life-prolonging areas is as yet hard to evaluate. However, it will demand of decision-makers an adherence to an analytical method that puts greater emphasis on objective norms than teleological considerations.

²⁵⁵ See also B.M. ASHLEY, “Does ‘The Splendor of Truth’ Shine on Bioethics?,” in *Ethics & Medics*, vol. 19, n. 1 (1994), pp. 3-4.

²⁵⁶ M.P. MCQUILLEN, “The Tarnished Splendor of Autonomy,” in *Linacre Quarterly*, vol. 62, n. 1 (1995), pp. 49-51.

2.1.11 – John Paul II, *Evangelium vitae* (1995)²⁵⁷

Several sections of this Encyclical are relevant to our theme. Early in the Encyclical John Paul II surveys the many threats to life, including infanticide, and condemns the custom of denying “the most basic care, even nourishment . . . to babies born with serious handicaps or illnesses.”²⁵⁸ The arguments justifying starving children to death are the same used to justify the withdrawal of assisted nutrition from comatose adults. It is the first explicit statement by a pope describing nutrition as a “basic care” which is, by inference, obligatory. In the next paragraph John Paul II speaks of the same threat for the incurably ill and the dying, and he rejects the practice of dealing with “the problem of suffering by eliminating it at the root, by hastening death.”²⁵⁹

The Encyclical has a formal condemnation of the direct and wilful killing of an innocent human with a preamble speaking of the threats to “weak and defenceless human beings.”²⁶⁰ The next paragraph applies this principle to those whose lives are

²⁵⁷ The full reference is in fn. 191. There are many commentaries on this encyclical, including PONTIFICIA ACCADEMIA PER LA VITA, *Commento interdisciplinare alla «Evangelium vitae»*, R. Lucas Lucas direzione e coordinamento, Edizione Italiana a cura di E. Sgreccia e R. Lucas Lucas, Vaticano, Libreria Editrice Vaticana, 1997; V. DE PAOLIS, “La protezione penale del diritto alla vita,” in PONTIFICIA ACCADEMIA PER LA VITA, *Commento interdisciplinare alla «Evangelium vitae»*, pp. 501-520; J-P. PERREX, *L'Évangile de la vie*, Paris, Beauchesne, 2 vols., 1999; C.E. CURRAN, “*Evangelium vitae* and its Broader Context,” in C.E. CURRAN, *History and Contemporary Issues: Studies in Moral Theology*, New York, Continuum, 1996, pp. 239-251; R.A. MCCORMICK, “The Gospel of Life,” in *America*, 172 (1995), pp. 10-17; A. RODRÍGUEZ LUÑO, “La legge divina del «non uccidere»,” in *Studi cattolici*, 29 (1995), pp. 435-444; J. PEREA, “Valor magisterial de las fórmulas empleadas en la «*Evangelium vitae*»,” in *Moralia*, 19 (1996), pp. 11-32; and F.A. SULLIVAN, “The Doctrinal Weight of *Evangelium vitae*,” in *Theological Studies*, 56 (1995), pp. 560-565.

²⁵⁸ *Evangelium vitae*, N. 14; the full text is in our Appendix VIII, p. 290.

²⁵⁹ *Ibid.*, n. 15.

²⁶⁰ *Ibid.*, n. 57, see our Appendix VIII, p. 290.

threatened, including the incurably ill. The language in this section echoes the definition of euthanasia in the *Declaration on Euthanasia*, with its focus on “intention or effect.”

In n. 65 of the Encyclical, John Paul II restates this definition of euthanasia found in the Declaration, but with one interesting variation. The Latin text is: «*Sub nomine euthanasiae vero proprioque sensu accipitur actio vel omissio quae suapte natura et consilio mentis mortem affert ut hoc modo omnis dolor removeatur. Euthanasia igitur in voluntatis proposito et procedendi rationibus, quae adhibentur, continetur.*» However, the Declaration had the phrase *quae suapte natura vel consilio mentis*; hence the Encyclical substitutes “et” for “vel.” N. Ford has suggested that John Paul II has thus changed the definition of euthanasia.²⁶¹ Ford’s thesis is that the change in wording means that an act of euthanasia will always involve an intention to kill, hence withdrawing assisted nutrition and hydration would not be immoral unless there was such an intention.²⁶² However, the footnote in the Encyclical refers to the Declaration, and John Paul II frequently refers to the teaching of the Declaration as being normative.²⁶³ There is no indication in the text, or in any other commentary, of a significant change in the meaning of euthanasia. Further, we have noted above, in our

²⁶¹ N. FORD, “Moral Dilemmas in the Care of the Dying,” in *The Australasian Catholic Record*, 73 (1996), pp. 474-490. The change is reflected in the “official” English-language translation, which uses “and by intention” where the Declaration had “or by intention.”

²⁶² *Ibid.*, pp. 487-488. Ford goes on to say that this change will “leave scope for the professional judgement of clinicians caring for the dying and those in a life threatening situation” (p. 488). He does not elaborate further about what he means by “scope,” but he seems to imply that the “new” definition will give clinicians a greater freedom to make life and death decisions. In our third chapter we will explore the canonical tradition regarding homicide; in this tradition an explicit intention to kill is not always necessary for the crime of homicide; the intention to place the act that results in death is sufficient.

²⁶³ For example, *Evangelium vitae* n. 65 has four such references, and there are two references elsewhere in the encyclical (in nn. 57 and 66).

treatment of intention, that a decision to forego a means can sometimes involve an intention to kill.

There is a clear statement of the objective evil of euthanasia as a form of homicide, which is not changed by circumstances or choice. The Pope is critical of the attitude that chooses death as a liberation from pain and suffering, and puts this into the context of advances in medicine which are able to “to sustain and prolong life even in situations of extreme frailty.”²⁶⁴ His phrase “hopelessly impaired life” would include the lives of those who are chronically disabled and those in the persistent vegetative state. In this context he develops the principles of the *Declaration on Euthanasia* relating to foregoing “aggressive medical treatment.” As with the Declaration, the decision to forego treatment can only be made if death is “clearly imminent and inevitable.”²⁶⁵

In summary, the teaching of *Evangelium vitae* restates the principles relating to the prolongation of life but goes much further than any other papal teaching in applying the principles to chronically ill patients. The withdrawal of nutrition from a disabled newborn infant is condemned, and this teaching here can be applied to a similar withdrawal from a chronically ill patient who requires assisted nutrition and hydration.

²⁶⁴ See *Evangelium vitae*, n. 64.

²⁶⁵ Ibid., n. 65.

2.1.12 – The *Charter for Health Care Workers* (1995)²⁶⁶

The Charter claims an authoritative status. In the preface, Cardinal Angelini, the President of the Pontifical Council for Pastoral Assistance to Health Care Workers, describes the Charter as a “deontological code for those engaged in health care” and as authoritative “directives” which have been approved by the Congregation for the Doctrine of the Faith.²⁶⁷ Two sections of the Charter are relevant to our theme: the principles for foregoing treatment and a discussion of assisted nutrition.

First, there is a presentation of the principles that govern the foregoing of treatments and remedies. This is done using the concepts of “proportionate” and “disproportionate” treatments and remedies and is based on the teaching of the *Declaration on Euthanasia*.²⁶⁸ What is interesting is that this is in section II of the Charter (on life) rather than section III (on dying). However, this does not mean that the principles, hitherto developed in relation to the dying, can now be applied in other situations. They need to be interpreted in the light of the Declaration and also the Charter’s own treatment of dying,²⁶⁹ which allows for the foregoing of treatment only in the context of imminent death.

Assisted nutrition and hydration is dealt with explicitly in section III of the charter (on dying) in the context of principles relating to “proportionate care” and

²⁶⁶ PONTIFICAL COUNCIL FOR PASTORAL ASSISTANCE TO HEALTH CARE WORKERS, *Charter for Health Care Workers*, Vatican City, Vatican Press, 1995; Boston, Pauline Books and Media, 1995.

²⁶⁷ See our Appendix IX, p. 293, the words beginning “And this Council.”

²⁶⁸ Using lengthy sections taken directly from the Declaration.

²⁶⁹ This is found in section III.

choices about optional means. They are designated “part of the normal treatment always due patients when this is not burdensome for them: their undue suspension could amount to euthanasia in a proper sense.”²⁷⁰ The term “burdensome” here relates back to the previous paragraph (taken from the *Declaration on Euthanasia*). If the feeding contributes to the “precarious and painful prolongation of life” of a dying person, it becomes extraordinary and optional. It must be provided in all other situations.

The teaching of the Charter is an important application of the general principles of the *Declaration on Euthanasia* to assisted nutrition and hydration. “Assisted” feeding is mentioned explicitly, and it is designated as a normal and obligatory treatment. It is optional only when it prolongs the dying process.

2.1.13 – John Paul II, *ad limina* address (2 October 1998)

This address of 1998, to a group of bishops from the United States, took up a number of themes relating to the defence of life and dealt explicitly with the withdrawal of assisted nutrition in the context of the teaching about obligatory and non-obligatory procedures.²⁷¹ The Pope spoke of “the substantive moral difference” between these procedures and went on to designate assisted nutrition and hydration as an ordinary means of preserving life. He also referred to the 1992 NCCB Pro-Life Committee’s *Nutrition and Hydration: Moral and Pastoral Considerations* and, like that statement, urged that there be a presumption in favour of medically assisted nutrition and hydration

²⁷⁰ *Charter for Health Care Workers*, n. 120.

²⁷¹ The full reference is in fn. 193.

“to all patients who need them.” He condemned any withdrawal intended to cause death.²⁷²

The significance of this statement lies in the teaching itself and the fact that it refers to the 1992 statement of the NCCB Pro-Life Committee²⁷³ rather than the 1994 NCCB health care directives that dealt with assisted nutrition and hydration in directive n. 58.²⁷⁴ The earlier statement of the Pro-Life Committee argued for a presumption in favour of assisted nutrition and hydration. It rejected many arguments for a permissive attitude to removal. It specified two possible situations justifying withdrawal, the case of imminent death or where the assisted nutrition could not be ingested.

The 1994 directive n. 58 is brief, albeit precisely worded, and, while it used the notion of presumption, it did not set any such limits. The Pope also uses the terminology of presumption without specifying situations where withdrawal is possible. However, his teaching seems to “ratify” the NCCB Pro-Life Committee statement.²⁷⁵

²⁷² See our Appendix X, p. 294, for the text.

²⁷³ NCCB, “Nutrition and Hydration: Moral and Pastoral Reflections,” 2 April 1992, in *Origins*, 21 (1991-1992), pp. 705-712.

²⁷⁴ NCCB, *Ethical and Religious Directives for Catholic Health Care Services*, 17 November 1994, in *Origins*, 24 (1994-1995), 449, 451-462. A history of these directives focusing on Directive 58 (regarding assisted nutrition and hydration) has been written by T.R. KOPFENSTEINER, “Developing Directive 58,” *Health Progress*, vol. 81, n. 3 (2000), pp. 20-23, 27.

²⁷⁵ For another view, see K. O’ROURKE and P. NORRIS, “Care of PVS Patients: Catholic Opinion in the United States,” in *Linacre Quarterly*, 68 (2001), pp. 201-217, especially p. 208 where the authors, citing the Pope’s statement that assisted nutrition and hydration should be provided to all patients who need them, say that the Pope “offers no clarification as to how to assess necessity in the concrete situation.”

2.1.14 – Pontifical Academy for Life, *Respect for the Dignity of the Dying* (2000)²⁷⁶

This document of 2000 was issued in the context of pro-euthanasia legislation in the Netherlands and touches on a number of issues relevant to our theme. In discussing the factors behind the promotion of euthanasia, the document mentions the considerable cost to the public of supporting chronically ill patients. In reviewing magisterial teaching relating to ordinary and extraordinary care for the seriously sick and the dying, the document places assisted nutrition and hydration into the category of ordinary care that is always obligatory.²⁷⁷

Magisterial texts of the Holy See: Conclusion

Papal teaching in the last fifty years has provided the principles needed for decision-making about foregoing life-sustaining means and guidance in the application of these principles. While there has been as yet no authoritative and comprehensive treatment of the question of withdrawing assisted nutrition and hydration from comatose and chronically ill patients, the general principles provide adequate guidance for appropriate decision-making. The references to assisted nutrition in papal teaching and curial documents state that such nutrition is part of the normal care due to the patient at any stage of the illness. The exception, articulated most authoritatively in the

²⁷⁶ PONTIFICAL ACADEMY FOR LIFE, “Il rispetto della dignità del morente: Considerazioni etiche sull’eutanasia,” 9 December 2000, published on the Pontifical Academy for Life’s web page, <http://www.vatican.va/roman_curia/pontifical_academies/acdlife/documents/rc_pa_acdlife_doc_20001209_eutanasia_it.html> (15 December 2000) (English translation in *Briefing*, vol. 31, n. 7 [2001], pp. 30-32).

²⁷⁷ This is in n. 6 of the document, and the Italian text is: *dovrà assicurare sempre le cure ordinarie (comprese nutrizione ed idratazione, anche se artificiali)*.

Declaration on Euthanasia, allows for the withdrawal of such nutrition only if it prolongs imminent death.

2.2 – Episcopal magisterium

In 1988 two American theologians, T.A. Shannon and J.J. Walter, conducted a survey to discern the policies of American bishops concerning assisted nutrition and hydration.²⁷⁸ Not every bishop answered the survey, but some answered in detail.²⁷⁹ Some reported being aware of patients in the persistent vegetative state, but few had a policy about assisted nutrition and hydration for such patients. After analysing the detailed responses, Shannon and Walter made this comment: “These documents represent a range of opinions, arguments, and conclusions. All are carefully stated, clearly argued, and located squarely within the Catholic tradition. Yet different conclusions are drawn from this common heritage—which indicates that the debate is far from finished. There is strong preference for a case-by-case consideration of the issues and a reluctance to have fixed rules to decide cases. On the other hand, there is a recognition that some consensus needs to be developed.”²⁸⁰

These authors reported on unpublished responses. Their summary remarks could well apply to the many published episcopal statements on the same theme. The nature

²⁷⁸ T.A. SHANNON and J.J. WALTER, “The PVS Patient and the Forgoing/Withdrawing of Medical Nutrition and Hydration,” in J.J. WALTER and T.A. SHANNON (eds.), *Quality of Life: The New Medical Dilemma*, New York, Mahwah, Paulist Press, 1990, pp. 203-223; and in *Theological Studies*, 49 (1988), pp. 623-647.

²⁷⁹ There were 78 responses to the 167 questionnaires sent (*ibid.*, p. 204). Shannon and Walter evaluated in detail the seven fuller responses (*ibid.*, pp. 205-210).

²⁸⁰ *Ibid.*, p. 210.

and variety of episcopal teaching has also changed very little in the years since this survey. Bishops then and now, both individually and in groups, have often addressed the matter of assisted nutrition and hydration in response to specific cases, or as an aspect of a more comprehensive teaching on euthanasia. The American bishops have been given guidance by the NCCB, particularly the Pro-Life Committee, but even these statements reflect a number of perspectives and have offered different applications of the well-accepted principles of Catholic doctrine.

We propose to survey the published episcopal teaching and comments that take up the issue, directly or indirectly, of assisted nutrition and hydration. Many of the documents deal primarily with euthanasia and develop the principles relating to the prolongation of life. This episcopal teaching comes in several styles in terms of authorship, form and authority. In terms of authorship, documents have been issued by conferences of bishops, other groupings of bishops and individual bishops for their dioceses.²⁸¹ In terms of form, there are pastoral letters, other letters, directives (or guidelines) for Catholic health institutions, briefs and testimony submitted to civil courts, guidelines and submissions offered to legislators, and media releases. The authority and weight of the documents varies with their authorship and form.

As part of this survey we will evaluate in detail some healthcare directives and guidelines, which are an important expression of the episcopal magisterium in healthcare matters.

²⁸¹ Many bishops' conferences have also issued documents through executive officers and committees, such as the NCCB Committee for Pro-Life Activities.

2.2.1 – Overview of episcopal statements

A number of relevant episcopal statements have been summarized in a series of tables, starting at page 294. These tables provide an overview of these statements and their teaching as it relates to assisted nutrition and hydration.

Some general observations can be made about these statements. The bishops of the United States and Great Britain have been the most articulate in developing teaching and policy. There is complete consistency in all statements in the development of the principles regarding the ordinary and extraordinary means of the prolongation of life. In applying the general principles to assisted nutrition and hydration, there is general consistency-what might be called a “majority view” - but there are significant variations in the American statements.

2.2.2 – The “majority view” against withdrawal

The “majority view” is that assisted nutrition and hydration is usually to be considered as ordinary care. There is to be a presumption in favour of its maintenance. This presumption yields in two specific circumstances: when assisted nutrition and hydration itself cannot be assimilated, or when inevitable death is imminent and the assisted nutrition and hydration becomes an additional burden for the dying person.

There are many bishops and groups of bishops who have proposed this teaching. They include Archbishop Hickey of Perth (Australia),²⁸² Archbishop Hume and Bishops

²⁸² The comments of Archbishop Hickey of Perth are taken from A. FISHER, “Should We Starve the Unconscious?” in *The Australasian Catholic Record*, 74 (1997), p. 325.

Budd²⁸³ and Conti²⁸⁴ from England, and a group of Bishops from England, Ireland, Scotland and Wales.²⁸⁵ Those from the United States of America include Archbishops Bernardin,²⁸⁶ Maida,²⁸⁷ O'Connor,²⁸⁸ Rigali²⁸⁹ and Stafford,²⁹⁰ and Bishops Gracida,²⁹¹ McHugh,²⁹² Myers,²⁹³ Nevins,²⁹⁴ as well as the NCCB Pro-Life Committee²⁹⁵ and the Bishops of Florida,²⁹⁶ Massachusetts,²⁹⁷ New Jersey²⁹⁸ and Pennsylvania.²⁹⁹

²⁸³ C. BUDD (Bishop), Statement in the Tony Bland Case, 24 November 1992, in *Briefing*, vol. 22, n. 23 (1992), p. 18. (Bishop Budd was writing as chairman of the Department of Christian Responsibility and Citizenship of the Catholic Bishops' Conference of England and Wales.)

²⁸⁴ M. CONTI (Bishop), Statement Following Tony Bland's Death, 24 April 1993, in *Briefing*, vol. 23, n. 10 (1993), p. 18.

²⁸⁵ JOINT COMMITTEE ON BIO-ETHICAL ISSUES OF THE CATHOLIC BISHOPS OF ENGLAND, IRELAND, SCOTLAND AND WALES, Statement in Response to the Law Lords' Judgement in the Case of Airedale NHS Hospital Trust v Bland, 12 August 1993, in *Briefing*, vol. 23, n. 15 (1993), p. 7; and in *Doctrine and Life*, 43 (1993), pp. 492-495.

²⁸⁶ J. BERNARDIN (Archbishop), Address on Euthanasia to the University of Chicago Center for Clinical Medical Ethics, 26 May 1988, in *Origins* 18 (1988-1989), pp. 52-57.

²⁸⁷ A. MAIDA (Archbishop), Lenten Pastoral Letter "The Lord and Giver of Life," 1992, in *Catholic International*, 3 (1992), pp. 685-688.

²⁸⁸ The 21 September 1989 paper of Bishop McHugh (see our fn. 292) was also sent to their priests by the bishops of New Jersey. On 16 November 1989, Cardinal O'Connor asked that the statement be sent to the priests of the Archdiocese of New York (reported in *Issues in Law & Medicine*, 6 [1990], p. 89).

²⁸⁹ J. RIGALI (Archbishop), Statement of Principles for Health Care Decisions Concerning Assisted Nutrition and Hydration and Related Issues, 29 June 2000, <<http://www.wf-f.org/RigaliANH.6-29-00.html>> (29 August 2000).

²⁹⁰ F. STAFFORD (Archbishop), Speech to Archdiocese of Denver Council of Women, 3 June 1991, in *Origins*, 21 (1991-1992), pp. 108-111.

²⁹¹ R. GRACIDA (Bishop), Interview in the *South Texas Catholic*, 22 April 1992, reported in *Catholic International*, 3 (1992), p. 624.

²⁹² J. MCHUGH (Bishop), Comments after Nancy Cruzan's Death, 4 January 1991, in *Origins*, 20 (1990-1991), pp. 518-519; Paper "Principles in Regard to Withholding or Withdrawing Artificially Assisted Nutrition/Hydration," 21 September 1989, in *Origins*, 19 (1989-1990), pp. 314-316; and *The Priest*, vol. 46, n. 1 (1990), pp. 32-34.

Since this teaching is most fully developed in the 1991 statement of Bishop Myers and in the 1992 NCCB Committee for Pro-Life Activities statement “Nutrition and Hydration: Moral and Pastoral Reflections,” we will analyse these documents more deeply.

Bishop Myers, then bishop of Peoria, addressed his statement specifically to administrators of Catholic healthcare facilities. He offered a detailed reflection on the Catholic moral tradition concerning the end of human life so as to help individuals and institutions “arrive at a correct formation of conscience” in dealing with difficult cases.³⁰⁰ The analysis of the Catholic moral tradition focuses on the CDF *Declaration on Euthanasia*, in particular, *Veritatis splendor* how the principles of that Declaration should

²⁹³ J. MYERS, (Bishop), “Instruction for Healthcare Administrators,” 14 September 1991, in *Linacre Quarterly*, vol. 59, n. 1 (1992), pp. 37-48.

²⁹⁴ J.J. NEVINS, (Bishop), Pastoral Letter on Euthanasia “Mercy or Murder,” 31 March 1994, in *Catholic International*, 5 (1994), pp. 276-281.

²⁹⁵ NCCB COMMITTEE FOR PRO-LIFE ACTIVITIES, “Nutrition and Hydration: Moral and Pastoral Reflections,” 2 April 1992, in *Origins*, 21 (1991-1992), pp. 705-712; *Linacre Quarterly*, vol. 59, n. 4 (1992), pp. 33-49; *Catholic International*, 3 (1992), pp. 620-632; and an Italian-language translation in *Lettere pastorali*, 1992-1993, pp. 300-312.

²⁹⁶ FLORIDA BISHOPS, Pastoral Letter “Life, Death and the Treatment of Dying Patients,” 27 April 1989, in *Origins*, 19 (1989-1990), pp. 47-48.

²⁹⁷ T. HARRINGTON, (Bishop), Statement Against Massachusetts Living Will Legislation, 1980, in J.G. MELTON (ed.), *The Churches Speak on: Euthanasia: Official Statements from Religious Bodies and Ecumenical Organizations*, Detroit, Gale Research Inc., 1991, pp. 6-8. (Bishop Harrington was speaking for the Bishops of Massachusetts.)

²⁹⁸ For details, see fn. 288.

²⁹⁹ PENNSYLVANIA BISHOPS, Pastoral Statement “Nutrition and Hydration: Moral Considerations,” 14 January 1992, in *Origins*, 21 (1991-1992), pp. 541, 543-553; *Linacre Quarterly*, vol. 59, n. 3 (1992), pp. 8-29; and an Italian-language translation in *Lettere pastorali*, 1992-1993, cols. 317-334.

³⁰⁰ MYERS, “Instruction for Healthcare Administrators,” p. 44.

be applied in situations involving assisted nutrition and hydration. Bishop Myers does not see the option of forgoing a life-preserving means as an “entirely open question,” as the Declaration allows withdrawal only when death is imminent in spite of the means used.³⁰¹ For Bishop Myers, artificially supplied food and water are obligatory unless they cannot be assimilated.³⁰²

In other cases, the judgement about the withdrawal of assisted nutrition and hydration must weigh the benefits of such nutrition against the burdens these means introduce, rather than “the presence of burdens or misery which arise *independent* of the medical intervention in question.”³⁰³ This analysis rejects any quality of life standard in assessing burdens and benefits. Assisted nutrition and hydration are not “useless” (non-obligatory) when they effectively deliver nutrients, even if they fail to bring about some other benefit such as the restoration of consciousness.³⁰⁴ An exception is when death is imminent in spite of the means used, as it is not necessary to employ means which secure a burdensome prolongation of life.³⁰⁵

The NCCB statement, “Nutrition and Hydration: Moral and Pastoral Reflections,” prepared by its Committee for Pro-Life Activities and issued on 2 April 1992, had a long

³⁰¹ Ibid., p. 43.

³⁰² Ibid., p. 45.

³⁰³ Ibid., p. 45. The emphasis is in the original text.

³⁰⁴ Ibid., p. 45.

³⁰⁵ Ibid., p. 46.

and complex history.³⁰⁶ It was in preparation for four years. Two earlier drafts had been sent to the bishops for written comments. The document was discussed in a closed session of the executive of the NCCB before being finally approved by the fifty bishop members of the NCCB Administrative Committee. The Pro-Life Activities Committee also consulted with the NCCB Committee on Doctrine. The authority of the statement is an issue addressed by at least two bishops.³⁰⁷ It is not a formal document of the NCCB but a committee statement. The title of the document, "Moral and Pastoral Reflections," indicates that the bishops did not see this as a definitive teaching or even firm guidelines on the issue, and there are several statements to this effect.

The reflections are presented as the first, not the last, word of the NCCB on the subject. "We recognize the complexity involved in applying these principles to individual cases and acknowledge that, at this time and on this particular issue, our applications do not have the same authority as the principles themselves."³⁰⁸ The moral principles pertinent to the issue are presented as "a basis for responsible discussion of the morality of life support," and, as to their application, the bishops acknowledge that they offer "tentative guidance on how to apply these principles to the difficult issue of medically

³⁰⁶ The editor of *Origins* explains the history of the document and the make-up of the committee. See *Origins*, 21 (1991-1992), p. 705, col. 1.

³⁰⁷ Bishop J. Fiorenza, in *Catholic International*, 3 (1992), p. 628, described it as "a committee statement issued to give guidance in a very difficult and complex question of modern medicine." Bishop Gracida, in the same issue of *Catholic International*, at p. 631, agreed, adding that the bishops did not vote on it at their plenary session. However, the NCCB Administrative Committee approved it unanimously. Bishop Gracida, who was a member of the Pro-Life Committee, added that the Holy See had been asked to monitor the progress of the document over a four-year period and had "informally" indicated approval of the final text. The statement was criticized by two theologians: K.D. O'ROURKE and J. DEBLOIS, "Removing Life Support: Motivations, Obligations," in *Health Progress*, vol. 73, n. 6 (1992), pp. 20-27, 38.

³⁰⁸ *Origins*, p. 706, col. 3.

assisted nutrition and hydration.”³⁰⁹ The bishops state more than once that the “teaching of the church has not resolved the question whether medically assisted nutrition and hydration should always be seen as a form of normal care.”³¹⁰ They also acknowledge the fact that Catholic theologians have different opinions on the withdrawal of assisted nutrition and hydration in certain cases.

The document has two major sections. The first lists the relevant moral principles, and the second contains seven questions and answers on themes relating to assisted nutrition and hydration.³¹¹ The bishops restate the relevant moral principles from the Catholic tradition. While everyone has the duty to care for life, this does not mean that all possible remedies must be used. One is not obliged to use “extraordinary” or “disproportionate” means to preserve life, particularly in the final stage of dying.³¹² Decisions about life and death must avoid all discrimination based on age or dependency, whatever the cause of the dependency or disability.³¹³ Euthanasia includes positive actions as well as omissions when the purpose is to kill. It is euthanasia if the decision to

³⁰⁹ Ibid., p. 711, col. 1, under “Conclusion.”

³¹⁰ We have reached a different conclusion in the light of more recent teaching of the papal magisterium. The situation has changed since this 1992 NCCB document, particularly with the 1995 *Charter for Health Care Workers*, so that medically assisted nutrition and hydration should now always be considered a form of normal care. However, we have argued that it can be withdrawn *in extremis*.

³¹¹ The document also has an introduction, a conclusion, 47 footnotes and an appendix on the technical medical issues relating to assisted feeding.

³¹² Further, the test is whether the means offer no reasonable hope of benefit or involve excessive burdens (ibid., p. 706, col. 2 at n. 4).

³¹³ Ibid., p. 706, col. 3 at n. 7. The difficult cases often involve a high level of dependency. The bishops in the Introduction to these reflections speak of “helpless patients – those who are seriously ill, disabled or persistently unconscious” (ibid., p. 706, col. 1).

withdraw assisted nutrition and hydration is done to cause the patient's death, either for its own sake or to achieve some other goal such as the relief of suffering.³¹⁴

However, in a carefully worded statement, the bishops speak of situations where assisted nutrition and hydration might be withdrawn.

Second, we should not assume that all or most decisions to withhold or withdraw medically assisted nutrition and hydration are attempts to cause death. To be sure, any patient will die if all nutrition and hydration are withheld. But sometimes other causes are at work - for example, the patient may be imminently dying, whether feeding takes place or not, from an already existing terminal condition. At other times, although the shortening of the patient's life is one foreseeable result of an omission, the real purpose of the omission was to relieve the patient of a particular procedure that was of limited usefulness to the patient or unreasonably burdensome for the patient and the patient's family or caregivers. This kind of decision should not be equated with a decision to kill or with suicide.³¹⁵

In drawing out the implications of this position, the document surveys several related issues. Is assisted nutrition and hydration a form of "treatment" or "care"?³¹⁶ What are the benefits and the burdens of assisted nutrition and hydration?³¹⁷ In analysing the complexities of these issues, the bishops several times deal with the intention involved.

Even here, however, we must try to think through carefully what we intend by withdrawing medically assisted nutrition and hydration. Are we deliberately trying to make sure that the patient dies in order to relieve the caregivers of the financial and emotional burdens that will fall upon them if the patient survives? Are we really implementing a decision to withdraw all other

³¹⁴ Ibid., p. 707, col. 1, citing the CDF *Declaration on Euthanasia*, Part III, and the 1971 NCCB *Ethical and Religious Directives for Catholic Health Facilities*, Directive 29.

³¹⁵ Ibid., p. 707, col. 1.

³¹⁶ Ibid., p. 707, col. 1.

³¹⁷ Ibid., p. 707, col. 2 to p. 708, col. 3.

forms of care, precisely because the patient offers so little response to the efforts of the caregivers?³¹⁸

In their conclusions, the bishops use the concept of presumption in favour of assisted nutrition.

We reject any omission of nutrition and hydration intended to cause a patient's death. We hold for a presumption in favor of providing medically assisted nutrition and hydration to patients who need it, which presumption would yield in cases where such procedures have no medically reasonable hope of sustaining life or pose excessive risks or burdens.³¹⁹

The bishops reject "broadly permissive policies on withdrawal of nutrition and hydration from vulnerable patients" (p. 711, col. 1), yet allow for the possibility of such a withdrawal in the situations mentioned in the above quote.

2.2.3 – Episcopal statements allowing withdrawal

The bishops who allow for the presumption in favour of assisted nutrition to yield in more situations are Bullock,³²⁰ Fiorenza,³²¹ Gelineau,³²² Leibrecht,³²³ Sheehan,³²⁴ and

³¹⁸ Ibid., p. 708, col. 3.

³¹⁹ Ibid., p. 711, col. 1.

³²⁰ W. BULLOCK (Bishop), Pastoral Statement on the Provision of Nutrition and Fluids to Dying or Comatose Patients, 16 January 1992, in *Origins*, 21 (1991-1992), pp. 553-555.

³²¹ J. FIORENZA (Bishop), Interview in *The Texas Catholic Herald*, reported in *Catholic International*, 3 (1992), p. 628.

³²² L. GELINEAU (Bishop), Statement on Removing Nutrition and Water from a Comatose Woman, 10 January 1988, in *Origins*, 17 (1987-1988), pp. 545, 547; *Catholic International*, 3 (1992), p. 622. Bishop Gelineau made a further statement after a judge had ruled in the case: L. GELINEAU, Statement After Judge's Decision on Medical Case, 17 October 1988, in *Origins*, 18 (1988-1989), p. 340. There was another report in *Origins* after Marcia Gray died: *Origins*, 18 (1988-1989), p. 430. For a strong critique of Bishop Gelineau's position (which was based on the opinion of Father Robert McManus), see N. HENTOFF, "The Church, the Law, and the Advancing Armies of Death," in *The Catholic Lawyer*, 33 (1990), pp. 4-5. Hentoff claims that Gray's guardian *ad litem* discovered that the nurses looking after Gray reported some basic interaction

the Texas bishops.³²⁵ These bishops tend to see assisted nutrition and hydration as an extraordinary and optional treatment. Some (such as Bishop Fiorenza) develop the theological opinion that physical life is subordinate to the spiritual good of the person and that there is no benefit in sustaining a merely biological life. Others (such as Bishop McGann and the Texas bishops) reject the view that the withdrawal of assisted nutrition and hydration is the cause of death; for them it is the underlying pathology, not the starvation, which leads to death.

The position is well articulated in the Texas Bishops' "Interim Pastoral Statement on Artificial Nutrition and Hydration." This statement was signed by sixteen of the eighteen bishops of Texas and issued jointly with the Texas Conference of Catholic Health Facilities.³²⁶ The bishops state that the statement was the result of a consultation of the Texas Conference of Catholic Health asking for the issue to be clarified.

interaction and understanding, and that no one at the hospital would agree to remove her feeding tube (*ibid.*, p. 4).

³²³ J. LEIBRECHT, (Bishop), Commentary on the Nancy Cruzan Case, 15 December 1989, in *Origins*, 19 (1989-1990), pp. 525, 526; *Catholic International*, 3 (1992), p. 621.

³²⁴ M. SHEEHAN, (Archbishop), Article in Archdiocesan Newspaper *The People of God*, "Violations Against the Dignity of Human Life – Doctor Assisted Suicide," May 1996, <<http://www.archdiocesasantafe.org/messages/pog0596.htm>> (12 August 2000).

³²⁵ TEXAS BISHOPS, "Interim Pastoral Statement on Artificial Nutrition and Hydration," 7 May 1990, in *Origins*, 20 (1990-1991), pp. 53-55.

³²⁶ The *Origins* text is accompanied by a note explaining that one of the dissenting Bishops was Gracida of Corpus Christi, who told the Catholic News Service on 16 May 1990 that the document's "fatal flaw" is that "it gives higher priority to relieving individuals and families of burdens, which are usually difficult to determine, rather than the sick individual's right to life" (*ibid.*, p. 53, col. 3). The identity of the other non-signer is not known.

The statement sets out relevant general principles relating to preserving life (ordinary and extraordinary means, burdens and benefits, and so forth).³²⁷ Life-sustaining means (such as mechanical respirators, cardiac pacemakers and assisted nutrition and hydration) can be omitted in “appropriate cases.” In developing this theme, the bishops’ analysis of “life-sustaining means” likens the withdrawal of assisted nutrition and hydration to that of a respirator.

The physical cause of death is ultimately the pathology which required the use of those means in the first place. The proximate physical means are either the absence of the substance necessary for life (oxygen, water, nutrients) or the presence of toxic substances resulting from metabolic activities of the body.³²⁸

In applying these principles to assisted nutrition and hydration, the bishops argue that patients “competently diagnosed” as being in a persistent vegetative state are “stricken with a lethal pathology which, without artificial nutrition and hydration, will lead to death.” The issue is determining the conditions making it morally necessary to intervene with artificial nutrition and hydration to prevent the patient from dying, which would occur as a result of the underlying pathology.³²⁹

The morally appropriate forgoing or withdrawing of artificial nutrition and hydration from a permanently unconscious person is not abandoning that person. 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. The forgoing or withdrawing of artificial nutrition and hydration should only occur after there has

³²⁷ The statement gives examples of benefits: “benefits include cure, pain reduction, restoration of consciousness, restoration of function and maintenance of life with reasonable hope of recovery” (ibid., p. 53, col. 2). The “life with reasonable hope of recovery,” however, inevitably leads to a quality of life analysis.

³²⁸ Ibid., p. 54, col. 1.

³²⁹ Ibid., p. 54, col. 1.

been sufficient deliberation based upon the best medical and personal information available.³³⁰

The statement of the Texas bishops reflects the views of K. O'Rourke, and we have already offered a critical analysis of the positions taken in this statement.

Episcopal magisterium: Conclusion

This is not a complete survey of the episcopal magisterium. The documents are those published and available to us. Yet, many bishops from various countries are represented in our survey.³³¹ Two motivations for these documents are common. First, they have frequently attempted to oppose moves to win community acceptance for euthanasia. Second, they have addressed the issue of the withdrawal of assisted nutrition and hydration, often in regard to individual cases, such as Cruzan in the USA and Bland in England.³³²

There is general consistency about both principles for prolongation of life and the circumstances in which means to prolong life can be foregone. Some bishops, all from the USA, have taken different views about the application of the principles relating to the prolongation of life. These bishops do not posit a presumption in favour of feeding; instead, they see assisted nutrition and hydration as an extraordinary and optional treatment that can be removed if it is unable to restore the patient to a conscious and active state. They also reject the view that the withdrawal of assisted nutrition and

³³⁰ Ibid., p. 54, col. 2.

³³¹ And summarized in our Appendix XI, pp. 294ff.

³³² These are two of the highly publicized and controversial cases that involved court decisions to remove assisted nutrition and hydration. The Church intervened in both.

hydration is the cause of death; for them it is the underlying pathology, not the starvation, which leads to death.

2.3 – Health care directives

Health care directives are an important instrument for providing direction for decision-making in Catholic institutions and by Catholic personnel. We shall consider the health directives of Australia, the United States and Canada, which are representative of varying approaches, from the point of view of the authority of the directives and the application of principles to artificial nutrition and hydration.³³³

2.3.1 – Australia

In May 2001, the Australian Bishops Conference at their plenary meeting in Sydney approved the *Code of Ethical Standards for Catholic Health and Aged Care Services in Australia*.³³⁴ The relevant guideline for assisted nutrition and hydration is as follows.

³³³ For an overview of the ethical debate concerning another controversial medical procedure (surgical uterine isolation as a contraceptive measure), see G. KOPACZYNSKI, “Uterine Isolation,” in R.E. SMITH (ed.), *The Splendor of Truth and Health Care: Proceedings of the Fourteenth Workshop for Bishops, Dallas, 1995*, Braintree, Pope John Center, 1995, pp. 58-75. This article reviews the history of the debate, the way the procedure was dealt with in the 1948 and 1971 American directives, and the authoritative resolution of the matter with the 1993 Vatican “Responses to questions concerning ‘uterine isolation’ and related matters.”

³³⁴ CATHOLIC HEALTH AUSTRALIA, *Code of Ethical Standards for Catholic Health and Aged Care Services in Australia*, Catholic Health Australia Inc., Red Hill, ACT, 2001. The process of drafting these guidelines started in 1998 when Catholic Health Australia commissioned the Plunkett Centre for Ethics in Health Care, under the guidance of a Steering Committee chaired by Bishop Michael Putney, to prepare the first set of ethical standards for all Catholic health and aged care services in Australia. Dr Bernadette Tobin chaired the drafting committee. Previously the Plunkett Centre had published similar guidelines, including a protocol for assisted

5.12 Continuing to care for a patient is a fundamental way of respecting and remaining in solidarity with that person. When treatments are withheld or withdrawn because they are therapeutically futile or overly-burdensome, other forms of care such as appropriate feeding, hydration and treatment of infection, comfort care and hygiene should be continued. Nutrition and hydration should always be provided to patients unless they cannot be assimilated by a person's body, they do not sustain life, or their only mode of delivery imposes grave burdens on the patient or others. Such burdens to others do not normally arise in developed countries such as Australia.³³⁵

There is a distinction here between treatment and care, with assisted nutrition and hydration in the category of a care that is obligatory even when treatments are withdrawn. The guideline must also be interpreted in the light of a number of fundamental principles articulated earlier in the Code, such as "judgments about the futility of a treatment outcome must be distinguished from judgments about the 'futility of a person's life': the former are legitimate, the latter are not" (1.14).

There is no use of the term "presumption" in favour of feeding, but the last sentence of guideline 5.12 conveys the same idea. While acknowledging that burdens are a consideration in decisions about assisted nutrition and hydration, there is a clear statement that such burdens are rarely a factor in Australia with its subsidised health-care system. However, the guideline would have been clarified by including a protocol for the withdrawal of assisted nutrition and hydration.

nutrition and hydration, for St. Vincent's Hospital in Sydney (PLUNKETT CENTRE, "Ethical Guidelines for Withholding or Withdrawing Life-Sustaining Treatment: With Special Reference to the Provision of Nutrition and Hydration," in *Bioethics Outlook*, vol. 9, n. 4 [December 1998], pp. 3-6).

³³⁵ *Code of Ethical Standards*, p. 44.

2.3.2 – United States of America

Prior to 1971 there were common ethical guidelines prepared and issued by the Catholic Health Association of the United States and Canada.³³⁶ In 1971 the American bishops took over the revision of these guidelines, which resulted in revised guidelines being published in 1971, 1994, and 2001. These were published as directives and reflect clear lines of authority and decision-making.

The 1971 *Ethical and Religious Directives for Catholic Health Facilities* were approved by the NCCB at their plenary meeting of 15-19 November 1971.³³⁷ The bishops wanted to issue an authoritative instrument for the implementation of moral principles in Catholic health institutions. The preamble stated, “Any facility identified as Catholic carries with this identification the responsibility to reflect in its policies and practices the moral teachings of the Church, under the guidance of the local bishop.”³³⁸

³³⁶ The 1949 Directives are reproduced as an appendix in C.J. MCFADDEN, *Medical Ethics*, 3rd ed., Philadelphia, F.A. Davis Company, 1953, pp. 445-454.

³³⁷ NCCB, *Ethical and Religious Directives for Catholic Health Facilities*, 16 November 1971, in *Origins*, 1 (1971-1972), pp. 408, 410-413. For the text of the directives relevant to our theme, see our Appendix XII, at p. 306.

The bishops of the United States had first approved Catholic hospital directives in 1954. For a history of such directives (1954, 1971, 1975 and 1984), see K.W. WILDES, “A Memo from the Central Office: The ‘*Ethical and Religious Directives for Catholic Health Care Services*’,” in *Kennedy Institute of Ethics Journal*, 5 (1995), pp. 133-139. Another brief history is in S.P. ROHLFS, “Theological Weight and the Directives,” in *Ethics & Medics*, vol. 22, n. 7 (1997), pp. 1-2. A comprehensive description of the complex drafting process of the 1971 directives, drawing on the archives of the NCCB and the Catholic Health Association of the United States, can be found in K.C. MCCOY, *Genetic Counseling and The Catholic Health Care Institutional Response in the United States*, Rome, Pontificia Universitas Lateranensis, Academia Alfonsiana, 1986, especially pp. 296-303. McCoy’s main focus is the way the directives handled the principles of co-operation which had been part of the first draft of the directives but which were excluded from the final version. This issue has continued to raise serious problems both in the formulation of the principles and in their application in Catholic institutions and has resulted in many subsequent revisions of the directives, most recently in the 2001 revision of the 1995 directives.

³³⁸ *Origins*, 1 (1971-1972), pp. 410-411.

The preamble also required that “the moral evaluation of new scientific developments and legitimately debated questions must be finally submitted to the teaching authority of the Church in the person of the local Bishop, who has the ultimate responsibility for teaching Catholic doctrine.” Directive 7 required consultation (presumably with the diocesan bishop) in the situation of doubt concerning the morality of some procedure.³³⁹

There were two references to euthanasia and the preservation of life (nn. 10 and 28), with n. 28 stating: “Euthanasia (‘mercy killing’) in all its forms is forbidden. The failure to supply the ordinary means of preserving life is equivalent to euthanasia. However, neither the physician nor the patient is obliged to the use of extraordinary means.” This is a general statement of traditional Catholic teaching. There is no attempt to specify what ordinary means are, nor is there a clear statement that the subject is a dying person.

³³⁹ This requirement, along with the normative and authoritative claim of the directives, was strongly criticized by two moral theologians speaking at the November 1971 meeting of the National Federation of Catholic Physicians Guilds. See W.T. REICH, “Policy and Truth: Medical Directives Criticized,” in *Origins*, 1 (1971-1972), pp. 409-410, and A. KOSNIK, “Medical Directives: Conscience and Policy,” in *Origins*, 1 (1971-1972), pp. 428-430. Another speaker (a physician) at that meeting, welcomed the directives; see J.J. BRENNAN, “Medical-Ethical Directives: Basic Principles,” in *Origins*, 1 (1971-1972), pp. 425-426.

Further criticism came in R.A. MCCORMICK, “Not What Catholic Hospitals Ordered,” in *America*, 125 (1971), pp. 510-513. Previously, at the 11 June 1971 convention of the Catholic Hospital Association, Archbishop J.F. Whealon had presented a rationale for the directives, later published as J.F. WHEALON, “Medical Directives: Another View,” in *Origins*, 1 (1971-1972), pp. 409, 413-414. A later article argued for adherence to the norms by personnel responsible for making ethical healthcare decisions: K.R. OVERBERG, “Collaboration Needed in Discussion of Ethical issues,” in *Health Progress*, vol. 69, n. 2 (1988), pp. 90-92.

The 1994 directives explicitly took up the issue of assisted nutrition and hydration.³⁴⁰ The stated aim of the document is to revise and update the directives issued by the bishops in 1971, and the document presupposes the theological principles presented in the bishops' 1981 pastoral letter "Health and Health Care."³⁴¹ The directives are "primarily concerned with institutionally based Catholic health care services"³⁴² and are proposed as an instrument by which the diocesan bishop could oversee conformity to Catholic moral principles by such facilities within his diocese.³⁴³

³⁴⁰ NCCB, *Ethical and Religious Directives for Catholic Health Care Services*, 17 November 1994, in *Origins*, 24 (1994-1995), pp. 449, 451-462. The directives were revised in 2001 and published as the fourth edition after being approved 209-7 at the Atlanta meeting of the bishops (USCCB, *Ethical and Religious Directives for Catholic Health Care Services*, 4th ed., July 2001, USCCB, 2001; *Origins*, 31 [2001-2002], pp. 153, 155-163). A history of these directives (up to the 3rd ed. and focusing on Directive 58 of that edition, regarding assisted nutrition and hydration), has been written by T.R. KOPFENSTEINER, "Developing Directive 58," in *Health Progress*, vol. 81, n. 3 (2000), pp. 20-23, 27. For other commentary on the directives, see WILDES, "The Ethical and Religious Directives;" J.M. HAAS, "The Need for Directives," in *Ethics & Medics*, vol. 22, n. 1 (1997), pp. 1-2; and J.F. KEENAN, "What's New in the Ethical and Religious Directives?" in *Linacre Quarterly*, vol. 65, n. 1 (1988), pp. 33-39.

³⁴¹ *Origins*, 24, (1994-1995), p. 451.

³⁴² *Ibid.*

³⁴³ The 2001 *Directives* come with the following recommendation: "This edition of the Directives, which replaces all previous editions, is recommended for implementation by the diocesan bishop [...]" (4th ed., 2001, inside cover). In accordance with the provisions of canon 455, the directives, which did not receive approbation from the entire conference, will have force in a diocese only when promulgated by the bishop. At least one canonist who has urged this is N. CAFARDI, "Canonical Concerns in Catholic Health Care," in R.E. SMITH (ed.), *The Splendor of Truth and Health Care: Proceedings of the Fourteenth Workshop for Bishops*, Dallas, 1995, Braintree, MA, Pope John Center, 1995, p. 92. The issue of the weight of the *Directives* has also been addressed by Rohlfs in his "Theological Weight and the Directives." Rohlfs' view is that the *Directives* are not magisterial teaching as such and that their value does not derive from their theological weight but from the fact that they provide a juridic instrument if and when "promulgated" locally by individual diocesan bishops. While he must keep in mind the fact that some individual directives will reflect Church teaching on specific issues, the diocesan bishop could omit, add or change directives as he sees fit. Further, the Directives do not claim to represent the entire body of Catholic moral teaching on health issues that binds all Catholic institutions.

The preamble to part five of the directives, titled “Issues in Care for the Dying,” notes that state Catholic conferences, individual bishops, and the NCCB Committee on Pro-Life Activities have addressed the moral issues concerning medically assisted hydration and nutrition.³⁴⁴ There are no specific citations of individual bishop’s statements, but there is a reference to the 1992 “Nutrition and Hydration: Moral and Pastoral Reflections” of the NCCB Committee on Pro-Life Activities,³⁴⁵ with the statement that this document “points out the necessary distinctions between questions already resolved by the magisterium and those requiring further reflection, as, for example, the morality of withdrawing medically assisted hydration and nutrition from a person who is recognized by the physicians as in the ‘persistent vegetative state’.”³⁴⁶ The 1994 directives take the stance that this issue needs further reflection and, in using the concept of “presumption in favour of providing nutrition and hydration,” restates its previous teaching.³⁴⁷ The relevant 1994 directive on this issue reflects traditional Catholic moral principles and, when it comes to the precise issue of assisted nutrition and hydration, speaks in general terms using the concept of presumption in favour of assisted nutrition and hydration.³⁴⁸

³⁴⁴ Ibid., p. 462, fn. 39.

³⁴⁵ Ibid.

³⁴⁶ Ibid., p. 459, col. 1

³⁴⁷ The previous teaching is in the 1984 “Guidelines for Legislation on Life-Sustaining Treatment” and the 1986 “Statement on the Uniform Rights of the Terminally Ill Act.” The directives summarize the bishops’ teaching as follows: “These statements agree that hydration and nutrition are not morally obligatory either when they bring no comfort to a person who is imminently dying or when they cannot be assimilated by a person’s body.”

³⁴⁸ For the text of the relevant directives, see our Appendix XII, p. 306.

Directive n. 58, then, does not exclude the possibility of withdrawing assisted nutrition and hydration but does not spell out circumstances in which this could be done. Directive n. 57 provides some of the criteria for making this decision. It uses the phrase “means of preserving life,” which would include a wide range of means from complex life-support systems to medically assisted nutrition and hydration. Another important aspect of the teaching is its treatment of burdens and benefits, which urges that the assessment of burdens focus on the burdens involved to the patient.

An important question here is: to which patients do these directives about nutrition and hydration apply? The general heading for the whole section is “Issues in Care for the Dying.” However, directive n. 55 seems to have a broader group in mind: “persons in danger of death from illness, accident, advanced age or similar condition.” “Danger of death” does not necessarily mean dying, and this large group of people who are in danger of death from these various causes could well include those in the persistent vegetative state who are not *in extremis* and who could survive for years.

In summary, directive n. 58 is less restrictive than the teaching of other bishops, and, indeed, that of the NCCB Committee on Pro-Life Activities which restricts withdrawal of assisted nutrition and hydration to those who are either “imminently dying” or who cannot assimilate this type of feeding.

2.3.3 – Canada

The Canadian health care directives differ in a number of ways from those of the United States. The most significant difference is that the Catholic Health Association of

Canada has continued to revise and publish their health ethics guides, which have been produced in 1970, 1991 and 2000.³⁴⁹ A feature of these guides is the stress on personal autonomy and conscience in decision-making.

The 1970 Guide was intended for use in Catholic hospitals and to guide Catholics working in non-Catholic hospitals. The use of the term “Guide” was deliberate; the preamble set this Guide apart from the earlier (1955) “Moral Code” with its notion of binding directives.³⁵⁰ The preamble contained a reflection on law and conscience, with a bias in favour of conscience when it comes to applying guidelines.³⁵¹ The Guide encourages the setting up of “medico-moral committees” for consultation in difficult cases and envisages consultation with a “theologian.” There is no mention of the diocesan bishop being involved in decision-making, either in the choosing of personnel for these committees or in adjudicating difficult cases.³⁵² There is a brief

³⁴⁹ CATHOLIC HEALTH ASSOCIATION OF CANADA, *The Medico-Moral Guide*, 9 April 1970, in *Origins*, 1 (1971-1972), pp. 427-428; *Health Care Ethics Guide*, Ottawa, Catholic Health Association of Canada, 1991; and the *Health Ethics Guide*, Ottawa, Catholic Health Association of Canada, 2000. Prior to 1970 there were common directives issued for the United States and Canada by their joint association. For the text of the relevant guidelines, see “Canadian Health Guidelines,” in our Appendix XII, p. 306.

³⁵⁰ The 1991 and 2000 Guides received approbation from the Permanent Council of the Canadian Conference of Catholic Bishops.

³⁵¹ Hence, there are “articles” rather than “directives.” After two introductory articles, art. 3 stated: “Every person must respect the dictates of the conscience of a patient,” (*Origins*, 1 [1971-1972], p. 427).

³⁵² Whereas the NCCB 1971 *Ethical and Religious Directives for Catholic Health Facilities* required that “the moral evaluation of new scientific developments and legitimately debated questions must be finally submitted to the teaching authority of the Church in the person of the local Bishop, who has the ultimate responsibility for teaching Catholic doctrine,” (*Origins*, 1 [1971-1972], p. 411).

treatment of the preservation of life and euthanasia, but no mention of assisted nutrition.

However, in 1970 this issue was not debated with the intensity of later years.³⁵³

The 1991 and 2000 Guides deal with assisted nutrition and hydration in the context of care of the dying person. After enunciating the principles for foregoing life-sustaining treatment (using the burden/benefit concepts), art. 83 of the 1991 Guide spoke of foregoing assisted nutrition and hydration “in the final phase of a terminal illness” in terms which echo the *Declaration on Euthanasia*. Like that Declaration, there is a different moral standard proposed for the final phase of a terminal illness. The 1991 Guide saw assisted nutrition as a treatment and distinguished it from “medical procedures” such as dialysis and cardiopulmonary resuscitation that are optional earlier in the dying process.³⁵⁴ The 1991 Guide, then, in applying the general principle of the *Declaration on Euthanasia* to assisted nutrition and hydration, provided a simple and precise protocol to guide a decision to withdraw assisted nutrition and hydration from a patient *in extremis*.

There is a major difference in the 2000 Guide. After setting forth the principle that useless or burdensome life sustaining treatment can be foregone, the 2000 Guide

³⁵³ What was being debated at the time was contraception and the morality of sterilisation as a contraceptive. The Guide, in art. 19, takes up this issue and states a principle found in *Humanae vitae*, but adds a note referring to the Canadian bishops’ document on the pastoral application of the principle which speaks of conflict situations and asserts that “whoever honestly chooses that course which seems right to him does so in good conscience” (ibid., p. 427 for the text of this document). We are presuming that the Guide was trying to give the maximum freedom possible to decide about sterilisation, and did not think that the principle of autonomy would be applied to decisions about a dying patient.

³⁵⁴ See n. 80 of the Guide.

deals with assisted nutrition and hydration in three articles.³⁵⁵ There is a more developed analysis of issues relating to assisted nutrition and hydration, but the thematic and linguistic links with the *Declaration on Euthanasia* are no longer clear. There are some similarities to the 1991 principles, but significant differences. The distinction between medical treatment and assisted nutrition and hydration, described as a “procedure,” has been retained, and the overall context is still the situation of a dying patient.³⁵⁶ However, the differences can be dealt with under three headings: the way burdens and benefits are applied, the notion of terminal illness, and the fact that the foregoing of assisted nutrition is no longer explicitly linked to the final phase of a terminal illness. We will now explore these three differences in more detail.

As to burdens and benefits, art. 100 states: “The moral value of these procedures depends upon the benefits they provide and the burdens they place upon the person receiving care. Where the burdens are disproportionate to the benefits, or where there is no benefit from the procedure, it should not be initiated, or if already initiated, should be withdrawn.” This statement could be interpreted in a number of ways and needs greater clarity. It implies that there may be no benefit from assisted feeding, when the benefit of such feeding derives from its primary and natural purpose of maintaining life.³⁵⁷ Further,

³⁵⁵ Ibid., arts. 99-101. For the complete text, see our Appendix XII, p. 306 ff.

³⁵⁶ The principles here are in chapter V, “Care of the Dying Person.”

³⁵⁷ Art. n. 101 itself expresses this notion well in its use of the phrase “basic nourishment.” If the issue really is basic nourishment, this guideline needs to specify how basic nourishment can become so burdensome as to become optional. We must presume that art. 100 here is not talking about the an incapacity to ingest food, as this is taken up in art. n. 101, which immediately follows.

the phrase “should be withdrawn” shifts the presumption in favour of feeding to a presumption in favour of the withdrawal of feeding.

As to the notion of terminal illness, art. 101 states: “Since some pathological conditions experienced by those who are dying prevent normal food ingestion, a decision to forgo or stop artificial nutrition and hydration can allow the pathology to run its course without prolonging the dying process. Such a decision is not the same as ‘hastening death’.” This is ambiguous in a number of ways. There is a logical flaw where it speaks of a decision to forgo or stop artificial nutrition and hydration being made in the light of “pathological” conditions that prevent the dying from normal food ingestion: if a true pathology prevents ingestion, there is no need for a decision about withdrawing feeding. However, the terminology of art. 101 suggests another possible interpretation: those familiar with the theological debate will discern in this text a form of the argument which holds that the inability of a person in the persistent vegetative state to ingest food normally is a kind of fatal pathology, and that to withdraw assisted nutrition is to allow that pathology to run its course.³⁵⁸ If this is what is meant by this text, then it has shifted significantly from the 1991 Guide that provided a protocol for possible withdrawal of life-supporting means, which would include feeding, “in the final phase of a terminal

³⁵⁸ See, for example, several articles by K. O’Rourke, including “The A.M.A. Statement on Tube Feeding: an Ethical Analysis,” in *America* 155 (1986), pp. 321-323, 331, and “Father Kevin O’Rourke on Hydration and Nutrition: Open Letter to Bishop McHugh,” in *Origins*, 19 (1989-1990), pp. 351-352. O’Rourke’s views are reflected in the Texas Bishops’ “On Withdrawing Nutrition and Hydration,” in *Origins*, 20 (1990-1991), pp. 53-55. The opposing view, that there is no fatal pathology and that starvation is the cause of death, is taken by many authors, including W.E. MAY, “Tube Feeding and the ‘Vegetative’ State,” in *Ethics & Medics*, vol. 23, n. 12 (1998), pp. 1-2.

illness.”³⁵⁹ The incapacity to feed has itself become the terminal illness, which is a debatable and controversial proposition.

This leads naturally to the third difference in the 2000 guidelines. The decision to withdraw nutrition is no longer restricted to a patient *in extremis*; the guidelines now speak of withdrawal of nutrition from “those who are vulnerable and dependent.”³⁶⁰ It is true that n. 101 speaks of “those who are dying” and “prolonging the dying process,” but the proponents of the “fatal pathology” argument argue that a person in the persistent vegetative state has a kind of “fatal pathology” and is dying. In the Catholic moral tradition “danger of death” and “dying” do not necessarily mean that a person is “*in extremis*.”³⁶¹ It is hard not to conclude that the 2000 guidelines have opened the way to withdrawing assisted nutrition and hydration from any patient in the persistent vegetative state and, indeed, any patient who is vulnerable and dependent and needs assistance in feeding.

