

- 9 Warren Quinn, "Abortion: Identity and Loss," *Philosophy and Public Affairs*, 13 (1984), p. 28.
- 10 On the range still possible after fertilization, see Karen Dawson, "Fertilisation and Moral Status: A Scientific Perspective," *Journal of Medical Ethics*, 13 (1987), pp. 173–8.
- 11 John T. Noonan, Jr., "An Almost Absolute Value in History," in *The Morality of Abortion*, ed. J. T. Noonan, Jr. (Cambridge, MA: Harvard University Press, 1970), pp. 56–7.
- 12 Werner Pluhar, "Abortion and Simple Consciousness," *Journal of Philosophy*, 74 (1977), p. 167.
- 13 The example is taken from a letter by Brian Scarlett (*Journal of Medical Ethics*, 10 (1984), pp. 217–18) arguing, in a different context, against the views of Peter Singer and Helga Kuhse on the potential of the embryo.
- 14 Mark Strasser, "Noonan on Contraception and Abortion," *Bioethics*, 1 (1987), pp. 199–205.
- 15 J. Grudzinskas and A. Nysenbaum, "Failure of Human Pregnancy after Implantation," *Annals of the New York Academy of Science*, 442 (1985), pp. 39–44.
- 16 Ibid.
- 17 C. Roberts and C. Lowe, "Where Have All the Conceptions Gone?" *Lancet* (1975), 1:498–9.
- 18 J. Muller et al., "Fetal Loss after Implantation," *Lancet* (1980), 2:554–6.
- 19 D. Braunstein, "Chorionicgonadotrophin (HCG) and HCG-like Substances in Human Tissue and Bacteria," in *Pregnancy Proteins: Biology, Chemistry and Clinical Application*, ed. J. Grudzinskas et al. (London: Academic Press, 1982), pp. 39–49.
- 20 M. Mahadevan and G. Baker, "Assessment and Preparation of Semen for *In Vitro* Fertilization," in *Clinical In Vitro Fertilization*, ed. C. Wood and A. Trounson (New York: Springer, 1984), pp. 99–116.
- 21 Personal communication from Dr. Ismail Kola, Centre for Early Human Development, Monash University.
- 22 Senate Select Committee on the Human Embryo Experimentation Bill, *Human Embryo Experimentation in Australia* (Canberra: Australian Government Publishing Service, 1986).
- 23 Ibid., para. 3.27.
- 24 Ibid., para. 5.13.
- 25 Ibid., para. D20.
- 26 This point parallels that made in our earlier discussion of Quinn.

## Fifteen

### Unsanctifying Human Life

As a preface to the substantive part of this chapter, I offer a comment on the nature of medical ethics which may clarify my approach.

The professional philosopher with an interest in ethics, and in particular what might be called "applied moral philosophy," may well discuss with his students and colleagues the moral problems that doctors encounter in the course of their practice. Since the professional philosopher is specially trained to think about these issues and has all the time he requires at his disposal to do so, one might think that the philosopher would be able to give considerable assistance to the doctor, whose training and time are devoted to medicine rather than moral philosophy. Yet with few exceptions, this is not the case. Doctors discuss their ethical dilemmas in the medical journals and philosophers keep to the philosophical journals; the footnotes in each case remain within the circle of the author's colleagues.

All this is not just a matter of the old academic failure to look at work outside one's own discipline. Anyone who reads both philosophical and medical journals containing discussions of problems in medical ethics can hardly avoid noticing that there is a more fundamental gap between the discussions than the fact that they appear in different kinds of journals. There is also a difference in the presuppositions employed and the problems discussed.

For example, in recent issues of philosophical journals we can find articles in which it is argued, quite seriously and on plausible grounds, that a normal,

healthy human infant has no right to life and that it is, in this respect, in the same position as a fetus.<sup>1</sup> Doctors, on the other hand, are so far from even considering this position that they regard as serious ethical dilemmas such questions as, What should be done with a patient certain never to recover consciousness? or, Are parents to be given the option of deciding how far a doctor should go in using all available techniques to save the life of a hopelessly retarded infant with, in addition, a congenital heart defect?<sup>2</sup>

There are a number of reasons why the ethical concerns of philosophers and practicing physicians should be so far apart. One important reason is the different ways in which they are affected by the law. The busy doctor, who would rather be doing medicine than philosophy, turns to ethical questions only when they actually confront him. He tends not to raise questions which he would never face in practice, since he has enough problems without thinking up hypothetical ones. So if some course of action is straightforwardly illegal – for instance, the direct killing of a retarded infant – then most doctors are not even going to consider whether this course of action might be morally justifiable. When the law is clear, it resolves the doctor's ethical problem for him. So long as the doctor obeys the law, he can hardly be blamed for the outcome, because he can regard himself as purely a medical man, a technician whose business it is to carry out policy but not to set it; if he goes against the law, however, he risks criminal proceedings and disqualification from practice. No wonder that most medical ethics is concerned with cases on which the law fails to give any clear guide – cases like those involving the use of extraordinary means to save life.

The philosopher, of course, is in a quite different position. Untroubled by such mundane issues as what the law allows, he turns his attention to cases which invoke basic moral principles. If real cases do not serve this purpose, he is free to make up hypothetical ones. So he follows the argument wherever it leads him, and if it leads him to the view that infanticide is often justifiable, well, this conclusion is not likely to cause him, personally, any problems.

