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will be adequate to any war, without new taxes or loans, and our position and increasing strength put us *hors d'insulte* from any nation. Being now so near the moment of retiring, that I take no part in affairs beyond the expression of an opinion. I think it fair that my successor should now originate those measures of which he will be charged with the execution and responsibility, and that it is my duty to clothe them with the forms of authority. Five weeks more will relieve me from a drudgery to which I am no longer equal, and restore me to a scene of tranquillity, amidst my family and friends, more congenial to my age and natural inclinations. In that situation, it will always be a pleasure to me to see you, and to repeat to you the assurances of my constant friendship and respect.

THE REPUBLIC OF SCIENCE

To John Hollins

Washington, February 19, 1809

DEAR SIR,—A little transaction of mine, as innocent an one as I ever entered into, and where an improper construction was never less expected, is making some noise, I observe, in your city. I beg leave to explain it to you, because I mean to ask your agency in it. The last year, the Agricultural Society of Paris, of which I am a member, having had a plough presented to them, which, on trial with a graduated instrument, did equal work with half the force of their best ploughs, they thought it would be a benefit to mankind to communicate it. They accordingly sent one to me, with a view to its being made known here, and they sent one to the Duke of Bedford also, who is one of their members, to be made use of for England, although the two nations were then at war. By the Mentor, now going to France, I have given permission to two individuals in Delaware and New York, to import two parcels of Merino sheep from France, which they have procured there, and to some gentlemen in Boston, to import a very valuable machine which spins cotton, wool and flax equally. The last spring, the Society informed me they were cultivating the cotton of the Levant and other parts of the Mediterranean, and wished to try also that of our southern States. I immediately got a friend to have two tierces of seed forwarded to me. They were consigned to Messrs. Falls and Brown of Baltimore, and notice of it being given me, I immediately wrote to them to re-ship them to New York, to be sent by the Mentor. Their first object was to make a show of my letter, as something very criminal, and to carry the subject into the newspapers. I had, on a like request, some time ago, (but before the embargo) from the President of the Board of Agriculture of London, of which I am also a member, to send them some of the genuine May wheat of Virginia, forwarded to them two or three barrels of it. General Washington, in his time, received from the same Society the seed of the perennial succory, which Arthur Young had carried over from France to England, and I have since received from a member of it the seed of the famous turnip of Sweden, now so well known here. I mention these things, to shew the nature of the correspondence which is carried on between societies instituted for the benevolent purpose of communicating to all parts of the world whatever useful is discovered in any one of them. These societies are always in peace, however their nations may be at war. Like the republic of letters, they form a great fraternity spreading over the whole earth, and their correspondence is never interrupted by any civilized nation. Vaccination has been a late and remarkable instance of the liberal diffusion of a blessing newly discovered. It is really painful, it is mortifying, to be obliged to note these things, which are known to every one who knows any thing, and felt with approbation by every one who has any feeling. But we have a faction to whose hostile passions the torture even of right into wrong is a delicious gratification. Their malice I have long learned to disregard, their censure to deem praise. But I observe, that some republicans are not satisfied (even while we are receiving liberally from others) that this small return should be made. They will think more justly at another day: but in the mean time, I wish to avoid offence. My prayer to you, therefore, is, that you will be so good, under the inclosed order, as to receive these two tierces of seed from Falls and Brown,

and pay them their disbursements for freight, &c. which I will immediately remit you on knowing the amount. Of the seed, when received, be so good as to make manure for your garden. When rotted with a due mixture of stable manure or earth, it is the best in the world. I rely on your friendship to excuse this trouble, it being necessary I should not commit myself again to persons of whose honor, or the want of it, I know nothing.

Accept the assurances of my constant esteem and respect.

THE NEGRO RACE

To Henri Gregoire

Washington, February 25, 1809

SIR,—I have received the favor of your letter of August 25th, and with it the volume you were so kind as to send me on the "Literature of Negroes." Be assured that no person living wishes more sincerely than I do, to see a complete refutation of the doubts I have myself entertained and expressed on the grade of understanding allotted to them by nature, and to find that in this respect they are on a par with ourselves. My doubts were the result of personal observation on the limited sphere of my own State, where the opportunities for the development of their genius were not favorable, and those of exercising it still less so. I expressed them therefore with great hesitation; but whatever be their degree of talent it is no measure of their rights. Because Sir Isaac Newton was superior to others in understanding, he was not therefore lord of the person or property of others. On this subject they are gaining daily in the opinions of nations, and hopeful advances are making towards their re-establishment on an equal footing with the other colors of the human family. I pray you therefore to accept my thanks for the many instances you have enabled me to observe of respectable intelligence in that race of men, which cannot fail to have effect in hastening the day of their relief; and to be assured of the sentiments of high and just esteem and consideration which I tender to yourself with all sincerity.

SCIENCE AND LIBERTY

To Joseph Willard

Paris, March 24, 1789

SIR,—I have been lately honored with your letter of September the 24th, 1788, accompanied by a diploma for a Doctorate of Laws, which the University of Harvard has been pleased to confer on me. Conscious how little I merit it, I am the more sensible of their goodness and indulgence to a stranger, who has had no means of serving or making himself known to them. I beg you to return them my grateful thanks, and to assure them that this notice from so eminent a seat of science, is very precious to me.

The most remarkable publications we have had in France, for a year or two past, are the following. 'Les voyages d'Anacharsis par l'Abbé Barthelemi,' seven volumes, octavo. This is a very elegant digest of whatever is known of the Greeks; useless, indeed, to him who has read the original authors, but very proper for one who reads modern languages only. The works of the King of Prussia. The Berlin edition is in sixteen volumes, octavo. It is said to have been gutted at Berlin; and here it has been still more mangled. There are one or two other editions published abroad, which pretend to have rectified the maltreatment both of Berlin and Paris. Some time will be necessary to settle the public mind, as to the best edition.

Montignot has given us the original Greek, and a French translation of the seventh book of Potolemy's great work, under the title of 'Etat des etoiles fixes au second siecle,' in quarto. He has given the designation of the same stars by Flamstead and Beyer, and their position in the year 1786. A very remarkable work is the 'Mechanique Analytique,' of Le Grange, in quarto. He is allowed to be the greatest mathematician now living, and his personal worth is equal to his science. The object of his work is to reduce all the principles of mechanics to the single one of the equilibrium, and to give a simple formula applicable to them all. The subject is treated in the algebraic method, without diagrams to assist the conception. My present occupations not permitting me to read any thing which requires a long and undisturbed attention, I

am not able to give you the character of this work from my own examination. It has been received with great approbation in Europe. In Italy, the works of Spallanzani on digestion and generation, are valuable. Though, perhaps, too minute, and therefore tedious, he has developed some useful truths, and his book is well worth attention; it is in four volumes, octavo. Clavigaro, an Italian also, who has resided thirty-six years in Mexico, has given us a history of that country, which certainly merits more respect than any other work on the same subject. He corrects many errors of Dr. Robertson; and though sound philosophy will disapprove many of his ideas, we must still consider it as an useful work, and assuredly the best we possess on the same subject. It is in four thin volumes, small quarto. De la Land has not yet published a fifth volume.

The chemical dispute about the conversion and reconversion of air and water, continues still undecided. Arguments and authorities are so balanced, that we may still safely believe, as our fathers did before us, that these principles are distinct. A schism of another kind, has taken place among the chemists. A particular set of them here, have undertaken to remodel all the terms of the science, and to give to every substance a new name, the composition, and especially the termination of which, shall define the relation in which it stands to other substances of the same family. But the science seems too much in its infancy as yet, for this reformation; because, in fact, the reformation of this year must be reformed again the next year, and so on, changing the names of substances as often as new experiments develope properties in them undiscovered before. The new nomenclature has, accordingly, been already proved to need numerous and important reformations. Probably it will not prevail. It is espoused by the minority only here, and by very few, indeed, of the foreign chemists. It is particularly rejected in England.

In the arts, I think two of our countrymen have presented the most important inventions. Mr. Paine, the author of Common Sense, has invented an iron bridge, which promises to be cheaper by a great deal than stone, and to admit of a much greater arch. He supposes it may be ventured for an arch of five hundred feet. He has obtained a patent for it in England, and is now executing the first experiment with an

arch of between ninety and one hundred feet. Mr. Rumsey has also obtained a patent for his navigation by the force of steam, in England, and is soliciting a similar one here. His principal merit is in the improvement of the boiler, and, instead of the complicated machinery of oars and paddles, proposed by others, the substitution of so simple a thing as the reaction of a stream of water on his vessel. He is building a sea vessel at this time in England, and she will be ready for an experiment in May. He has suggested a great number of mechanical improvements in a variety of branches; and upon the whole, is the most original and the greatest mechanical genius I have ever seen. The return of la Peyrouse (whenever that shall happen) will probably add to our knowledge in Geography, Botany and Natural History. What a field have we at our doors to signalise ourselves in! The Botany of America is far from being exhausted, its Mineralogy is untouched, and its Natural History or Zoology, totally mistaken and misrepresented. As far as I have seen, there is not one single species of terrestrial birds common to Europe and America, and I question if there be a single species of quadrupeds. (Domestic animals are to be excepted.) It is for such institutions as that over which you preside so worthily, Sir, to do justice to our country, its productions and its genius. It is the work to which the young men, whom you are forming, should lay their hands. We have spent the prime of our lives in procuring them the precious blessing of liberty. Let them spend theirs in shewing that it is the great parent of *science* and of virtue; and that a nation will be great in both, always in proportion as it is free. Nobody wishes more warmly for the success of your good exhortations on this subject, than he who has the honor to be, with sentiments of great esteem and respect, Sir, your most obedient humble servant,

A REPORT FROM VERSAILLES

To John Jay

Paris, May 9, 1789

SIR,—Since my letter of March the [illegible] by the way of Havre, and those of March the 12th and 15th, by the way of London,

point of view. I should not therefore fear to propose that the one intended by Congress should be considerably smaller than any of those to be seen here; as I think it will be more beautiful, and also cheaper. I have troubled you with these observations as they have been suggested to me from an actual sight of works in this kind, & supposed they might assist you in making up your minds on this subject. In making a contract with Monsr. Houdon it would not be proper to advance money, but as his disbursements and labour advance. As it is a work of many years, this will render the expence insensible. The pedestrian statue of marble is to take three years. The equestrian of course much more. Therefore the sooner it is begun the better.

"AN HONEST HEART . . . A KNOWING HEAD"

To Peter Carr

Paris, August 10, 1785

DEAR PETER,—I received, by Mr. Mazzei, your letter of April the 20th. I am much mortified to hear that you have lost so much time; and that when you arrived in Williamsburg, you were not at all advanced from what you were when you left Monticello. Time now begins to be precious to you. Every day you lose, will retard a day your entrance on that public stage whereon you may begin to be useful to yourself. However, the way to repair the loss is to improve the future time. I trust, that with your dispositions, even the acquisition of science is a pleasing employment. I can assure you, that the possession of it is, what (next to an honest heart) will above all things render you dear to your friends, and give you fame and promotion in your own country. When your mind shall be well improved with science, nothing will be necessary to place you in the highest points of view, but to pursue the interests of your country, the interests of your friends, and your own interests also, with the purest integrity, the most chaste honor. The defect of these virtues can never be made up by all the other acquirements of body and mind. Make these then your first object. Give up money, give up fame,

give up science, give the earth itself and all it contains, rather than do an immoral act. And never suppose, that in any possible situation, or under any circumstances, it is best for you to do a dishonorable thing, however slightly so it may appear to you. Whenever you are to do a thing, though it can never be known but to yourself, ask yourself how you would act were all the world looking at you, and act accordingly. Encourage all your virtuous dispositions, and exercise them whenever an opportunity arises; being assured that they will gain strength by exercise, as a limb of the body does, and that exercise will make them habitual. From the practice of the purest virtue, you may be assured you will derive the most sublime comforts in every moment of life, and in the moment of death. If ever you find yourself environed with difficulties and perplexing circumstances, out of which you are at a loss how to extricate yourself, do what is right, and be assured that that will extricate you the best out of the worst situations. Though you cannot see, when you take one step, what will be the next, yet follow truth, justice, and plain dealing, and never fear their leading you out of the labyrinth, in the easiest manner possible. The knot which you thought a Gordian one, will untie itself before you. Nothing is so mistaken as the supposition, that a person is to extricate himself from a difficulty, by intrigue, by chicanery, by dissimulation, by trimming, by an untruth, by an injustice. This increases the difficulties ten fold; and those who pursue these methods, get themselves so involved at length, that they can turn no way but their infamy becomes more exposed. It is of great importance to set a resolution, not to be shaken, never to tell an untruth. There is no vice so mean, so pitiful, so contemptible; and he who permits himself to tell a lie once, finds it much easier to do it a second and third time, till at length it becomes habitual; he tells lies without attending to it, and truths without the world's believing him. This falsehood of the tongue leads to that of the heart, and in time depraves all its good dispositions.