The matter of intention is raised twice: n. 100 states that “the intent must never be to hasten death,” and n. 101 states, in regard to the removal of assisted nutrition and hydration from a person with a fatal pathology, that this decision “is not the same as ‘hastening death’.” However, removing assisted nutrition and hydration in any

³⁵⁹ As we have argued elsewhere, recent teaching of the papal magisterium on this issue is that feeding, including artificially assisted feeding, is a normal and obligatory means until the patient enters “the final phase of a terminal illness.” This implies that the fatal medical condition is something other than starvation induced by the withdrawal of feeding.

³⁶⁰ *Health Ethics Guide*, n. 99.

³⁶¹ Again, what is missing is the clarity of the 1991 guideline n. 83, which spoke of possible withdrawal “in the final phase of a terminal illness,” which is similar to the *Declaration on Euthanasia*’s “when inevitable death is imminent in spite of the means used” (*Declaration on Euthanasia*, IV).

circumstances apart from the final phase of a terminal illness (and only when the feeding prolongs the dying) is hastening death by removing “basic nourishment.”

The normative status of these guidelines is not easy to determine. On the one hand they are presented as guidelines rather than norms. On the other hand, they have been published by the Catholic Health Association and have been approved by the Canadian Conference of Bishops for use in Catholic facilities and, as such, have a certain authority.³⁶² At the very least, n. 101 is ambiguous and could be interpreted as encouraging the withdrawal of assisted nutrition and hydration from anyone in the persistent vegetative state and, if so, is the most permissive of any episcopal or episcopally endorsed document.

Chapter Two: Conclusion

The teaching contained in magisterial texts of the Holy See has provided the principles needed to deal with withdrawal of assisted nutrition and hydration from a patient in the persistent vegetative state. Papal teaching considers assisted nutrition and hydration as normal and ordinary care, which imposes a presumption on their continued provision for any patient who needs them. The traditional principles of ordinary and extraordinary means of prolonging life can be applied, but in papal teaching they have been applied only in cases of imminent death. Likewise, the traditional categories of burdens and benefits have been applied only when the patient is *in extremis*, and when

³⁶² Further, the back cover of the Guide comes with the following endorsement by the Canadian Conference of Catholic Bishops: “The *Health Ethics Guide* provides directives and information that will assist not only Canadian Catholic health care institutions but all the Church in Canada.”

the feeding becomes a burdensome prolongation of the dying process. This is in contrast to “quality of life” considerations, such as the notion of the burdensome life, which can never be a reason to withdraw feeding. Accordingly, assisted nutrition and hydration becomes an extraordinary and optional means only in the final phase of the dying process, and only if the feeding itself has become intolerably burdensome for the dying patient.

Episcopal teaching has, for the most part, followed the teaching of the papal magisterium. However, some episcopal teaching has not adequately reflected the principles of the *Declaration on Euthanasia*. Many episcopal statements and episcopally endorsed statements will have to be adjusted to reflect more recent papal teaching on assisted nutrition and hydration and the application of general principles to patients in the persistent vegetative state.

CHAPTER 3

THE CANONICAL CRIME OF HOMICIDE

In our first two chapters we surveyed and analysed the relevant theological reflection and magisterial teaching related to our theme. In this chapter we will review the canonical tradition on homicide as it relates to the question of the withdrawal of assisted nutrition and hydration leading to a person's death.

We will begin with a brief overview of the notion of homicide, starting with the civil (common law and European) understanding, and then the way homicide is understood in the Church's tradition and recent magisterial teaching. In this tradition homicide means any kind of unlawful killing. Our task in this chapter is to see how this tradition has evolved and which elements of the tradition are relevant to our theme.

Our canonical inquiry will begin with a study of the canonical notion of crime. This doctrine is reflected in canon 1321 of the 1983 Code which highlights the two essential elements of any canonical crime: the external/objective element (the breaking of the law, or the *actus reus*), and the internal/subjective element (the intention to break the law, or the *mens rea*). The link between these elements is the basis of the axiom that legal imputability is grounded in moral imputability, often expressed in the canonical tradition as "mortal sin." In exploring this notion we will discover that this is primarily an

objective judgement based on the nature of the crime, and one that the Church still makes about homicide, which it calls a “moral evil.”

We will then explore in detail the objective and subjective aspects of a canonical crime. As to the objective aspect, the first point to make is that canon 1397 says that homicide is a crime. The more difficult question to answer is whether the withdrawal of assisted nutrition and hydration is the crime of homicide, and we will take up this question in detail in the second part of this chapter in our analysis of the canonical tradition regarding homicide. For the moment we will be concerned with the subjective element of crime; this is quite complex as it deals with the difficult realities of *mens rea* and imputability, which can be present through either *dolus* or *culpa*. The key element of imputability is the intention to place the proscribed act. In the canonical tradition there are degrees of imputability, and “wilful” homicide (which arises in *dolus*) has specific canonical implications. Subjective factors reduce imputability and penalties but do not absolve from liability.

Continuing with our review of imputability, we take up some themes related to knowledge and awareness. An important aspect of the tradition concerning *mens rea* relates to the awareness of the proscribed act as morally wrong. There are three ways in which a person’s understanding of the act and its consequences may be defective: error, doubt, and ignorance. While the canonical tradition has addressed all three, there is no tradition for analysing these questions in actual cases. The doctrine related to knowledge and awareness, then, must be discovered in the canonical tradition rather than through an analysis of actual cases.

The last part of our treatment of imputability will take up two issues related directly to homicide. Firstly, homicide is an intrinsically evil crime and for such a crime ignorance does not excuse. Secondly, because of the nature of homicide as a natural and divine positive law crime, the canonical tradition has posited a lesser degree of imputability to commit this crime than it has for other types of crimes.

We will finish our study of the canonical notion of crime with a brief survey of two related issues. The first is the canonical tradition on accomplices and co-operation. The withdrawal of assisted nutrition and hydration is often a joint decision, involving the family, medical personnel and ethicists. This raises a number of serious questions, particularly for priests and religious on hospital ethics committees who are involved in decision-making about the withdrawal of assisted nutrition and hydration. Finally, we will look briefly at the irregularity arising from homicide. There is a different standard for imputability for the irregularity as distinct from the crime. The issue of imputability will be taken up in much greater detail later in this chapter as we review the canonical tradition on homicide.

Having explored the notion of crime, we will then turn to the crime of homicide in the canonical tradition. Our historical survey starts with the *Corpus iuris canonici*, which reflects a developed and almost settled tradition, and then looks at how important commentators before the 1917 Code understood that tradition. We will discover that the major focus of this tradition is the irregularity arising from homicide. A relevant theme is the way the canonical tradition deals with the “qualified” homicide of “exposing” infants and the sick to starvation and death.

The 1917 Code is a key event in the development of the tradition and we will survey in depth the *fontes* of the relevant canons of that Code for the crime of homicide and for the irregularity arising out of homicide. Many of these *fontes* are from the *Corpus iuris canonici*, and the next part of our survey will be a systematic analysis of the doctrine of homicide in that *Corpus*. Our study will then take up the commentators prior to the 1917 Code leading to the doctrine of homicide in the 1917 Code itself. After a study of selected commentaries on the 1917 Code, our chapter will conclude with preparation for the 1983 Code and the doctrine of homicide in that Code and in recent commentators.

3.1 – The notion of homicide

The fundamental meaning of the word “homicide” can be gleaned by an etymological analysis. The word homicide (derived from *homo* and *caedere*) denotes the killing of a person by another person. The word in English is generally used for any kind of killing, whether by act, omission or command, without passing judgement on the circumstances and imputability.³⁶³ Qualifying words such as “justified” and “lawful” are

³⁶³ See art. “Homicide,” in H.C. BLACK, *Black's Law Dictionary: Definitions of The Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, 5th ed. by the publisher's editorial staff, contributing authors J.R. NOLAN and M.J. CONNOLLY, St. Paul, MN, West Publishing Company, 1979, pp. 661-662. An interesting illustration of this notion was in the verdict of homicide given by an Ontario Coroner's Inquiry into a starvation death of a baby. The report in the *National Post* of 4 April 2001 included the following: “‘At a coroner's inquest, homicide means the killing of one person by another, it doesn't mean anything more than that,’ explained John Sutherland, the coroner's counsel who urged the five-person jury to rule the infant's death a homicide.” Using terms that we will develop in our next section on the notion of crime, this was a verdict in terms only of the *actus reus*, with no suggestion of *mens rea*. By contrast, a verdict of homicide in a European system would imply some degree of imputability.

sometimes added to denote a kind of homicide.³⁶⁴ In legal systems based on the common law tradition, a number of compound or derivative words or similes are used to denote the various types of homicide according to the degree of culpability based on intention and circumstances: murder,³⁶⁵ manslaughter, mercy killing, justifiable homicide, vehicular homicide, felonious homicide, homicide by necessity, and so forth.³⁶⁶

By contrast, in the European tradition “homicide” usually denotes unlawful killing. Hence, the word is not used for accidental killing or for such justified killing as self-defence, killing in war or the execution of a condemned prisoner. The European legal systems and their derivatives tend to categorise all unlawful killings as homicide and specify different penalties according to intention and circumstances.³⁶⁷

³⁶⁴ There are three types of “lawful” homicide in the English common law tradition: an execution in the advancement of justice, reasonable self-defence of person or property or in order to prevent the commission of an atrocious crime, and misadventure. All other cases of homicide are unlawful (CROSS and JONES, *Criminal Law*, p. 130).

³⁶⁵ “Murder” and “homicide” are not equivalent words. Murder in the common law tradition is a type of homicide, specifically homicide with full imputability arising from “malice aforethought” (similar to the *dolus* of the canonical tradition). The distinction can sometimes be lost or is confused when “murder” is used to translate homicide, as in the L. BENDER article “Murder,” in the *Dictionary of Moral Theology*, pp. 803-804. In this article, a translation from the Italian, the sense is clearly homicide and not murder and the translator struggles to maintain consistency in approach, sometimes resorting to the phrase “homicide or murder.” The word “murder” will be used in our dissertation only in relation to the common law tradition.

³⁶⁶ Murder is sometimes classified as first or second degree, or “wilful.” For example, the Western Australian Criminal Code distinguishes murder (which requires proof of intent to cause grievous bodily harm) and wilful murder (which requires proof of intent to kill); see D. ROSS, *Crime: Law and Practice in Criminal Courts*, Sydney, LBC Information Services, 1998 (in loose-leaf format, updated 2001), n. 13.820. In the common law tradition there are other kinds of flexibility. For example, in a case where the elements of murder are present a jury can return a verdict known as the “merciful verdict of manslaughter” (Ross, *Crime: Law and Practice in Criminal Courts*, 13.860).

³⁶⁷ See art. “Homicide” in *The New Encyclopædia Britannica*, vol. 6, p. 26; and art. “omicidio” in *Enciclopedia Italiana di Scienze, Lettere ed Arti*, vol. 25, pp. 345-346. The flexibility comes with the sentence, as distinct from contrivances such as the “merciful verdict of

From the Middle Ages, the Catholic moral and canonical tradition has also used the word to denote unlawful killing.³⁶⁸ The moral tradition has been concerned with homicide as a sin and has dealt with its consequences in the internal forum. Insofar as penances were carried out in public, there was an external forum element in this tradition.³⁶⁹ The Church has also dealt with homicide as a crime, an external and culpable crime resulting in penalties and other effects in the external forum.

In the Catholic tradition prior to 1988, homicide was also used for the act resulting in the death of an animated foetus, in contrast to the killing of the non-animated foetus which was dealt with as abortion. In 1988 the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law issued an interpretation that removed this distinction by extending the notion of abortion to include the death of a foetus at any stage of its development.³⁷⁰ This understanding has been incorporated into the description

manslaughter" mentioned above in fn. 366. This approach is reflected in canons 1323 and 1324 of the 1983 Code that provide norms for application of penalties for those who commit crimes with a lesser degree of imputability.

³⁶⁸ BRIDE, "Homicide," col. 1163. Bride points out that the (1917) Code reserves "homicide" for culpable killing and used paraphrases to denote non-culpable killing, such as when speaking of the irregularity for the "judge who imposes the sentence of death" (*iudex qui mortis sententiam tulit*, canon 984, 6°) and the executioner and his assistants (*munus carnificis ... in executione capitalis*, canon 984, 7°).

³⁶⁹ The penitential tradition also used "homicide" to denote unlawful killing; see H. CONNOLLY, *The Irish Penitentials and their Significance for the Sacrament of Penance Today*, Dublin, Four Courts Press, 1995, fn. 88, p. 216. In the early Church homicide was considered a mortal sin for which public penance was required. One interesting exception is dealt with by B. Poschmann who refers to a homicide case mentioned by Augustine. Because the publicity attached to the public penance was likely to expose the sinner to the danger of being handed over to the criminal judge, the enrolment in public penance was dispensed. The principle enunciated by Augustine was that for secret sins, even grave ones, the rebuke could be given privately (the reference is to *Sermons* 82, 8, 11; see B. POSCHMANN, *Penance and the Anointing of the Sick*, translated and revised by F. Courtney, Montreal, Palm Publishers, 1964, pp. 91-92).

³⁷⁰ PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, "Responsiones ad proposita dubia," II (canon 1398), 19 January 1988, in *AAS*, 80 (1988), p. 1818.

of abortion in *Evangelium vitae* n. 58: “procured abortion is the deliberate and direct killing, by whatever means it is carried out, of a human being in the initial phase of his or her existence, extending from conception to birth.”

3.2 – Crime in canon law

We begin our study of homicide in the canonical tradition by looking at the notion of crime. What are the elements of the canonical crime? In particular, what aspects of the canonical tradition concerning crime are relevant to the crime of homicide, specifically our theme of the withdrawal of assisted nutrition and hydration from a helpless person in the persistent vegetative state? Our theme is imputability and not penalties or processes, but imputability and penalty are inter-related in many canons of Book VI of the Code; the doctrine of imputability is presumed or must be inferred from canons treating penalties or sentencing policy. Our study will begin with canon 1321 and develop the elements of crime to be found there.

For further commentary on this response, see Fr. PIUS, “Reply of the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law,” in *Canon Law Society of Great Britain & Ireland Newsletter*, n. 77 (1989), pp. 54-56; and V. DE PAOLIS, “Adnotationes: Responsa Pont. CIC Authentice Interpretando,” in *Periodica*, 78 (1989), pp. 278-286. In line with the greater canonical interest in abortion as compared to homicide, there has been little interest in dealing with any foetal death as homicide.

3.2.1 – Canon 1321 and the essential elements of crime

The 1983 Code of Canon Law does not define crime,³⁷¹ but its meaning can be deduced from a careful reading of canon 1321 §1 in the light of the canonical tradition.³⁷²

Canon 1321 of the 1983 Code states:³⁷³

§ 1. Nemo punitur, nisi
externa legis vel praecepti
violatio, ab eo commissa, sit
graviter imputabilis ex dolo
vel ex culpa.

No one can be punished for the
commission of an external violation of a
law or precept unless it is gravely
imputable by reason of malice or of
culpability.

§ 2. Poena lege vel praecepto
statuta is tenetur, qui legem
vel praeceptum deliberate
violavit; qui vero id egit ex
omissione debita diligentiae,
non punitur, nisi lex vel

A person who deliberately violated a law
or precept is bound by the penalty
prescribed in the law or precept. If,
however, the violation was due to the
omission of due diligence, the person is
not punished unless the law or precept

³⁷¹ The Commission for the revision of the Code decided against using definitions in the Code, arguing that this was the function of canonists rather than the legislator. (See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema documenti quo disciplina sanctionum seu poenarum in Ecclesia Latina denuo ordinatur*, Romae, Typis polyglottis Vaticanis, 1973, p. 6. See also E. McDONOUGH, “A Gloss on Canon 1321,” in *Studia canonica*, 21 [1987], pp. 381-382.) Canon 2195 of the 1917 Code had defined a crime as follows: «Nomine delicti, iure ecclesiastico, intelligitur externa et moraliter imputabilis legis violatio cui addita sit sanctio canonica saltem indeterminata.» The elements of this definition have been incorporated into the present canon 1321.

³⁷² The various commentaries deal with the notion of crime; see É. JOMBART, art. “Délit,” in *DDC*, vol. 4, cols. 1084-1098; A. PUGLIESE, art. “Delictum” in *Dictionarium morale et canonicum*, vol. 2, pp. 51-56, M. O’REILLY, *Sanctions in the Church* (=Sanctions), Faculty of Canon Law, SPU, Ottawa, 1996-1997, p. 37 (lecture notes); T.J. GREEN, “Sanctions in the Church” (=“Sanctions”), in J.P. BEAL, J.A. CORIDEN and T.J. GREEN (eds.), *New Commentary on the Code of Canon Law*, New York, Paulist Press, 2000, p. 1540; and A. Marzoa’s commentary on canon 1321 in A. MARZOA, J. MIRAS y R. RODRIGUEZ-OCAÑA (eds.), *Comentario exegetico de derecho canónico*, 2nd ed., Pamplona, Ediciones Universidad de Navarra, 1997, vol. IV/I, pp. 290-303, especially p. 291.

³⁷³ We will use the revised British Commonwealth version of English-language translation of the 1983 Code (*The Code of Canon Law in English Translation*, new rev. ed. prepared by THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, in association with THE CANON LAW SOCIETY OF AUSTRALIA AND NEW ZEALAND and THE CANADIAN CANON LAW SOCIETY, London, HarperCollins, 1997).

praeceptum aliter caveat.

provides otherwise.

§ 3. Posita externa violatione,
imputabilitas praesumitur, nisi
aliud appareat.

When there has been an external
violation, imputability is presumed,
unless it appears otherwise.

Canon 1321 §1 refers to the two elements that must be present in any canonical crime: the objective element (the *externa legis vel praecepti violatio*)³⁷⁴ and the subjective element (the *imputabilis ex dolo vel ex culpa*).³⁷⁵ This notion of crime has been firmly established since the time of the publication of the various elements of the *Corpus Iuris canonici*.³⁷⁶ It is our task now to take up these elements in turn.³⁷⁷

³⁷⁴ This is also called the *actus reus* in the common law tradition. MARZOA (ibid., p. 291), JOMBART ("Délit," cols. 1085-1086), and GREEN ("Sanctions," p. 1540) separate the objective element into two components and so delineate three elements, which they designate the objective (the external violation of the law), the legal (denoting that there is a penalty attached to that law), and the subjective (imputability). PUGLIESE takes a slightly different approach when he says that there are two requirements in the abstract but three in the concrete world ("Delictum," p. 56).

³⁷⁵ The common law tradition also uses *mens rea* to refer to the "mental element" of crime. There is a vigorous debate in that tradition about the mental element required for murder. See R. GOFF, "The Mental Element in the Crime of Murder," in *The Law Quarterly Review*, 104 (1988), pp. 30-59; and G. WILLIAMS, "The *Mens Rea* for Murder: Leave it Alone," in *The Law Quarterly Review*, 105 (1989), pp. 387-397.

³⁷⁶ O'REILLY, *Sanctions*, p. 22.

³⁷⁷ In doing so we should stress that these elements are not entirely distinct and that there is a unity between the action and the one acting. A crime is a human act that results from a knowing and free decision. This canonical analysis, then, corresponds to the moral analysis of a human act that looks at it from the point of view of object, intention and circumstances. We propose here to deal first with what the moral theologians call the "object" of the human act (*finis operis*), followed by an analysis of the relevant subjective aspects (*finis operantis*).

3.2.2 – The objective element: the *actus reus*

The objective element of a crime is the external violation of a law or precept to which a penalty has been attached.³⁷⁸ External here means that something actually happens in the real world; thoughts, feelings and unrealised intentions can never be crimes.³⁷⁹ External also means that the physical event, while it may not be known to anyone, can be established in the external forum as having happened.³⁸⁰ The violation of the law or precept can be by action or inaction. If by direct action, the delinquent brings about the effect directly; if indirect, he brings about the effect indirectly. In both cases a law is broken, a law that imposes a duty on the delinquent. Further, this law or precept has a penalty attached.

Canon 1397 of the 1983 Code establishes penalties for the crime of homicide, and the objective evil of homicide has been explicitly taught in magisterial teaching. The *Catechism* n. 2268 states that “The fifth commandment forbids direct and intentional killing as gravely sinful,” and goes on to say that the “murderer and those who cooperate voluntarily in murder commit a sin that cries out to heaven for vengeance.”³⁸¹ In n. 2269 the *Catechism* gives examples of indirect homicide: “Those whose usurious and

³⁷⁸ Sometimes called the *corpus delicti*; see O'REILLY, *Sanctions*, p. 37, and PUGLIESE “Delictum,” p. 56.

³⁷⁹ The word “external” was added in the 1980 *schema*. McDonough presents the 1973 and 1980 versions of the canon side by side (“A Gloss of Canon 1321,” p. 383).

³⁸⁰ GREEN, “Sanctions,” p. 1540. Canon 1330 provides a special norm for a criminal manifestation of doctrine or knowledge. If manifested it is external and would normally constitute the *actus reus* of a crime. However, canon 1330 says that the declaration must be actually seen by someone to constitute a crime (see O'REILLY, *Sanctions*, p. 51).

³⁸¹ We agree that “murderer” is an appropriate translation as the context is “direct and intentional killing,” which is the equivalent of malice aforethought of the common law tradition.

avaricious dealings lead to the hunger and death of their brethren in the human family indirectly commit homicide, which is imputable to them.”³⁸² There are similar expressions in *Evangelium vitae* n. 57, which speaks of direct and wilful homicide as “gravely immoral,” a “moral evil,” and “a grave act of disobedience to the moral law.”³⁸³ Clearly, homicide is an objective crime, and one that is proscribed by positive and natural divine law as well as canon law.

3.2.3 – The subjective element: *mens rea*

In the passages from the *Catechism* and *Evangelium vitae* quoted above, there are strong expressions of the moral law in its objective, external element. However, these magisterial documents also distinguish between this objective quality and subjective guilt. While motives and circumstances do not change the objective quality of an act of killing as *intrinsece malus*, these and other factors modify subjective guilt, as expressed in this passage from *Evangelium vitae* n. 58: “It is true that the decision to have an abortion is often tragic and painful for the mother, insofar as the decision to rid herself of the fruit of conception is not made for purely selfish reasons or out of convenience, [...]

³⁸² The word “imputable” here is used in its moral rather than its canonical sense. In this part of the *Catechism* the only reference to canon law is in n. 2272, which speaks of the canonical penalty for abortion. Otherwise, the context is the “moral law,” an expression found in n. 2269. The two references to imputability in n. 2269 are to moral imputability.

³⁸³ As with the *Catechism*, *Evangelium vitae* is concerned primarily with the moral law. However, there is a reference to the canonical penalties for abortion in n. 62.

Nevertheless, these reasons and others like them, however serious and tragic, *can never justify the deliberate killing of an innocent human being.*³⁸⁴

Motives and circumstances, then, do not change the objective quality of the crime. However, the Church's moral and canonical tradition has always taken these and other subjective elements of the sin and crime into account to determine appropriate penances and penalties.³⁸⁵ Our task here is to look more closely at the subjective aspects of the canonical crime. Once it has been determined that there is an *actus reus*, the next step is to establish that there exists the necessary *mens rea* that transforms the act into a crime. The crime must be imputed to the offender either by *dolus* or *culpa*.³⁸⁶ A crime involves what the moralists would call a human act done with deliberation and freedom. There must be a "guilty mind," which gives the physical act its delictual nature. Our task, then, is to explore the relevant aspects of canonical imputability.

³⁸⁴ The emphasis is in the original. In n. 59, the Pope continues his reflection on subjective and objective moral guilt: "Nor can one overlook the pressures which sometimes come from the wider family circle and from friends. Sometimes the woman is subjected to such strong pressure that she feels psychologically forced to have an abortion: certainly in this case moral responsibility lies particularly with those who have directly or indirectly obliged her to have an abortion. Doctors and nurses are also responsible, when they place at the service of death skills which were acquired for promoting life."

³⁸⁵ An interesting feature of canon 901 of the 1917 Code was its requirement that the circumstances related to the mortal sin must also be explained, a reference to moral imputability.

³⁸⁶ "The terms *mens rea* and *actus reus* that are used in criminal law are taken from the statement: «actus non facit reum nisi mens sit rea.» The origin of this phrase is to be found in a sermon of St. Augustine who said «Ream linguam non facit nisi mens rea.» (From P. KITCHEN, "Marriage Intention and Simulation," in *Studia canonica*, 28 [1994], p. 358; the Augustine text is from *Sermons*, n. 180, c. 2.)

3.2.3.1 – Moral and legal imputability

In the canonical tradition, there are numerous references to the fact that legal imputability arises out of moral imputability.³⁸⁷ The fundamental notion behind this axiom is that a crime is a human act and only those actions that are posited freely and with deliberation can be the object of penal sanctions. The essential elements of this doctrine are: crime and sin are different realities; not all sins are crimes; but every crime requires a “mortal sin,”³⁸⁸ meaning that it was committed with the requisite deliberation and freedom.³⁸⁹

The canonical axiom that legal imputability is based on moral imputability is particularly important for our theme, as there are many theologians and some bishops who have taught that the removal of assisted nutrition and hydration from a comatose

³⁸⁷ The canonical tradition is long. F. Morrissey, *Procedural Law*, p. 20, cites Innocent III thus: “No sane person is ignorant of the fact that it pertains to our office to punish every Christian for any mortal sin.” (The reference is X, 2, 1, c. 13.) See also JOMBART, “Délit,” *DDC*, vol. 4, col. 1088; J-L BRUGUÈS deals with the relationship in his art. “*Droit canon et morale*,” in *DMC*, pp. 132-134.

³⁸⁸ The modern theological debate about the nature and division of sin has had little impact on the canonical tradition that reflects the Church’s traditional two-fold division into venial and mortal. The 1983 Code uses “grave sin” (as in canons 915 and 988), but the terms “mortal,” “serious” and “grievous” sin are interchangeable in the various commentaries. Canons 901 and 902 of the 1917 Code, following the Council of Trent, used “mortal” sins (*mortalia*). The doctrine and the terminology of mortal sin is repeated in n. 1456 of the *Catechism*, which also includes the relevant Tridentine text.

³⁸⁹ A clear explanation of the difference between the two realities is in S.B. SMITH, *Elements of Ecclesiastical Law*, vol. III, *Ecclesiastical Punishments*, 3rd ed., New York, Benziger Brothers, 1888, p. 10. Smith has a reference to Augustine quoting St. Paul about the need to choose for ordination those without crime, as distinct from those without sin, otherwise no one would be ordained. (The text is in Gratian, D. 81, c. 1). St. Thomas also distinguished between crime and sin in this way: «Aliud est crimen, et aliud peccatum. Peccatum dicitur quodcumque sive magnum, sive parvum, sive occultum, crimen autem magnum et infame.» (Taken from his *Lect. 2 Com. Ep. Ad Tim.*). An essential characteristic of crime is that it always violates the social fabric (Smith, *ibid.*, p. 11).

person does not involve any moral fault. If there is no sin, there is no crime, so this theme must be explored further.

A cautionary note will help in a proper understanding of this theme. There is a danger that modern Catholics will “read back” later ideas and realities into the civil and canonical tradition. This is particularly true with attitudes to sin: modern notions of sin may not coincide with those of even fifty years ago, when it seemed much easier to commit a mortal sin than now. Contemporary attitudes stress subjective mitigation and we would be more hesitant than an earlier generation to name certain activities as mortally sinful.³⁹⁰ Some modern commentators articulate the connection in traditional terms without further comment, but seem to presume that the modern reader will have the requisite insights into these complex issues.

With this in mind, we can explore the theme in greater detail. There are numerous references to mortal sin in canonical works prior to the Second Vatican Council. Some examples from various sources will illustrate this point. F. Schmalzgrueber in his treatment of exposing children and the sick first spells out what he is referring to and then asks: *quale peccatum sit exponere infantes, et languidos?* He speaks in terms of sin, not crime, and this is a judgement about an objective wrong.³⁹¹ In one of the *fontes* of canon 2354 §2 of the 1917 Code, just restitution is required “under pain of mortal sin.” Here

³⁹⁰ The same caution will also apply to notions about the separation of internal and external *fora* and to the distinction between moral theology and canon law.

³⁹¹ F. SCHMALZGRUEBER, *Ius ecclesiasticum universum: brevi methodo ad discentium utilitatem explicatum, seu Lucubrationes canonicae in quinque libros Decretalium Gregorii IX, Pontificis Maximi* (= *Ius ecclesiasticum* followed by the vol. n.), Roma, Ex Tipographia Rev. Cam. Apostolicae, 1843, vol. 10, p. 384.

mortal sin is spoken of as one would speak of a penalty.³⁹² The distinction is succinctly expressed in the following: “The decision in instances in which sin is implicated is not a decision of the internal forum (sacrament of penance), but it is a true external judgment as a result of a conscious and free violation of either civil or natural law.”³⁹³

The relationship between sin and crime is not restricted to ecclesiastical law. Plucknett sees as a “notable contribution” to English criminal law the Church’s insistence “that crime should be treated from the point of view of sin, and consequently the theories of the moral theologians concerning the place of intention in sin became part of the law of crime.”³⁹⁴ Plucknett’s concern is with canon law as an influence in the development of the common law. However, the canonist will look as well at the various factors in the development of the canonical tradition of intention and those factors that modify guilt. In this regard the penitential tradition is an important factor.³⁹⁵

³⁹² See S. C. S. Off., decr. 4 mart. 1679, prop. 38, damn., in P. GASPARRI (ed.), *Codicis iuris canonici fontes* (=Fontes, followed by the volume number), v. 5, Romæ, Typis polyglottis Vaticanis, 1930, n. 754, p. 33.

³⁹³ F. MORRISEY, *Procedural Law: cc. 1400-1691*, Class Notes, Faculty of Canon Law, SPU, Ottawa, 2000-2001, p. 20.

³⁹⁴ The history of treating homicide in the light of intention and circumstances in the English common law tradition has attracted the attention of legal historians, for example, T.A. GREEN, “Societal Concepts of Criminal Liability for Homicide in Mediaeval England,” in *Speculum*, 47 (1972), pp. 669-694. Green’s thesis is that the concept of murder developed pragmatically between the twelfth and sixteenth centuries, during which time juries rendered verdicts against the strict norm of law of the time, which required that most homicides be treated as capital crimes. The juries found many homicides were pardonable, even distorting the facts of the case to make it seem like self-defence, a type of homicide that would later be called “manslaughter.”

³⁹⁵ For a detailed exposition of the way the penitentials graded sins and their related penances, see CONNOLLY, *The Irish Penitentials*. Connolly points out that the authors of the penitentials dealt with homicide under the category of anger, specifically as a sin arising from anger (see pp. 62-68). The historical record is not complete, but Connolly surmises that the civil punishments at the time would have been severe, allowing the confessor to use discretion in

In summary, the judgement about moral imputability, insofar as it relates to penal imputability, is an objective one pertaining to the external forum. It means that the crime was committed with full understanding, deliberation and will.³⁹⁶

3.2.3.2 – Doubt, ignorance, and error

Another important issue is the awareness of the moral nature of the act and its canonical implications. Doubt, ignorance, and error can transform the moral quality of the act. As with almost every aspect of canonical imputability, there is no developed case tradition for analysing the role of doubt, ignorance and error.³⁹⁷ As Swoboda has said:

“the relevant juridical norms are based upon moral or legal reasonings and their binding

determining an appropriate penance (p. 66). Homicides in the penitentials are categorised according to premeditation. However, even accidental homicide had a penance, albeit less severe. In reading the penitentials it is evident that the penitential tradition reflected in them was attuned to the complexities of intention and motivation for human acts.

³⁹⁶ This issue has become significant in a recent controversy concerning canon 915 and was taken up in a declaration of the Pontifical Council for Legislative Texts (*Declaration regarding canon 915*, June 24, 2000, in *Origins*, 30 [2000-2001], pp. 174-175). Canon 915 says that a person who persists in “manifest grave sin” should not be admitted to Holy Communion. The controversy arose over an interpretation of grave sin that insisted that subjective as well as objective elements be established before a person could be refused Communion. The Pontifical Council in its response said that only “a true external judgment” was required.

³⁹⁷ There have been very few penal cases at the Rota. For example, A. Mendonça’s anthology of Rotal cases from 1971 to 1988 has just one penal case, an unpublished decision involving a suspension. (See A. MENDONÇA, *Rotal Anthology: An Annotated Index of Rotal Decisions from 1971 to 1988*, CLSA, Washington, 1992, p. 448.) An anthology of rights and penal cases at the Rota from 1909 to 1993 confirms that penal cases have been comparatively rare. (See V. PALESTRO, *Rassegna di giurisprudenza rotale nelle cause iurium e penali [1909-1993]*, Milano, Giuffrè Editore, 1996.) Of the ten penal cases listed in this anthology, the majority are concerned with procedural matters arising from earlier instances. One case, decision n. 48 from 1931 (p. 102), takes up the issue of imputability and factors that modify it. An interesting penal trial involving canon 1397 (the charges related to “detaining or seriously wounding,” rather than homicide) is reported in *Studia canonica*, 33 (1999), pp. 213-232. However, these are isolated cases and their focus is on issues other than imputability.

force must be sought in the general acceptance of the Church through custom.”³⁹⁸ We will now explore the canonical tradition regarding the effects of doubt, ignorance and error on moral culpability.

Doubt involves the suspension of assent regarding the binding nature of a law. Canon 14 provides a general norm for dealing with a doubt of canon law: the principle is that a doubtful law is no law. However, the moral tradition posits a different response to doubt: one must resolve the doubt before acting, for to act in doubt is to risk breaking the moral law that is itself an imputable act. We have referred to this issue of moral doubt in our first chapter.³⁹⁹ The issue here was the theological debate about the burdens and benefits of a means such as assisted nutrition and hydration. A decision about such a means involving life and death will require strict attention to moral principles, and one

³⁹⁸ This comment was made in relation to the doctrine concerning ignorance, and the full quote is as follows: “Furthermore, after the Protestant Revolt of the sixteenth century criminal court proceedings are limited almost exclusively to clerical cases and most of these are handled in an administrative way, with the result that there is practically no important court jurisprudence in the matter of ignorance. The entire development occurs within the doctrine of canonists and moralists. The juridical norms are based upon moral or legal reasonings and their binding force must be sought in the general acceptance of the Church through custom.” (See I.R. SWOBODA, *Ignorance in Relation to the Imputability of Delicts: An Historical Synopsis and Commentary*, CUA Canon Law Studies n. 143, Washington, CUA, 1941, p. 54.) This applies equally to the wider question of the crime of homicide itself, and we could simply substitute “homicide” for “ignorance” in Swoboda’s statement.

³⁹⁹ “When a person is in doubt about the morality of performing (or of omitting) an action, he must either follow the opinion for law or settle the doubt with practical certainty in favor of liberty” (CONNELL, “Moral Doubt,” p. 1024). See also G. GRANERIS, art. “Doubt,” in *Dictionary of Moral Theology*: “All moral theologians agree that it is a sin to perform an action while concretely doubting its lawfulness (doubt of fact)” (p. 432). This more stringent standard has also applied traditionally to the irregularity arising out of homicide (see W.H. FANNING, art. “Irregularity,” in *CE*, 1999 online edition at <<http://www.newadvent.org/cathen/08170a.htm>> [28 February 2001], p. 2).

must follow the safest course. This is particularly true if the act is intrinsically evil and against the natural law.⁴⁰⁰

The doctrine of the canonical and the civil traditions is that ignorance of the law does not excuse. This necessary procedural presumption obviates the prosecution having to prove knowledge, which would be impossible. However, knowledge about the law is not the same as knowledge about the moral nature of the act. There are a number of questions here touching on our theme: would a Catholic making a decision to withdraw assisted nutrition and hydration be expected to know that such an act is a canonical crime? Would a doctor who deliberately intends to kill a patient for compassionate reasons be liable to a penalty if he has no awareness of the fact of the penalty? Would a Catholic doctor, or an ethicist, be expected to know the wider canonical ramifications such as the irregularity?

We have already dealt in our first chapter with the theological reflection on the matter of withdrawal of assisted nutrition and hydration; there is a divided theological opinion, and many theologians and some bishops have taught that it is morally defensible. If a Catholic acted erroneously but in good faith on the advice of his bishop or parish priest, or the ethics committee of a Catholic hospital, does his error exempt him

⁴⁰⁰ There is a parallel with the crime of abortion, and here we should note the CDF *Declaration on Procured Abortion* and its reference to “human reason” which can and should recognise respect for life as the most fundamental of all goods and the condition of their realization (n. 11). Part II of the Declaration is titled “In the Light of Faith” and traces the history of the Church’s opposition to abortion. Part III is titled “In the Additional Light of Reason” and develops a natural law argument against abortion. The Church’s opposition to abortion, then, is based on divine positive and natural law and allows no exceptions. The Declaration rejects the notion that scientific doubt about the precise moment of the beginning of human life might allow some possible early-term abortions. “It is objectively a grave sin to dare to risk murder” (n. 13). For further comment, see L.S. CAHILL, art. “Abortion: Religious Traditions: Roman Catholic Perspectives,” in *Encyclopedia of Bioethics*, vol. I, p. 32, col. 1.

from possible canonical ramifications? Would a Catholic deliberately choosing to act against the moral law on killing be expected to know that such an act is also a canonical crime? The offender may be completely ignorant of the moral and canonical implications of his act. We need, then, to investigate the canonical tradition on ignorance, error and doubt and their relationship to imputability. The answer to these questions will come from an analysis of these issues in the light of the Church's canonical and moral traditions.

Ignorance and error can be dealt with together.⁴⁰¹ Ignorance can be defined as the "absence of data in the process of knowing to the point that no judgement can be reached."⁴⁰² Error means that there is some deficiency in the process of knowing to the point that a false judgment is reached."⁴⁰³ Our concern here is with the canonical implications of these defects of knowledge concerning the law and its penalty, as well as knowledge about the moral nature of the act.

The general norm on ignorance and error is in canon 15 §2: they are not presumed about a law or a penalty. In other words, it is presumed that a person knows the relevant law and any penalty attached to that law. The idea behind this canon and its related

⁴⁰¹ Canon 1323, 2° says that (inculpable) "inadvertence and error are the equivalent to ignorance." However, culpable error (canon 1324 §1, 8°) and culpable ignorance (canon 1324 §1, 9°) have different canonical implications in terms of reduction of the penalty, as distinct from its complete exemption.

⁴⁰² L. ÖRSY, "General Norms," in *The Code of Canon Law: A Text and Commentary*, p. 34. In the case of a crime, one does not know that the action is a crime.

⁴⁰³ Ibid. In the case of a crime, one thinks erroneously that one knows the moral nature of the act.

principles is that “laws operate independently from the state of mind of the persons,”⁴⁰⁴ and this is often expressed in an axiom of the canonical tradition that “ignorance of the law does not excuse.”⁴⁰⁵ This is a necessary presumption to preclude the prosecution having to prove that the delinquent had the requisite knowledge, an unreasonably difficult prospect.⁴⁰⁶

The Code provides norms for dealing with ignorance and error in applying penalties, and the references to ignorance and error reflect important distinctions. Canons 1323, 2° and 1325 distinguish culpable and inculpable ignorance and error,⁴⁰⁷ and canon 1324 §1, 9° distinguishes knowledge of the law and knowledge of the penalty attached to the law. These distinctions have implications for our theme and will be dealt with in turn.

As the word suggests, an inculpable ignorance is one where there is no moral fault and therefore no imputability.⁴⁰⁸ There are several types of culpable ignorance: affected,

⁴⁰⁴ Ibid.

⁴⁰⁵ It is also an axiom of the civil tradition. *The Australian Criminal Law Dictionary* defines ignorance as: “A common law and statutory principle that no person will be excused from liability because of ignorance of the law.” It is often expressed as «Ignorantia juris quod quisque scire tenetur non excusat» (*The Australian Criminal Law Dictionary* is part of the collection titled *Australian Criminal Law Library*, published in Australia as a Butterworths CD-ROM, and updated 3 April 2001). An interesting illustration of the principle is a case involving Joseph Mohr, who on 9 May 1997 was acquitted on a charge of murder by a jury in the Supreme Court of Victoria (Australia). At her request, Mohr had killed his elderly and chronically ill wife. His defence counsel argued that the prosecution had to prove that Mohr knew that the act was wrong in the sense of it being unlawful. There was evidence that his doctor had told him several times that euthanasia was wrong, but his counsel argued successfully that this knowledge did not “sink in.” (The case is unreported but summarised at n. 9.460 in D. ROSS, *Crime: Law and Practice in Criminal Courts*, Sydney, LBC Information Services, 1998 [in loose-leaf format, updated 2001].)

⁴⁰⁶ L. ÖRSY, *ibid.*

⁴⁰⁷ This distinction is also found in canon 1324 §1, 8°.

⁴⁰⁸ Is there a contradiction or anomaly in the use of “without fault” in 1323, 2°, concerning the implications of defects of knowledge for the imposition of penalties? Canon 1323

crass and supine. Affected ignorance is a deliberate ignorance, an attempt to avoid the implications of the law. Crass and supine ignorance results from little or no effort to understand the law.⁴⁰⁹ Canon 1325 says that these culpable types of ignorance do not reduce imputability for crimes. Hence, an offender whose ignorance was culpable could not claim exemption from the law on homicide and its penalty on the basis that he did not know.

However, the question we are trying to answer relates to a possible non-culpable ignorance and error. If a person, acting under the advice of a bishop, or an ethics committee in a Catholic hospital, makes a decision in good faith to withdraw assisted nutrition and hydration, this would be error, which is equivalent to ignorance in determining culpability.⁴¹⁰ The answer to the dilemma lies in the nature of the act as intrinsically evil.⁴¹¹ Swoboda summarises the canonical doctrine on this matter as follows: "If the penal law of the Church is merely an expression of an already pre-existing divine law, ignorance of the former does not excuse from moral guilt and hence

provides "sentencing" guidelines, which presumes that some degree of imputability has transformed the external violation into a crime. Using the principle that legal imputability presumes moral imputability, inculpable ignorance implies an absence of moral fault. Hence, there is no crime, and no need for a "sentencing" guideline.

⁴⁰⁹ O'Reilly, *Sanctions*, p. 53. A similar idea is found in canon 1326 §1, 3°, which speaks of what might be called the "duty of care" that is expected of "any careful person" (*diligens quilibet*). This is the sort of duty or standard that applies to the overcoming of ignorance and error. A failure in such a duty would be an imputable form of *culpa*.

⁴¹⁰ Canon 1323, 2°.

⁴¹¹ This concept of objective evil is reflected in canons 1323, 4° and 1324, §1, 5° which uses the phrase "unless the act is intrinsically evil" (*intrinsece malus*). These canons provide norms for imposing penalties on delinquents; penalties will not be waived or reduced if the crime was intrinsically evil.

neither from penal imputability.”⁴¹² Homicide is this sort of offence; it is a crime against the divine positive and natural law to which the Church has attached canonical sanctions.⁴¹³

3.2.3.3 – Necessity and grave inconvenience

Another factor that might determine the degree of imputability is the possibility that a person who withdrew assisted nutrition and hydration did so out of necessity or grave inconvenience. Canons 1323, 4° and 1324, §1, 5° deal with these matters and should be read together to determine the applicable canonical doctrine. In summary, while necessity and grave inconvenience modify imputability, they will not exempt from a penalty if the act involved is *intrinsece malus*. Further, the provisions of canons 1323 and 1324 provide principles to determine an appropriate penalty or no penalty at all.⁴¹⁴

⁴¹² SWOBODA, *Ignorance in Relation to the Imputability of Delicts*, p. 156. The canonical doctrine was that developed prior to the 1917 Code by which the present law should be interpreted.

⁴¹³ In *Evangelium vitae* n. 57, the Pope, in relation to the formal condemnation of homicide, spells out the divine and natural law basis of the crime in these words: “This doctrine, based upon that unwritten law which man, in the light of reason, finds in his own heart (cf. *Rom* 2:14-15), is reaffirmed by Sacred Scripture, transmitted by the Tradition of the Church and taught by the ordinary and universal Magisterium.”

⁴¹⁴ This doctrine may well apply to an act posited out of grave inconvenience but it is difficult applying it to an act posited out of necessity. In a case of true necessity, the act is not posited freely and is not imputable. This is true whether the act is *intrinsece malus* or not. In such a case, there can be no penalty or other canonical effects. We made a similar point above in relation to the doctrine of canon 1323, 2° and its reference to an act placed “without fault” (see fn. 408). Canons 1323 and 1324 provide protocols for the application of penalties and presume the capacity to commit a crime, as distinct from canon 1322 that says that those who habitually lack the use of reason are incapable of committing a crime.

They presume that the crime has been committed. In other words, it would still be the crime of homicide, albeit with a reduced penalty.⁴¹⁵

3.2.4 – The irregularity arising from homicide

Our study of crime in canon law must now take up the related issue of the imputability required to incur the irregularity arising from homicide. Canon 1041, 4° states:⁴¹⁶

Can. 1041 - Ad recipiendos ordines sunt irregulares: [...] 4° qui voluntarium homicidium perpetraverit : [...] omnesque positive cooperantes.

The following persons are irregular for the reception of orders: [...] 4° one who has committed wilful homicide : [...] and all who have positively co-operated.

As we have seen with our study of the notion of crime, the crime of homicide must be imputed to the offender either by *dolus* or *culpa*. This means that the crime can arise through a deliberate action or negligence. By contrast, the phrase “wilful homicide” of canon 1041, 4° means that the irregularity arising from homicide will have to be grounded in *dolus* and not *culpa*. In other words, the death must result from an intention to kill rather than negligence.

⁴¹⁵ Further, with any degree of imputability he would incur the irregularities of canons 1041 and 1044 and the dismissal from religious life of canon 695 §1.

⁴¹⁶ Canon 1044 §1, 3° extends the scope of canon 1041, 4° to include an irregularity for the exercise of orders.

3.2.5 – Co-operation in crime

Canon 1329 provides norms for the application of penalties to those who have co-operated in a crime. This canon does not define co-operation nor explain the many ways of being an accomplice in crime but presumes the canonical tradition in these matters.⁴¹⁷ Its major concern is the penalty, but the application of a penalty presumes imputability.⁴¹⁸ We will now develop the concept of imputability for co-operation in crime, drawing from canon 1329 in light of the canonical and moral tradition.⁴¹⁹

⁴¹⁷ Canon 1329 has greatly simplified the discipline of the 1917 Code. The *fontes* list four canons of the 1917 Code: 2209, 2211, 2230, and 2231. Canon 2209 takes up in a systematic way the many ways of being an accomplice in crime. Canon 2211 provides for an action for restitution against some accomplices (specifically, those mentioned in canon 2209 §1-3, the co-agents in the planning and execution of the crime, the “necessary” accomplices of specific crimes that require such, and the “effective” accomplices who order or persuade the delinquent). Finally, canons 2230 and 2231 deal with penalties for accomplices. For a detailed commentary on these canons and their historical background, see L.A. ELTZ, *Cooperation in Crime: An Historical Conspectus and Commentary*, CUA Canon Law Studies No. 156, Washington, CUA Press, 1942.

One major concern of the canonical and moral tradition on co-operation that has been eliminated from this part of the Code is the restitution and the action for damages arising out of criminal activity that had been provided for in canon 2211 of the 1917 Code. This theme features prominently in the commentaries prior to the 1983 Code, including ELTZ, *Cooperation in Crime*, pp. 168-170, and J.F. DELANY, art. “Accomplice,” in *CE*, 1999 online edition, <<http://www.newadvent.org/cathen/01100a.htm>> (March 12, 2001), p. 3.

⁴¹⁸ The relationship between imputability and penalty is clearly established in canon 1329 and other canons, notably canon 1321 §1 which establishes the basic principle that a penalty can only be imposed if there is “grave” imputability. However, they are different realities and the fact that penalties are not imposed does not imply a lack of imputability, as suggested by some commentators. See, for example, D. KELLY, “Orders,” in G. SHEEHY et al. (eds.), *The Canon Law, Letter & Spirit: A Practical Guide to the Code of Canon Law*, prepared by THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, in association with THE CANADIAN CANON LAW SOCIETY, Dublin, Veritas, 1995, pp. 548-571. In his commentary on canon 1041, 4^o Kelly says: “One may therefore reasonably assume that [...] if the mitigating circumstances mentioned in Cann. 1323 and 1324 §1 are operative, the irregularity is not incurred (p. 564).” It is our contention, however, that these mitigating circumstances presume the presence of imputability and that any degree of imputability gives rise to the irregularity even if there is no penalty.

⁴¹⁹ In the moral tradition, the fundamental distinction is between formal and material co-operation. Formal co-operation involves intention, the equivalent to the canonical *dolus*. A good summary of these concepts from the moral perspective can be found in DELANY, “Accomplice” (see fn. 417 for the full reference). Another good introduction to the theme is P. PALAZZINI, art.

Canon 1329 speaks of two ways of being an accomplice in crime, one is a general category including all types of co-operation, and the other is a particular type of co-operation, specifically that co-operation considered necessary for the commission of the crime. Canon 1329 makes the distinction in relation to penalties, but our concern is with imputability and we will deal consecutively with these types of co-operation in terms of their imputability.

The first, broad category of co-operation is indicated by the terms “accomplices” and “persons [who] conspire together to commit an offence” of canon 1329.⁴²⁰

“Accomplices” here encompasses the many ways of criminal co-operation that have been discussed in the canonical tradition, ranging from full participation in the crime to more

“Cooperators (in evil),” in *Dictionary of Moral Theology*, pp. 327-331. There are many commentaries that take the canonical perspective: Eltz’s 1942 *Cooperation in Crime* (see fn. 417) is an extremely thorough commentary. Others are O. CASSOLA, “De concursu delinquentium in Codice J. C.,” in *Apollinaris* 31 (1958), pp. 102-117; O’Reilly, *Sanctions*, pp. 56-58; W.H. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, Ottawa, SPU Faculty of Canon Law, 2000, pp. 38-40; M. HUGHES, *Sanctions in the Church* (class notes), Ottawa, SPU, 1986-1987, p. 30.

Another important aspect of this theme is institutional co-operation. Here the principles are applied in situations where Catholic and non-Catholic hospitals merge, and decisions are made about “services” such as sterilization that were previously provided by the non-Catholic hospital. A comprehensive analysis of the principles in the light of such mergers in the USA can be found in MCCOY’S *Genetic Counseling and The Catholic Health Care Institutional Response in the United States*. The 1994 NCCB *Ethical and Religious Directives for Catholic Health Care Services* were revised in 2001 precisely in regard to institutional co-operation. There is an ongoing theological debate about this type of co-operation in the provision of sterilization in Catholic hospitals following merger; see J.F. KEENAN, “Not an Excessive Claim, Nor a Divisive One, But a Traditional One: A Response to Lawrence Welch on Immediate Material Cooperation,” in *Linacre Quarterly*, vol. 67, n. 4 (2000), pp. 83-91; and A. ZIMMERMAN, “Contraceptive Sterilization in Catholic Hospitals is Intrinsically Evil,” in *Linacre Quarterly*, 68 (2001), pp. 262-273.

⁴²⁰ *Complex and qui communi delinquendi consilio.*

limited types of participation.⁴²¹ A person who fully participates in the crime is described variously as the “co-principal,” “co-agent,” or “co-author” of the crime.⁴²² Partial participation involves any other facilitation.⁴²³ Canon 1329 §1 says that co-operators in this broad sense are liable to any *ferendae sententiae* penalty established by the law for that particular crime. Co-operators, then, share in varying degrees in the imputability of the principal author of the crime and are liable to the canonical effects of that crime.⁴²⁴

The second, restrictive category of co-operation is indicated by the phrase “if, without their assistance, the crime would not have been committed” of canon 1329 §2.⁴²⁵ This concept was found in canon 2209 §3 of the 1917 Code.⁴²⁶ This necessary co-

⁴²¹ See HUGHES, *Sanctions in the Church*, p. 30. As we noted above in fn. 417, canon 2209 dealt explicitly with several types of participation. These types of co-operation have their counterparts in civil law which uses different terms to denote the varying degrees of criminal participation: aid and abet; principal in the first degree; principal in the second degree; accessory before the fact; accessory after the fact; complicity; and common purpose. To take just two of these, in New South Wales an accessory before the fact is “a person who, although not present at the place where and when a felony is committed, counsels or procures another to commit that offence.” By contrast, the principal in the second degree counsels or procures and is actually present. (See *Criminal Practice and Procedure New South Wales*, part of the collection titled *Australian Criminal Law Library*, published in Australia as a Butterworths CD-ROM and updated 3 April 2001, at [6-100] “Accessory before the fact.”)

⁴²² They are commonly called “partners in crime,” and the imputability of the various categories of accomplice is judged in relation to that of the “principal author” of the crime.

⁴²³ Those who help in the actual commission of the crime have been called “facilitating” co-operators, those who could have stopped the crime but did not are “negative” co-operators, and those who helped the delinquent after the crime are “subsequent” co-operators. These are the terms used by Eltz in *Cooperation in Crime*, pp. 84-167, in his commentary on canon 2209 of the 1917 Code.

⁴²⁴ In the case of homicide, then, this would include the irregularity as well as the penalty. In regard to our theme, a priest who counsels another to withdraw assisted nutrition and hydration from a helpless patient could be irregular for the exercise of orders.

⁴²⁵ *Si sine eorum opera delictum patratum non esset.*

⁴²⁶ We need to make an important distinction here. Following Eltz, we have used the word “necessary” to designate a particular type of co-operation, namely that described in canon

operation arises in a number of ways, the common element being that the co-operation is a *sine qua non* for the commission of the crime. It is this type of co-operation, and only this type, which incurs any *latae sententiae* penalty established for that crime. By inference, then, these co-operators share fully in the imputability of the principal author of the crime, and are fully liable to the canonical effects of that crime.

The *fontes* for canon 1329 §2 indicate that canon 2209 §§3 and 4 of the 1917 Code were its sources, and we will look more closely at both these canons to identify in greater detail the types of co-operation implied here. Canon 2209 §3 dealt with “effective” co-operators⁴²⁷ and gives two examples: the *mandans* who orders the crime (he is described in the canon as the “principal author” of the delict), and then anyone who encourages or concurs with the crime in any way,⁴²⁸ with the condition that the crime would not have been committed without their efforts. This condition will inevitably involve a judgement, as not every type of encouragement will be a *sine qua non* for the commission of the crime, and even less essential will be the agreement of the accomplice.

2209 §2 of the 1917 Code. Here the crime by its nature requires an accomplice, such as the bishop who consecrates another bishop without pontifical mandate. For this crime canon 1382 provides a *latae sententiae* excommunication for both bishops. However, the necessary co-operation of canon 1329 §2 is a broader concept, what Eltz calls “effective” co-operation in his commentary on canon 2209 §3. It may be more descriptive to use “necessary effective” for this category. T.J. Green uses “necessary” here in contrast to the broader type that he calls “secondary” (*Sanctions*, p. 1547).

⁴²⁷ ELTZ, *Cooperation in Crime*, pp. 104ff., uses this term.

⁴²⁸ “Qui ad delicti consummationem inducunt vel in hanc quoquo modo concurrunt.”

However, if that condition can be established, such an accomplice shares fully in the imputability of the crime.⁴²⁹

The second of the *fontes* for canon 1329 §2 is canon 2209 §4 of the 1917 Code which deals with “facilitating co-operators,” a lesser type of co-operation involving reduced imputability.⁴³⁰ The listing of this canon as a source of canon 1329 §2 seems to be an error, as the facilitation envisaged in canon 2209 §4 is in no way necessary or causal.⁴³¹

In summary, then, we can say that canon 1329 reflects the doctrine of imputability for co-operation in crime. This imputability will vary according to the level of co-operation, with full imputability arising from any co-operation that has been instrumental or necessarily effective in the commission of the crime and partial imputability arising from any other co-operation.⁴³²

⁴²⁹ See ELTZ, *Cooperation in Crime*, p. 123; Eltz says that the co-operation described in canons 2209 §§1-4 involve the imputability of the principal author.

⁴³⁰ ELTZ, *Cooperation in Crime*, pp. 123ff. The canon speaks of *concursum facilius [...]* *reddidit delictum* and posits a lesser imputability because the co-operation is no longer linked causally to the crime.

⁴³¹ In fact, thematic consistency suggests that the *fontes* are canons 2209 §§2-3, and not canons 2209 §§3-4. The reason that canon 2209 §1 was not a source is that the involvement in the planning and execution of the crime (the canon speaks of “physical” collaboration) is such that it is more properly co-agency than co-operation.

⁴³² A good summary of the canonical tradition is provided by J.A. Coriden in an article which applies the principles of co-operation to administrators of hospital which provide abortion facilities: “The Canonical Penalty for Abortion as Applicable to Administrators of Clinics and Hospitals,” in *The Jurist*, 46 (1986), pp. 652-658, and in W.A. SCHUMACHER and J.J. CUNEO (eds.), *Roman Replies and CLSA Advisory Opinions 1986*, CLSA, Washington, 1986, pp. 80-85. In this article Coriden argues that such administrators are not liable to the *latae sententiae* penalty for abortion. However, the question of imputability is a different one and Coriden, while not explicitly addressing this issue, takes the view that the various personnel in institutions that provide abortion, including counsellors, have “a serious moral responsibility” in varying degrees

3.2.5.1 – Co-operation and the irregularity for homicide

We need to address the matter of the irregularity of canons 1041, 4° as it affects co-operators.⁴³³ This canon includes as irregular “all who have positively co-operated,”⁴³⁴ and we can understand the implications of this phrase by reference to the canonical tradition. We have already noted the fact that the complex categories of co-operation in that tradition and reflected in canon 2209 of the 1917 Code have been simplified in our present canon 1329 which posits one broad category of accomplice liable to *ferendae sententiae* penalties, and a narrower category – the “necessary effective” co-operator – liable to *latae sententiae* penalties. Another type of co-operation was called “negative,” and this involved failing to prevent the crime.⁴³⁵ This category was dealt with in canon 2209 §6 of the 1917 Code which spoke of the person *qui in delictum concurrat suum dumtaxat officium negligendo*. Here the person who has a special duty (implied in the term *officium*) to impede a crime positively is negligent and allows the crime to happen. The canon goes on to say that such a person incurs imputability in proportion to his duty.

(*The Jurist*, 46 [1986], p. 658). Such moral imputability gives rise to legal imputability and, while they are not liable to the *latae sententiae* penalty of canon 1398, *ferendae sententiae* penalties could be imposed and clerics risk incurring the irregularity of canon 1041 4°.