Now one can certainly sympathize with the doctor who confines his attention to those cases that he *has* to deal with, and regards the moral philosopher as an irresponsible theorizer. Nevertheless, the resulting limited scope of much of the work by medical people in medical ethics has had, I think, a harmful effect on the conclusions reached even within those areas that have received close attention. While we may agree that in general a doctor ought to obey the law, there has been a tendency to lose sight of the difference between this view and the idea that the law, and the conventional moral standards it embodies, is an indisputable starting point for further ethical debate. Because in practice a doctor can not challenge the law when it is clear and straightforward, the moral standards behind the law also do not often

get challenged; if these conventional moral standards are in fact dubious, however, then conclusions which presuppose them are also likely to be dubious.

My purpose in what follows is to challenge one of these conventional moral doctrines: the doctrine of the sanctity of human life. I know that in taking this approach I run the risk of being regarded as yet another philosopher far removed from the world of real people. I shall try to guard against this danger by discussing some current, widely accepted medical practices. My strategy will be to bring together two distinct areas of medicine that are normally discussed only in quite separate moral contexts, and to show thereby that current attitudes in medical ethics are either plainly inconsistent or else guilty of a crude form of discrimination that is no more defensible than racial discrimination. In this way I want to force those involved in medicine to reconsider the foundations of the decisions they make. Foundations that give rise to the kind of inconsistency or discrimination that I am referring to are in urgent need of reconsideration; and the core of the problem, I believe, is the doctrine of the sanctity of human life.

People often say that life is sacred. They almost never mean what they say. They do not mean, as their words seem to imply, that *all* life is sacred. If they did, killing a pig or even pulling up a cabbage would be as contrary to their doctrine as infanticide. So when in the context of medical ethics people talk of the sanctity of life, it is the sanctity of *human* life that they really mean. It is this doctrine that I shall be discussing from now on.

In discussing the doctrine of the sanctity of human life, I shall not take the term "sanctity" in any specifically religious sense. Although I think that the doctrine does have a religious origin, and I shall say more about this shortly, it is now part of a broadly secular ethic, and it is as part of this secular ethic that it is most influential today. Not all those who talk about "the sanctity of life" are religious, and of those that are religious, in many cases their affirmation of the sanctity of life is independent of their religious views. In the secular context in which problems of medical ethics are usually discussed today, those who talk of the sanctity of human life are trying to say essentially that human life has some very special value; and a crucial implication of this assertion is the idea that there is a radical difference between the value of a human life and the value of the life of some other animal – a difference not merely of degree, but of quality or kind.

It is this idea, the idea that *human* life as such has unique value, that I shall criticize. Before I do so, however, I want to demonstrate how deep-seated and pervasive this idea of the unique value of human life is and how far this idea is sometimes taken in our own society and within the field of medicine. To demonstrate this, I offer two instances from different areas of medicine.

First, as an example of the value attributed to human life, a summary of a case history from Anthony Shaw's recent article, "Dilemmas of 'Informed Consent' in Children":

A baby was born with Down's syndrome (mongolism), intestinal obstruction, and a congenital heart condition. The mother, believing that the retarded infant would be impossible for her to care for adequately, refused to consent to surgery to remove the intestinal obstruction. Without surgery, of course, the baby would soon die. Thereupon a local child-welfare agency, invoking a state child-abuse statute, obtained a court order directing that surgery be performed. After a complicated course of surgery and thousands of dollars worth of medical care, the infant was returned to her mother. In addition to her mental retardation, the baby's physical growth and development remained markedly retarded because of her severe cardiac disease. A follow-up enquiry eighteen months after the baby's birth revealed that the mother felt more than ever that she had been done an injustice.<sup>3</sup>

This case shows how much some people are prepared to do in order to ensure that a human infant lives, irrespective of the actual or potential mental capacities of the infant, its physical condition, or the wishes of the mother.

While some doctors are struggling to preserve life in cases of this sort, others are using their medical training in another way: they design and carry out experiments on nonhuman animals. I will give an example of the kind of work that is quite frequently done because its nature is not as well known as it ought to be. This particular experiment was carried out at the University of Michigan Medical School and funded by the National Research Council and the US Public Health Service. The description which follows is drawn from the researchers' own account, which they published in the journal *Psychopharmacologia*:

The researchers confined sixty-four monkeys in small cubicles. These monkeys were then given unlimited access to a variety of drugs through tubes implanted in their arms. They could control the intake by pressing a lever. In some cases, after the monkeys had become addicted, supplies were abruptly cut off. Of the monkeys that had become addicted to morphine, three were "observed to die in convulsions" while others found dead in the morning were "presumed to have died in convulsions." Monkeys that had taken large amounts of cocaine inflicted severe wounds upon themselves, including biting off their fingers and toes, before dying convulsive deaths. Amphetamines caused one monkey to "pluck all of the hair off his arms and abdomen." In general, the experimenters found that "The manifestations of toxicity . . . were similar to the well-known toxicities of these drugs in man." They noted that experiments on animals with addictive drugs had been going on in their laboratory for "the last 20 years."<sup>4</sup>

I know that it is not pleasant to think about experiments of this nature; but since they are a real part of medicine, they should not be ignored. In fact this experiment is by no means exceptional and is perhaps no worse than the routine testing of new drugs, foodstuffs, and cosmetics, which results in the poisoning of millions of animals annually in the United States.<sup>5</sup> Nor, for that matter, is the case of the mongoloid infant exceptional, apart from the fact that it was necessary to invoke the law; more commonly, the doctors would have obtained the mother's signature, though how often that signature implies genuine "informed consent" is another matter.

The question that arises from consideration of these two kinds of case is simply this: Can it be right to make great efforts to save the life of a mongoloid human infant when the mother does not want the infant to live, and at the same time can it not be wrong to kill, slowly and painfully, a number of monkeys?