An honest heart being the first blessing, a knowing head is the second. It is time for you now to begin to be choice in your reading; to begin to pursue a regular course in it; and not to suffer yourself to be turned to the right or left by read-

ing any thing out of that course. I have long ago digested a plan for you, suited to the circumstances in which you will be placed. This I will detail to you, from time to time, as you advance. For the present, I advise you to begin a course of antient history, reading every thing in the original and not in translations. First read Goldsmith's history of Greece. This will give you a digested view of that field. Then take up antient history in the detail, reading the following books, in the following order: Herodotus, Thucydides, Xenophontis Hellenica, Xenophontis Anabasis, Arrian, Quintus Curtius, Diodorus Siculus, Justin. This shall form the first stage of your historical reading, and is all I need mention to you now. The next, will be of Roman history.* From that, we will come down to modern history. In Greek and Latin poetry, you have read or will read at school, Virgil, Terence, Horace. Anacreon, Theocritus, Homer, Euripides, Sophocles. Read also Milton's Paradise Lost, Shakspeare, Ossian, Pope's and Swift's works, in order to form your style in your own language. In morality, read Epictetus, Xenophontis Memorabilia, Plato's Socratic dialogues, Cicero's philosophics. Antoninus, and Seneca. In order to assure a certain progress in this reading, consider what hours you have free from the school and the exercises of the school. Give about two of them, every day, to exercise; for health must not be sacrificed to learning. A strong body makes the mind strong. As to the species of exercise, I advise the gun. While this gives a moderate exercise to the body, it gives boldness, enterprise, and independence to the mind. Games played with the ball, and others of that nature, are too violent for the body, and stamp no character on the mind. Let your gun therefore be the constant companion of your walks. Never think of taking a book with you. The object of walking is to relax the mind. You should therefore not permit yourself even to think while you walk; but divert your attention by the objects surrounding you. Walking is the best possible exercise. Habituate yourself to walk very far. The Europeans value themselves on having subdued the horse to the uses of man; but I doubt whether we have not lost more than we have gained, by the use of this

*Livy, Sullust, Cæsar, Cicero's epistles, Suetonius, Tacitus, Gibbon.

animal. No one has occasioned so much, the degeneracy of the human body. An Indian goes on foot nearly as far in a day, for a long journey, as an enfeebled white does on his horse; and he will tire the best horses. There is no habit you will value so much as that of walking far without fatigue. I would advise you to take your exercise in the afternoon: not because it is the best time for exercise, for certainly it is not; but because it is the best time to spare from your studies; and habit will soon reconcile it to health, and render it nearly as useful as if you gave to that the more precious hours of the day. A little walk of half an hour, in the morning, when you first rise, is advisable also. It shakes off sleep, and produces other good effects in the animal economy. Rise at a fixed and an early hour, and go to bed at a fixed and early hour also. Sitting up late at night is injurious to the health, and not useful to the mind. Having ascribed proper hours to exercise, divide what remain, (I mean of your vacant hours) into three portions. Give the principal to History, the other two, which should be shorter, to Philosophy and Poetry. Write to me once every month or two, and let me know the progress you make. Tell me in what manner you employ every hour in the day. The plan I have proposed for you is adapted to your present situation only. When that is changed, I shall propose a corresponding change of plan. I have ordered the following books to be sent to you from London, to the care of Mr. Madison. Herodotus, Thucydides, Xenophon's Hellenics, Anabasis and Memorabilia, Cicero's works, Baretti's Spanish and English Dictionary, Martin's Philosophical Grammar, and Martin's Philosophia Britannica. I will send you the following from hence. Bezout's Mathematics, De la Lande's Astronomy, Muschenbrock's Physics, Quintus Curtius, Justin, a Spanish Grammar, and some Spanish books. You will observe that Martin, Bezout, De la Lande, and Muschenbrock are not in the preceding plan. They are not to be opened till you go to the University. You are now, I expect, learning French. You must push this; because the books which will be put into your hands when you advance into Mathematics, Natural philosophy, Natural history, &c. will be mostly French, these sciences being better treated by the French than the English writers. Our future connection with Spain renders that the

most necessary of the modern languages, after the French. When you become a public man, you may have occasion for it, and the circumstance of your possessing that language, may give you a preference over other candidates. I have nothing further to add for the present, but husband well your time, cherish your instructors, strive to make every body your friend; and be assured that nothing will be so pleasing, as your success, to, Dear Peter,

Your's affectionately,

COMMERCE AND SEA POWER

To John Jay

Paris, Aug. 23, 1785

DEAR SIR,—I shall sometimes ask your permission to write you letters, not official but private. The present is of this kind, and is occasioned by the question proposed in yours of June 14. "whether it would be useful to us to carry all our own productions, or none?" Were we perfectly free to decide this question, I should reason as follows. We have now lands enough to employ an infinite number of people in their cultivation. Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independant, the most virtuous, & they are tied to their country & wedded to it's liberty & interests by the most lasting bonds. As long therefore as they can find employment in this line, I would not convert them into mariners, artisans or anything else. But our citizens will find employment in this line till their numbers, & of course their productions, become too great for the demand both internal & foreign. This is not the case as yet, & probably will not be for a considerable time. As soon as it is, the surplus of hands must be turned to something else. I should then perhaps wish to turn them to the sea in preference to manufactures, because comparing the characters of the two classes I find the former the most valuable citizens. I consider the class of artificers as the panders of vice & the instruments by which the liberties of a country are generally overturned. However we are not free to decide this question

fection depends on mathematical principles, and one great circumstance in it's favor is that it may be made by the most bungling carpenter, & cannot possibly vary a hair's breadth in it's form, but by gross negligence. You have seen the musical instrument called a sticcado. Suppose all it's sticks of equal length, hold the fore-end horizontally on the floor to receive the furr which presents itself horizontally, and with the right hand twist the hind-end to the perpendicular, or rather as much beyond the perpendicular as will be necessary to cast over the turf completely. This gives an idea (tho not absolutely exact) of my mould-board. It is on the principle of two wedges combined at right angles, the first in the direct line of the furrow to raise the turf gradually, the other across the furrow to turn it over gradually. For both these purposes the wedge is the instrument of the least resistance. I will make a model of the mould-board & lodge it with Col? Harvie in Richmond for you. This brings me to my thanks for the drill plough lodged with him for me, which I now expect every hour to receive, and the price of which I have deposited in his hands to be called for when you please. A good instrument of this kind is almost the greatest desideratum in husbandry. I am anxious to conjecture beforehand what may be expected from the sowing turneps in jaded ground, how much from the acre, & how large they will be? Will your experience enable you to give me a probable conjecture? Also what is the produce of potatoes, & what of peas in the same kind of ground? It must now have been several pages since you began to cry out 'mercy.' In mercy then I will here finish with my affectionate remembrance to my old friend. Mr. Pendleton & respects to your fireside, & to yourself assurances of the sincere esteem of, dear Sir,

'Your friend & serv',

THE GENEVA ACADEMY

To François D'Ivernois

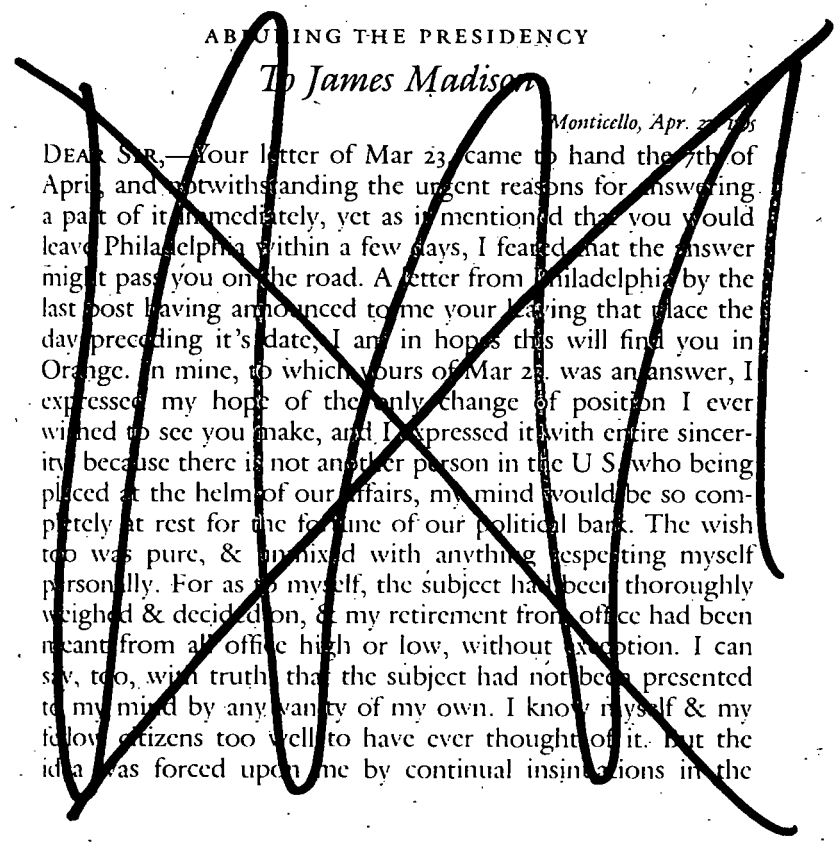
Monticello, in Virginia, Feb. 6. 1795

DEAR SIR,—Your several favors on the affairs of Geneva found me here, in the month of December last. It is now

more than a year that I have withdrawn myself from public affairs, which I never liked in my life, but was drawn into by emergencies which threatened our country with slavery, but ended in establishing it free. I have returned, with infinite appetite, to the enjoyment of my farm, my family & my books, and had determined to meddle in nothing beyond their limits. Your proposition, however, for transplanting the college of Geneva to my own country, was too analogous to all my attachments to science, & freedom, the first-born daughter of science, not to excite a lively interest in my mind, and the essays which were necessary to try it's practicability. This depended altogether on the opinions & dispositions of our State legislature, which was then in session. I immediately communicated your papers to a member of the legislature, whose abilities & zeal pointed him out as proper for it, urging him to sound as many of the leading members of the legislature as he could, & if he found their opinions favorable, to bring forward the proposition; but if he should find it desperate, not to hazard it; because I thought it best not to commit the honor either of our State or of your college, by an useless act of eclat. It was not till within these three days that I have had an interview with him, and an account of his proceedings. He communicated the papers to a great number of the members, and discussed them maturely, but privately, with them. They were generally well-disposed to the proposition, and some of them warmly; however, there was no difference of opinion in the conclusion, that it could not be effected. The reasons which they thought would with certainty prevail against it, were 1. that our youth, not familiarized but with their mother tongue, were not prepared to receive instructions in any other; 2d. that the expence of the institution would excite uneasiness in their constituents, & endanger it's permanence; & 3. that it's extent was disproportioned to the narrow state of the population with us. Whatever might be urged on these several subjects, yet as the decision rested with others, there remained to us only to regret that circumstances were such, or were thought to be such, as to disappoint your & our wishes. I should have seen with peculiar satisfaction the establishment of such a mass of science in my country, and should probably have been

tempted to approach myself to it, by procuring a residence in it's neighborhood, at those seasons of the year at least when the operations of agriculture are less active and interesting. I sincerely lament the circumstances which have suggested this emigration. I had hoped that Geneva was familiarized to such a degree of liberty, that they might without difficulty or danger fill up the measure to its maximum; a term, which, though in the insulated man, bounded only by his natural powers, must, in society, be so far restricted as to protect himself against the evil passions of his associates, & consequently, them against him. I suspect that the doctrine, that small States alone are fitted to be republics, will be exploded by experience, with some other brilliant fallacies accredited by Montesquieu & other political writers. Perhaps it will be found, that to obtain a just republic (and it is to secure our just rights that we resort to government at all) it must be so extensive as that local egoisms may never reach it's greater part; that on every particular question, a majority may be found in it's councils free from particular interests, and giving, therefore, an uniform prevalence to the principles of justice. The smaller the societies, the more violent & more convulsive their schisms. We have chanced to live in an age which will probably be distinguished in history, for it's experiments in government on a larger scale than has yet taken place. But we shall not live to see the result. The grosser absurdities, such as hereditary magistracies, we shall see exploded in our day, long experience having already pronounced condemnation against them. But what is to be the substitute? This our children or grand children will answer. We may be satisfied with the certain knowledge that none can ever be tried, so stupid, so unrighteous, so oppressive, so destructive of every end for which honest men enter into government, as that which their forefathers had established, & their fathers alone venture to tumble headlong from the stations they have so long abused. It is unfortunate, that the efforts of mankind to recover the freedom of which they have been so long deprived, will be accompanied with violence, with errors, & even with crimes. But while we weep over the means, we must pray for the end.—But I have been insensibly led by the general complexion of the times, from

the particular case of Geneva, to those to which it bears no similitude. Of that we hope good things. Its inhabitants must be too much enlightened, too well experienced in the blessings of freedom and undisturbed industry, to tolerate long a contrary state of things. I shall be happy to hear that their government perfects itself, and leaves room for the honest, the industrious & wise; in which case, your own talents, & those of the persons for whom you have interested yourself, will, I am sure, find welcome & distinction. My good wishes will always attend you, as a consequence of the esteem & regard with which I am, Dear Sir, your most obedient & most humble servant.