John Paul II has taken up the issue of the moral imputability of those who co-operate in abortion in *Evangelium vitae* n. 59. The relevant passage has been reproduced in fn. 384, on p. 138 above. The Pope is especially critical of “those who have directly or indirectly obliged [the woman] to have an abortion,” and he also speaks of the responsibility of doctors and nurses.

⁴³³ Our comments will take into account 1044 §1, 3°, which applies canon 1041, 4° to the irregularity for the exercise of orders. A clear explanation of these issues is in J.J. HICKEY, *Irregularities and Simple Impediments in the New Code of Canon Law*, CUA Canon Law Studies n. 7, Washington, CUA Press, 1920, pp. 50-57.

⁴³⁴ *Omnesque positive cooperantes*.

By contrast, all other co-operation is positive and incurs the irregularity.⁴³⁶

Positive co-operation is that which involves an intention to help the principal author break the law.⁴³⁷ This element of deliberation and intentionality means that the irregularity can be incurred only *ex dolo* and not *ex culpa*.

Crime in canon law: conclusion

We can draw a number of conclusions from our study of the notion of crime.

There is a distinction between crime from the objective and the subjective aspects. At the objective level, homicide is a crime against divine positive law, natural law, and canon law. The crime of homicide can be committed through deliberation and intention (*ex dolo*) or through “the omission of due diligence” (*ex culpa*). Canon 1397 provides a penalty for the crime of homicide, but, in accordance with canon 1321 §2, the crime of homicide will not be punished if it has arisen *ex culpa*. Similarly, the irregularity arising from homicide can only arise *ex dolo*.

⁴³⁵ This is similar to the concept of *culpa*; the canon posited a “negative” imputability arising out of *culpa*, in contrast to the broad category of “positive” imputability of the other sections of canon 2209 that required *dolus*.

⁴³⁶ The most fundamental division of co-operation in the Palazzini article “Cooperators (in evil)” is between positive and negative co-operation. Palazzini spells out the types of positive co-operation as ordering, counselling, approving, flattering, sheltering, and participating (p. 327). The concept can be found in the *Catechism* n. 2268, which condemns the “murderer and those who cooperate voluntarily in murder” (*Homicida illique qui voluntarie cooperantur occisioni*).

⁴³⁷ See HUGHES, *Sanctions in the Church*, p. 30, note 1. In reaching this conclusion we note that other commentators have posited a different meaning for the “positive” co-operation of 1041, 4°. See, e.g., R.J. GEISINGER, “Orders,” in *New Commentary on the Code of Canon Law*, New York, Paulist Press, 2000, p. 1217. In commenting on this canon, Geisinger says that the participation “must have been necessary to the execution of the act in some way.” We have argued above that this type of co-operation, in accordance with canon 1329 §2, is required for *latae sententiae* penalties but is not required in the present canon dealing with co-operation and irregularity.

At the subjective level, while there are degrees of imputability, imputability can be modified but is not removed by subjective factors. Motive may reduce imputability but does not change the nature of the act. There must be serious imputability before penalties are applied, but homicide will be a crime with canonical implications with any degree of imputability. Further, the fact that homicide is a crime of the natural law means that a higher standard of action is demanded in the situation of factors such as doubt, ignorance, error, and necessity. Finally, accomplices will be liable to the canonical implications of the crime of homicide according to the type of co-operation.

3.3 – Homicide in the canonical tradition

Having dealt with the canonical notion of crime, we now propose to review the canonical tradition concerning homicide in the light of the question we have posed: is the withdrawal of assisted nutrition and hydration leading to death the crime of homicide? The tradition is a long one, and we must be selective in our survey. Accordingly, we will concentrate on four major expressions of that tradition: the *fontes* of the 1917 Code, the *Corpus iuris canonici*, and the 1917 and the 1983 Codes. We will also take note of significant commentaries on the doctrine at those key stages of development and expression. There is no clear separation of the subjective and objective aspects in the development of the tradition, and what follows about the doctrine of homicide will be as concerned with the *mens rea* as well as the *actus reus*.

3.3.1 – Homicide in the *fontes* of the 1917 Code

A study of the *fontes* of the 1917 Code will help us to determine those elements of the doctrine of homicide that were considered important by Cardinal P. Gasparri and the other canonists who worked on the preparation of the Code. We have concentrated on the *fontes* of three canons of the 1917 Code: canon 985 (the irregularity *ex delicto*), canon 2354 §1 (homicide and laypersons) and canon 2354 §2 (homicide and clerics). We have been necessarily selective in this choice, but it is our view that these canons allow us to elaborate the essential elements of the doctrine of homicide.⁴³⁸ Two of the three canons here are themselves *fontes* for the 1983 Code; canon 985, 4° is the only *fons* listed for canon 1041, 4°, and canon 2354 §1 is one of three *fontes* for canon 1397.

We have prepared annotated tables of these *fontes*, arranged according to the relevant canon of the 1917 Code, which form Appendix XIII starting on p. 308. These tables contain the full references for and the summaries of the ninety-three *fontes*, many being decrees and decisions in actual cases. These *fontes* are mostly papal and conciliar decrees from the *Corpus iuris canonici* and decisions of the S.C.C.⁴³⁹

We need to explain briefly why we have included the *fontes* for the irregularity in this study. In the canonical tradition there is more interest in homicide as it relates to the irregularity than in homicide as a crime. The reason is that the irregularity arising from

⁴³⁸ Canon 984 (the irregularity *ex defectu*) has been omitted from our analysis as none of its *fontes* relate to homicide, even though two parts of the canon (984, 6° and 7°, the *defectus lenitatis* arising from passing a death sentence or helping to carry out the death sentence) deal with a related issue.

⁴³⁹ There are a small number of other sources: one is a decree from the Council of Trent and there are two other papal decrees. The *Corpus iuris canonici* canons also include scripture, St. Augustine, Roman Law and the Roman penitential as *fontes*.

homicide presented the Church with more practical problems than did the crime of homicide.⁴⁴⁰ The *fontes* include many cases of papal decrees declaring irregularities and curial decisions in cases where clerics were seeking dispensation from the irregularity.⁴⁴¹ These cases, especially the decisions of the S.C.C. in regard to dispensations, often discuss one or more aspects of the doctrine of homicide. They are particularly concerned with imputability, so the *fontes* concerned with irregularity provide many insights into the way imputability was understood. There is less discussion of the doctrine in the *fontes* for canon 2354 (crime) than there is in those for canon 985 (irregularity). Further, there is no separate crime of clerical homicide. There is one crime, with many degrees of imputability, which can be committed by clerics and laypersons and which for a cleric has an additional canonical implication known as irregularity.⁴⁴² The *fontes* for the irregularity, then, are a rich source of material to understand homicide as a crime.

A preliminary caution is in order: those whose notion of crime has been formed by the common law tradition will need a *novus habitus mentis* in approaching this material. We have already pointed to a fundamental difference in the way the common law tradition deals with homicide as compared with those European systems more closely

⁴⁴⁰ It may be more accurate to say that the Church dealt with homicide as a sin rather than a crime. Crime and punishment in these *fontes* pertain more to the secular arm, with the Church's focus being more on homicide as a sin requiring correction through penance, as well as the added canonical implication of irregularity for clerics.

⁴⁴¹ Further, many of the *fontes* relate to both the irregularity and the crime, and a number of the *fontes* for canon 2354 §1, regarding laypersons and homicide, actually concern clerics.

⁴⁴² However, what will become clear in these *fontes* is that the irregularity is incurred with a minimal degree of imputability. An article written by W.H. Fanning in 1910 made the point that, while normally an irregularity *ex delicto* required mortal sin, the exception was homicide that required only venial sin. Fanning also applied this distinction to doubt about whether a homicide had been committed; the doubt is resolved in favour of the irregularity (see FANNING, "Irregularity," p. 2).

related to canon law. Generally, while the common law tradition has many crimes involving killing, the canon law tradition has one. Homicide in this tradition refers to any kind of unlawful killing, albeit with many degrees of imputability based on intention and circumstances. As we will see in our study of the *fontes*, any degree of imputability results in the sin and the crime of homicide.

3.3.1.1 – Types of homicide

The *fontes* reflect the fact that there are many types of homicide, ways of committing homicide, and ways of being considered a *homicida*. Some will need little comment; others have significant canonical implications. Of passing interest is the fact that self-mutilation was considered a form of homicide, although the *fontes* do not reveal whether the penalties and penances for homicide were applied.⁴⁴³ A more important category or distinction is occult homicide. In X, 1, 11, c. 17, for example, there is a list of occult crimes that can be dispensed, and homicide is explicitly excluded.⁴⁴⁴

⁴⁴³ This sort of mutilation had its own canonical implications in that it incurred the irregularity for orders. (See D. 55, c. 4, and our Appendix XIII, p. 309. The reference to the page number here and with the canons that follow will be to the page in our Appendix XIII where the canon can be found, often with a summary and comments.) There is a distinction made in this and the surrounding canons between voluntary and non-voluntary mutilation and only the man who voluntarily castrates himself is irregular. This canon is also a source of canon 2354 §2.

⁴⁴⁴ This is a source of canon 985. (See our Appendix XIII, p. 309 for more details.) Significantly, homicide is contrasted here to the crimes of adultery and perjury; while the three crimes incur an irregularity, a priest who is a *homicida* cannot return to ministry after penance, as he could after perjury or adultery. The Council of Trent made reference to this distinction in legislating the irregularity for homicide. (Sess. XIV, *de ref.*, c. 7; see our Appendix XIII, p. 321 for details.) The irregularity is incurred even if the crime is occult. For a case from the *fontes* in which this law was implemented for an occult homicide, see the S.C.C. decree of 21 May 1718 (at p. 313 in Appendix XIII).

We have already alluded to a more significant distinction: homicide has a unique place in the Church's penal tradition and has greater canonical implications than any other crime. This applies particularly to homicide perpetrated by clerics; the Church's canonical tradition reflects a determination to isolate clerics from anything to do with the unlawful taking of life and involvement in any kind of loss of life.⁴⁴⁵ Clerics hold a special place in this tradition in that they are both more protected by the law and more punished by the law.⁴⁴⁶

3.3.1.2 – Imputability

We have spoken above of the fact that in the canonical tradition as reflected in the *fontes* there is one crime of homicide with many shades or degrees of culpability. An analysis of the *fontes* reflects the complexity of the notion of imputability for the crime of homicide. The crime is committed with minimal imputability. There are very few circumstances that reduce imputability, and virtually none that removes it completely.⁴⁴⁷

⁴⁴⁵ Most of the *fontes* concern homicide as an unlawful taking of life. However, clerics could incur an irregularity even if they were inculpably involved in the loss of life. The most powerful expression of this is in X, 5, 12, c. 19 (p. 310 in Appendix XIII) that has two cases of irregularity or possible irregularity where there was no crime. This doctrine was the basis for the irregularities *ex defectu* found in canon 984, 7° and *ex delicto* of canon 985, 6°.

⁴⁴⁶ The best illustration of the harsher penalties for clerics is in D. 50, c. 41, a *fons* for all three canons in our analysis. (See our Appendix XIII, pp. 309, 315 and 318, and the details of the penances in fn. 716.) This canon provides graded penalties according to rank, starting with bishop and ending with layperson. For canons, which illustrate the greater protection given to clerics, see C. 17, q. 4, c. 24 (our Appendix XIII, p. 316) and the following three canons (C. 17, q. 4, c. 25; C. 17, q. 4, c. 27; and C. 17, q. 4, c. 28). C. 17, q. 4, c. 25 provides a three-fold penance if the victim is wearing a stole when killed (see fn. 751, our Appendix XIII, p. 316).

⁴⁴⁷ Further, any act leading to death seems to bring with it a presumption of imputability.

We will begin this section with a brief look at three factors that do not remove or reduce imputability: the status of the victim, age and self-defence.

Imputability is not removed by the status of the victim. In other words, there is no justifiable homicide, no category of person who does not have the protection of law, and no excusing cause. For example, pagans and those who blaspheme or hate the Church cannot be killed.⁴⁴⁸ Adultery is not a justification for homicide.⁴⁴⁹

Imputability may be reduced but is not removed because of the age of the offender. One canon involves a youthful cleric of eighteen years; another is a boy of fifteen years of age.⁴⁵⁰ In both cases, the request for dispensation from the irregularity was denied.

There are numerous references to self-defence in these *fontes*, but most forms of self-defence will reduce but not remove imputability.⁴⁵¹ The determining principle is whether the killing could have been avoided, and this concept is reflected in one of the

⁴⁴⁸ For example, see D. 50, c. 5 (our Appendix XIII, p. 308); D. 50, c. 6 (our Appendix XIII, p. 280); D. 50, c. 40 (our Appendix XIII, p. 315); and X, 5, 12, c. 24 (our Appendix XIII, p. 311) for canons relating to the killing of pagans and similar.

⁴⁴⁹ C. 33, q. 2, c. 5 (p. 317).

⁴⁵⁰ See S.C.C. #3, p. 312, and S.C.C. #5, p. 313. In the first case the cleric of eighteen years fatally wounded someone during a fight. The second case involved a fifteen-year-old boy who wounded a companion with a knife while playing. In this latter case the age of the boy does not seem to be an issue in the canonical reflection, although it was the reason for not conducting a civil process at the time (1718).

⁴⁵¹ In some canons there are references to self-defence where there seems to be no allowance made for circumstances. Some examples are: D. 50, c. 6 (see our Appendix XIII, p. 308 and the related comments in fn. 712); X, 5, 14, c. 1 (see our Appendix XIII, p. 311); and X, 5, 12, c. 2 (our Appendix XIII, p. 317), which speaks of the imputability involved in killing in self-defence with "hateful meditation."

decisions of the S.C.C. that uses the notion of “truly necessary” self-defence.⁴⁵² However, every canon in the *fontes* dealing with self-defence posits some degree of imputability; any voluntary action that results in death is considered a homicide, albeit with reduced imputability.⁴⁵³

The major modifier of imputability is the element of voluntariness. The most imputable type of homicide is voluntary homicide which is contrasted to *homicidium casuale*.⁴⁵⁴ These are general categories only, and the *fontes* reveal the difficulty in assigning pre-determined categories to complex human behaviour. We can perhaps best discern the meaning of voluntary homicide by first spelling out what it is not.

Voluntariness does not require pre-meditation. We have already explored the idea that self-defence rarely reduces and never removes imputability, precisely because the element of voluntariness is still present. The act of killing in these situations may be impulsive, but it is still voluntary and imputable.⁴⁵⁵

⁴⁵² S.C.C. #11, p. 314. In this case, the priest who acted in true self-defence was considered irregular, but this type of self-defence seems to have justified the dispensation. Other canons where self-defence was argued but the dispensation was rejected are S.C.C. #6 (our Appendix XIII, p. 313; here the dispensation was denied because the priest could have avoided killing the thief by running away); and X, 5, 12, c. 2 (our Appendix XIII, p. 317; there is imputability but a lesser penance for killing a madman or a thief if the killing could have been avoided).

⁴⁵³ The one exception is where the killing involves the carrying out of a lawful sentence of death, as in C. 23, q. 8, c. 33 (our Appendix XIII, p. 317).

⁴⁵⁴ Many words and phrases are used to convey the same idea: *in casu*, even simply *casu*, are common, as well as *ex improviso*; another case distinguishes “carelessness” and “studied neglect.” Other terms to indicate voluntary homicide are *voluntate*, *sponte*, *voluntas occidendi*, *animus occidendi*, *ex industria*, “hateful meditation,” and so forth.

⁴⁵⁵ We have already referred to the case of the eighteen-year-old cleric who wounds another student in a fight. (See S.C.C. #3, our Appendix XIII, p. 312, with the facts of the case set out in fn. 732.) There is imputability even though the boy did not intend to kill and was young. If

Voluntariness does not require an intention to kill. An intention to wound is enough to incur imputability, as is an intention to do something illicit that results in death.⁴⁵⁶ This doctrine is elaborated explicitly in S.C.C. #5, the story of a young boy who lethally wounds his friend while playing.⁴⁵⁷ The decree discusses the various kinds of voluntary homicide and the fact that in most cases such a small wound would not cause death. It goes on to elaborate the two kinds of voluntary homicide: one where the killer explicitly wishes to kill, the other where the will tends to the act from which *per se* death follows immediately, and not *per accidens*.⁴⁵⁸

Voluntary homicide is frequently contrasted to *homicidium casuale*, and so by inference voluntary homicide is not *homicidium casuale*. An analysis of the notion of *homicidium casuale* or involuntary homicide will help our understanding of voluntary homicide. The term “accidental” conveys something of the notion, but some accidents

the killing could have been avoided it would have been imputable. Further, as we will see, the intention to wound is enough to incur imputability.

⁴⁵⁶ A case in which this doctrine is explicit is D. 50, c. 39. (See our Appendix XIII, p. 309; the details of the case are in fn. 715, which has details of and references to several other cases illustrating the same doctrine.) For another case in which intention is discussed, see S.C.C. #6 (see our Appendix XIII, p. 313, and fn. 735 for the details). Here the priest claimed that his action was *praeter intentionem* and in self-defence. However, in a lengthy elaboration of the canonical principles, the Congregation ruled that he could have run away, hence the intention necessary for imputability was present.

⁴⁵⁷ See our Appendix XIII, p. 313, and fn. 734 for the details of the case.

⁴⁵⁸ It goes on to refer to the doctrine of *Si furiosus* (a reference to Clem. 5, 4, 1) that holds that only *homicidium casuale* and not voluntary homicide can be dispensed. The fact that the dispensation was refused in this case implies that the Congregation considered the boy's action to be voluntary homicide. Another illustration of this doctrine is the case where the monk's sin of fornication led to an abortion. (The canon is X, 5, 12, c. 20, our Appendix XIII, p. 311; the story is in fn. 725.) The monk did not intend the abortion, or have any part in that decision; his imputability flows from the sin of fornication that preceded the homicide. Clearly, this was considered to be an action that led to death *per se* and not *per accidens*. However, it is hard to see that his act immediately led to death, as in the doctrine elaborated above.

give rise to imputability because of the element of recklessness or neglect.⁴⁵⁹ By contrast, there are some accidental deaths discussed in the *fontes* where it is agreed that there is no imputability.⁴⁶⁰ *Homicidium casuale*, then, can be imputable or not according to a number of circumstances.

We can now elaborate the essential elements of the notion of voluntary homicide in the *fontes*. First and foremost, it involves either an intention to kill or to place an act that is likely to have directly lethal consequences. It does not require pre-meditation; it can be impulsive. In short, it involves *dolus* as this concept is used in penal law. By contrast, if there is imputability arising from involuntary homicide, it corresponds to the *culpa* of the penal law tradition.

3.3.1.3 – Co-operation

The canons of the *fontes* reveal many elements of the doctrine of co-operation. There is a thorough elaboration of this doctrine in X, 5, 12, c. 6.⁴⁶¹ The canon speaks of various ways of being an accomplice and participating in the crime: the accomplice with

⁴⁵⁹ A good illustration of the difference is in D. 50, c. 43, (our Appendix XIII, p. 316, with the story in fn. 748). Here an angry woman beats her servant girl so badly she dies. There is a discussion of voluntary homicide and *homicidium casuale*, as there is doubt that she had an intention to kill. However, the discussion is not about the existence of imputability or not, but the degree of imputability, and there is very little difference in the recommended penances for the two types of imputability. Another case is S.C.C. #8 (our Appendix XIII, p. 313, fn. 737). This is case of a priest who rode his horse without due care and killed a pedestrian; there is a long discussion of the canonical tradition of involuntary homicide as it relates to the irregularity.

⁴⁶⁰ D. 50, c. 50 (our Appendix XIII, p. 316, with the story in fn. 749), is one of several canons discussing the imputability arising from lighting fires leading to accidental death. Here it is agreed that the man who lit the fire was doing his job without negligence and without any intention to kill. D. 50, c. 49 (our Appendix XIII, p. 309, fn. 717) takes up the same ideas.

⁴⁶¹ See our Appendix XIII, p. 310; the details of the canon can be found in fn. 720.

the will to kill; the accomplice without the will to kill; the accomplice without the will to kill who tries to stop the killing (he will be less imputable); the accomplice who incites another to kill; the accomplice who incites another to hatred from which death follows (he will be punished less than the killer, unless he directly incited the homicide); and counselling others to kill.⁴⁶²

A perplexing problem is determining imputability in cases where two or more attackers wound a victim who later dies.⁴⁶³ Another difficult problem is in a case where uncertainty about the cause of death leads to uncertainty about imputability, and several requests for dispensation from irregularity take up this theme.⁴⁶⁴ The doctrine underlying

⁴⁶² A simpler expression of the ways of co-operating is in D. 50, c. 8 (our Appendix XIII, p. 308) that says that imputability can arise in killing by fact, precept or counsel. A slight variation is in the story of the cleric who engages another to fight his duel and incurs irregularity by proxy. (The canon is X, 5, 14, c. 1, our Appendix XIII, p. 311, with the details of the story in fn. 727.) In VI, 5, 4, c. 1 (our Appendix XIII, p. 320), mandating another to be killed incurs the irregularity.

⁴⁶³ X, 5, 12, c. 18 elaborates some principles in a case where a priest and others strike a man who dies. The canon (our Appendix XIII, p. 310) is concerned with imputability for penance and the irregularity: if it is not clear whose wound caused death, or if the priest did not have the *voluntas occidendi*, or if he struck lightly in a place which is not normally lethal, he can be returned to ministry after penance, provided there is no scandal. We can infer from this canon that if the priest had struck a lethal blow, or struck any kind of blow with the intention of killing, the imputability would be that of voluntary homicide no matter how many were involved in the attack.

⁴⁶⁴ In S.C.C. #4 (our Appendix XIII, p. 312) the problem is whether the victim died as the result of a priest's blow or from subsequent inept surgery. In this case the Congregation decided not to dispense, and it did not dispense in S.C.C. #3 (our Appendix XIII, p. 312), an even more complex case in which there was doubt both as to who had struck the blow and whether that blow was the cause of death. A case, however, in which the Dispensation was granted is S.C.C. #13 (our Appendix XIII, p. 314), which concluded that there could be a dispensation if there was genuine doubt that the wound caused the death. In S.C.C. #14 (our Appendix XIII, p. 314) the dispensation was granted because of doubt about the level of co-operation. In another of these cases (S.C.C. #15, our Appendix XIII, p. 315) we find the concept of "secret consent" and "remote co-operation" giving rise to a lesser imputability.

these cases is that the irregularity will be incurred for voluntarily associating with the lethal actions of other persons.

Homicide in the *fontes*: conclusion

The *fontes* of the 1917 Code reflect a rich and complex tradition concerning the doctrine of homicide. The sources are many and for the most part reflect the Church dealing with the reality of homicide in actual cases. We should be prepared to look at this material critically as this is an evolving tradition that is not entirely consistent. The cases often provide inadequate factual information to understand precisely how the doctrine has been applied. Another need for caution is that many of the cases deal with the irregularity for orders arising from homicide, and this gives the material a pronounced clerical perspective. However, in spite of these limitations and cautions, we can find much in this material to help us understand the important influences in the codification of the law and the means for a correct interpretation of that law.

A more difficult question is how these *fontes* are to be viewed in relation to the 1983 Code. The three canons we have chosen for analysis are themselves *fontes* for canons 1397 and 1041, 4°. Certain aspects of the doctrine certainly do not apply,⁴⁶⁵ but the understanding of imputability, as it applies both to the crime and to the irregularity, reflects a long-standing praxis of the Church in dealing with actual cases of homicide. It is our view that the following elements of the doctrine found in the *fontes* are firmly established:

- Homicide means unlawful killing and is distinguished from lawful killing, such as the execution of a criminal.
- Any voluntary action leading to an unlawful death is homicide.
- Homicide has a unique place in the Church's penal tradition; any degree of imputability will give rise to the crime; very few circumstances will reduce this imputability, and none will remove it.
- Voluntary homicide is distinguished from involuntary homicide.
Voluntary homicide does not require pre-meditation or an intention to kill; an intention to wound is enough, as long as the will tends to the act which of its nature leads to death. Involuntary homicide is also imputable if the delinquent does not exercise due diligence.
- Involving oneself with the lethal action of others gives rise to imputability as a co-operator in homicide.
- The Church's canonical tradition has tried to isolate clerics from any involvement in homicide and any involvement in any kind of killing.

3.3.2 – Homicide in the *Corpus iuris canonici*

Many of the *fontes* of the 1917 Code are from the *Corpus iuris canonici* and have been dealt with in our previous section on the *fontes*. However, we now need to look at

⁴⁶⁵ In particular, the doctrine relating to self-defence. We will take up this theme in greater detail in our treatment of the *Decretales* of Gregory IX (see p. 183ff.).

the doctrine of homicide in the *Corpus iuris canonici* in its entirety. We will look at Gratian and the decretals of Gregory IX in some detail, and finish with a brief glance at the *Liber Sextus* of Boniface VIII which has a brief treatment of homicide.

3.3.2.1 – Homicide in the Decree of Gratian

There are references to homicide and its implications in many parts of Gratian's Decree.⁴⁶⁶ However, two parts of the Decree deal extensively with homicide: D. 50, cc. 36-51 and C. 23, q. 5. A brief introduction to these parts of the Decree will help in our understanding of their teaching.

D. 50 is in the first part of Gratian's Decree which is concerned with ministry in the Church and deals with issues relating to clerical and specifically sacerdotal crimes, in particular the question of possible restoration of offending ministers to their ministry.⁴⁶⁷ The doctrine as found in this part of Gratian is not so much concerned *per se* with the crime of homicide and how the Church should deal with it, but with one of its canonical effects, namely, the implications for ministry for a priest or other cleric who was

⁴⁶⁶ We have used the Friedberg edition of the *Corpus iuris canonici* (*Corpus iuris canonici*, ed. Lipsiensis secunda post A. L. RICHTER curas ad librorum manu scriptorum et editionis Romanae fidem recognovit et adnotatione critica instruxit A. FRIEDBERG, pars prior, *Decretum Magistri Gratiani*, Leipzig, B. Tauchnitz, 1879, editio anastatice repetita, Leipzig, 1928). We have also used the analytical index prepared by F. Germovnik (*Indices ad Corporis Iuris Canonici*, ed. altera a M. THÉRIAULT, Ottawa, Facultas iuris canonici, Universitas Sancti Pauli, 2000), following his method of citation. Germovnik includes other references to killing under "homicide." Unless otherwise noted, the translations are our own.

⁴⁶⁷ In other words, it is concerned with irregularities. Seven canons from this distinction are listed as *fontes* of canon 2354 §1 of the 1917 Code, namely 8, 40, 41, 43, 44, 47, and 50. Canon 2354 §1 deals with homicide and other crimes committed by a layperson as distinct from a cleric. Other crimes in D. 50, apart from homicide, include apostasy, idolatry, adultery, bigamy and fornication.

repentant (or perhaps non-repentant) after the required penitential period.⁴⁶⁸ This concern with irregularity, as well as the procedural realities arising out of the privilege of the forum, explains why so much of the teaching on homicide is from a clerical perspective.

The doctrine in this part of the decree is not entirely consistent, which reflects Gratian's disparate sources and the purpose of his work, which was to collect and synthesise the vast body of canonical material extant at the time.⁴⁶⁹ Some of the canons allow for the restoration of the priest or cleric to his office after homicide, while others preclude the possibility.⁴⁷⁰

There are also many references to homicide in C. 23, q. 5, in the second part of the Decree that deals with ecclesiastical administration. The fifth question deals with many issues related to the role of the secular administration, including punishing by killing and other penalties. Gratian begins this section with a general statement that no one is allowed to kill another person and he develops this and related themes in forty-nine canons taking up many issues related to homicide. Here the doctrine of homicide is more general in scope with little of the clerical bias elsewhere in Gratian.

⁴⁶⁸ However, there is an interest in Gratian in the type of homicide, as this frequently determines the conditions for return, or not, as the case may be. We will find that this interest in what might loosely be called the "irregularity" arising from homicide also dominates the canonical tradition after Gratian. This concern for the implication of homicide for priests and other clerics was also related to the privilege of the forum, to be treated below.

⁴⁶⁹ This issue of the inconsistencies in the doctrine of homicide in D. 50 is dealt with in P. TORQUEBLAU, art. "Corpus iuris canonici: I. Le décret de Gratian," in *DDC*, vol. 4, col. 619.

⁴⁷⁰ For example, D. 50, c. 37 contains a papal decree dispensing a cleric who had killed a boy with a stone; he could remain in his order, as long as he did so "always in penance and fear." However, most of the canons declare that the minister who kills is to be permanently excluded from office. One example is in D. 50, c. 39 that calls for a presbyter to lose his office perpetually, even if he had killed without premeditation.

The form of Gratian's Decree should be kept in mind as we review the doctrine; it consists of documents from various sources and eras arranged thematically.⁴⁷¹ These documents consist of papal decrees, canons of councils, penitential precepts, scriptural exegesis and the works of the Fathers. They have different styles, purposes and authority. Gratian's purpose was to order them in such a way as to bring consistency and order;⁴⁷² however, some inconsistencies remain.⁴⁷³ We can now set out the important elements of Gratian's doctrine of homicide.

3.3.2.1.1 – Jurisdictional issues: public and ecclesial authority, the privilege of the forum

There are many references in Gratian to a public authority that was competent to deal with the crime of homicide and, for the most part, had a duty to do so.⁴⁷⁴ By contrast,

⁴⁷¹ For a general introduction to Gratian and his sources, see P. TORQUEBIAU, art. "Corpus iuris canonici: I. Le décret de Gratian," in *DDC*, vol. 4, cols. 611-627; J. RAMBAUD-BUHOT, art. "Gratian, Decretum of (*Concordia discordantium canonum*)," in *NCE*, vol 6, pp. 706-709; L.E. BOYLE, art. "Canon Law, History of : 4. Classical Period," *NCE*, vol. 3, pp. 41-45.

⁴⁷² Gratian's preferred title was *Concordia discordantium canonum*.

⁴⁷³ For example, C. 23, q. 5, c. 31 is from a commentary of Jerome on Jeremiah in which he says that the punishment of *homicidae* (and other criminals) should not be considered a bloodletting but rather the "ministry of law." This is in contrast to the general theme of Gratian that no one has the mandate to kill. The context, however, is significant; this canon is placed with several others taking up the idea of secular authority working with the Church to coerce sinners, and this suggests that Gratian uses c. 31 here in regard to the exercise of lawful secular power.

⁴⁷⁴ He spoke of the judge who had the right to decree an execution, contrasting this to killing by private authority, which he considered homicide (C. 23, q. 5, c. 14). Here Gratian says that when the "minister of justice" (presumably the executioner) kills a condemned prisoner *sponte*, he is a *homicida*. In a similar passage, Gratian says that a person who kills by "private instinct" is a *homicida*, even if he exercises "public power" (C. 23, q. 5, c. 49). The execution must be carried out according to law and not according to the whim or private will of the executioner. There are other references to "private authority" set in contrast to "proper authority" (C. 23, q. 5, c. 7 and C. 23, q. 5, c. 9).

in Gratian's doctrine of homicide the Church deals with homicide in an ecclesial way.⁴⁷⁵

The Church dealt with the sin of homicide with its penitential tradition, and the canonical effects of homicide with its power of jurisdiction.

In Gratian's doctrine the Church and state had a complementary but sometimes uneasy relationship. He accepted the reality that secular power had the right to punish lay offenders for the crime of homicide, even with death, while urging a more merciful approach by the Church.⁴⁷⁶ The diffidence concerning state sanctioned bloodshed comes through in a number of canons.⁴⁷⁷ On the other hand, several canons speak enthusiastically about the role of secular authority in punishing sinners, particularly after the Church's efforts had failed.⁴⁷⁸ Further, Gratian taught that, if the Church's penitential

⁴⁷⁵ The history of the Church in this regard is complex and was as much determined by the political situation of a given country as with Church law, but for the most part the Church did not have jurisdiction over what we would now call criminal law. For an account of the relationship between civil and ecclesiastical jurisdictions in Ireland at the time of Gratian and for some centuries later, see J.A. WATT, *The Church and the Two Nations in Medieval Ireland*, Cambridge, Cambridge University Press, 1970. The story here, as elsewhere, is one of challenge of jurisdiction involving conflict (p. 125). While the bishop had jurisdiction over certain crimes *ratione peccati* (p. 143), he had no jurisdiction over property, and all temporal matters went to the royal court. However, there was some mutuality, an example being that excommunication could be appealed to a secular court and was sometimes enforced by secular authority.

⁴⁷⁶ This is expressed powerfully in C. 23, q. 5, c. 1, taken from Augustine, which asserts that offenders are corrected by flogging and not by having their limbs torn off or death inflicted. The modern world may be shocked at the enthusiasm for ecclesiastical flogging, but the emphasis in the canon is on the rejection of killing and mutilation as an appropriate means of dealing with crime.

⁴⁷⁷ C. 23, q. 5, c. 7 is a decree of Gregory the Great which says that the Church should protect even killers and not hand them over to "imperial law" for death; otherwise the Church would be colluding in bloodshed.

⁴⁷⁸ One such passage is C. 23, q. 5, c. 39 which deals with the proper "correction" by secular judges of terrible crimes such as homicide: "In this way the kings and princes of this world punish offenders. He who judges such wickedness does not carry the sword without reason."

discipline had failed with a recidivist priest, he should be handed over to “secular power” for correction.⁴⁷⁹

One important exception to this notion of complementary jurisdiction was the privilege of the forum enjoyed by the clergy. By this privilege, the crimes of the clergy were brought to an ecclesiastical rather than a secular court.⁴⁸⁰ The privilege could be lost, in which case the cleric would be handed over to the lay court, as we saw in the

⁴⁷⁹ C. 23, q. 5, c. 22; this reflects the institution of the privilege of the forum enjoyed by clergy. The clerical state at the time included several minor grades below diaconate. The handing over of a cleric would result in the application by the secular court of those severe penalties (mutilation, execution) hitherto shunned by Gratian. Watt’s *The Church and the Two Nations in Medieval Ireland* takes up the question of the privilege of the forum. In summary, it was never entirely accepted by the common law (p. 134). However, if an accused “felon clerk” could prove his status as a cleric, he would be sent to the ecclesiastical court. Watt mentions various related protocols and procedures: if the cleric was *bigamus* or *degradatus*, he could not claim privilege; if he was not in clerical dress when arrested, he was also not exempt (p. 136). If a cleric was sent to the ecclesiastical court, there was a prior inquisition to determine guilt, and the royal justice was on guard to ensure against negligence by the ecclesiastical judge. Further, the verdict had to be ratified by the king’s court (p. 138).

⁴⁸⁰ For a history of this privilege, see A. BOUDINHON, art. “Clerical Immunity,” in *CE*, 1999 online edition at <<http://www.newadvent.org/cathen/07690a.htm>> (28 February 2001); J.E. DOWNS, *The Concept of Clerical Immunity: A Dissertation in Public Ecclesiastical Law*, CUA Canon Law Studies No. 126, Washington, CUA Press, 1941; A. LEDWOLORZ, art. “Clergy (privileges of),” in *Dictionary of Moral Theology*, pp. 240-242; and J.B. SÄGMÜLLER, art. “Ecclesiastical Privileges,” in *CE*, 1999 online edition at <<http://www.newadvent.org/cathen/12437a.htm>> (28 February 2001). By the time of the promulgation of the 1917 Code the privilege had in reality ceased due to the complete ascendancy of secular power. However, there was a vestige of the privilege reflected in canon 2354 of the 1917 Code, dealing with homicide and other crimes against life and liberty. Canon 2354 §2 states that a cleric guilty of these crimes is to be punished by an ecclesiastical court, notwithstanding the fact that the privilege of the forum allowing this had been “finally everywhere abrogated” (SÄGMÜLLER, art. “Ecclesiastical Privileges,” p. 3 [this was written in 1911]; he went on to say that the Church maintained the privilege “in principle”). Some twenty-five years earlier Grandclaude, in speaking of imposing penalties for homicide, made the following point: “But today the ecclesiastical judge rarely or never handles these cases,” and he goes on to say so that the penalties are in the internal forum (*Ius canonicum*, t. 3, p. 363).

previous paragraph.⁴⁸¹ Gratian develops the doctrine at length in the fifty canons of C. 11, q. 1.

3.3.2.1.2 – Imputability

The doctrine of homicide in Gratian reflects an understanding of the complexity of human intention and motivation. A basic principle was his assertion that not everyone who kills is guilty of homicide.⁴⁸² We have noted Gratian's acceptance of a lawful secular authority with the power to kill; this killing was not homicide. Other types of killing were not imputable: a demented person does not incur guilt;⁴⁸³ those who wage

⁴⁸¹ For an understanding of how the privilege worked in pre-Reformation England, see R.N. SWANSON, *Church and Society in Late Medieval England*, Oxford, Basil Blackwell, 1989. From the year 1071, crime for the most part was a state matter with the one major exception being benefit of clergy (p. 147). This could only be claimed for felonies and always involved a prior process by which a jury determined guilt. If guilty, the accused cleric was handed over to the ordinary for imprisonment while awaiting trial (p. 152). Usually this was by purgation, but purgation was often exploited and led to cases of virtual clerical impunity. Hence, clerics accused of homicide were branded with an "M" when taken to the ecclesiastical prison so that a later crime could be investigated with knowledge of the accused person's past (p. 153). As to the punishments handed out by ecclesiastical courts, Swanson mentions long imprisonments, flogging and the death penalty, which was always referred to the civil arm for implementation.

⁴⁸² C. 23, q. 5, c. 19.

⁴⁸³ C. 15, q. 1, c. 5. However, Gratian distinguishes between the *dementes*, who are incapable of criminal activity, and the *insanientes*, who are guilty of homicide but who receive a lighter penalty (C. 15, q. 1, c. 12). The distinctions here and what follows later about imputability correspond to the norms of canons 1322 to 1324 of the 1983 Code.

what we would call a “just war” are not transgressors,⁴⁸⁴ nor are those who have killed in self-defence.⁴⁸⁵

These are types of killing with no imputability. However, our major concern here is to see how Gratian deals with degrees of imputability for homicide. In this regard the most important factors in Gratian’s doctrine are intention and will, and there are many instances when wilfulness is diminished. Gratian posits two broad categories of homicide, voluntary or involuntary, expressed in various ways.⁴⁸⁶ In general, it is voluntary homicide which incurs the greater penalties and is likely to render a minister permanently unfit for his ministry.⁴⁸⁷ By contrast, lighter penances and penalties are imposed if there is no intention to kill.⁴⁸⁸ A number of canons deal with negligence

⁴⁸⁴ C. 23, q. 5, c. 9; Gratian uses the phrase *Deo auctore* in regard to this war. In other passages he exempts from guilt those who take up arms on behalf of the Church against the excommunicated (C. 23, q. 5, c. 47), and those who punish *homicidae* and the sacrilegious (C. 23, q. 5, c. 31). Similarly, soldiers who follow orders are not guilty (C. 23, q. 5, c. 13).

⁴⁸⁵ C. 13, q. 2, c. 32; C. 23, q. 5, c. 8. In an interesting variation on this theme, Gratian held that, while suicide was considered a homicide (D. 50, c. 46), suicide to preserve chastity would not incur guilt (C. 23, q. 5, c. 11).

⁴⁸⁶ We have already noted the adverb *sponte* in C. 23, q. 5, and c. 14. Other ways of expressing the idea of voluntariness are *voluntate* (D. 50, c. 46), *animus occidendi* (D. 50, c. 47), and *voluntas nocendi* (D. 50, c. 47). The notion of non-voluntariness is also expressed in a number of ways; *casu fortuito* (D. 50, c. 46), *ex improviso* (D. 50, c. 47), and *non voluntate* (D. 50, c. 44).

⁴⁸⁷ We have treated above some inconsistencies in the doctrine in this regard (see fn. 470, p. 170), but the majority of canons urge deposition and exclusion from ministry. For example D. 50, c. 39 is a papal decree that holds that a presbyter who kills through excessive anger loses his office permanently. In D. 50, c. 38, Gratian, commenting on a papal decree, says that a presbyter who kills in anger, even if he did not have the *animus occidendi*, is to be permanently deposed.

⁴⁸⁸ There is a clear example in D. 50, c. 44 that provides for a seven-year penance for non-voluntary homicide, but permanent excommunication until death for voluntary homicide.

leading to death, and this source of imputability also has canonical implications and incurs an irregularity.⁴⁸⁹

3.3.2.1.3 – Motive

Linked to the idea that no one may kill by private authority is the doctrine that the motive does not justify the crime. An example of this is the doctrine that a husband cannot kill his wife because of adultery.⁴⁹⁰ However, there are some interesting exceptions to the general rule. Suicide to preserve chastity was justified.⁴⁹¹ Several canons seem to suggest that killing *homicidae*, the excommunicated, zealots and so forth is not wrong.⁴⁹²

⁴⁸⁹ D. 50, c. 49 is a papal decree which was one of the *fontes* of the 1917 Code (canon 985, 4°, the irregularity *ex homicidio*). It takes up the case of the imputability of those lighting fires leading to a tree falling on and killing someone. This canon clearly distinguishes the two sources of imputability: *dolus* and *culpa*. While in general there is no guilt because there is no will or desire to kill, the decree posits the possibility of death resulting from negligence (*culpa vel neglectu*), in which case the guilty [cleric] is to be deposed and is no longer able to receive sacred ordination. D. 50, c. 50 is a very similar canon (again involving lighting fires in the bush) which holds that the person who is guilty *voluntate vel negligentia* must submit to penance as a *homicida*.

⁴⁹⁰ C. 33, q. 2, c. 6; this canon repudiates the worldly law or custom allowing a husband to kill his wife for adultery, arguing that the Church of God wields only the spiritual sword and brings life and not death. In the canon above (C. 33, q. 2, c. 50), Gratian adds other crimes to adultery to argue that no crime justifies killing.

⁴⁹¹ C. 23, q. 5, c. 11. This is taken from a commentary of Jerome on the book of Jonah. The main point is that suicide to escape persecution is wrong; one should submit to the yoke of persecution instead. The part exempting chastity from this rule is placed in parentheses.

⁴⁹² C. 23, q. 5, cc. 31, 47. However, the wording of canon 31 implies that this is lawful killing. D. 50, c. 6 seems to go to the other extreme and says that a cleric who has killed a pagan in self-defence loses his priestly office. The canon affirms that no one has a licence to kill any one at any time or in any way.

3.3.2.1.4 – Accomplices

A number of canons deal with the imputability of those who collude in the crime of homicide in various ways. For example, a cleric who is conscious after baptism of killing by fact, precept or counsel, is not to be ordained.⁴⁹³ D. 1, c. 23, *de pen.*, condemns not just those who kill “with their hands” but those who encourage, exhort and advise to kill.⁴⁹⁴

3.3.2.1.5 – Penalties

While it often seems to the modern mind that medieval punishment was overly vindictive, in Gratian’s doctrine the purpose of punishment was salvific.⁴⁹⁵ There are

⁴⁹³ D. 50, c. 8, one of the *fontes* of canon 985 of the 1917 Code. The canon clearly applies the irregularity to anyone who orders someone killed (precept), or who advises or encourages someone to kill (counsel).

⁴⁹⁴ In a rather unusual exegesis, the canon develops the idea of killing with the tongue. It cites the “Crucify him!” of John’s gospel to argue that, while the Jews did not kill the Lord with their hands, “the death of the Lord is imputed to them” because the Jews killed at the third hour with their tongues and the soldiers at the sixth with their hands. The canon ends with a reference to penance for those who wish to seek pardon for this crime.

We should note in passing a number of other quasi-homicides or ways of being a *homicida*: to “hate and detract” (D. 1, c. 24, *de pen.*); suicide (C. 23, q. 5, cc. 9-11); and encouraging one’s brethren to evil (D. 1, c. 27, *de pen.*). Canonical penalties are not specified for these quasi-homicides, and we must presume that Gratian’s purpose here is moral and exhortatory rather than strictly canonical. There is a clearer canonical attitude to abortion; a procured abortion is homicide (C. 2, q. 5, c. 20), unless the soul has not been infused into the body (C. 32, q. 2, cc. 8-10). For a detailed analysis of Gratian’s doctrine on abortion, see J.R. CONNERY, *Abortion and the Development of the Roman Catholic Perspective*, Chicago, Loyola University Press, 1977. Connery says that from Gratian on there gradually developed two concepts of homicide, a broader one (Connery calls this “interpretative” or “spiritual” homicide) that included sterilisation and the abortion of the unformed fetus, and the stricter one (“real” homicide) that was limited to homicide as such. The distinction related to effects, including penance and the irregularity (pp. 98-103). Connery’s view is that the distinction is broadly that between sin and crime, and that only real homicide attracted the irregularity.

⁴⁹⁵ In C. 23, q. 5, c. 6 there is a statement of Jerome that the drastic punishments of this life are to prevent eternal punishment. The notion that excommunication was a medicinal penalty

many possible penalties for homicide, listed variously as *poenae* and *poenitentiae*.⁴⁹⁶ As we have seen, Gratian shunned the more drastic penalties of civil law (death, mutilation) as unworthy of Christian justice, but was open to flogging and imprisonment.⁴⁹⁷

The general penalty for homicide (for laypersons and clerics) includes excommunication⁴⁹⁸ and the loss of the right to marry. Penances include undertaking a penitential discipline for life (voluntary homicide), or seven years (involuntary homicide),⁴⁹⁹ or fasting with bread and water for forty days.⁵⁰⁰

We have spoken about the emphasis on the clergy in Gratian, and many of the penalties pertain exclusively to clerics and priests.⁵⁰¹ These include deprivation of office and benefice,⁵⁰² deposition⁵⁰³ and irregularity⁵⁰⁴ as well as penances.⁵⁰⁵ Deposition did

may seem to be lost with excommunication for life (as in D. 50, c. 7, mentioned in fn. 495 below); however, the penalty was seen in relation to the next life.

⁴⁹⁶ We need to be careful reading into Gratian later distinctions between the internal and external forum, and between penances and penalties.

⁴⁹⁷ C. 23, q. 5, c. 1.

⁴⁹⁸ C. 24, q. 3, c. 20.

⁴⁹⁹ D. 50, c. 44.

⁵⁰⁰ D. 50, c. 50.

⁵⁰¹ Deposition is frequently mentioned, including the rather drastic deposition of the incorrigible or recidivist cleric or priest, which was a necessary procedural prelude to the cleric being handed over to the secular authority for execution. There are a number of variations on the penance and deposition theme. D. 50, c. 7 is a conciliar decree that mandates that bishops, priests and deacons who have committed a capital crime are to be deposed and put into a monastery where they can receive communion as laymen for as long as they live. D. 50, c. 8, a papal decree, orders a cleric conscious of homicide not to be ordained and to be excluded from communion until the end of his life. However, D. 81, c. 12 provides for deposition without excommunication for homicide.

⁵⁰² Deposition involved loss of office, benefice and the clerical state (D. 50, c. 1, c. 39; and D. 81, c. 12).

not necessarily mean that the offender was sent to the secular court; that happened only if the cleric or priest was “incorrigible” or in a dispute with his bishop or otherwise beyond the control of the Church.⁵⁰⁶ Penalties were determined by the rank of the priest or deacon, and sometimes by the rank or status of the victim.⁵⁰⁷

3.3.2.1.6 – A procedural norm

While we do not intend to take up issues of procedural law in detail, we can note in passing that Gratian offers a procedural norm that relates to imputability and was incorporated into both Codes. In a canon reflected in canon 1321 §3, there is an expression of the presumption to imputability: *In maleficiis voluntas pro opere*

⁵⁰³ D. 81, c. 12 mandates deposition for a priest or deacon guilty of homicide but says they are not to be excommunicated, arguing that one punishment was enough. This canon is discussed at length in C. DUGGAN, “The Becket Dispute and the Criminous Clerks,” in C. DUGGAN, *Canon Law in Medieval England: The Becket Dispute and Decretal Collections*, Collected studies series CS151, London, Variorum Reprints, 1982, pp. 15-17 of chapter 10. The dispute between Henry II and Becket was over the privilege of the forum, and, in reviewing the canonical arguments of both sides, Duggan traces the development of the doctrine as found in Gratian and as implemented in England at the time. Becket resisted the idea of a cleric being deposed and sent to the royal court for punishment, as the deposition itself was the prescribed canonical penalty and was punishment enough (pp. 4 and 5).

⁵⁰⁴ D. 50, cc. 4-8.

⁵⁰⁵ A cleric guilty of involuntary homicide may be dispensed to allow him to keep his office, but he remains *in penitencia et timore* (D. 50, c. 48).

⁵⁰⁶ This notion is developed in DUGGAN, *Canon Law in Medieval England*, pp. 12-14.

⁵⁰⁷ A clear example of the penalty being determined by the rank of the *reus* is in D. 50, c. 41; a bishop who kills does fifteen years penance and is deposed; a presbyter does twelve years and is deposed; a deacon ten years, a lay person or cleric seven years and they should not be admitted to the priesthood. This illustrates the blending of penances, penalties and irregularities.

reputatur.⁵⁰⁸ This is closer to canon 2199 of the 1917 Code that spoke of the presumption of *dolus*, compared to the present presumption of imputability.⁵⁰⁹

3.3.2.2 – The *Decretales* of Gregory IX

The *Decretales* of Gregory IX issued in 1234 contains a major magisterial and doctrinal treatment of homicide.⁵¹⁰ Gregory dealt with homicide as part of his treatment of penal law in Book V of these *Decretales*. Since that time, numerous commentators have dealt with homicide using Gregory's structure, restating his teaching and adding significant decrees and other legislative texts.⁵¹¹ This doctrine of Gregory IX, elaborated and amplified by numerous commentators, constituted the canonical tradition on homicide that was presumed in the 1917 and 1983 Codes.⁵¹²

⁵⁰⁸ D.1, c.25 *de pen*.

⁵⁰⁹ For a commentary, see M. HUGHES, "The Presumption of Imputability in Canon 1321, §3," in *Studia canonica*, 21 (1987), pp. 19-36. In this article, Hughes surveys the development of the canon, highlighting significant differences in the 1983 Code.

⁵¹⁰ This was the first comprehensive body of laws promulgated for the universal Church. For a general overview of this Decretal and its significance in the history and development of canon law, see A. CICOGNANI, *Canon Law*, 2nd rev. ed., authorized English version by J.M. O'HARA and F. BRENNAN, Philadelphia, Dolphin Press, 1935, pp. 298-305; P. TORQUEBIAU, art. "Corpus iuris canonici: II. Les Décrets de Grégoire IX," in *DDC*, vol. 4, cols. 627-632; and L.E. BOYLE, art. "Canon Law, History of: 4. Classical Period," *NCE*, vol. 3, pp. 41-45.

⁵¹¹ Some important examples are: J. ANDREAE, *In quintum Decretalium librum novella commentaria: Novella in Decretales Gregorii IX*, vol. 5, Venice, apud F. Franciscium, Senensam, 1581, reprinted Turin, Bottega D'Erasmus, 1963, pp. 56-65 (Andreae died 1348); SCHMALZGRUEBER, *Ius ecclesiasticum*, vol. 10, pp. 392-483; and F.X. WERNZ, *Ius decretalium*, t. VI, *Ius poenale Eccles. Catholicae*, Prati, Giachetti, 1913, pp. 361-374.

⁵¹² We have dealt with substantial elements of Gregory IX's doctrine in our treatment of the *fontes* of the 1917 Code. We will note these references where appropriate.

While the structure of the Decretal differs considerably from Gratian's Decree, both consist of documents from various sources and eras arranged thematically.⁵¹³ Title XII of Book V is *De homicidio voluntario vel casuali* and consists of twenty five canons. All but three of these canons deal with the irregularity arising from homicide or a related issue.⁵¹⁴ The doctrine of homicide, then, in this part of Gregory IX's Decretal emerges in relation to administrative policies concerning the ministry of clerics and priests who had committed homicide. There are references to penances and even penalties, but no direct interest in appropriate penances or penalties or, in this context at least, the procedures by which they are imposed.⁵¹⁵ In our present context (X, 5, 12), the references to penances and penalties are usually by way of indicating the correct disposition of a *reus* priest or cleric who is petitioning for re-admittance to ministry.

3.3.2.2.1 – Jurisdiction

As with Gratian, Gregory IX's doctrine on homicide presumes that the Church's jurisdiction is limited to homicide as a sin and to the canonical ramifications for ministry. The exception is the privilege of the clergy by which clerical offenders were brought before the ecclesiastical court. The first canon in the treatise on homicide is a brief but powerful reminder of both the distinction between these two "arms" and also their mutual

⁵¹³ The sources include papal decrees, canons of councils, penitentials, the Fathers (Augustine, Jerome) as well as Gregory's own decrees.

⁵¹⁴ Eight of the canons (1, 6, 10, 11, 18-20, 24) are listed as *fontes* of canon 985 of the 1917 Code.

⁵¹⁵ Book II deals with procedures, and there is a reference to homicide and some other crimes in X, 2, 14, c. 8. Title 14 is *De dolo et contumacia* and canon 8 is about procedures for a contumacious or absent *reus* in a penal trial; in this circumstance witnesses can be heard and sentence given.

and complementary roles: an unrepentant [cleric] is to be deposed, then handed over to the “secular curia” for execution.⁵¹⁶

3.3.2.2.2 – Imputability

In line with the title *De homicidio voluntario vel casuali*, the canons in Gregory IX distinguish between the two basic kinds of homicide: voluntary and involuntary. However, two kinds of involuntary homicide are posited, one where there is no fault and one where the *reus* did not exercise due diligence.⁵¹⁷ The distinction is crucial, for the irregularity is incurred (or ministry forbidden) only where there is such *culpa*.⁵¹⁸ The doctrine here is comprehensively elaborated in canon six which urges the judge, in giving penances, to attend to the circumstances of the case by which the penance for the crime can be lessened or augmented.⁵¹⁹

However, two canons in this section are inconsistent in applying the doctrine. The first is the *sicut ex* found in X, 5, 12, c. 20.⁵²⁰ The case here concerns a priest who

⁵¹⁶ X, 5, 23, c. 1; the canon uses the phrase *per industriam* to indicate that the *reus* has killed with intention and will. The idea which underpins this canon is that, where penance fails to correct the sinner, his correction will be effected by the secular arm (see also X, 5, 50, c. 27).

⁵¹⁷ This is called *culpa*. There are references to this distinction in many canons: X, 5, 23, cc. 7-8, 12-13, and 23.

⁵¹⁸ For example, X, 5, 12, c. 7 is a papal decree regarding a priest who, with the purpose of discipline, strikes and wounds a boy who later dies. He is to be permanently removed from his sacerdotal office.

⁵¹⁹ X, 5, 12, c. 6. The wording of this canon is reflected in canons 1324-1326 of the Code, particularly canon 1326 which says that “the judge” can punish offenders more severely in certain circumstances.

⁵²⁰ There is great interest in this canon and the way it reflects the medieval understanding of homicide, contraception and abortion. See J.T. NOONAN, *Contraception: A History of its Treatment by the Catholic Theologians and Canonists*, Cambridge, MA and London, The

impregnates a woman who then aborts the baby, and deals with a possible irregularity arising from homicide. The priest's guilt and the irregularity arise out of another person's sin and is imputed to him because the prior sin of fornication is linked to the homicide that follows. Further, the irregularity depends not so much on his intention and the circumstances, but on whether the baby was "vivified" (*vivificatus*) or not.⁵²¹ This principle is also found in X, 5, 12, c. 10; the summary of this canon says that the irregularity is incurred by him whose illicit work is followed by homicide.

3.3.2.2.3 – Self-defence

One important variation in the doctrine of homicide in Gregory IX as compared to Gratian is with self-defence.⁵²² Gratian had allowed for killing only when done according to civil law and by public authority. However, Gregory relaxed this rigorous approach in

Belknap Press of Harvard University Press, 1986; Noonan discusses *sicut ex* as an illustration of contraception being seen as a homicide (pp. 232-233). The canon is also discussed in L.S. CAHILL, art. "Abortion: Religious Traditions: Roman Catholic Perspectives," in *Encyclopedia of Bioethics*, vol. I, p. 31.

⁵²¹ We have already mentioned the importance of this canon (see fn. 520 above) for an understanding of how abortion was distinguished from homicide in the medieval Church. Various words and phrases have been used to convey the crucial distinction between the viable and non-viable fetus: "formed," "ensouled," "infusion" (of the soul into the body), and "vivified." What is sometimes not fully understood is that this doctrine can be understood only in the light of the developing distinction between sin and crime. Abortion, or the killing of the fetus at any stage of development, was always considered a sin but was seen to be a different crime from homicide. Some commentators have missed this nuance and have maintained that the Church allowed abortion of the non-viable fetus. See, for example, G. Grisez's critique of G. Williams' influential book *The Sanctity of Life and the Criminal Law* (London, Faber and Faber, 1958) in his *Abortion: The Myths, The Realities, and the Arguments*, New York and Cleveland, Corpus Books, 1970, especially pp. 232-235. For a more detailed critique of Williams' book, see C.B. DALY, "A Criminal Lawyer on the Sanctity of Life," (in three parts) in *The Irish Theological Quarterly*, 25 (1958), pp. 330-366; 26 (1959), pp. 23-55; 26 (1959), pp. 231-272.

⁵²² We have already taken up this theme in our treatment of the *fontes* of the 1917 Code. For more details, see our treatment on pp. 162ff., and in particular the references to and illustrations from Gregory IX in fn. 451, p. 162.

the canon *Significasti* that allowed for moderate defence against an unjust aggressor.⁵²³

The doctrine was further modified by the *Si furiosus* of Clement V of 1317.⁵²⁴

3.3.2.2.4 – Accomplices

We have already taken up this theme in our treatment of the *fontes* of the 1917 Code, which draw extensively on Gregory IX's decretal. The key canon is X, 5, 12, c. 6, which is a source of three of the "homicide" canons of the 1917 Code, and which elaborates various ways of co-operation in homicide with the corresponding canonical implication.⁵²⁵ These include inciting another to kill, advising another to kill, and being an actual accomplice (*socians*) in the killing.⁵²⁶

3.3.2.2.5 – Penalties

A variety of penances and penalties are proposed in these decretals. In one canon the penances for killing a presbyter vary with circumstances.⁵²⁷ A woman who killed her child voluntarily ought to do penance in a monastery in perpetuity.⁵²⁸

⁵²³ The full reference is X, 5, 12, c. 18; this is a long canon detailing the various ways for a cleric to be involved with killing another. The canon deals with accidental killing as well as self-defence.

⁵²⁴ The canon can be found in Clem. 5, 4, c. 1.

⁵²⁵ For full details, see our treatment of this canon in our analysis of the *fontes* in three places in Appendix XIII, at pp. 310, 317, and 319.

⁵²⁶ These ways of being an accomplice have their own variations that are elaborated in the canon.

