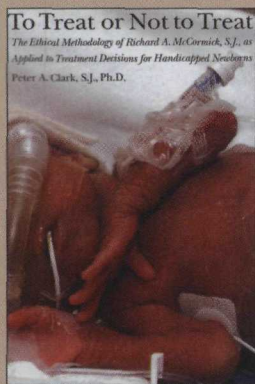


# BOOK Reviews



## To Treat or Not to Treat:

*The Ethical Methodology of Richard A. McCormick, S.J., as Applied to Treatment Decisions for Handicapped Newborns*

Fr. Peter A. Clark, S.J., PhD

Fordham University Press,  
Bronx, NY,  
2004, 349 pp.

In this extensively researched and carefully argued volume, Fr. Peter A. Clark, SJ, PhD, articulates and analyzes the foundations of the ethical methodology of the late Fr. Richard A. McCormick, SJ. Clark then applies certain aspects of Fr. McCormick's ethical methodology to treatment decisions for handicapped newborns.

Fr. McCormick (1922-2000) was known as "the dean of Roman Catholic moral theology," and his work continues to be highly regarded and influential. Fr. Clark documents changes and developments in Fr. McCormick's ethical methodology over the course of his career. It is significant that from 1983 to 2000, the late Jesuit turned his attention explicitly to medical ethics. This development was and is of great consequence to Catholic health care, but, according to Fr. Clark, "McCormick never systematically articulated his ethical methodology," potentially leaving it open to concerns about ambiguity and inconsistency (p. 310). Fr. Clark's volume is intended to bridge this gap through an exploration of the anthropology, epistemology, and criteriology that form the foundations of Fr. McCormick's ethical methodology. Fr. Clark then "tests" Fr. McCormick's methods by applying them to five types of cases involving handicapped newborns.

The decision-making process for handicapped newborns is still difficult and controversial, although there is a considerable body of bioethics literature concerning the issue. Many of the most relevant articles are listed in the American Board of Pediatrics's *Bioethics References Applicable to the Care of Pediatric Patients*.<sup>1</sup> For example, one article listed there, by D. K. Stevenson and A. Goldworth,<sup>2</sup> recommends consideration of quality of life, the best interest of the infant, the interests of family members, and issues of futility: themes that are similar to those developed by Fr. McCormick. Opening a wider conversation between pediatric bioethics liter-

ature and Fr. McCormick's theological ethics could certainly be useful for all, especially for those desiring a more complete examination of core Catholic commitments relating to persons, the Christian life, and values.

Fr. Clark's book comprises six chapters and a detailed table of contents, but no index, which would have been helpful. The first chapter of *To Treat or Not to Treat* provides an excellent background concerning Fr. McCormick's moral theology, the history and range of today's bioethical methodologies, and an overview of current practice in neonatology. Chapters 2, 3, and 4 offer an extensive and expert analysis of the development and foundations of the late Jesuit's ethical methodology. Complex and detailed as they are, these chapters may be primarily intended to advance dialogue among theologians and ethicists. The chapters would be difficult for clinicians and families to understand and use, particularly in the midst of clinical decision making.

For Fr. McCormick, ethical judgments and norms are based on the person's relationship with others and with God, as revealed in the life and teachings of Jesus Christ. The Christian story tells us "who we are, where we come from, where we are going, who we ought to be becoming. It is only against such undertakings that our concrete deliberations can remain truly humane and promote our best interests" (p. 81).<sup>3</sup>

In Fr. McCormick's work, Fr. Clark identifies as core themes human dignity, "best interests," and relationships with others and with God (pp. 80-120). Human reason in community can bring these foundational commitments to bear on treatment decisions concerning handicapped newborns. One practical implication of McCormick's work is that human life is sacred, but not an absolute good. Cure-oriented medical treatment may be withdrawn if and when the patient and family, in consultation with physicians,

determine that the burdens of treatment outweigh the possible benefits. However, human life may never be deliberately ended. Palliative care of the dying person should focus on pain management, symptom control, and spiritual support (p. 99).