ABOUT ING THE PRESIDENCY

To James Madison

Monticello, Apr. 2[illegible] 1[illegible]

DEAR SIR,—Your letter of Mar 23 came to hand the 7th of April, and notwithstanding the urgent reasons for answering a part of it immediately, yet as it mentioned that you would leave Philadelphia within a few days, I feared that the answer might pass you on the road. A letter from Philadelphia by the last post having announced to me your leaving that place the day preceding it's date, I am in hopes this will find you in Orange. In mine, to which yours of Mar 23. was an answer, I expressed my hope of the only change of position I ever wished to see you make, and I expressed it with entire sincerity because there is not another person in the U S who being placed at the helm of our affairs, my mind would be so completely at rest for the fortune of our political bark. The wish too was pure, & unmixed with anything respecting myself personally. For as to myself, the subject had been thoroughly weighed & decided on, & my retirement from office had been meant from all office high or low, without exception. I can say, too, with truth, that the subject had not been presented to my mind by any vanity of my own. I know myself & my fellow citizens too well to have ever thought of it. But the idea was forced upon me by continual insinuations in the

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the art to cul-

tivate it beyond all others. There is no part of the earth where so much of this is enjoyed as in America. You agree with me in this; but you think that the pleasures of Paris more than supply its wants; in other words that a Parisian is happier than an American. You will change your opinion, my dear Madam, and come over to mine in the end. Recollect the women of this capital, some on foot, some on horses, & some in carriages hunting pleasure in the streets, in routs & assemblies, and forgetting that they have left it behind them in their nurseries; compare them with our own countrywomen occupied in the tender and tranquil amusements of domestic life, and confess that it is a comparison of Amazons and Angels.— You will have known from the public papers that Monsieur de Buffon, the father, is dead & you have known long ago that the son and his wife are separated. They are pursuing pleasure in opposite directions. Madame de Rochambeau is well: so is Madame de la Fayette. I recollect no other Nouvelles de societé interesting to you. And as for political news of battles & sieges, Turks & Russians, I will not detail them to you, because you would be less handsome after reading them. I have only to add then, what I take a pleasure in repeating, tho' it will be the thousandth time that I have the honour to be with sentiments of very sincere respect & attachment, dear Madam, your most obedient & most humble servant.

"THE CRUMBS OF SCIENCE"

To the Rev. James Madison

Paris, July 19, 1788

DEAR SIR,—My last letter to you was of the 13th of August last. As you seem willing to accept of the crumbs of science on which we are subsisting here, it is with pleasure I continue to hand them on to you, in proportion as they are dealt out. Herschel's volcano in the moon you have doubtless heard of, and placed among the other vagaries of a head, which seems not organised for sound induction. The wildness of the theories hitherto proposed by him, on his own discoveries, seems

to authorise us to consider his merit as that of a good optician only. You know also, that Doctor Ingenhouse had discovered, as he supposed, from experiment, that vegetation might be promoted by occasioning streams of the electrical fluid to pass through a plant, and that other physicians had received and confirmed this theory. He now, however, retracts it, and finds by more decisive experiments, that the electrical fluid can neither forward nor retard vegetation. Uncorrected still of the rage of drawing general conclusions from partial and equivocal observations, he hazards the opinion that *light* promotes vegetation. I have heretofore supposed from observation, that light affects the color of living bodies, whether vegetable or animal; but that either the one or the other receives *nutriment* from that fluid, must be permitted to be doubted of, till better confirmed by observation. It is always better to have no ideas, than false ones; to believe nothing, than to believe what is wrong. In my mind, theories are more easily demolished than rebuilt.

An Abbé here, has shaken, if not destroyed, the theory of de Dominis, Descartes and Newton, for explaining the phenomenon of the rainbow. According to that theory, you know, a cone of rays issuing from the sun, and falling on a cloud in the opposite part of the heavens, is reflected back in the form of a smaller cone, the apex of which is the eye of the observer: so that the eye of the observer must be in the axis of both cones, and equally distant from every part of the bow. But he observes, that he has repeatedly seen bows, the one end of which has been very near to him, and the other at a very great distance. I have often seen the same thing myself. I recollect well to have seen the end of a rainbow between myself and a house, or between myself and a bank, not twenty yards distant; and this repeatedly. But I never saw, what he says he has seen, different rainbows at the same time, intersecting each other. I never saw coexistent bows, which were not concentric also. Again, according to the theory, if the sun is in the horizon, the horizon intercepts the lower half of the bow, if above the horizon, that intercepts more than the half, in proportion. So that generally, the bow is less than a semicircle, and never more. He says he has seen it more than a semicircle. I have often seen the leg of the bow below my

level. My situation at Monticello admits this, because there is a mountain there in the opposite direction of the afternoon's sun, the valley between which and Monticello, is five hundred feet deep. I have seen a leg of a rainbow plunge down on the river running through the valley. But I do not recollect to have remarked at any time, that the bow was more than half a circle. It appears to me, that these facts demolish the Newtonian hypothesis, but they do not support that erected in its stead by the Abbé. He supposes a cloud between the sun and observer, and that through some opening in that cloud, the rays pass, and form an iris on the opposite part of the heavens, just as a ray passing through a hole in the shutter of a darkened room, and falling on a prism there, forms the prismatic colors on the opposite wall. According to this, we might see bows of more than the half circle, as often as of less. A thousand other objections occur to this hypothesis, which need not be suggested to you. The result is, that we are wiser than we were, by having an error the less in our catalogue; but the blank occasioned by it, must remain for some happier hypothesist to fill up.

The dispute about the conversion and reconversion of water and air, is still stoutly kept up. The contradictory experiments of chemists, leave us at liberty to conclude what we please. My conclusion is, that art has not yet invented sufficient aids, to enable such subtle bodies to make a well defined impression on organs as blunt as ours: that it is laudable to encourage investigation, but to hold back conclusion. Speaking one day with Monsieur de Buffon, on the present ardor of chemical inquiry, he affected to consider chemistry but as cookery, and to place the toils of the laboratory on a footing with those of the kitchen. I think it, on the contrary, among the most useful of sciences, and big with future discoveries for the utility and safety of the human race. It is yet, indeed, a mere embryon. Its principles are contested; experiments seem contradictory; their subjects are so minute as to escape our senses; and their result too fallacious to satisfy the mind. It is probably an age too soon, to propose the establishment of a system. The attempt, therefore, of Lavoisier to reform the chemical nomenclature, is premature. One single experiment may destroy the whole filiation of his terms, and his

string of sulphates, sulfites and sulfures, may have served no other end, than to have retarded the progress of the science, by a jargon, from the confusion of which, time will be requisite to extricate us. Accordingly, it is not likely to be admitted generally.

You are acquainted with the properties of the composition of nitre, salt of tartar and sulphur, called pulvis fulminans. Of this, the explosion is produced by heat alone. Monsieur Bertholet, by dissolving silver in the nitrous acid, precipitating it with lime water, and drying the precipitate on ammoniac, has discovered a powder which fulminates most powerfully, on coming into contact with any substance whatever. Once made, it cannot be touched. It cannot be put into a bottle, but must remain in the capsula, where dried. The property of the spathic acid, to corrode flinty substances, has been lately applied by a Mr. Puymaurin, to engrave on glass, as artists engrave on copper, with aquafortis. M. de la Place has discovered, that the secular acceleration and retardation of the moon's motion, is occasioned by the action of the sun, in proportion as his excentricity changes, or, in other words, as the orbit of the earth increases or diminishes. So that this irregularity is now perfectly calculable.

Having seen announced in a gazette, that some person had found in a library of Sicily, an Arabic translation of Livy, which was thought to be complete, I got the chargé des affaires of Naples here, to write to Naples to inquire into the fact. He obtained in answer, that an Arabic translation was found, and that it would restore to us seventeen of the books lost, to wit, from the sixtieth to the seventy-seventh, inclusive: that it was in possession of an Abbé Vella, who, as soon as he shall have finished a work he has on hand, will give us an Italian, and perhaps a Latin translation of this Livy. There are persons, however, who doubt the truth of this discovery, founding their doubts on some personal circumstances relating to the person who says he has this translation. I find, nevertheless, that the chargé des affaires believes in the discovery, which makes me hope it may be true.

A countryman of ours, a Mr. Ledyard of Connecticut, set out from hence some time ago for St. Petersburg, to go thence to Kamtschatka, thence to cross over to the western

coast of America, and penetrate through the continent, to the other side of it. He had got within a few days' journey of Kamtschatka, when he was arrested by order of the Empress of Russia, sent back, and turned adrift in Poland. He went to London; engaged under the auspices of a private society, formed there for pushing discoveries into Africa; passed by this place, which he left a few days ago for Marseilles, where he will embark for Alexandria and Grand Cairo; thence explore the Nile to its source; cross the head of the Niger, and descend that to its mouth. He promises me, if he escapes through his journey, he will go to Kentucky, and endeavor to penetrate westwardly to the South Sea.

The death of M. de Buffon you have heard long ago. I do not know whether we shall have any thing posthumous of his. As to political news, this country is making its way to a good constitution. The only danger is, they may press so fast as to produce an appeal to arms, which might have an unfavorable issue for them. As yet, the appeal is not made. Perhaps the war which seems to be spreading from nation to nation, may reach them: this would insure the calling of the States General, and this, as is supposed, the establishment of a constitution.

I have the honor to be, with sentiments of sincere esteem and respect, Dear Sir, your friend and servant,

"A MONOPOLY OF DESPOTISM"

To St. John de Crèvecoeur

Paris, August 9, 1788

DEAR SIR,—While our second revolution is just brought to a happy end with you, yours here, is but cleverly under way. For some days, I was really melancholy with the apprehension, that arms would be appealed to, and the opposition crushed in its first efforts. But things seem now to wear a better aspect. While the opposition keeps at its highest wholesome point, government, unwilling to draw the sword, is not forced to do it. The contest here is exactly what it was in Holland: a contest between the monarchical and aristocratical

ginia], which prescribes the selection of the youths of genius from among the classes of the poor, we hope to avail the State of those talents which nature has sown as liberally among the poor as the rich, but which perish without use, if not sought for and cultivated.—NOTES ON VIRGINIA. viii, 390. FORD ED., iii, 254. (1782.) See GENIUS.

7723. SCHOOLS, Government of.—If it is believed that the elementary schools will be better managed by the Governor and Council, the Commissioners of the Literary Fund, or any other general authority of the government, than by the parents within each ward, it is a belief against all experience.—To JOSEPH C. CABELL. vi, 543. (1816.)

7724. SCHOOLS, History in.—At these [Virginia public] schools shall be taught reading, writing, and common arithmetic, and the books which shall be used therein for instructing the children to read shall be such as will, at the same time, make them acquainted with Græcian, Roman, English, and American history.—DIFFUSION OF KNOWLEDGE BILL. FORD ED., ii, 223. (1779.)

7725. SCHOOLS, Trustees.—I have received your favor, informing me that the Board of Trustees for the public school in Washington had unanimously reappointed me their President. I pray you to present to them my thanks for the mark of their confidence, with assurances that I shall at all times be ready to render to the institution any services which shall be in my power.—To ROBERT BRENT. v, 196. (M., Sep. 1807.)

7726. SCHOOLS, Visitors.—I had formerly thought that visitors of the school might be chosen by the county, and charged to provide teachers for every ward, and to superintend them. I now think it would be better for every ward to choose its own resident visitor, whose business it would be to keep a teacher in the ward, to superintend the school, and to call meetings of the ward for all purposes relating to it; their accounts to be settled, and wards laid off by the courts. I think ward elections better for many reasons, one of which is sufficient, that it will keep elementary education out of the hands of fanaticising preachers, who, in county elections, would be universally chosen, and the predominant sect of the county would possess itself of all its schools.—To JOSEPH C. CABELL. vii, 189. FORD ED., x, 167. (P.F., 1820.)

7727. SCHOOLS, Wealth and.—In the elementary bill they [the Legislature] inserted a provision which completely defeated it; for they left it to the court of each county to determine for itself when this act should be carried into execution within their county. One provision of the bill was that the expenses of these schools should be borne by the inhabitants of the county, every one in proportion to his general tax rate. This would throw on wealth the education of the poor; and the justices, being generally of the more wealthy class, were unwilling to incur that burden, and I believe it was not suffered to commence in a single county.—AUTOBIOGRAPHY. i, 48. FORD ED., i, 67. (1821.) See ACADEMY, EDUCATION, LANGUAGES, and UNIVERSITY.

7728. SCIENCE, Acquirement of.—The possession of science is, what (next to an honest heart) will above all things render you dear to your friends, and give you fame and promotion in your own country.—To PETER CARR. i, 395. (P., 1785.)

7729. SCIENCE, American field of.—What a field have we at our doors to signalize ourselves in. The Botany of America is far from being exhausted, its Mineralogy is untouched, and its Natural History or Zoology, totally mistaken and misrepresented. As far as I have seen, there is not one single species of terrestrial birds common to Europe and America, and I question if there be a single species of quadrupeds. (Domestic animals are to be excepted.) It is for such institutions as that [Harvard] over which you preside so worthily to do justice to our country, its productions and its genius. It is the work to which the young men whom you are forming should lay their hands. We have spent the prime of our lives in procuring them the precious blessing of liberty. Let them spend theirs in showing that it is the great parent of science and of virtue; and that a nation will be great in both, always in proportion as it is free.—To DR. WILLARD. iii, 16. (P., 1789.)

7730. SCIENCE, Common property.—The field of knowledge is the common property of mankind, and any discoveries we can make in it will be for the benefit of yours and of every other nation, as well as our own.—To HENRY DEARBORN. v, 111. FORD ED., ix, 86. (W., 1807.)

7731. SCIENCE, Delight in.—Nature intended me for the tranquil pursuits of science, by rendering them my supreme delight.—To DUPONT DE NEMOURS. v, 432. (W., March 2, 1809.)