⁵²⁷ X, 5, 38, c. 2; the normal penance was twelve years, but the penance itself could take a variety of forms such as working the ploughshare, losing the right to bear arms, and losing the

3.3.2.3 – The *Liber Sextus* of Boniface VIII

This decretal has a brief treatise on homicide that takes up the canonical implications of putting others at risk of death. The first canon, a decree of Innocent IV, says that a person who orders an assassination incurs excommunication and is to be deposed from office and benefice.⁵²⁹ The third canon extends this notion by saying that a person who orders another to be chastised, even if he specifically precludes death or mutilation, will be irregular if death actually occurs because he was negligent in not foreseeing the consequences.⁵³⁰ The second canon, however, looks at the situation of a prelate or cleric who takes lay malefactors to a civil court for punishment. They need not fear irregularity if the judge lawfully imposes the death penalty.⁵³¹

Homicide in the *Corpus iuris canonici*: conclusion

We can now draw some general conclusions from this survey. The doctrine of homicide in the *Corpus iuris canonici* has emerged primarily in relation to dealing with clerical offenders. This is partly because of the privilege of the forum, which meant that there was minimal interest in the idea of prosecuting the crime of homicide as a crime, as

hope of marriage. In some circumstances, for example, if culpability had been denied, the penance was for life.

⁵²⁸ X, 5, 10, c. 1. The doctrine proposed here is that, if the woman's guilt is uncertain, her freedom to marry should not be denied her. In a similar situation of uncertainty (in this case about which parent had killed the child), the decision was three years' penance, one year being on bread and water (X, 5, 10, c. 3).

⁵²⁹ VI, 5, 4, c. 1.

⁵³⁰ VI, 5, 4, 3, which is a decree of Boniface VIII. For a translation of this canon, see E. KNEAL, *Medical Practice by the Clergy: Medicine, Irregularities, Indults, Psychiatry*, Rome, Catholic Book Agency, 1967, p. 42.

⁵³¹ VI, 5, 4, 2. This is another decree of Boniface VIII.

this was considered the role of the secular arm. However, the Church dealt with homicidal clerics, with most attention being given to the irregularity for orders arising from homicide.

In some aspects, the doctrine of homicide in the *Corpus iuris canonici* reflects an evolving tradition. The best illustration is the attitude to self-defence as reducing or modifying imputability; Gregory IX's doctrine involves a relaxation of that in Gratian. However, there is general consistency in other aspects of the doctrine that are now firmly established in the canonical tradition. The most important element of imputability in this doctrine is voluntariness, which admits of degrees. Voluntary homicide involves a direct and intentional killing, or it can arise by doing an illegal work from which death follows. Involuntary homicide arises from a culpable but non-intentional action that leads to death. Motive does not reduce imputability, and there is no class of person not protected by the law. Reduced imputability may lead to lighter penalties but will always incur the irregularity. Co-operation in homicide will also incur penalties and the irregularity, and co-operation arises from helping the commission of the crime or by ordering, advising, or inciting another to commit the crime.

3.3.3 – The Council of Trent

The *fontes* of canon 985 of the 1917 Code list two chapters of the Council of Trent: one regarding clerical dress and the other homicide.⁵³² The chapter on homicide

⁵³² The references are to *De. ref.*, chapters six (clerical dress) and seven (clerical homicide) from the fourteenth session. Our source is N.P. TANNER (ed.), *Decrees of the Ecumenical Councils*, original text established by G. Alberigo et al. in consultation with H. Jedin, London, Sheed and Ward, Washington, Georgetown University Press, 1990, vol. 2, p. 764.

deals with the irregularity arising from homicide and distinguishes between voluntary and unintentional homicide.⁵³³ No one who has committed voluntary homicide can be promoted to sacred orders, and a homicidal priest is to be taken away from the altar, even though the crime is either occult or has not been proved by the ordinary judicial process. Further, a *homicida* shall be forever excluded from every ecclesiastical order, benefice and office. A priest who has committed unintentional homicide, perhaps through self-defence against force, can be dispensed (by his ordinary or the metropolitan or the nearest bishop) so that he may continue to enjoy his order, benefices and dignities.⁵³⁴

3.3.4 – The pre-1917 doctrine in *auctores probati*

We will now review in detail the treatment of homicide in the commentaries of some important canonists: Reiffenstuel, Schmalzgrueber, Ferraris, and Wernz. We will concentrate on the material relating to our theme.⁵³⁵

⁵³³ The intentional notion is conveyed by the phrases *per industriam* and *per insidias*.

⁵³⁴ The dispensation can only be granted after a process, the nature of which is not made explicit.

⁵³⁵ We will mention here some other noteworthy commentaries from the pre-1917 period. The first is ALBERICUS DE ROSATE, *Dictionarium iuris tam civilis, quam canonici*, Venice, apud Guerros Fratres, 1573 (reprinted Torino, Bottega d'Erasmus, 1971), pp. 320-324. Albericus lived 1290-1360; his commentary is long, densely packed and uses a casuist approach and an abbreviated Latin style. He deals with some situations involving sick people on p. 324, col. 2. Other commentaries are M. ANDRÉ (D'AVALLON), art. "Homicide," in *Dictionnaire de droit canonique* (1888-1890), vol. 2, pp. 297-299; and J.F. DELANY and C.W. SLOANE, art. "Homicide," in *CE*, 1999 online edition, <<http://www.newadvent.org/cathen/07441a.htm>> (12 March 2001).

3.3.4.1 – Reiffenstuel, *Ius canonicum universum* (1700, 1869)

A. Reiffenstuel deals with homicide in vol. 6 of his *Ius canonicum universum*.⁵³⁶

In this commentary, Reiffenstuel closely followed the structure of the Decretals of Gregory IX. Accordingly, in his title X he takes up the killing of children and links it to the previous title (on heresy) by explaining that, after crimes against God, crimes against life are the worst. Further, he treats these types of homicide in order of culpability with parricide being the worst.⁵³⁷ Here he explains the idea of “qualified” homicide and says that it should be punished more severely.⁵³⁸

Title XI then takes up the theme of exposing infants and the sick that he describes as more evil than simple homicide.⁵³⁹ He sets out a number of different ways of killing children: suffocating the newborn, abandoning them, denying them nourishment, or leaving them to be found in a public place. In n. 21 he explains what he means by sick persons: anyone who has a serious, lengthy or incurable illness, on which excessive time

⁵³⁶ A. REIFFENSTUEL, *Ius canonicum universum*, vol. 6, Parisiis, Ludovicum Vives, 1869. The first edition was published in 1700.

⁵³⁷ *Ius canonicum universum*, vol. 6, p. 333.

⁵³⁸ Ibid., p. 335. We have already touched on this theme of qualified homicide in our first chapter in regard to allowing defective newborn children to die (pp. 38 ff.). P. Palazzini distinguishes *homicidium qualificatum* from *homicidium simplex*; its special character derives from the additional evil arising from the type of victim or the place of the crime («Si ipso homicidio accedit specialis malitia vel sacrilegii personalis aut localis,» from art. “Homicidium,” in *Dictionarium morale et canonicum*, vol. 2, pp. 556-558). See also J. CHELODI, *Ius canonicum de delictis et poenis et de iudiciis criminalibus*, ed. V, recognita et aucta a P. CIPROTTI, Vicenza, Società Anonima Tipografica, 1943, p. 115; and A. Bride, “Homicide,” col. 1163.

⁵³⁹ *De infantibus, et languidis expositis* is pp. 340-344. This canonical treatment of the problem of exposing the sick and children to death reflected an important historical reality. A good overview of the history of the custom has been given by E. Westermarck, who has dealt with this as part of an historical treatment of parricide. Under parricide he includes the abandoning or killing of three classes of people, elderly and sick parents, other sick people, and infants (E. WESTERMARCK, *The Origin and Development of the Moral Ideas*, 2nd ed., London, Macmillan, 1912-1917, vol. 2, pp. 386-393).

and money has been spent in futile attempts at treatment.⁵⁴⁰ It is “seriously sinful” to expose a sick person if, in doing so, he lacks nourishment and other necessities. Later he adds a commentary regarding the obligation to provide care for the family. The master is not held to “great expense,” but to “limited expense” in the care of his sick family.⁵⁴¹

3.3.4.2 – Schmalzgrueber, *Ius ecclesiasticum* (1719, 1843)

The first edition of Schmalzgrueber’s *Ius ecclesiasticum* was published in 1719 and continued the tradition of closely following the themes and structure of the Decretals of Gregory IX.⁵⁴² He deals with homicide (Title XII, *De homicidio voluntario vel casuali*) under the general theme of crimes against the love of neighbour, which include *De his qui filios occiderunt* (Title X) and *De infantibus et languidis expositis* (Title X). This is a comprehensive and extremely lengthy commentary; title XII is divided into five sections comprising some 275 paragraphs and covering 92 pages.⁵⁴³ While it sets out to be a general commentary and treats every possible element of the doctrine, most of it is devoted to the irregularity arising from homicide.⁵⁴⁴ The text contains numerous

⁵⁴⁰ Ibid., p. 343.

⁵⁴¹ Ibid., pp. 343-344.

⁵⁴² The subtitle of his *Ius ecclesiasticum* is: *brevi methodo ad discentium utilitatem explicatum, seu Lucubrationes canonicae in quinque libros Decretalium Gregorii IX, Pontificis Maximi*. The full reference is in fn. 511 and the commentary on homicide is in the tenth volume of this twelve volume work. Schmalzgrueber closely follows Gregory’s structure, including title numbers and headings, but not his brevity.

⁵⁴³ The analytical index for homicide in vol. XII fills seven columns.

⁵⁴⁴ Mutilation is also treated with homicide, and some of the commentary is devoted to issues specific to mutilation. However, irregularity is a canonical effect of both crimes.

references to a variety of sources and authors.⁵⁴⁵ We will first deal with his treatise on exposing the sick, which is of particular interest for our theme, and then that on homicide. We will focus on those aspects of the doctrine relevant to our theme.

Schmalzgrueber deals with the exposing of the sick in twenty-nine paragraphs covering eight pages.⁵⁴⁶ He describes such killing as a parricide, the inhumane desertion of one's kin, whether a child or the sick, to whom care and nourishment (*alimentum*) is due. The sick are those who have been gravely ill for a long time, especially those who are permanently and incurably incapacitated, perhaps because of age, and for whom labours and resources have been expended.⁵⁴⁷

Those who expose such people sin and incur the most grave guilt of fault (*culpa*), not only if the infant perishes but also if he should perchance be found and saved by others. This is considered a crime in both laws⁵⁴⁸ and those who are guilty are to be punished for the crime of homicide.⁵⁴⁹ The exception is the parent who is unable to sustain the child, or the master his sick slave, especially if they leave the child where he is likely to be found.⁵⁵⁰ The penalties are discretionary (*poena arbitraria*) and could include capital punishment, depending on whether the offender exposed the victim in a

⁵⁴⁵ These include scripture, the *Corpus iuris canonici*, Roman Law, decisions of the Roman Curia, and commentators such as Reiffenstuel.

⁵⁴⁶ *Ius ecclesiasticum*, Title XI, vol. 10, pp. 384-391.

⁵⁴⁷ *Ibid.*, n. 1, p. 384.

⁵⁴⁸ *Ibid.*, n. 3, p. 384. This is a reference to civil and ecclesiastical law.

⁵⁴⁹ *Ibid.*, n. 2, p. 385.

⁵⁵⁰ *Ibid.*, n. 5, p. 385.

public or private place.⁵⁵¹ There is recognition here that the act may have been *praeter intentionem*.⁵⁵²

There follows, as in Reiffenstuel, a reflection on how much one is bound to spend on care of the sick or children. The master is not held to great expense (*ad magnas*), but to limited expenses (*tenues expensas*).⁵⁵³ The underlying principle here is that you are only required to do what you can, and extreme poverty and grave necessity would excuse.⁵⁵⁴

Schmalzgrueber's treatment of homicide begins with a chapter on definitions and varieties of homicide. The fundamental distinction is between *homicidium voluntarium* and *homicidium casuale*. Voluntary homicide has two kinds: it can be intended and direct, or indirect. The first kind, intended and direct, is when the death is directly willed and brought about in itself. Indirect homicide involves placing an act so that death is morally certain to follow, even if that death was not formally and explicitly intended.⁵⁵⁵ Voluntary homicide can also be just (as in self-defence or in the lawful execution of a prisoner) or unjust.⁵⁵⁶

⁵⁵¹ Ibid., n. 6, p. 386.

⁵⁵² Ibid., n. 8, p. 386.

⁵⁵³ Ibid., n. 21, p. 389.

⁵⁵⁴ Ibid., n. 22, p. 390.

⁵⁵⁵ He gives as an example the firing of a gun into a crowded place resulting in someone's death (*Ius ecclesiasticum*, vol. 10, p. 393).

⁵⁵⁶ Just and unjust homicides get separate chapters. Interestingly, the chapter on justified homicide (pp. 399-437) is twice as long as unjustified homicide (pp. 438-459) due to the variety and complexity of possible irregularities arising from clerics being involved in self-defence (with

The whole chapter on indirect homicide is devoted to irregularity.⁵⁵⁷ *Homicidium casuale* has two kinds. In both the death occurs *praeter intentionem*, but one is *homicidium casuale mere* where there is no fault and the other is *homicidium casuale culposum* where there is fault. There is no irregularity if there is no fault.⁵⁵⁸

The principle of crime arising from moral fault is contained in the chapter on unjust homicide. He who kills with a gravely sinful act is irregular, even if it was not pre-meditated or qualified in any other way. All that is needed is that he sinned and did something to cause death, even if the death followed after a long time.⁵⁵⁹

The doctrine relating to co-operation is developed in the chapter on unjust homicide and deals with a number of ways of co-operation. Even if others are involved in the killing, the irregularity is incurred if the cleric's action in any way whatever leads to death, or he acted with the *voluntas occidendi*.⁵⁶⁰ Those who counsel or persuade are irregular if death should follow from that very counsel. The reason is that the one who counsels is the moral cause of the death, but only if the crime would not have been

moderate or blameworthy response, defence of property vis a vis defence of life, reputation or honour, just war vis a vis unjust war, and so forth). Schmalzgrueber also deals here with the *irregularitas ex defectu lenitatis* arising from clerics being involved in criminal trials (*in causa sanguinis*).

⁵⁵⁷ As with the chapter on justified homicide, this chapter takes up a great variety of complex situations of possible irregularity: death following lawfully prescribed medicine, death while playing games, or while doing licit or illicit works, or through drunkenness, and so forth.

⁵⁵⁸ Ibid., n. 208, p. 461.

⁵⁵⁹ Ibid., nn. 149-150, p. 440.

⁵⁶⁰ Ibid., n. 151, p. 441.

committed otherwise.⁵⁶¹ As to those consenting to the crime, the consent must be an efficacious influence in that there was encouragement, real co-operation, or willing approval of the plan. These are to be distinguished from merely verbal consent.⁵⁶²

3.3.4.3 – Ferraris, *Bibliotheca canonica* (1746, 1892)⁵⁶³

L. Ferraris lived from 1687 to 1763 and the first edition of his *Bibliotheca canonica* was published in 1746. It is a comprehensive commentary with an extensive summary that indicates that there are 114 sections. He defines homicide and describes the various categories (voluntary, *homicidium casuale*) and so forth. The content of this commentary is firmly in the decretal tradition: just killing includes moderate repelling of an aggressor, defending life and limb and significant property; no civil authority can privately kill an innocent person; and a husband cannot kill an adulterous wife.⁵⁶⁴

In line with the decretal tradition, a considerable part of the commentary is given to the irregularity and issues pertaining to the clerical state; an incorrigible cleric killer should be deposed and handed over to civil authority for execution; a homicidal cleric should be deposed from the ministry of the altar; a voluntary homicidal cleric is to be stripped of every order and benefice (following Trent); accused or condemned *homicidae*

⁵⁶¹ Ibid., n. 154, p. 442.

⁵⁶² Ibid., n. 155, p. 443.

⁵⁶³ L. FERRARIS, *Bibliotheca canonica, juridica, moralis, theologica nec non ascetica, polemica, rubricistica, historica*, ed. novissima mendis expurgata et novis additamentis locupletata, 8 vols., Romae, Ex Typographia Polyglotta, 1885-1892, Supplement, 1899.

⁵⁶⁴ One omission in Ferraris' lengthy list of cases and situations is a treatment of exposing the sick.

when *remissi fuerint*, are not to hold office or dignity; a lay killer who later becomes a cleric should be condemned only by an ecclesiastical judge; and a cleric has the privilege of the forum.⁵⁶⁵

3.3.4.4 – Wernz, *Ius decretalium* (1913)

As the title suggests, Wernz's commentary is firmly in the decretal tradition.⁵⁶⁶ He defines homicide as a violent (non-natural) killing, the taking of life, and the extinction of a living person.⁵⁶⁷ He then presents the categories of homicide, mostly along traditional lines.⁵⁶⁸ The fundamental division is between voluntary and involuntary homicide. Voluntary homicide is then divided into direct and indirect; indirect homicide involves placing an act from which death results with moral certitude.⁵⁶⁹ With involuntary homicide there is no direct or indirect intention to kill.⁵⁷⁰ Finally, under his

⁵⁶⁵ However, someone who commits homicide with poison does not enjoy ecclesiastical immunity (*ibid.*, n. 73, p. 135).

⁵⁶⁶ F.X. WERNZ, *Ius poenale Eccles. Catholicae*, t. 7 of *Ius decretalium*, 1913. Wernz, however, incorporates titles 10, 11, and 12 of Gregory IX's Decretal into one title that he calls *De homicidio* (pp. 361-375). However, he retains some of the archaic elements of the decretal tradition, one example being his inclusion of slaves (along with the animated fetus, the unborn infant, and the deformed child) under his heading of the "object" of homicide. A very similar treatment of homicide is in B. OJETTI, art. "Homicidium," in *Synopsis rerum moralium et iuris pontificii*, vol. 2, cols. 2089-2097.

⁵⁶⁷ *Ius poenale*, p. 362.

⁵⁶⁸ One interesting departure from the canonical tradition is his categorization of homicide as just and unjust (*ibid.*, p. 363). Generally, in the tradition, justified killing is not called "homicide."

⁵⁶⁹ *Ibid.*, p. 362.

⁵⁷⁰ *Ibid.*, pp. 362-363. On p. 365 he gives as an example of culpable involuntary homicide the firing of a gun in a crowded place; the cause of death is negligence and it is homicide *ex culpa*.

list of persons who are the object of homicide he includes someone with a “monstrous deformity.”⁵⁷¹

Of particular interest for our theme is Wernz’s treatment of the exposing of infants and the sick.⁵⁷² He speaks of the obligation that parents and others have in regard to children and the sick to provide necessary assistance. He distinguishes exposure with and without an intention to kill. If there is an intention to kill and the child or sick person perishes, then the perpetrator is subject to the penalties for intentional homicide. If the death is not intended, or the act not completed, arbitrary penalties are to be imposed.

The pre-1917 doctrine in *auctores probati*: conclusion

We have necessarily been selective in our choice of material. However, these commentaries show that the doctrine of homicide is consistent and settled in most respects. Homicide is a crime forbidden by divine and human law and can arise by intentional action or by negligence. An intentional homicide involves either a direct act of killing or the placing of an act from which death is likely to follow with moral certitude. An unintentional homicide can be imputable if the death resulted from negligence. There are a number of types of homicide, but one which is singled out for special comment is the exposure of the sick leading to their death. This is a qualified homicide, one that is particularly heinous, and involves the abandonment by someone with a duty of care of a chronically sick person whose treatment until now has been expensive and futile. However, if such abandonment was done out of necessity, there is no imputability.

⁵⁷¹ Ibid., p. 364.

Finally, co-operation in the crime of homicide can incur its canonical effects. Co-operation can take forms such as counsel and persuasion, but there is imputability only if there was an efficacious influence.

3.4 – Homicide in the 1917 Code of Canon Law

The 1917 Code was a significant event in the history of canon law but had little impact on the way the doctrine of homicide was understood and applied. Our task here will be to look at the way homicide emerged in the 1917 Code, and then the way the various commentators on the 1917 Code dealt with the doctrine. The commentaries of this era tend to be concise in comparison with the major pre-Code commentaries, and the structure of the commentaries will now begin to reflect that of the 1917 Code, rather than the decretals of Gregory IX. The doctrine on homicide, however, continues in the decretal tradition.

We will now look briefly at the canons that most pertain to our theme, canons 2354 §1 and §2, and canon 985, 4^o.⁵⁷³

Canon 2354 of the 1917 Code is as follows:

⁵⁷² Ibid., pp. 371-372. He says this crime has an affinity to parricide.

⁵⁷³ We will deal only with the crime of homicide in canon 2354 and omit from our discussion the other crimes mentioned there (abduction, selling into servitude, usury, plunder, theft, incendiarism, wounding and mutilation). Our major focus is imputability, and we will deal with the penal process or penalties insofar as they reflect the doctrine of imputability. For an introduction to the preparation of the penal canons of the 1917 Code, see M. VISMARA MISSIROLI and L. MUSSELLI, *Il processo di codificazione del diritto penale canonico*, Università di Pavia studi nelle scienze Giuridiche e sociali, nuova serie, v. 36, Padova, Cedam, 1983. This book is in two parts; in the first (by Vismara Missiroli) there is a synoptic table of the schemata of the Code

Can. 2354. §1. Laicus qui fuerit legitime damnatus ob delictum homicidii [...] ipso iure exclusus habeatur ab actibus legitimis ecclesiasticis et a quolibet munere, si quod in Ecclesia habeat, firma onere reparandi damna.

A lay person who has been legitimately declared guilty of the crime of homicide [...] shall by the law itself be deprived of the right to legal ecclesiastical actions and of every position which he may have in the Church, besides the obligation of repairing the damages.

Can. 2354. §2. Clericus vero qui aliquod delictum commiserit de quibus in §1, a tribunali ecclesiastico puniatur, pro diversa reatus gravitate, poenitentiis, censuris, privatione officii ac beneficii, dignitatis, et, si res ferat etiam depositione; reus vero homicidii culpabiles degradetur.

If a cleric has committed any of the crimes enumerated in the first paragraph of this Canon, he shall be punished by the ecclesiastical court in proportion to his guilt with penances, censures, deprivation of office, benefice and dignity, and even with deposition, if the circumstances demand it; if he has been guilty of culpable homicide, he shall be degraded.⁵⁷⁴

Canon 2354 distilled its elements from the canonical tradition, which it presumed.

It did not define or describe homicide. Its division into two paragraphs treating lay and clerical *homicidae* separately reflected the concept of the privilege of the clergy, which already by 1917 was an archaic vestige.⁵⁷⁵ The canon, in effect, was a sentencing guide.⁵⁷⁶ There was an indirect reference to imputability in canon 2354 §2 with the phrase “in proportion to his guilt” and with the concept of graded penalties, but none of

that shows the changes during the revision. While particular delicts are not dealt with, there are chapters on the *fontes*, the notion of delict, mixed forum, and imputability.

⁵⁷⁴ This English-language rendition is from S. WOYWOD, *A Practical Commentary on the Code of Canon Law*, rev. and enlarged ed. by C. SMITH, vol. II, New York, Joseph Wagner, 1948, p. 549. It has been slightly modified.

⁵⁷⁵ We have already dealt with this privilege in a number of places: the Decree of Gratian (see pp. 171ff., in particular fn. nn. 479 and 480); and the Decretals of Gregory IX (see pp. 181ff.).

⁵⁷⁶ However, the canon and the penalties reflect the reality that by 1917 homicide was handled by civil and not ecclesiastical courts, and that homicide as a crime did not present practical problems for the Church. Homicide was being dealt with in the internal forum and not by ecclesiastical courts (see the comment of Grandclaude, made in 1883, in fn. 480 above).

the other distinctions of the tradition, such as voluntary and involuntary, were even mentioned.

3.4.1 – Canon 985, 4°

Canon 985, 4° distinguished between voluntary and involuntary homicide; the irregularity arising from homicide arose only from voluntary homicide.

Canon 985. Sunt irregulares ex delicto: [...] 4° Qui voluntarium homicidium perpetrarunt aut fetus humani abortum procuraverunt, effectu secuto, omnesque cooperantes.

The following are irregular from crime: [...] 4° Men who have committed voluntary homicide or effectively procured abortion, and all their accomplices.⁵⁷⁷

As with canon 2354, this canon distilled from the canonical tradition the essential elements of the doctrine of irregularity arising from homicide and presumed an understanding of that tradition. There was a reference to imputability that set this canon apart from canon 2354; the reference to “voluntary” in canon 985, 4° meant that the irregularity could arise only *ex dolo* and not *ex culpa*. In other respects, the canon presumed the traditional doctrine on imputability.

3.4.2 – Other references to homicide in the 1917 Code

Canon 1172 §1, 1° said that a church was violated by the crime of homicide. As with the canons 2354 and 985, the tradition on imputability and homicide was

⁵⁷⁷ This English-language rendition of the canon is from WOYWOD, *A Practical Commentary on the Code of Canon Law*, vol. I, pp. 599-600.

presumed.⁵⁷⁸ The other reference to homicide in the 1917 Code was in canon 1703, 3° that provided for a prescription of ten years for the crime of homicide. There were indirect references to homicide in canon 1075, 2° and 3°, concerning the impediment of “crime” in the spouse who *coniugicidium patravit*, or the spouses who *mortem coniugi intulerunt*.⁵⁷⁹

3.4.3 – The commentators of the 1917 Code

The commentaries of this era tend to be derivative and repetitive and the doctrine of homicide is that of the pre-Code era.⁵⁸⁰ We will treat Bride’s comprehensive commentary in some detail and summarise the others.⁵⁸¹

⁵⁷⁸ The concept of violation has been retained in canon 1211 of the 1983 Code, but neither homicide nor any other particular crime is mentioned. For further commentary, see J.T. GULCZYNSKI, *The Desecration and Violation of Churches: An Historical Synopsis and Commentary*, CUA Canon Law Studies n. 159, Washington, CUA, 1942. Gulczynski treats the theme of violation from homicide historically and analytically. The canonical principles relating to homicide and imputability developed prior to 1917 had to be applied; thus, imputability had to be established, the homicide had to be deliberate and unjust (p. 31), and the act had to result in death, as attempted homicide was not enough (p. 32). For a more recent article on the theme, see M.S. FOSTER, “The Violation of a Church (Canon 1211),” in *The Jurist*, 49 (1989), pp. 693-703.

⁵⁷⁹ The impediment has been retained in canon 1090 of the 1983 Code. For further comment, see E.G. VITALI, *Profili dell’impedimentum criminis*, Milano, A. Giuffrè, 1979; and M. O’REILLY, *Marriage Impediments*, Faculty of Canon Law, SPU, Ottawa, 1986-1987 (lecture notes), pp. 183-185.

⁵⁸⁰ A good example of this is the 1937 Wernz-Vidal (F.X. WERNZ and P. VIDAL, *Ius poenale ecclesiasticum, Ius canonicum* t. 7, 1937; the commentary *De homicidio* is pp. 509-513.). Part of the interest in Wernz-Vidal is that it is a pre-Code commentary adapted in the light of the 1917 Code; the *Ius decretalium* of 1913 had become the *Ius canonicum* of 1937. However, the later commentary is identical in most respects to the former. There are some modifications in the section on penalties in the light of canon 2354, but the doctrine on the types of homicide and related matters is identical. We have outlined this doctrine on p. 194.

⁵⁸¹ Palazzini and Simeone deal with the doctrine of homicide in a little more detail than other commentators and we will deal with them in summary form. P. Palazzini wrote a lengthy dictionary article in 1965 taking up the essential aspects of homicide (“Homicidium,” in *Dictionarium morale et canonicum*, vol. 2, pp. 556-558). As part of its analysis of homicide, this

3.4.3.1 – Bride, *Dictionnaire de droit canonique* (1953)

This is a long and very detailed article filling sixteen columns of the *DDC*.⁵⁸² We will concentrate on those aspects of the article related to our theme. In his section on “divisions and species,” Bride follows the traditional analysis in dividing homicide into voluntary and involuntary.⁵⁸³ Voluntary is either direct (placing the act so that death follows immediately) or indirect (death follows the placing of the act, but indirectly). Involuntary homicide is either “purely accidental” or negligently culpable.⁵⁸⁴ He lists mercy killing as one of the many types of homicide. He has a long section on the historical development of the tradition, and here he traces the Roman law antecedents of canon law.⁵⁸⁵ Then he treats the history of Church attitudes and discipline, including the

article treats the irregularity, the violation of a church, and penalties. Almost half of the entire article is devoted to reparation. As to the doctrine of homicide, Palazzini briefly sets out the basic notions and divisions; he distinguishes homicide *ex dolo* (which involves an intention to kill, whatever the means used) and *ex culpa* (where death follows an act which is *praeter intentionem*).

L. Simeone produced a series of articles on homicide and related themes during a three-year period, with the material related to our theme in articles published in 1957 and 1958 (“De homicidio quaedam,” in *Miscellanea Francescana*, 57 [1957], pp. 478-557; and *Miscellanea Francescana*, 58 [1958], pp. 50-75). Previously, he had written on the themes of mutilation (“De mutilatione quaedam,” in *Miscellanea Francescana*, 55 [1955], pp. 59-87), and suicide (“De suicidio quaedam,” in *Miscellanea Francescana*, 56 [1956], pp. 37-102). In his 1958 article he deals with canonical issues, such as the irregularity, the violation of the Church, and penalties (*Miscellanea Francescana*, 58 [1958], pp. 69ff). Simeone’s doctrine of homicide is developed along traditional lines. He deals with euthanasia as a special homicide case (other special cases are the death penalty, self-defence, and genocide). Another of these special cases is the abandonment of those who are incapacitated, which is a true homicide, both formally and materially (pp. 541ff.). There is nothing about feeding as a means, but he deals with pain-relief for a terminally ill patient and teaches that: it is licit to use a means that may shorten life but produce a better death (p. 538).

⁵⁸² BRIDE, “Homicide” cols. 1163-1179.

⁵⁸³ Bride says that this division is from the point of view of imputability (*ibid.*, col. 1164)

⁵⁸⁴ *Ibid.*, col. 1164.

penitential discipline.⁵⁸⁶ From the Middle Ages, homicide has been considered a “mixed forum” crime, and from that time the Church has been content to leave the prosecution of homicide to secular courts and to apply its own specific penalties in the internal forum.⁵⁸⁷ This attitude has lasted until modern times, when the Church, as well as abandoning the ancient penalties, has abandoned lay *homicidae* to secular courts and dealt with clerical offenders in the internal forum.⁵⁸⁸

3.4.3.2 – Cause of death vs. acceleration of death

We will conclude this section by taking up a theme rather than a particular commentator. One of the issues in the theological debate is whether withdrawing assisted nutrition and hydration introduces a new cause of death or merely allows the natural dying process to take its course. We should note, however, that the canonical tradition on homicide considers acceleration of death to be a homicide, and this doctrine features in the commentaries on the 1917 Code. Bender, who has written extensively on these themes, says that one can never intentionally hasten death.⁵⁸⁹ Abbo and Hannan say that

⁵⁸⁵ Some examples are: the distinction between intentional and non-intentional homicide; purely accidental not being punished; the guilt of the mandator; the concept of qualified homicide and parricide; and the penalties for abandoning children (*ibid.*, col. 1168). He takes up the theme of abandoned infants in greater detail in col. 1171.

⁵⁸⁶ *Ibid.*, col. 1169.

⁵⁸⁷ *Ibid.*, col. 1171. An interesting feature of Bride’s article is that he consistently treats irregularity as a penalty.

⁵⁸⁸ *Ibid.*, col. 1176; modern concordats are part of the reason for this.

⁵⁸⁹ L. BENDER, art. “Acceleration of Death,” in *Dictionary of Moral Theology*, p. 18. See also his “Occisio directa et indirecta,” in *Angelicum*, 28 (1954), pp. 232-233, where he deals with acceleration of death in detail. Bender has written a number of other articles in the *Dictionary of Moral Theology* on related themes: “Death,” pp. 368-369; “Murder,” pp. 803-804; and “Nutrition,” p. 834.

homicide includes the “acceleration of death” and mercy killing, as well as any act from which it can be foreseen that death will follow.⁵⁹⁰

Homicide in the 1917 Code of Canon Law: conclusion

The 1917 Code provided penalties for the crime of homicide but, by the time of the promulgation of the Code, the Church for the most part was dealing with homicide in the internal forum or not at all. Accordingly, the commentaries that came after the 1917 Code reflect a decrease in interest in homicide as a crime.⁵⁹¹ The doctrine of homicide is settled and the comments, if any, tend to be summary and repetitive. In fact, the 1917 codification made little difference to the approach of canonists to the crime of homicide.

3.5 – Homicide in the 1983 Code of Canon Law

The references to homicide in the Code are few and presume an awareness of the canonical tradition. However, an analysis of these references will tell us something of this doctrine. We will look closely here at canons 1397 and 1041, and then briefly at the other references to homicide and killing in the Code.⁵⁹²

⁵⁹⁰ J.A. ABBO and J.D. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church* (= *The Sacred Canons*, followed by the volume number), vol. 2, rev. ed., St. Louis, MO, Herder, 1957, p. 128.

⁵⁹¹ We have made note of Bride’s comments in this regard (see p. 201). M. Facciotto, writing in 1955, also said that in practice homicide cases are remanded to the civil forum (“Omicidio,” in *Dizionario Ecclesiastico*, vol. 2, p. 1202).

⁵⁹² We will not deal with the other crimes mentioned in canon 1397: kidnapping, detaining, and mutilation and wounding. The significance of canon 1041 is that the doctrine of homicide has emerged historically largely in relation to the irregularity for orders arising from homicide.

3.5.1 – Canon 1397 of the 1983 Code

Canon 1397 states:

*Qui homicidium patrat [...],
privationibus et prohibitionibus,
de quibus in can. 1336, pro
delicti gravitate puniatur;
homicidium autem in personas
de quibus in can. 1370, poenis
ibi statutis punitur.*⁵⁹³

One who commits homicide [...], is to be punished, according to the gravity of the offence, with the deprivations and prohibitions mentioned in Can. 1336. In the case of the homicide of one of those persons mentioned in Can. 1370, the offender is punished with the penalties there prescribed.

There are some similarities in canon 1397 of the 1983 Code compared to canon 2354, its 1917 predecessor. It does not define homicide and is, in effect, a sentencing guide for a *homicida* that presumes the canonical tradition on homicide.⁵⁹⁴ There is one reference to degrees of imputability in the phrase “according to the gravity of the offence,” but otherwise the canonical tradition on crime and imputability are also presumed.

The differences between canon 1397 and its predecessor are significant, but those differences pertain to procedural matters and penalties, not imputability. Canon 1397 no longer treats cleric and lay *homicidae* separately. It does not list a series of possible penalties, as did its predecessor, but refers to the vindictive penalties listed in canon 1336. It also adds a provision not found in the earlier code, a reference to canon 1370

⁵⁹³ Canon 1370 speaks of crimes of violence against the Pope, bishops, clerics and religious.

⁵⁹⁴ See our comment on definitions and the Code in fn. 371, p. 134. Similarly, murder and manslaughter (as distinct from their penalties) are not defined by any statute in England, but their elements can be determined by reference to the common law tradition. (See CROSS and JONES, *Criminal Law*, p. 125).

which provides penalties for physical attacks on the Pope, bishops, clerics and religious.⁵⁹⁵

3.5.2 – Canon 1041 of the 1983 Code

Canon 1041 makes an important distinction touching on imputability:

Can. 1041 – *Ad recipiendos ordines sunt irregulares: [. . .] 4° qui voluntarium homicidium perpetraverit : [. . .] omnesque positive cooperantes.*

The following persons are irregular for the reception of orders: [. . .] 4° one who has committed wilful homicide : [. . .] and all who have positively co-operated.⁵⁹⁶

Canon 1041, like canon 985, 4° of the 1917 Code, distinguishes between voluntary and involuntary homicide as the basis for the irregularity arising from homicide, and says that the irregularity arises only from voluntary homicide.⁵⁹⁷

⁵⁹⁵ This is one of the crimes against the freedom of the Church, and canon 1397 adds further penalties for homicide against those same persons, this time under the category of crimes against human life and freedom. In the 1917 Code, the equivalent canon was 2343 §1, which is listed as one of the *fontes* of canon 1397. The other source for canon 1397, apart from those already mentioned (canons 2343 §1 and 2354), is a 1934 decree of the Holy Office (SACRA CONGREGATIO SANCTI OFFICII, Decree *Cum ex expresse*, 21 July 1934, in AAS 26 [1934], p. 550). This decree is also a source for several other canons of the 1983 Code: 1367, 1370, 1378 §1, and 1388 §1. It extended the penalties for several crimes (including the profanation of the Eucharist, attacks on the Pope, absolution of an accomplice, and violation of the sacramental seal) to the entire Church, Latin and Oriental.

⁵⁹⁶ We have omitted the reference in canon 1041, 4° to abortion and will not deal with the other sources of irregularity in the canon.

⁵⁹⁷ We have dealt with canon 985, 4° on pp. 198ff. Note the apparent “harder” position of canon 695 §1 that provides for mandatory dismissal from institutes of consecrated life and societies of apostolic life for the crime of homicide. Homicide arising from *culpa* would seem to suffice for such dismissal. On this point, see M. O'REILLY, *Institutes of Consecrated Life*, Faculty of Canon Law, SPU, Ottawa, 1995-1996 (lecture notes), pp. 819-820. O'Reilly discusses the difficult case of a fatal accident while driving a car under the influence of alcohol or drugs, and says that any cases that warrant dismissal would have to be determined by weighing all the facts and the imputability.

3.5.3 – Other references to homicide and killing in the 1983 Code

Homicide is mentioned explicitly or indirectly in some other canons of the Code. Homicide and several other crimes give rise to mandatory dismissal from institutes of consecrated life and societies of apostolic life. Canon 695 §1 says that a member “must be dismissed” for the crime of homicide.⁵⁹⁸ Killing a spouse gives rise to the impediment of “crime” (canon 1090).⁵⁹⁹ Canon 1211 speaks of desecration of a sacred place by “acts which are gravely injurious or give scandal” and which are “contrary to the sacred character of the place.”⁶⁰⁰ While there is no mention here of specific acts, canon 1172 §1 of the 1917 Code was explicit about the crime of homicide as violating the Church.⁶⁰¹

Two canons giving sentencing guidelines touch on issues of imputability. There is a reference to lawful self-defence in canons 1323, 5° and 1324 §1, 6°. Canon 1323, 5° exempts from the penalty for homicide if the perpetrator acted with due moderation,⁶⁰²

⁵⁹⁸ Canons 729 and 746 do not mention homicide explicitly but refer back to canon 695 and apply the norms found there to societies of apostolic life. The use of “offences” here means that the crime of homicide, as distinct from the fact of killing another person, is what gives rise to this dismissal. However, the canon does not specify voluntary homicide, and so homicide *ex culpa* would also seem to require mandatory dismissal.

⁵⁹⁹ Canon 1090 uses the phrases “has killed” (*mortem intulerit*), whereas the equivalent canon 1075, 2° of the 1917 Code used *coniugicidium patravit*, and “have killed” (*mortem intulerunt*; canon 1075, 3° of the 1917 Code had *mortem coniugi intulerunt*). See fn. 579 for further comment and references.

⁶⁰⁰ T. RICHSTATTER, “Sacred Times and Places,” in *The Code of Canon Law: A Text and Commentary*, p. 847.

⁶⁰¹ For further commentary, see GULCZYNSKI, *The Desecration and Violation of Churches*, pp. 69-73. Gulczynski deals with the history of homicide and desecration at pp. 17-18 and pp. 31-32.

⁶⁰² This norm would also apply to two other crimes mentioned in canon 1397: mutilation and grievous bodily harm. However, there is an anomaly in the norm: surely if a person acted with due moderation there would be no imputability and therefore no need to provide for the “suspended sentence” of this canon. Self-defence, especially with due moderation, is not “homicide.” The fact that the law abolishes the penalty implies that there is a crime, albeit with a

and canon 1324 §1, 6° provides for a reduced penalty if the perpetrator acted with undue moderation in self-defence.⁶⁰³

Our final canon from the 1983 Code is 1362 §1, 2° which provides for a prescription of five years (instead of the three years for other crimes) for homicide, pointing to the special seriousness of this crime.⁶⁰⁴

3.5.4 – The revision of the 1983 Code

The stages in the drafting of canon 1397 during the revision process can be followed using various research tools, particularly *Communicationes*.⁶⁰⁵ The first version

suspended sentence. (See GREEN, “Sanctions,” p. 1542). A similar point could be made about canon 1324 §1, 6°; the idea behind the canon is clear, but the conjunction of the ideas “legitimate self-defence” and “without due moderation” is confusing. If the defence was immoderate, it would not be legitimate.

⁶⁰³ There is no doubt about the fact of the crime here, which presumably would mean that the perpetrator incurs the irregularity and lead to dismissal.

⁶⁰⁴ In Canon 1703, 3° of the 1917 Code it was a ten-year period for homicide and simony. For a commentary on penal prescription, see G. READ, “Clerical Child Abuse and the Application of the Penal Process,” in *Canon Law Society of Great Britain and Ireland Newsletter*, n. 104 (1995), pp. 14-19. Read gives a brief outline of the origin of the notion of prescription in Roman Law and its application in canon law, with comparisons with American and British civil law. See also M. CONNOR, *The Administrative Removal of Pastors: An Historical Synopsis and Commentary*, CUA Canon Law Studies n. 104, Washington, CUA, 1937; Connor gives a brief history of prescription for penal processes on p. 67ff.

⁶⁰⁵ Some reference tools include E.N. PETERS, *Tabulae congruentiae inter Codicem iuris canonici et versiones anteriores canonum*, Montréal, Wilson & Lafleur, 2000 (canon 1397 is on p. 154); J. FOX and G. CORBELLINI, “Synthesis generalis laboris Pontificiae commissionis codici iuris canonici recognoscendo,” in *Communicationes*, 19 (1987), pp. 262-308; J. FOX., “A General Synthesis of the Work of the Pontifical Commission for the Revision of the Code of Canon Law,” in *The Jurist*, 48 (1988), pp. 800-840; and J. FOX “Fontes and Analytical Index to Code,” in *Canon Law Society of Great Britain and Ireland Newsletter*, 77 (1989), pp. 14-18.

For commentary on penal law reform, see P. CIPROTTI, “De iure poenali recognoscendo,” in *Communicationes*, 2 (1970), pp. 99-107, 194-195; id., “Elementi di novita nel diritto penale canonico vigente,” in *Monitor Ecclesiasticus*, 114 (1989), pp. 17-28; id., “Qualche punto caratteristico della riforma del diritto penale canonico,” in *Ephemerides Iuris Canonici*, 46

was canon 70 of the *De iure poenale* of the 1973 Schema, which is as follows: «Qui homicidium patrat, privationibus et prohibitionibus, de quibus in can. 21, § 1, b et c, pro delicti gravitate puniatur, praeter poenas can. 51 statutas, si in personas ibi recensitas delictum patretur.»⁶⁰⁶ This was sent to the bishops of the world for comment in 1973.⁶⁰⁷

The canon was discussed and its revision finalised by the *coetus* on 22 April 1977.⁶⁰⁸ In revising the canon, the *coetus* made two important structural decisions; it decided to revise canon 70 in the light of canon 51 (violence against the Pope and other persons) and to merge canons 72 and 70.⁶⁰⁹ Canon 1397, then, was in its final form on 22

(1990), pp. 111-127; R. METZ, "Simples réflexions sur la réforme du droit pénal de l'Église," in *Revue de droit canonique*, 18 (1969), pp. 97-104; V. DE PAOLIS, "Animadversiones ad schema documenti quo disciplina sanctionum seu poenarum in Ecclesia Latina denuo ordinatur," in *Periodica* 63 (1974), pp. 489-507; id., "De recognoscendo iure poenali canonico," in *Periodica* 63 (1974), pp. 37-67; T.J., GREEN, "The Future of Penal Law in the Church," in *The Jurist*, 35 (1975), pp. 212-275; id., "Penal Law Revisited: The Revision of Penal Law Schema," in *Studia canonica*, 15 (1981), pp. 135-198; id., "The Code Revision Process: The Involvement of the Canon Law Society of America," in *Revista Española de derecho canónico*, 47 (1990), pp. 517-541. For a general work on the revision process, see F. D'OSTILIO, *La Storia Del Nuovo Codice Di Diritto Canonico: Revisione, Promulgazione, Presentazione*, Città del Vaticano, Libreria editrice Vaticana, 1983.

For the general principles that guided the revision, see PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, "Principia quae Codicis Iuris Canonici Recognitionem dirigant," in *Communicationes*, 2 (1969), pp. 77-85; for commentary, see J.A. ALESANDRO, "The Revision of the Code of Canon Law: A Background Study" in *Studia canonica*, 24 (1990), pp. 91-146, especially pp. 106-110. Several of these principles touched on penal law (internal and external forum, minimum penalties necessary, preference for *ferendae sententiae* penalties), but were not influential in the revision of the canon on homicide.

⁶⁰⁶ *Communicationes*, 9 (1977), p. 317; canon 72 of the draft (regarding the other crimes that eventually were incorporated into the final form of canon 1397) is on the same page.

⁶⁰⁷ The letter of Cardinal Felici accompanying the *Schema* sent to the bishops is in *Communicationes*, 5 (1973), pp. 195-196.

⁶⁰⁸ *Communicationes*, 9 (1977), p. 317. The report of this discussion reveals that there had been no responses received from the bishops concerning homicide.

⁶⁰⁹ *Ibid.*

April 1977.⁶¹⁰ The doctrine of homicide was not discussed at all during the revision process.⁶¹¹

3.5.5 – The commentators of the 1983 Code

The commentaries since the 1983 Code follow the pattern of ones before the Code; they have little to say about homicide which is a settled doctrine with seemingly no practical application. In these commentaries canon 1398 and abortion are invariably given greater attention. We will sample some representative commentaries and summarise the rest.⁶¹²

⁶¹⁰ We have prepared an appendix with a brief overview of the discussion and revision of the canons related to our theme. (See Appendix XIV, pp. 322ff.).

⁶¹¹ However, there was discussion about canon 72 (kidnapping, mutilation and wounding); the penalties proposed by canon 72 were facultative, and the *coetus* decided to make them obligatory, which meant the canon could also be more easily merged with canon 70. The *coetus* also discussed the fact that these crimes were punished by civil law, but decided to retain the canonical penalties.

On a related theme, imputability was discussed a number of times and changes were made to the doctrine as found in the 1983 Code. (See *Communicationes*, 2 [1970], p. 103; and 8 [1976], pp. 175-176.) We have already dealt with this issue earlier in this chapter (see “The subjective element: *mens rea*,” pp. 137ff.).

⁶¹² Some commentators say nothing at all about homicide; for example, V. DE PAOLIS, *De sanctionibus in Ecclesia: adnotationes in Codicem liber VI*, Romae, Pontificia Universitas Gregoriana, 1986. Other commentators deal with homicide more from the moral than the canonical aspect, for example, L. CICCONE, *Non uccidere: Questioni di morale della vita fisica*, n. 1, Ragione & fede, n. 2, Milano, Edizioni Ares, 1984; this treats homicide (pp. 132-143) and euthanasia (pp. 257-294) in separate chapters. While he gives the usual distinctions and categories, such as direct and indirect, the author’s interest is moral theology and sociology.

Other commentaries with a minimalist approach are A. CALABRESE, *Diritto penale canonico*, Milano, Edizioni Paoline, 1990, pp. 286-288; L. CHIAPPETTA, *Il Codice di diritto canonico: commento giuridico-pastorale*, 2nd ed., 2 vols., Rome, Edizioni Dehoniane, 1996, pp. 687-688; and WOESTMAN, *Ecclesiastical Sanctions and the Penal Process*, pp. 147-148.

The most comprehensive treatment of homicide is by M. O'Reilly who takes up the euthanasia issue and modern cases and trends that have created new possibilities for application of the canon.⁶¹³

J. Martin in the 1995 *The Canon Law, Letter & Spirit* also takes up the doctrine of homicide in the light of euthanasia.⁶¹⁴ He mentions the notion of wilful homicide and imputability. He gives a number of examples, including reckless driving. Most importantly, he deals with euthanasia as a type of homicide, and includes the 1980 CDF definition of euthanasia, contrasting euthanasia and legitimate pain-relief.⁶¹⁵

F. Pérez-Madrid, in the 1997 multi-volume *Comentario exegético de derecho canónico*, has a lengthy commentary but there is little on homicide as such.⁶¹⁶ The introduction takes up the general theme of crimes against life and says the law has been considerably simplified by the omission of such crimes as duelling and suicide. There is a brief reference to the revision process and some of the discussion in the *coetus*. As to homicide, there are eight lines in total, almost all from the 1937 Wernz-Vidal *Ius canonicum* giving a definition of homicide and some types.⁶¹⁷

⁶¹³ O'REILLY, *Sanctions*, pp. 174-177.

⁶¹⁴ J. MARTIN, "Sanctions in the Church," in *The Canon Law, Letter & Spirit*, pp. 749-810.

⁶¹⁵ *Ibid.*, p. 807.

⁶¹⁶ F. PÉREZ-MADRID, Commentary on canon 1397, in *Comentario exegético de derecho canónico*, vol. IV/1, pp. 585-588.

⁶¹⁷ *Ibid.*, p. 587.

T.J. Green has now written two commentaries on homicide taking a similar approach in both.⁶¹⁸ The dominant theme is penal process and forum, and he emphasises the different approach in the 1983 Code as compared to 1917. In 1985 he spoke of the need for “collaboration” between civil and Church authorities; in 2000 he says that, realistically speaking, the civil courts will deal with the crimes mentioned in canon 1397. There is nothing in either commentary about homicide as such.

In summary, the commentators following the 1983 Code deal with homicide in a derivative and perfunctory way. They presume that homicide and the other crimes of canon 1397 will be handled by civil law, and they do not develop the doctrine in the canonical context. There are few expectations in the published commentaries that the canonical principles will ever be applied.

Homicide in the 1983 Code of Canon Law: conclusion

The 1983 Code has a number of references to homicide that reflect some differences from the 1917 Code in the area of procedural matters and penalties. However, the doctrine of homicide and its relationship to imputability has remained unchanged and is presumed rather than stated in the canonical texts. By contrast, there are ample doctrinal descriptions and definitions to be found in recent magisterial teaching that distinguishes types of homicide and degrees of imputability.

⁶¹⁸ T.J. GREEN, “Sanctions in the Church,” in *The Code of Canon Law: A Text and Commentary*, (1985), pp. 891-941, and “Sanctions in the Church,” in *New Commentary on the Code of Canon Law*, (2000), pp. 1529-1605.

Chapter Three: Conclusion

We can now synthesise and summarise our survey of the canonical tradition on homicide, highlighting the elements of that tradition that touch on our theme of the canonical implications of withdrawing assisted sustenance from an unconscious patient leading to death. Is such an act the crime of homicide? The canonical tradition has dealt with similar situations and provides the principles to answer the question.

Homicide is a crime against divine law, both positive and natural, and canon law. It has always held a special place in the Church's penal tradition.

Our study of the canonical tradition on crime has shown that the crime of homicide, like all crimes, can be imputed to the perpetrator through deliberation and intention (*ex dolo*) or through the omission of due diligence (*ex culpa*). This imputability, which admits of degrees, can be modified but is not removed by subjective factors. Motive may reduce imputability but does not change the nature of the act. There must be serious imputability before penalties are applied, but homicide will be a crime with canonical implications with any degree of imputability. Further, the fact that homicide is a crime of the natural law means that a higher standard of action is demanded in the situation of factors such as doubt, ignorance, error, and necessity. Finally, accomplices will be liable to the canonical implications of the crime of homicide according to the type of co-operation.

Our study of the *fontes* of the 1917 Code has shown that the current law is based on and reflects a rich and complex tradition concerning the doctrine of homicide. These sources for the most part reflect the Church dealing with the reality of homicide in actual

cases. Many of the cases deal with the irregularity for orders arising from homicide, and our study has shown that the doctrine of homicide has emerged primarily in relation to the irregularity for orders. However, these doctrinal principles pertain to the crime of homicide as well as to the irregularity. We have distilled from the *fontes* these following elements of the doctrine, which still constitute the doctrine today:

- Homicide refers to any unlawful killing. There are two broad categories of lawful killing: civil execution after a legal process, and moderate self-defence. Any other killing is unlawful and a homicide.
- Any voluntary action leading to an unlawful death is homicide.
- Any degree of imputability will give rise to the crime of homicide; very few circumstances will reduce this imputability, and none will remove it.
- Voluntary homicide is distinguished from involuntary homicide.
Voluntary homicide does not require pre-meditation or an intention to kill; an intention to wound is enough, as long as the will tends to the act which of its nature leads to death. Involuntary homicide is also imputable if the delinquent does not exercise due diligence.
- Involving oneself with the lethal action of others gives rise to imputability as a co-operator in homicide, and its canonical implications.

In our survey of the canonical tradition we then turned to the *Corpus iuris canonici*, and we found that the doctrine there also emerged primarily in relation to the dealing with clerical offenders. The most important element of this doctrine relates to

imputability; the key element in the imputability for homicide is voluntariness, which admits of degrees. Voluntary homicide involves a direct and intentional killing, or placing an act from which death follows. Involuntary homicide arises from a culpable but non-intentional action that leads to death. Motive does not reduce imputability, and there is no class of person not protected by the law. Reduced imputability may lead to lighter penalties, but will always incur the irregularity. Co-operation in homicide will also incur penalties and the irregularity, and co-operation arises from helping the commission of the crime or by ordering, advising, or inciting another to commit the crime.

The doctrine of homicide reflected in the *Corpus iuris canonici* evolved in the light of actual cases. The privilege of the forum meant that the Church dealt with clerical *homicidae*, but in the centuries that followed the publication of the *Corpus iuris canonici*, the Church was gradually forced to cede this privilege and increasingly dealt with homicide in the internal forum or not at all. This reality is reflected in the commentaries prior to the 1917 Code that increasingly saw the prosecution of the crime of homicide as the role of the secular arm. The Church, in dealing with homicidal clerics, paid most attention to the irregularity for orders arising from homicide. However, these commentaries show that the doctrine of homicide is consistent and settled in most respects.

These pre-Code commentators continued to focus on imputability, especially the element of voluntariness. An intentional homicide involves either a direct act of killing, or the placing of an act from which death is likely to follow with moral certitude. An unintentional homicide can be imputable if the death resulted from negligence. There are a number of types of homicide, but one which is singled out for special comment is the

exposure of the sick leading to their death. This is a qualified homicide, one that is particularly heinous, and involves the abandonment by someone with a duty of care of a chronically sick person whose treatment until now has been expensive and futile. However, if such abandonment was done out of necessity, there is no imputability. Finally, co-operation in the crime of homicide can incur its canonical effects. Co-operation can take forms such as counsel and persuasion, but there is imputability only if there was an efficacious influence.

The 1917 and 1983 Codes, in their canons on penalties and the irregularity, presumed the doctrine of homicide that had been unchanged for centuries. The commentaries on these Codes show little interest in homicide as a crime, reflecting the reality that the Church dealt with it mostly in the internal forum or left it to the civil authorities. By contrast with this atrophied canonical tradition, there has been a renewed interest in homicide in magisterial texts such as the *Catechism* and *Evangelium vitae*, largely as a response to attacks on life. These documents contain doctrinal descriptions and definitions and distinguish types of homicide and degrees of imputability.

General Conclusion

We must now apply the canonical principles and answer the question that we have set out: does the withdrawal of assisted nutrition and hydration constitute the canonical offence of homicide? Our first task is to deal with the objective aspects of the act of withdrawal: are the elements of the *actus reus* of homicide present?

Magisterial teaching condemns the direct killing of an innocent person. In canonical terms, this doctrine is expressed in the principle that any voluntary action leading to an unlawful death is a homicide. The canonical tradition posits only two kinds of lawful killing: state-sanctioned execution and legitimate self-defence. Any other killing is unlawful and a homicide. Further, the magisterium teaches that helpless patients demand care and that nutrition is part of the normal care due to the patient at any stage of the illness. From this perspective, then, a patient whose feeding is withdrawn is innocent and his death from starvation is a homicide.

The cause of death is a key issue in determining whether withdrawal of nutrition constitutes an *actus reus*. Some bishops and theologians have argued that the “underlying pathology” is the cause of death when such nutrition is removed from a comatose patient. Those who take this position would hold that the death follows the removal of feeding but is not caused by that removal.

The point at issue here is one of medical fact rather than theological opinion, and we have taken the view that the arguments proposing this “fatal pathology” position are

logically and medically flawed. We disagree with the position that assisted feeding is a useless artificial procedure. This might be true of a machine that supplies the functions of a fatally damaged heart or any other vital organ; if such a machine is removed, then the cause of death will normally be the failure of the vital organ. Artificially assisted nutrition as a means of life-support has some similarity to this sort of machine, but the differences change the moral and canonical nature of the act when this particular means is removed. The similarity lies in the fact that the patient in the persistent vegetative state needs assisted nutrition because he is brain damaged and cannot feed himself. The difference is that the feeding does not supply for the brain damage, as no machine can do this.⁶¹⁹

Further, the “problem” with a patient in the persistent vegetative state is the fact that he is not dying; to use a phrase of D. Callaghan, he is “biologically tenacious” and may continue to live in this state draining resources for many years.⁶²⁰ The “underlying pathology” is not, in fact, fatal, unless the feeding is removed. The assisted feeding is removed precisely because it is keeping the patient alive.⁶²¹ To withdraw assisted feeding, then, is to introduce a new cause of death, which is a homicidal act. At the very

⁶¹⁹ Many patients in this state could be fed without machinery, perhaps by a nurse or relative. The tube feeding is often used because it is easier and less expensive.

⁶²⁰ See D. CALLAHAN, “On Feeding the Dying,” in *The Hastings Center Report*, vol. 13, n. 5 (1983), p. 22. In this article, Callaghan expresses his “stubborn emotional repugnance” to withdrawal, even as he rationally agrees with the notion that in some circumstances it is the right thing to do. “A denial of nutrition may in the long run become the only effective way to make certain that a large number of biologically tenacious patients actually die.”

⁶²¹ It could be argued that the same moral analysis could be applied to other means that help to keep the patient alive and could be removed, such as air, warmth, or medication.

least, it is an act that accelerates death, which is also a homicide. In the canonical tradition, an act that leads to death in any way is a homicide.

