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A Commentary of The National Catholic Bioethics Center on Health Care and the Life Sciences

■ Also in this issue: “Conscience and Religious Freedom Trump Public Health,” by Michael Arthur Vacca ■

ORDINARY AND EXTRAORDINARY: THEOLOGY AND HISTORY, PART I

Rev. W. Jerome Bracken, CP



Although the words *ordinary* and *extraordinary* are well known to the readers of this bulletin, it is important to establish their historical context, not simply in the sense of their literary origins but in salvation history. The concern for those who are seriously ill must go beyond caring for their physical condition and reach as far as caring about their relation to God, for that is the true source of one’s happiness.¹ Interestingly, the very first question St. Thomas Aquinas answers in the *Summa theologiae* concerns the content of happiness, namely, our salvation and what we need to know in order to attain it. Aquinas’s one-sentence answer, which he of course elaborates on, is, “It was necessary for man’s salvation that there should be a knowledge revealed by God besides philosophical science built up by human reason.”²

What, then, is this knowledge revealed by God? It is the Word of God, telling us about himself and his plan to save us and enabling us to know and follow his plan.³ It is a knowledge that must be revealed because our own human powers cannot attain it. God gradually revealed this knowledge through his prophets of old and did so fully and completely by sending his Son who is the Word of God incarnate. Christ communicated this knowledge so that we might know him and follow him. He did this through his words, life, death, resurrection, and the sending of the Spirit. Through the apostles and his Church, we received the grace necessary to know and follow Christ.⁴ He is the way and the truth and the life by which we attain salvation, our ultimate happiness. Christ is communicated to us through the words and actions of the sacraments of Reconciliation, Eucharist, and Anointing of the Sick, in particular.

The Gift of Natural Reason

Besides revelation, God also gave us reason so that we might know something of him and his plan through the creation. In creating the universe, God in his providence inclined each thing in nature to seek its own perfection so that when everything is taken together, creation as a whole mirrors the perfection of God himself. In addition, God gave us reason to understand the things of nature,

including our own human nature. By reflecting on our own natural inclinations, we can come to know what will perfect our nature (what is good) and what will not (what is evil). The formulation of this knowledge into general norms of conduct is called natural law.

By using God’s revelation and the norms of natural law, we, with our reasoning powers, have the ability and responsibility to make concrete determinations about what is good for us on earth and for our eternal destiny in heaven. By these means and with the aid of faith, we not only know the goal of caring for one who is seriously ill but also discover the particular treatment that should be implemented given the concrete circumstances affecting the ill person and the person’s caregivers. For instance, when giving morphine to lessen or eliminate the person’s suffering, one is required to determine the appropriate amount, lest one violate natural law and kill the person for the sake of killing the pain.

Early Discussions of the Distinction

Aquinas, in his commentary on Second Thessalonians, states, “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 cannot live.”⁵

The theologians of the sixteenth century, as Donald Henke notes, “provided the next advances in the moral understanding of the specific requirements to preserve human life.” Francisco de Vitoria (d. 1546), basing his idea on our natural inclination of self-preservation, said on the positive side that “one must eat food to live.” On the negative side, should one’s appetitive power be so affected that “with the greatest of effort and as though by means of a certain torture, can a sick man take food,” then “right away that is reckoned as a certain impossibility, and therefore [one] . . . is excused, at least from mortal sin, especially where there is little hope of life, or none at all.”⁶ Thus, de Vitoria considered what is objectively required and what is subjectively possible.

Domingo de Soto (d. 1560) said that even if spiritually one is ordered under obedience to take medicine for one’s health, one is not obliged to do so should it cause great pain.⁷ It was Domingo Banez, OP (d. 1604) who first used the term *ordinary* for those actions common to all that preserve one’s health (nourishment, clothing, even medicine that causes mild pain) and the name *extraordinary* for those actions that would subject oneself to great pain or anguish.⁸

Juan Cardinal de Lugo (d. 1660) made an interesting distinction regarding amputations. What is extraordinary need not be the amputation, as it would save life, but the pain accompanying it. Thus, as Henke concludes, “In a case in which the obscuring blanket of pain was removed, the amputation procedure would

constitute an ordinary means of conserving life.”⁹ De Lugo made another important distinction. It was between “the death of a person because of inadequate use of the ordinary means (which is a moral violation) and the death of a person resulting from a decision not to use an extraordinary means (which was not a moral violation ... [since] a human person’s life was not the greatest good ... something to be preserved at all costs).”¹⁰ With the discovery of anesthesia in the late nineteenth and early twentieth centuries, and Joseph Lister’s recognition that the use of antiseptics kills germs that cause infection in amputations,¹¹ surgeries that were formerly considered extraordinary because of their pain and terrible results could be considered ordinary.