7732. SCIENCE, Elementary works.—I have received a copy of your mathematical principles of natural philosophy, which I have looked into with all the attention which the rust of age and long continued avocations of a very different character permit me to exercise. I think them entirely worthy of approbation, both as to matter and method, and for their brevity as a text book; and I remark particularly the clearness and precision with which the propositions are enounced and, in the demonstrations, the easy form in which ideas are presented to the mind, so as to be almost intuitive and self-evident. Of Cavallo's book, which you say you are enjoined to teach [in William and Mary College], I have no knowledge, having never seen it; but its character is, I think, that of mere mediocrity; and, from my personal acquaintance with the man, I should expect no more. He was heavy, capable enough of understanding what he had read, and with memory to retain it, but without the talent of digestion or improvement. But, indeed, the English generally have been very stationary in latter times, and the French, on the contrary, so active and successful, particularly in preparing elementary books, in the mathematical and natural sciences, that those who wish for instruction, without caring from what nation they get it, resort universally to the latter language. Besides the earlier and invaluable works of Euler and Bezont, we have latterly that of Lacroix in mathematics, of Legendre in geometry, Lavoisier in chemistry, the elementary works of Haüy in physics, Biot in experimental physics and physical astronomy, Dumeril in natural history, to say nothing of many detached essays of Monge and others, and the transcendent labors of Laplace. I am informed by a highly instructed person recently from Cambridge, that the mathematicians of that institution, sensible of being in the rear of those of the continent, and ascribing the cause much to their too long-continued preference of the geometrical over the analytical methods,

which the French have so much cultivated and improved, have now adopted the latter; and that they have also given up the fluxionary, for the differential calculus. To confine a school, therefore, to the obsolete work of Cavallo, is to shut out all advances in the physical sciences which have been so great in latter times.—To PATRICK K. RODGERS. vii, 327. (M., 1824.)

7733. SCIENCE, Encouragement of.—I am for the encouraging the progress of science in all its branches; and not for raising a hue and cry against the sacred name of philosophy; for awing the human mind by stories of raw-head and bloody bones to a distrust of its own vision, and to repose implicitly on that of others; to go backward instead of forward to look for improvement; to believe that government, religion, morality, and every other science were in the highest perfection in the ages of the darkest ignorance, and that nothing can ever be devised more perfect than what was established by our forefathers.—To ELBRIDGE GERRY. iv, 269. FORD ED., vii, 328. (Pa., 1799.)

7734. SCIENCE, Mother of freedom.—Freedom, the first-born daughter of science.—To M. D'IVERNOIS. iv, 113. FORD ED., vii, 3. (M., Feb. 1795.)

7735. SCIENCE, Objects of.—The main objects of all science are the freedom and happiness of man.—To GENERAL KOSCIUSKO. v, 509. (M., 1810.)

7736. SCIENCE, Pursuit of.—On the revival of letters, learning became the universal favorite [pursuit]. And with reason, because there was not enough of it existing to manage the affairs of a nation to the best advantage, nor to advance its individuals to the happiness of which they were susceptible, by improvements in their minds, their morals, their health, and in those conveniences which contribute to the comfort and embellishment of life. All the efforts of the society, therefore, were directed to the increase of learning, and the inducements of respect, ease, and profit were held up for its encouragement. Even the charities of the nation forgot that misery was their object, and spent themselves in founding schools to transfer to science the hardy sons of the plow. To these incitements were added the powerful fascinations of great cities. These circumstances have long since produced an overcharge in the class of competitors for learned occupation, and great distress among the supernumerary candidates; and the more, as their habits of life have disqualified them for reentering into the laborious class. The evil cannot be suddenly, nor perhaps ever entirely cured: nor should I presume to say by what means it may be cured. Doubtless there are many engines which the nation might bring to bear on this object. Public opinion, and public encouragement are among these.—To DAVID WILLIAMS. iv, 513. (W., 1803.)

7737. SCIENCE, Republican government and.—Science is more important in a republican than in any other government.—To —— ——. vii, 221. (M., 1821.)

7738. —— ——. Science is important to the preservation of our republican government and it is also essential to its protection against foreign power.—To —— ——. vii, 222. (M., 1821.)

7739. SCIENCES, Distribution of the.—I have received the copy of your System of Universal Science. * * * It will be a monument of the learning of the author and of the analyzing powers of his mind. * * * These analytical views indeed must always be ramified according to their object. Yours is on the great scale of a methodical encyclopedia of all human sciences, taking for the basis of their distribution, matter, mind, and the union of both. Lord Bacon founded his first great division on the faculties of the mind which have cognizance of these sciences. It does not seem to have been observed by any one that the origination of this division was not with him. It had been proposed by Charron, more than twenty years before, in his book de la Sagesse. B. 1, c. 14, and an imperfect ascription of the sciences to these respective faculties was there attempted. This excellent moral work was published in 1600. Lord Bacon is said not to have entered on his great work until his retirement from public office in 1621. Where sciences are to be arranged in accommodation to the schools of an university, they will be grouped to coincide with the kindred qualifications of professors in ordinary. For a library, which was my object, their divisions and subdivisions will be made such as to throw convenient masses of books under each separate head. Thus, in the library of a physician, the books of that science, of which he has many, will be subdivided under many heads; and those of law, of which he has few, will be placed under a single one. The lawyer, again, will distribute his law books under many subdivisions, his medical under a single one. Your idea of making the subject matter of the sciences the basis of their distribution, is certainly more reasonable than that of the faculties to which they are addressed. * * * Were I to re-compose my tabular view of the sciences, I should certainly transpose a certain branch. The naturalists, you know, distribute the history of nature into three kingdoms or departments: zoology, botany, mineralogy. Ideology, or mind, however, occupies so much space in the field of science, that we might perhaps erect it into a fourth kingdom or department. But, inasmuch as it makes a part of the animal construction only, it would be more proper to subdivide zoology into physical and moral. The latter including ideology, ethics, and mental science generally, in my catalogue, considering ethics, as well as religion, as supplements to law in the government of man, I had them in that sequence. But certainly the faculty of thought belongs to animal history, is an important portion of it, and should there find its place.—To MR. WOODWARD. vii, 338. (M., 1824.)

— **SCIENTIFIC SOCIETIES.**—See SOCIETIES, SCIENTIFIC.

— **SCIPIO.**—See ORATORY.

— **SCREW PROPELLER.**—See INVENTIONS.

7740. SCULPTURE, Style.—As to the style or costume [for a statue of General Washington], I am sure the artist, and every person of taste in Europe, would be for the Roman. * * * Our boots and regimentals have a very puny effect.—To NATHANIEL MACON. vi, 535. (M., 1816.)

7741. SEAMEN, American.—The seamen which our navigation raises had better be of our own. It is neither our wish nor our interest ever to employ [those of England].—To WILLIAM SHORT. vi, 128. (M., June 1813.)

7742. SEAMEN, Distressed.—Another circumstance which claims attention, as directly affecting the very source of our navigation, is

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release April 17, 1997

REMARKS BY THE PRESIDENT AND THE FIRST LADY AT WHITE HOUSE CONFERENCE ON EARLY CHILD DEVELOPMENT AND LEARNING

The East Room

10:45 A.M. EDT

MRS. CLINTON: Please be seated. Welcome to the White House and to this very special White House Conference on Early Childhood Development and Learning. We are delighted that you can join us today not only here in the East Room, but I want to give a special welcome to the thousands of people who are joining this conference via satellite from universities, hospitals and schools around the country. There are nearly 100 sites in 37 states.

Now, at first glance, it may seem odd to hold a conference here at the White House devoted to talking about baby talk. But that discussion has never been more important, because science, as we will hear from the experts who are with us today, has now confirmed what many parents have instinctively known all along, that the song a father sings to his child in the morning, or a story that a mother reads to her child before bed help lay the foundation for a child's life, and in turn, for our nation's future.

So the President has convened this conference with a clear mission: to give the leading experts in the field of early childhood development, the scientists and pediatricians, the researchers and all of the others, the opportunity to explain their discoveries and to put this invaluable body of knowledge at the service of America's families.

But this is not just for America's families. This information is crucial for anyone in the position of leaving an impression on a young child's growing mind -- day-care workers, teachers, doctors and nurses, television writers and producers, business leaders, government policy-makers, all of us.

It is astonishing what we now know about the young brain and about how children develop. Just how far we have come is chronicled in a report being issued today by the Families and Work Institute, entitled, "Rethinking the Brain." Fifteen years ago, we thought that a baby's

brain structure was virtually complete at birth. Now, we understand that it is a work in progress, and that everything we do with a child has some kind of potential physical influence on that rapidly-forming brain.

A child's earliest experiences, their relationships with parents and care-givers, the sights and sounds and smells and feelings they encounter, the challenges they meet determine how their brains are wired. And that brain shapes itself through repeated experiences. The more something is repeated, the stronger the neuro-circuitry becomes, and those connections, in turn, can be permanent. In this way, the seemingly trivial events of our earliest months that we cannot even later recall -- hearing a song, getting a hug after falling down, knowing when to expect a smile -- those are anything but trivial.

And as we now know, for the first three years of their life, so much is happening in the baby's brain. They will learn to soothe themselves when they're upset, to empathize to get along. These experiences can determine whether children will grow up to be peaceful or violent citizens, focused or undisciplined workers, attentive or detached parents themselves.

We now have reached the point of understanding that a child's mind and a child's body must be nourished. During the first part of the 20th century, science built a strong foundation for the physical health of our children -- clean water and safe food, vaccines for preventable diseases, a knowledge of nutrition, a score of other remarkable other lifesaving achievements. The last years of this century are yielding similar breakthroughs for the brain. We are completing the job of primary prevention, and coming closer to the day when we should be able to ensure the well-being of children in every domain -- physical, social, intellectual, and emotional.

I have very high hopes not only for this conference, but for what I hope will come from it. But there are, however, two things I hope this conference will not do. The first is I hope this information will not burden or overwhelm parents. Parenting is the hardest job in the world, and the information we offer today is meant to help parents, not to make them anxious or imprison them in a set or rules. If you forget to read to your child one night, please, that's okay. (Laughter.)

Think of this conference as a map. And like any good map, it shows you a lot of different ways to get where you need to go. Many American parents have been asking for just such a map. A new survey, "From Zero to Three," the National Center for Infants, Toddlers and Families shows a real hunger on the part of parents for knowledge on how they can play a positive role in their child's early development. And I hope this conference in one of the ways we answer that call.

The second thing I hope does not happen is to create the impression that once a child's third birthday rolls around, the important work is over. The early years are not the only years. The brain is the last organ to become fully mature anatomically. Neurological circuitry for many

emotions isn't completed until a child reaches 15. So there is always room for appropriate stimulation, loving and nurturing care by adults who are invested in a child. There's always something that concerned adults can do.

And that has special relevance for adoption. Adoptive parents can make an enormous difference for a child at any time, and especially for older children.

That said, here is what I hope the conference will accomplish. I hope it will get across the revolutionary idea that the activities that are the easiest, cheapest and most fun to do with your child are also the best for his or her development -- singing, playing games, reading, story-telling, just talking and listening. Some of my best memories are reading to our daughter, even if I fell asleep in the nine hundredth reading of "Goodnight, Moon." But reading to her when she was young was a joy for Bill and me, and we think also a joy for her. But we had no idea 15, 16, 17 years ago that what we were doing was literally turning on the power in her brain, firing up the connections that would enable her to speak and read at as high a level as she possibly could reach.

I hope that the science presented in this conference will drive home a simple message, one supported in great detail by a report being issued today by the President's Council of Economic Advisors. If we, as a nation, commit ourselves now to modest investments in the sound development of our children, including especially our very youngest children, we will lay the groundwork for an American future with increased prosperity, better health, fewer social ills and ever greater opportunities for our citizens to lead fulfilling lives in a strong country in the next century.

There's a quote I particularly like from the Chilean poet, Gabriella Mistral, that reminds us, "Many things we need can wait; the child cannot. Now is the time his bones are being formed, his blood being made, his mind being developed. To him, we cannot say, tomorrow. His name is today." We have known this instinctively, even poetically; now we know it scientifically.

And I'm pleased to introduce someone who has been saying this and practicing it for a long time -- maybe not in poetry, but certainly in the countless stories and books and songs that he has shared not only with our daughter, but with our nephews and, really, any small child who ever crosses his path. As the President of the United States and as a father, he has acted on these beliefs, putting the well-being of children at the very center of national policy. So it pleases me greatly to introduce my fellow reader of "Good Night, Moon," the President, Bill Clinton. (Applause.)

THE PRESIDENT: Thank you. Thank you very much. Thank you very much, and welcome to the White House. I was relieved to hear Hillary say that the brain is the last organ to fully develop. It may yet not be too late for me to learn how to walk down steps. (Laughter.) Or maybe I was thinking it was because I was always hugged when I fell down as a child, I did this

subconsciously on purpose. (Laughter.)

Let me begin by thanking the members of the Cabinet who are here. I see Secretary Riley and Secretary Glickman. I thank Governor Romer and Governor Chiles for being here. I think Governor Miller is coming. There are many others who are here. Congresswoman De Lauro is either here or coming. Thank you, Governor Miller. I see I was looking to the left there. (Laughter.) He's from Nevada -- he just went up five points in the polls when I said that. (Laughter.)

Let me say, first of all, the first time I met Hillary, she was not only a law student, she was working with the Yale Child Study Center, and she began my education in these issues. And for that, I am profoundly grateful. And I thank her for bringing the scientists, the doctors, the sociologists, the others whose work is the basis for our discussion today here. And I, too, want to thank the thousands of others who are joining us by satellite.