There is a connection, then, between the action in question and the patient's death. The action, whatever form it takes, stops the patient's nutrition and he will eventually die of starvation, no matter what his medical condition.⁶²² The canonical distinction, if any, in this matter is that between voluntary direct and voluntary indirect homicide. We will deal later with the "voluntary" aspect of this proposition and concentrate for the moment on the "indirect" aspect. In voluntary indirect homicide, an act is placed from which death follows with moral certitude. Whether direct or indirect, death follows the action. By that fact we have the elements of the *actus reus* of homicide.

In exploring the *actus reus* we need to take up another issue: is assisted nutrition and hydration an extraordinary and so an optional means? The arguments for this proposition posit a kind of "dispensation" from the principle of the moral law that life is to be preserved. We will draw upon the 1980 CDF *Declaration on Euthanasia* to deal with this issue. The relevant part of the Declaration is as follows: "When inevitable death is imminent in spite of the means used, it is permitted in conscience to take the decision to refuse forms of treatment that would only secure a precarious and burdensome prolongation of life, so long as the normal care due to the sick person in similar cases is not interrupted."⁶²³ The situation envisaged in the Declaration is very different from the one that concerns us; the dying process has started and cannot be stopped by any means.

⁶²² In some cases the feeding tube is removed; in other cases some or all of the nutrients are removed from the feeding apparatus.

⁶²³ *Declaration on Euthanasia*, IV.

If the feeding in this situation becomes “precarious and burdensome,” it can be removed. The patient will die because of the underlying pathology and not from starvation.

Is this acceleration of death? It is only in the sense that death may come more quickly. The appropriate distinction to make here is that between preserving and prolonging life: life has to be preserved if possible, but does not have to be prolonged by every means. In the situation of the withdrawal of assisted nutrition and hydration *in extremis*, life can be prolonged but not preserved. Further, the withdrawal does not cause the death. In this situation the withdrawal can truly be said to be the removal of a means that has become burdensome and is unnecessarily preventing natural death.

To withdraw assisted nutrition and hydration in any other situation is euthanasia as defined in the *Declaration on Euthanasia*, namely, “... an action or an omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated.” The Declaration goes on to say, “Euthanasia’s terms of reference, therefore, are to be found in the intention of the will and in the methods used.”⁶²⁴ We will deal later with the elements of this definition related to imputability (intention and motive); for the moment our concern is with the “action or an omission which of itself [...] causes death” and the methods used. Depending on how the withdrawal of assisted nutrition and hydration is achieved, it could have elements of both an action and an omission. The withdrawal itself introduces a new cause of death; hence it is an act of euthanasia, which is a type of homicide. From the objective aspect, then, the act of withdrawal meets the conditions for the *actus reus* of homicide.

⁶²⁴ *Declaration on Euthanasia*, II.

We need now to draw conclusions about the act of withdrawal in its subjective aspect from the perspective of imputability and the *mens rea*. In the canonical tradition, it is the voluntary aspect of an act that is the key to imputability, and two kinds of voluntary action give rise to the imputability for homicide: voluntary direct and voluntary indirect. Voluntary direct means the *homicida* intends to kill and places the act which of its nature brings about death. Voluntary indirect does not require an intention to kill, but the *homicida* places an act that is lethal of its nature and does in fact result in death.

The distinction is important for more than one reason. First of all, it reflects the complexity of human behaviour and is an attempt to find a label or category for homicidal behaviour so as to determine the appropriate ecclesiastical response. More important for our theme is the fact that the focus is on the fact of the placing of the act rather than on the disposition of the person who places the act. Whether voluntary direct or indirect, the act is fatal. The canonical tradition emphasises the objective reality of the intentional placing of this fatal act over and above the agent's motive and the circumstances. All that is needed for imputability is that the unlawful act was placed intentionally. The imputability for homicide is present if the fatal act is in any way intentional, whether direct or indirect.

The distinction is crucial in the light of the debate about the withdrawal of assisted nutrition and hydration, as this focus on the voluntary placing of the act is often blurred. In this debate, words such as "direct," "purpose" and "intention" can have different meanings. For example, a "direct" intention to kill can imply different things; the act of killing can be voluntary directly as we have explained that notion, or it can mean a direct means of killing as distinct from allowing a person to die. Both "intention"

and “purpose” can mean what is intended (the act of killing) or the motive (as in, “my purpose was to alleviate suffering,” or, “my intention was to alleviate suffering”). Here purpose, motive and intention are blurred.⁶²⁵

By contrast, in the canonical tradition, with its focus on the intentional placing of the lethal act, there is a more precise use of language that allows for an easier analysis of the essential components of imputability. Intention in this tradition is an act of the will, the object of which is the placing of an act of killing.⁶²⁶ This is the principal determinant of imputability; motive and circumstances may be relevant in determining canonical consequences, but are irrelevant for determining imputability.⁶²⁷

This is reflected in the CDF *Declaration on Euthanasia*, which says that euthanasia’s “terms of reference...are to be found in the intention of the will and in the methods used.” The Declaration’s definition of euthanasia includes the notion that its motive is the relief of suffering. What is intended in euthanasia is the death of the suffering patient; the relief of suffering is why it is intended. Intention here involves an

⁶²⁵ In other words, what is done is distinct from why it is done. We could also include the word “object” in this analysis; it has a precise and technical meaning in the canonical tradition, but can sometimes be used in English to refer to motive.

⁶²⁶ There is a comparable notion in the canons on marriage consent: consent makes marriage (canon 1057 §1), and consent is defined as “an act of will by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing a marriage” (canon 1057 §2). Consent here is described in terms of its essential elements: its object as an expression of an act of the will. The point would be clearer if the phrase “with the intention of” was substituted for “for the purpose of,” as “purpose” can sometimes refer to motive. There could be many possible motives for marriage, but they do not change the nature of consent. As we have already noted, what is done (the object of an act of the will) is distinct from why it is being done (the motive for the act of the will).

⁶²⁷ Hence, “voluntary,” “deliberate” and “intentional,” insofar that they refer to an act of the will, are equivalent terms.

act of the will, and its object is the placing of a fatal act, or the omission of an act that leads to death. Whatever the method, if the motive is relief of suffering it is an act of euthanasia. Without that specific motive, it is an act of homicide.

In summary, in the canonical tradition neither an intention to kill nor an intention to harm is required. The fatal act will be imputable if it was deliberate and if death was likely to follow with moral certitude. The withdrawal of assisted nutrition and hydration may have been done with the “best of intentions,” but those “intentions” are irrelevant to imputability.⁶²⁸ The withdrawal will be imputed as homicide by the fact that it was placed intentionally.

Further, some of the debate about burdens can be interpreted as being about motives for euthanasia. Suffering is a burden, whether it is the suffering of the patient or, more usually in the case of assisted feeding, the “suffering” of the caregivers. Other burdens that are relevant to our theme include cost and indignity. If the reason for withdrawal is the removal of any or all of these burdens, then we are dealing with motive. Some arguments for withdrawal, when analysed closely, posit compassionate relief of suffering as a motive and, in so doing, meet the conditions for euthanasia.⁶²⁹

⁶²⁸ “Intentions” here refer to motives.

⁶²⁹ One example is the argument for withholding life-support (usually feeding) from a defective newborn if that treatment would result in what McCormick calls “one long oppressive convalescence”(see fns. 103 and 104). If life-support is withheld for this reason, it is not accurate to describe it as intending to withdraw an optional means. It is more precise to describe it as intending to place a homicidal act, albeit for a good and compassionate motive. We could add that any argument for the withdrawal based on “compassion” is likely to be an argument for euthanasia.

In some situations, it will be impossible to supply assisted nutrition and hydration, and this will remove the moral and canonical duty to feed. Necessity, like imputability, takes a number of forms and admits of degrees. The canonical tradition posits the possibility of true necessity that by its nature would preclude imputability. In the debate about the removal of assisted nutrition and hydration, the fact that the patient is unable to ingest food is accepted as a case of true necessity, and all commentators agree that in this situation of physical necessity there is no obligation to maintain feeding.

There are other situations of necessity that would remove the obligation to feed. Clearly, there must be the physical capacity to provide assisted nutrition and hydration, and this does not exist everywhere, particularly not in undeveloped countries. Further, even in developed countries with sophisticated health-care systems, a particular family's resources may be depleted making it impossible to continue assisted feeding. However, the necessity must be based on objective criteria and, as commentators such as Grisez have pointed out, feeding itself is only a small part of the total cost of caring for a patient. To choose to stop feeding to save the total cost of care is a homicidal choice as it involves killing to achieve an end. In canonical terms, the intention would be to place a fatal act with the motive of conserving dwindling resources. With these cautions in mind, however, we can conclude that true necessity, usually a physical necessity, would excuse from imputability. Conversely, it is a homicidal action to withdraw feeding outside the situation of true necessity, and if the patient is not *in extremis*.

We will now draw out the canonical implications for those who voluntarily involve themselves in the withdrawal of assisted nutrition and hydration. The canonical tradition posits imputability for those who co-operate in the crime of homicide.

Commentators on canon 1329 have, for the most part, focused on the application of penalties rather than the underlying doctrine of co-operation. The doctrine of co-operation means that, while imputability for co-operation in crime admits of degrees and the type of co-operation has implications for *latae sententiae* penalties, any effective co-operation in homicide renders the accomplice liable to its canonical effects, including penalties and the irregularity. Where there has been a decision to withdraw assisted nutrition and hydration, this doctrine could apply to a number of people involved in making that decision and carrying it out. When any doctor, nurse, counsellor, or other health professional acts in such a way as to incur moral responsibility, this would also imply the legal imputability for homicide and its canonical effects.

An important canonical effect that has been overlooked in the theological debate on the withdrawal of assisted nutrition and hydration is the irregularity for orders arising from co-operation in that withdrawal. The canonical tradition reflects the Church's commitment to isolate clerics from anything connected to the taking of life and, in that tradition, any degree of imputability incurs the irregularity that was rarely, if ever, dispensed. Canon 1041, 4° includes as irregular "all who have positively co-operated," and positive co-operation refers to any kind of co-operation except negative co-operation.⁶³⁰ This doctrine has serious implications for a priest or deacon who involves himself in a decision to withdraw assisted nutrition and hydration. Priests on hospital ethics committees, or a parish priest who advises a family in a less formal capacity, may be involved in such a decision. Moreover, a priest will often have considerable influence

⁶³⁰ Negative co-operation involves non-action where there is a duty to act. All other co-operation is positive.

on the decision, as the family of the patient will presume that his advice reflects Church teaching. If his advice is influential and effective in bringing about an unlawful death, he will be irregular for the exercise of orders.

Another possible canonical effect is the obligatory dismissal from religious life. Canon 695 §1 says that a member “must be dismissed” for the crime of homicide. There are a number of roles that could be fulfilled by a religious, such as doctor, nurse, counsellor, or other health professional, that could involve decision-making in regard to assisted nutrition and hydration. Such a decision, or the implementation of that decision, has implications for religious. If as principal agents or co-operators they have been involved in a homicidal decision, they face dismissal in the light of canon 695 §1.

Pope John Paul II, in his Encyclical *Evangelium vitae*, spoke of what he termed the “culture of death,” manifested in various ways in the attitudes and actions of an increasing number of people, even by those who are dedicated to the care of the sick. In our introduction to this dissertation we spoke of one manifestation of this trend: the Church is facing a new situation in the protection of life in its health-care ministry and can no longer presume that civil law will defend vulnerable patients by prosecuting the crime of homicide in its various forms. We have seen in many magisterial statements that the Church is strongly committed to promoting its message of the sanctity of life and the need to protect those vulnerable patients whose lives are most at risk.

The role of canon law will always be secondary to that of teaching in the protection of life. Further, unlike the civil law doctrine, the canonical doctrine of imputability and homicide for the most part has not been tested and refined in light of

difficult cases involving life-support. Given recent developments in technology and changed attitudes in society, it is not unlikely that ecclesiastical authorities and Church courts in the future will be dealing with these questions. If so, we hope this dissertation can be of some assistance in clarifying the relevant issues, doctrines, and principles of law.

Bibliography

Sources

Collections of magisterial texts

Corpus iuris canonici, ed. Lipsiensis secunda post A. L. RICHTERI curas ad librorum manu scriptorum et editionis Romanae fidem recognovit et adnotatione critica instruxit A. FRIEDBERG, pars prior, *Decretum Magistri Gratiani*, Leipzig, B. Tauchnitz, 1879, editio anastatice repetita, Leipzig, 1928.

O'ROURKE, K.D. and P. BOYLE (eds.), *Medical Ethics, Sources of Catholic Teachings*, St. Louis, MO, The Catholic Health Association of the United States, 1989; 3rd ed., Washington, Georgetown University Press, 1999.

VERSPIEREN, P. (ed.), *Biologie, médecine et éthique: textes du magistère catholique réunis et présentés par Patrick Verspieren*, Paris, Le Centurion, 1987.

Preparation of the 1983 Code (in date order)

PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, "Principia quae Codicis Iuris Canonici Recognitionem dirigant," in *Communicationes*, 2 (1969), pp. 77-85.

———, *Schema generale de delictis et poenis*, Romae, Typis polyglottis Vaticanis, 1970.

———, *Schema documenti quo disciplina sanctionum seu poenarum in Ecclesia latina denuo ordinatur*, Romae, Typis polyglottis Vaticanis, 1973.

———, *Schema documenti aut disciplina sanctionum seu poenarum in ecclesia latina denuo ordinatur*, Romae, Typis polyglottis Vaticanis, 1980.

———, *Schema codicis iuris canonici: schema Patribus Commissionis reservatum*, Romae, Libreria editrice Vaticana, 1980.

———, *Relatio complectens synthesim animadversionum ab Em-mis atque Ex-mis Patribus Commissionis ad novissimum schema Codicis Iuris Canonici*

exhibitarum, cum responsionibus a secretaria et consultoribus datis, Città del Vaticano, Typis polyglottis Vaticanis, 1981.

PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, *Acta et documenta pontificiae Commissionis Codici iuris canonici recognoscendo, congregatio plenaria diebus 20-29 Octobris 1981 habita*, Città del Vaticano, Typis polyglottis Vaticanis, 1981.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, "Relatio complectens synthesim animadversionum ab Em-mis atque Exc.mis Patribus Commissionis ad novissimum schema Codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis, Liber VI, De sanctionibus in Ecclesia," in *Communicationes*, 16 (1984), pp. 38-51.

FOX, J. and G. CORBELLINI, "Synthesis generalis laboris Pontificiae commissionis codici iuris canonici recognoscendo," in *Communicationes*, 19 (1987), pp. 262-308.

PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, *Acta et documenta pontificiae commissionis Codici iuris canonici recognoscendo, congregatio plenaria diebus 20-29 Octobris 1981 habita*, Typis polyglottis Vaticanis, 1991.

PETERS, E.N., *Tabulae congruentiae inter Codicem iuris canonici et versiones anteriores canonum*, Montréal, Wilson & Lafleur, 2000.

Magisterial Texts of the Holy See

Acta Apostolicae Sedis: commentarium officiale, Romae, 1909-1928; in Civitate Vaticana, Typis polyglottis Vaticanis, 1929-.

Canon Law Digest, T. BOUSCAREN (ed.), vols. 1-3; T. BOUSCAREN and J. O'CONNOR (eds.), Milwaukee, Bruce Publishing Co., vols. 4-6; J. O'CONNOR (ed.), Mundelein, Ill., vols. 7-10; E. PFNAUSCH (ed.), Washington, CLSA, vol. 11.

CARLEN, C. (compiler), *The Papal Encyclicals 1878-1903*, Wilmington, NC, McGrath Publishing Company, 1981.

Catechismus Catholicae Ecclesiae, auctoritate Ioannis Pauli PP. II promulgatus, Libreria editrice Vaticana, 1997 (English-language version *Catechism of the Catholic Church: Second Edition*, St Pauls Publications, Strathfield, NSW, 2000).

Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, Roma, Typis polyglottis Vaticanis, 1990 (English-language translation: *Code of Canons of the Eastern Churches*, Latin-English edition, new English translation, prepared under the auspices of THE CANON LAW SOCIETY OF AMERICA, WASHINGTON, CLSA, 2001).

Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, Roma, Libreria editrice Vaticana, 1983 (British Commonwealth version of English-language translation: *The Code of Canon Law in English Translation*, new rev. ed. prepared by THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, in association with THE CANON LAW SOCIETY OF AUSTRALIA AND NEW ZEALAND and THE CANADIAN CANON LAW SOCIETY, London, HarperCollins Liturgical, 1997).

Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, Romae, Typis polyglottis Vaticanis, 1917.

Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, praefatione, fontium annotatione et indice analytico-alphabetico ab Emmo P. Card. Gasparri auctus, Romae, Typis polyglottis Vaticanis, 1933.

Codicis iuris canonici fontes, 9 vols., (1923 -1939), ed. Cardinals P. GASPARRI (I-VI), I. SERÉDI (VII-IX); vols. I-III.

Communicationes: Romae, vols. 1-15, PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO; vols. 16-20, PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO; vols. 21-, PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, 1969- .

CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on Euthanasia Iura et bona*, 5 May 1980, in *AAS*, 72 (1980), pp. 542-552 (English-language versions in A. FLANNERY [gen. ed.], *Vatican Council II: The Conciliar and Post Conciliar Documents*, Grand Rapids, MI, Eerdmans, 1982, pp. 510-517; *TPS*, 25 [1980], pp. 289-296; *Origins*, 10 [1980-1981], pp. 154-157; and <<http://www.nccbuscc.org/prolife/tdocs/euthanasia.htm>> [17 August 2000]).

———, *Declaration on Procured Abortion*, 28 November 1974, in *AAS*, 66 (1974), pp. 730-747 (English-language version in *Origins*, 4 (1974-1975), pp. 385, 387-392).

———, Observations on the Position of Father Charles Curran, April 1983, in *Origins*, 15 (1985-1986), pp. 670-672.

Corpus iuris canonici, ed. Lipsiensis secunda post A. L. Richteri curas ad librorum manu scriptorum et editionis Romanae fidem recognovit et adnotatione critica instruxit A. Friedberg, pars secunda, *Decretalium collectiones*, Leipzig, B. Tauchnitz, 1881, editio anastatice repetita, Leipzig, 1928.

FLANNERY, A. (ed.), vol.1: *Vatican Council II: The Conciliar and Post Conciliar Documents*, new revised edition, Dublin, Dominican Publications, 1992; vol. 2: *Vatican Council II: More Post Conciliar Documents*, Northport, NY, Costello Publishing Co., 1982.

HOLY SEE, (THE), "To all who work for the disabled," *From the very beginning*, 4 March 1981, in *Enchiridion Vaticanum* 7, pp. 1040-1067 (on facing pages with the

Italian-language version; both versions have identical column nn. 1138-1170); and *Origins*, 10 (1980-1981), pp. 747-750.

JOHN PAUL II, *Ad limina* Address to Bishops from the Western United States, 2 October 1998, in *Origins*, 28 (1998-1999), pp. 314-316; <<http://www.cwnews.com/news/viewrec.cfm?RefNum=8567>> (26 November 2000).

———, Address to Two Groups of Scientists, 21 October 1985, in *AAS*, 78 (1986), pp. 313-316; *Discourses of the Popes from Pius XI to John Paul II to the Pontifical Academy of Sciences: 1936-1986*, Pontificiae Academiae Scientiarum Scripta Varia 66, Vatican City, Pontifical Academy of Sciences, 1986, pp. 183-186; *Origins*, 15 (1985-1986), pp. 415-417; *Health Progress*, vol. 66 n. 10 (1985), pp. 31, 72 (excerpt).

———, Encyclical Letter *Evangelium vitae*, 25 March 1995, in *AAS*, 87 (1995), pp. 401-522 (English-language version JOHN PAUL II, *The Gospel of Life*, Sherbrooke, Médiaspaul, Magisterium Series 28, 1995; <<http://www.nccbuscc.org/prolife/tdocs/evangel/evangeli.htm>> (17 August 2000).

———, Encyclical Letter *Veritatis splendor*, 6 August 1993, in *AAS*, 85 (1993), pp. 1133-1228 (English-language version [Vatican translation], JOHN PAUL II, *Veritatis splendor*, Vatican City, Libreria Editrice Vaticana, 1993; *The Splendor of Truth*, Sherbrooke, Éditions Paulines, Magisterium Series 18, 1993; *Origins*, 23 [1993-1994], pp. 297-334).

———, Motu proprio *Apostolos suos*, 21 May 1998, in *AAS*, 90 (1998), pp. 641-658 (English-language version in *Origins*, 28 [1998-1999], pp. 152-158).

KOTHEN, R., *Directives récentes de l'Église concernant l'exercice de la médecine*, Louvain, E. Warny, 1952.

———, *L'Église et les problèmes médicaux modernes, édition canadienne des Directives récentes de l'Église concernant l'exercice de la médecine*, Québec, Éditions du Renouveau, 1954.

LEO XIII, Encyclical Letter *Rerum novarum*, 15 May 1891, in *Acta Leonis XIII Pontificis Maximi*, vol. XI, Rome, Ex Typographia Vaticana, 1892, pp. 97-144.

MILLER, J.M. (ed. and introductions), *The Encyclicals of John Paul II*, Huntington, IL, Our Sunday Visitor Publishing Division, 1996.

MONKS OF SOLESMES (THE) (eds.), *L'euthanasie*, Collection ce que dit le pape n. 11, Paris, Sarmet/Fayard, 1990.

———, *The Human Body*, "Papal Teachings" Series, Boston, St. Paul Editions, 1960.

PIUS XII, *Pie XII: discorsi ai medici*, F. ANGELINI (ed.), 3rd ed., Roma, Edizione "Orizzonte Medico," 1959.

PIUS XII, *Pio XII y los médicos*, P. SANTIAGO NAVARRO (ed.), 2nd ed., Madrid, Editorial Cocusa, 1964.

PONTIFICAL ACADEMY FOR LIFE, "Il rispetto della dignità del morente: Considerazioni etiche sull'eutanasia," 9 December 2000, <http://www.vatican.va/roman_curia/pontifical_academies/acdlife/documents/rc_pa_acdlife_doc_20001209_eutanasia_it.html> (15 December 2000).

PONTIFICIA ACCADEMIA PER LA VITA, *Commento interdisciplinare alla «Evangelium vitae»*, R. Lucas Lucas direzione e coordinamento, Edizione Italiana a cura di E. Sgreccia e R. Lucas Lucas, Città del Vaticano, Libreria editrice Vaticana, 1997.

PONTIFICAL ACADEMY OF SCIENCES, "Vita artificiale e trapianti," *Su invito*, 21 October 1985, in *Enchiridion Vaticanum* 9, pp. 1726-1727, nn. 1766-1769 (English-language translation in *Origins*, 15 [1985-1986], p. 415; *Health Progress*, vol. 66, n. 10 [1985], p. 31; O'ROURKE and BOYLE, *Sources of Catholic Teachings*, 2nd ed., p. 155).

PONTIFICAL COUNCIL COR UNUM, *Quelques questions d'éthique relatives aux grands malades et aux mourants, Dans le cadre*, 27 June 1981, in *Enchiridion Vaticanum* 7, pp. 1132-1173, nn. 1234-1281 (the Italian-language version is reproduced on facing pages and with identical column nn.). English-language version, *Question of Ethics Regarding the Fatally Ill and the Dying*, in R.E. SMITH (ed.), *Conserving Human Life*, Braintree, MA, Pope John XXIII Medical-Moral Research and Education Center, 1989, Appendix II, pp. 286-304. Excerpt in *La Civiltà cattolica*, 3280 (2 February 1987), p. 324, and O'ROURKE and BOYLE, *Sources of Catholic Teachings*, 3rd ed., p. 220.

PONTIFICAL COUNCIL FOR PASTORAL ASSISTANCE TO HEALTH CARE WORKERS, *Charter for Health Care Workers*, Vatican City, Vatican Press, 1995; Boston, Pauline Books and Media, 1995.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, "Responsiones ad proposita dubia," II (canon 1398), 19 January 1988, in *AAS*, 80 (1988), p. 1818.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI INTERPRETANDO, *Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Romae, Libreria editrice Vaticana, 1989.

RATZINGER, J., Letter to Father Charles Curran, delivered 18 August 1986, in *Origins*, 16 (1986-1987), pp. 201-203.

SACRA CONGREGATIO SANCTI OFFICII, Decretum *Cum ex expresso*, 21 July 1934, in *AAS*, 26 (1934), p. 550; *Apollinaris*, 8 (1935), pp. 29-30 (including commentary by F. Roberti, pp. 30-31); and *Periodica* 23 (1934), pp. 131-132 (including brief anonymous commentary).

SECOND VATICAN COUNCIL, "Pastoral Constitution on the Church in the Modern World," *Gaudium et spes*, 7 December 1965, in *AAS*, 58 (1966), pp. 1025-1115 (English-language translation in N.P. TANNER [ed.], *Decrees of the Ecumenical Councils*, original text established by G. ALBERIGO et al. in consultation with H. JEDIN, vol. 2, Trent to Vatican II, London, Sheed and Ward; Washington, Georgetown University Press, 1990, pp. 1069-1135).

TANNER, N.P. (ed.), *Decrees of the Ecumenical Councils*, original text established by G. ALBERIGO et al. in consultation with H. JEDIN, 2 vols., London, Sheed and Ward; Washington, Georgetown University Press, 1990.

VISSER, J., "Pronunziamento ufficiale della S. Sede sull'eutanasia," in *Medicina e morale*, 31 (1981), pp. 358-372.

Magisterial Texts of Bishops and Conferences of Bishops

Australia

AUSTRALIAN CATHOLIC BISHOPS CONFERENCE, *Euthanasia: A Pastoral Letter*, 14 May 1995, in *Medicina e morale*, 48 (1996), pp. 992-993, <http://www.catholic.org.au/statements/me_euth.htm> (16/12/2000).

———, *Submission to: The Select Committee on Euthanasia of the Northern Territory Legislative Assembly*, 26 April 1995, in *Medicina e morale*, 48 (1996), pp. 971-992, <<http://www.catholic.org.au/pdf/nteuth.pdf>> (16/12/2000).

CHURCH LEADERS IN VICTORIA, *Euthanasia: A Joint Statement*, 17 July 1995, <<http://www.melb.catholic.aust.com/topics/euthana2.html>> (29 October 2000). (This statement was signed by the bishops of the four Victorian dioceses.)

HICKEY, B. (Archbishop), Comments on Artificial Feeding, [undated], taken from A. FISHER, "Should We Starve the Unconscious?" in *The Australasian Catholic Record*, 74 (1997), p. 325.

LITTLE, F. (Archbishop), Comments on Artificial Feeding, [undated], taken from A. FISHER, "Should We Starve the Unconscious?" in *The Australasian Catholic Record*, 74 (1997), p. 329.

British Isles

BUDD, C. (Bishop), Statement in the Tony Bland Case, 24 November 1992, in *Briefing*, vol. 22, n. 23 (1992), p. 18. (Bishop Budd was writing as chairman of the

Department of Christian Responsibility and Citizenship of the Catholic Bishops' Conference of England and Wales.)

CHURCH OF ENGLAND HOUSE OF BISHOPS, (THE), Statement on Euthanasia, 28 October 1992, in *Briefing*, vol. 22, n. 24 (1992), p. 11. (The Catholic Bishops' Conference of England and Wales adopted this statement at its November 1992 meeting.)

CHURCH OF ENGLAND HOUSE OF BISHOPS, (THE), THE CATHOLIC BISHOPS' CONFERENCE OF ENGLAND AND WALES, AND THE LEADERS OF THE FREE CHURCHES IN ENGLAND, Joint Submission to the House of Lords Select Committee on Medical Ethics, 8 July 1993, in *Briefing*, vol. 23, n. 14 (1993), pp. 2-3; *Doctrine and Life*, 43 (1993), pp. 493-495 (French-language translation in *La Documentation Catholique*, 90 (1993), pp. 779-781).

CONTI, M. (Bishop), Statement Following Tony Bland's Death, 24 April 1993, in *Briefing*, vol. 23, n. 10 (1993), p. 18.

HUME, B. (Cardinal), Letter to the *Times of London*, 27 November 1997, in *Catholic International*, 9 (1998), pp. 184-185.

———, Letter to the *Times of London*, 27 November 1997, <<http://www.tasc.ac.uk/cc/briefing/9712/9712011.htm>> (9 November 2000).

———, Statement Concerning House of Lords Judgement in the Bland Case, 8 February 1993, in *Briefing*, vol. 23, n. 4, (1993), p. 18.

HUME, B. (Cardinal), T. WINNING (Cardinal) and S. BRADY (Archbishop), letter to the *Daily Telegraph*, 1 April 1988, in *Briefing*, vol. 28, n. 4 (1998), p. 44. (The authors wrote as representatives of their respective bishops' conferences, England and Wales, Scotland, and Ireland.)

IRISH BISHOPS' CONFERENCE, *Human Life is Sacred: Pastoral Letter of the Archbishops and Bishops of Ireland to the Clergy, Religious and Faithful*, Boston, St. Paul Editions, 1977.

JOINT COMMITTEE ON BIO-ETHICAL ISSUES OF THE CATHOLIC BISHOPS OF ENGLAND, IRELAND, SCOTLAND AND WALES, Statement in Response to the Law Lords' Judgement in the Case of Airedale NHS Hospital Trust v Bland, 12 August 1993, in *Briefing*, vol. 23, n. 15 (1993), p. 7; *Doctrine and Life*, 43 (1993), pp. 492-495.

KONSTANT, D. (Bishop), Message to Priests of the Leeds Diocese After Tony Bland's Death, 26 February 1993, in *Briefing*, vol. 23, n. 5 (1993), p. 18.

———, Statements Concerning House of Lords Judgement in the Bland Case, 8 February 1993, in *Briefing*, vol. 23, n. 4 (1993), p. 18.

MURPHY-O'CONNOR, C. (Archbishop), Submission to the Court of Appeal, 14 September 2000, <<http://www.westminsterdiocese.org.uk/arch/>> (8 November 2000).

SMITH P. (Bishop), "Response to the Medical Treatment (Prevention of Euthanasia) Bill," 21 January 2000, in *Briefing*, vol. 30, n. 2 (2000), pp. 3-5; <<http://www.tasc.ac.uk/cc/briefing/0002/0002001.htm>> (9 November 2000). (Bishop Smith was writing as chairman of the Department of Christian Responsibility and Citizenship of the Catholic Bishops' Conference of England and Wales.)

Canada

BLANCHET, B. (Archbishop), M. GERVAIS (Archbishop) and R. MERCIER (Rev.), Oral Testimony before the Canadian Senate's Committee on Assisted Suicide and Euthanasia, 26 October 1994, in *Origins*, 24 (1994-1995), pp. 393-396.

CANADIAN CATHOLIC CONFERENCE, *The Medico-Moral Guide*, 9 April 1970, in *Origins*, 1 (1971-1972), pp. 427-428.

———, Position Paper on Euthanasia, "To Live and Die in a Compassionate Community," 26 October 1994, in *L'Osservatore Romano*, Weekly English Edition n. 1378 (15 February 1995), pp. 6-8 (Italian-language translation in *Lettere pastorali* [1994-1995], pp. 988-1000).

GERVAIS, M. (Archbishop), Statement on Euthanasia, 13 January 1993, in *Origins*, 22, (1992-1993), pp. 573, 575 (French-language translation in *La Documentation Catholique*, 90 [1993], pp. 179-180; Italian-language translation in *Lettere pastorali* [1992-1993], pp. 260-262).

Colombia

COLOMBIAN BISHOPS' CONFERENCE, "Pro-life Decalogue," in *Catholic International*, 8 (1997), p. 349.

Europe

BRAND, C.A. (Archbishop), Déclaration de la commission des évêchés de la Communauté européenne (COMECE), 6 June 1991, in *La documentation catholique*, 88 (1991), pp. 794-795 (English translation in *Catholic International*, 2 [1991], p. 908).

MARTINI, C.M. (Archbishop), "Le service de l'Église auprès des mourants," Report of the 7th Symposium of European bishops, 17 October 1979, in *La documentation catholique*, *Hors serie*, *Questions actuelles: L'accompagnement des mourants*, May 1996, pp. 19-22.

catholique, Hors serie, Questions actuelles: L'accompagnement des mourants, May 1996, pp. 19-22.

France

CONSEIL PERMANENT DE L'ÉPISCOPAT FRANÇAIS, Statement on Euthanasia, 16 June 1976, in P. VERSPIEREN (ed.), *Biologie, médecine et éthique: textes du magistère catholique réunis et présentés par Patrick Verspieren*, Paris, Le Centurion, 1987, pp. 388-395.

Germany

GERMAN BISHOPS' Conference and the GERMAN COUNCIL OF EVANGELICAL CHURCHES, Déclaration commune du Conseil des Églises Évangéliques et de la Conférence épiscopale d'Allemagne, pour la Semaine pour la Vie, March 1996, in *La documentation catholique*, 93 (1996), pp. 492-497 (French-language translation of German-language original).

GERMAN BISHOPS' CONFERENCE, *Declaration on Euthanasia* "La vie de l'homme et l'euthanasie," 15 June 1975, in P. VERSPIEREN (ed.), *Biologie, médecine et éthique: textes du magistère catholique réunis et présentés par Patrick Verspieren*, Paris, Le Centurion, 1987, pp. 379-385.

———, Pastoral statement "Mort digne de l'homme et mort chrétienne," 20 November 1978, in *La documentation catholique, Hors serie, Questions actuelles: L'accompagnement des mourants*, May 1996, pp. 28-33.

Korea

CONFERENCE OF KOREAN CATHOLIC BISHOPS, Pastoral Letter, "A New Culture of Respect for Human Life," 8 December 1991, in *Catholic International*, 3 (1992), pp. 331-333.

New Zealand

NEW ZEALAND CATHOLIC BISHOPS' CONFERENCE, *Pastoral Letter to the Catholic People of New Zealand on Euthanasia*, 29 August 1995, <<http://www.catholic.org/newzealand/cathcom/bishops/frbishops.html>> (4 September 2000).

NEW ZEALAND CATHOLIC BISHOPS' CONFERENCE, *A Consistent Ethic of Life- Te Kahu-O-Te-Oral*, 18 April 1997, <<http://www.catholic.org/newzealand/cathcom/bishops/frbishops.html>> (4 September 2000).

United States of America

BERNARDIN, J. (Archbishop), Address on Euthanasia to the University of Chicago Center for Clinical Medical Ethics, 26 May 1988, in *Origins*, 18 (1988-1989), pp. 52-57.

———, Address to Catholic Hospital Administrative Personnel "The Consistent Ethic of Life," May 1986, in *Health Progress*, vol. 67, n. 6 (1986), pp. 48-51.

———, Address to Diocesan Pro-Life Directors "Voters and the Consistent Ethic," 8 August 1988, in *Origins*, 18 (1988-1989), pp. 185-189.

———, Letter to the *Chicago Catholic*, 18 April 1988, reported in R.L. BARRY, *Medical Ethics: Essays on Abortion and Euthanasia*, Theology and Religion, Series VII, vol. 45, New York, Peter Lang, 1989, p. 180.

BORDERS, W. (Archbishop), Letter to Maryland Attorney General's Office, 1988, reported in *Origins*, 18 (1988-1989), p. 230. (Archbishop Borders was writing on behalf of the bishops of Maryland, Delaware and Washington.)

BULLOCK, W. (Bishop), Pastoral Statement on the Provision of Nutrition and Fluids to Dying or Comatose Patients, 16 January 1992, in *Origins*, 21 (1991-1992), pp. 553-555.

CALIFORNIA BISHOPS, Statement on Proposed "Humane and Dignified Death Act," 22 April 1988, in *Origins*, 17 (1987-1988), pp. 819-820.

CASEY, L. (Bishop), Statement in the Karen Quinlan Case, 1 November 1975, in *Origins*, 5 (1975-1976), pp. 337, 339-342 (French-language translation in P. VERSPIEREN [ed.], *Biologie, médecine et éthique: Textes du Magistère catholique*, Les dossiers de la Documentation catholique 2, Paris, Le Centurion, 1987, pp. 386-388).

CONNECTICUT BISHOPS, Euthanasia Brochure, 1976, reported in *Origins*, 6 (1976-1977), p. 310.

FIORENZA, J. (Bishop), Interview in *The Texas Catholic Herald*, reported in *Catholic International*, 3 (1992), p. 628.

FLORIDA BISHOPS, Pastoral Letter "Life, Death and the Treatment of Dying Patients," 27 April 1989, in *Origins*, 19 (1989-1990), pp. 47-48.

GELINEAU, L. (Bishop), Statement After Judge's Decision on Medical Case, 17 October 1988, in *Origins*, 18 (1988-1989), p. 340.

- GELINEAU, L. (Bishop), Statement on Removing Nutrition and Water from a Comatose Woman, 10 January 1988, in *Origins*, 17 (1987-1988), pp. 545, 547; *Catholic International*, 3 (1992), p. 622.
- GRACIDA, R. (Bishop), Interview in the *South Texas Catholic*, 22 April 1992, reported in *Catholic International*, 3 (1992), p. 624.
- GREGORY, W. (Bishop), Pastoral Statement on Euthanasia and Physician-Assisted Suicide, 7 October 1996, in *Origins*, 26 (1996-1997), pp. 305-307.
- HANNAN, P. (Archbishop), Statement on the Removal of Food and Water, 16 March 1986, reported in R.L. BARRY, *Medical Ethics: Essays on Abortion and Euthanasia*, Theology and Religion, Series VII, vol. 45, New York, Peter Lang, 1989, pp. 180-181.
- HARRINGTON, T. (Bishop), Statement Against Massachusetts Living Will Legislation, 1980, in J.G. MELTON (ed.), *The Churches Speak on: Euthanasia: Official Statements from Religious Bodies and Ecumenical Organizations*, Detroit, Gale Research Inc., 1991, pp. 6-8. (Bishop Harrington was speaking for the Bishops of Massachusetts.)
- ILLINOIS BISHOPS, Pastoral Letter "Facing the End of Life," 29 May 2001, in *Origins*, 31 (2001-2002), pp. 105, 107-109.
- LAW, B. (Archbishop), "Contemporary Medical Issues - Discussed from a Catholic Moral and Ethical Perspective," in *Linacre Quarterly*, vol. 59, n. 1 (1992) pp. 64-69.
- , Testimony Before Congress Against Physician-Assisted Suicide, 7 March 1997, in *Catholic International*, 8 (1997), pp. 237-240.
- LEIBRECHT, J. (Bishop), Commentary on the Nancy Cruzan Case, 15 December 1989, in *Origins*, 19 (1989-1990), pp. 525, 526; *Catholic International*, 3 (1992), p. 621.
- MAHONY, R. (Archbishop), Statements on the Bouvia Case (undated), in *Linacre Quarterly*, vol. 55, n. 1 (1988), pp. 84-87.
- MAIDA, A. (Archbishop), Address to Michigan Commission on Death and Dying, 1 September 1993, in *Origins*, 23 (1993-1994), p. 280.
- MAIDA, A. (Archbishop), Lenten Pastoral Letter "The Lord and Giver of Life," 1992, in *Catholic International*, 3 (1992), pp. 685-688.
- MARINO, E. (Archbishop), Friend-of-the-Court Brief in the McAfee Case, 1 September 1989, in *Origins*, 19 (1989-1990), pp. 273, 275-279; reprinted in J.G. MELTON (ed.), *The Churches Speak on: Euthanasia: Official Statements from Religious Bodies and Ecumenical Organizations*, Detroit, Gale Research Inc., 1991, pp. 34-41; and J.J. WALTER and J.J. SHANNON (eds.), *Quality of Life: the New Medical Dilemma*, New York, Paulist Press, 1990, pp. 349-357.

- MCGANN, J. (Bishop), Pastoral Letter "Comfort My People," 19 February 1997, in *Origins*, 26 (1996-1997), pp. 640-648.
- MCHUGH, J. (Bishop), Comments after Nancy Cruzan's Death, 4 January 1991, in *Origins*, 20 (1990-1991), pp. 518-519.
- , Paper "Principles in Regard to Withholding or Withdrawing Artificially Assisted Nutrition/Hydration," 21 September 1989, in *Origins*, 19 (1989-1990), pp. 314-316; *The Priest*, vol. 46, n. 1 (1990), pp. 32-34.
- MICHIGAN BISHOPS, Pastoral Letter "Living and Dying According to the Voice of Faith," 14 September 1997, in *Origins*, 27 (1997-1998), pp. 317, 319-322; <<http://www.micatholicconference.org/living.htm>> (17 August 2000).
- , Pastoral Letter "Proposal B: Physician Assisted Suicide," in *Focus*, vol. 26, n. 3 (September 1998, complete issue); <<http://www.micatholicconference.org/pdf/foc9809.pdf>> (17 August 2000).
- , Statement on Physician Assisted Suicide and Euthanasia, 19 April 1993, in *Origins*, 23 (1993-1994), pp. 63-64.
- MISSOURI BISHOPS, Statement on Ending Nancy Cruzan's Nutrition and Hydration, 20 December 1990, in *Origins*, 20 (1990-1991), pp. 493, 495.
- MURPHY, T. (Archbishop), Address to a Detroit Archdiocesan Euthanasia Conference, 20 September 1994, in *Origins*, 24 (1994-1995), pp. 389-392.
- , Address to Nine Convocations in Washington State, September 1991, in *Origins*, 21 (1991-1992), pp. 297, 299-302. Archbishop Murphy was speaking on behalf of the bishops of the Washington State Catholic Conference.
- MYERS, J. (Bishop), Instruction for Healthcare Administrators, 14 September 1991, in *Linacre Quarterly*, vol. 59, n. 1 (1992), pp. 37-48.
- NCCB ADMINISTRATIVE COMMITTEE, Statement on Euthanasia, 12 September 1991, in *Origins*, 21 (1991-1992), pp. 257-258; *Catholic International*, 2 (1991), p. 917; <<http://www.nccbuscc.org/prolife/issues/euthanas/euthnccb.htm>> (17 August 2000).
- NCCB COMMITTEE FOR PRO-LIFE ACTIVITIES and the AMERICAN JEWISH CONGRESS, Joint Statement on the Treatment of Handicapped Newborns, 26 July 1985, in *Origins*, 15 (1985-1986), p. 192.
- NCCB COMMITTEE FOR PRO-LIFE ACTIVITIES, "Nutrition and Hydration: Moral and Pastoral Reflections," 2 April 1992, in *Origins*, 21 (1991-1992), pp. 705-712; *Linacre Quarterly*, vol. 59, n. 4 (1992), pp. 33-49; and *Catholic International*, 3 (1992), pp. 620-632; <<http://www.nccbuscc.org/prolife/issues/euthanas/>>

nutindex.htm> (17 August 2000) (Italian-language translation in *Lettere pastorali*, 1992-1993, pp. 300-312).

NCCB COMMITTEE FOR PRO-LIFE ACTIVITIES, Guidelines for Legislation of Life-Sustaining Treatment, 10 November 1984, in *Origins*, 14 (1984-1985), pp. 526-528; *Linacre Quarterly*, vol. 52, n. 3 (1985), pp. 205-209; and J.G. MELTON (ed.), *The Churches Speak on: Euthanasia: Official Statements from Religious Bodies and Ecumenical Organizations*, Detroit, Gale Research Inc., 1991, pp. 14-18.

NCCB COMMITTEE FOR PRO-LIFE ACTIVITIES, Letter to Members of Congress on the Born-Again Infants Protection Act, 25 July 2000, <<http://www.nccbuscc.org/prolife/issues/abortion/bornalive.htm>> (29 October 2000).

———, Statement on the “Uniform Rights of the Terminally Ill Act,” 2 July 1986, in *Origins*, 16 (1986-1987), pp. 222-224.

NCCB COMMITTEE FOR PRO-LIFE ACTIVITIES/ E. BRYCE, Statement on the ‘Baby Doe’ Case, 16 August 1983, in *Origins*, 13 (1983-1984), pp. 313-316.

NCCB COMMITTEE FOR PRO-LIFE ACTIVITIES/ E. BRYCE, Statement on the Medical Care of Handicapped Infants, 18 April 1983, in *Origins*, 12 (1982-1983), pp. 769-770.

NCCB COMMITTEE FOR PRO-LIFE ACTIVITIES/J. MCHUGH, “Death and Dying: Legislative Trends,” 1976, in *Origins*, 6 (1976-1977), pp. 411-412.

NCCB DOCTRINE COMMITTEE, Statement of Moral Principles Concerning Infants with Anencephaly, 20 September 1996, in *Origins* 26 (1996-1997), p. 276; and *Medicine e morale*, 49 (1997), pp. 984-985.

NCCB, *Ethical and Religious Directives for Catholic Health Care Services*, 17 November 1994, in *Origins*, 24 (1994-1995), pp. 449, 451-462.

———, *Ethical and Religious Directives for Catholic Health Facilities*, 16 November 1971, in *Origins*, 1 (1971-1972), pp. 408, 410-413; <<http://www.usc.edu/hsc/info/newman/resources/chc/titlepage.html>> (30 August 2000).

———, “Faithful for Life: A Moral Reflection,” September 1995, in *Origins*, 25 (1995-1996), pp. 116-120; <<http://www.nccbuscc.org/prolife/tdocs/faithful.htm>> (17 August 2000).

———, “Medical Care of Handicapped Infants,” 18 April 1983, in *Origins*, 12 (1982-1983), pp. 769-770.

———, “Pastoral Plan for Pro-Life Activities: A Reaffirmation,” 15 November 1985, in *Origins*, 15 (1985-1986), pp. 401-406.

———, “The Law and the Protection of Handicapped Infants,” 7 April 1983, in *Origins*, 12 (1982-1983), pp. 770-772.

- NCCB, "The Pastoral Letter on Moral Values," 11 November 1976, in *Origins*, 6 (1976-1977), pp. 357, 359-370.
- , "USCC Brief in Nancy Cruzan Case," 16 October 1989, in *Origins*, 19 (1989-1990), pp. 345-351.
- , Pastoral Letter on Health and Health Care, 19 November 1981, in *Origins*, 11 (1981-1982), pp. 396-402.
- , Pastoral Statement on the Handicapped, 16 November 1978, in *Origins*, 8 (1978-1979), pp. 372-377.
- , Testimony in Support of the Pain Relief Promotion Act, 25 April 2000, <<http://www.nccbuscc.org/prolife/issues/euthanas/test42500.htm>> (17 August 2000).
- NEVINS, J.J. (Bishop), Pastoral Letter on Euthanasia "Mercy or Murder," 31 March 1994, in *Catholic International*, 5 (1994), pp. 276-281.
- NEW JERSEY CATHOLIC CONFERENCE, Friend-of-the-Court Brief in the Nancy Jobes Case, 3 November 1986, in *Origins*, 16 (1986-1987), pp. 582-584; reprinted in J.J. WALTER and J.J. SHANNON (eds.), *Quality of Life: the New Medical Dilemma*, New York, Paulist Press, 1990, pp. 343-348.
- NEW YORK STATE CATHOLIC CONFERENCE, Testimony on Surrogate Decision Making, 13 January 1993, in *Origins*, 22 (1992-1993), pp. 576-579.
- O'CONNOR, J. (Archbishop), Statement on withholding nutrition, 9 April 1986, reported in R.L. BARRY, *Medical Ethics: Essays on Abortion and Euthanasia*, Theology and Religion, Series VII, vol. 45, New York, Peter Lang, 1989, p. 181.
- OFFICIAL UNITED STATES METHODIST-ROMAN CATHOLIC DIALOGUE, Agreed Statement "Holy Living and Holy Dying," August 1989, in *Origins*, 19 (1989-1990), pp. 241, 243-248.
- OHIO BISHOPS, Pastoral Letter "Hopes and Fears: Pastoral Reflections on Death," 12 October 1993, in *Origins*, 23 (1993-1994), pp. 373-378.
- OREGON AND WASHINGTON BISHOPS, Pastoral Letter "Living and Dying Well," 10 October 1991, in *Origins*, 21 (1991-1992), pp. 345, 347-352.
- OREGON BISHOPS, Letter on Proposed Euthanasia Bill, 9 February 1973, in *Origins*, 2 (1972-1973), p. 573.
- PENNSYLVANIA BISHOPS, Pastoral Statement "Nutrition and Hydration: Moral Considerations," 14 January 1992, in *Origins*, 21 (1991-1992), pp. 541, 543-553; and *Linacre Quarterly*, vol. 59, n. 3 (1992), pp. 8-29 (Italian-language translation in *Lettere pastorali*, 1992-1993, cols. 317-334).

- RIGALI, J. (Archbishop), Statement of Principles for Health Care Decisions Concerning Assisted Nutrition and Hydration and Related Issues, 29 June 2000, <<http://www.wf-f.org/RigaliANH.6-29-00.html>> (29 August 2000).
- SHEEHAN, M. (Archbishop), Article in Archdiocesan Newspaper *The People of God* "Violations Against the Dignity of Human Life – Doctor Assisted Suicide," May 1996, <<http://www.archdiocesasantafe.org/messages/pog0596.htm>> (12 August 2000).
- STAFFORD, F. (Archbishop), Speech to Archdiocese of Denver Council of Women, 3 June 1991, in *Origins*, 21 (1991-1992), pp. 108-111.
- SULLIVAN, W. (Bishop), Pastoral Letter on Proposed Death with Dignity Legislation, 12 December 1975, in *Origins*, 5 (1975-1976), pp. 421, 423-427.
- TEXAS BISHOPS, "Interim Pastoral Statement on Artificial Nutrition and Hydration," 7 May 1990, in *Origins*, 20 (1990-1991), pp. 53-55.
- UNTERKOEFLER, E. (Bishop), Statement on South Carolina Living Will and Definition of Death Bills, 13 January 1978, in *Origins*, 7 (1977-1978), pp. 543-544.
- USCCB, *Ethical and Religious Directives for Catholic Health Care Services*, 4th ed., July 2001, USCCB, 2001; *Origins*, 31 (2001-2002), pp. 153, 155-163
- WHEALON, J.F. (Archbishop), "Medical Directives: Another View," in *Origins*, 1 (1971-1972), pp. 409, 413-414.
- Catholic Associations, Organizations and Institutions
- CATHOLIC HEALTH ASSOCIATION OF CANADA, *Health Care Ethics Guide*, Ottawa, Catholic Health Association of Canada, 1991.
- , *Health Ethics Guide*, Ottawa, Catholic Health Association of Canada, 2000.
- , *The Medico-Moral Guide*, 9 April 1970, in *Origins*, 1 (1971-1972), pp. 427-428.
- CATHOLIC HEALTH AUSTRALIA, *Code of Ethical Standards for Catholic Health and Aged Care Services in Australia*, Catholic Health Australia Inc., Red Hill, ACT, 2001.
- CATHOLIC UNION and the GUILD OF CATHOLIC DOCTORS, "Report to the House of Lords Select Committee on Medical Ethics," (undated), in *Briefing*, vol. 23, n. 12 (1993), pp. 6-8.
- CATHOLIC UNION, Statement on the Tony Bland Case, 17 February 1993, in *Briefing*, vol. 23, n. 5 (1993), p. 16.

PLUNKETT CENTRE FOR ETHICS IN HEALTH CARE, "Plunkett Centre's Submission to NSW Health Department's Review of 'Dying with Dignity' Guidelines," in *Bioethics Outlook*, vol. 12, n. 1 (2001), pp. 1-8.

ST. VINCENT'S HOSPITAL SYDNEY, *Ethical Guidelines for Withholding or Withdrawing Life-Sustaining Treatment: with special reference to the provision of nutrition and hydration*, 19 October 1998, Plunkett Centre for Ethics in Health Care, Sydney; *Bioethics Outlook*, vol. 9, n. 4 (1998), pp. 3-6.

Authors

AA., ("Rev. Dr. E.," "somewhere in North America"), definitive sentence in a first instance penal case, 20 May 1998, reported in *Studia canonica*, 33 (1999), pp. 213-232.

AA.VV., "De las sanciones en la Iglesia," in A. MARZOA, J. MIRAS y R. RODRIGUEZ-OCAÑA (eds.), *Comentario exegético de derecho canónico*, 2nd ed., Pamplona, Ediciones Universidad de Navarra, 1997, vol. IV/I, pp. 221-594.

———, art. "Homicidio," in *Enciclopedia universal ilustrada Europea-Americana*, vol. 28, n. 1, Madrid, Espasa-Calpe, 1966.

———, art. "Homicidio," in *Gran Enciclopedia Rialp*, vol. 12, Madrid, Ediciones Rialp, 1979, pp. 130-133.

———, *Eutanasia: Atti del XII congresso nazionale dei teologi moralisti italiani Firenze, 1-4 Aprile 1986*, Collana Etica Teologica Oggi, n. 9, Edizioni Dehoniane, Bologna, 1987.

ABBO, J.A. and J.D. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, vol. 2 (Canons 870-2414), rev. ed., St. Louis, MO, Herder, 1957.

ABEL, F., art. "Accanimento terapeutico," in *Dizionario di bioetica*, pp. 3-6.

ADDIS, W.E. and T. ARNOLD, *A Catholic Dictionary*, 17th ed., rev. by T.B. Scannell, P.E. Hallett and G. Albion and the members of the staff of St. John's Seminary, Womersley, London, Routledge & Kegan Paul Limited, 1960.

———, "Homicide," in *A Catholic Dictionary*, p. 412.

ALBERICUS DE ROSATE, *Dictionarium iuris tam civilis, quam canonici*, Venice, apud Guerros Fratres, 1573, reprinted Torino, Bottega d'Erasmus, 1971.

ALESANDRO, J.A., "The Revision of the Code of Canon Law: A Background Study," in *Studia canonica*, 24 (1990), pp. 91-146.

- ALLSOPP, M.E. and J.J. O'KEEFE (eds.), *Veritatis splendor: American Responses*, Kansas City, MO, Sheed and Ward, 1995.
- ALLSOPP, M.E., "Early Management and Decision-Making for the Treatment of Myelomeningocele at the University of Oklahoma Health Sciences Center: Observations Clinical and Ethical," in *Linacre Quarterly*, vol. 53, n. 1 (1986), pp. 56-65.
- , "On Playing God: The Theological Center of Daniel Maguire's *Death by Choice*," in *Linacre Quarterly*, 52, (1985), pp. 343-348.
- ANDRÉ (D'AVALLON), M., art. "Homicide," in *Dictionnaire de droit canonique* (1888-1890), vol. 2, pp. 297-299.
- , *Dictionnaire de droit canonique*, entièrement revu, corrigé, augmenté et actualisé par P. CONDIS, 3 vols., Paris, Hippolyte Walzer, 1888-1890.
- ANDREAE, J., *In quintum Decretalium librum novella commentaria: Novella in Decretales Gregorii IX*, vol. 5, Venice, apud F. Franciscium, Senensam, 1581, reprinted Turin, Bottega D'Erasmus, 1963.
- ASHLEY, B.M., "Does 'The Splendor of Truth' Shine on Bioethics?" in *Ethics & Medics*, vol. 19, n. 1 (1994), pp. 3-4.
- , "Euthanasia and Over-treatment," in E. SGRECCIA, A.G. SPAGNOLO and M.L. DI PIETRO (eds.), *L'assistenza al morente: Aspetti socio-culturali, medico-assistenziali e pastorali* (alternative title: *Care for the Dying Person: Socio-cultural, medical and pastoral aspects*), Atti del Congresso Internazionale Roma, 15-18 marzo 1992, Milan, Vita e Pensiero, 1994, pp. 343-359.
- ASHLEY, B.M. and K.D. O'ROURKE, *Healthcare Ethics, A Theological Analysis*, 3rd ed., St. Louis, MO, The Catholic Health Association of the United States, 1989, pp. 184-188.
- ASHLEY, B.M., art. "Life, Prolongation of," in *NCE*, vol. 17, pp. 351-352.
- ATKINSON, G.M., "Theological History of Catholic Teaching on Prolonging Life," in D.G. MCCARTHY and A.S. MORACZEWSKI (eds.), *Moral Responsibility in Prolonging Life Decisions*, St. Louis, MO, Pope John Center, 1981, pp. 95-115.
- ATTARD, M.V., art. "Accompagnamento alla morte," in *Dizionario di bioetica*, pp. 9-13.
- AUGUSTINE, P.C., *A Commentary on the New Code of Canon Law*, 8 vols., St. Louis and London, Herder, 1925-1936.
- AUSILI, P.J., "Withdrawing Artificial Nutrition and Hydration From Terminally Ill and Permanently Unconscious Patients: Some Recent Case Law and Contemporary Catholic Theology," in *The Catholic Lawyer*, vol. 32, n. 1 (1988), pp. 55-88.

- AYRINHAC, H.A., *Penal Legislation in the New Code of Canon Law*, rev. by P.J. LYDON, New York, Benziger, 1936.
- BALDANZA, J., "De iure canonico poenali secundum hodiernam ecclesiologiam recognoscendo," in *Ephemerides Iuris Canonici*, 20 (1964), pp. 283-297.
- BARBÁRA, E., *Donum Vitae, Continuity and Development in Church Teaching*, Rome, Pontificia Universitas Lateranensis Academia Alfonsiana, 1994.
- BARRETT, R.J., "The Normative Status of the Catechism," in *Periodica*, 85 (1996), pp. 9-34.
- BARRY, R.L., "Why I Am Uneasy About the Right-to-Die Debate," in *The Priest*, vol. 42, n. 2 (1986), pp. 36-42.
- , "Catholic Ethics and Feeding the Comatose," in R.L. BARRY, *Medical Ethics: Essays on Abortion and Euthanasia*, Theology and Religion, Series VII, vol. 45, New York, Peter Lang, 1989, pp. 179-197.
- , "Facing Hard Cases: The Ethics of Assisted Feeding," in *Issues in Law & Medicine*, 2 (1986), pp. 99-115.
- , "Feeding the Comatose and the Common Good in the Catholic Tradition," in *The Thomist*, 53 (1989), pp. 1-30.
- , *Medical Ethics: Essays on Abortion and Euthanasia*, Theology and Religion, Series VII, vol. 45, New York, Peter Lang, 1989.
- BAYER, E.J., "A Right Not to Eat? Refusal to Eat vs. Incapacity to Eat," in *Ethics & Medics*, vol. 9, n. 6 (1984), pp. 3-4.
- , "Intravenous Food and Fluids for the Dying," in *Ethics & Medics*, vol. 9, n. 1 (1984), pp. 1-2.
- , "Intubation of the Irreversibly Comatose: A Response to Robert Barry, O.P.," in *Linacre Quarterly*, vol. 55, n. 1 (1988), pp. 77-82.
- , "Perspectives from Catholic Theology," in J. Lynn (ed.), *By No Extraordinary Means: The Choice to Forgo Life-Sustaining Food and Water*, Bloomington, Indiana University Press, 1986, pp. 89-98.
- BAYLEY, C., "The Case of Elizabeth Bouvia: a Strain on Our Ethical Reasoning," in *Health Progress*, vol. 67, n. 6 (1986), pp. 40-47.
- BEAL, J.P., J.A. CORIDEN and T.J. GREEN (eds.), *New Commentary on the Code of Canon Law*, New York, Paulist Press, 2000.
- BENDER, L., "Occisio directa et indirecta," in *Angelicum*, 28 (1954), pp. 224-253.