One obvious defence of the addiction experiment that might be offered is that by means of such experiments, results are obtained which lead to the elimination of more suffering than is caused by the experiments themselves. Certainly in the experiment I described, no startling new discoveries were made, and any connection with the alleviation of suffering seems very tenuous. However, this defense is irrelevant to the comparison I am drawing between the way we treat humans and other animals. We would not forcibly addict mongoloid infants to drugs and then allow them to die in convulsions even if we did believe that useful knowledge could thus be obtained. Why do we think it wrong to treat members of our own species in the same way that we treat other species?

Can it ever be right to treat one kind of being in a way that we would not treat another kind? Of course it can, if the beings differ in relevant respects. Which respects are relevant will depend on the treatment in question. We could defend a decision to teach young members of our own species to read, without making the same effort on behalf of young dogs, on the grounds that the two kinds of being differ in their capacity to benefit from these efforts. This difference is obviously relevant to the particular proposal. On the other hand, anyone who proposed teaching some humans to read but not others, on the grounds that people whose racial origin is different from his own should not be encouraged to read, would be discriminating on an arbitrary basis since race as such has nothing to do with the extent to which a person can benefit from being able to read.

Now what is the position when we compare severely and irreparably retarded human infants with nonhuman animals like pigs and dogs, monkeys and apes? I think we are forced to conclude that in at least some cases the human infant does not possess any characteristics or capacities that are not also

possessed, to an equal or higher degree, by many nonhuman animals. This is true of such capacities as the capacity to feel pain, to act intentionally, to solve problems, and to communicate with and relate to other beings; and it is also true of such characteristics as self-awareness, a sense of one's own existence over time, concern for other beings, and curiosity.<sup>6</sup> In all these respects adult members of the species I have mentioned equal or surpass many retarded infant members of our own species; moreover some of these nonhumans surpass anything that some human infants might eventually achieve even with intensive care and assistance. (In case anyone should be uncertain about this, it should be noted that chimpanzees have now been taught to communicate by means of American Sign Language, the standard language used by deaf people in this country, and have mastered vocabularies of well over a hundred signs, including signs which indicate that they possess both self-awareness and the idea of time.)<sup>7</sup>

So when we decide to treat one being – the severely and irreparably retarded infant – in one way, and the other being – the pig or monkey – in another way, there seems to be no difference between the two that we can appeal to in defense of our discrimination. There is, of course, the fact that one being is, biologically, a member of our own species, while the others are members of other species. This difference, however, cannot justify different treatment, except perhaps in very special circumstances; for it is precisely the kind of arbitrary difference that the most crude and overt kind of racist tries to use to justify racial discrimination. Just as a person's race is in itself nearly always irrelevant to the question of how that person should be treated, so a being's species is in itself nearly always irrelevant. If we are prepared to discriminate against a being simply because it is not a member of our own species, although it has capacities equal or superior to those of a member of our own species, how can we object to the racist discriminating against those who are not of his own race, although they have capacities equal or superior to those of members of his own race?

I said a moment ago that a difference of species cannot justify different treatment except perhaps in very special circumstances. It may be worth mentioning the circumstances I have in mind. If we discovered a new drug which we thought could be a very powerful aid in the treatment of serious diseases, we might feel that it should be tested in some way before being used on normal humans, in order to see if it had dangerous side-effects. Assuming that there was no reliable way of testing it except on a living, sentient creature, should we test it on a severely and irreparably retarded human infant, or on some other animal, like a monkey? Here, if the capacities of the beings are equal, I think we might be justified in saying that the biological species of the being was relevant. Since many drugs affect different species in unpredictably

different ways, we would probably achieve our goal sooner by testing the drug on the retarded member of our own species than on the monkey; this would mean that we would have to use fewer subjects for our experiment and so inflict less suffering all told. This seems to be a reasonable ground for preferring to use the human infant, rather than the monkey, if we have already decided to test the drug on one or the other. So discrimination on the basis of species, in the rare cases in which it is justified, seems to go *against* our present practices rather than in favor of them. (Even here we would not really be discriminating on the basis of species *as such*, but rather using the species of the being as an indication of further possible unknown differences between them.)

The doctrine of the sanctity of human life, as it is normally understood, has at its core a discrimination on the basis of species and nothing else. Those who espouse the doctrine make no distinction, in their opposition to killing, between normal humans who have developed to a point at which they surpass anything that other animals can achieve, or humans in a condition of hopeless senility, or human fetuses, or infant humans, or severely brain-damaged humans. Yet those who use the sanctity of life doctrine as a ground for opposition to killing any human beings show little or no concern over the vast amount of quite unnecessary killing of nonhuman animals that goes on in our society, despite the fact that many of these other animals equal or surpass humans (except for normal humans beyond the age of infancy) on any test that I can imagine to be relevant, in all the categories I have just mentioned. It is significant to note, too, that even if we allow the relevance of a being's potential (and I agree with Michael Tooley that there are serious objections to so doing),<sup>8</sup> there are still human beings – the hopelessly senile and the irreparably brain-damaged – whose life is allegedly sacrosanct, who cannot be distinguished from other animals in respect of their potential.