This unique conference is a part of our constant effort to give our children the opportunity to make the most of their God-given potential and to help their parents lead the way, and to remind everyone in America that this must always be part of the public's business because we all have a common interest in our children's future.

We have begun the job here over the last four years by making education our top domestic priority, by passing the Family Leave act and now trying to expand it and enact a form of flex time which will give parents more options in how they take their overtime in pay or in time with their children, by the work we have done to expand the Family and Medical Leave Act and by the work we've tried to do to give parents more tools with the v-chip and the television rating system, and the work we are still carrying on to try to stop the advertising and marketing and distribution of tobacco to our children, and other work we've done in juvenile justice and trying to keep our kids away from the dangers of alcohol and drugs.

All these are designed to help our parents succeed in doing their most important job. Now it seems to me maybe the most important thing we can actually do is to share with every parent in America the absolutely stunning things we are learning from new scientific research about how very young children learn and develop. In that regard, I'd like to thank Rob Reiner and others who are committed to distributing this information, and I'd like to thank the media here in our Nation's Capital and throughout the country for the genuine interest that they have shown in this conference.

I think there is an instinctive understanding here that this is a very, very big issue that embraces all of us as Americans, and that if we learn our lessons well and if we're patient in carrying them out, as Hillary said, knowing that there is no perfect way to raise a child, we are likely to have a very positive and profound impact on future generations in this country. So I want to thank, again, all of you for that.

Let me say there are some public programs that bear directly on early childhood development -- the Head Start program, which we've expanded by 43 percent over the last four years; the WIC program, which we've expanded by nearly 2 million participants. I have to say that I was a little disappointed -- or a lot disappointed to see a congressional committee yesterday vote to underfund the WIC program. I hope that if nothing else happens out of this conference, the results of the conference will reach the members of that congressional committee and we can reverse that before the budget finally comes to my desk.

I would also like to remind all of you that this conference is literally just a start. We have to look at the practical implications of this research for parents, for care-givers, for policy-makers, but we also know that we're looking at years and years of work in order to make the findings of this conference real and positive in the lives of all of our children. But this is a very exciting and enormous undertaking.

This research has opened a new frontier. Great exploration is, of course, not new to this country. We have gone across the land, we have gone across the globe, we have gone into the skies, and now we are going deep into ourselves and into our children. In some ways, this may be the most exiting and important exploration of all.

I'm proud of the role that federally-funded research has played in these findings in discovering that the earliest years of life are critical for developing intellectual, emotional and social potential. We all know that every child needs proper nutrition and access to health care, a safe home and an environment; and we know every child needs teaching and touching, reading and playing, singing and talking.

It is true that Chelsea is about to go off to college, but Hillary and I have been blessed by having two young nephews now -- one is about two and one is about three -- and we're learning things all over again that, I must say, corroborate what the scientists are telling us.

We are going to continue to work on this, and I know that you will help us, too. Let me just mention two or three things that we want to work on that we think are important. We've got to do a lot more to improve the quality, the availability and the affordability of child care. Many experts consider our military's child care system to be the best in our country. I'm very proud of that, and not surprised.

The man responsible for administering the Navy's child care system, Rear Admiral Larry Marsh, is here with us today. He leads a system that has high standards, including a high percentage of accredited centers, a strong enforcement system with unannounced inspections, parents have a toll-free number to call and report whatever concerns they may have, training is mandatory and wages and benefits are good, so, staff tends to stay on.

I am proud that the military places such importance on helping the families of the men and women who serve our country in uniform. But it's really rather elementary to know that

they're going to do a lot better on the ships, in the skies, in faraway lands if they're not worried about how their children are faring while they're at work serving America.

To extend that kind of quality beyond the military, I am issuing today an executive memorandum asking the Department of Defense to share its success. I want the military to partner with civilian child care centers to help them improve quality, to help them become accredited, to provide training to civilian child care providers, to share information on how to operate successfully, and to work with state and local governments to give on-the-job training and child care to people moving from welfare to work.

I think this is especially important. Let me say in the welfare reform bill, we put another $4 billion in for child care. In addition to that, because the states are getting money for welfare reform based on the peak case load in welfare in 1994, and we've reduced the welfare rolls by 2.8 million since then, most states, for a period of time until an extra session comes along, will have some extra funds that the can put into more child care. This gives states the opportunity they have never had before to train more child care workers, to use funds to help even more people move from welfare to work and perhaps even to provide more discounts to low-income workers to make child care affordable for them.

This welfare reform effort, if focused on child care, can train lots of people on welfare to be accredited child care workers and expand the availability of welfare in most of the states of the country. It's not true for every state, because some of them have had smaller drops in the case load and three have had no drops. But, by and large, the welfare reform bill, because of the way it's structured, gives all of you who care about child care about a year or two to make strenuous efforts, state by state, to create a more comprehensive quality system of child care than we have ever had before. And I certainly hope that what we can do here, plus the support of the military, we'll see dramatic advances in that regard.

I'd like to thank the people here who have done that work. And I'd like to say that we are going to hold a second conference, this one devoted exclusively to the child care issue here at the White House in Washington this fall. And I hope all of you who care about that will come back.

The second thing we want to do is to extend health care coverage to uncovered children. The budget I have submitted will extend coverage to as many as 5 million children by the year 2000 with the children's health initiative in the budget proposal -- to strengthen Medicaid for poor children and children with disabilities, to provide coverage for working families through innovative state programs, to continue health care coverage for children of workers who are between jobs. There is an enormous amount of interest in this issue in both parties, I'm happy to say, in the Congress in this session. And I quite confident that if we'll all work together, we can get an impressive expansion in health care coverage for children in this congressional session.

I'm pleased that Dr. Jordan Cohen, the President and CEO of the Association of American Medical Colleges is with us today to lend his association's strong support to these

efforts. With the support of leaders in medicine, again I say, I am convinced we'll have a bipartisan consensus that will extend coverage to millions more uninsured children.

The third thing we want to do is this: Because we know the great importance of early education, we're going to expand Early Head Start enrollment by at least one-third next year. Early Head Start was created in 1994. It's been a great success in bringing the nutritional, educational and other services of Head Start to children aged three and younger and to pregnant women. It has been a real success and we need to expand it.

Today we are requesting new applications for early Head Start programs to accomplish the expansion. And to help parents to teach the very young, we developed a tool kit called, "Ready, Set, Read," part of our America Reads challenge, designed to make sure that every child can read independently by the 3rd grade. This kit gives tips on activities for young children. It's going out to early childhood programs all across the country along with a hotline number for anyone else who wants the kit.

The fourth thing we're going to do is to protect the safety of our children more. In particular, we have to help young children more who are exposed to abuse and violence. Let me tell you, as you might imagine, I get letters all the time from very young children. And my staff provides a significant number of them for me to read. The Secretary of Education not very long ago gave me a set of letters from children who were quite young, a couple of years ago gave me a set of letters from children who were in the 3rd grade. But sometimes I get them from kindergarten children and 1st grade children, talking about what they want America to look like.

And it is appalling the number of letters I get from five- and six-year-olds who simply want me to make their lives safe; who don't want to worry about being shot; who don't want anymore violence in their homes; who want their schools and the streets they walk on to be free of terror.

So, today the Department of Justice is establishing a new initiative called "Safe Start," based on efforts in New Haven, Connecticut, which you will hear about this afternoon. The program will train police officers, prosecutors, probation and parole officers in child development so that they'll actually be equipped to handle situations involving young children. And I believe if we can put this initiative into effect all across America, it will make our children safer. And I'm glad we're announcing it today during Victims of Crime Week.

We all know that it's going to take a partnership across America to help our children reach their full potential. But the toughest job will always belong to our parents -- first teachers, main nurturers. Being a parent is a joy and a challenge. But it's not a job you can walk away from, take a vacation from, or even apply for family leave from. (Laughter.) The world moves too fast, and today, parents have more worries than ever. Work does compete with family demands, and finding a balance is more difficult than before. That's why this must always be

part of the public's business.

Let me come now to the bottom line. The more we focus on early years, the more important they become. We know that these investments of time and money will yield us the highest return in healthier children, stronger families and better communities.

Now, let me say, finally, I know that none of us who are in politics, none of us who are just parents, will ever know as much as the experts we're about to hear from today. But what they're going to tell us is the most encouraging thing of all, which is, they have found out that we can all do the job. No matter how young, a child does understand a gentle touch or a smile or a loving voice. Babies understand more than we have understood about them. Now we can begin to close the gap and to make sure that all children in this country do have that chance to live up to the fullest of their God-given potential.Again, I thank you all for being here. I thank our experts, I thank the First Lady. And I'd like to ask Dr. David Hamburg to come up and sit there and take over the program.

David?

Thank you. (Applause.)

END 11:10 A.M. EDT

Terry -

NBAC is the President's Bioethics Advisory Commission. Childress wrote for Kennedy School of Ethics Journal. Good stuff B-

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Kennedy Institute of Ethics Journal 6.4 (1996) ix-x

Introduction

The Kennedy Institute of Ethics celebrated the twenty-fifth anniversary of its founding at its annual Advanced Bioethics Course in March 1996. The course, entitled "Bioethics in the Twenty-First Century," provided an opportunity for 20 former and present senior research scholars of the Institute to reflect on the past and anticipate the future of bioethics in the next century. This issue of the *Kennedy Institute of Ethics Journal* contains 18 of the papers presented at the course; Madison Powers's article "Forget about Equality" was published in the June 1996 issue of the *Journal* and William F. May's lecture "Money and the Medical Profession" will appear in the March 1997 issue.

In the first article of the current issue, Warren Reich revisits the October 1971 press conference that officially launched the Kennedy Institute of Ethics and reflects on some of the intellectual, moral, cultural, and political factors that shaped the Institute and the new field of bioethics. The 17 remaining articles are organized into 6 groups according to topic.

The three papers in the first group discuss "Theories and Methods in Bioethics." Laurence McCullough argues that John Gregory's medical ethics of the eighteenth century can and should inform twentieth-century bioethics, especially the concept and "fragile reality" of the physician as fiduciary of the patient. Bryan Hehir discusses the status and role of natural law in Catholic theology, especially in bioethics, and suggests that its future role will be influenced by a pluralism of sources and voices in the Catholic community. Tristram Engelhardt argues that in a post-modern, post-Christian world such as ours, in which the only source of common moral authority among strangers will be consent, the very project of bioethics must be reconsidered.

The second group of papers reflect on "Theory and the Clinic." John Harvey describes the enduring influence of William Osler on the principles, ethics, and standards of medical practice. Edmund Pellegrino, a physician, reminds scholars and practitioners that, while bedside decision making tempers the abstractness of ethical theory with the realities of the clinic, clinical ethics must evaluate itself against a normative source other than its own self-generated norms: theory and practice must both be retained. Hans-Martin Sass, a philosopher, recognizes the need in the clinical setting to tailor the values and principles of theory to real-life situations and asserts as well that theories will benefit by accepting the challenges brought upon them by clinical practitioners. Ruth Faden concludes the section by exploring the impact that the theory of informed consent, the strategy adopted by bioethics early on to establish the moral authority of patients, has had in the area of clinical research. **[End Page ix]**

Two papers examine another element of clinical practice, the nature of "The Patient-Physician Relation." Roy Branson reflects on the roles of virtues and obligations in the patient-physician relationship and then suggests the need for an ethics of vision, which creates new understandings of the reality within which virtue and obligation play their roles. Robert Veatch envisions a new era for the patient-provider relationship in which the Hippocratic ethic, called into question by the medical ethics of the current generation, gives way to a pairing of patients and providers based on shared values.

On the topic of "Death and Dying," Tom Beauchamp argues against the traditional distinction between killing (euthanasia and physician-assisted suicide) and letting die (treatment refusal) and suggests that

support for physician assistance in dying may soon become the received opinion in both law and bioethics. Rihito Kimura discusses the changing perceptions of issues pertaining to death and dying in Japanese culture. Kevin Wildes examines why the controversies surrounding death and dying persist despite many years of ethical reflection and discourse; he submits that the same realities are likely to affect all issues in bioethics.

LeRoy Walters introduces the topic of "Ethics and Human Reproduction" with a look at some of the recent history of ethics and assisted reproduction and a discussion of current and future issues in that area of bioethics. Richard McCormick examines the Catholic tradition's treatment, in terms of dominion and limits, of six areas that touch on human life and the implications of that discussion for issues in reproductive ethics. Margaret Little identifies and explores two issues of particular importance to discussions in the ethics of reproduction: the value of biological connection and the meaning of motherhood.

In the final section, "Ethics and the Allocation of Scarce Resources," James Childress focuses on one of the persistent questions in the area of organ transplantation, how available organs should be allocated, and underscores several important themes for debates about organ allocation as we enter the next century. John Langan reviews six elements of Catholic social teaching that are relevant to the just allocation of scarce resources in American health care.

The breadth of topics explored by the authors in this special, twenty-fifth anniversary issue of the *Kennedy Institute of Ethics Journal* demonstrates the degree to which the field of bioethics has flourished since the Institute's founding in 1971. It also is clear that some of the ethical problems confronting medicine have been around for centuries and that they, and many others, will persist well into the next.