- BENDER, L., art. "Acceleration of Death," in *Dictionary of Moral Theology*, p. 18.
- , art. "Death," in *Dictionary of Moral Theology*, pp. 368-369.
- , art. "Murder," in *Dictionary of Moral Theology*, pp. 803-804.
- , art. "Nutrition," in *Dictionary of Moral Theology*, p. 834.
- BLACK, H.C., *Black's Law Dictionary: Definitions of The Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, 5th ed. by the publisher's editorial staff, contributing authors J.R. NOLAN and M.J. CONNOLLY, St. Paul, MN, West Publishing Co., 1979.
- BLASQUEZ, N., "The Church's Traditional Moral Teaching on Suicide, in *Concilium*, 179, n. 3 (1985), pp. 63-74.
- BOLE, T.J., "Why Almost Any Cost to Others to Preserve the Life of the Irreversibly Comatose Constitutes an Extraordinary Burden," in K.W. WILDES, F. ABEL and J.C. HARVEY (eds.), *Birth, Suffering, and Death: Catholic Perspectives at the Edges of Life*, Philosophy and Medicine, n. 41, 1992, Dordrecht, Kluwer Academic Publishers, pp. 171-187.
- BOUDINHON, A., art. "Clerical Immunity," in *CE*, 1999 online ed. at <http://www.newadvent.org/cathen/07690a.htm> (28 February 2001).
- BOUSCAREN, T.L. and A.C. ELLIS, *Canon Law: A Text and Commentary*, 3rd rev. ed., Milwaukee, The Bruce Publishing Co., 1957.
- BOYLE, J.M., "On Killing and Letting Die," in *The New Scholasticism*, 51 (1977), pp. 433-452.
- BOYLE, L.E., art. "Canon Law, History of : 4. Classical Period," *NCE*, vol. 3, pp. 41-45.
- BOYLE, P., L. KING and K. O'ROURKE, "The Brophy Case: The Use of Artificial Nutrition and Hydration," in *Linacre Quarterly*, vol. 54, n. 2 (1987), pp. 63-72.
- BRENNAN, J.J., "Medical-Ethical Directives: Basic Principles," in *Origins*, 1 (1971-1972), pp. 425-426.
- BRIDE, A., art. "Homicide," in *DDC*, vol. 5, cols. 1163-1179.
- BRUGUÈS, J-L., art. "Acte humain," in *DMC*, pp. 19-23.
- , art. "Avortement," in *DMC*, pp. 46-49.
- , art. "Droit canon et morale," in *DMC*, pp. 132-134.
- , art. "Euthanasie et acharnement therapeutique," in *DMC*, pp. 156-159.

- BRUGUÈS, J-L., art. "Homicide," in *DMC*, pp. 190-191.
- , art. "Intention," in *DMC*, pp. 213-214.
- , art. "Mortel (péché)," in *DMC*, pp. 278-279.
- , art. "Omission," in *DMC*, p. 300.
- , art. "Proportionnalisme," in *DMC*, pp. 343-344.
- , art. "Suicide," in *DMC*, pp. 422-424.
- , art. "Violence," in *DMC*, pp. 454-456.
- , art. "Voluntaire indirect," in *DMC*, p. 460.
- , *Dictionnaire de morale catholique*, Chambray, C.L.D., 1991.
- BRUNINI, J.B., *The Clerical Obligations of Canons 139 and 142: An Historical Synopsis And Commentary*, CUA Canon Law Studies n. 103, Washington, CUA Press, 1937.
- BURKE, G., "Tube Feeding and Advanced Dementia, in *Ethics & Medics*, vol. 26, n. 3, (2001), pp. 1-2.
- CAFARDI, N., "Canonical Concerns in Catholic Health Care" in R.E. SMITH (ed.), *The Splendor of Truth and Health Care: Proceedings of the Fourteenth Workshop for Bishops, Dallas, 1995*, Braintree, MA, Pope John Center, 1995, pp. 87-97.
- CAHILL, L.S., "A 'Natural Law' Reconsideration of Euthanasia," in *Linacre Quarterly*, vol. 44, n. 1 (1977), pp. 47-63.
- , "Catholicism, Ethics and Health Care Policy," in *The Catholic Lawyer*, vol. 32, n. 1 (1988), pp. 38-54.
- , "Notes on Moral Theology: Bioethical Decisions to End Life," in *Theological Studies*, 52 (1991), pp. 107-127.
- , "Respecting Life and Causing Death in the Medical Context," in *Concilium*, vol. 179, n. 3 (1985), pp. 29-38.
- , art. "Abortion: Religious Traditions: Roman Catholic Perspectives," in *Encyclopedia of Bioethics*, vol. I, pp. 30-34.
- CALABRESE, A., *Diritto penale canonico*, Milano, Edizioni Paoline, 1990.
- CALIPARI, M., "Nutrizione artificiale nei pazienti in 'stato vegetativo persistente'," in *Medicina e morale*, 49 (1999), pp. 1223-1230.

- CALLAHAN, D., "On Feeding the Dying," in *The Hastings Center Report*, vol. 13, n. 5 (1983), p. 22.
- CAMBARERI, R.G., *Scritti di Bioetica: Presentazione de Mario Luigi Card. Ciappi*, Vibo Valentia, Edizioni Settecolori, 1992.
- CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, *Report on 'Schema Documenti quo Disciplina Sanctionum seu Poenarum in Ecclesia Latina demuo Ordinatur,'* 1974.
- CAPARROS, E., M. THÉRIAULT and J. THORN (eds.), *Code of canon law annotated: Latin-English edition of the Code of canon law and English-language translation of the 5th Spanish-language edition of the commentary prepared under the responsibility of the Instituto Martín de Azpilcueta*, Montréal, Wilson & Lafleur, 1993.
- CASPAR, R., "Food and Water: Symbol and Reality," in *Health Progress*, vol. 69, n. 4 (1988), pp. 54-58.
- CASSOLA, O., "De concursu delinquentium in Codice J. C.," in *Apollinaris* 31 (1958), pp. 102-117.
- , "De Iure Poenali Codicis Canonico Emendando," in *Apollinaris*, 32 (1959), pp. 240-259.
- , "Specimen Partis Primae Libri V Codicis Iuris Canonici Reformatae proponitur (de delictis in genere)," in *Apollinaris*, 50 (1967), pp. 457-479.
- CATALDO, P.J., "The Principle of the Double Effect," in *Ethics & Medics*, vol. 20, n. 3 (1995), pp. 1-3.
- CATOIR, J.T., art. "Documents, Papal," in *NCE*, vol. 4, pp. 946-947.
- CAVANAGH, J.R., "Bene Mori: The Right of the Patient to Die With Dignity," in *Linacre Quarterly*, vol. 30, n. 2, (1963), pp. 60-68.
- CHELODI, J., *Ius canonicum de delictis et poenis et de iudiciis criminalibus*, ed. V recognita et aucta a P. CIPROTTI, Vicenza, Società Anonima Tipografica, 1943.
- CHIAPPETTA, L., *Il Codice di diritto canonico: commento giuridici-pastorale*, 2nd ed., 2 vols., Rome, Edizioni Dehoniane, 1996.
- CICCONE, L., *Non uccidere: Questioni di morale della vita fisica*, n. 1, Ragione & fede, n. 2, Milano, Edizioni Ares, 1984.
- , *Salute & malattia: Questioni di morale della vita fisica*, n. 2, Ragione & fede, n. 4, Milano, Edizioni Ares, 1984.

- CICOGNANI, A., *Canon Law*, 2nd rev. ed., authorised English version by J.M. O'Hara and F. Brennan, Philadelphia, Dolphin Press, 1935.
- CIPROTTI, P., "De iure poenali recognoscendo," in *Communicationes*, 2 (1970), pp. 99-107, 194-195.
- , "Elementi di novita nel diritto penale canonico vigente," in *Monitor Ecclesiasticus*, 114 (1989), pp. 17-28.
- , "Qualche punto caratteristico della riforma del diritto penale canonico," in *Ephemerides Iuris Canonici*, 46 (1990), pp. 111-127.
- CIUPINSKI, J., *Il principio della Signoria di Dio sulla vita e il problema dell'eutanasia, Tradizione, Magistero, Teologia*, Rome, Pontificia Universitas Lateranensis Academia Alfonsiana, 1996.
- COCCOPALMERIO, F., "Natura ecclesialis Sacram. Paenitentiae et actualis recognitio iuris poenalis," in *Periodica* 63 (1974), pp. 223-230.
- COCCOPALMERIO, F., "Sacramentum poenitentiae et ius poenale in structura Ecclesiae," in *Periodica* 64 (1975), pp. 393-405.
- Code de droit canonique annoté: traduction et adaptation françaises des commentaires de l'Université pontificale de Salamanque*, publiés sous la direction du Professeur Lamberto de Echeverria, Paris, Les Éditions du Cerf, 1989.
- COFFEY, P., "When is Killing the Unborn a Homicidal Action?" in *Linacre Quarterly*, vol. 43, n. 2 (1976), pp. 85-93.
- COLBERT, J.G., "Comment on Cahill's 'Reconsideration of Euthanasia'," in *Linacre Quarterly*, 44 (1977), pp. 240-242.
- COLEMAN, G., "Basic Issues in The Debate Over Dying," in *Origins*, 27 (1997-1998), pp. 663-668.
- COMPAGNONI, F., art. "Corpo e vita," in *Nuovo Dizionario di Teologia Morale*, pp. 159-183.
- COMPAGNONI, F., G. PIANA and S. PRIVITERA (eds.), *Nuovo Dizionario di Teologia Morale*, Milano, Edizioni Paoline, 1990.
- CONCETTI, G., *L'eutanasia: aspetti giuridici, teologici, morali*, Rome, Editrice Ave, 1987.
- CONNELL, F.J., art. "Moral Doubt," in *NCE*, vol. 4, p. 1024.
- CONNERY, J.R., "In the Matter of Clare Conroy," in *Linacre Quarterly*, 52 (1985), pp. 321-328.

- CONNERY, J.R., "Prolonging Life: The Duty and its Limits," in D.G. MCCARTHY and A.S. MORACZEWSKI (eds.), *Moral Responsibility in Prolonging Life Decisions*, St. Louis, MO, Pope John Center, 1981, pp. 124-138.
- , "Quality of Life," in *Linacre Quarterly*, vol. 53, n. 1 (1986), pp. 26- 33.
- , "Quality of Means, Quality of Life and Euthanasia," in *Linacre Quarterly*, vol. 59, n. 2 (1992), pp. 5-9.
- , "The Ethical Standards for Withholding/Withdrawing Nutrition and Hydration," in *Issues in Law & Medicine*, 2 (1986), pp. 87-97; *Linacre Quarterly*, vol. 54, n. 1 (1987), pp. 17-26.
- CONNOLLY, H., *The Irish Penitentials and their Significance for the Sacrament of Penance Today*, Dublin, Four Courts Press, 1995.
- CONNOR, M., *The Administrative Removal of Pastors: An Historical Synopsis and Commentary*, CUA Canon Law Studies n. 104, Washington, CUA, 1937.
- CONWAY, W., "The Act of Two Effects," in *The Irish Theological Quarterly*, 18 (1951), pp. 125-137.
- CORIDEN, J.A., "The Canonical Penalty for Abortion as Applicable to Administrators of Clinics and Hospitals," in *The Jurist*, 46 (1986), pp. 652-658, and W.A. SCHUMACHER and J.J. CUNEO (eds.), *Roman Replies and CLSA Advisory Opinions 1986*, CLSA, Washington, 1986, pp. 80-85.
- CORIDEN, J.A., T.J. GREEN and D.E. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary*, New York, Paulist Press, 1985.
- CORKERY, P., "Ethics for Health Care," in *The Furrow*, 46 (1995), pp. 407-415.
- Criminal Practice and Procedure New South Wales*, in the collection titled *Australian Criminal Law Library*, published in Australia as a Butterworths CD-ROM, updated 3 April 2001.
- CRONIN, D.A., *The Moral Law in Regard to the Ordinary and Extraordinary Means of Conserving Life*, Rome, Pontificia Universitas Gregoriana, 1958; reprinted in R.E. SMITH (ed.), *Conserving Human Life*, Braintree, MA, Pope John XXIII Medical-Moral Research and Education Center, 1989, Part I, pp. xxii-145.
- CROSS, R. and P.A. JONES, *An Introduction to the Criminal Law*, 5th ed., London, Butterworths, 1964.
- CROSSIN, J.W., Letter in response to R.A. McCormick's "Moral Considerations' III Considered," in *America*, 166 (1992), p. 394.

- CURRAN, C.E., "Evangelium vitae and Its Broader Context," in C.E. CURRAN, *History and Contemporary Issues: Studies in Moral Theology*, New York, Continuum, 1996, pp. 239-251; and in C.E. CURRAN and R.A. MCCORMICK (eds.), *John Paul II and Moral Theology*, Readings in Moral Theology n.10, New York, Paulist Press, 1998, pp. 120-133.
- , "The Catholic Hospital Code, The Catholic Believer and a Pluralistic Society," in C.E. CURRAN, *Issues in Sexual and Medical Ethics*, Notre Dame, University of Notre Dame Press, 1978, pp. 139-167.
- , "The Catholic Hospital, and the Ethical and Religious Directives for Catholic Health Facilities," in *Linacre Quarterly*, vol. 44, n. 1 (1977), pp. 18-37.
- , "The Historical Development of Catholic Medical Ethics," in C.E. CURRAN, *History and Contemporary Issues: Studies in Moral Theology*, New York, Continuum, 1996, pp. 28-49.
- , "Veritatis splendor: A Revisionist Perspective," in C.E. CURRAN, *History and Contemporary Issues: Studies in Moral Theology*, New York, Continuum, 1996, pp. 216-238.
- CURRAN, C.E. and R.A. MCCORMICK (eds.), *John Paul II and Moral Theology*, Readings in Moral Theology n.10, New York, Paulist Press, 1998.
- CURRAN, C.E., art. "Roman Catholicism," in *Encyclopedia of Bioethics*, vol. 4, pp. 2321-2331.
- , *Catholic Moral Tradition Today: A Synthesis*, Washington, Georgetown University Press, 1999.
- , *History and Contemporary Issues: Studies in Moral Theology*, New York, Continuum, 1996.
- , Memorandum, 11 March 1986, in *Origins*, 15 (1985-1986), pp. 669-670.
- , Press Statement, 11 March 1986, in *Origins*, 15 (1985-1986), pp. 665-667.
- , Response to Observations of the Congregation for the Doctrine of the Faith, 10 August 1983, in *Origins*, 15 (1985-1986), pp. 672-675.
- CUYAS, M., *Eutanasia: L'etica, la libertà e la vita*, Casale Monferrato, Piemme, 1989.
- D'OSTILIO, F., *La Storia Del Nuovo Codice Di Diritto Canonica: Revisione, Promulgazione, Presentazione*, Città del Vaticano, Libreria editrice Vaticana, 1983.
- D'AGOSTINO, F., art. "Omicidio e legittima difesa," in *Nuovo Dizionario di Teologia Morale*, pp. 822-830.

- DALY, C.B., "A Criminal Lawyer on the Sanctity of Life," (in three parts) in *The Irish Theological Quarterly*, 25 (1958), pp. 330-366; 26 (1959), pp. 23-55; 26 (1959), pp. 231-272.
- DE PAOLIS, V., "Animadversiones ad schema documenti quo disciplina sanctionum seu poenarum in Ecclesia Latina denuo ordinatur," in *Periodica* 63 (1974), pp. 489-507.
- , "De recognoscendo iure poenali canonico," in *Periodica* 63 (1974), pp. 37-67.
- , "La protezione penale del diritto alla vita," in *Commento interdisciplinare alla «Evangelium vitae»*, R. Lucas Lucas direzione e coordinamento, Edizione Italiana a cura di E. Sgreccia e R. Lucas Lucas, Città del Vaticano, Libreria Editrice Vaticana, 1997, pp. 501-520.
- , "Responsa Pont. CIC authentice interpretando: Adnotationes," in *Periodica*, 78 (1989), pp. 278-286.
- , "Totum ius poenale ad externum tantum forum limitatum est," in *Periodica*, 65 (1976), pp. 297-315.
- , *De sanctionibus in Ecclesia: adnotationes in Codicem liber VI*, Romae, Pontificia Universitas Gregoriana, 1986.
- DELANY, J.F. and C.W. SLOANE, art. "Homicide," in *CE*, 1999 online ed. at <http://www.newadvent.org/cathen/07441a.htm> (28 February 2001).
- DELANY, J.F., art. "Accomplice," in *CE*, 1999 online edition, <http://www.newadvent.org/cathen/01100a.htm> (March 12, 2001).
- DEMMER, K., art. "Eutanasia," in *Dizionario di bioetica*, pp. 370-373.
- DEMMER, K., art. "Eutanasia," in *Nuovo Dizionario di Teologia Morale*, pp. 394-406.
- DIAMOND, E.F., "Comment on: Nutrition and Hydration: Moral Considerations A Statement of The Catholic Bishops of Pennsylvania," in *Linacre Quarterly*, vol. 59, n. 1 (1992), pp. 31-33.
- DIAMOND, E.F., "Medical Issues When Discontinuing AHN," *Ethics & Medics*, vol. 24, n. 9 (1999), pp. 1-2.
- DOMINIC, C., "Separating the Twins Jodie and Mary," in *Ethics & Medics*, 26 June 2001, <http://www.ethicsandmedics.com/0106-2.html> (19 June 2001).
- DONOVAN, G.K., "Decisions at the End of Life: Catholic Tradition," in *Christian Bioethics*, 3 (1997), pp. 188-203.

- DONOVAN, J.P., "Letting Patients Die," in *The Homiletic and Pastoral Review*, 49 (1949), p. 904.
- DOWNS, J.E., *The Concept of Clerical Immunity: A Dissertation in Public Ecclesiastical Law*, CUA Canon Law Studies n. 126, Washington, CUA Press, 1941.
- DRINAN, R.F., "Should Paul Brophy Have Been Allowed to Die?" in *America*, 155 (1986), pp. 324-325, 332.
- DUGGAN, C., "The Becket Dispute and the Criminous Clerks," in C. DUGGAN, *Canon Law in Medieval England: The Becket Dispute and Decretal Collections*, Collected studies series CS151, London, Variorum Reprints, 1982, chapter 10 (pagination not continuous).
- DURAND, G., "Alimentation et hydratation artificielles," in *Le Supplément*, n. 179, (Décembre 1991), pp. 131-153.
- DURAND, G. et J. SAINT-ARNAUD, "L'Alimentation et l'hydratation artificielles chez les patients qui sont en phase terminale et chez les comateux," in *Laval théologique et philosophique*, 44 (1988), pp. 293-303.
- ELIZARI, F.J., "Eutanasia: lenguaje y concepto," in *Moralia*, 14 (1992), pp. 145-175.
- ELTZ, L.A., *Cooperation in Crime: An Historical Conspectus and Commentary*, CUA Canon Law Studies n. 156, Washington, CUA Press, 1942.
- Enciclopedia Italiana di Scienze, Lettere ed Arti*, Rome, Istituto della Enciclopedia Italiana, 35 vol., 1949.
- FACCIOTTO, M., art. "Omicidio," in *Dizionario Ecclesiastico*, vol. 2, pp. 1202-1203.
- FAGGIONI, M.P., "Stato vegetativo persistente: Prima parte," in *Studia Moralia*, 36 (1998), pp. 523-552.
- FANNING, W.H., art. "Irregularity," in *CE*, 1999 online ed. at <<http://www.newadvent.org/cathen/08170a.htm>> (28 February 2001).
- FASANELLA, G., N. SILVESTRI and E. SGRECCIA, art. "Coma," in *Dizionario di bioetica*, pp. 158-162.
- FEELEY, M.S., "A Historical Account of the Curran Controversy," in *The Catholic Lawyer*, 32 (1988), pp. 1-26.
- FERRARIS, L., art. "Homicida, Homicidium," in *Bibliotheca canonica, juridica, moralis, theologica nec non ascetica, polemica, rubricistica, historica*, vol. 4, cols. 239-264.

- FERRARIS, L., *Bibliotheca canonica, juridica, moralis, theologica nec non ascetica, polemica, rubricistica, historica*, ed. novissima mendis expurgata et novis additamentis locupletata, 8 vols., Romae, Ex Typographia Polyglotta, 1885-1892, Supplement, 1899.
- FINNIS, J., "Beyond the Encyclical," in J. WILKINS (ed.), *Considering Veritatis splendor*, Cleveland, Pilgrim Press, 1994, pp. 69-76.
- , "Bland: Crossing the Rubicon?" in *The Law Quarterly Review*, 109 (1993), pp. 329-337.
- FINNIS, J., G. GRISEZ and J. BOYLE, "Direct" and "Indirect": A Reply to Critics of our Action Theory, in *The Thomist*, 65 (2001), pp. 1-44.
- FISHER, A., "Should We Starve the Unconscious?" in *The Australasian Catholic Record*, 74 (1997), pp. 315-329.
- FLECHA, J.R. and J.M. MÚGICA, *La pregunta moral ante la eutanasia*, Coleccion relectiones 8, Salamanca, Universidad Pontificia Salamanca, 1987.
- FLECHA, J-R., "Eutanasia y distanasia en la doctrine de la Iglesia," in *Moralia*, 8 (1986), pp. 125-136.
- FLECHA, J-R., "Sobre el derecho a disponer de la vida humana," in *Moralia*, 12 (1990), pp. 383-406.
- FLYNN, E.P., *Hard Decisions: Forgoing and Withdrawing Artificial Nutrition and Hydration*, Kansas City, Sheed & Ward, 1990.
- FORD, N., "Different Concepts of Person Employed in Bioethics," in *The Australasian Catholic Record*, 75 (1998), pp. 255-263.
- , "Moral Dilemmas in the Care of the Dying," in *The Australasian Catholic Record*, 73 (1996), pp. 474-490.
- FOSTER, M.S., "The Violation of a Church (Canon 1211)," in *The Jurist*, 49 (1989), pp. 693-703.
- FOX, J., "A General Synthesis of the Work of the Pontifical Commission for the Revision of the Code of Canon Law," in *The Jurist*, 48 (1988), pp. 800-840.
- , "Fontes and Analytical Index to Code," in *Canon Law Society of Great Britain and Ireland Newsletter*, 77 (1989), pp. 14-18.
- FUCHS, J., "Good Acts and Good Persons," *Veritatis splendor* in focus: 4, in *The Tablet*, 247 (1993), pp. 1444-1445; and in J. WILKINS (ed.), *Considering Veritatis splendor*, Cleveland, Pilgrim Press, 1994, pp. 21-26.

- GAFFNEY, J., "The Pope on Proportionality," in M.E. ALLSOPP and J.J. O'KEEFE (eds.), *Veritatis splendor: American Responses*, Kansas City, MO, Sheed and Ward, 1995, pp. 60-71; and C.E. CURRAN and R.A. MCCORMICK (eds.), *John Paul II and Moral Theology*, Readings in Moral Theology n.10, New York, Paulist Press, 1998, pp. 52-66.
- GAFO, J., "La eutanasia y la Iglesia Católica," in J. GAFO (ed.), *La eutanasia y el arte de morir*, Dilemas éticos e la medicina actual – 4, Universidad Pontificia Comillas, 1990, pp. 113-123.
- GARCIA, J.L.A., art. "Double Effect," in *Encyclopedia of Bioethics*, vol. 2, pp. 636-641.
- GEISINGER, R.J., "Orders," in *New Commentary on the Code of Canon Law*, pp. 1193-1233.
- GERBER, R.J., "Abortion: Two Opposing Philosophies," in *The American Journal of Jurisprudence*, 15 (1970), pp. 1-24.
- GERMOVNIK, F., *Indices ad Corporis Iuris Canonici*, ed. altera a M. THÉRIAULT, Ottawa, Facultas iuris canonici, Universitas Sancti Pauli, 2000.
- GHIRLANDA, G., "Elementi di novit nel Diritto penale canonico vigente," in *Monitor Ecclesiasticus*, 114 (1989), pp. 17-28.
- , "Qualche punto caratteristico della riforma del diritto penale canonico," *Ephemerides Iuris Canonici*, 46 (1990), pp. 111-127.
- GLEESON, G., "Euthanasia- Clarifying the Issues: The Refusal of Life-Prolonging Treatment" in *Bioethics Outlook*, vol. 7, n. 2 (June 1996), pp. 7-8, 11.
- , "How the Guidelines may help resolve some 'hard cases'," in *Bioethics Outlook*, vol. 9, n. 4 (1998), pp. 7-11.
- , "Just What Are We Doing? Our Obligations to Comatose Patients," in *Bioethics Outlook*, vol. 3, n. 3 (1992), pp. 8-11.
- , "The Scope of the Church's Moral Teaching; A Response to *Beyond Its Authority?* By Frank Mobbs," in *The Australasian Catholic Record*, 75 (1998), pp. 264-270.
- GOFF, R., "The Mental Element in the Crime of Murder," in *The Law Quarterly Review*, 104 (1988), pp. 30-59.
- GORMALLY, L. "Notes on the Winterton Bill," <<http://www.linacre.org/frames.html>> (30 August 2000).
- GRACIA, D., "Doctrine of Ordinary and Extraordinary Means," in K.W. WILDES (ed.), *Critical Choices and Critical Care: Catholic Perspectives on Allocated Resources*

in *Intensive Care Medicine*, Philosophy and Medicine n. 51, Dordrecht, Kluwer Academic Publishers, 1995, pp. 119-125.

GRAHAM, G.P., "Artificial Nutrition and Hydration: It is Time to Take a Stand," in *Homiletic & Pastoral Review*, <<http://www.catholic.net/rcc/Periodicals/Homiletic/May1999/nutrition.html>> (16 November 2000).

GRANDCLAUDE, E., *Ius canonicum juxta ordinem Decretalium, recentioribus Sedis Apostolicae decretis et rectae rationi in omnibus consonum*, 3 vols., Paris, V. Lecoffre, 1882-1883.

GRANERIS, G., art. "Body," in *Dictionary of Moral Theology*, pp. 152-154.

———, art. "Doubt," in *Dictionary of Moral Theology*, p. 1024.

GREEN, T.A., "Societal Concepts of Criminal Liability for Homicide in Mediaeval England," in *Speculum*, 47 (1972), pp. 669-694.

GREEN, T.J., "Penal Law in the *Code of Canon Law* and in the *Code of Canons of the Eastern Churches*, Some Comparative Reflections," in *Studia canonica*, 28 (1994), pp. 407-451.

———, "Penal Law Revisited: The Revision of Penal Law Schema," in *Studia canonica*, 15 (1981), pp. 135-198.

———, "Penal Law: A Review of Selected Themes," in *The Jurist*, 50 (1990), pp. 221-256.

———, "Reflections on Penal Law Reform," in *Canon Law Society of America Proceedings*, 43 (1981), pp. 179-187.

———, "Reflections on the Eastern Code Revision Process," in *The Jurist*, 51 (1991), pp. 18-37.

———, "Sanctions in the Church," in *New Commentary on the Code of Canon Law*, pp. 1529-1605.

———, "Sanctions in the Church," in *The Code of Canon Law: A Text and Commentary*, pp. 891-941.

———, "The Code Revision Process: The Involvement of the Canon Law Society of America," in *Revista Española de derecho canónico*, 47 (1990), pp. 517-541.

———, "The Future of Penal Law in the Church," in *The Jurist*, 35 (1975), pp. 212-275.

GRIESE, O.N., "Pope Pius XII and 'Medical Treatments'," in *Linacre Quarterly*, vol. 54, n. 4 (1987), pp. 43-49.

- GRIESE, O.N., "Church Pronouncements on Feeding the Hopeless and the Helpless," in R.E. SMITH (ed.), *Conserving Human Life*, Braintree, MA, Pope John XXIII Medical-Moral Research and Education Center, 1989, pp. 153-232.
- GRISEZ, G. and J.M. BOYLE, *Life and Death with Liberty and Justice: A Contribution to the Euthanasia Debate*, Notre Dame and London, University of Notre Dame Press, 1979.
- GRISEZ, G., "Revelation Versus Dissent," *Veritatis splendor* in Focus: 1, in *The Tablet*, 247, n. 7993, (1993), pp. 1329-1331; C.E. CURRAN and R.A. MCCORMICK (eds.), *John Paul II and Moral Theology*, Readings in Moral Theology n.10, New York, Paulist Press, 1998, pp. 35-41; and J. WILKINS (ed.), *Considering Veritatis splendor*, Cleveland, Pilgrim Press, 1994, pp. 1-8.
- , "Should Nutrition and Hydration Be Provided to Permanently Comatose and Other Mentally Disabled Persons?" in *Linacre Quarterly*, vol. 57, n. 2 (1990), pp. 30-43.
- , "Toward a Consistent Natural-Law Ethics of Killing," in *The American Journal of Jurisprudence*, 15 (1970), pp. 64-96.
- , *Abortion: The Myths, The Realities, and the Arguments*, New York and Cleveland, Corpus Books, 1970.
- , *Christian Moral Principles*, The Way of the Lord Jesus, vol. 1, Chicago, Franciscan Herald Press, 1983.
- , *Difficult Moral Questions*, The Way of the Lord Jesus, vol. 3, Quincy, Franciscan Press, 1997.
- , *Living a Christian Life*, The Way of the Lord Jesus, vol. 2, Quincy, Franciscan Press, 1993.
- GRONDELSKI, J.M., "Catholicism and the "Right" to Die," in *Linacre Quarterly*, vol. 59, n. 4 (1992), pp. 50-56.
- GRONDELSKI, J.M., "Removal of Artificially Supplied Nutrition and Hydration: A Moral Analysis," in *The Irish Theological Quarterly*, 55 (1989), pp. 291-302.
- GULA, R.M., "Quality of Life: A Focus of the Patient's Total Good," in *Health Progress*, vol. 69, n. 6 (1988), pp. 34-39, 84.
- , *Euthanasia: Moral and Pastoral Perspectives*, New York/Mahwah, Paulist Press, 1986.
- , *What Are They Saying About Euthanasia?* New York/Mahwah, Paulist Press, 1994.

- GULCZYNSKI, J.T., *The Desecration and Violation of Churches: An Historical Synopsis and Commentary*, CUA Canon Law Studies n. 159, Washington, CUA, 1942.
- HAAS, J.M., "The Need for Directives," in *Ethics & Medics*, vol. 22, n. 1 (1997), pp. 1-2.
- HÄRING, B., "A Distrust That Wounds," *Veritatis splendor* in focus: 2, in *The Tablet*, 247, n. 7994, (1993), pp. 1378-1379; and in J. WILKINS (ed.), *Considering Veritatis splendor*, Cleveland, Pilgrim Press, 1994, pp. 9-13.
- , *Medical Ethics*, ed. by G.B. Jean, Notre Dame, IN, Fides, 1973.
- HEALY, E.F., *Medical Ethics*, Chicago, Loyola University Press, 1956.
- HEALY, J., "*Veritatis splendor* and the Human Person," in *Linacre Quarterly*, vol. 61, n. 4 (1994), pp. 16-26.
- HEANEY, S.J., "'You Can't Be Any Poorer Than Dead': Difficulties in Recognizing Artificial Nutrition and Hydration as Medical Treatments," in *Linacre Quarterly*, vol. 61, n.24 (May 1994), pp. 77-87.
- HELSPER, S.C. and MCCARTHY, J., "Foregoing Artificial Nutrition and Hydration: Some Recent Legal and Moral Implications for catholic Health Care Facilities," in *Linacre Quarterly*, vol. 54, n. 3 (1987), pp. 39-46.
- HENTOFF, N., "The Church, the Law, and the Advancing Armies of Death," in *The Catholic Lawyer*, 33 (1990), pp. 1-11.
- HICKEY, J.J., *Irregularities and Simple Impediments in the New Code of Canon Law*, CUA Canon Law Studies n. 7, Washington, CUA Press, 1920.
- HINKLEY, M.F.X., *A Catholic Analysis of a Current Medical-Moral Dilemma in Health Care: The Moral Duty to Provide Nutrition and Hydration to Patients in the Persistent Vegetative State*, Rome, Pontificia Universitas Lateranensis Academia Alfonsiana, 1993.
- HORAN, D.J. and E.R. GRANT, "Catholic Ethical Teaching and Public Policy: How Do They Relate?" in *Linacre Quarterly*, vol. 53, n. 4 (1986), pp. 28-38.
- HUFTIER, M., "Usage de soins extraordinaires," in *L'Ami du clergé*, 75 (1966), pp. 455-456.
- HUGHES, M., "The Presumption of Imputability in Canon 1321, §3," in *Studia canonica*, 21 (1987), pp. 19-36.
- , *Sanctions in the Church* (class notes), Ottawa, SPU Faculty of Canon Law, 1989.

- HUGHES, M., *Sanctions in the Church* (class notes), Ottawa, SPU Faculty of Canon Law, 1986-1987.
- IVEREIGH, A., "Heartbreaking ruling on conjoined twins," in *National Catholic Reporter*, <http://www.natcath.com/NCR_Online/archives/112400/112400o.htm> (6 December 2000).
- JANINI, J., "La operación quirúrgica, remedio ordinario," in *Revista Española de teología*, 18 (1958), pp. 331-347.
- JOMBART, É, art. "Délit," in *DDC*, vol. 4, cols. 1084-1098.
- JONSEN, A.R. and S. TOULMIN, *The Abuse of Casuistry: A History of Moral Reasoning*, Berkeley, The University of California Press, 1989.
- KEENAN, J.F., "Euthanasia: Comparisons and contrasts in the ethical, political and legal developments in the USA and Australia," in *Bioethics Outlook*, vol. 10, n. 2, (1999), pp. 1-10.
- , "Not an Excessive Claim, Nor a Divisive One, But a Traditional One: A Response to Lawrence Welch on Immediate Material Cooperation," in *Linacre Quarterly*, vol. 67, n. 4 (2000), pp. 83-91.
- , "The Function of The Principle of Double Effect," in *Theological Studies*, 54 (1993), pp. 294-315.
- , "What's New in the Ethical and Religious Directives?" in *Linacre Quarterly*, vol. 65, n. 1 (1988), pp. 33-39.
- KELLY, D., "Orders," in *The Canon Law, Letter & Spirit*, pp. 548-571.
- KELLY, D.F., "Theology and Treatment of the Dying," in *Health Progress*, vol. 68, n. 6 (1987), pp. 28-29.
- KELLY, G., "Keeping Patients Alive," in *Linacre Quarterly*, vol. 17, n. 3 (1950), pp. 10-12.
- , "Medico-Moral Notes: Care of the Dying," in *Linacre Quarterly*, vol. 19, n. 4 (1952), pp. 109-111.
- , "Notes on Moral Theology, 1953," in *Theological Studies*, 15 (1954), pp. 52-102. (The notes were written with J.C. Ford. However, the notes on ordinary and extraordinary means are Kelly's and are on pp. 74-75.)
- , "Preserving Life," in *Linacre Quarterly*, vol. 24, n. 1 (1957), pp. 10-12.
- , "The Duty of Using Artificial Means of Preserving Life," in *Theological Studies*, 11 (1950), pp. 203-220.

- KELLY, G., "The Duty to Preserve Life," in *Theological Studies*, 12 (1951), pp. 550-556.
- KELLY, K., "A Medical and Moral Dilemma," in *The Month*, 26 (1993), pp. 138-144.
- KEOWN, J., "Restoring moral and intellectual shape to the law after Bland," in *The Law Quarterly Review*, 113 (1997), pp. 481-503.
- KITCHEN, P., "Marriage Intention and Simulation," in *Studia canonica*, 28 (1994), pp. 347-406.
- KNAUER, P., "The Hermeneutic Function of the Principle of Double Effect," in *Natural Law Forum*, 12 (1967), pp. 132-162; reprinted in C. CURRAN and R.A. MCCORMICK (eds.), *Readings in Moral Theology* n. 1, New York, Paulist Press, 1979, pp. 1-39.
- KNEAL, E., *Medical Practice by the Clergy: Medicine, Irregularities, Indults, Psychiatry*, Rome, Catholic Book Agency, 1967.
- KOMONCHAK, J.A., "The Authority of the Catechism," in B.L. Marthaler (ed.), *Introducing the Catechism of the Catholic Church: Traditional Themes and Contemporary Issues*, New York, Mahwah, Paulist Press, 1994.
- KOPACZYNSKI, G., "Moral Methodologies: Relativism," in *Ethics & Medics*, vol. 19, n. 7 (1994), pp. 1-2.
- , "Uterine Isolation," in R.E. SMITH (ed.), *The Splendor of Truth and Health Care: Proceedings of the Fourteenth Workshop for Bishops, Dallas, 1995*, Braintree, MA, Pope John Center, 1995, pp. 58-75.
- KOPFENSTEINER, T.R., "Death With Dignity: A Roman Catholic Perspective," in *Linacre Quarterly*, vol. 63, n. 4 (1996), pp. 64-75.
- , "Developing Directive 58," in *Health Progress*, vol. 81, n. 3 (2000), pp. 20-23, 27.
- KOSNIK, A., "Medical Directives: Conscience and Policy," in *Origins*, 1 (1971-1972), pp. 428-430.
- KULANECK, C., art. "Infanticidium," in *Dictionarium morale et canonicum*, vol. 2, pp. 701-703.
- LEDWOLORZ, A., art. "Clergy (privileges of)," in *Dictionary of Moral Theology*, pp. 240-242.
- LEONE, S. and S. PRIVITERA (eds.), *Dizionario di bioetica*, Bologna, EDB, 1994.
- LEONE, S., art. "Alimentazione artificiale," in *Dizionario di bioetica*, pp. 33-35.
- , art. "Infanticidio," in *Dizionario di bioetica*, pp. 480-482.

- LEONE, S., art. "Qualità della vita," in *Dizionario di bioetica*, pp. 812-815.
- LISSEN, E.L., "Moral Repugnance as a Source in Moral Analysis," in *Linacre Quarterly*, vol. 61, n. 1 (1994), pp. 53-65.
- LUSSIER, M.L., "An Approach to Weighing the Benefits and Burdens of Artificial Nutrition and Hydration," in *Linacre Quarterly*, vol. 54, n. 4 (1987), pp. 67-78.
- LUSTIG, B.A., "*Veritatis splendor*: Some Implications for Bioethics," in M.E. ALLSOPP and J.J. O'KEEFE (eds.), *Veritatis splendor: American Responses*, Kansas City, MO, Sheed & Ward, 1995, pp. 252-268.
- MADDEN, J., "Moral Theology: Some Problems of Nurses," in *The Australasian Catholic Record*, 28 (1951), pp. 340-350.
- MAGUIRE, D.C., *Death by Choice*, Garden City, NY, Doubleday, 1974 (2nd rev. ed., New York, Image Books, 1984).
- MAHIG, J., *L'euthanasie: mort douce ou meurtre?* Montréal, Editions Paulines, 1976.
- MALONE, G.K., art. "Encyclical," in *NCE*, vol. 5, pp. 332-333.
- MANGAN, J.T., "An Historical Analysis of the Principle of Double Effect," in *Theological Studies*, 10 (1949), pp. 41-61.
- MARET, M., *Euthanasie: Alternative sociale et enjeux pour l'éthique chrétienne*, Saint-Maurice, Éditions Saint-Augustine, 2000.
- MARTIN, J., "Sanctions in the Church," in *The Canon Law, Letter & Spirit*, pp. 749-810.
- MARZEN, T.J., "Intubation of the Permanently Unconscious: A Rejoinder to Rev. Edward Bayer, S.T.D.," in *Linacre Quarterly*, vol. 55, n. 2 (1988), pp. 35-38.
- MARZOA, A., J. MIRAS y R. RODRIGUEZ-OCAÑA (eds.), *Comentario exegetico de derecho canónico*, 2nd ed., 5 vols., Pamplona, Ediciones Universidad de Navarra, 1997.
- MAY, W.E., "Caring for Persons in the 'Persistent Vegetative State'," in *Anthropotes*, 13 (1997), pp. 317-331.
- , "Comment on: Nutrition and Hydration: Moral Considerations A Statement of The Catholic Bishops of Pennsylvania," in *Linacre Quarterly*, vol. 59, n. 1 (1992), pp. 34-36.
- , "Criteria for Withholding or Withdrawing Treatment," in *Linacre Quarterly*, vol. 57, n. 3 (1990), pp. 81-90.
- , "*Death by Choice* by Daniel Maguire," (book review) in *Linacre Quarterly*, vol. 41, n. 2 (1974), pp. 135-140.

- MAY, W.E., "Ethics and Human Identity: The Challenge of the New Biology," in *Horizons*, 3 (1976), pp. 17-37.
- , "Euthanasia, Benemortasia, and the Dying," in *Linacre Quarterly*, 41 (1974), pp. 114-123.
- , "Meeting Ethical Dilemmas in Health Care: Some Basic Criteria," in *Linacre Quarterly*, 49 (1982), pp. 248-265.
- , "Tube Feeding And The 'Vegetative' State," Part I, *Ethics & Medics*, vol. 23, n. 12 (1998), pp. 1-2.
- , "Tube Feeding And The 'Vegetative' State," Part II, *Ethics & Medics*, vol. 24, n. 1 (1999), pp. 3-4.
- MAY, W.E., et al., "Feeding and Hydrating the Permanently Unconscious and Other Vulnerable Persons," in *Issues in Law & Medicine*, 3 (1987), pp. 203-217; and J.J. WALTER and T.A. SHANNON (eds.), *Quality of Life, The New Medical Dilemma*, New York, Mahwah, Paulist Press, 1990, pp. 195-202.
- MCCABE, M.J., *The Hospice Movement: An Alternative to Euthanasia*, Rome, Pontificia Universitas Lateranensis Academia Alfonsiana, 1994.
- MCCARTHY, J., "Notes and Queries: Taking of Insulin to Preserve Life," in *The Irish Ecclesiastical Record*, 58 (1941), pp. 552-554.
- MCCARTHY, J.J., "Caring for the Critically Ill Patient in a Persistent Vegetative State: Must Nutritional and Hydration Support Always be Provided?" in *Linacre Quarterly*, vol. 61, n. 2 (1994), pp. 63-76.
- MCCARTNEY, J.J., "The Development of the Doctrine of Ordinary and Extraordinary Means of Preserving Life in Catholic Moral Theology Before the Karen Quinlan Case," in *Linacre Quarterly*, 47 (1980), pp. 215-223.
- MCCORMICK, R.A., "Killing the Patient," *Veritatis splendor* in focus, in *The Tablet*, 247 (1993), pp. 1444-1445; and in J. WILKINS (ed.), *Considering Veritatis splendor*, Cleveland, Pilgrim Press, 1994, pp. 14-20.
- , "'Moral Considerations' Ill Considered," in *America*, 166 (1992), pp. 210-214.
- , "Caring or Starving? The Case of Claire Conroy," in *America*, 152 (1985), pp. 269-273.
- , "Not What Catholic Hospitals Ordered," in *America*, 125 (1971), pp. 510-513.
- , "Nutrition-Hydration: The New Euthanasia?" in R.A. MCCORMICK, *The Critical Calling: Reflections on Moral Dilemmas Since Vatican II*, Washington, Georgetown University Press, 1989, pp. 369-388.

- MCCORMICK, R.A., "Some Early Reactions to *Veritatis splendor*," in C.E. Curran and R. A. McCormick (eds.), *John Paul II and Moral Theology*, Readings in Moral Theology, n. 10, New York, Paulist Press, 1998, pp. 5-34.
- , "The Consistent Ethic of Life: Is There a Historical Soft Underbelly?" in R.A. MCCORMICK, *The Critical Calling: Reflections on Moral Dilemmas Since Vatican II*, Washington, Georgetown University Press, 1989, pp. 211-232.
- , "The Gospel of Life," in *America*, 172 (1995), pp. 10-17.
- , "The Preservation of Life," in *Linacre Quarterly*, vol. 43, n. 2 (1976), pp. 94-100.
- , "The Quality of Life, the Sanctity of Life," in R.A. MCCORMICK (ed.), *How Brave a New World: Dilemmas in Bioethics*, New York, Doubleday, 1981, pp.383-401.
- , "To Save or Let Die: The Dilemma of Modern Medicine," in *America*, 130 (1974), pp. 6-10; and in R.A. MCCORMICK (ed.), *How Brave a New World: Dilemmas in Bioethics*, New York, Doubleday, 1981, pp.339-351.
- , *Health and Medicine in the Catholic Tradition: Tradition in Transition*, New York, Crossroad, 1984.
- , Letter in reply to W.B. Smith, in *America*, 166 (1992), p. 392.
- , *The Critical Calling: Reflections on Moral Dilemmas Since Vatican II*, Washington, Georgetown University Press, 1989.
- MCCOY, K.C., *Genetic Counseling and the Catholic Health Care Institutional Response in the United States*, Rome, Pontificia Universitas Lateranensis, Academia Alfonsiana, 1986.
- MCDONALD, W.J. (ed. in chief), *NCE*, 17 vols., New York, McGraw Hill, 1967-.
- MCDONOUGH, E., "A Gloss on Canon 1321," in *Studia canonica*, 21 (1987), pp. 381-390.
- MCFADDEN, C.J., *Medical Ethics*, 3rd ed., Philadelphia, F.A. Davis Company, 1953.
- MCHUGH, J., "Death and Dying: Legislative Trends," in *Origins*, 6 (1976-1977), pp. 411-412.
- MCPMAHON, K.T., "What the Pennsylvania Bishops Really Said: A Reply to Rev. R.A. McCormick," in *Linacre Quarterly*, vol. 59, n. 3 (1992), pp. 6-10.
- MCQUILLEN, M.P., "The Tarnished Splendor of Autonomy," in *Linacre Quarterly*, vol. 62, n. 1 (1995), pp. 49-51.

- MEILAENDER, G., "Quaestio Disputata: Ordinary and Extraordinary Treatments: When Does Quality of Life Count?" in *Theological Studies*, 58 (1997), pp. 527-531.
- , "The Distinction Between Killing and Allowing to Die," in *Theological Studies*, 37 (1976), pp. 467-470.
- MENDONÇA, A., *Rotal Anthology: An Annotated Index of Rotal Decisions from 1971 to 1988*, Washington, CLSA, 1992.
- MERCATI, A., and A. PELZER (eds.), *Dizionario Ecclesiastico*, redattore capo A.M. BOZZONE, 3 vols., Torino, Unione Tipografico Editrice Torinese, 1953-1958.
- MEREDITH, A., "Reflections on *Veritatis splendor*," in *The Month*, 26 (1993), pp. 428-431.
- METZ, R., "Le Nouveau Code de Droit Canonique des Églises Orientales Catholici," in *Revue de droit canonique*, 42 (1991), pp. 99-117.
- , "Simples réflexions sur la réforme du droit pénal de l'Église," in *Revue de droit canonique*, 18 (1969), pp. 97-104.
- MIGLIETTA, G.M., *Il principio del duplice effetto nel dibattito della teologia morale contemporanea*, Rome, Pontificia Universitas Urbaniana Facultas Theologiae, 1997.
- MIKOCHIK, S.L., "When Life Becomes Optional: A Comment on Kevin O'Rourke's Approach to Forgoing Life Support," in *Issues in Law & Medicine*, 10 (1994), pp. 343-351.
- MILLER, J.M., "*Veritatis splendor*: Editor's Introduction," in J.M. MILLER (ed. and introductions), *The Encyclicals of John Paul II*, Huntington, Our Sunday Visitor Publishing Division, 1996, pp. 651-671.
- MOLLAT, G, art. "Corpus iuris canonici, IV. Les Clémentines," in *DDC*, vol. 4, cols. 635-639.
- MORACZEWSKI, A., "A Matter of Life and Death: When is Life-Support the Prolongation of Dying?" in *Ethics & Medics*, vol. 10, n. 11 (1985), pp. 3-4.
- , "Is Food Always Obligatory? Feeding the Comatose Patient," in *Ethics & Medics*, vol. 10, n. 9 (1985), pp. 3-4.
- , "The Moral Option Not to Conserve Life Under Certain Conditions," in R.E. SMITH (ed.), *Conserving Human Life*, Braintree, MA, Pope John XXIII Medical-Moral Research and Education Center, 1989, Part III, pp. 235-275.
- , "Against the Separation of Jodie & Mary, in *Ethics & Medics*, <<http://www.ethicsandmedics.com/0106-1.html>> (19 June 2001).

- MORI, M., "Sulla distinzione tra eutanasia e sospensione delle terapie: Analisi delle argomentazioni nell'etica laica," in V. Salvodi (ed.), *Oltre l'eutanasia e l'accanimento: Politica, scienza e morale*, Bologna, Edizioni Dehoniane, 1991.
- MORRISEY, F.G., "The Revision of the Code of Canon Law," in *Studia canonica*, 12 (1978), pp. 177-198.
- , *Procedural Law: cc. 1400-1691*, Class Notes, SPU Faculty of Canon Law, Ottawa, 2000-2001.
- , *Papal and Curial Pronouncements: Their Canonical Significance in Light of the Code of Canon Law*, 2nd rev. ed., Ottawa, SPU Faculty of Canon Law, 1995.
- MULLOOLY, J.P., "Ordinary/Extraordinary Means and Euthanasia," in *Linacre Quarterly*, vol. 54, n. 2 (1987), pp. 50-46.
- MUNIER, C., art. "Canon Law, History of : 3. False Decretals to Gratian," in *NCE*, vol. 3, pp. 39-41.
- NAZ, R., director, *Dictionnaire de droit canonique*, 7 vols., Paris, Librairie Letouzey et Ané, 1935-1965.
- NEDUNGATT, G., *A Companion to the Eastern Code: for a New Translation of Codex Canonum Ecclesiarum Orientalium*, Kanonika 5, Rome, Pontificio Istituto Orientale, 1994.
- NIENSTEDT, J.C. (Bishop), "Reexamining the ERDs on Cooperation," in *Ethics & Medics*, vol. 26, n. 5, (2001), pp. 1-2.
- NOLAN, K., "The Problem of Care for the Dying," in C.E. CURRAN (ed.), *Absolutes in Moral Theology?* Washington, Corpus Books, 1968, pp. 249-260.
- NOONAN, J.T., *Contraception: A History of its Treatment by the Catholic Theologians and Canonists*, Cambridge, MA and London, The Belknap Press of Harvard University Press, 1986.
- O'CALLAGHAN, D.F., "Duty to Prolong Life in the Hopeless Case," in *The Irish Ecclesiastical Record*, 103 (1965), pp. 330-335.
- O'DONNELL, T.J., "Medical Directives: Reviewing the Reviews," in *Origins*, 1 (1971-1972), pp. 470-471.
- , "Modern Medical and Surgical Means for the Preservation of Life," in *The Linacre Quarterly*, vol. 18, n. 1 (1951), pp. 22-31.
- , *Medicine and Christian Morality*, New York, Alba House, 1976.
- , *Morals in Medicine*, Westminster, MD, Newman Press, 1956.

- O'DONOVAN, O., "A Summons to Reality," in J. WILKINS (ed.), *Considering Veritatis splendor*, Cleveland, Pilgrim Press, 1994, pp. 41-45.
- O'HARE, F.C., art. "Homicide," in *NCE*, vol. 5, pp. 110-111.
- O'KEEFE, B. (Justice in the Supreme Court of NSW), Judgement in "Northridge v Central Sydney Area Health Service," (the John Thompson Case), New South Wales Supreme Court 1241, 29 December 2000, <<http://caselaw.lawlink.nsw.gov.au/ISYSquery/IRL4904.tmp/1/doc>> (08 May 2001).
- O'REGAN, A., "The Worth of Human Life," in *Studia Moralia* 6 (1968), pp. 207-277.
- O'REILLY, M., *Institutes of Consecrated Life* (lecture notes), SPU Faculty of Canon Law, Ottawa, 1995-1996.
- , *Marriage Impediments* (lecture notes), SPU Faculty of Canon Law, Ottawa, 1986-1987.
- , *Sanctions in the Church* (lecture notes), SPU Faculty of Canon Law, Ottawa, 1996-1997.
- O'ROURKE, K. and P. NORRIS, "Care of PVS Patients: Catholic Opinion in the United States," in *Linacre Quarterly*, 68 (2001), pp. 201-217.
- O'ROURKE, K., "Evolution of Church Teaching on Prolonging Life," in *Health Progress*, vol. 69, n. 1 (1988), pp. 28-35.
- , "Open Letter to Bishop McHugh: Father Kevin O'Rourke on Hydration and Nutrition," in *Origins*, 19 (1989-1990), pp. 351- 352.
- , "The A.M.A. Statement on Tube Feeding: an Ethical Analysis," in *America*, 155 (1986), pp. 321-323, 331.
- O'ROURKE, K. and J. DEBLOIS, "Removing Life Support: Motivations, Obligations," in *Health Progress*, vol. 73, n. 6 (1992), pp. 20-27, 38.
- O'ROURKE, K.D., and D. BRODEUR, "Development of Church Teaching on Prolonging Life," in K.D. O'ROURKE and D. BRODEUR, *Medical Ethics: Common Ground for Understanding*, vol. II, St. Louis, MO, Catholic Health Association of the United States, 1986, pp. 120-140.
- O'CONNOR, J., "Trends in Canon Law, the Question of Penalties," *Studia canonica*, 3 (1969), pp. 209-237.
- OJETTI, B., art. "Homicidium," in *Synopsis rerum moralium et iuris pontificii*, vol. 2, cols. 2089-2097.

- OJETTI, B., *Synopsis rerum moralium et iuris pontificii*, 3rd rev. ed., 3 vols., Rome, Ex Officina Polygraphica Editrice, 1909-1912.
- ÖRSY, L., "Episcopal Conferences and the Power of the Holy Spirit," in *Louvain Studies*, 25 (2000), pp. 363-375.
- ÖRSY, L., "General Norms," in *The Code of Canon Law: A Text and Commentary*, pp. 25-114.
- OVERBERG, K.R., "Collaboration Needed in Discussion of Ethical Issues," in *Health Progress*, vol. 69, n. 2 (1988), pp. 90-92.
- PACE, P., art. "Omicidio," in *Dizionario di bioetica*, pp. 655-657.
- PALAZZINI, P., art. "Cooperators (in evil)," in *Dictionary of Moral Theology*, pp. 327-331.
- PALAZZINI, P., art. "Death, Desire for," in *Dictionary of Moral Theology*, p. 369.
- PALAZZINI, P., art. "Euthanasia," in *Dictionarium morale et canonicum*, vol. 2, pp. 304-307.
- PALAZZINI, P., art. "Exposure of Infants," in *Dictionary of Moral Theology*, pp. 491-493.
- PALAZZINI, P., art. "Homicidium," in *Dictionarium morale et canonicum*, vol. 2, pp. 556-558.
- PALAZZINI, P., director, and F. GALEA (ed.), *Dictionarium morale et canonicum*, 4 vols., Rome, Catholic Book Agency, 1962-1968.
- PALESTRO, V., *Rassegna di giurisprudenza rotale nelle cause iurium e penali (1909-1993)*, Milano, Giuffrè Editore, 1996.
- PALMIERI, V.M., *Medicina legale canonistica*, Città di Castello e Bari, L. Macri, 1946.
- PARIS, J.J. and A.C. VARGA, "Care of the Hopelessly Ill," in *America*, 151 (1984), pp. 141-144.
- PARIS, J.J. and R.A. MCCORMICK, "Saving Defective Infants: Options for Life or Death," in *America*, 148 (1983), pp. 313-317.
- PARIS, J.J. and R.A. MCCORMICK, "The Catholic Tradition on the Use of Nutrition and Fluids," in *America*, 156 (1987), pp. 356-361.
- PARIS, J.J., "The Catholic Tradition on the Use of Nutrition and Fluids," in K.W. WILDES, F. ABEL and J.C. HARVEY (eds.), *Birth, Suffering, and Death: Catholic Perspectives at the Edges of Life*, Philosophy and Medicine, n. 41, 1992, Dordrecht, Kluwer Academic Publishers, pp. 189-208.

- PARIS, J.J., "When Burdens of Feeding Outweigh Benefits," in *Hastings Center Report*, vol. 16, n. 1 (1986), pp. 30-32.
- PARIS, J.J., "Withholding of Life-Supporting Treatment from the Mentally Handicapped," in *Linacre Quarterly*, 45 (1978), pp.237-248.
- PARIS, J.J., "Withholding or Withdrawing Nutrition and Fluids, What Are the Real Issues?" (interview), in *Health Progress*, vol. 66, n. 10 (1985), pp. 22-25.
- PELL, G. (Archbishop), "The Role of the Bishop," in *Briefing*, vol. 30, n. 9 (2000), pp. 13-22.
- PEREA, J., "Valor magisterial de las fórmulas empleadas en la «*Evangelium vitae*»," in *Moralia*, 19 (1996), pp. 11-32.
- PÉREZ-MADRID, F., "De delictis contra hominis vitam et libertatem," in *Comentario exegetico de derecho canónico*, vol. 4, pp. 585-594.
- PERRENX, J-P, *L'Évangile de la vie*, 2 vols., Paris, Beauchesne, 1999.
- PETRINI, M., "L'assistenza al morente: orientamenti e prospettive," in *Medicina e morale*, 35 (1985), pp. 365-38.
- PHILIP, B., art. "Acte humain," in *Nouveau Dictionnaire de Théologie Morale*, pp. 16-18.
- PHILIP, B., art. "Homicide," in *Nouveau Dictionnaire de Théologie Morale*, pp. 272-278.
- PHILIP, B., art. "Irrégularité," in *Nouveau Dictionnaire de Théologie Morale*, pp. 315-320.
- PHILIP, B., *Nouveau Dictionnaire de Théologie Morale*, Paris, J. Lecoffre, 1857.
- PINCKAERS, S., "Veritatis splendor: Consequentialism, Proportionalism and Christian Morality," in *Ethics & Medics*, vol. 20, n. 3 (1995), pp. 3-4.
- PINCKAERS, S., "Veritatis splendor: the New Law and the Role of the Holy Spirit," in *Ethics & Medics*, vol. 20, n. 1 (1995), pp. 3-4.
- PIUS, Fr., "Reply of the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law," in *Canon Law Society of Great Britain & Ireland Newsletter*, n. 77 (1989), pp. 54-56.
- PLUNCKNETT, T.F., *A Concise History of the Common Law*, London, Butterworth, 1956.
- POHIER, J., and D. MIETH (eds.), *Suicide and the Right to Die, Concilium*, vol. 179, n. 3 1985: Moral Theology, Edinburgh, T. & T. Clark, 1985 (entire issue).