Fr. Clark indicates that Fr. McCormick's "best interests" standard is based on quality of life considerations and the person's potential for human relationships. With regard to infants, Fr. McCormick "advocates a patient-centered, quality-of-life approach based on the potential for human relationship associated with the infant's medical condition. . . . He argues that quality-of-life decisions ought to be made by parents in consultation with the appropriate health care professionals" (p. 31).

In Chapter 5, Fr. Clark analyzes five different handicapping conditions of newborns with respect to survival and potential for human relationships. These conditions are anencephaly, Grade IV intraventricular hemorrhage of the brain, hypoplastic left heart syndrome, necrotizing enterocolitis, and a surgically correctable anomaly such as tracheoesophageal fistula in a child with Down syndrome. This chapter is a valuable application of Fr. McCormick's ethical methodology to certain situations in neonatology.

However, it is worth noting that decisions regarding life-sustaining treatment in the five conditions are relatively noncontroversial. Anencephaly and extensive necrotizing enterocolitis cannot be effectively treated, and most clinicians would readily agree that it would be appropriate to withhold or withdraw life-sustaining measures and focus on palliative care alone. On the other hand, spina bifida and a surgically correctable defect in a child with Down syndrome would almost always be treated. Still, Fr. Clark's articulation and application of Fr. McCormick's ethical positions may be helpful in providing a reflective context for clinical practice.

It would be interesting to apply Fr. McCormick's ethical methodology to

situations of greater uncertainty, such as cases of neonates with borderline viability. At birth, the severely premature neonate's potential for existence is highly uncertain. Those who do survive are likely to have reduced quality of life with handicaps such as impaired vision and cognitive function, but here again the nature and extent of deficits are unpredictable. Clinicians often initiate life-sustaining treatment when the neonate is thought to have a reasonable chance of survival; but over time, if the neonate suffers further complications such as cerebral hemorrhage or necrotizing enterocolitis, clinicians will consider it reasonable to withhold or withdraw life-sustaining treatment. E. N. Kraybill describes this practice as "provisional intensive care for all."<sup>4</sup> These considerations seem consistent with Fr. Clark's category, "the handicapped neonate who has the potential for human relationships but after medical treatment has been initiated, it becomes apparent that the treatment is medically futile" (p. 262).

Guidelines for infants below the threshold of viability should be discussed and developed by neonatologists working with ethics committees (p. 308). A neonate with virtually no chance of survival should not be subjected to treatments that will only fail. When either parents or clinicians insist on useless treatments, review by a hospital ethics committee is warranted. Situations in which parents decline treatment that has a reasonable chance of success may also call for ethics committee review.

In Chapter 6, Fr. Clark recommends Fr. McCormick's ethical methodology to hospital ethics committees and more specialized infant/pediatric ethics committees. This point is well taken. Ethics committees might select and study Fr. Clark's Chapter 5, or other selections from Fr. McCormick's work. A suggestion would be for Fr. Clark to simplify further the essential findings of his book in shorter articles, if possible. Clinicians and ethics committee members often appreciate brief articles, or even tables and algorithms that can aid

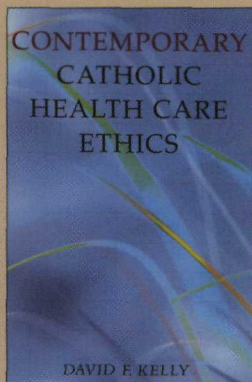
them in decision making. While briefer aids could not do justice to the complexity and nuances of Fr. McCormick's theological ethics, they could give clinical personnel confidence that the guidelines would be reliably grounded in the type of reflection and scholarly analysis offered by Fr. Clark's volume.

Fr. McCormick's core insights concerning the dignity of the human person, quality of life, and human relational potential certainly could be useful as parents and clinicians discern approaches to individual cases, with all their ambiguity. It is worth noting that the *Ethical and Religious Directives for Catholic Health Care Services* do not provide a separate section on the care of seriously ill newborns. Although clinical ethicists may apply Part 5 of the directives to these decisions, enough differences exist between pediatric (including neonatal) ethics and situations involving adults that a new section might be considered as part of a consultative development process. In my opinion, Fr. Clark's articulation of Fr. McCormick's ethical methodology could certainly contribute to such an effort.