Carol Mason Spicer

Kennedy Institute of Ethics Journal 6.4 (1996) 323-327

Revisiting the Launching of the Kennedy Institute: Re-visioning the Origins of Bioethics

Warren Thomas Reich

Twenty-five years ago, on October 1, 1971, at a press conference held at Georgetown University, the Joseph and Rose Kennedy Institute for the Study of Human Reproduction and Bioethics, later called the Kennedy Institute of Ethics, was officially inaugurated. To revisit that event--and the Institute's five founding collaborators who spoke at it--provides an opportunity to re-vision some of the most significant intellectual, moral, cultural, and political factors that shaped both this Institute and the then-nascent field of bioethics.

Eunice Kennedy Shriver, who spoke at the press conference, was intensely committed to a new sort of philanthropy that would effect socio-political change in favor the dignity and well-being of the mentally disadvantaged. As executive vice-president of the Joseph P. Kennedy, Jr. Foundation, she had already applied the Foundation's vision and resources to the task of harnessing the best of the "biological revolution" of the 1960s to prevent developmental disorders. Prompted by the values at stake in the care of the disadvantaged, she turned the Foundation toward the creation of the Institute in 1971.

Just prior to the opening of the Institute, Mrs. Shriver had produced and appeared as introducer in a highly influential film, "Who Shall Survive?", which dealt with a "mongoloid baby" who was allowed to die in the newborn clinic because of its condition. Showcased at a highly publicized symposium involving 2000 people (Editorial 1971) and widely discussed in the press, the film helped to establish neonatal ethics as paradigmatic for the emerging field of bioethics (Bedeviling Question 1971; Rothman 1991, pp. 190-221). Undoubtedly under the influence of her involvement in the publicizing of those issues, Mrs. Shriver commented at the press conference that she hoped the Institute would re-emphasize the value of children in face of the widespread feeling that children are a burden (Kennedys 1971, p. 19).

At the press conference, then president of Georgetown University, Robert J. Henle, S.J., announced the Kennedy Foundation's grant of $1.35 million to establish the Institute. Henle was undoubtedly alert to the fact that certain issues, such as abortion and terminating the lives of infants, would be perceived **[End Page 323]** as highly controversial when raised at a Catholic university. Not surprisingly, reporters at the press conference raised provocative questions about how Georgetown University would reconcile Catholic moral doctrine with the Institute's broadly-based inquiries. Henle replied tersely that the Institute "will be a 'truly ecumenical and catholic effort,' defining catholic in its classical meaning of universal" (Helping 1971). The reporters might have found it quite ironic that within a few years Georgetown's ecumenical vision had provided the intellectual environment that permitted the Institute to become famous for development of the first systematic, secular (principle-based) approach to bioethics (Reich 1995).

Father Henle was probably also aware that by launching the Kennedy Institute he was creating the first institute principally devoted to ethics research ever established at a university. It took a special sort of university to take this first step into bioethics research and policymaking. In 1971, ethics was regarded

as belonging to religion, and religion was generally regarded as suspect academically. While it was difficult, in that atmosphere, for a nonreligious university to take such a bold step, Henle's Georgetown University offered a promising setting that could scarcely have been found in any other university. It departed from the common mold of Catholic-college-as-indoctrination-center, yet it had an explicit and unashamed commitment to the investigation of religious and secular values in an environment of academic freedom. It was an increasingly cosmopolitan university, committed to developing the best of secular scholarship. Furthermore, Henle was willing to experiment with as-yet unproven interdisciplinary studies.

Sargent Shriver--god-father of the Kennedy Institute, chairman of its first Advisory Board, and a constant dialogue partner of his friend and the Institute's founding director, Dr. André Hellegers--was intensely interested in linking scientific progress with religious belief, unfettered moral debate, and commitment to disadvantaged humans.

At the inaugural event, the new Institute was described as "unique in its introduction of ethicists into laboratories [and] clinical areas . . . where life and death decisions . . . are made" (Kennedys 1971, p. 18). This element of the Institute was revolutionary, at a time when physicians held almost unquestioned authority in medical matters. Shriver, whose public life had been devoted to advocacy for the powerless (as founding director of both the Peace Corps and the Job Corps), stated bluntly: "I'd be very happy to see one of the ethicists [of the Institute] blast one of the doctors for doing something wrong" (GU to Study 1971). His bold comment was emblematic of the societal forces that were even then precipitating a shift in medical authority away from science toward ethics (Fagot-Largeault 1985), away from "insiders" (physicians) towards "outsiders" (patients, research subjects, and the public)--a power shift that characterized the rise of bioethics (Rothman 1991). **[End Page 324]**

Senator Edward M. Kennedy (D-MA), who spoke at the press conference in his role as president of the Kennedy Foundation, signalled the future importance of bioethics for the formation of public policy. He cited, as issues the Institute would study, problems that were then crying out for policy clarification: whether there is a right to reproduce defective children; the just distribution of scarce lifesaving "artificial kidney machines"; and policy issues involved in "creating test tube babies."

At the time of the Institute's inaugural, Kennedy was refocussing the initial bioethics interests of the U.S. Senate. Just two years after the October 1971 event, the U.S. Congress, under the leadership of Senators Kennedy and Mondale, established the first-ever national bioethics commission in response to the public outcry against abuses in biomedical research, in particular the Tuskegee Syphilis Study (Rothman 1991, p. 3).

Thus, it is not surprising that at the launching of the Kennedy Institute Senator Kennedy made a comment that anticipated future ethics commissions. He pleaded: "Human life is too precious and the decisions regarding it too important to leave to any one group of specialists--doctors, lawyers, scientists, political leaders, or theologians [the ethicists of those times]." He contended that the multidisciplinary teams that would function in the Kennedy Institute would represent a preferred, collaborative decision-making process (New Institute 1971).

As this historical account indicates, the founding of the Institute was a team effort; yet in a distinctive way the Institute was the product of Dr. André E. Hellegers, founding director of the Kennedy Institute and Professor of Obstetrics/ Gynecology and Physiology/Biophysics at Georgetown University. The Kennedy Foundation began funding Hellegers in 1963 as Kennedy Senior Research Scholar in mental retardation at Johns Hopkins University, and in 1964 they awarded him a grant to support a center for medical ethics and human reproduction, also at Hopkins (Paulist Profiles 1967; Fetal Research 1971). He was the brilliant entrepreneur of ideas, people, funding, and institutions and the trusted inspirer of scholars who established both the Institute and the environment essential to its accomplishments.

Among the controversial issues that laid the groundwork for bioethics, none equaled in intensity, popular concern, or ethical, religious, and legal controversy the impassioned, decades-long debates about contraception, sterilization, abortion, and assisted reproduction that were shaped by religious moral convictions, ecclesiastical authority, attitudes of and about women, the limits of the law, and global requirements for good health and well-being.

Hellegers, who had grown up professionally in the midst of all dimensions of these issues, had the ideal scientific, professional, and humanistic background for starting the interdisciplinary institute that he described at the press conference as a bioethics institute whose design would include a specialization in the **[End Page 325]** ethics of human development and reproduction. He had been president of the Society for Gynecologic Investigation and the Perinatal Research Society, a member of President Johnson's Commission on Population and Family Planning, and deputy secretary general of the Papal Commission on Population and Birth Control.

Hellegers' vision was manifest at the launching of the Institute. For example, he said he hoped the Institute's perinatal research would make it possible for fetuses one day to be treated in situ, which would be preferable to having abortion as the only alternative; and he proposed what would later develop into major ethical methodologies when he said the Georgetown program would "go from specific case histories to the development of ethical principles" (Grant Establishes 1971).

The Kennedy Institute's inaugural event was replete with the sense of starting not only a new institute but a new field of learning as well. While today's scholars increasingly claim the field of bioethics started in the early- or mid-1960s, these collaborating founders of the Institute regarded their own 1971 initiative as "unique in combining ethics and science and . . . pioneering in developing a new field of joint research," which they called bioethics. Henle spoke prophetically on the point. Just as, throughout scientific history, "fields of study have changed their perspective when the original discipline was inadequate to the effective pursuit of truth," prompting chemists to create the sub-specialty of biochemistry and physicists to launch the field of biophysics, so too, Henle predicted, "bioethics will assume the same importance to mankind as these other fields" (Kennedys 1971, p. 18).

A retrospective of the public launching of the Kennedy Institute twenty-five years ago makes possible a re-visioning of some significant social, cultural, and intellectual elements that produced this field of learning: the moral struggle between science and religion/ethics; the power struggle over who would control medical authority; the debates about fertility control, women's procreative rights, and international health; moral anxiety about the biological revolution and innovative medical technologies; a new breed of philanthropy; a political orientation deeply concerned about the moral shape of health-related forces in society; the crucial role of the U.S. Congress; the creative tension between religious and secular elements in higher education; the formative influence of increasing scientific specialization and interdisciplinarity; and the impact of the media not only on public opinion but on the agenda of intellectual inquiry.

The twenty-fifth anniversary of the Kennedy Institute is a propitious moment to re-evaluate the contemporary implications of the forces that shaped this field.

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Kennedy Institute of Ethics Journal 6.4 (1996) 329-333

Bioethics in the Twenty-First Century: Why We Should Pay Attention to Eighteenth-Century Medical Ethics

Laurence B. McCullough

Theories and Methods in Bioethics

Those of us who work in the field of bioethics tend to think that, because the word "bioethics" is new, so too the field is new in all respects, but we are not the first to do bioethics. John Gregory (1724-1773) did bioethics just as we do it, at least two centuries before we thought to do it (Gregory 1772). He deployed philosophical methods as sophisticated as our own. Indeed, Gregory took up the very best moral philosophy available to thinkers of the Scottish Enlightenment, namely, David Hume's moral philosophy and its core concept of sympathy. Gregory also responded in a conceptually powerful and clinically applicable way to the problems of his time, just as we do. I want here to outline Gregory's accomplishment and to identify some aspects of its importance for bioethics in the twenty-first century.

Gregory's "Problem List"

Gregory wrote his medical ethics as a response to the then current state of medicine in Britain. We now follow Gregory in our writing of bioethics and clinical ethics in response to the problems of our time. A great deal that we now take for granted did not then exist. [1]

There was not, as there is now, any uniform pathway into medicine. Nor did there exist universal licensure. The Royal Colleges did attempt to assert, but failed to achieve, monopoly control of medical practice. The concepts of health and disease were themselves contested and therefore competed for their success in the market place. There was a marked oversupply of practitioners who competed fiercely--very fiercely indeed--in the medical market place for their concepts of health and disease, their treatments, and therefore their livelihoods. Patients had their own concepts of health and disease, engaged in "self-physicking" or self-care, and often traded physician's prescriptions.

Medicine exhibited little scientific discipline in its accounts of disease and in determining the efficacy of treatments, a fact that Gregory (1743) laments as a **[End Page 329]** medical student. There was no marked improvement when he began to give his medical ethics lectures nearly a quarter of a century later. Treatments failed as often, perhaps more often, than they succeeded in benefiting patients. The sick usually sought out the help of a physician after trying self-physicking.

Physicians, Gregory taught, could not hope to *control* human biology, though they could aim to manage its processes well. When nature underresponds to disease the physician should assist her processes; when nature overresponds, the physician should tamp down nature's responses, to lessen their "violence"--in both cases always attentive to the limits of medicine's capacities in treating disease.

Physicians attended the well-to-do sick at home, and the sick person summoned and dismissed physicians, surgeons, or apothecaries at will. A physician therefore might find himself--no women had yet been admitted to the ranks of university-trained physicians--summoned before, after, or simultaneously with a competitor, with his concepts and diagnosis and treatment put to the acid test. In this setting, there existed only a patient-physician relationship, not a physician-patient relationship.

Physicians left off the care of dying patients, a practice that was made a matter of duty by Friederich Hoffmann (1749). One would suffer punishing economic consequences if one had a high mortality rate. Better, then, to label the patient incurable, withdraw, and turn matters over to clergy. Gregory attacks this practice as intellectual fraud and calls for the physician to continue to attend the dying. Indeed, he says, "It is as much the business of a physician to alleviate pain, and to smooth the avenues of death, when unavoidable, as to cure diseases" (Gregory 1772, p. 35). He does not explicitly address what we now call physician-assisted suicide; neither does he condemn it, and he is quick to condemn some things--e.g., sexual abuse of female patients or "sporting" with patients in the Royal Infirmary by using experiments as the first line of treatment.

The Royal Infirmary was established to care for the deserving, working poor, who received free care. The sick had first to obtain a ticket of admission from one of the benefactors of the Infirmary and then pass screening by the lay managers of the institution, who selected against patients with "fever" or any other sign of life-threatening illness, to keep mortality rates down. Thus, a not-for-profit institution invented market segmentation for the purpose of advancing institutional self-interest. The lay managers exerted strict control of resources and complained regularly of the overuse of resources and high mortality rates on the teaching ward.

There were regular accusations of callousness made against the physicians of the Infirmary, who were appointed by the benefactors and served without recompense. Physicians, Gregory says, abused the label "incurable" by applying it too quickly, so as to rationalize the use of experiments as the first line of **[End Page 330]** treatment. Institutional support existed for an emerging physician-patient relationship, but as yet there was no ethics to guide and regulate the growing power of physicians in this new institution.

All of these problems combined to create a crisis of confidence, on the part of the sick, in those who put themselves forward as medical practitioners. "Whom can I trust?" became an urgent question for the sick in a medical market place driven largely, often exclusively, by the physician's pursuit of self-interest. Medicine, Gregory feared, had become commercial, a trade or means to the end of the physicians's self-interest. Gregory, deeply under the influence of the fading, Highland ideals, railed against commerce in general and commerce in medicine in particular.