The Modern Era

Nonetheless, differences of opinion continued. For instance, H. Noldin (1838–1922) concluded that amputating surgeries were ordinary and obligatory, since there is the possibility of attaching artificial limbs and one has the obligation of preserving life even with some bodily defect. Augustine Lehmkuhl (1834–1918) argued that one need not be obliged to undergo an operation should one view it with a great deal of repulsion (*horrorem magnum*). In a 1958 article, the historian José Janini concluded that “in the light of present surgical techniques modern surgery must always be considered ordinary means and obligatory, at least as this term was understood by the classical moralists.”¹² Then, recognizing the distinction between the medical and moral characteristics of a treatment, Janini added that one must always consider other relevant circumstances (e.g., horror, uncertainty of success) as well as other virtues that may be involved (e.g., piety, charity) before one can pass a moral judgment on any given case.

Daniel Cronin, in his 1958 Pontifical Gregorian University dissertation, *Moral Law in Regard to the Ordinary and Extraordinary Means of Conserving Life*, came to similar conclusions. All are obliged to preserve their lives unless there is a moral impossibility. Both natural means (those per se intended by nature) and artificial means (those whereby man can supplement nature) can be ordinary means. Cronin, following Gerald Kelly’s 1950 article in *Theological Studies*, gave the following definitions:

Ordinary means of conserving life may be defined as those means commonly used in given circumstances which the individual in his present physical, psychological and economic condition can reasonably employ with definite hope of proportionate benefit.

Extraordinary means of conserving life may be defined as those means not commonly used in given circumstances or those means in common use which this individual in his

present physical, psychological and economic condition cannot reasonably employ, or if he can, will not give him definite hope of proportionate benefit.¹³

A year before Cronin’s dissertation was published, Pope Pius XII gave the key magisterial teaching regarding ordinary means and extraordinary means.¹⁴

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Notes

1. Thomas Aquinas, *Summa theologiae* (ST), trans. Fathers of the English Dominican Province (Province of England, 1920; New Advent, 2017), I-II.3.4.
2. Aquinas, ST I.1.1 corpus.
3. *Catechism of the Catholic Church*, 2nd ed. (Washington, DC: US Conference of Catholic Bishops/Libreria Editrice Vaticana, 2016 update), n.74. God “desires all men to be saved and to come to the knowledge of the truth, that is, of Christ Jesus. Christ must be proclaimed to all nations and individuals, so that this revelation may reach to the ends of the earth.”
4. *Catechism*, n. 85. “The task of giving an authentic interpretation of the Word of God, whether in its written form or in the form of Tradition, has been entrusted to the living, teaching office of the Church alone. Its authority in this matter is exercised in the name of Jesus Christ. This means that the task of interpretation has been entrusted to the bishops in communion with the successor of Peter, Bishop of Rome.”
5. Donald E. Henke, “A History of Ordinary and Extraordinary Means,” *National Catholic Bioethics Quarterly* 5.3 (Autumn 2005): 557, doi: 10.5840/ncbq20055333.
6. Henke, “History of Ordinary and Extraordinary Means,” 557.
7. James J. McCartney, “The Development of the Doctrine of Ordinary and Extraordinary Means of Preserving Life in Catholic Moral Theology before the Karen Quinlan Case,” *Linacre Quarterly* 47.3 (August 1980): 216. See also Scott Sullivan, “The Development and Nature of the Ordinary/Extraordinary Means Distinction in the Roman Catholic Tradition,” *Bioethics* 21.7 (September 2007): 389, doi: 10.1111/j.1467-8519.2007.00567.x.
8. McCartney, “Doctrine of Ordinary and Extraordinary Means,” 216.
9. Henke, “History of Ordinary and Extraordinary Means,” 559.
10. Henke, “History of Ordinary and Extraordinary Means,” 560.
11. Sherwin B. Nuland, *Doctors: The History of Scientific Medicine Revealed Through Biography* (Chantilly, VA: Teaching Company, 2005), 53, 76.
12. McCartney, “Doctrine of Ordinary and Extraordinary Means,” 216.
13. Daniel Cronin, “The Moral Law in Regard to the Ordinary and Extraordinary Means of Conserving Life” (PhD diss., Gregorian University of Rome, 1958), cited in McCartney, “Doctrine of Ordinary and Extraordinary Means,” 218.
14. Jerome Bracken, “Determining Ordinary Means of Caring for the Sick Using Three Simple Questions,” *National Catholic Bioethics Quarterly* 20.4 (Winter 2020): 759–774.



