

THE PHYSICIAN'S DUTY TO PRESERVE LIFE BY EXTRAORDINARY MEANS

I

Moralists, when discussing the obligation of the individual to preserve his life, distinguish between ordinary and extraordinary means of preserving health and life. They rarely, if ever, define these terms. Nevertheless they appear to be in substantial agreement with regard to the concepts involved.

When they speak of ordinary means they refer to things which can be obtained and used without excessive hardship. When they speak of extraordinary means they refer to anything that involves excessive hardship by reason of expense, great physical pain, subjective horror or repugnance, and so on.

I feel that it is imperative at the outset of this discussion to clarify and definitize, if possible, these notions. It is especially important to do this whenever discussing our main problem with members of the medical profession. For to a doctor the terms "ordinary and extraordinary procedures" do not convey the same ideas as "ordinary and extraordinary means" do to the moral theologian.

To illustrate: the doctor's code of ethics requires him to treat his patient with ordinary or reasonable skill; to administer to his patient the ordinary cures and treatments, such as would be expected to exist in the community in which he is practicing. Ordinary, to the physician, means that which is the usual, generally accepted medical practice in his community. It is conceivable that what the doctor would consider an ordinary procedure, might involve excessive hardship for his patient, and consequently be classified as an extraordinary remedy by the moralist. On the other hand moralists generally—even some reputable present day theologians—list operations among the extraordinary means of preserving life. But doctors appear to be in agreement in considering operations—at least those which are more commonly practiced—as ordinary procedures.

Now what means of preserving life are we to consider ordinary means? From examples given by the standard manuals we can conclude that the use of reasonably available food, drink, clothing, shelter, and medical care are all to be considered as ordinary life-preserving means. In addition to this I think we must consider the progress made by medical and scientific research in recent years, which has resulted in the numberless aids to life-preservation. Drugs, blood transfusions, intra-venous injections and feeding, the various tests and examinations, X-rays and so on have become standard practice among physicians. These artificial means of preserving and restoring health and life, it seems to me do not generally involve great hardship or expense and consequently can in most—if not in all—cases be classified (at least per se) as ordinary means. It is realized that in individual cases subjective considerations, of excessive expense, repugnance, pain, and so on, may cause such measures to be classed as extraordinary means. But apart from such unusual cases, I wonder if such artificial means of preserving life, cannot generally be considered to be ordinary means?

As for extraordinary means, the authors of the standard works are more generous with their examples. Classic are the following: leaving one's home to go to a more healthful climate, expensive medicines and treatments, the amputation of a leg (standard example since the 16th century, according to O'Donnell; and used by Father Connell himself in his "Morals in Politics and Professions"). Older authors considered operations to be extraordinary means—chiefly because of the pain involved, the danger of infection and consequent death, and the uncertainty of success. But medicine and surgery have made such great progress since those days, anesthesia has removed the pain, and extreme caution is exercised to reduce the danger of infection—so that it would seem that operations, at least those which are commonly performed with ease and safety in our modern hospitals, do not warrant classification as extraordinary means any longer. I imagine that we could still consider as extraordinary means delicate and dangerous operations that demand special skills not possessed by the average surgeon.

Father Connell gives as examples: a child needing a very difficult and delicate operation which only a specialist could perform in order

to prolong its life; a very painful operation (such as the amputation of a limb) in order to gain a brief prolongation of life for an elderly person.

It is interesting to see the reference to a painful operation in this twentieth century. Despite advances made in art of anesthesia, cases occasionally do occur in which operations are very painful. A recent case involved a young lady with extremely bad heart and other complications who needed operation for acute appendicitis. No anesthesia could be administered. Operation was performed successfully, but with excruciating pain for the patient.

More interesting is the reference to the amputation of a limb. Father Connell called it an extraordinary means because of the pain involved. Perhaps such an operation is more painful to an elderly person; but I should think the pain of the amputation itself would be almost completely removed by proper anesthesia. I am inclined to consider the amputation in this case as an extraordinary means because of the extreme mutilation and the excessive post-operative hardship it would involve in the case of an elderly person. Such a person would not be able to use an artificial limb, for example, with any great proficiency or ease.

Merkelbach and other moralists classify notable amputations as extraordinary means of preserving life. To these authors the amputation appears to be extraordinary not so much because it is painful, but because it is a notable mutilation.

An impression one receives from reading the moralists is that there is no hard and fast dividing line between means that are ordinary, and means that are extraordinary. The reference to such subjective and relative factors as excessive pain, great expense, unusual personal repugnance for certain procedures tend to lead to the conclusion that there is no absolute norm or standard by which to distinguish ordinary from extraordinary means.