A doctrine which went by the name of "the sanctity of human life" would not necessarily have to be a speciesist doctrine. The term "human" is not strictly a biological term and, as Tooley has pointed out, it is a mistake to assume that "human being" refers to precisely the same beings as are designated by the biological idea of "member of the species *Homo sapiens*." "Human," according to the *Oxford English Dictionary*, means "of, belonging to, or characteristic of man"; or in a slightly different sense, "having or showing the qualities or attributes proper to or distinctive of man." If the advocates of the "sanctity of human life" doctrine were to take this definition seriously, they would find their views radically transformed. According to the definition, whether we class a being as "human" will depend on what qualities or attributes we think characteristic of, proper to, or distinctive of man (and I assume that by "man," the dictionary here means men and women, mankind as a whole). So we would then have to try to draw up a list of these qualities or attributes –

something which some writers in the field have already tried to do.<sup>9</sup> This list would probably include some or all of the capacities and characteristics that I mentioned earlier, when comparing retarded infants and monkeys, but to decide which properties were necessary and which sufficient would be difficult. Let us say, though, just to take an example, that we decide that what is characteristic or distinctive of men and women is a capacity of self-awareness or self-consciousness. Then we will not count severely retarded infants as human beings even though they are clearly members of *Homo sapiens*; at the same time we might decide, after examining the abilities displayed by apes, dolphins, and perhaps some other mammals, to count these beings as human beings.

In any case, if we follow the dictionary definition of "human," one point seems certain no matter what criteria we eventually select as distinctive of men and women: severely and irreparably retarded *Homo sapiens* infants would be in the same category as a great many members of other species. This seems true, anyway, so long as we stay within the secular context that I have been assuming throughout this discussion. If we allow appeals to religious doctrines, based on special revelations, other conclusions might be possible – a point on which I shall say a little more later.

Is the only problem with the doctrine of the sanctity of human life, then, a misconception about the boundaries of "human"? Is it just that the advocates of this doctrine have got hold of a biological notion of what it is to be human instead of a notion that defines the term as the dictionary suggests it should be defined, with regard to characteristics distinctive of our species?

We could, perhaps, try to save the doctrine by modifying it in this way (and it would be no small modification). I chose my two contrasting examples of medical practice to show how far from this kind of position our present attitudes are. The suggested modification of the doctrine would place lethal experiments on the more developed nonhuman animals in the same category as experiments on severely retarded members of our own species. Similarly if, as Jonathan Swift once suggested, human infants, boiled, roasted, or fricasseed, make a tasty dish, then we would have to choose between ceasing to rear animals like pigs and cattle for food, and admitting that there is no moral objection to fattening retarded infants for the table. Clearly, this is not a position that many present advocates of the sanctity of human life would be prepared to embrace. In fact, it is so far from what present advocates of the doctrine mean that it would be downright misleading to continue to use the same name for the doctrine. Whatever the proper or dictionary meaning of the word, "human" is now, in popular usage, too closely identified with "member of the species *Homo sapiens*" for us to apply it to chimpanzees or deny it to retarded infants. I myself, in this paper, have used and for reasons of convenience shall continue to use the word in its popular, rather than dictionary, sense.

A further difficult question which conditions any attempt to redraw the boundaries of the "human" community is: where do we place normal embryonic or infant members of our species who have the potential, given normal development, to satisfy the criteria for membership but do not satisfy them at present? Judged by the characteristics they actually possess, and excluding for the moment such indirect factors as the concerns of parents or others, an infant *Homo sapiens* aged six months would seem to be much less of a "human" than an adult chimpanzee; and if we consider a one-month-old infant, it compares unfavorably with those adult members of other species – pigs, cattle, sheep, rats, chickens, and mice – that we destroy by the million in our slaughterhouses and laboratories. Does the potential of these infants make a difference to the wrongness of killing them?

It is impossible for me to discuss this question adequately here, so I will only point out that if we believe it is the potential of the infant that makes it wrong to kill it, we seem to be committed to the view that abortion, however soon after conception it may take place, is as seriously wrong as infanticide. Moreover, it is not easy to see on what grounds mere potential could give rise to a right to life, unless we valued what it was that the being had the potential to become – in this case a rational, self-conscious being. Now while we may think that a rational, self-conscious being has a right to life, relatively few of us, I think, value the existence of rational self-conscious beings in the sense that the more of them there are, the better we think it is. If we did value the existence of rational self-conscious beings in this way, we would be opposed to contraception, as well as abortion and infanticide, and even to abstinence or celibacy. But most of us think that there are enough rational, self-conscious beings around already – in which case I find it hard to see why we should place great moral weight on every potentially rational, self-conscious being realizing its potential. For further discussion of this important topic, though, I must refer you to the articles by Tooley and Warren that I have already mentioned.

Assuming that we can settle the criteria for being "human" in the strict sense, and can settle this problem about potentially "human" beings, would this mean that we had settled the question of which lives are sacred and which beings it is justifiable to kill for rather trivial reasons? Unfortunately, even then we would not have solved all our problems for there is no necessary connection between what is characteristic of, or distinctive of, mankind, and what it is that makes it wrong to kill a being. Proponents of the doctrine of the sanctity of human life, even after revising their definition of "human" so that it refers to characteristics distinctive of our species, need to *argue* for the view that the lives of all and only humans, so defined, are sacred. To believe that this connection was automatic and followed immediately without further argument would only be a slightly more sophisticated form of speciesism than the crude

biological basis of discrimination discussed earlier. While we might, in the end, decide that all and only those beings whose lives were sacred were those that possessed the characteristics distinctive of mankind, this would be a moral decision that could not be deduced simply from the definition of "human." We might, on reflection, decide the other way – for instance, we might hold that no sentient being should be killed if the probability is that its life will contain a favorable balance of pleasure or happiness over pain and suffering.