- PORTER, J., "Reason, Law and Medicine: Anencephalics as Organ Donors," in S.A. MCLEAN (ed.), *Contemporary Issues in Law, Medicine and Ethics*, Aldershot, Dartmouth, 1996, pp. 163-178.
- POSCHMANN, B., *Penance and the Anointing of the Sick*, translated and rev. by F. COURTNEY, Montreal, Palm Publishers, 1964.
- POSPISHIL, V.J., *Eastern Catholic Church Law*, 2nd rev. ed., Staten Island, NY, Saint Maron Publications, 1996.
- PRIVITERA, S., "Attivo-passivo," in *Dizionario di bioetica*, pp. 68-69.
- PRIVITERA, S., art. "Duplice effetto," in *Dizionario di bioetica*, pp. 308-309.
- PROVOST, J.H., "Revision of Book V of the Code of Canon Law," in *Studia canonica*, 9 (1975), pp. 135-152.
- PUGLIESE, A., art. "Crime, delict," in *Dictionary of Moral Theology*, pp. 344-347.
- PUGLIESE, A., art. "Delictum" in *Dictionarium morale et canonicum*, vol. 2, pp. 51-56.
- PUTHUSSERIL, G., *The Legislative Authority of the Episcopal Conference in the New Code of Canon Law*, Rome, Pontifical Urban University Faculty of Canon Law, 1986.
- QUILTER, J., "'Sanctity' and 'Quality': Where is the conflict?" in *Bioethics Outlook*, vol. 11, n. 2, (2000), pp. 1-8.
- QUINN, J. (Archbishop), "Perspectives on 'Veritatis splendor'," in *Origins*, 23 (1993-1994), pp. 398-399.
- RAMBAUD-BUHOT, J., art. "Gratian, Decretum of (*Concordia discordantium canonum*)," in *NCE*, vol 6, pp. 706-709.
- RAMSEY, P., "'Euthanasia' and Dying Well Enough," in *Linacre Quarterly*, vol. 44, n. 1 (1977), pp. 37-46.
- RAMSEY, P., "Abortion: A Review Article," in *The Thomist*, 37 (1973), pp. 174-226.
- RAMSEY, P., Letter titled "Speeding or Slowing the Angel of Death," in *America*, 156 (1987), pp. 449-450.
- RAMSEY, P., *The Patient as Person: Explorations in Medical Ethics*, New Haven, Yale University Press, 1970.
- RATZINGER, J., "Bishops, Theologians and Morality," in *Origins*, 13 (1983-1984), pp. 657, 659-666.

- RATZINGER, J., "Dissent and Proportionalism in Moral Theology," in *Origins*, 13 (1983-1984), pp. 666-669.
- , *Gospel, Catechesis, Catechism: Sidelights on the Catechism of the Catholic Church*, San Francisco, Ignatius Press, 1997.
- READ, G. "Clerical Child Abuse and the Application of the Penal Process," in *Canon Law Society of Great Britain and Ireland Newsletter*, n. 104 (1995), pp. 14-19.
- REICH, W.T. (ed.), *Encyclopedia of Bioethics*, rev. ed., 5 vols., New York, Simon & Schuster Macmillan, 1995.
- REICH, W.T., "Policy and Truth: Medical Directives Criticized," in *Origins*, 1 (1971-1972), pp. 409-410.
- REIFFENSTUEL, A., *Ius canonicum universum*, 7 vols., Paris, Ludovicum Vives, 1864-1870.
- RICHSTATTER, T., "Sacred Times and Places," in *The Code of Canon Law: A Text and Commentary*, pp. 846-855.
- RIZZO, C., art. "Feticide," in *Dictionary of Moral Theology*, pp. 507-509.
- ROACH, R.R., "Consequentialism and the Fifth Commandment," in D.G. MCCARTHY and A.S. MORACZEWSKI (eds.), *Moral Responsibility in Prolonging Life Decisions*, St. Louis, MO, Pope John Center, 1981, pp. 20-43.
- ROBERTI, C., compiler, and P. PALAZZINI (ed.), *Dictionary of Moral Theology*, translated from the 2nd Italian ed. under the direction of H.J. YANNONE, Westminster, MD, Newman Press, 1962.
- ROBERTI, F., Adnotationes (on the SACRA CONGREGATIO SANCTI OFFICII (HOLY OFFICE) Decretum *Cum ex expresso*), in *Apollinaris*, 8 (1935), pp. 30-31.
- RODRÍGUEZ LUÑO, A., "La legge divina del «non uccidere»," in *Studi Cattolici*, 29 (1995), pp. 435-444.
- ROHLFS, S.P., "Theological Weight and the Directives," in *Ethics & Medics*, vol. 22, n. 7 (1997), pp. 1-2.
- ROMANO, M.L., art. "Proportionalità delle cure," in *Dizionario di bioetica*, pp. 768-772.
- ROSS, D., *Crime: Law and Practice in Criminal Courts*, Sydney, LBC Information Services, 1998 (in loose-leaf format, updated 2001).
- ROSSI, L. and A. VALSECCHI (eds.), *Dizionario Enciclopedico di Teologia Morale*, 2nd ed., Rome, Edizione Paoline, 1973.

- ROSSI, L., art. "Duplice effetto," in *Dizionario Enciclopedico di Teologia Morale*, pp. 272-287.
- , art. "Eutanasia," in *Dizionario Enciclopedico di Teologia Morale*, pp. 354-360.
- , art. "Suicidio," in *Dizionario Enciclopedico di Teologia Morale*, pp. 1016-1021.
- ROTHENBERG, L.S., "The Dissenting Opinions: Biting the Hands That Won't Feed," in *Health Progress*, vol. 67, n. 10 (1986), pp. 38-45, 99.
- RYAN, J.A., art. "Foundling Asylums," in *CE*, 1999 online ed. at <http://www.newadvent.org/cathen/06159a.htm> (12 March 2001).
- SÄGMÜLLER, J.B., art. "Ecclesiastical Privileges," in *CE*, 1999 online ed. at <http://www.newadvent.org/cathen/12437a.htm> (28 February 2001).
- SCHINDLER, T.F., Letter titled "Implications of Prolonging Life," in *Health Progress*, vol. 69, n. 4 (1988), p. 12.
- SCHMALZGRUEBER, F., *Ius ecclesiasticum universum: brevi methodo ad discentium utilitatem explicatum, seu Lucubrationes canonicae in quinque libros Decretalium Gregorii IX, Pontificis Maximi*, 12 vols., Roma, Ex Tipographia Rev. Cam. Apostolicae, 1843-1845.
- SCHNEIDERMAN, L.J. and A.M. CAPRON, "How Can Hospital Futility Policies Contribute to establishing Standards of Practice?" in *Cambridge Quarterly of Healthcare Ethics*, 9 (2000), pp. 524-531.
- SGRECCIA, E., A.G. SPAGNOLO and M.L. DI PIETRO (eds.), *L'assistenza al morente: Aspetti socio-culturali, medico-assistenziali e pastorali* (alternative title: *Care for the Dying Person: Socio-cultural, medical and pastoral aspects*), Atti del Congresso Internazionale Roma, 15-18 Marzo 1992, Milan, Vita e Pensiero, 1994.
- SGRECCIA, E., *Manuale di Bioetica*, 2nd ed., 2 vols., Milano, Vita e Pensiero, 1996.
- SHANNON, T.A. and J.J. WALTER, "The PVS Patient and the Forgoing/Withdrawing of Medical Nutrition And Hydration," in J.J. WALTER and T.A. SHANNON (eds.), *Quality of Life: The New Medical Dilemma*, New York, Mahwah, Paulist Press, 1990, pp. 203-223; and *Theological Studies*, 49 (1988), pp. 623-647.
- SHEEHY, G. et al. (eds.), *The Canon Law, Letter & Spirit: A Practical Guide to the Code of Canon Law*, prepared by THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, in association with THE CANADIAN CANON LAW SOCIETY, Dublin, Veritas, 1995.
- SHEWMON, D.A., "Recovery from 'Brain Death': A Neurologist's Apologia," in *Linacre Quarterly*, vol. 64, n. 1 (1997), pp. 30-96.

- SIMEONE, L., "De homicidio quaedam," in *Miscellanea Francescana*, 57 (1957), pp. 478-557; and *Miscellanea Francescana*, 58 (1958), pp. 50-75.
- SMITH, D., "The Withholding or Withdrawing of Nutrition and Hydration in PVS Patients," in *Milltown Studies*, 38 (1996), pp. 115-128.
- SMITH, J.E., Moral Methodologies: Proportionalism," in *Ethics & Medics*, vol. 19, n. 6 (1994), pp. 1-3.
- SMITH, P., "Personhood and the Persistent Vegetative State," in *Linacre Quarterly*, vol. 57, n. 2 (1990), pp. 49-58.
- SMITH, R.E. (ed.), *Conserving Human Life*, Braintree, MA, Pope John XXIII Medical-Moral Research and Education Center, 1989.
- SMITH, R.E., "Ordinary and Extraordinary Means," in *Ethics & Medics*, vol. 20, n. 4 (1995), p. 1-2.
- SMITH, S.B., *Ecclesiastical Punishments*, Elements of Ecclesiastical Law, vol. III, 3rd ed., New York, Benziger Brothers, 1888.
- SMITH, W.B., "Judeo-Christian Teaching on Euthanasia: Definitions, Distinctions and Decisions," in *Linacre Quarterly*, vol. 54, n. 1 (1987), pp. 27-42.
- SMITH, W.B., Letter regarding R.A. McCormick's "'Moral Considerations' III Considered," in *America*, 166 (1992) p. 330.
- SPARKS, R.C., *To Treat or Not To Treat: Bioethics and the Handicapped Newborn*, New York/Mahwah, Paulist Press, 1988.
- SPECIAL COMMITTEE OF THE TASK FORCE OF THE CANON LAW SOCIETY OF AMERICA, "Report on the Proposed Schema *De Delictis et Poenis*," Proceedings of the Thirty-Sixth Convention of the Canon Law Society of America, Washington, 1975, pp. 130-140.
- STEINBOCK, B., "The Removal of Mr. Herbert's Feeding Tube," in *The Hastings Center Report*, vol. 13, n. 5 (1983), pp. 13-16.
- SULLIVAN, F.A., "The Authority of the Magisterium on Questions of Natural Moral Law," in C.E. CURRAN and R.A. MCCORMICK (eds.), *Dissent in the Church*, Readings in Moral Theology n. 6, New York, Paulist Press, 1988, pp. 42-57.
- , "The Doctrinal Weight of *Evangelium vitae*," in *Theological Studies*, 56 (1995), pp. 560-565.
- , *Creative Fidelity: Weighing and Interpreting Documents of the Magisterium*, New York, Paulist Press, 1996.

- SULLIVAN, J.V., *The Morality of Mercy Killing*, Westminster, MD, Newman Press, 1950.
- SULMASY, D., "Heart and Soul: The Case of the Conjoined Twins," in *America*, online edition, 2 December 2000, <<http://www.americapress.org/articles/sulmasy.htm>> (31 May 2001).
- SWANSON, R.N., *Church and Society in Late Medieval England*, Oxford, Basil Blackwell, 1989.
- SWOBODA, I.R., *Ignorance in Relation to The Imputability of Delicts: An Historical Synopsis and Commentary*, CUA Canon Law Studies n. 143, Washington, CUA, 1941.
- TALONE, P.A., *Feeding the Dying: Religion and End-of-Life Decisions*, American University Studies, Series 7 Theology and Religion, vol. 114, New York, Peter Lang, 1996.
- TESSON, E., "Réanimation et Casuistique," in *Études*, 296 (1958), pp. 96-98.
- TETTAMANZI, D., art. "Magistero," in *Dizionario di bioetica*, pp. 565-576.
- , *Bioetica: Nuove frontiere per l'uomo*, 2nd rev. ed., Edizioni Piemme, Casale Monferrato, 1990.
- , *Eutanasia, la muerte dulce*, 23 February 1997, <<http://www.multimedios.org/bec/etexts/tettaman.htm>> (18 December 2000).
- , *Eutanasia: L'illusione della buona morte*, Azione pastorale, n. 6, Rome, Edizione Piemme, 1985.
- The Australian Criminal Law Dictionary*, in the collection titled *Australian Criminal Law Library*, Butterworths (Australia) CD-ROM, updated 3 April 2001.
- The New Encyclopedia Britannica*, 15th ed., 32 vols., Chicago, Encyclopedia Britannica, 1997.
- THE SUPREME COURT OF JUDICATURE COURT OF APPEAL (CIVIL DIVISION), before Lord Justice Ward, Lord Justice Brooke and Lord Justice Robert Walker, Draft Judgment, Case No: B1/2000/2969, 22 September 2000, <http://www.courtservice.gov.uk/info/news_items/siamese.htm> (2 July 2001).
- THÉVENOT, X., *La bioéthique: début et fin de vie*, Paris, Centurion Éditions Paulines, 1988.
- TOBIN, B., "Preparing a clinical ethics protocol: the process," in *Bioethics Outlook*, vol. 9, n. 4 (1998), pp. 1-2, 11.

- TOBIN, B., "The distinction between foregoing life-sustaining treatment and directly inducing death," in *Bioethics Outlook*, vol. 5, n. 1 (1994), pp. 9-11.
- , "Withdrawing Nutrition and Hydration," in *Bioethics Outlook*, vol. 4, n. 3 (1993), pp. 1-3.
- TORQUEBLAU, P., art. "Corpus iuris canonici: I. Le décret de Gratian," in *DDC*, vol. 4, cols. 611-627.
- , art. "Corpus iuris canonici: II. Les Décrétals de Grégoire IX," in *DDC*, vol. 4, cols. 627-632.
- , art. "Corpus iuris canonici: III. Le Sexte de Boniface VIII," in *DDC*, vol. 4, cols. 632-635.
- , art. "Corpus iuris canonici: V. Les Extravagantes," in *DDC*, vol. 4, cols. 640-643.
- TURNER, J.W. and A.L. ARMITAGE, *Cases on Criminal Law*, 3rd ed., Cambridge, Cambridge University Press, 1964.
- VACCARI, M.A., "Artificial Respiration and AHN: Some Similarities and Differences," in *Linacre Quarterly*, vol. 59, n. 2 (1992), pp. 48-62.
- , "The Inability to Swallow as a Fatal Pathology: Comments on the McHugh/O'Rourke Correspondence and the Removal of Life-Sustaining Treatment," in *Issues in Law & Medicine*, 7 (1991), pp. 155-167.
- VACEK, E.V. "Proportionalism: One View of the Debate," in *Theological Studies*, 46 (1985), pp. 287-314.
- VERSPIEREN, P., "Consentement aux soins refus de soins," in *Laënnec*, vol. 43, n. 5 (1995), pp. 2-6.
- , "Décider pour le bien de celui qui meurt," in M. Abiven, et. al., *Avec celui qui meurt*, Paris, Assas Éditions, 1991
- , "Des situations d'extrême dépendance," *Liminaire in Laënnec*, vol. 44, n. 2 (1995), pp. 1-2.
- , "Les discours sur la souffrance dans le Catholicisme," in *Laënnec*, numéro spécial: Souffrance et religions: Approches chrétiennes, (1996), pp. 7-11.
- , "L'euthanasie," in *Études*, 346 (1977), pp. 293-309.
- , "Maîtrise et respect de la vie," in *Médecine de l'homme*, n. 186 (1990), pp. 8-12.
- , *Face à celui qui meurt: Euthanasie, acharnement thérapeutique, accompagnement*, Paris, Desclée de Brouwer, 1984.

- VIDAL, M., art. "Vida humana, valor de la," in M. VIDAL, *Diccionario de ética teológica*, Estella (Navarra), Editorial Verbo Divino, 1991, pp. 616-619.
- VISMARA MISSIROLI, M. and L. MUSSELLI, *Il processo di codificazione del diritto penale canonico*, Università di Pavia studi nelle scienze Giuridiche e sociali, nuova serie, v. 36, Padova, Cedam, 1983.
- VITALI, E.G., *Profili dell'impedimentum criminis*, Milano, A. Giuffrè, 1979.
- WALTER, J.J., "The Meaning and Validity of Quality of Life Judgments in Contemporary Roman Catholic Medical Ethics," in *Louvain Studies*, 13 (1988), pp. 195-208.
- WATT, H., "Conjoined (Siamese) Twins," at <<http://www.linacre.org/frames.html>> (26 November 2000).
- WATT, J.A., *The Church and the Two Nations in Medieval Ireland*, Cambridge, Cambridge University Press, 1970.
- WEBER, L.J., *Who Shall Live? The Dilemma of Severely Handicapped Children and its Meaning for Other Moral Questions*, New York, Paulist Press, 1976.
- WERNZ, F.X. and P. VIDAL, *Ius canonicum*, 7 t. in 8 vol., Romæ, apud aedes Universitatis Gregorianæ, 1927-1938.
- WERNZ, F.X., *Ius decretalium ad usum praelectionum in scholis textus canonici sive iuris decretalium*, 6 t. in 10 vol., Prati, Giachetti, 1908-1915.
- WESTERMARCK, E., *The Origin and Development of the Moral Ideas*, 2nd ed., 2 vols., London, Macmillan, 1912-1917.
- WHEALON, J.F., "Medical Directives: Another View," in *Origins*, 1 (1971-1972), pp. 409, 413-414.
- WILDES, K.M., "In the Light of the Splendor: *Veritatis splendor* and Moral Theology," in *Kennedy Institute of Ethics Journal*, 4 (1994), pp. 13-25.
- , "A Memo from the Central Office: The 'Ethical and Religious Directives for Catholic Health Care Services'," in *Kennedy Institute of Ethics Journal*, 5 (1995), pp. 133-139.
- WILDES, K.W., "Conserving Life and Conserving Means: Lead Us Not Into Temptation," in K.W. WILDES (ed.), *Critical Choices and Critical Care: Catholic Perspectives on Allocated Resources in Intensive Care Medicine*, Philosophy and Medicine n. 51, Dordrecht, Kluwer Academic Publishers, 1995.
- , "Ordinary and Extraordinary Means and the Quality of Life," in *Theological Studies*, 57 (1996), pp. 500-512.

- WILDES, K.W., "Quaestio Disputata: When Does Quality of Life Count? A Response to Gilbert Meilaender," in *Theological Studies*, 59 (1998), pp. 505-508.
- WILKINS, J. (ed.), *Considering Veritatis splendor*, Cleveland, Pilgrim Press, 1994.
- WILLIAMS, G., "The *Mens Rea* for Murder: Leave it Alone," in *The Law Quarterly Review*, 105 (1989), pp. 387-397.
- , *Textbook of Criminal Law*, London, Stevens & Sons, 1978.
- , *The Sanctity of Life and the Criminal Law*, London, Faber and Faber, 1958.
- WOESTMAN, W.H., *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, Ottawa, SPU Faculty of Canon Law, 2000.
- WOOLCOCK, P.G., "Quality of Life and the Limitation of Life-Sustaining Treatment," in *Bioethics Outlook*, vol. 1, n. 1 (1990), pp. 2-4.
- WOYWOD, S., *A Practical Commentary on the Code of Canon Law*, rev. and enlarged ed. by C. SMITH, 2 vols., New York, Joseph Wagner, 1948.
- ZIEBA, M., "Truth and Freedom in the Thought of Pope John Paul II," in J. WILKINS (ed.), *Considering Veritatis splendor*, Cleveland, Pilgrim Press, 1994, pp. 35-40.
- ZIMMERMAN, A., "Allowing the Unconscious to Depart," in *Linacre Quarterly*, vol. 58 n. 1 (1990), pp. 17-24.
- , "Cessation From Feeding a PVS is not 'Killing'," in *Linacre Quarterly*, vol. 62 n. 2 (1995), pp. 19-21.
- , "Contraceptive Sterilization in Catholic Hospitals is Intrinsically Evil," in *Linacre Quarterly*, 68 (2001), pp. 262-273.

Appendices

Appendix I: Vitoria case⁶³¹

Regarding the first argument to the contrary, ... I would say secondly that if a sick man can take food or nourishment with a certain hope of life, he is held to take the food, as he would be held to give it to one who is sick. Thirdly, I would say that if the depression of spirit is so low and there is present such consternation in the appetitive power that only with the greatest of effort and as though by means of a certain torture, can the sick man take food, right away that is reckoned a certain impossibility, and therefore he is excused, at least from mortal sin, especially where there is little hope of life, or none at all. Responding by way of confirmation: first of all a similar case does not exist in reference to food and drugs. For, food is per se a means ordered to the life of the animal and it is natural, drugs are not: man is not held to employ all the possible means of conserving his life, but the means which are per se intended for that purpose ... Thirdly, we say that if one were to have moral certitude that by means of a drug he would gain health, without the drug, however, he would die, he really does not seem to be excused from mortal sin: because if he did not give the drug to a sick neighbor, he would sin mortally, and medicine per se is intended also by nature for health, but since this rarely can be certain, therefore they are not to be condemned of mortal sin who have universally declared an abstinence from drugs, although this is not laudable because God created medicine because of its need, as Solomon says...	<i>Ad argumentum in contrarium, ad primum ... Secundo dico quod si aegrotus potest sumere cibum, vel alimentum cum aliqua spe vitae, tenetur sumere cibum, sicut teneretur dare aegrotanti. Tertio dico, quod si animi dejectio tanta est et appetitivae virtutis tanta consternatio, ut non nisi per summum laborem et quasi cruciatum quendam, aegrotus possit sumere cibum, jam reputatur quaedam impossibilitas et ideo excusatur, saltem a mortali, maxime ubi est exigua spes vitae aut nulla. Ad confirmationem respondetur. Primo, quod non est simile de pharmaco et alimento. Alimentum enim per se medium ordinatum ad vitam animalis et naturale, non autem pharmacum: nec tenetur homo adhibere omnia media possibilia ad conservandam vitam, sed media per se ad hoc ordinata ... Tertio dicimus quod si quis haberet certitudinem moraliter, quod per pharmacum reciperet incolumitatem, sine pharmaco autem moreretur, non videtur profecto excusari a mortali: quia si non daret pharmacum proximo sic aegrotanti, peccaret mortaliter et medicina per se etiam ordinata est ad salutem a natura, sed quia hoc vix potest esse certum, ideo non sunt damnandi de mortali, qui in universum decreverunt abstinere a pharmacis, licet non sit laudabile, cum creaverit Deus medicinam propter necessitatem Ut ait Salomon ...</i>
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⁶³¹ From D. CRONIN, *The Moral Law in Regard to the Ordinary and Extraordinary Means of Conserving Life*, Rome, Pontificia Universitas Gregoriana, 1958, appendix to chapter two, n. 5, p. 164.

Appendix II: Pope Pius XII allocution, *Le Dr. Haid*, (1957, excerpts)⁶³²

Natural reason and Christian morals say that man (and whoever is entrusted with the task of taking care of his fellowman) has the right and the duty in case of serious illness to take the necessary treatment for the preservation of life and health. This duty that one has toward himself, toward God, toward the human community, and in most cases toward certain determined persons, derives from well ordered charity, from submission to the Creator, from social justice and even from strict justice, as well as from devotion toward one's family.

But normally one is held to use only ordinary means — according to circumstances of persons, places, times, and culture—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 men 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. On the other hand, one is not forbidden to take more than the strictly necessary steps to preserve life and health, as long as he does not fail in some more serious duty (pp. 314-315).

[And later, on p. 316, in speaking of the rights and duties of the doctor and family of an unconscious patient, the Pope restates the principle]

On the other hand, since these forms of treatment go beyond the ordinary means to which one is bound, it cannot be held that there is an obligation to use them nor, consequently, that one is bound to give the doctor permission to use them. The rights and duties of the family depend in general upon the presumed will of the unconscious patient if he is of age and “sui juris.” Where the proper and independent duty of the family is concerned, they are usually bound only to the use of ordinary means.

The rights and duties of the doctor are correlative to those of the patient. The doctor, in fact, has no separate or independent right where the patient is concerned. In general he can take action only if the patient explicitly or implicitly, directly or indirectly, gives him permission.

[Later, on pp. 316-317, in answering the question as to the requirement to use artificial resuscitation apparatus in “hopeless” cases of prolonged deep unconsciousness]

⁶³² PIUS XII, Allocution to an International Congress of Anesthesiologists *Le Dr. Bruno Haid*, 24 November 1957, in *AAS*, 49 (1957), pp. 1027-1033 (French-language original text, English-language translation in *TPS*, 4 [1958], pp. 393-398).

Consequently, if it appears that the attempt at resuscitation constitutes in reality such a burden for the family that one cannot in all conscience impose it upon them, they can lawfully insist that the doctor should discontinue these attempts, and the doctor can lawfully comply. There is not involved here a case of direct disposal of the life of the patient, nor of euthanasia in any way: this would never be licit. Even when it causes the arrest of circulation, the interruption of attempts at resuscitation is never more than an indirect cause of the cessation of life, and one must apply in this case the principle of double effect and of “voluntarium in causa.”

Appendix III: Congregation for the Doctrine of the Faith, *Iura et bona* (1980, excerpts)⁶³³

By euthanasia is understood an action or an omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated. Euthanasia's terms of reference, therefore, are to be found in the intention of the will and in the methods used.

It is necessary to state firmly once more that nothing and no one can in any way permit the killing of an innocent human being, whether a fetus or an embryo, an infant or an adult, an old person, or one suffering from an incurable disease, or a person who is dying.

Everyone has the duty to care for his or her own health or to seek such care from others. Those whose task it is to care for the sick must do so conscientiously and administer the remedies that seem necessary or useful. 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. Thus some people prefer to speak of "proportionate" and "disproportionate" means. In any case, it will be possible to make a correct judgment as to the means by studying the type of treatment to be used, its degree of complexity or risk, its cost and the possibilities of using it, and comparing these elements with the result that can be expected, taking into account the state of the sick person and his or her physical and moral resources.

In order to facilitate the application of these general principles, the following clarifications can be added:

—If there are no other sufficient remedies, it is permitted, with the patient's consent, to have recourse to the means provided by the most advanced medical techniques, even if these means are still at the experimental stage and are not without a certain risk. By accepting them, the patient can even show generosity in the service of humanity.

—It is also permitted, with the patient's consent, to interrupt these means, where the results fall short of expectations. But for such a decision to be made, account will have to be taken of the reasonable wishes of the patient and the

⁶³³ SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on Euthanasia Iura et bona*, 5 May 1980, in *Acta Apostolicae Sedis*, 72 (1980), pp. 542-552 (English-language version in *TPS*, 25 [1980], pp. 289-296).

patient's family, as also of the advice of the doctors who are specially competent in the matter.

The latter may in particular judge that the investment in instruments and personnel is disproportionate to the results foreseen; they may also judge that the techniques applied impose on the patient strain or suffering out of proportion with the benefits which he or she may gain from such techniques.

—It is also permissible to make do with the normal means that medicine can offer. Therefore one cannot impose on anyone the obligation to have recourse to a technique which is already in use but which carries a risk or is burdensome. Such a refusal is not the equivalent of suicide; on the contrary, it should be considered as an acceptance of the human condition, or a wish to avoid the application of a medical procedure disproportionate to the results that can be expected, or a desire not to impose excessive expense on the family or the community.

When inevitable death is imminent in spite of the means used, it is permitted in conscience to take the decision to refuse forms of treatment that would only secure a precarious and burdensome prolongation of life, so long as the normal care due to the sick person in similar cases is not interrupted. In such circumstances the doctor has no reason to reproach himself with failing to help the person in.

Appendix IV: Holy See Statement on the Disabled Person (1981, excerpts)⁶³⁴

The first principle, which is one that must be stated clearly and firmly, is that the disabled person (whether the disability be the result of a congenital handicap, chronic illness or accident, or from mental or physical deficiency, and whatever the severity of the disability) is a fully human subject with the corresponding innate, sacred and inviolable rights. This statement is based upon the firm recognition of the fact that a human being possesses a unique dignity and an independent value from the moment of conception and in every stage of development, whatever his or her physical condition. This principle, which stems from the upright conscience of humanity, must be made the inviolable basis of legislation and society.

A perfect technological society which only allowed fully functional members and which neglected, institutionalized or, what is worse, eliminated those who did not measure up to this standard or who were unable to carry out a useful role, would have to be considered as radically unworthy of man however economically successful it might be.

One cannot at whim dispose of human life by claiming an arbitrary power over it. Medicine loses its title of nobility when instead of attacking disease, it attacks life; in fact prevention should be against the illness, not against life. One can never claim that one wishes to bring comfort to a family by suppressing one of its members. The respect, the dedication, the time and means required for the care of handicapped persons, even those whose mental faculties are gravely affected, is the price that a society should generously pay in order to remain truly human.

Furthermore, the deliberate failure to provide assistance or any act which leads to the suppression of the newborn disabled person represents a breach not only of medical ethics but also of the fundamental and inalienable right to life.

⁶³⁴ Document of the Holy See, "To all who work for the disabled," *From the very beginning*, 4 March 1981, in *Enchiridion Vaticanum* 7, pp. 1040-1067 (on facing pages with the Italian-language version; both versions have identical margin nn. 1138-1170); *Origins*, 10 (1980-1981), pp. 747-750.

Appendix V: *Question of Ethics Regarding the Fatally Ill and the Dying* (1981, excerpts)⁶³⁵

2.4.2. The criteria whereby we can distinguish extraordinary measures from ordinary measures are very many. They are to be applied according to each concrete case. Some of them are objective: such as the nature of the measures proposed, how expensive they are, whether it is just to use them, and what the options of Justice are in the matter of using them. Other criteria are subjective: such as not giving certain patients psychological shocks, anxiety, uneasiness, and so on. It will always be a question, when deciding upon measures to be taken, of establishing to what extent the means to be used and the end being sought are proportionate.

2.4.3 The Criterion of the Quality of Life: Its Importance. Among all the criteria for decision, particular importance must be given to the quality of the life to be saved or kept living by the therapy. The letter of Cardinal Villot to the Congress of the International Federation of Catholic Medical Associations is very clear on this subject: "It must be emphasized that it is the sacred character of life which forbids a physician to kill and makes it a duty for him at the same time to use every resource of his art to fight against death. This does not, however, mean that a physician is under obligation to use all and every one of the life-maintaining techniques offered him by the indefatigable creativity of science. Would it not be a useless torture, in many cases, to impose vegetative reanimation during the last phase of an incurable disease ?" (*Documentation Catholique*, 1970, p. 963).

But the criterion of the quality of life is not the only one to be taken into account, since, as we have said above, subjective considerations must enter into a properly cautious judgment as to what therapy to undertake and what therapy not. The fundamental point is that the decision should be made according to rational arguments that have taken well into account the many and various aspects of the situation, including what effect will be had upon the family. The principle to follow is, therefore, that no moral obligation to have recourse to extraordinary measures exists; and that, incidentally, a doctor must follow the wishes of a sick person who refuses such measures.

2.4.4. Obligatory Minimal Measures. On the contrary, there remains the strict obligation to apply under all circumstances those therapeutic measures which are called "minimal": that is, those which are normally and customarily

⁶³⁵ PONTIFICAL COUNCIL COR UNUM, "Quelques questions d'éthique relatives aux grands malades et aux mourants," *Dans le cadre*, 27 June 1981, in *Enchiridion Vaticanum* 7, pp. 1132-1173, nn. 1234-1281. The Italian-language version is reproduced on facing pages and with identical column numbers; the English-language version, "Question of Ethics Regarding the Fatally Ill and the Dying," is in R.E. SMITH (ed.), *Conserving Human Life*, Braintree, MA, Pope John XXIII Medical-Moral Research and Education Center, 1989, Appendix II, pp. 286-304.

used for the maintenance of life (alimentation, blood transfusions, injections, etc.). To interrupt these minimal measures would, in practice, be equivalent to wishing to put an end to the patient's life.

Appendix VI: Pontifical Academy of Sciences, The Artificial Prolongation of Life (1985, excerpts)⁶³⁶

... By "treatment" the group understands all the medical interventions, however technically complex, which are available and appropriate for a given case. If the patient is in permanent coma, irreversible as far as it is possible to predict, treatment is not required, but all care should be lavished on him including feeding. If it is clinically established that there is a possibility of recovery, treatment is required. If treatment is of no benefit to the patient, it may be withdrawn, while continuing with the care of the patient. By "care" the group understands ordinary help due to sick patients, such as compassion and affective and spiritual support due to every human being in danger.

⁶³⁶ PONTIFICAL ACADEMY OF SCIENCES, "Vita artificiale e trapianti" *Su invito*, 21 October 1985, in *Enchiridion Vaticanum* 9, pp. 1726-1727, nn. 1766-1769 (English-language translation in *Origins*, 15 [1985-1986], p. 415; and *Health Progress*, vol. 66, n. 10 [1985].)

Appendix VII: Pope John Paul II, *Veritatis splendor* (1993, excerpts)⁶³⁷

IV. The moral act

Teleology and teleologism

71. The relationship between man's freedom and God's law, which has its intimate and living centre in the moral conscience, is manifested and realized in human acts. It is precisely through his acts that man attains perfection as man, as one who is called to seek his Creator of his own accord and freely to arrive at full and blessed perfection by cleaving to him. Human acts are moral acts because they express and determine the goodness or evil of the individual who performs them. They do not produce a change merely in the state of affairs outside of man but, to the extent that they are deliberate choices, they give moral definition to the very person who performs them, determining his *profound spiritual traits*.

72. [The objective nature of moral activity, the secondary role of intention] The rational ordering of the human act to the good in its truth and the voluntary pursuit of that good, known by reason, constitute morality. Hence human activity cannot be judged as morally good merely because it is a means for attaining one or another of its goals, or simply because the subject's intention is good. Activity is morally good when it attests to and expresses the voluntary ordering of the person to his ultimate end and the conformity of a concrete action with the human good as it is acknowledged in its truth by reason. If the object of the concrete action is not in harmony with the true good of the person, the choice of that action makes our will and ourselves morally evil, thus putting us in conflict with our ultimate end, the supreme good, God himself.

74. [Criticism of teleological theories] But on what does the moral assessment of man's free acts depend? What is it that ensures this *ordering of human acts to God*? Is it the *intention* of the acting subject, the *circumstances* -- and in particular the consequences -- of his action, or the *object* itself of his act? This is what is traditionally called the problem of the "sources of morality". Precisely with regard to this problem there have emerged in the last few decades new or newly-revived theological and cultural trends which call for careful discernment on the part of the Church's Magisterium. Certain *ethical theories*, called "*teleological*," claim to be concerned for the conformity of human acts with the ends pursued by the agent and with the values intended by him. The criteria for evaluating the moral rightness of an action are drawn from the *weighing of the non-moral or pre-moral goods* to be gained and the corresponding

⁶³⁷ JOHN PAUL II, Encyclical Letter *Veritatis splendor*, 6 August 1993, in *AAS*, 85 (1993), pp. 1133-1228 (English-language version in Vatican translation, JOHN PAUL II, *Veritatis splendor*, Vatican City, Libreria Editrice Vaticana, 1993; *The Splendor of Truth*, Sherbrooke, Editions Paulines, Magisterium Series 18, 1993; and *Origins*, 23 [1993-1994], pp. 297-334).

non-moral or pre-moral values to be respected. For some, concrete behaviour would be right or wrong according as whether or not it is capable of producing a better state of affairs for all concerned. Right conduct would be the one capable of “maximizing” goods and “minimizing” evils.

75. [Criticism of “consequentialism” or “proportionalism”] But as part of the effort to work out such a rational morality (for this reason it is sometimes called an “autonomous morality”) there exist *false solutions, linked in particular to an inadequate understanding of the object of moral action*. Some authors do not take into sufficient consideration the fact that the will is involved in the concrete choices which it makes: these choices are a condition of its moral goodness and its being ordered to the ultimate end of the person. Others are inspired by a notion of freedom which prescind from the actual conditions of its exercise, from its objective reference to the truth about the good, and from its determination through choices of concrete kinds of behaviour. According to these theories, free will would neither be morally subjected to specific obligations nor shaped by its choices, while nonetheless still remaining responsible for its own acts and for their consequences. This “*teleologism*,” as a method for discovering the moral norm, can thus be called -- according to terminology and approaches imported from different currents of thought -- “*consequentialism*” or “*proportionalism*”. The former claims to draw the criteria of the rightness of a given way of acting solely from a calculation of foreseeable consequences deriving from a given choice. The latter, by weighing the various values and goods being sought, focuses rather on the proportion acknowledged between the good and bad effects of that choice, with a view to the “greater good” or “lesser evil” actually possible in a particular situation.

The teleological ethical theories (proportionalism, consequentialism), while acknowledging that moral values are indicated by reason and by Revelation, maintain that it is never possible to formulate an absolute prohibition of particular kinds of behaviour which would be in conflict, in every circumstance and in every culture, with those values. The acting subject would indeed be responsible for attaining the values pursued, but in two ways: the values or goods involved in a human act would be, from one viewpoint, *of the moral order* (in relation to properly moral values, such as love of God and neighbour, justice, etc.) and, from another viewpoint, *of the pre-moral order*, which some term non-moral, physical or ontic (in relation to the advantages and disadvantages accruing both to the agent and to all other persons possibly involved, such as, for example, health or its endangerment, physical integrity, life, death, loss of material goods, etc.). In a world where goodness is always mixed with evil, and every good effect linked to other evil effects, the morality of an act would be judged in two different ways: its moral “goodness” would be judged on the basis of the subject’s intention in reference to moral goods, and its “rightness” on the basis of a consideration of its foreseeable effects or consequences and of their proportion. Consequently, concrete kinds of behaviour could be described as “right” or “wrong,” without it being thereby possible to judge as morally “good” or “bad” the will of the person choosing them. In this way, an act which, by contradicting a universal negative

norm, directly violates goods considered as “pre-moral” could be qualified as morally acceptable if the intention of the subject is focused, in accordance with a “responsible” assessment of the goods involved in the concrete action, on the moral value judged to be decisive in the situation.

The evaluation of the consequences of the action, based on the proportion between the act and its effects and between the effects themselves, would regard only the pre-moral order. The moral specificity of acts, that is their goodness or evil, would be determined exclusively by the faithfulness of the person to the highest values of charity and prudence, without this faithfulness necessarily being incompatible with choices contrary to certain particular moral precepts. Even when grave matter is concerned, these precepts should be considered as operative norms which are always relative and open to exceptions.

In this view, deliberate consent to certain kinds of behaviour declared illicit by traditional moral theology would not imply an objective moral evil.

The object of the deliberate act

76. These theories can gain a certain persuasive force from their affinity to the scientific mentality, which is rightly concerned with ordering technical and economic activities on the basis of a calculation of resources and profits, procedures and their effects. They seek to provide liberation from the constraints of a voluntaristic and arbitrary morality of obligation which would ultimately be dehumanizing.

Such theories however are not faithful to the Church’s teaching, when they believe they can justify, as morally good, deliberate choices of kinds of behaviour contrary to the commandments of the divine and natural law. These theories cannot claim to be grounded in the Catholic moral tradition. Although the latter did witness the development of a casuistry which tried to assess the best ways to achieve the good in certain concrete situations, it is nonetheless true that this casuistry concerned only cases in which the law was uncertain, and thus the absolute validity of negative moral precepts, which oblige without exception, was not called into question. The faithful are obliged to acknowledge and respect the specific moral precepts declared and taught by the Church in the name of God, the Creator and Lord. When the Apostle Paul sums up the fulfilment of the law in the precept of love of neighbour as oneself (cf. *Rom* 13:8-10), he is not weakening the commandments but reinforcing them, since he is revealing their requirements and their gravity. *Love of God and of one’s neighbour cannot be separated from the observance of the commandments of the Covenant* renewed in the blood of Jesus Christ and in the gift of the Spirit. It is an honour characteristic of Christians to obey God rather than men (cf. *Acts* 4:19; 5:29) and accept even martyrdom as a consequence, like the holy men and women of the Old and New Testaments, who are considered such because they gave their lives rather than perform this or that particular act contrary to faith or virtue.

77. In order to offer rational criteria for a right moral decision, the theories mentioned above take account of the intention and *consequences* of human action. Certainly there is need to take into account both the intention -- as Jesus forcefully insisted in clear disagreement with the scribes and Pharisees, who prescribed in great detail certain outward practices without paying attention to the heart (cf. *Mk* 7:20-21; *Mt* 15:19) -- and the goods obtained and the evils avoided as a result of a particular act. Responsibility demands as much. But the consideration of these consequences, and also of intentions, is not sufficient for judging the moral quality of a concrete choice. The weighing of the goods and evils foreseeable as the consequence of an action is not an adequate method for determining whether the choice of that concrete kind of behaviour is "according to its species," or "in itself," morally good or bad, licit or illicit. The foreseeable consequences are part of those circumstances of the act, which, while capable of lessening the gravity of an evil act, nonetheless cannot alter its moral species.

Moreover, everyone recognizes the difficulty, or rather the impossibility, of evaluating all the good and evil consequences and effects -- defined as pre-moral -- of one's own acts: an exhaustive rational calculation is not possible. How then can one go about establishing proportions which depend on a measuring, the criteria of which remain obscure? How could an absolute obligation be justified on the basis of such debatable calculations?

78. *The morality of the human act depends primarily and fundamentally on the "object" rationally chosen by the deliberate will*, as is borne out by the insightful analysis, still valid today, made by Saint Thomas. In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person*. The object of the act of willing is in fact a freely chosen kind of behaviour. To the extent that it is in conformity with the order of reason, it is the cause of the goodness of the will; it perfects us morally, and disposes us to recognize our ultimate end in the perfect good, primordial love. By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person. Consequently, as the *Catechism of the Catholic Church* teaches, "there are certain specific kinds of behaviour that are always wrong to choose, because choosing them involves a disorder of the will, that is, a moral evil". And Saint Thomas observes that "it often happens that man acts with a good intention, but without spiritual gain, because he lacks a good will. Let us say that someone robs in order to feed the poor: in this case, even though the intention is good, the uprightness of the will is lacking. Consequently, no evil done with a good intention can be excused. 'There are those who say: And why not do evil that good may come? Their condemnation is just' (*Rom* 3:8)".

The reason why a good intention is not itself sufficient, but a correct choice of actions is also needed, is that the human act depends on its object, whether that object is *capable or not of being ordered* to God, to the One who

“alone is good,” and thus brings about the perfection of the person. An act is therefore good if its object is in conformity with the good of the person with respect for the goods morally relevant for him. Christian ethics, which pays particular attention to the moral object, does not refuse to consider the inner “teleology” of acting, inasmuch as it is directed to promoting the true good of the person; but it recognizes that it is really pursued only when the essential elements of human nature are respected. The human act, good according to its object, is also *capable of being ordered* to its ultimate end. That same act then attains its ultimate and decisive perfection when the will *actually does order* it to God through charity. As the Patron of moral theologians and confessors teaches: “It is not enough to do good works; they need to be done well. For our works to be good and perfect, they must be done for the sole purpose of pleasing God”.

“Intrinsic evil”: it is not licit to do evil that good may come of it (cf. Rom 3:8)

79. One must therefore reject the thesis, characteristic of teleological and proportionalist theories, which holds that it is impossible to qualify as morally evil according to its species -- its “object” -- the deliberate choice of certain kinds of behaviour or specific acts, apart from a consideration of the intention for which the choice is made or the totality of the foreseeable consequences of that act for all persons concerned.

Appendix VIII: John Paul II, *Evangelium vitae* (1995, excerpts)⁶³⁸

14 Following this same logic, the point has been reached where the most basic care, even nourishment, is denied to babies born with serious handicaps or illnesses. The contemporary scene, moreover, is becoming even more alarming by reason of the proposals, advanced here and there, to justify even infanticide, following the same arguments used to justify the right to abortion. In this way, we revert to a state of barbarism which one hoped had been left behind forever.

15. Threats which are no less serious hang over the incurably ill and the dying. In a social and cultural context which makes it more difficult to face and accept suffering, the temptation becomes all the greater to resolve the problem of suffering by eliminating it at the root, by hastening death so that it occurs at the moment considered most suitable.

57. If such great care must be taken to respect every life, even that of criminals and unjust aggressors, the commandment “You shall not kill” has absolute value when it refers to the innocent person. And all the more so in the case of weak and defenceless human beings, who find their ultimate defence against the arrogance and caprice of others only in the absolute binding force of God’s commandment...

Therefore, by the authority which Christ conferred upon Peter and his Successors, and in communion with the Bishops of the Catholic Church, I confirm that the direct and voluntary killing of an innocent human being is always gravely immoral. This doctrine, based upon that unwritten law which man, in the light of reason, finds in his own heart (c/f. Rom 2:14-15), is reaffirmed by Sacred Scripture, transmitted by the Tradition of the Church and taught by the ordinary and universal Magisterium.

The deliberate decision to deprive an innocent human being of his life is always morally evil and can never be licit either as an end in itself or as a means to a good end. It is in fact a grave act of disobedience to the moral law, and indeed to God himself, the author and guarantor of that law; it contradicts the fundamental virtues of justice and charity. “Nothing and no one can in any way permit the killing of an innocent human being, whether a fetus or an embryo, an infant or an adult, an old person, or one suffering from an incurable disease, or a person who is dying. Furthermore, no one is permitted to ask for this act of killing, either for himself or herself or for another person entrusted to his or her

⁶³⁸ JOHN PAUL II, Encyclical Letter *Evangelium vitae*, 25 March 1995, in *AAS*, 87 (1995), pp. 401-522 (English-language version JOHN PAUL II, *The Gospel of Life*, Sherbrooke, Médiaspaul, Magisterium Series 28, 1995).

care, nor can he or she consent to it, either explicitly or implicitly. Nor can any authority legitimately recommend or permit such an action”.

64. At the other end of life's spectrum, men and women find themselves facing the mystery of death. Today, as a result of advances in medicine and in a cultural context frequently closed to the transcendent, the experience of dying is marked by new features. When the prevailing tendency is to value life only to the extent that it brings pleasure and well-being, suffering seems like an unbearable setback, something from which one must be freed at all costs. Death is considered “senseless” if it suddenly interrupts a life still open to a future of new and interesting experiences. But it becomes a “rightful liberation” once life is held to be no longer meaningful because it is filled with pain and inexorably doomed to even greater suffering.

Furthermore, when he denies or neglects his fundamental relationship to God, man thinks he is his own rule and measure, with the right to demand that society should guarantee him the ways and means of deciding what to do with his life in full and complete autonomy. It is especially people in the developed countries who act in this way: they feel encouraged to do so also by the constant progress of medicine and its ever more advanced techniques. By using highly sophisticated systems and equipment, science and medical practice today are able not only to attend to cases formerly considered untreatable and to reduce or eliminate pain, but also to sustain and prolong life even in situations of extreme frailty, to resuscitate artificially patients whose basic biological functions have undergone sudden collapse, and to use special procedures to make organs available for transplanting.

In this context the temptation grows to have recourse to euthanasia, that is, to take control of death and bring it about before its time, “gently” ending one's own life or the life of others. In reality, what might seem logical and humane, when looked at more closely is seen to be senseless and inhumane. Here we are faced with one of the more alarming symptoms of the “culture of death,” which is advancing above all in prosperous societies, marked by an attitude of excessive preoccupation with efficiency and which sees the growing number of elderly and disabled people as intolerable and too burdensome. These people are very often isolated by their families and by society, which are organized almost exclusively on the basis of criteria of productive efficiency, according to which a hopelessly impaired life no longer has any value.

65. For a correct moral judgment on euthanasia, in the first place a clear definition is required. *Euthanasia in the strict sense* is understood to be an action or omission which of itself and by intention causes death, with the purpose of eliminating all suffering. “Euthanasia's terms of reference, therefore, are to be found in the intention of the will and in the methods used”.

Euthanasia must be distinguished from the decision to forego so-called “aggressive medical treatment,” in other words, medical procedures which no

longer correspond to the real situation of the patient, either because they are by now disproportionate to any expected results or because they impose an excessive burden on the patient and his family. In such situations, when death is clearly imminent and inevitable, one can in conscience “refuse forms of treatment that would only secure a precarious and burdensome prolongation of life, so long as the normal care due to the sick person in similar cases is not interrupted”. Certainly there is a moral obligation to care for oneself and to allow oneself to be cared for, but this duty must take account of concrete circumstances. It needs to be determined whether the means of treatment available are objectively proportionate to the prospects for improvement. 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.

In modern medicine, increased attention is being given to what are called “methods of palliative care,” which seek to make suffering more bearable in the final stages of illness and to ensure that the patient is supported and accompanied in his or her ordeal. Among the questions which arise in this context is that of the licitness of using various types of painkillers and sedatives for relieving the patient’s pain when this involves the risk of shortening life. While praise may be due to the person who voluntarily accepts suffering by forgoing treatment with pain-killers in order to remain fully lucid and, if a believer, to share consciously in the Lord’s Passion, such “heroic” behaviour cannot be considered the duty of everyone. Pius XII affirmed that it is licit to relieve pain by narcotics, even when the result is decreased consciousness and a shortening of life, “if no other means exist, and if, in the given circumstances, this does not prevent the carrying out of other religious and moral duties”. In such a case, death is not willed or sought, even though for reasonable motives one runs the risk of it: there is simply a desire to ease pain effectively by using the analgesics which medicine provides. All the same, “it is not right to deprive the dying person of consciousness without a serious reason”: as they approach death people ought to be able to satisfy their moral and family duties, and above all they ought to be able to prepare in a fully conscious way for their definitive meeting with God.

Taking into account these distinctions, in harmony with the Magisterium of my Predecessors and in communion with the Bishops of the Catholic Church, *I confirm that euthanasia is a grave violation of the law of God*, since it is the deliberate and morally unacceptable killing of a human person. This doctrine is based upon the natural law and upon the written word of God, is transmitted by the Church’s Tradition and taught by the ordinary and universal Magisterium.

Depending on the circumstances, this practice involves the malice proper to suicide or murder.

Appendix IX: *Charter for Health Care Workers* (1995, excerpts)⁶³⁹

[Preface] And this Council cannot but feel flattered that the Congregation for the Doctrine of the Faith approved and quickly confirmed in its entirety the text of the Charter submitted to it: another reason for its full validity and secure authority, but also a concrete proof of the interdicastery cooperation expressly desired in the *motu proprio* which set up the Pontifical Council for Pastoral Assistance to Health Care Workers.

Therefore, after an introduction on the figure and essential tasks of health care workers, or better, of the “ministers of life,” the Charter gathers its directives around the triple theme of procreation, life, and death. And so that—as often happens—doubtful interpretations may not prevail over the objective worth of the contents, in the drafting of the document the statements of the Supreme Pontiffs and authoritative texts issued by the Offices of the Roman Curia have almost always been quoted directly. (Preface)

119. Contemporary medicine, in fact, has at its disposal methods which artificially delay death, without any real benefit to the patient. It is merely keeping one alive or prolonging life for a time, at the cost of further, severe suffering. This is so-called “therapeutic obstinacy,” which consists “of the use of methods which are particularly exhausting and painful for patients, condemning them, in fact, to an artificially prolonged agony.”

120. Aware that they are “neither the lord of life nor the conqueror of death,” health care workers, in evaluating means, “should make appropriate choices “that is, relate to patients and be guided by their real condition.”

Here they will apply the principle—already stated—of “proportionate care,” which can be specified as follows: “When inevitable death is imminent, despite the means used, it is licit in conscience to decide to refuse treatment that would only secure a precarious and painful prolongation of life, but without interrupting the normal treatment due to the patient in similar cases. Hence doctors need have no concern; it is not as if they had failed to assist the person in danger.”

The administration of food and liquids, even artificially, is part of the normal treatment always due patients when this is not burdensome for them: their undue suspension could amount to euthanasia in a proper sense.

⁶³⁹ PONTIFICAL COUNCIL FOR PASTORAL ASSISTANCE TO HEALTH CARE WORKERS, *Charter for Health Care Workers*, Vatican City, Vatican Press, 1995; Boston, Pauline Books and Media, 1995.

Appendix X: John Paul II, *ad limina* address (2 October 1998, excerpts)⁶⁴⁰

As ecumenical witness in defense of life develops, a great teaching effort is needed to clarify the substantive moral difference between discontinuing medical procedures that may be burdensome, dangerous, or disproportionate to the expected outcome-what the *Catechism of the Catholic Church* calls “the refusal of ‘over-zealous’ treatment” (2278; c/f *Evangelium Vitae*, 65)-and taking away the ordinary means of preserving life, such as feeding, hydration, and normal medical care. The statement of the United States bishops’ Pro-Life Committee, Nutrition and Hydration: Moral and Pastoral Considerations, rightly emphasizes that the omission of nutrition and hydration intended to cause a patient’s death must be rejected and that, while giving careful consideration to all the factors involved, the presumption should be in favor of providing medically assisted nutrition and hydration to all patients who need them. To blur this distinction is to introduce a source of countless injustices and much additional anguish, affecting both those already suffering from ill health or the deterioration which comes with age, and their loved ones.

⁶⁴⁰ JOHN PAUL II, *ad limina* address to bishops from the Western United States, 2 October 1998, in *Origins*, 28 (1998-1999), pp. 314-316.

Appendix XI: Tables of episcopal statements

The purpose of these tables is to provide an overview of episcopal documents that deal directly or indirectly with assisted nutrition and hydration. There are four tables according to the place of origin. Full reference information can be found in the bibliography; the information in the tables (author, date and nature of document) is the minimum necessary to allow accurate identification of the document. Where the document has an explicit reference to assisted nutrition and hydration, there is a brief summary of the teaching or comment in a footnote. The table will also note any document that takes up the theme of the ordinary and extraordinary means of prolonging life (or equivalent concepts, such as proportionate, burdensome, and so forth).

Australian episcopal statements⁶⁴¹

Author	Date	Nature of Document	Ordinary Extraordinary analysis?	Nutrition and hydration?
ACCB	26 April 1995	Submission	Yes	Indirect ⁶⁴²
ACCB	14 May 1995	Pastoral letter	Yes	No
Hickey (Perth)	1995	Comments	No	Yes ⁶⁴³
Little (Melbourne)	1992	Comments	No	Yes ⁶⁴⁴

⁶⁴¹ Full publication details for the Australian episcopal documents can be found in the bibliography, starting at p. 231.

⁶⁴² There are two references, at 2.6 and 5.3. The context indicates that the bishops would be critical of any move to withdraw assisted nutrition and hydration.

⁶⁴³ Medically assisted nutrition and hydration may only be withdrawn if it is very burdensome to the patient, and only when death is imminent and inevitable.

Author	Date	Nature of Document	Ordinary Extraordinary analysis?	Nutrition and hydration?
Victorian bishops	17 July 1995	Media release	Yes	No

British episcopal statements⁶⁴⁵

Bishop, conference or group	Date	Nature of statement	Ordinary and extraordinary analysis?	Nutrition and hydration?
Budd	24 November 1992	Statement	Yes	Yes
England and Wales	17 December 1992	Statement	Yes	Indirect ⁶⁴⁶
Hume	8 February 1993	Statement	No	Yes ⁶⁴⁷
Konstant	8 February 1993	Statement	No	Yes ⁶⁴⁸
Konstant	26 February 1993	Statement	Yes	Indirect ⁶⁴⁹
Conti (Bishop)	24 April 1993	Comments	No	Yes ⁶⁵⁰

⁶⁴⁴ Dying patients are to be given adequate supportive care, including food and water. Withdrawal of such basic ordinary care results in a sense of abandonment of the dying.

⁶⁴⁵ The British episcopal statements start on p. 231 of the bibliography.

⁶⁴⁶ The context was the Bland case. The bishops did not refer directly to the case or to assisted nutrition and hydration. However, they called for the state to protect the interests of those who are most vulnerable.

⁶⁴⁷ Cardinal Hume, in speaking of the Bland case, said: "I am very concerned about the implication of this judgement if the effect is to sanction death by starvation which cannot be morally right."

⁶⁴⁸ "However, the Catholic bishops of this country have made their position clear. The discontinuation of feeding, as permitted by the Law Lords in this case, amounts to legalised killing by starvation and the Catholic Church is opposed to it."

⁶⁴⁹ Bishop Konstant did not make an explicit reference to assisted nutrition and hydration but gave a brief summary of the principles of ordinary and extraordinary means, and then said: "On the larger issue we will need time, information and guidance to come to a clear understanding of the morality of such situations. It is a far more complex matter than I had first thought." He seems to have moderated his stance of 25 February 1993, as quoted in fn. n. 648.

Bishop, conference or group	Date	Nature of statement	Ordinary and extraordinary analysis?	Nutrition and hydration?
England, Ireland, Scotland & Wales	12 August 1993	Statement	Yes	Yes ⁶⁵¹
Hume, Winning, Brady	1 April 1988	Letter	Yes	Indirect ⁶⁵²
Smith	21 January 2000	Response	Yes	Yes ⁶⁵³
Hume	27 November 1997	Letter	Yes	Indirect ⁶⁵⁴
England and Wales	8 July 1993	Submission	Yes	Yes ⁶⁵⁵
Ireland	1977	Pastoral letter	Yes	No

⁶⁵⁰ “Feeding a patient has always been accepted as a primary duty of care, be the individual a dependent child or a helpless geriatric [...] It can be reasonable to stop tube-feeding if a patient is in the final phase of dying or if it involves excessive risks or burdens for a patient. But it cannot be morally right to withdraw it precisely to end a patient’s life.”

⁶⁵¹ The bishops quoted Bishop Conti’s 24 April 1993 statement verbatim (see fn. 650).

⁶⁵² “Medical treatment, though not basic nursing care, can be, and lawfully is, withdrawn (after appropriate consultation and agreement) when it is futile or imposes an excessive burden on the patient.”

⁶⁵³ Bishop Smith said that the Bill (*The Medical Treatment [Prevention of Euthanasia] Bill*), which was an attempt to stop the withdrawal of sustenance, including assisted nutrition and hydration, from patients, “fully accords with the Catholic Church’s ethical teaching on euthanasia.”

⁶⁵⁴ “Medical treatment, though not basic nursing care, can be, and lawfully is, withdrawn (after appropriate consultation and agreement) when it is futile or imposes an excessive burden on the patient.”

⁶⁵⁵ The Bland decision (to withdraw assisted nutrition and hydration) must not be used to change existing laws or practice. Any decision about treatment and care must never aim at death. Death, if it ensues, will have resulted from the underlying condition, not as a direct consequence of the decision to withhold or withdraw treatment. It is possible to envisage cases where withholding or withdrawing treatment might be morally equivalent to murder.