DIGEST OF THE DISCUSSION

The discussion of this section revolved around two points:

1) Is an amputation to be considered an ordinary or an extraordinary means?

Some thought it ought to be considered an ordinary means and

gave various reasons: (a) the inconveniences involved are small when compared with the great benefit of life; (b) physicians generally consider amputation to be an ordinary procedure, and rehabilitation is very simple when the patient co-operates; and (c) there is no moral impossibility involved: statistics would probably show that most people would not refuse such an operation to save their lives. The opposing opinion was based on these reasons: (a) the inconvenience that the patient would have to suffer subsequent to the amputation; (b) the extrinsic authority of modern authors who hold that an amputation is an extraordinary means of preserving one's life.

2) Must subjective elements always be considered when determining the obligation to use ordinary means?

The following opinions were among those expressed: (a) Some procedures are in themselves ordinary means, and hence a patient would be obliged *per se* to use them to save his life. (b) Subjective elements must always be considered and hence the patient's obligation would often depend on such subjective elements. It was said that fear and repugnance could be considered excusing causes since psychological pain cannot always be overcome. Some took exception to this maintaining that in such cases the way out of the difficulty would be to leave the person in good faith. All agreed that if a person's fear of an operation should be unreasonable the person would have an obligation to reduce his unreasonable fears.

II

With regard to the use of ordinary and extraordinary means to preserve life the standard authors give us rules that apply only to the individual and his obligation to preserve his own life and health. I have not found, in any of the standard manuals of Moral Theology, a treatment of our problem—which is the duty of the physician with regard to the use of ordinary and extraordinary means in preserving the life of his patient.

Moralists are in agreement 1) that *per se* the individual must use ordinary means to preserve his own life. If a person has any duty at all to preserve his life, that duty involves the use of ordinary means.

2) The individual may, if he desires, use extraordinary means to preserve his life, but *per se* he is not bound to do so. *Per accidens*, all admit, he may be obliged even to use extraordinary means to save his life—when, for example, the welfare of his soul, or the common good, would require it.

3) Some moralists expressly state that *per accidens* the individual would have no obligation to use even ordinary means, in the case that such means would be useless and would not be beneficial in saving his life. I have the impression that all the authors would agree to this, even though not all of them advert to this particular aspect of the matter.

But what about the duty of the physician? I may have fulfilled my duty in a certain case by calling in the doctor. But how far is the doctor obliged to exert himself in preserving my life? The determination of this obligation has its applications not so much in the ordinary case in which there is hope of patient's recovery, but in cases involving hopeless sick, incurable, and inoperable diseases, and the care of the aged. Certainly the doctor is obliged to use ordinary means. Otherwise he would have no obligation at all. But does the doctor fulfill his duty to his patient and to society, if he uses only ordinary means? Or is the doctor, because of some special relationship, obliged to go beyond ordinary means, and make use also of extraordinary means to preserve his patient's life?

From my observations in hospitals and from conversations with physicians I have the impression that doctors often do have recourse to extraordinary means to preserve and to prolong the lives of their patients; and that they feel they are obliged to do so.

Thus we could conceive of the situation in which the doctor would feel duty-bound to prescribe and use remedies to preserve his patient's life, which the patient himself would in no way be obliged to use or to accept—because they are extraordinary.

Just how far is the physician obliged to go to preserve his patient's life? I propose we discuss three possible relationships that involve the physician and his patient, with a view to determining,

if possible, some satisfactory answer to that question. These relationships are: (a) that of the neighbor (b) The physician-patient relationship resulting from the physician-patient contract; (c) the doctor's relationship to his profession, or to the common welfare.

A. Does charity to neighbor oblige the doctor to prescribe and use extraordinary means?

Charity obliges us to help our neighbor who is in extreme bodily need even at the cost of serious inconvenience to ourselves; but there is no obligation to do for others what one is not obliged to do to save his own life.

Ubach explicitly says: "non datur obligatio succurrendi (proximo) per media plane extraordinaria, cum ne ad servandam quidem propriam vitam teneatur quisquam ea adhibere."

Jone gives these examples of extraordinary means: "One need not finance a change of climate for a poor man to save his life." (The example of change of climate is one of the classic examples of an extraordinary means.) "A surgeon need not perform an extraordinary operation gratis."

Of course, it is realized that the physician's duty will be somewhat greater if the patient's spiritual condition is such that charity demands he be kept alive until he can make his peace with God.