Although I have been unable to make up my own mind about the necessary criteria for a right to life – and I leave this question open in the hope that others will be able to help me decide – it is clear that we shall have to change our attitudes about killing so as to obliterate the sharp distinction that we currently make between beings that are members of our own species and beings that are not. How shall we do this?

There are three possibilities:

- 1 While holding constant our attitudes to members of other species, we change our attitudes to members of our own species so that we consider it legitimate to kill retarded human infants in painful ways for experimental purposes even when no immediately useful knowledge is likely to be derived from these experiments; and in addition we give up any moral objections we may have to rearing and killing these infants for food.
- 2 While holding constant our attitudes to members of our own species, we change our attitudes to members of other species so that we consider it wrong to kill them because we like the taste of their flesh or for experimental purposes even when the experiment would result in immediately useful knowledge; moreover we refuse to kill them even when they are suffering severe pain from some incurable disease and are a burden to those who must look after them.
- 3 We change our attitudes to both humans and nonhumans so that they come together at some point in between the present extremes.

None of these three positions makes an arbitrary discrimination on the basis of species, and all are consistent. So we cannot decide between them on these grounds; accordingly, while I am quite certain that our present attitudes are wrong, I am a little more tentative about which of these possibilities is right. Still, if we look at what each implies, I think we can see that the third possibility has much in its favor – not surprisingly, in view of its median position. Thus, I doubt that anyone could seriously advocate performing an experiment like that I described earlier on retarded infants of our own species; nor do I think that many of us could treat retarded infants as if they were purely means towards our gastronomic ends. I think that we can only carry on these

practices with regard to other species because we have a huge prejudice in favor of the interests of our own species and a corresponding tendency to neglect the interests of other species. If I am right about this, we are not likely to transfer this prejudice to members of our own species. White racist slave-owners, if forced to stop discriminating, would be unlikely to start enslaving their fellow whites.

As for the second possibility, while I advocate a very radical change in our attitudes toward other species, I do not think this change should go so far as to imply that we should eliminate all mercy-killing or attempt to keep alive an animal which can only live in misery.

So we have to change our attitudes in both directions. We have to bring nonhumans within the sphere of our moral concern and cease to treat them purely as means to our ends. At the same time, once we realize that the fact that severely and irreparably retarded infants are members of the species *Homo sapiens* is not in itself relevant to how we should treat them, we should be ready to reconsider current practices which cause suffering to all concerned and benefit nobody. As an example of such a practice, I shall consider, very briefly, the practice of allowing these infants to die by withholding treatment.

It quite often happens that a severely and irreparably retarded infant has, in addition to its retardation, a condition which unless treated will cause it to die in some foreseeable period – perhaps a day, perhaps a few months or a year. The condition may be one which doctors could, and in the case of a normal infant certainly would, cure; but sometimes, when the infant is severely and irreparably retarded, the doctor in charge will withhold this treatment and allow the infant to die. In general, we can only guess at how often this occurs but a recent investigation of the Yale-New Haven special care nursery showed that over a 2½ year period, 43 deaths, or 14 percent of all deaths in the nursery, were related to withholding treatment. The decision to withhold treatment at this nursery was in each case made by parents and physicians together on the basis that there was little or no chance for a meaningful life for the infant.<sup>10</sup> The investigators, Duff and Campbell, cautiously endorse this practice, and within the alternatives legally available to the doctors, it does seem to be the best that they can do; but if it is justifiable to withhold available forms of treatment knowing that this will result in the death of the infant, what possible grounds can there be for refusing to kill the infant painlessly?

The idea that there is a significant moral distinction between an act and an omission, between killing and letting die, has already been attacked by philosophers.<sup>11</sup> I accept their arguments and have nothing new to add to them, except for the reflection that we would never consider allowing a horse or dog to die in agony if it could be killed painlessly. Once we see that the case of a dying horse is really quite parallel to the case of a dying infant, we may be more

ready to drop the distinction between killing and letting die in the case of the infant too.

This is by no means an academic issue. Enormous, and in my view utterly needless, suffering is caused by our present attitudes. Take, for example, the condition known as spina bifida, in which the infant is born with its spinal cord exposed. Three out of every thousand babies have this condition, which adds up to a large number of babies. Although treatment is possible, with the more severe cases even immediate surgery and vigorous treatment will not result in successful rehabilitation. The children will grow up severely handicapped, both mentally and physically, and they will probably die in their teens. The burden on the family can easily be imagined, and it is doubtful if the child's life is a benefit for him. But what is the alternative to surgery, under present medical ethics?

If surgery is not performed, the spina bifida baby will die – but not immediately. Some of them, perhaps a third, will last more than three months and a few will survive for several years. One writer has described their condition in the following terms:

Virtually all will be paralysed from the waist down, and incontinent because of damage to their exposed nerves. Four out of five of these survivors will get hydrocephalus; their heads will swell out, some until they are too heavy to hold up. Severely retarded, often spastic and blind, they will spend their childhood in institutions that most of us do not care to think about, let alone visit. By adolescence virtually all will be dead.<sup>12</sup>

This kind of life is the alternative that parents must face if they hesitate to consent to surgery. It is a horrible, immoral choice to offer anyone, let alone parents immediately after the birth of their child. The obvious alternative to trying to bring up a severely retarded and handicapped child – a swift, painless death for the infant – is not available because the law enforces the idea that the infant's life is sacred and cannot be directly terminated.

This, then, is one way in which our treatment of severely and irreparably retarded infants needs to be brought closer to our better form of treatment of members of other species.