United States of America episcopal statements⁶⁵⁶

Bishop, conference or group	Date	Nature of Document	Analysis of Ordinary Extraordinary?	Nutrition and hydration?
Bernardin	18 April 1986	Letter	Yes	Yes ⁶⁵⁷
Bernardin	May 1986	Address	Yes	No
Bernardin	26 May 1988	Address	Yes	Indirect ⁶⁵⁸
Bernardin	8 August 1988	Address	Yes	Indirect ⁶⁵⁹
Borders ⁶⁶⁰	1988	Letter	No	Yes ⁶⁶¹
Bullock	16 January 1992	Pastoral statement	Yes	Yes ⁶⁶²
California	22 April 1988	Statement	Yes	No
Casey	1 November 1975	<i>Amicus curiae</i> in Quinlan case	Yes	No
Connecticut	1976	Brochure	Yes	No
Fiorenza	July 1992	Interview	Yes	Yes ⁶⁶³

⁶⁵⁶ The American episcopal statements start on p. 235 of the bibliography.

⁶⁵⁷ Food and water are ordinary means that are to be given to the comatose.

⁶⁵⁸ When a person enters the dying process, we can withdraw those useless or burdensome measures that have become ethically extraordinary.

⁶⁵⁹ The Church's consistent ethic regarding the preservation of life opposes directly intended attacks on human life, whether by active intervention or by withdrawal of the means of survival (p. 189).

⁶⁶⁰ Archbishop Borders was speaking for several other bishops of that region, including Hickey and Corrada of Washington, Mulvey of Wilmington, and the three auxiliaries of Maryland.

⁶⁶¹ Withdrawal to hasten death is homicide. Assisted nutrition and hydration for the permanently unconscious is not useless if it maintains life, even if "quality of life" cannot be restored.

⁶⁶² Easily assimilated nutrition and hydration is a form of normal care, but is not obligatory if it ceases to provide a reasonable hope of benefit. Benefit for an incompetent patient is analysed in terms of possible recovery or a prolongation of at least minimally conscious life (p. 554).

⁶⁶³ Physical life is subordinate to the spiritual good of a person and there is no benefit to sustaining a merely biological life. Assisted nutrition and hydration is treatment, and if withheld the resulting death is not caused by starvation, but by the underlying pathological condition.

Bishop, conference or group	Date	Nature of Document	Analysis of Ordinary Extraordinary?	Nutrition and hydration?
Florida	27 April 1989	Pastoral statement	Yes	Yes ⁶⁶⁴
Gelineau	10 January 1988	Statement	Yes	Yes ⁶⁶⁵
Gracida	22 April 1992	Interview	Yes	Yes ⁶⁶⁶
Gregory	7 October 1996	Pastoral statement	Yes	No
Hannan	16 March 1986	Statement	Yes	Yes ⁶⁶⁷
Harrington ⁶⁶⁸	1980	Statement	Yes	Indirect ⁶⁶⁹
Illinois	29 May 2001	Pastoral letter	Yes	Yes ⁶⁷⁰
Law	7 March 1997	Testimony	Yes	No
Leibrecht	15 December 1989	Commentary	No	Yes ⁶⁷¹

⁶⁶⁴ The “strongest presumption” must be given to continuance. They can be withdrawn only in the context of imminent death, and only then when the assisted nutrition and hydration itself has become excessively burdensome (p. 48).

⁶⁶⁵ Assisted nutrition and hydration is an invasive medical treatment that offers no reasonable hope of benefit to Marcia Gray, who is in a persistent vegetative state. Accordingly, it is futile and extraordinary. The intention here is not to cause death but to alleviate the burden and suffering of the patient.

⁶⁶⁶ In most cases assisted nutrition and hydration is ordinary and obligatory care. A greater priority must be given to preserving life rather than weighing burdens and benefits to persons other than the patient. A person in the persistent vegetative state does not have a terminal condition which justifies the removal of assisted nutrition and hydration.

⁶⁶⁷ Food and water are ordinary means of sustaining life and are obligatory.

⁶⁶⁸ Bishop Harrington was speaking on behalf of the bishops of Massachusetts.

⁶⁶⁹ “No religious or moral tradition in the West requires physicians or patients to initiate or continue treatments where death is imminent whether or not such procedures are utilized. The right to withhold or withdraw useless treatment applies to ‘natural’ as well as to ‘artificial’ means” (p. 7).

⁶⁷⁰ Aggressive therapy (optional) and ordinary care are distinguished. “When a person can swallow and digest food, it is never appropriate to stop feeding by hand and giving sips of water. On the other hand, to provide artificial feeding and hydration in some cases at the end stages of terminal diseases like cancer might directly increase the suffering of the patient and perhaps even inadvertently hasten death. In every case and on every occasion we may not do anything that is aimed at causing or hastening the death of a patient” (p. 108).

⁶⁷¹ The case concerned the removal of assisted nutrition and hydration from Nancy Cruzan. Bishop Leibrecht argued that there are two valid Catholic positions, one emphasizing the

Bishop, conference or group	Date	Nature of Document	Analysis of Ordinary Extraordinary?	Nutrition and hydration?
Mahony	1988	Comments	Yes	Yes ⁶⁷²
Maida	1992	Pastoral letter	Yes	Yes ⁶⁷³
Maida ⁶⁷⁴	1 September 1993	Address	Yes	Indirect ⁶⁷⁵
Marino	1 September 1989	<i>Amicus curiae</i>	Yes	No
McGann	19 February 1997	Pastoral letter	Yes	Yes ⁶⁷⁶
McHugh	4 January 1991	Comments	Yes	Yes ⁶⁷⁷
McHugh ⁶⁷⁸	21 September 1989	Paper to priests	Yes	Yes ⁶⁷⁹

value of life, the other personhood. Until either the Vatican or the NCCB chooses between the two, either position can be followed.

⁶⁷² This statement was a response to the Bouvia case; Bouvia was a quadriplegic woman who hoped to starve herself to death and tried to enlist co-operation from hospital personnel. Archbishop Mahony's statement strongly criticised the Appeal Court's "quality of life" approach in reaching its decision, which in effect ruled that Bouvia's life was so miserable she had the right to end it. He affirmed the right to forego food, but only if the food itself added significant additional burdens (p. 86).

⁶⁷³ "When death is inevitable, it is permitted, in good conscience, to refuse treatment which would only secure a precarious and burdensome prolongation of life. Even in these cases, however, the normal care of food, water and cleanliness due a sick person must not be interrupted" (p. 686).

⁶⁷⁴ Archbishop Maida was speaking for the Michigan Catholic Conference.

⁶⁷⁵ Archbishop Maida spoke in favour of a 1993 Michigan law that "recognizes the right to reject unwanted medical treatment, including life-sustaining procedures, so that a suffering individual may die a natural death."

⁶⁷⁶ Assisted nutrition and hydration can be withdrawn (from sick and dying people) if it offers no reasonable benefit or is an unreasonable burden. "In foregoing or withholding burdensome treatment or technological assistance, the disease causes the death" (p. 642).

⁶⁷⁷ Bishop McHugh distinguished between a dying and a non-dying patient. Patients in the persistent vegetative state are not brain-dead or dying. To withdraw nutrition and hydration from a non-dying patient is to introduce a new cause of death.

⁶⁷⁸ The bishops of New Jersey also sent this paper to the priests of their dioceses. On 16 November 1989 Cardinal O'Connor asked that the statement be sent to the priests of the Archdiocese of New York.

Bishop, conference or group	Date	Nature of Document	Analysis of Ordinary Extraordinary?	Nutrition and hydration?
Methodist-Catholic dialogue	August 1989	Agreed statement on living and dying	Yes	Indirect ⁶⁸⁰
Michigan	19 April 1993	Statement	Yes	No
Michigan	14 September 1997	Pastoral letter	Yes	No
Missouri	20 December 1990	Statement	Yes	Yes ⁶⁸¹
Murphy	September 1991	Address	Yes	No
Murphy	20 September 1994	Address	Yes	No
Myers	14 September 1991	Healthcare instruction	Yes	Yes ⁶⁸²
NCCB	11 November 1976	Pastoral letter	Yes	No
NCCB	16 November 1978	Pastoral letter on the handicapped	Yes	Indirect ⁶⁸³
NCCB	15 November 1985	Pastoral plan for pro-life activities	No	Indirect ⁶⁸⁴

⁶⁷⁹ Patients in the persistent vegetative state are not dying, nor do they have a fatal pathology. Assisted nutrition and hydration must be provided as part of a patient's normal care, unless or until their benefits are clearly outweighed by a definite danger or burden, or they are clearly useless in sustaining life. The inability to pursue the spiritual ends of life does not justify withdrawal (p. 315).

⁶⁸⁰ "Medical interventions of little benefit to the patient compared to the burdens they impose" can be withdrawn from a dying patient (p. 246).

⁶⁸¹ The statement reflected the fact that it was a response to a 14 December 1990 Court decision to withdraw assisted nutrition and hydration, and was made while Nancy Cruzan was dying. The bishops said this was a controverted case, but that there should be a presumption in favour of life in such cases (p. 495).

⁶⁸² The option of forgoing a life-preserving means is not an "entirely open question." The *Declaration on Euthanasia* allows withdrawal only when death is imminent in spite of the means used. Artificially supplied food and water are obligatory unless they cannot be assimilated. In other cases, there can be a judgement about the burdens introduced by the assisted nutrition and hydration, with no judgement based on a quality of life standard.

⁶⁸³ This pastoral statement on the handicapped condemned "postnatal neglect" and the practice of denying handicapped newborn babies "ordinary and usual medical procedures" (p. 374).

⁶⁸⁴ The plan notes the "trend toward lethal neglect of newborn children with disabilities" (p. 401). This neglect includes withdrawal of nutrition.

Bishop, conference or group	Date	Nature of Document	Analysis of Ordinary Extraordinary?	Nutrition and hydration?
NCCB	16 October 1989	<i>Amicus curiae</i> in Cruzan case	Yes	Yes ⁶⁸⁵
NCCB (Administrative Committee)	12 September 1991	Statement on Euthanasia	Yes	No
NCCB (Doctrine Committee)	20 September 1996	Statement on anencephaly	Yes	Indirect ⁶⁸⁶
NCCB (Pro-Life Committee)	1976	Report to bishops on legislative trends	Yes	No
NCCB (Pro-Life Committee)	18 April 1983	Statement on handicapped infants	Yes	Yes ⁶⁸⁷
NCCB (Pro-Life Committee)	16 August 1983	Statement	Yes	Yes ⁶⁸⁸
NCCB (Pro-Life Committee)	1984	Guidelines for legislation	Yes	Yes ⁶⁸⁹

⁶⁸⁵ “[The] bishops are gravely concerned over recent social and legal trends regarding the withdrawal of life-sustaining care and treatment from non-terminal patients. Procedures for providing nutrition and hydration to unconscious or otherwise disabled patients are a central focus of these disturbing trends. The conference’s considered judgment regarding such procedures is that “the law should establish a strong presumption in favor of their use,” because “food and water are necessities of life for all human beings and can generally be provided without the risks and burdens of more aggressive means for sustaining life” (p. 345).

⁶⁸⁶ This statement dealt with issues relating to infants with anencephaly; it stressed the human dignity of such a child (against some critics) and said, “the anencephalic child, during his or her probably brief life after birth, should be given the comfort and palliative care appropriate to all the dying. This failing life need not be further troubled by using extraordinary means to prolong it (see *Ethical and Religious Directives*, Directives 57 and 58). Directives 57 and 58 of the 1994 NCCB *Ethical and Religious Directives for Catholic Health Care Services* dealt with assisted nutrition and hydration.

⁶⁸⁷ This statement on the medical care of handicapped new-borns applauded a federal government attempt to stop the practice of starving infants to death. It says the deliberate omission of necessary life-support in order to cause death can be equivalent to murder (p. 771).

⁶⁸⁸ This statement makes the same point as the NCCB 18 April 1983 statement (see fn. 687).

Bishop, conference or group	Date	Nature of Document	Analysis of Ordinary Extraordinary?	Nutrition and hydration?
NCCB (Pro-Life Committee)	26 July 1985	Joint statement on handicapped newborns	Yes	Yes ⁶⁹⁰
NCCB (Pro-Life Committee)	2 July 1986	Statement on the Terminally Ill Act	Yes	Yes ⁶⁹¹
NCCB (Pro-Life Committee)	2 April 1992	Moral and pastoral reflections on nutrition	Yes	Yes ⁶⁹²
NCCB (Pro-Life Committee)	25 July 2000	Letter to Congress on the Protection of New-born Infants	Yes	No
Nevins	31 March 1994	Pastoral letter	Indirect	Indirect ⁶⁹³
New Jersey	3 November 1986	<i>Amicus curiae</i>	Yes	Yes ⁶⁹⁴
New York State	13 January 1993	Testimony	Yes	Yes ⁶⁹⁵

⁶⁸⁹ Guideline (h) urged that suggested legislation should “recognize the presumption that certain basic measures, such as nursing care, hydration, nourishment, and the like must be retained out of respect for the dignity of every patient.”

⁶⁹⁰ “Every newborn has the right to basic care: nurture, sustenance and relief from pain” which must be provided “quite aside from medical intervention.”

⁶⁹¹ This response distinguished people who are dying from people with “incurable or irreversible disabling conditions” who are not terminally ill. It pointed out that the crucial distinction arises out of the cause of death (the illness vs. starvation) when assisted nutrition and hydration is withdrawn.

⁶⁹² Decisions about life and death must avoid all discrimination based on age or dependency, whatever the cause. It is euthanasia if the decision to withdraw assisted nutrition and hydration is done to cause the patient’s death, either for its own sake or to achieve some other goal such as the relief of suffering. The presumption in favour of providing medically assisted nutrition and hydration to patients yields in cases where such procedures have no medically reasonable hope of sustaining life or pose excessive risks or burdens (p. 711, col. 1).

⁶⁹³ Bishop Nevins referred to the Florida bishops’ 27 April 1989 pastoral statement and its principles for provision of sustenance to the dying, (see our fn. 664, p. 297).

⁶⁹⁴ Assisted nutrition and hydration are aspects of normal care that are not excessively burdensome and must always be maintained. If removed, the death which follows (by starvation) is intentional euthanasia (p. 583).

⁶⁹⁵ Assisted nutrition and hydration are an “ethically ordinary” and obligatory means (p. 577).

Bishop, conference or group	Date	Nature of Document	Analysis of Ordinary Extraordinary?	Nutrition and hydration?
O'Connor	9 April 1986	Statement	Yes	Yes ⁶⁹⁶
O'Connor	16 November 1989	Policy for priests	Yes	Yes ⁶⁹⁷
Ohio	12 October 1993	Pastoral letter	Yes	No
Oregon	9 February 1973	Letter	Yes	No
Oregon and Washington	10 October 1991	Pastoral letter	Yes	Yes ⁶⁹⁸
Pennsylvania	14 January 1992	Pastoral statement	Yes	Yes ⁶⁹⁹
Rigali	July 2000	Statement	No	Yes ⁷⁰⁰
Sheehan	May 1996	Statement	Yes	Yes ⁷⁰¹
Stafford	3 June 1991	Speech	Yes	Yes ⁷⁰²
Sullivan	12 December 1975	Pastoral letter	Yes	Yes ⁷⁰³

⁶⁹⁶ Life prolonging medical treatment need not always be employed, but care, including food and water, is required.

⁶⁹⁷ Cardinal O'Connor made available Bishop McHugh's policy statement, which argues for retaining assisted nutrition and hydration (see our fn. 679, p. 300).

⁶⁹⁸ There should be a presumption in favour of providing the necessities for survival. Any decision to withdraw should be done on a case-by-case basis using the burdens/benefits analysis.

⁶⁹⁹ Assisted nutrition and hydration is ordinary care and must be continued, unless the patient is in the final stage of a terminal illness, when it may become extraordinary (p. 548).

⁷⁰⁰ Assisted food and water is ordinary care and must be supplied to all patients who need it and can benefit from it. The presumption in favour of assisted nutrition and hydration yields in very limited circumstances, namely, imminent death and when the nourishment cannot be assimilated.

⁷⁰¹ This brief article distinguishes normal feeding (ordinary means) and artificial feeding. "Christian ethics allows for extensive use of pain medicine, teaches that the patient be kept comfortable and does not require any artificial means of continuing life."

⁷⁰² There should be a strong presumption in favour of assisted nutrition (p. 110). Withdrawal will directly and inevitably cause the death of the patient. The presumption can be overturned if the patient cannot assimilate the food or if the means themselves impose excessive burdens on the patient (p. 111).

⁷⁰³ "It is also clear that no patient should ever be deprived of basic necessities of life, such as food and water" (p. 424).

Bishop, conference or group	Date	Nature of Document	Analysis of Ordinary Extraordinary?	Nutrition and hydration?
Texas ⁷⁰⁴	7 May 1990	Pastoral statement	Yes	Yes ⁷⁰⁵
Unterkoefler	13 January 1978	Statement	Yes	No

Other episcopal statements⁷⁰⁶

Bishop, conference or group	Date	Nature of Document	Analysis of Ordinary Extraordinary?	Nutrition and hydration?
Canada	13 January 1993	Statement	Yes	Indirect ⁷⁰⁷
Canada	26 October 1994	Testimony	Yes	Indirect ⁷⁰⁸
Colombia	1997	Pro-life Decalogue	Yes	Indirect ⁷⁰⁹

⁷⁰⁴ The statement was signed by sixteen of the eighteen bishops, with two dissenting.

⁷⁰⁵ Assisted nutrition and hydration is a life-sustaining means similar to a mechanical respirator, and is not always ethically necessary. Patients in the persistent vegetative state have an underlying pathology which, without assisted nutrition and hydration, will lead to death.

⁷⁰⁶ Full details can be found in the bibliography. Episcopal statements are arranged there according to the country of origin.

⁷⁰⁷ "Medical treatment that is futile or extraordinary methods that only prolong the dying process are not required" (p. 575).

⁷⁰⁸ The bishops quoted directly from Archbishop Gervais' 13 January 1993 statement: "Medical treatment that is futile or extraordinary methods that only prolong the dying process are not required" (p. 7).

⁷⁰⁹ Assisted nutrition and hydration is not mentioned, but the Colombian bishops make several statements that indirectly argue for non-withdrawal, such as: "it is immoral to deny a patient the required means to stay alive . . . it is illicit to renounce providing proportional and available medical care that is efficient, even if they are so only partially . . . It is licit to stop

Bishop, conference or group	Date	Nature of Document	Analysis of Ordinary Extraordinary?	Nutrition and hydration?
France	16 June 1976	Statement on euthanasia	Yes	No
Germany	15 June 1975	<i>Declaration on Euthanasia</i>	Yes	No
Germany	20 November 1978	Pastoral statement on dying	No	No
Germany	March 1996	Joint statement on euthanasia	No	No
Korea	8 December 1991	Pastoral letter	No	No
New Zealand	29 August 1995	Pastoral letter	Yes	No
New Zealand	18 April 1997	Pastoral letter	No	No
Saint-Macary (Nice)	1984	Statement on death with dignity	Yes	No

extraordinary treatment of a comatose patient, but it is not when the patient's brain shows vital activity and when such omission would directly provoke his death. Disabled or crippled persons have the same rights as other persons to receive all kinds of care."

Appendix XII: Tables of health directives or guidelines

United States of America Directives

1971 Directives	1994 and 2001 Directives
28. Euthanasia ("mercy killing") in all its forms is forbidden. The failure to supply the ordinary means of life is equivalent to euthanasia. However, neither the physician nor the patient is obliged to the use of extraordinary means.	57. A person may forgo extraordinary or disproportionate means of preserving life. Disproportionate means are those that in the patient's judgement do not offer a reasonable hope of benefit or entail an excessive burden or impose excessive expense on the family or the community. 58. There should be a presumption in favor of providing nutrition and hydration to all patients, including patients who require medically assisted nutrition and hydration, as long as this is of sufficient benefit to outweigh the burdens involved to the patient.

Canadian Health Guidelines

1970	1991	2000
Art. 9. Every human being has a right to live, and every effort should be made to protect that right. Art. 10. However, man is not bound to have recourse to every means to prolong life. Neither the patient nor the doctor is obligated to resort to involved techniques for artificial survival. Art. 11. Euthanasia is a form of homicide; it is forbidden. To neglect ordinary means to prolong life is equivalent to euthanasia. ⁷¹⁰	83. For persons in the final phase of a terminal illness it is morally permissible to forgo treatment, including artificially supplied nutrition and hydration, that secures only a precarious and burdensome prolongation of life. (Refer to articles 30, 76-78)	99. Artificially provided nutrition and hydration raises issues related to such fundamental human realities as basic nourishment, mutual interdependence, and faithfulness to those who are vulnerable and dependent. Artificial nutrition and hydration requires special training and serious attention to the human and ethical issues involved. 100. The moral value of these procedures depends upon the benefits they provide and the burdens they place upon the person receiving care. Where the burdens are disproportionate to the benefits, or

⁷¹⁰ This formulation of the principle is virtually unchanged from the 1949 Directives, where it appeared as Directive 5a.

1970	1991	2000
		where there is no benefit from the procedure, it should not be initiated, or if already initiated, should be withdrawn. The criteria on which to base any decision to withhold or discontinue artificial nutrition or hydration are to follow the needs, values and wishes of the person receiving care. The intent must never be to hasten death. (Refer to the principle of double effect, page 13 and articles 92, 96) 101. Since some pathological conditions experienced by those who are dying prevent normal food ingestion, a decision to forgo or stop artificial nutrition and hydration can allow the pathology to run its course without prolonging the dying process. Such a decision is not the same as "hastening death."

Appendix XIII: Analysis of *fontes* of 1917 Code relevant to homicide

The *fontes* of three canons of the 1917 Code will be analysed in the following order: canon 985 (the irregularity *ex delicto*), canon 2354 §1 (homicide and laypersons) and canon 2354 §2 (homicide and clerics).

1. Canon 985 - *fontes*

Canon 985. Sunt irregulares ex delicto: [...] 4° Qui voluntarium homicidium perpetrarunt aut fetus humani abortum procuraverunt, effectu secuto, omnesque cooperantes.

a. The *Corpus iuris canonici*⁷¹¹

Reference	Source	Doctrine
D. 50, c. 4	John VIII (died 882)	After homicide the sacerdotal office is not to be administered.
D. 50, c. 5	Nicholas I (858)	A cleric who has killed a pagan cannot be promoted to a major grade.
D. 50, c. 6	Nicholas I (858)	He who has killed a pagan in self-defence loses the sacerdotal office. ⁷¹²
D. 50, c. 8	Martin I (died 654)	A man conscious after baptism of killing by fact, precept or counsel is not to be ordained a cleric. ⁷¹³

⁷¹¹ If the source can be accurately identified, we will give the name of the Pope or Council and the year of the decree or letter (or the date of death of the Pope).

⁷¹² The teaching here is that he must remain in a lower grade because it is better to serve the Lord in a lowly state in this life rather than to be cast down to a lowly state in the next. Penance and conversion are not enough. The decision seems harsh, given that it was self-defence. However, canon 985 speaks of voluntary homicide, and this was considered voluntary homicide, even if in self-defence. By contrast, D. 50, c. 36 (see the commentary below at fn. 714, p. 309) allows restoration to office (after two years penance) for necessary homicide. Further, the fact that there was a penance suggests that the homicide was considered imputable. This appears inconsistent, but it reflects the developing understanding of the distinction between sin and crime.

⁷¹³ The phrase *consciuis fuerit* is echoed in the *conscientiam habeat* of canon 988 §1 of the 1983 Code. See also our fn. 719, p. 309 for a similar expression.

Reference	Source	Doctrine
D. 50, c. 36	Council of Ilerdense (546)	Clerics caught in a siege and who have drawn blood of necessity are restored to their office and communion after two years' penance. ⁷¹⁴
D. 50, c. 39	Nicholas I (858)	A presbyter will lose his office perpetually if he kills another in anger, even if he did not have the intention to kill. ⁷¹⁵
D. 50, c. 41	(cited conciliar source not extant)	The graded penances for those in major orders and for lay persons. ⁷¹⁶
D. 50, c. 49	Nicholas I (died 867)	If someone causes death <i>culpa vel neglectu</i> , then he is to be banished from his grade of order and can in no circumstance receive ordination. ⁷¹⁷
D. 55, c. 4	Canons of the Apostles	Self-mutilation (specifically castration) is considered a homicide. ⁷¹⁸
X, 1, 11, c. 17	Gregory IX (died 1243)	Priests and other clerics who have committed the (occult) crimes of homicide, adultery, or perjury may continue to minister after doing penance

⁷¹⁴ The determining factor here is "of necessity," which seems to preclude the irregularity, if not the penance. For a similar case where the irregularity is incurred because the killing was not necessary, see D. 50, c. 6 above (in fn. 712, p. 308).

⁷¹⁵ This is also a source of canon 2354 §2. There was no intention to kill, but he intended the act from which death followed. There are many illustrations of this theme in the decisions of the S.C. of the Council in regard to requests for dispensation from the irregularity arising from homicide, and these are set out below (p. 312 ff.). For even more complex illustrations of the theme of cause and effect and their tenuous but real link to intention, see X, 5, 12, c. 10 (fn. 721, p. 310 below); X, 5, 12, c. 19 (fn. 724, p. 310 below); and X, 5, 12, c. 20 (fn. 725, p. 310 below).

⁷¹⁶ A bishop who kills does fifteen years penance and is deposed; a presbyter does twelve years and is deposed; a deacon ten years (and is not deposed); a layperson or (lower) cleric seven years and they may not be admitted to the priesthood. This is also a source of canons 985 and 2354 §2.

⁷¹⁷ This is a case of death by a falling tree and the issue is the imputability of the person who lights the fire that led to the tree falling. This canon, while distinguishing *dolus* and *culpa*, concludes that both can be sources of imputability. This is also a source of canon 2354 §2.

⁷¹⁸ The link between self-castration and homicide seems tenuous to the modern mind, but was quite real in the early Christian centuries. Similarly, any attempt at contraception was considered a homicidal act. Hence, the irregularity arising from self-castration had elements of both *ex defectu* and *ex delicto*. There is a strong and consistent distinction made in this and the surrounding canons between voluntary and non-voluntary mutilation. Only a man who voluntarily castrates himself is irregular. This canon is also a source of canon 2354 §2.

⁷¹⁹ Gregory was responding to the situation of priests and clerics who may not have been in good conscience and wanted to know how to resolve the problem. The canon is a good illustration of the distinctive way homicide was considered and treated as compared to other

Reference	Source	Doctrine
		<i>praeter reos homicidam.</i> ⁷¹⁹
X, 5, 12, c. 1	Book of Exodus	An incorrigible killer is to be deposed and handed over to the secular curia for execution.
X, 5, 12, c. 6	Alexander III (died 1181)	The judge, in giving penances, is to attend to the circumstances of the case by which the penance for the crime can be lessened or augmented. ⁷²⁰
X, 5, 12, c. 10	Alexander III (died 1181)	He is irregular if homicide follows his illicit work. ⁷²¹
X, 5, 12, c. 11	Alexander III (died 1181)	An upright and learned deacon who seems to have “given cause” for homicide is not to be promoted to the priesthood. ⁷²²
X, 5, 12, c. 18	Innocent III (died 1216)	A presbyter who strikes another lethally is irregular. ⁷²³
X, 5, 12, c. 19	Innocent III (died 1216)	A religious is irregular if he does surgery and death follows, even if he was diligent charitable and pious; however, he can be mercifully

crimes, especially for clerics who were *homicidae*. The response clearly distinguishes homicide and other crimes, and precludes a dispensation from the irregularity arising from homicide. This canon is also a source for canon 2354 §2.

⁷²⁰ This canon, which is also a source for canons 2354 §1 and 2354 §2, relates to the *omnesque cooperantes* of canon 985, and develops the doctrine of homicide in relation to various types of co-operation. Some specific rules are elaborated: 1-the accomplice will be irregular if he had the will to kill; 2-however, if he tried to stop the killing he will be subject to penance but will not be irregular; 3-a person inciting another to hatred which leads to homicide will be punished less than the killer, unless he directly incited the homicide; 4-clerics who counsel others to kill are to be permanently removed from the altar.

⁷²¹ This theme of homicide resulting from an illicit work is taken up in two canons dealt with below: X, 5, 12, c. 19 (death after illicit surgery, see our fn. 724, p. 310), and X, 5, 12, c. 20 (a monk's fornication precedes an abortion, his sin links him to the crime of abortion and he is irregular; see our fn. 725, p. 310).

⁷²² The facts are not fully elaborated, but it seems that the deacon did not do anything deliberately to bring about death. This is similar to the case of the clerical student mentioned in the second part of X, 5, 12, c. 19 (see our fn. 724 below).

⁷²³ However, some clarifications are made in this canon which seem to be inconsistent with other elaborations of the doctrine in these *fontes*: if the wounded man is struck by others and if it is not clear whose wound caused death, or if the priest did not have the *voluntas occidendi*, or if he struck lightly in a place which is not normally lethal, he can be returned to ministry after penance if there is no scandal.

⁷²⁴ This canon is also a source for canon 985, 6°. Here the irregularity comes from the fact of the patient's death, even though the cleric acted in good faith and with every diligence. The purpose of the irregularity was to shield clerics from anything that might lead to death. This

Reference	Source	Doctrine
		dispensed after satisfaction. ⁷²⁴
X, 5, 12, c. 20	Innocent III (died 1216)	A monk who “gives cause” for an abortion is guilty of homicide and is irregular. ⁷²⁵
X, 5, 12, c. 24	Honorius III (died 1227)	A cleric who kills while fighting enemies of the faith is irregular. ⁷²⁶
X, 5, 14, c. 1	Alexander III (died 1181)	A cleric who kills by fact, precept, counsel or in defence is irregular. ⁷²⁷

b. The Council of Trent

Sess. XIV, <i>de ref.</i> , c. 7	A voluntary <i>homicida</i> shall be forever excluded from every ecclesiastical order, benefice and office. ⁷²⁸
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is brought out even more forcefully in the second part of this long canon which looks at the possibility of an irregularity for a cleric who wounded an intruder who was later captured and died after being punished with castration and blinding. The canonical interest here is in the cleric's wounding of the intruder and in his later giving evidence at his trial. The decision was that he was not irregular, even though he participated in the civil process, because the blows of someone else legally killed the thief later. This canon is discussed at length in E. KNEAL, *Medical Practice by the Clergy: Medicine, Irregularities, Indults, Psychiatry*, Rome, Catholic Book Agency, 1967, at pp. 16-17, 39, 40 and 168. For another analysis of this canon, see J.B. BRUNINI, *The Clerical Obligations of Canons 139 and 142: An Historical Synopsis And Commentary*, CUA Canon Law Studies No. 103, Washington, CUA Press, 1937, p. 8.

⁷²⁵ The case here concerns a priest who impregnates a woman who then aborts the baby of her own volition. The priest's guilt and the irregularity arise out of another person's sin and are imputed to him because the prior sin of fornication is linked to the homicide that follows. Further, the irregularity depends not so much on his intention and the circumstances, but on whether the baby was vivified or not. The irregularity is incurred only if *conceptum erat vivifacatum animal rationale*, which would make the crime homicide rather than abortion. This canon, known as the *Sicut ex*, is important for understanding the Church's attitude to abortion at the time. For more detailed comments and references, see our fn. 520, p. 182.

⁷²⁶ The canon, in speaking of the struggle against those who “blaspheme” and “hate the cross of the Lord,” reflects the tension inherent in the situation of the plight of the cleric who seems justified to have waged this holy struggle. In spite of that, he is irregular.

⁷²⁷ In this case the cleric, Henry, had arranged a proxy to fight a duel and the proxy had fatally wounded his opponent. The canon says that, while Henry cannot exercise his sacred order, he can be “mercifully” dispensed to enjoy his benefice.

⁷²⁸ The canon goes on to say that this is so even though the crime is either occult or has not been proved by the ordinary judicial process. This is also a source of canon 2354 §2.

c. Papal decrees

Pope	Decree	Doctrine
Sixtus V	const. <i>Effraenatam</i> (1588)	Applies Trent's teaching on the irregularity arising from homicide to abortion.

d. The Roman Curia

S.C.C. ⁷²⁹	Reference	Doctrine
S.C.C. #1	<i>Chinen.</i> , 15 dec. 1674	In this case a priest fired on some bandits and one died. The dispensation was denied. ⁷³⁰
S.C.C. #2	<i>Panormitana</i> , 26 apr. 1698	A request for dispensation denied; it was voluntary homicide. ⁷³¹
S.C.C. #3	<i>Salamantina</i> , 17 dec. 1701	An eighteen year old cleric kills another student during a fight. His request for dispensation was denied. ⁷³²
S.C.C. #4	<i>Aquilana</i> , 28 nov. 1711	A priest asks for dispensation from the irregularity for homicide that had happened eleven years earlier when he was a "simple cleric."

⁷²⁹ The S.C. of the Council, which dealt with requests for dispensation from the irregularity arising from homicide. This is the only congregation represented in the *fontes* for canon 985, so we will number the decrees for easy reference.

⁷³⁰ In *Fontes*, v. 5, n. 2836, pp. 372-373.

⁷³¹ In *Fontes*, v. 5, n. 2961, pp. 441-442. The petitioner had been sentenced to the *triremes* as a penalty (a *trireme* was a ship with three ranks of oars to which prisoners were chained). This dispensation was requested twenty years after the crime.

⁷³² In *Fontes*, v. 5, n. 2989, p. 463. The facts in this case are complex, with the fight involving more than two people and various weapons, including a small knife, rocks and a gun. There was some doubt as to whether the petitioner had actually inflicted the fatal wound. The case illustrates the distinction between voluntary and pre-meditated homicide. Clearly, the boy did not have the *animus occidendi*, but his act was voluntary and the praxis of the S.C.C. in this and many other cases in these *fontes* was to refuse dispensation for any type of voluntary homicide. There were three further requests for dispensation in the same case (n. 2992, p. 465, n. 3007, p. 479, and n. 3012, p. 484 of the same volume), arguing that the petitioner was not the killer and the act was not voluntary. However, the request for the dispensation was refused.

⁷³³ In *Fontes*, v. 5, n. 3107, pp. 560-562. Another complicated case where the *parochus*, it seems, had wounded somebody while defending himself, and that person had died forty days later after inept surgery. This normally incurs the irregularity, but the doubt here was whether the death resulted from the original wound or the inept surgery. There had been two previous requests for dispensation.

S.C.C. ⁷²⁹	Reference	Doctrine
		Dispensation denied. ⁷³³
S.C.C. #5	<i>Papien.</i> , 21 maii 1718	An occult homicide case involving a fifteen year old boy playing with a friend and wounding him with a small knife. Dispensation denied. ⁷³⁴
S.C.C. #6	<i>Casalen.</i> , 24 sept. 1718, ad 1	A priest kills a nocturnal thief and claims that his action was <i>praeter intentionem</i> and self-defence. Dispensation denied. ⁷³⁵
S.C.C. #7	<i>Vicentina</i> , 19 apr. 1738, ad 1	A request for dispensation from irregularity is denied. ⁷³⁶
S.C.C. #8	<i>Montis Falisci</i> , 16 maii, 6 jun. 1739	A request for dispensation from irregularity is granted in a case of non-culpable accidental death. ⁷³⁷
S.C.C. #9	<i>Caputaquen.</i> , 26 apr.,	A request for dispensation from the irregularity is

⁷³⁴ In *Fontes*, v. 5, n. 3170, pp. 620-621. One of the issues discussed is the fact that there was no (civil) contentious process at the time (eighteen years earlier), and it was now "morally impossible" to have one because of the time lapse and the death of witnesses. Hence, it was not possible to determine whether the homicide was voluntary or involuntary. The decree discussed the various kinds of voluntary homicide and the fact that in most cases such a small wound would not cause death. It goes on to elaborate the two kinds of voluntary homicide: one is where the killer explicitly wishes to kill, the other where the will tends to the act from which *per se* death follows immediately, and not *per accidens*. *Si furiosus* (a reference to Clem. 5, 4, c. 1) holds that only *homicidium casuale* and not voluntary homicide can be dispensed.

⁷³⁵ In *Fontes*, v. 5, n. 3175, pp. 626-627. There is a lengthy elaboration of the relevant doctrinal considerations, taken from Roman law, Augustine and the *Corpus iuris canonici*. He is culpable if he could have avoided the killing, for example, by running away. In this sense his action is intentional and the homicide is voluntary and cannot be dispensed.

⁷³⁶ In *Fontes*, v. 5, n. 3485, pp. 921-922.

⁷³⁷ In *Fontes*, v. 5, n. 3503, pp. 940-942. This is a story of accidental death with several canonical repercussions. A priest is riding his horse to the Church on the feast of St. Rose (he was doing something licit and necessary, which is a relevant detail), and he accidentally runs over a man who later dies. At first glance he would seem to be guilty of homicide *ex culpa*, as he was riding too fast and did not give the customary vocal warning to nearby pedestrians. After an ecclesiastical process the priest was declared irregular. However, he requested a hearing at the S.C.C., arguing that the deceased's previous illness was the cause of death. The decree of the S.C.C. discusses the canonical tradition drawn from seven decretals of Gregory IX (X, 5, 12, cc. 8, 13, 15, 16, 22; and X, 5, 38, c. 7). The key canonical issue here, however, is whether the irregularity is incurred by involuntary homicide, and the decree posits the accepted doctrine thus: if he does a licit work and shows diligence and care, as is appropriate, any homicide which happens by chance and without any fault, does not render him irregular. On the contrary, if he does something illicit, especially if he acts without due care, he will be irregular. However, on the basis of the facts of the story as related here, this appears to have been homicide *ex culpa* and the decision contradicts the principle just enunciated. Canon 985, 4° restricted the irregularity to voluntary homicide, and this story was one of involuntary homicide.

S.C.C. ⁷²⁹	Reference	Doctrine
	& 10 maii 1755	denied after many years of penance. ⁷³⁸
S.C.C. #10	<i>Derthonen.</i> , 8 maii 1756	A request for dispensation from irregularity is denied; while there were mitigating circumstances, the homicide was voluntary. ⁷³⁹
S.C.C. #11	<i>Murana</i> , 22 ian., 26 febr., 13 mart. 1763	A request for dispensation from irregularity is granted in a case of truly necessary self-defence. ⁷⁴⁰
S.C.C. #12	<i>Camenece.</i> , 30 iul. 1785	A request for dispensation from the irregularity is denied. The priest had participated voluntarily in uxoricide. ⁷⁴¹
S.C.C. #13	<i>Veronen.</i> , 19 ian., 16 febr. 1805	Dispensation from the irregularity granted because there was genuine doubt that the wound caused the death. ⁷⁴²
S.C.C. #14	<i>Caitana</i> , 14 jun. 1823, and 20 nov.	Dispensation from the irregularity granted because there was doubt about the priest's level of

⁷³⁸ In *Fontes*, v. 5, n. 3650, pp. 1067-1068. Fr. Joseph, the petitioner in this case, asked for the dispensation from the irregularity after doing penance for seventeen years. The relevant doctrinal issues are not explained, apart from some procedural matters (he had not appealed against the sentence of the ecclesiastical court). One possible conclusion from this case is that an irregularity is perpetual and dispensed rarely, and only then for reasons developed in the canonical tradition and not as a favour.

⁷³⁹ In *Fontes*, v. 5, n. 3661, pp. 1075-1077. This is a very complicated story. It seems that it is a third instance hearing at the S.C.C., after both civil and ecclesiastical processes at first instance. The Church court had abundant proofs and had sentenced the priest to the *triremes* for ten years and added the penalty of confiscation of his goods. The priest may have had some justification for striking the deceased man, but the key issue is the fact that it was voluntary homicide, what the S.C.C. here calls *homicidium ex industria*.

⁷⁴⁰ In *Fontes*, v. 6, n. 3724, pp. 22-23. It seems that the argument was accepted that the homicide was in truly necessary self-defence. While he is irregular, he can be dispensed. He had already spent four years in prison and had been exiled from the diocese for another five years. It seems an excessive penalty if it was true self-defence, and on the facts presented here it is hard to understand why he incurred the irregularity in the first place. Was the original declaration of the irregularity a mistake? The S.C.C. dispensed it, suggesting that the Congregation thought that the irregularity had been incurred. There may have been more to the story than emerged in their decree.

⁷⁴¹ In *Fontes*, v. 6, n. 3844, pp. 132-133. In this case the priest colluded in a crime of homicide (uxoricide). There was a process, he was found guilty of the "atrocious" crime of being *particeps in voluntarii homicidii*, was declared irregular, deprived of his benefice and sent to prison for eighteen months. The nature of his co-operation is not clear, but the irregularity cannot be dispensed.

⁷⁴² In *Fontes*, v. 6, n. 3921, p. 199. The case involved a priest in a fight in which he had inflicted only a light wound that may or may not have caused the death. The doctrine is that in the case of true doubt the irregularity can be dispensed.

S.C.C. ⁷²⁹	Reference	Doctrine
	1824	involvement in the actions that caused the death. ⁷⁴³
S.C.C. #15	<i>Baren.</i> , 24 ian. 1829	Quasi-dispensation from the irregularity granted because of doubt about the priest's level of involvement in the actions that caused the death. ⁷⁴⁴

2. Canon 2354 §1 - *fontes*⁷⁴⁵

Can. 2354 §1. Laicus qui fuerit legitime damnatus ob delictum homicidii, [...] ipso iure exclusus habeatur ab actibus legitimis ecclesiasticis et a quolibet munere, si quod in Ecclesia habeat, firma onere reparandi damna.

a. The *Corpus iuris canonici*

Reference	Source	Doctrine
D. 50, c. 8	Martin I (died 654)	Homicide can be by fact, precept or counsel. ⁷⁴⁶
D. 50, c. 40	(cited conciliar source not extant)	Pre-meditated killing of a pagan is homicide.
D. 50, c. 41	(cited conciliar	Penances for homicide according to clerical

⁷⁴³ In *Fontes*, v. 6, nn. 3982 (pp. 255-256) and 3989 (p. 263). This is a complex story of a priest's involvement in an action in which bombs were fired on a group of brigands resulting in the death of two of them. The civil judicial process did not conclude to imputability but he was declared irregular as an accomplice to homicide and also *ex defectu lenitatis*. A number of principles are discussed in this decree of the S.C.C.; the doctrine is that he should not have been there and had voluntarily associated himself with the lethal actions of other persons. The basis for the dispensation is not entirely clear. The first decree asked for more penance before the dispensation. The second decree granted the dispensation as the penance had largely overcome the scandal.

⁷⁴⁴ In *Fontes*, v. 6, n. 4025, p. 297. A priest of thirty years standing commits homicide and theft and is condemned to the tiremes. Then, in 1815, he begins to minister without dispensation from the irregularity. The argument brought to the S.C.C. is that he was not complicit in the criminal act itself, but co-operated "with secret consent" and with "remote co-operation." He had expiated his crime, was repentant, poor, and was considered worthy (by his bishop) of the dispensation. The response: he can do spiritual exercises in a religious house designated by the Archbishop. This seems to be a compromise solution, based on the uncertainty as to the level of his involvement in the crime.

⁷⁴⁵ The *fontes* relevant to homicide are all from the *Corpus iuris canonici*. There are other *fontes* for the canon from papal decrees and decrees of the Roman Curia, but they relate to other irregularities, such as slavery, kidnapping, usury and so forth.

⁷⁴⁶ This is also a source for canon 2354 §2.

Reference	Source	Doctrine
	source not extant)	order and for lay persons. ⁷⁴⁷
D. 50, c. 43	Council of Eliberitano (306)	Graded penances for voluntary and <i>in casu</i> homicide. ⁷⁴⁸
D. 50, c. 44	Martin I (died 654)	Voluntary <i>homicidae</i> are to be permanently excluded from communion, <i>in casu</i> are to do penance.
D. 50, c. 47	Roman law	There is no imputability if the killing results from lawful punishment where there was no intention to kill, or if the killing was accidental.
D. 50, c. 50	Conciliar decree	There is no homicide if death results from the actions of someone who is doing his job without negligence or with no intention to kill. ⁷⁴⁹
D. 50, cc. 4-6, 9	Canons of the Apostles, papal and conciliar decrees	Voluntary castration is considered homicide. ⁷⁵⁰
C. 6, q. 1, c. 17	Stephen I (died 257)	<i>Homicidae</i> incur infamy.
C. 17, q. 4, c. 24	Council of Moguntino (847)	Graded penances for killing a priest.
C. 17, q. 4, c. 25	Council of Triburiensis (895)	Graded penances for wounding or killing a priest. ⁷⁵¹
C. 17, q. 4, c. 27	Lib. V Capitularium (803)	Penances for killing clerics according to their grades.
C. 17, q. 4, c. 28	Lib. VI Capitularium (803)	The penance for killing a monk or cleric.

⁷⁴⁷ This is also a source for canon 2354 §2.

⁷⁴⁸ The story involves an enraged woman who beats her maid who dies of the injuries three days later. While her action is considered imputable, there is some debate as to what kind of homicide it is, as there may not have been an intention to kill (*eo quod incertum sit, voluntate, an casu occiderit*). The penances for both kinds of homicide are given: seven years for voluntary and five years for *in casu*. The canonical distinction is that between voluntary direct and voluntary indirect.

⁷⁴⁹ This is one of several canons that illustrate imputability with the story of someone lighting fires leading to another's death from falling trees.

⁷⁵⁰ These are *fontes* for mutilation. However there is a thematic link with homicide and the canons stress the difference between voluntary and involuntary mutilation.

⁷⁵¹ If the victim was wearing his stole when wounded or killed, the penance is threefold.

Reference	Source	Doctrine
C. 22, q. 5, c. 19	Augustine	A layperson who, through the sacrilegious violation of his oath, brings about another's death is anathema but can do penance. ⁷⁵²
C. 23, q. 8, c. 32	Innocent II (died 1143)	This canon provides an excommunication for firebrands; if death follows, there are more severe penances.
C. 23, q. 8, c. 33	Augustine	A person without public office who kills commits homicide. ⁷⁵³
C. 24, q. 3, c. 20	Council of Agathense (506)	A <i>homicida</i> is to be deprived of communion.
C. 33, q. 2, c. 5	Nicholas I (died 867)	After penance can a spouse-killer return? Only if they are adolescents. ⁷⁵⁴
C. 33, q. 2, c. 8	Stephen V (died 891)	Penances for killing a spouse. ⁷⁵⁵
C. 33, q. 2, c. 8	Stephen V (died 891)	The penances for matricide.
X, 5, 12, c. 2	Roman penitential	The penances for voluntary killing. ⁷⁵⁶
X, 5, 12, c. 6	Alexander III (died 1181)	Penances for co-operation in homicide. ⁷⁵⁷

⁷⁵² This is also a source for 2354 §2. It adds that a bishop, priest or deacon committing the same crime is to be degraded.

⁷⁵³ Gratian links this canon to the next (C. 23, q. 8, c. 34) by posing a question about the imputability of several persons who together fatally wound a man. Canon 34, a conciliar decree, says that those who attack with an intention to kill do penance as *homicidae*. However, there is no guilt for those who did not attack, or wound, or give help or counsel as co-operators.

⁷⁵⁴ Gratian adds some comments here, as the decree seems to imply that a spouse could be killed for adultery or a similar crime. Using the metaphor of the swords, he draws a distinction between ecclesial and secular discipline.

⁷⁵⁵ This is a very detailed description of the penances given to Astulphus, who had killed his wife.

⁷⁵⁶ The penances are according to imputability. The first case involves someone who kills a madman or a thief, but could have avoided the killing; there is a detailed penitential regime elaborated. The second case involves killing evil persons without "hateful meditation" while trying to free yourself or another. A layperson receives indulgence; a presbyter is not deposed but does penance for life.

⁷⁵⁷ There are several ways of co-operating: the accomplice (*socians*) is held to the same penances if he intended the killing. However, if he tried to prevent the homicide, the accomplice does a lighter penance. One who incites another to homicide does less penance, according to the case (unless his involvement certainly led to the homicide). Those who participate do penance in

Reference	Source	Doctrine
X, 5, 37, c. 10	Innocent III (died 1216)	Those who kill prelates are deprived of any benefices, and so are their heirs.
X, 5, 38, c. 2	Council of Moguntino (847)	The penances for killing a presbyter.

3. Canon 2354 §2 - *fontes*

Can. 2354, §2. Clericus vero qui aliquod delictum commiserit de quibus in §1, a tribunali ecclesiastico puniatur, pro diversa reatus gravitate, poenitentiis, censures, privatione officii ac beneficii, dignitatis, et, si res ferat etiam depositione; reus vero homicidii culpabiles degradetur.

a. The *Corpus iuris canonici*

Reference	Source	Doctrine
D. 50, c. 4	John VIII (died 882)	After homicide the sacerdotal office cannot be administered.
D. 50, c. 5	Nicholas I (858)	A cleric who has killed a pagan cannot be promoted to a higher grade.
D. 50, c. 6	Nicholas I (858)	A priest who has killed a pagan in self-defence loses his office.
D. 50, c. 8	Martin I (died 654)	A man conscious after baptism of homicide by fact, precept or counsel, cannot be ordained.
D. 50, c. 37	Urban II (died 1091)	A cleric who throws a stone and kills a boy can remain in his order after dispensation. ⁷⁵⁸
D. 50, c. 39	Nicholas I (858)	A presbyter will lose his office perpetually if in anger he kills another, even if he did not have the <i>voluntas occidendi</i> . ⁷⁵⁹
D. 50, c. 41	(cited conciliar source not extant)	Depositions and graded penances for clerics (and laypersons) who commit homicide. ⁷⁶⁰
D. 50, c. 49	Nicholas I	Accidental death; there is a distinction between a lack

accordance with their manner of participation. Clerics whose counsel helped in any way to bring about a death do penance for life. This canon is also a source of canons 985 and 2354 §2.

⁷⁵⁸ There is no explanation for the decision. It seems to contradict other decrees in these *fontes*.

⁷⁵⁹ This is also a source of canon 985.

⁷⁶⁰ This is also a source of canons 985 and 2354 §1.

Reference	Source	Doctrine
	(858)	of will, <i>culpa</i> and <i>neglectus</i> . ⁷⁶¹
D. 55, c. 4	Canons of the Apostles	Self-mutilation is the equivalent of homicide.
D. 81, c. 12	Canons of the Apostles	A presbyter or deacon found to have committed homicide is to be deposed but not deprived of communion. ⁷⁶²
C. 22, q. 5, c. 19	Augustine	A bishop, priest or deacon who, through the sacrilegious violation of his oath, brings about another's death is to be degraded. ⁷⁶³
X, 1, 11, c. 17	Gregory IX (died 1243)	Those priests and other clerics who have committed the (occult) crimes of homicide, adultery, or perjury may continue to minister after doing penance <i>praeter reos homicidam</i> . ⁷⁶⁴
X, 2, 1, c. 10	Celestine III (died 1198)	An incorrigible cleric guilty of homicide, who does not respond to the increasingly severe penances, is to be handed over to the secular curia. ⁷⁶⁵
X, 3, 1, c. 2	Council of Pictaviensis (1079)	Clerics bearing arms are to be excommunicated.
X, 3, 50, c. 5	Alexander III (died 1181)	Secular and not ecclesiastical judges deal with bloodshed.
X, 5, 12, c. 1	Exodus	An incorrigible cleric who guilty of homicide is to be handed over to the secular curia for execution.
X, 5, 12, c. 6	Alexander III (died 1181)	Penances for accessories in homicide. ⁷⁶⁶
X, 5, 12, c. 7	Alexander III (died 1181)	Involuntary homicide is imputable if someone is negligent while doing something lawful. ⁷⁶⁷

⁷⁶¹ In the latter case, they lose their grade and are not to receive sacred ordination. This is also a source of canon 985.

⁷⁶² The canon adds: "God does not judge the same thing twice."

⁷⁶³ A source for canon 2354 §1. A layperson committing the same crime is *anathema* but can do penance. This is another illustration of the doctrine of imputability for homicide that is not directly intended but follows an illicit act. See other canons already discussed above (for example, D. 50, c. 39, and comments in our fn. 715, p. 309 relating to this and similar canons).

⁷⁶⁴ This is also a source for canon 985.

⁷⁶⁵ Other crimes, such as theft and perjury, are also mentioned in this canon. The secular curia will impose legal penalties that may include death, as distinct from the rather severe penances that have failed to bring about conversion.

⁷⁶⁶ This is also a source for canons 985 and 2354 §1. For the details, see our fn. 757, p. 317.

Reference	Source	Doctrine
X, 5, 12, c. 8	Alexander III (died 1181)	Involuntary but negligent homicide is imputable where someone acting illicitly is negligent. ⁷⁶⁸
X, 5, 12, c. 10	Alexander III (died 1181)	A cleric is irregular if homicide follows his illicit work.
X, 5, 12, c. 18	Innocent III (died 1216)	Various homicides lead to the irregularity: lethally striking another, even if he dies at the hands of others; non-lethally striking another with the <i>animus occidendi</i> , even though others' blows kill him. ⁷⁶⁹
X, 5, 12, c. 24	Honorius III (died 1227)	If a cleric fighting enemies of the Catholic faith should strike one whose death troubles his conscience, he should abstain from the ministry of the altar.
X, 5, 38, c. 7	Clement III (died 1191)	Imputability arising from the death of children through "studied carelessness" or neglect. ⁷⁷⁰
VI, 5, 4, c. 1	Innocent IV (died 1254)	Killing by assassination, or mandating another to be killed, incurs excommunication and deposition.

⁷⁶⁷ The priest disciplined the child by hitting him on the head and the child later died of the wound. The principle enunciated is that one must exercise due diligence while engaged in lawful activities. It seems that the priest is irregular because, in causing the wound which led to death, he did not exercise due diligence.

⁷⁶⁸ The principle enunciated here develops that of the previous canon (c. 7). The priest was allowed to hit the boy to discipline him, but should have exercised greater care. In c. 8, a deacon failed to exercise due care while doing something illicit. He is playing a game involving throwing javelins and a layman riding by is hit and later dies. The decree stresses the deacon's negligence; he should have been aware of the danger. However, while he is irregular he may be dispensed by the Pope.

⁷⁶⁹ In the first case here, the cleric did not intend to kill, and his blow did not directly bring about death. However, it was a lethal blow, and even though other factors influenced how and when the deceased died (other offenders struck the wounded man), there is imputability. In the second case, there is also imputability because he had wanted to kill and, even though his blow was not in itself lethal, he had in fact contributed to the victim's death.

⁷⁷⁰ Title thirty-eight is about penances. In this canon the penances are determined by the circumstances leading to the death of children. The story concerns a Greek priest (he is legally married) whose children are found dead in their beds. The issue is whether they died as the result of his "studied neglect" or simple carelessness. In the first case, he is permanently to abstain from the altar; in the second he abstains only for a time. A secondary issue discussed here is whether the crime is occult or not. If occult, an occult penance is imposed. The death of children in these circumstances presented a perplexing problem for lawmakers and canonists of the time, as there was really no way of knowing how they died. X, 5, 10, c. 3 is another decretal that deals with the issue.

b. The Council of Trent

Sess. XIV, de ref., c. 7	A voluntary <i>homicida</i> shall be forever excluded from every ecclesiastical order, benefice and office. ⁷⁷¹
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c. Papal decrees

Pope	Decree	Doctrine
Benedictus XIV	const. <i>Officii Nostri</i> , 15 mart. 1750, § 6	Premeditated and deliberately carried out homicide is a crime deserving the “penalty of blood.” ⁷⁷²

d. The Roman Curia

Congregation	Reference	Doctrine
S. C. C.	<i>Caiacen.</i> , 23 maii 1722	A Cathedral canon who fatally shoots another canon is irregular. ⁷⁷³

⁷⁷¹ The canon goes on to say that this is so even though the crime is either occult or has not been proved by the ordinary judicial process. This is also a source of canon 985.

⁷⁷² «Homicidium animo praemeditato ac deliberato patrantur». The decree adds a procedural point touching on the privilege of the clergy: “provided that the competent ecclesiastical judge takes note of these cases, and if they are found to be guilty.” The implication is that, if found guilty, the cleric will be handed over to the secular judge for execution.

⁷⁷³ In *Fontes*, v. 5, n. 3242, pp. 693-694. There is a statement of facts in this decree but no discussion of these facts as related to relevant doctrinal principles. After a process, the ecclesiastical court declared a censure and the irregularity. The present request for dispensation from both is denied.

Appendix XIV: Summary of *Communicationes* relating to penal law reform

Volume	Page(s)	Comment
1 (1969)	34	Members of the <i>Coetus studiorum</i> for penal law
	52-54	Summary of the work of the <i>Coetus</i> to date
	55	Synod of Bishops: 10 principles for revision (April 1967)
	77-85	Principles for revision explained
	96-97	Summaries of responses to revision principles (re penalties)
2 (1970)	99-107	Summary of <i>Coetus</i> work to date
	101	"Expiatory" rather than "vindictive" penalties
	103-104	Discussion of imputability and <i>dolus</i>
	107, 195	Individual crimes in seven groups; those against life group 6
	194	Definitions of crimes to be kept to a minimum
3 (1971)	24	Reference to crimes of violence (Paul VI to Rota 1971)
4 (1972)	59	Reference to <i>schema</i> for penal process
5 (1973)	195-196	Cardinal Felici letter sending 1973 schema to bishops
6 (1974)	219-220	Summary of <i>Coetus</i> work to 1970
7 (1975)	93-97	Brief report on responses to 1973 schema
8 (1976)	166-183	Revision of 1973 schema (canon by canon)
	169	Expiatory penalties
	175	<i>Dolus</i> (1973 <i>Schema</i> , <i>Sanctiones</i> , c. 10), <i>ex dolo vel ex culpa</i> , imputability
	176	More on <i>culpa</i> ; only grave imputability penalised
	198	Reference to penal procedure
9 (1977)	147-174	More canon by canon discussion
	155-158	Expiatory penalties (1973 <i>Schema</i> , c. 21)
	156	Penalties not taxative in universal law, particular law role
	160	C. 27, application of penalties
	168	C. 28, cessation of penalties
	173	C. 46, prescription for homicide (c. 70) 5 years
	304-322	Discussion of individual delicts (starting with heresy, c. 48)
	306-308	C. 51, violence against pope, bishop, cleric or religious; c. 51 §4, specific reference to killing (<i>occisio</i>)
	317	C. 70, homicide (in separate canon; no observations received for discussion; decision to change wording of c. 51 (violence against Pope and others) to include homicide
	317	C. 71, abortion (interdict proposed)
	317	C. 72, kidnapping, wounding, etc.; decision to join to homicide
16 (1984)	38-51	Code nearing completion, comments on the text
	38	No definitions
	39	Imputability
	50	C. 1350, abortion; the excommunication to be retained (interdict is similar and to reduce punishment may confuse)