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CONSCIENCE AND RELIGIOUS FREEDOM TRUMP PUBLIC HEALTH

Michael Arthur Vacca



In the midst of the COVID-19 pandemic, there is renewed debate about the proper relationship between conscience rights essential to religious freedom and the needs of public health. These two elements of public policy often come into conflict. If someone has a conscience objection to taking a vaccine that would promote the public health, should that person be required to take it? If one thousand people want to gather in a closed space to celebrate the holy Mass or another religious service, should they be able to do so? If a person wants to visit his or her sick father in a hospital, should he or she be able to do so? Catholic social teaching and the natural moral law have much to say about the relationship between conscience rights and public health.

Conscience is defined by the *Catechism of the Catholic Church* as “a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed. In all he says and does, man is obliged to follow faithfully what he knows to be just and right. It is by the judgment of his conscience that man perceives and recognizes the prescriptions of the divine law.”¹ The Catholic Church speaks of conscience as a binding moral norm and would never sanction anything opposed to conscience. This does not mean that conscience is infallible, but the sincere exercise of conscience should always be respected. Absent an intrinsic evil, an intention to commit evil, or the reckless disregard for others, we should presume that people are following their consciences. This is required by the moral norm of charity, which requires us to treat others as we would want to be treated (Matt. 7:12).

Positive and Negative Moral Laws

In Catholic teaching, negative moral prohibitions such as some of the Ten Commandments ban absolutely and without exception (Exod. 20: 1–17). The commandments not to murder, not to commit adultery, not to steal, and not to blaspheme the Lord’s name are binding in all circumstances. Simply put, the ends do not justify the means. No matter how much good could potentially come from these acts, they can never be morally justified, because they are, by virtue of their nature, irremediably evil. This doctrine is foundational to the entire edifice of Catholic moral teaching and is set forth explicitly by Pope St. John Paul II in his great encyclical on the foundations of moral theology, *Veritatis splendor* (*The Splendor of Truth*). The holy father eloquently writes, “If acts are intrinsically evil, a good intention or particular circumstances can diminish their evil, but they cannot remove it. They remain ‘irremediably’ evil acts; *per se* and in themselves they are not capable of being ordered to God and to the good of the person.”²

This is, after all, the teaching of St. Paul: “Do you not know that the unrighteous will not inherit the kingdom of God? Do not

be deceived; neither the immoral, nor idolaters, nor adulterers, nor homosexuals, nor thieves, nor the greedy, nor drunkards, nor revilers, nor robbers will inherit the kingdom of God” (1 Cor. 6:9–10, CRSV). St. Augustine also says as much in *Contra mendacium* VII.18.

Catholic social teaching and the natural moral law hold that there is no circumstance or intention that justifies causing another person to violate his or her sincerely held religious convictions or conscience. Such acts are intrinsically immoral because they prevent the person from obeying the voice of God in his or her soul. Conscience rights and religious freedom are ends in themselves and can never be made mere means toward an allegedly greater end such as public health.

Public health is founded on the right of individuals to live in a healthy and safe environment. This does not mean only that the state should not pollute the air, the water, and the environment. Public health means this to be sure, but it also means that the state must positively take steps to protect the health of people by prohibiting companies from polluting the environment, by enforcing health and safety standards relative to infectious diseases, and by passing laws which prohibit dangerous activities. Public health is not a negative moral prohibition like conscience; it is, rather, a positive moral command obligating all people, society, and the state to create the conditions requisite for the common good.

In Catholic social teaching and the natural moral law, positive moral commands do not bind absolutely and without exception. They bind generally but not if following them causes one to commit evil. For instance, Jesus commands us to feed the poor and clothe the naked (Matt. 25:35–36). These are positive moral commands that generally bind. So, if Anthony sees a homeless man that is poorly clad in the midst of a frigid winter, and if he can give the man a coat without exposing himself to harm or failing in another of his moral obligations, he should strive in conscience to help the man. If, on the other hand, Anthony senses that the man is unstable and may harm him, or if his wife or children urgently need his attention, Anthony would not be sinning by not giving the man his coat.