I said at the beginning of this paper that the moral philosopher and the doctor with an interest in medical ethics have different concerns, at least partly because of their different positions vis-à-vis the law. No doubt this applies to the practice of allowing infants to die while refusing to kill them. The law prohibits killing, but gives no clear directive about letting die; so doctors do what they can to relieve suffering within the boundaries of the law. For this, of course, they are to be commended; but there are indications that a policy

which should be defended only in terms of making the best of a bad legal situation is also being thought of as embodying a significant moral distinction. Doctors can be heard sagely quoting Arthur Clough's lines: "Thou shalt not kill, but needst not strive officiously to keep alive," as if these lines were a piece of ancient wisdom – they seem to be unaware that the lines were written to satirize the moral position in support of which they are being quoted.<sup>13</sup> More seriously, the House of Delegates of the American Medical Association recently adopted a policy statement condemning "the intentional termination of the life of one human being by another" as "contrary to that for which the medical profession stands," although the same statement went on to allow the "cessation of the employment of extraordinary means to preserve the life of the body."<sup>14</sup> But what is the cessation of any form of life-sustaining treatment if it is not the intentional termination of the life of one human being by another? And what exactly is it for which the medical profession stands that allows it to kill millions of sentient nonhuman beings while prohibiting it from releasing from suffering an infant *Homo sapiens* with a lower potential for a meaningful life? While doctors may have to obey the law, they do not have to defend it.

I have suggested some ways in which, once we eliminate speciesist bias from our moral views, we might bring our attitudes to human and nonhuman animals closer together. I am well aware that I have not given any precise suggestions about when it is justifiable to kill either a retarded infant or a nonhuman animal. I have not made up my mind on this problem, but hope that others will offer suggestions.

In the remainder of this chapter, I shall look at the doctrine of the sanctity of human life from a perspective rather different from that which I have used up to now. Instead of producing arguments against the doctrine, I shall comment briefly on its historical origins. My motive for so doing is not, of course, the belief that normative consequences follow logically from historical facts. That belief is mistaken. To refute a doctrine it is necessary to produce sound arguments against it. Unfortunately, when a doctrine is very deeply embedded in people's moral institutions, it is sometimes necessary to do more than refute the doctrine in order to convince people that it is false. If one produces apparently valid objections to the doctrine but does no more, one is liable to be met by a reply rather like that which Moore used when he said that he was more certain of the existence of his hands than he could possibly be of the validity of any argument that purported to show that he could not know that his hands existed. In moral philosophy too people will say that they are more certain of the wrongness of killing human infants and the rightness of killing monkeys and pigs than they are of the validity of any arguments to the contrary. Instead of jettisoning their intuitions they will seek desperately for any foothold, however slender, from which they can support their intuitions.

So the following historical excursion is intended to be a kind of softening-up operation on your intuitions, to persuade you that the doctrine of the sanctity of human life is a legacy of attitudes and beliefs that were once widespread, but which few people would now try to defend.

The doctrine of the sanctity of all human life, and the seriousness with which the killing of any member of our species is regarded, mark off the Christian ethical and cultural tradition from almost all others. Of course there have been cultures which regard all life, or at least all sentient life, as sacred and which prohibit the taking of the life of *Homo sapiens*; and there have been other cultures which are as careless of the life of nonhuman animals as the Christian tradition, without being as scrupulous of the lives of all human beings; but the Christian tradition is distinctive for the sharpness of the line it draws between all beings that are members of our species and all other beings.

That very many different societies have seen no moral objection to abortion and infanticide is, I think, well-known. Even if we restrict our attention to infanticide, the list is almost endless. Westermarck's *Origin and Development of the Moral Ideas* has twenty pages chronicling the practice in societies which range geographically from the South Sea Islands over every continent to Greenland, and vary in habits and culture from nomadic Australian aborigines to the sophisticated city-dwellers of ancient Greece or mandarin China. In some of these cultures infanticide is not merely permitted, it is, in certain circumstances, morally obligatory. The use of either exposure or the direct killing of the new-born infant as a means of population control is not unusual, and in many societies the killing of deformed or sickly infants is obligatory. In other cultures where infanticide is not obligatory, it may still be performed without any sense of guilt or wrongdoing.<sup>15</sup>

It is, of course, possible to disregard accounts of the morals of so-called "primitive" societies by taking the line that we have advanced as far beyond these cultures in morals as we have in technology. Sometimes there is a certain amount of truth in this view. It is perhaps less easy to feel comfortable about the certainty of our own intuitions when we find them at variance with the views of cultures for whose moral sense we have considerable respect. I am thinking primarily of ancient Greece. Everyone knows that the Spartans exposed deformed or weak infants, but then no one cares much for Spartan morality anyway. Less often commented on is the fact that both Plato, in the *Republic*, and Aristotle, in his *Politics*, propose that the state command the killing of deformed infants.<sup>16</sup> In making these recommendations, Plato and Aristotle were merely endorsing the legislative codes said to have been drawn up by the renowned law-givers Lycurgus and Solon.

In Roman times, too, we find a moralist like Seneca, whose humanitarian outlook has survived the centuries, advocating infanticide for the sick and deformed.<sup>17</sup> Up to this time, this was thought of as a natural and humane solution, obviously preferable to the alternative of a miserable life for both parents and children. We find nothing resembling the doctrine that the lives of all born of human parents are sacred in the pre-Christian literature.