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## NOTES

1. Ethics Committee of the American Board of Pediatrics, *Bioethics References Applicable to the Care of Pediatric Patients*, available at [www.abp.org/publicat/bioethics.pdf](http://www.abp.org/publicat/bioethics.pdf).
2. D. K. Stevenson and A. Goldworth, "Ethical Dilemmas in the Delivery Room," *Seminars in Perinatology*, vol. 22, no. 3, June 1998, pp. 198-206.
3. R. A. McCormick, "Biomedical Advances and the Catholic Perspective," in F. E. Greenspahn, ed., *Contemporary Ethical Issues in the Jewish and Christian Tradition*, Ktav Publishing House, Hoboken, NJ, 1986, p. 39.
4. E. N. Kraybill, "Ethical Issues in the Care of Extremely Low Birth Weight Infants," *Seminars in Perinatology*, vol. 22, no. 3, June 1998, pp. 207-215.



## Contemporary Catholic Health Care Ethics

David F. Kelly

Georgetown University Press, Washington, DC, 2004, 336 pp.

David Kelly is the Gallagher Professor of Theology and Health Care Ethics at Duquesne University, Pittsburgh, and also served as an ethicist for the former St. Francis Health System in southwestern Pennsylvania. This book, which reflects his dual role in academics and health care, is intended, he writes, “as a textbook for students and a resource for practitioners” (p. xi).

Part I (“Theological Basis”) and Part II (“Method”) are appropriate primarily for an academic audience. In these theoretical sections, Kelly traces the religious roots of the contemporary discipline of health care ethics, sets out a theological anthropology in relation to health care, and introduces the concepts of philosophical ethics.

Part III (“Application”) is likely to be of greatest interest to health care professionals. Nine of the 14 chapters in this section deal with end-of-life issues, reflecting the author’s assessment that “this is the area where ethics comes into play most visibly in hospitals and nursing homes” (p. xi). Particular chapters discuss the distinction between ordinary and extraordinary means as the principle for forgoing treatment, the distinction between killing and allowing to die, decisions by competent patients, decision making for incompetent patients, advance directives, nutrition and hydration, physician-assisted suicide and euthanasia, the concept of medical futility, and pain management.

Additional chapters in this section deal with embryonic stem cell research, genetic engineering, allocating health care resources, and the nuts-and-bolts of health care ethics committees. One weakness of the book’s content is its extremely cursory discussion of the burgeoning area of assisted reproductive technologies. On the other hand, its ethical content is enriched by ample discussion of relevant court cases and by inclusion of Kelly’s own experiences working in the health care setting.

Considering the book’s title, it is fair to ask: In exactly what sense does *Contemporary Catholic Health Care Ethics* present a health care ethics that is distinctively “Catholic”? Kelly does include mention of ecclesiastical documents such as the *Dec-*

*laration on Euthanasia, the Declaration on Procured Abortion, and the Catechism of the Catholic Church*. In his chapter on nutrition and hydration the author offers a survey of statements from various bishops and state bishops’ conferences, as well as mentioning the papal allocation of March 2004. There is some citation of the *Ethical and Religious Directives for Catholic Health Care Services*, although Kelly does not refer to them in all the topical areas he discusses in which relevant directives exist.

Rather than attempting to provide a comprehensive exposition of official church teaching, Kelly explicitly places himself among the “Catholic scholars [who] are critical of some aspects of the received tradition” (p. xii). On the level of ethical theory, Kelly indicates that he has “serious problems” with the principle of double effect (p. 108) and shows a favorable disposition to the approach of proportionalism (chapter 10). Concerning particular procedures, Kelly calls into question the church’s prohibition of artificial contraception (chapter 11), takes issue with official church teaching on the treatment of ectopic pregnancies (chapter 12), and favors the use of spare frozen embryos for stem cell research (chapter 23). Rather than maintaining an absolute prohibition against euthanasia and assisted suicide, Kelly wants to recognize some exceptional cases in which these practices might be morally right (chapter 19).

Thus, if one is looking for a single text to provide an introduction to the ethical principles which must govern the operations of a facility claiming to be Catholic, this book is not a good choice. It is not a successor to or replacement for the classic *Healthcare Ethics: A Theological Analysis* by Frs. Benedict M. Ashley, OP, PhD, and Kevin D. O’Rourke, OP, JCD.