Gregory'S Response

Gregory utilizes the great invention of Scottish Enlightenment philosophy, Hume's moral sense philosophy of sympathy, to address these and other problems. His topic list includes: truth-telling to the seriously ill; confidentiality, especially with regard to female patients; sexual abuse of female patients; consultations, including negotiating the then very unstable borders between medicine and surgery and between physicians and apothecaries, mistakenly thought by some commentators to involve mere etiquette; abandoning dying patients; the abuse of patients for experimentation; animal experimentation; and the definition and clinical determination of death. This topic list anticipates much of what we now take to be "new" problems. In what follows, I consider his method for moral philosophy and its consequence, the invention of the ethical concept of the physician as the moral fiduciary of the patient.

Gregory was steeped in Scottish moral sense philosophy, having studied and accepted Hume's moral philosophy while he was teaching at King's College in the 1750's, during which time he helped to found and played a very active role in the proceedings of the Aberdeen Philosophical Society (Ulman 1990). Numerous sessions of the Society were devoted to the critical study and discussion of Hume's ([1739-40] 1978) *A Treatise of Human Nature*. Gregory absorbed and accepted the central concept in Hume's moral philosophy, sympathy, which had a technical meaning for Hume that was well understood and accepted in his time.

The virtues of properly functioning sympathy are tenderness and steadiness. Women of learning and virtue, Gregory believed, provide the moral exemplars of these virtues--particularly women of the London Bluestocking Circle, especially Mrs. Elizabeth Montagu (Myers 1990). To use current terminology, Gregory genders sympathy as feminine (Tong 1993), thus writing the first feminine medical ethics long before theories of care based on affiliative or relational psychology (More 1994).

Gregory thus writes the first philosophical, secular, professional, clinical, and **[End Page 331]** feminine medical ethics in the English-language literature of medical ethics (McCullough, forthcoming 1997). He did so just as we do, by bringing to bear the methodological tools of philosophy on the actual problems encountered by physicians and health care institutions. In doing so, he solves a very serious problem for the medicine of this day, its lack of professional character in the ethical sense. Gregory took the view that medicine involved a life of service and sacrifice in the care of patients--the physician as moral fiduciary.

This concept bears crucially on what will arguably be *the* ethical challenge early in the new century, the managed practice of medicine (see McCullough, forthcoming 1997, especially Chapter 4). We are, without realizing it, recreating the very conditions of medicine that Gregory found ethically unacceptable and set out to improve. Moreover, we are in the process of undermining, if not destroying, the concept and fragile reality of the physician as fiduciary of the patient. Our task is to reforge Gregory's legacy of the physician as fiduciary into the concept of the physician as an economically disciplined and responsible fiduciary. We should, Gregory would rightly warn us, treat this concept as unstable. How we ought to manage its instability will be one of the central questions of twenty-first century bioethics. We should pay attention to Gregory's eighteenth-century medical ethics, because it helps us to see clearly the nature of the ethical challenge facing American medicine now and for the indefinite future and provides us with the conceptual tools to address that challenge effectively.

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Note

1. For my account of the care of the sick at home, I rely on Dorothy Porter and Roy Porter (1989) and for my account of the care of patients at the Royal Infirmary of Edinburgh, I rely on Gunther B. Risse (1986).

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Bioethics and Natural Law: The Relationship in Catholic Teaching

J. Bryan Hehir

Theories and Methods in Bioethics

In the discipline of Catholic moral theology, bioethics (traditionally described as medical ethics) has held a major place. The systematic development of bioethics has drawn principally upon a natural law ethic, supported by broader religious arguments. The purpose of this essay is to examine the status and role of natural law in Catholic teaching as it bears upon bioethics.

Natural Law and Catholic Theology

The role of natural law in Catholic theology is rooted in a prior conviction about the complementary relationship of faith and reason. The conviction finds initial expression in patristic authors, then preeminently in Thomas Aquinas and consistently in modern papal teaching of the twentieth century. Flowing from this conviction, as a premise of Catholic theology and teaching, is the **[End Page 333]** notion that a second source of moral wisdom exists along side the revealed wisdom of the Hebrew and Christian scriptures. This second source of wisdom is the product of rational reflection upon human nature and experience. In the tradition of natural law ethics (expressed in a plurality of versions), such reflection affirms an objective moral order, accessible to reason and based upon a conception of the person as both spiritual and social. The spiritual nature, expressed in the capacity for reflection and free choice, is the foundation of the natural law ethic, providing the human person a unique status in the created order. The social nature of the person locates each human being in a framework of social relationships, articulated in a complex of rights and duties and finding expression in three basic communities: the family, civil society, and the human community.

The fully developed framework of a natural law ethic has five dimensions. It yields a theory of society, a doctrine of the state, a charter of duties and rights, a jurisprudence, and an applied ethic. At each level of this framework, the natural law ethic is contested by other contemporary philosophical positions. In this article, space demands that stress must be placed on the natural law affirmations without trying to engage the critics.

The centrality of the social nature of the person yields a theory of society that is organic in character, laying strong emphasis on the social fabric of existence. Hence the theory has traditionally emphasized both order and justice more strongly than claims of freedom. The doctrine of the state, in contemporary natural law arguments, supports a limited yet activist state, limited by constitutional restraints and human rights claims, yet activist in its conception of a broad range of social obligations, particularly to the poor. The charter of rights affirms a range of both political-civil and socio-economic rights; the traditional natural law emphasis on a structure of duties has been complemented in the twentieth century by its stress on the role of human rights. The jurisprudential theory of natural law has been its most prominent aspect; it affirms a moral grounding for civil law, but distinguishes precisely between the

comprehensive nature of moral law and the more limited scope of civil law, restricted to the maintenance of public order in society. Finally, the natural law framework finds expression in Catholic teaching in three areas of applied ethics: social ethics (civil society and international relations), sexual ethics, and bioethics.

History and Status

While a natural law ethic has been a staple of Catholic social and bioethical teaching, it has not held similar status in the wider arena of contemporary philosophical or theological ethics. Through the 1950s, therefore, one could find a strong consensus supporting natural law within the Catholic community and ongoing debates within the wider world of philosophy and bioethics. Since the 1960s, any description of the status and role of natural law must consider the debates within Roman Catholicism itself about the role and status of natural law. **[End Page 334]**

It is possible to distinguish two stages of these internal arguments in the church. In the period from 1960 to 1990, three events in Catholicism directly influenced the standing of a natural law position: John XXIII's encyclical *Pacem In Terris* (1963), Paul XI's encyclical *Humanae Vitae* (1968), and the teaching of the *Second Vatican Council* (1962-1965).

Pacem In Terris is the most systematic and expansive statement of contemporary natural law social ethics in Catholic teaching. It progressively sets forth a view of the person, the relationship of citizen and state, the relations of states in the international arena, and finally an analysis of citizen and state vis-à-vis the international community. Both within the church and in the broader intellectual world, the encyclical attracted attention and support. It represented a consensual statement of contemporary Catholic social ethics. *Humanae Vitae*, the encyclical devoted to the teaching on contraception produced a very different response. While its statement of the natural law argument about contraception included refinement and development of the traditional teaching, its conclusion, which sustained the earlier teaching against contraception, fractured the theological community. The expected opposition to the teaching from outside the church was joined by a substantial body of dissent--both practically and theoretically--within the church. The contrast between the reception given the social ethic and the sexual ethic (both using a natural law framework) in the 1960s established a pattern that exists to the present moment in the Catholic world. Some of the most visible and vocal critics of *Humanae Vitae* are strong supporters of a natural law social ethic.

The third event of the 1960s, the experience and teaching of Vatican II, provided both the context and the content for the debate about natural law. The conciliar teaching did not address the natural law ethic in a specific way, but it contributed two crucial themes to any discussion of the ethic in Catholic teaching. First, the council legitimated and encouraged the return to a biblically based theology, and, second, it opened a discussion about the role and understanding of teaching authority in the church. The return to the scriptures provided an alternative perspective to the philosophical style of the natural law ethic. The examination of distinct levels of authority in magisterial teaching, the role of theological dissent, and the strong emphasis on personal conscience that have been so prominent in the post-conciliar theological discussion in the church were catalyzed by and contributed to the *Humanae Vitae* debate and to similar topics in sexual and bioethics since Vatican II. These controversies involve not only specific issues in applied ethics but the understanding of natural law itself.

The post-conciliar arguments about the premises and conclusions of a natural law bioethics have generated a series of responses from Rome. This second stage of the natural law debate includes three major contributions spanning the last decade: *Donum Vitae* (1987) from the Congregation of the Doctrine of the Faith; and John Paul II's two encyclicals, *Veritatis Splendor* (1993) and **[End Page 335]** *Evangelium Vitae* (1995). The 1987 "Instruction on Respect for Life" was a comprehensive document examining "new technologies of birth." The framework of analysis was a natural law social ethic that generally drew strong support from theologians and secular commentators. However, the analysis of specific issues, ranging from abortion to experimentation on embryos to artificial insemination, generated a range of responses that illustrated the diversity of theological perspectives within the church on the use of natural law in the casuistry of bioethics. The encyclical *Veritatis Splendor* was a sophisticated reaffirmation of the natural law ethic in the face of criticisms made over the past decade.

While neither of these documents invoked solely a natural law argument, they reaffirmed the magisterium's commitment to retain basic positions drawn from natural law principles.

The Future

The future role of natural law in Catholic moral theology, and specifically in bioethics, will be influenced by a pluralism of sources and voices in the Catholic community. The sources, biblical and philosophical, will continue, it seems, to tilt more toward a biblical-theological analysis than toward the Catholic teaching manifested in the pre-conciliar period. The pluralism of voices significantly will include lay perspectives often representing specific expertise in fields touching bioethics, as well as the increasing role of women writing in moral theology. Neither of these foreshadows a major shift away from natural law, but both could shape the way in which it is used in Catholic thought. Finally, the strong social framework that natural law provides for bioethics may be its most important contribution to the dialogue that the church has with the broader civil society on issues of bioethics.

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Bioethics Reconsidered: Theory and Method in a Post-Christian, Post-Modern Age

H. Tristram Engelhardt, Jr.

Theories and Methods in Bioethics

A candid assessment of the moral significance of our post-Christian, post-modern era calls for a reconsideration of the very project of bioethics. For many bioethicists, concerns for theory and method are secondary. [1] These scholars presuppose a common morality and a reasonable, overlapping consensus regarding **[End Page 336]** an appropriate polity. They assume as well that we, as humans, possess middle-level principles, casuistic capacities, and guiding intuitions that enable us, inter alia, to identify which allocations of health care are unfair, whether the purchase of organs from the poor is exploitative, and if physicians may require as a condition for treatment agreement on a professional standard for the disclosure of information in the acquisition of consent. In this account of bioethics, we are taken to share a content-full moral understanding. Theory may illuminate that understanding and method may resolve particular controversies, but neither is necessary to disclose the nature of the moral life in the domain of health care. The account presents us as bound by a content-full morality, about which we have pretheoretical knowledge and in terms of which we are able to reach appropriate decisions, even if we have competing theoretical understandings of that morality.

This dominant account of bioethics has interesting similarities with Roman Catholic moral theology in assuming (1) the existence of a common canonical morality grounded in our nature, our sentiments, and/or our reason, as well as (2) the ability of reason, reflection, or analysis to disclose the substance of that morality. The difficulty is that there are diverse moral sentiments, sympathies, and visions. The depth of our disagreements can be gauged in our substantive disputes regarding abortion, physician-assisted suicide, and health care reform. Furthermore, no appeal to middle-level principles or to casuistry can bridge such differences when people really disagree. Such appeals only underscore what separates.

Consider how an appeal to the principle of autonomy or justice in mediating disputes regarding the licensing of for-profit euthanatization services or the enactment of a health care proposal like that produced by the Clinton administration in 1993 (White House 1993) will only disclose how deep the disagreements are, if the disputants are a Rawlsian and a Nozickian (Rawls 1971, Nozick 1974). Or, consider an appeal to casuistry for the resolution of health care policy debates among parties, some of whom consider dumping and skimming to be morally exemplar acts of autonomy, frankness, and appropriate stewardship of resources (Engelhardt and Rie 1988), while the other parties regard them as exemplar acts of injustice. Such disputants will agree neither about the proper descriptions of the cases, nor about how to derive moral guidance from them, because they bring to the cases disparate moral senses and different understandings of moral rationality. In a world in which there are as many different accounts of fairness and justice as there are major religions, and where many may hold that exploiters are those who do not allow the poor to sell their organs to the rich, the presumption of a moral consensus or background morality (Bayertz 1994) serves more as an ideology than as a general authoritative moral

disclosure. **[End Page 337]**

In addition, it is not possible to choose among many [2] of the competing visions or accounts of justice, fairness, and appropriate behavior on the basis of sound rational argument. To choose authoritatively among competing content-full moralities or moral accounts, one must already have background moral guidance. If one is to choose the account that maximizes benefits over harms, one must be able to compare competing benefits. For example, in terms of consequences, one cannot compare liberty and equality outcomes without already knowing how to rank liberty and equality. One must already know the answer about which morality--e.g., the one that gives priority to liberty over equality, or the one that gives priority to equality over liberty--is authoritative. Nor will an appeal to preference satisfaction solve the difficulty of determining how to establish the canonical ethics and bioethics. One must first know how one should correct preferences, compare impassioned versus considered preferences, as well as identify God's discount rate for preference satisfaction over time.