There can be no doubt that the change in European attitudes to abortion and infanticide is a product of the coming of Christianity. What is especially important to note about this change, for the purposes of the present discussion, is that the change had a special theological motivation in the new religion; that is to say, the change occurred not because of some general broadening of people's moral concern that was part of a more enlightened moral outlook, but because of the Christian doctrine that all born of human parents have immortal souls and are destined for an eternity of bliss or for everlasting torment. This central belief of the new religion placed a yawning gulf between *Homo sapiens* and all other species, so far as the significance of their lives was concerned. To kill a human being was an act of fearful significance, since it consigned him or her to an eternal fate. Moreover this idea was coupled with another doctrine that made abortion and infanticide still more terrible. As the sixth-century Saint Fulgentius says in his treatise *De Fide*:

It is to be believed beyond doubt that not only men who are come to the use of reason, but infants, whether they die in their mother's womb or after they are born, without baptism in the name of the Father, Son and Holy Ghost, are punished with everlasting punishment in eternal fire, because although they have no actual sin of their own, they carry along with them the condemnation of original sin from their first conception and birth.<sup>18</sup>

This was the orthodox view of the Latin Church. The unborn fetus, from the moment it acquired its soul, was destined to rise again on the day of judgment and face its Judge. If its responsibility for the sin of Adam had not been removed by baptism, it was doomed to hell for ever. No wonder that while previously abortion and infanticide had been looked upon as not crimes at all, or if crimes, then far less serious than the murder of an adult, after the coming of Christianity they were often thought of as worse than ordinary murder. Nor was this doctrine merely current among scholarly theologians. It was embodied in various early Christian laws. The *Lex Bajuvariorum*, one of the medieval Germanic codes, expressly provides for a daily compensation for children killed in the womb, on account of the daily suffering of those children in hell; and other codes provide for distinctively cruel modes of execution for mothers who kill their infants.<sup>19</sup> As W. E. H. Lecky puts it in his classic *History*

of *European Morals*: "That which appealed so powerfully to the compassion of the early and medieval Christians, in the fate of the murdered infants, was not that they died, but that they commonly died unbaptised."<sup>20</sup>

Over the centuries of Christian domination of European thought, the moral ideas based on these doctrines took a firm hold. They became part of the basic moral beliefs of most Europeans. They were not seriously challenged until the eighteenth century, when rationalist thinkers started to question various religious dogmas. Then Bentham, among others, pointed out that the law's treatment of infanticide ignored the differences between this act and ordinary murder. He referred to the killing of an infant by an unmarried mother as

what is improperly called the death of an infant, who has ceased to be, before knowing what existence is, — a result of a nature not to give the slightest inquietude to the most timid imagination; and which can cause no regrets but to the very person who, through a sentiment of shame and pity, has refused to prolong a life begun under auspices of misery.<sup>21</sup>

The challenge to theological doctrines that gave rise to the doctrine of the sanctity of human life has, by and large, succeeded. The challenge to the moral attitudes themselves has made slower progress. Laws against abortion have been substantially weakened or abolished in many countries, but a doctor may still be charged with murder if he kills an infant, no matter how retarded. My brief historical survey suggests that the intuitions which lie behind these laws are not insights of self-evident moral truths, but the historically conditioned product of doctrines about immortality, original sin, and damnation which hardly anyone now accepts; doctrines so obnoxious, in fact, that if anyone did accept them, we should be inclined to discount any other moral views he held. Although advocates of the doctrine of the sanctity of human life now frequently try to give their position some secular justification, there can be no possible justification for making the boundary of sanctity run parallel with the boundary of our own species, unless we invoke some belief about immortal souls.

Before I finish I should mention one major objection, practical rather than theoretical, to my proposal that we reject the idea of the sanctity of human life. People are liable to say that while the doctrine may be based on an arbitrary and unjustifiable distinction between our own species and other species, this distinction still serves a useful purpose. Once we abandon the idea, this objection runs, we have embarked on a slippery slope that may lead to a loss of respect for the lives of ordinary people and eventually to an increase in crime or to the selective killing of racial minorities or political undesirables. So the idea of the sanctity of human life is worth preserving because the distinction it

makes, even if inaccurate at some points, is close enough to a defensible distinction to be worth preserving.

There is no evidence that taking the lives of members of our own species under certain special circumstances will have any kind of contagious effect on our attitudes to killing in other circumstances. Historical evidence suggests the contrary. Ancient Greeks, as we have seen, regularly killed or exposed infants, but appear to have been at least as scrupulous about taking the lives of their fellow-citizens as medieval Christians or modern Americans. In Eskimo societies it was the custom for a man to kill his elderly parents, but to murder a normal, healthy adult was virtually unknown.<sup>22</sup> White colonists in Australia would shoot Aborigines for sport, as their descendents now shoot kangaroos, with no discernible effect on the seriousness with which the killing of a white man was regarded. If we can separate such basically similar beings as Aborigines and Europeans into distinct moral categories without transferring our attitudes from one group to the other, there is surely not going to be much difficulty in marking off severely and irreparably retarded infants from normal human beings. Moreover, anyone who thinks that there is a risk of bad consequences if we abandon the doctrine of the sanctity of human life must still balance this possibility against the tangible harm to which the doctrine now gives rise: harm both to infants whose misery is needlessly prolonged, and to nonhumans whose interests are ignored.