Does it follow then, that just as the physician is not obliged to use extraordinary means to preserve his own life, so also he is not obliged, by love of neighbor at least, to use such means to save his patient's life?

DIGEST OF THE DISCUSSION

It was pointed out that the problem of this relationship centers around the physician's obligation to perform an ordinary operation for a person who cannot afford it. The means would then be extraordinary for the patient, but could well be, in itself, an ordinary means. A warning was given that the moralist should not confuse the terms ordinary and extraordinary means with grave and slight *incommodum*. It was agreed that the rules of charity would apply in this case: if a patient is not bound because of inconvenience, then the doctor is not bound to perform the operation if he is subject to the same inconvenience.

B. Is there an obligation in justice, by reason of the physician-patient contract?

Justice will oblige the physician to give the patient what is his due. The patient has a right to be assisted by the physician according to the best of the physician's abilities. Moralists and doctors themselves agree that the physician must help his patient "meliore et certiore modo quo moraliter potest."

Therefore, since the patient has a right to all the ordinary life-preserving remedies, the doctor must provide them. The doctor must also provide any extraordinary remedies requested by his patient. For if the patient desires to save his life by extraordinary means, the doctor he engages is bound to use those means. But apart from any such expressed desire by the patient, what is the doctor's obligation?

Moralists are not of much help in solving this moral problem. I have been able to find only a few statements that would apply.

Father Huerth (*De Statibus*, p. 108), after noting that the medicines and treatments to be prescribed by the physician must be such as offer some hope of benefit to the patient, remarks: "Cum nemo teneatur mediis (ratione sui status) extraordinariis curam sanitatis et vitae agere, neque medicus tenetur ad talia media praescribenda, si certo scit: aegrotum haec media acquirere et adhibere non posse."

Father Davis (II, p. 127): "Doctors, nurses and midwives sin seriously if through grave negligence, and still more if, of set purpose, they cause or hasten the deaths of patients, or do not *use reasonable and ordinary precautions*, for their duty is to keep patients alive, and they have no privilege of killing them" (emphasis added).

Father Connell (*Morals in Politics and Professions*, p. 121): "The doctor is bound by the law of God . . . to preserve the life of a patient as long as is reasonably possible. . . . Ordinary measures must be employed even in the case of one who will continue to be, naturally speaking, merely an unprofitable burden on society. If the child whose physical constitution is so defective that he will grow up to be a drivelling idiot is seriously ill with pneumonia, the physician must employ the most effective remedies he knows in order to cure him, provided they can be reckoned as ordinary means. There is no obligation to use extraordinary remedies to preserve a life so hampered."

Father Merkelbach (II, n. 378, ff.): Discussing the case of the incurable patient he notes that while the doctor may lawfully use remedies which will probably benefit even though they may possibly harm (i.e., in the absence of any certainly beneficial remedies), "dangerous or extraordinary remedies ought not generally to be used without at least the presumed consent of the patient himself."

These authors apparently limit the doctor's obligation to the use of ordinary means. Yet, I think it is possible to detect in these quotations (e.g., in Father Huerth) a reluctance to absolve the physician completely from all obligation to use extraordinary means of preserving his patient's life. It is not perfectly clear to what extent the physician is obliged to use such means. Apparently there comes a time in the treatment of some patients when the duty to use extraordinary means ceases; but authors do not attempt to help us determine when that time comes.

At this point it may be interesting and perhaps enlightening to see what the doctors themselves think of their obligations toward their patients. I have taken the following quotation from *Legal Medicine and Toxicology* by Gonzales, Vance and Helpert (New York: Appleton-Century, 1940), Chapter XXVI. "Rights and Obligations of Physicians—The relation of the Physician to His Patient," pp. 433-434.

The fundamental relationship in law between the physician and his patient is simply that of a contract, in which the physician agrees to furnish medical care to the patient. In a few instances, the agreement may be expressed, that is, set down in documentary form and signed by the parties concerned. In the majority of cases, however, the contract is implied and the physician is pledged automatically to observe the following conditions:

1. He shall treat the patient with an ordinary or reasonable degree of skill, such as would be expected to exist in the community in which he is practicing.

2. He shall exercise due care and diligence in his treatment of the case. This means that he shall not only avoid negligence in the administration of curative measures, but that he shall use prudence in discontinuing his attendance on the patient. He cannot quit the case unless the patient consents, or unless he gives the patient timely notice so that another physician can be en-

gaged in his place, or until he assumes the responsibility of pronouncing the patient no longer in need of medical attention.

3. He shall use his best judgment at all times for the benefit of the patient.

In other words, the physician does not guarantee to heal the patient, but he does promise to use his best efforts to effect a cure.