This teaching is evident in end-of-life situations. The natural moral law and Catholic social teaching absolutely prohibit suicide, but they do not require that people who are dying do everything imaginable to prolong their lives. They are required to use ordinary means of care and can morally forgo extraordinary means.³ The Church and natural moral law distinguish between the negative moral prohibition “do not murder,” which binds absolutely and without exception, and the positive moral command to preserve one’s life, which does not bind absolutely, because one can forgo extraordinary means.

Thus, it follows that society, including but not solely the state, has a general duty to promote the common good and protect the lives of others, but this duty admits of exceptions. We are not required to promote public health if it causes us to do irremediable harms such as forcing people to be vaccinated, promoting regulations or policies which prevent people from seeing their loved ones, or enacting laws to prohibit people from worshiping God in communion with others. To do so would be to violate the negative moral prohibition protecting the sacrosanct rights of conscience and religious freedom. Not only are we not required to do these things, but it would be objectively wrong and sinful to do them, because they violate the authentic good of the person, the rights

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of God and the Church to public worship, the right of families to congregate, and the right of every individual human person to conscience and religious freedom. In short, whenever there is a conflict between conscience and religious freedom on the one hand and public health on the other, the former always trumps the latter.

Primacy of Conscience Rights

Conscience rights and religious freedom have primacy over public health because they concern rights and duties that belong inviolably to individual human persons. If Susan has a right in conscience not to take a vaccine that she objects to for personal reasons, then everyone else, including the state, has the duty to respect Susan's sincerely held convictions. Essentially, conscience rights and religious freedom mean that every person has the right not to be forced to violate his or her conscience. It is a negative moral right, a right to be left alone. Those who seek to exercise their conscience rights and religious freedom are not asking the state to give them something; instead, they simply want to live in peace, with respect for their conscience and that of others.

Some may argue that public health can be conceived as a negative moral prohibition in the sense that we are bound to refrain from harming others, but this would not justify using the power of the state to promote the common good by undermining the right of conscience. The state can prohibit murder because that is truly in the common good and does not violate the sincere exercise of conscience, but it cannot prohibit Mass attendance, because that violates the sincere exercise of conscience of some of its citizens; hence, it is not truly in the interests of the common good. In Catholic teaching, the common good refers to the conditions which allow for the good of every person. The attempt to argue that violating the right of conscience serves the common good reduces it to a utilitarian caricature. Instead of serving all, the common good serves the many at the cost of the few. This is an abuse of both the common good and freedom of conscience as a primary messenger of God.

Nothing said here denies the moral duty to seek to protect the lives of others or denies the legitimacy of public health as an essential element of the common good. But there is a profound difference between a person's having a moral obligation to avoid behaviors that expose others to undue risk and the government's forcing the person to avoid those same behaviors. In a free society, we take risks every day. If the state, instead of society as a whole, becomes the judge and enforcer of what is morally required to protect the common good, we lose our freedom. This means that we lose our capacity to live righteously, pursuant to our sincerely held convictions grounded in freedom of conscience. If conscience and religious freedom are prioritized, then public health is on a firm foundation.

Both Catholic social teaching and the natural moral law give primacy to conscience and religious freedom. Those who put public health on a par with conscience and religious freedom, or who imply an equivalence among them, as if they were comparable elements of public policy, are misguided, however well intentioned. Ironically, the common good that is the foundation of the right to public health is harmed by violating conscience and religious freedom. The principle should be clear: all of society, not solely the state, should promote the common good through public health and safety measures insofar as doing so does not violate the dignity of the human person, especially in matters of conscience and religious freedom.

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Notes

1. *Catechism of the Catholic Church*, 2nd ed. (Washington, DC: US Conference of Catholic Bishops/Libreria Editrice Vaticana, 2016 update), n.1778.
2. John Paul II, *Veritatis splendor* (August 6, 1993), n. 81.
3. Pius XII, "The Prolongation of Life: An Address to an International Congress of Anesthesiologists, November 24, 1957," reprinted in *National Catholic Bioethics Quarterly* 9.2 (Summer 2009): 327-332, doi: 10.5840/ncbq20099259.