### Notes

- 1 See Michael Tooley, "Abortion and Infanticide," *Philosophy and Public Affairs*, 2 no. 1 (1972); a similar conclusion seems to be implied by Mary Anne Warren, "The Moral and Legal Status of Abortion," *The Monist*, 57 no. 1 (1975).
- 2 See Henry K. Beecher, "Ethical Problems Created by the Hopelessly Unconscious Patient," *New England Journal of Medicine*, 278 no. 26 (1968); Anthony Shaw, "Dilemmas of 'Informed Consent' in Children," *New England Journal of Medicine*, 289 no. 17 (1973).
- 3 Ibid.
- 4 G. Deneau, T. Yanagita, and M. Seevers, "Self-Administration of Psychoactive Substances by the Monkey," *Psychopharmacologia*, 16 (1969), pp. 30–48.
- 5 See Richard Ryder, *Victims of Science* (London: Davis-Poynter, 1975).
- 6 This list is a compound of the main indicators of "humanhood" or "personhood" suggested by Mary Anne Warren, "The Moral and Legal Status of Abortion," and Joseph Fletcher, "Indicators of Humanhood: A Tentative Profile of Man," *Hastings Center Report* (Institute of Society, Ethics and the Life Sciences, Hastings-on-Hudson, NY) 2 no. 5 (1972).
- 7 For an early report, see R. A. Gardner and B. T. Gardner, "Teaching Sign Language to a Chimpanzee," *Science*, 165 (1969); and for a more recent informal

- summary of progress in this area see the report by Peter Jenkins, *The Guardian* (London) (10 July, 1973), p. 16, reprinted in T. Regan and P. Singer (eds.), *Animal Rights and Human Obligations* (Englewood Cliffs, NJ: Prentice-Hall, 1976).
- 8 Michael Tooley, "Abortion and Infanticide."
  - 9 See note 6.
  - 10 R. S. Duff and A. G. M. Campbell, "Moral and Ethical Dilemmas in the Special Care Nursery," *New England Journal of Medicine*, 289 no. 17 (1973).
  - 11 See Jonathan Bennett, "Whatever the Consequences," *Analysis*, 26 (1966); Tooley, and "Abortion and Infanticide," and chapters 7 and 8 of *Ethical Issues Relating to Life and Death*, ed. John Ladd (New York and Oxford: Oxford University Press, 1979); for a contrary view, see chapter 2 of Ladd's book.
  - 12 Gerald Leach, *The Bureaucrats* (Harmondsworth: Penguin, 1972), p. 197.
  - 13 I owe this point to Jonathan Glover. See his *Causing Death and Saving Lives* (Harmondsworth: Penguin, 1977), ch. 7.
  - 14 *New York Times*, 5 Dec. 1973.
  - 15 Edward Westermarck, *The Origin and Development of Moral Ideas*, vol. 1 (London: Macmillan, 1924), pp. 394–413.
  - 16 Aristotle, *Politics* 7.1335<sup>b</sup>; Plato, *Republic* 5.460.
  - 17 Seneca, *De Ira* 1.15 (referred to by Westermarck, *Moral Ideas*, p. 419).
  - 18 St. Fulgentius, *De Fide* 27 (quoted by Westermarck, pp. 416–17).
  - 19 W. E. H. Lecky, *History of European Morals*, vol. 2 (London: Longmans, 1892), p. 23 n.
  - 20 *Ibid.*, p. 23. John T. Noonan has argued (in *The Morality of Abortion: Legal and Historical Perspective* (Cambridge, MA: Harvard University Press, 1970)) that Christian opposition to abortion and infanticide did not depend on narrow theological doctrines, but on the spirit of the scriptural injunction to love our neighbor as ourself. So Noonan says, "The fetus as human was a neighbor; his life had parity with our own" (p. 58). But if we do not take account of theological doctrines, how can it be explained why, for the Christian, any human, including a fetus, is my neighbor, while a horse or a dog is not my neighbor, even though they resemble me more closely than the fetus in important characteristics like sentience and self-awareness, and I have more contact with them and am able to relate to them in a much more neighborly manner? Once this question is asked the influence of theological doctrines becomes apparent.
  - 21 Jeremy Bentham, *Theory of Legislation*, pp. 264f. (quoted by Westermarck, *Moral Ideas*, p. 413 n).
  - 22 For the practice of killing elderly parents and other forms of euthanasia among the Eskimo, see the sources cited by Westermarck, *Moral Ideas*, p. 387, n. 1 and p. 392, n. 1–3; for the rarity of homicide outside such special circumstances and the severe condemnation with which it is regarded among the same people, see Westermarck, *Moral Ideas*, pp. 329; 330; 331, n. 2; 334.

## Sixteen

# Should All Seriously Disabled Infants Live?

*Helga Kuhse and Peter Singer*

Modern medical technology has given us the means to sustain the lives of many seriously ill or handicapped young children who, only a decade or two ago, would have died soon after birth because the means were not available to keep them alive. But should we always try to preserve every child's life by all available means, or are there times when a young child should be allowed, or helped, to die because she is seriously ill or handicapped?

It is frequently claimed that all human beings, including handicapped newborn infants, have a "right to life" and that it is morally wrong to base life and death decisions in the practice of medicine on the quality or kind of life in question. In this article, we shall dispute that claim and argue that quality and kind of life constitute a proper basis for medical decision-making for seriously ill or handicapped young children.

To begin, let us consider the following case. It is described by Fred M. Frohock, a professor of political science, in his recent book *Special Care*, written after he had spent four months as an observer in a modern neonatal intensive care unit of an unnamed American hospital (Frohock 1986).

Parts of this chapter are drawn from the authors' book, *Should the Baby Live? The Problem of Handicapped Infants* (Oxford: Oxford University Press, 1985) and from an article "For Sometimes Letting – and Helping – Die," *Law, Medicine, and Health Care*, 14 (1986), pp. 149–54. The article was written as part of a larger study on "Life and Death Choices for Defective Newborns," supported by the Australian Research Grants Scheme. We wish to thank the ARGS for their support.

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