. . . The implied contract has certain well-defined limitations. For one thing, a physician cannot call a consultant, send a patient to a hospital, or perform an operation without the patient's consent. The only exception is when an emergency arises with a helpless individual, and the medical man has to assume the immediate responsibility for life and death; then he can operate without consent."

This statement of the physician's obligations does not afford us much help in our problem. It is stated that the physician-patient contract does not oblige the physician to use certain means, such as operations, sending patient to hospital, calling a consultant, which the moralist recognizes as extraordinary means, unless he has previously secured the patient's consent. But this statement of the physician's duties before the law does not clearly rule out the duty of using extraordinary means altogether. The point is not directly touched. The remedies to be used by the physician are considered solely from the point of view of the welfare of the patient.

DIGEST OF THE DISCUSSION

It was generally felt that the physician-patient contract alone is not sufficient to explain the obligation which physicians feel is theirs, viz., to do more than use ordinary life-saving means. Some expressed the thought that more light could be thrown on the problem if it were possible to ascertain just how the physicians themselves felt about their contractual obligations to their patients. The suggestion was made that when the patient expresses no wish to use extraordinary means, and the parents or family say nothing, the doctor should use the golden rule. As regards the idiot child, there is no point in prolonging his life by extraordinary means, if he has been baptized. But the real problem, it was agreed, lies with the adult patient: here the doctor should be guided by the golden rule in his efforts to interpret the patient's wishes.

C. Does the doctor have a duty towards his profession which would at times demand even greater care of his patient than that demanded by his contract with the patient?

This is the question raised by Father Kelly in his article in the Dec., '51, issue of *Theological Studies*. Father Kelly there suggests that the physician's duty is not completely stated in terms of his patient. From our own discussion of the physician-patient contract it would appear that that suggestion is well-founded. But if we wish to examine it more closely we run into difficulty. It is extremely difficult to find a definite and clear statement of the duties physicians owe to their profession.

In recent discussions on mercy-murder, references have been made to "the standards of the medical profession," the "mission of the physician," duties of doctors and so on. These references may furnish us, possibly, with a starting point for our own discussion.

Father Blakely, S.J., in an article in *America* (Nov. 4, '39, p. 90) which is quoted by Father Kelly, speaks of "the law which has governed the medical profession since the profession took form, and which tells the physician that his most solemn obligation is to fight death to the end, however hopeless the battle may seem."

Does this "law" require the physician to use all available means—even extraordinary means, and remedies which offer little or no hope of cure—as long as life lasts?

LaRochelle-Fink in their *Handbook of Medical Ethics* (pp. 170-171) discuss the question whether there is any obligation to try to prolong life, at least according to our manner of speaking, if God is willing, by means of "secondary" aids such as caffeine, serum, oxygen, camphorated oil, or blood transfusions. They note that doctors are divided, some holding that there is an obligation, because life is so precious and so meritorious, especially in its last hours, and the duty of the doctor is to cure. A Dr. Bon is cited in favor of this view. But others, among whom the authors cite Boigelot, are said to oppose this view. The reason given is that science does not oblige us to change the natural course of events, and since it is necessary to take extraordinary measures to do this there is no strict obligation in the matter.

(My own observation is that in this passage the authors appear to be considering the duty of the doctor to maintain life by *artificial* means. The examples they give of "secondary aids" are all artificial, not natural, means of prolonging life. To me they appear to be life-preservatives, rather than specifics for any particular disease. In a subsequent passage the same authors insist that ordinary *natural* care is to be given the dying, and that the nurse should do her utmost to maintain life by such means as long as possible.)

The conclusion of LaRochelle-Fink is that the doctor, in such a situation, ought to weigh carefully the reasons for and against prolonging life, and decide upon the course which will do most good. It appears evident that they are not considering a case which offers some hope of eventual recovery, but rather the case of the hopelessly incurable patient.

The Academy of Moral and Political Sciences, on Nov. 14, 1949, passed a resolution condemning euthanasia. As reported in the *Journal of the American Medical Association* (Mar. 11, 1950), the *Academy* stated:

It is certainly the doctor's duty to lessen, as far as his technical skill makes it possible for him to do so, the anguish and pangs of death, whenever they occur. In these circumstances the fear that death may intervene while he is caring for the patient, must not inhibit his use of therapeutic measures, but he must not consider it lawful to deliberately provoke death.