At the same time, health care professionals already well versed in ethics may find particular chapters to be thought provoking. These chapters are short enough that they may be used for discussion at, for example, the meeting of an ethics committee. Noteworthy are Kelly’s reservations about state laws regarding advance directives (chapter 17), his proposal of a particular understanding of “medical futil-

ity" (chapter 20), and his argumentation in favor of age-based rationing of health care (chapter 25). In view of recent events, Kelly's discussion of surrogate decision making for incompetent patients is of particular interest (chapter 16).

As an extension of patient autonomy, the generally accepted "gold standard" in such cases is the principle of substituted judgment, which instructs a surrogate to make treatment decisions in accord with the values and wishes of the patient. Proverbially going against the tide, Kelly argues vigorously for greater use of the objective criterion of the "best interests" of the patient. As a legal corollary of the principle of substituted judgment, some look for "clear and convincing evi-

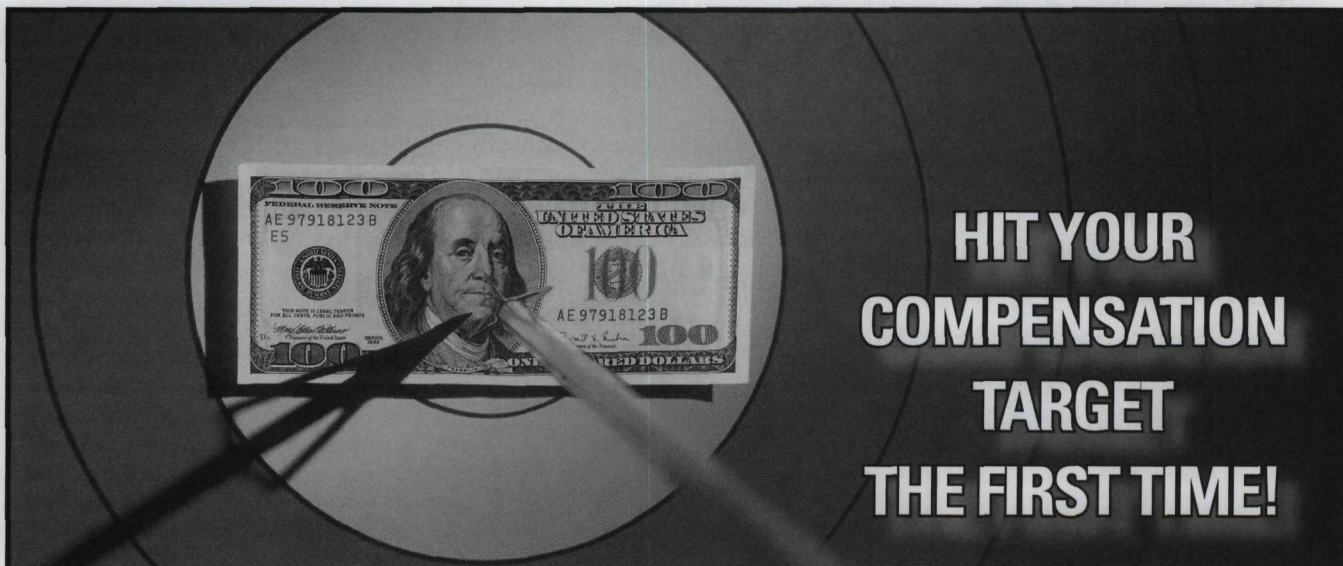
dence" that the incompetent patient would wish to forgo life-sustaining treatment. In this regard, Kelly offers a word of caution:

If states were to move toward restrictive laws requiring irrational levels of clear and convincing evidence, most of us would be unable to meet the criteria. Most persons who write living wills cannot accurately foresee which diseases they will encounter and which precise sets of treatments they will want for-gone in which medical circumstances. We can write general directives, but these might not meet the requirements of clear and convincing evidence. . . .

Clinical experience demonstrates that most people do not have living wills and durable powers of attorney. Loving relatives make the decisions for them. If states were to insist on clear and convincing evidence, many Americans would be forced to endure useless and costly medical treatments (pp. 160-61).

In the aftermath of the case of Terri Schiavo, Kelly's words of warning are well worth keeping in mind.

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