Dr. D. Marion, director general of the Doctors' Association of Canada, was reported in *The Catholic News* of Nov. 28, 1950, as voicing in the following terms the views of the association on euthanasia:

We reject euthanasia because it is contrary to natural morals. . . . We reject euthanasia through fidelity to our Hippocratic oath; through fidelity to our mission, which is to cure, to save, or to prolong life, not to cut it short; to prevent or lessen suffering, not to kill.

The doctor then goes on to recall other considerations of progress in medical research and the duty of the physician to maintain the patient's confidence:

Euthanasia would be a shameful submission in the face of sicknesses, today incurable but which science may vanquish tomorrow. It would destroy that confidence in the physician, which to an ailing person is an important moral element in cures. In a word, our professional honor as well as our dignity of man makes it a duty for us to respect this thing sacred among all: life.

The statement of the *Academy of Moral and Political Sciences*, quoted previously also referred to the doctor's "essential role which is to cure." This is a point which was emphasized by a doctor friend of mine with whom I discussed our problem a short time ago. This doctor, who is competent, conscientious and Catholic, held that the physician's duty is to bend every effort towards the cure of the patient. But, he said, when a doctor arrives at a point at which it is clear that he cannot cure the disease, and that all medicines and remedies will be of no avail—then the doctor's work is done. The doctor as a healer, that is. The doctor may still have an obligation to make his patient comfortable, to keep him out of pain; but the care of the patient from that time on, he tended to regard, as nursing care rather than medical care. Such a dying person would be given sedatives and drugs to ease his pain; he would be fed and cared for along natural lines; he need not necessarily be supplied with nourishment, oxygen and the like by artificial means. Since the only effect of such measures would be not to cure, or even to control, the disease, but merely to postpone for a short time the inevitable hour of death, there would be no clear-cut obligation on the doctor to use them.

This case came to my attention some time ago: A baby was born with some pathological condition for which there is no known cure and which by itself would bring about death within a rather short time—a few weeks or so. The doctor at first sought to keep the child alive in an oxygen tent. After several days of oxygen, it became apparent to the doctor, that the baby's parents—who had several other children to support and care for—were in no financial condition to bear the expense of continued oxygen treatment. He discontinued the oxygen—without obtaining the expressed consent of the parents—and the baby died within a short time.

Some criticized the doctor on the grounds that it was his duty to maintain the life of the hopelessly incurable baby until death itself

intervened. Others, especially his physician associates, defended his action. The Catholic doctor who told me of this himself thought that the continued use of oxygen would have been an unbearable expense and a most extraordinary measure to prolong the baby's life. He thought the doctor justified in his action.

There are, therefore, in the medical profession itself two views as to the duty of the physician to prolong the life of his patient. I am again indebted to Father Kelly's article for a very satisfactory and clear statement of these views which have been reflected in the considerations above.

The first attitude, which we can call, along with Father Kelly, the moderate attitude has been described by William L. Sperry in *The Ethical Basis of Medical Practice* (New York: Paul B. Hoeber, 1950), p. 134:

I believe that some distinction should be made between an active attitude designing to end life and a passive attitude which allows a hopeless patient to die and does not involve the use of futile gestures. It seems to me that the doctor's job is to keep such a patient as free as possible from suffering either physical pain or mental anguish. This is quite different from deliberately ending his life, which seems to me contrary to the whole ethos of our profession.

The other attitude, called by Father Kelly the extreme attitude, is accurately enough expressed in these words:

The doctor's duty is to preserve life as he can and by any means at his disposal. He is not the judge of life and death; but he makes himself the judge the moment he decides not to use or to cease using some available means of preserving life. Only God knows when the patient's life is to end. There is always the possibility of a miracle.

And I might add, there is always the possibility that tomorrow science may discover a cure.

Therefore: in view of the difference of opinion among medical men themselves, does the physician have a strict obligation to use every means available, even though it be an extraordinary means, to preserve the life of his patient?

Can we say that in some cases at least, there comes a time when the physician is not obliged to continue the use of extraordinary measures aimed merely at prolonging the patients' life?

DIGEST OF THE DISCUSSION

It was noted that doctors and nurses often feel obliged to do more than the moralists would oblige them to do. It was generally felt that until more is known about the doctors' obligation to society no satisfactory and clear-cut statement of their duty to use extraordinary means can be drawn up.

A further point of discussion centered around the question: When an extraordinary means is not used, can the purpose of the act be to shorten life? It was felt by some that it can. Since a person is not obliged to use extraordinary means to preserve life, and since death can be desired lawfully, it was thought permissible for a person to refuse to use extraordinary means precisely to end his life. All agreed, however, that great care and caution must be exercised in the manner in which this is expressed outside of theological circles.

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