So, too, appeals to a disinterested observer are impotent, unless one knows which moral sense to impute to that observer. After all, if the observer is truly disinterested, then it will not endorse any particular moral choice. The problem is that one must invoke a particular moral sense or notion of moral probity in order to generate a particular moral conclusion. To come to a rationally endorsed conclusion, one must already accept particular initial moral premises as well as rules of moral evidence and inference. One must either beg the question or engage in an infinite regress. This is not to deny that there is a canonical content-full morality, only that it can be discovered by sound rational argument. [3] We are left with diverse moral visions without a discursively rational basis to choose among them.

This state of affairs is very unsatisfactory for defenders of the dominant account of bioethics. Their account not only presupposes (1) a common morality with (2) a particular content, but also its (3) discursive disclosability, as well as (4) the moral authority to impose it on all. The hope of contemporary bioethics has been to realize the modern philosophical aspiration of disclosing a morality that should bind all. The Reformation left Christian Western Europe with a plurality of Christianities. If the Western faith in reason had been justified (Romanides 1981), then reason could still have united all in a common morality, even if persons were separated by diverse religious understandings. Had reason been successful in this regard, the outcome would have been a triumph after all: (1) one could have dismissed all who disagreed as irrational, (2) one would have had the moral authority of reason to impose the morality one had established, (3) the imposition of that morality by coercive force would have been congenial to the true rational nature of those subject to it, and (4) all would have grounds for knowing themselves to be members of one moral community so that society could appropriately be regarded as one community. The difficulty **[End Page 338]** is that rationality by itself is instrumental, without particular content, and unable by itself to establish a particular moral understanding. The hope by reason to disclose a secular surrogate for the Western Christian moral synthesis fails.

Under this circumstance, a content-full secular bioethics aspiring to be universally authoritative runs the risk of functioning as a dominant ideology, while its defenders become conceptive ideologists. [4] If they act as if the very character of reason or a rationally canonical understanding of sympathies, sentiments, or intuitions establishes their bioethics, though this cannot be discursively established, they act as if secular bioethics were a singular noun, even though it is plural. In a post-Christian, post-modern world lacking a rationally canonical morality, all bioethics is in the plural. A theoretical account of secular bioethics in showing that it cannot produce canonical content deconstructs the secular bioethics aspiration to authorize a particular canonical morality. The consequence of this position is that one must rethink the project of bioethics.

If one wishes to resolve moral controversies without a mere appeal to force, and if all do not listen to God so as to be united in one religion, and since reason cannot disclose a canonical moral vision, the only source of common moral authority among moral strangers will be consent. In this circumstance, the central practices of bioethics are those by which persons convey and withhold authorization or permission: (1) consent, (2) contracts, (3) limited democracies, and (4) the moral equivalent of rights to privacy. Authority will be the authority of agreement, not of God or of reason. Such a morality will be without moral content. [5] It will have no implications regarding how one should rank goods, including those of liberty and equality. Though this morality, and the secular bioethics it authorizes, will in this

sense be without moral content, it will have content-full secular moral implications through ruling out as wrong those views that endorse the imposition of a particular content-full understanding of morality or justice or that otherwise affirm the use of force against the unconsenting innocent. If the authority of a secular bioethics can be derived neither from God nor from reason, but only from the permission of those who participate, *then* those health care policy structures that can claim secular moral authority will be libertarian by default. This will be the case, since the authorization of the actions of large-scale, geographically located states will inevitably be limited.

Where does this lead us and bioethics? The theory of secular bioethics in the sense of the systematic and critical examination of its foundations provides the deconstruction of any canonical content, thus rendering secular bioethics either (1) a content-less ethics directed to methods for exploring the scope of feasible permissions from persons for common endeavors, or (2) a cluster of competing moral visions. An examination of this plurality of moral visions and intuitions discloses competing moral understandings, many of which possess the disturbing **[End Page 339]** character of Alasdair MacIntyre's Hawaiian mores (MacIntyre 1990, pp. 182-86). One finds forcefully endorsed intuitions regarding fairness, equality, exploitation, empowerment, and the like, without the necessary supporting foundations. As such, these convictions and intuitions become mere taboos. We must rethink the very project of bioethics.

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Notes

1. The arguments in this essay are developed in greater detail in Engelhardt (1996).

2. Some moralities and accounts of morality can be excluded as candidates for being the secular morality because of (1) their logical incoherence or (2) their violation of the principle of permission (see Engelhardt 1996, Chapters 2-3).

3. What cannot be known philosophically about the canonical content of morality can be known theologically (see Engelhardt 1995).

4. One wonders whether many bioethicists do not play the role that Marx describes for "conceptive ideologists, who make the perfecting of the illusion of the class about itself their chief source of livelihood" (Marx and Engels 1967, p. 40).

5. A content-less bioethics (and for that matter a content-less morality) is one that endorses no particular understanding of the good, the good life, or human flourishing. The bioethics I advance has a right-making condition--i.e., to act rightly, one must act with the permission of those on whom one acts--and a wrong-making condition--i.e., it is wrong to act on persons without their permission. These right/wrong-making conditions are not dependent on a content-full view of good or bad conduct or of human flourishing. They disclose a realm of moral authority allowing blame and praise, as well as morally authorized defensive and punitive use of force against the guilty--i.e., those guilty of having acted on the unconsenting. What is offered is a categorical possibility. A content-full bioethics (and for that matter morality) offers an account of the good, the good life, and human flourishing. A thin theory of bioethics (or morality) would advance an account sufficiently sparse so as not to rule out diverse alternative senses of the good life and of human flourishing. Rawls in his *A Theory of Justice* (1971) aspires to provide such a thin account (see, for example, pp. 392f).

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The Foundation of Ethical Theory in the Clinic

John Collins Harvey

Theory and the Clinic

William Osler has had a very profound and lasting effect on American medical education and medical practice. He set the pattern, still followed today, for the clinical training of medical students at the patient's bedside and in the clinical laboratory. In such settings Osler was able to demonstrate to his pupils the principles, ethics, and standards of medical practice that he espoused and thought fundamental to the profession of medicine. His monumental text book, *The Principles and Practice of Medicine*, first published in 1892, transformed the medical profession and remained a standard text for more than four decades (Leon 1995, p. 13). Renowned medical historians, such as Pedro Laín Entralgo, Henry Sigerist, and Richard Shyrock, recognize him as the greatest clinician that North America has ever produced.

Osler, who had observed bedside teaching in his post-graduate studies, recognized that this method had much to offer in the instruction of medical students. Opportunity to introduce this method of teaching into the medical school curriculum came in 1888 when he was called to serve as Professor of Medicine and Physician-in-Chief at the newly established Johns Hopkins Medical School and Hospital. Bedside teaching proved to be very successful especially in demonstrating to students the standards and ethics of medical practice that he espoused.

Osler's teaching method was immediately adopted by many of the university medical schools in the United States, including Harvard, Columbia, the University of Pennsylvania, and Stanford, all of whom appreciated the success of the Hopkins medical educational experiment. Graduates of the Hopkins Medical School quickly became a major source of faculty in medical schools in the United States. Many of Osler's immediate pupils became outstanding clinicians and leaders in American academic medicine and served as faculty members at Hopkins or in established or newly founded schools. Osler's disciples taught students in the wards the "art" of medicine according to his principles, ethics, and standards. The second and third generation faculty members, who were trained by Osler's immediate pupils, continue to this day to teach the "art" by employing this method of teaching. Consequently, the practice of medicine in the United States continues to be influenced by the ethics held by Osler. To find **[End Page 343]** the theories behind Osler's teaching, we must look at Osler's background, education, and writings.

The *Religio Medici:* Background For Osler'S Medical Ethics

Osler received a very solid traditional classical education at the small, excellent Anglican secondary school in Weston, Ontario run by the Reverend James Johnson, with whom Osler developed a life long friendship. Johnson's avocation was natural science. He first aroused Osler's interest in nature and science. Osler was taught Scripture well at Weston. He committed much of the Bible to memory and often quoted it in his speeches. He also studied both Greek and Latin, and was exposed to the writings of Plato, Aristotle, Cicero, and other classical authors, particularly the stoics.

While a student at Weston, Osler first came to know Sir Thomas Browne's remarkable text *Religio Medici* (The Religion of the Physician), which was to become a lifelong favorite. In his first address as the new Regius Professor of Medicine at Oxford in 1905, which was given to the Guy's Hospital Physical Society, he vigorously recommended the *Religio Medici* to the students.

The *Religio* is a deeply reflective personal inquiry into the paradoxical nature of one man as a microcosm of all men (Browne 1940, pp. 40, 53-54, 61-62). Browne participated in the Baconian program for the advancement of knowledge and the rise of "science." As a defense of the physician's faith, the *Religio* shows how neatly the scientist and the Christian united in the single figure of the inspired reader of God's two books, nature and Scripture, can defend an attitude that is both scientific and yet reverent. The central theme in the first and much longer part of the *Religio* is the relation between faith and reason. The second part of the *Religio* is about charity: Man's love of God and his neighbors, commanded as the fulfilling of the law (Matt 22: 37-39). Browne (1940, p. 67) asserts that the true religious purpose of Charity is obedience to God: "I give not almes to satisfie the hunger of my Brother, but to fulfill and accomplish the Will and command of my God." In this section, he also addresses another aspect or quality of charity before its meaning was narrowed, namely moral excellence. He describes the virtues of the man of moral excellence and in doing so reflects the Aristotelian Nicomachean ethics (Martin 1964, p. 34).

After Weston, Osler matriculated at the University of Trinity College in Toronto to study theology and prepare himself for ordination to the Anglican priesthood. At Trinity, he became familiar with the writings of the Fathers of the Church. He also found a great friend among the faculty, the brilliant physician James Bovell, in whose home he boarded as a student.

Bovell, whose avocation was theology, knew the *Religio* well and often quoted it in his teaching. His writings also indicate that he was acquainted with Percival. Bovell's influence on Osler was great, indeed, so much so that Osler decided to give up his ambition for the Anglican ministry and instead study **[End Page 344]** medicine. Osler decided with the encouragement of Bovell to transfer to McGill to finish his medical studies. There were greater opportunities for clinical experience at the Montreal General Hospital than at the Toronto hospitals.

The basis of Osler's ethics is revealed by some of his writings penned at different times through out his life. It is clearly a theological ethics. Osler marked with stars the opening paragraph of the *Religio* (Cushing 1925, Vol. I, p. 51):

> For my religion, though there be several circumstances that might persuade the world, I have none at all. As the general scandal of my behavior and discourse in matters of religion, neither violently defending one, nor with the common authors, neither violently opposing another, yet in despite hereof, I dare, without usurpation, assume the honorable style of a Christian.

In his Valedictory to the Medical Profession of the United States at the meeting of the Medical and Chirugical Faculty of Maryland in Baltimore on April 26, 1905, he began: "I give a single word as my parting commandment" and then he quoted Deuteronomy (30: 11-14).

> For this Law that I enjoin on you today is not beyond your strength or beyond your reach. It is not in heaven, so that you need to wonder: "who will go up to heaven for us and bring it down to us, so that we may hear it and keep it?" Nor is it beyond the seas, so that you need to wonder: "Who will cross the seas for us and bring it back to us, so that we may hear it and keep it?" No, the word is very near to you, it is in your mouth and in your heart for your observance--Charity! (Cushing 1925, Vol. I, p. 679)

In his lecture "The Master Word in Medicine," he said:

> A conscientious pursuit of Plato's ideal of perfection may teach you the three great lessons of life. . . . Learn to accept in silence the minor aggravations, cultivate the gift of taciturnity and consume your own smoke with an extra draught of hard work . . . . Second, we are not here to get all we can out of life for ourselves, but to try to make the lives of others happier.

> This is the essence of that oft repeated admonition of Christ; "He that findeth his life shall loose it and he that looseth his life for my sake shall find it" . . . the practice of medicine is an art not a trade, a calling not a business, a calling in which your heart will be used equally with your head . . . and the third lesson you may find the hardest of all--that the law of the higher life is only fulfilled by love i.e. Charity! (Osler 1932, p. 368)

In his farewell remarks at a dinner for him on the eve of his departure for England in 1905, Osler said:

> I have three personal ideals. One to do the day's work well and not to bother about tomorrow. The second idea has been to act the Golden Rule **[End Page 345]** as far as in me lay, towards my professional brethren and towards the patients committed to my care. And the third has been to cultivate such a measure of equanimity as would enable me to bear success with humility, the affection of my friends without pride, and to be ready when the day of sorrow and grief comes to meet it with the courage befitting a man. (Cushing 1925, Vol. I, p. 682)

It is quite clear that Osler's ethic of life is a theological one based upon divine revelation and expressed by the Judaic-Christian great law of love! "Love God and love your neighbor as yourself!" Like Sir Thomas Browne, Osler felt that there was not a philosophical system for medicine. He possessed an Englishman's characteristic regard for empirical inquiry over theory. Speculation about the causes of disease was an anathema to him. He relied on an inductive methodology. In a letter to the *Journal of the American Medical Association*, published on May 9, 1908, and penned in Vienna earlier that year--some 30-plus years after his only other visit to the city as a graduate student at the Allgemeines Krankenhaus--he wrote:

> Minerva Medica--as a medical center, Vienna has had a remarkable career, and her influence particularly on American medicine has been very great. She had never settled in Northern Germany for though she loves art she hates with a deadly hatred philosophy and all philosophical systems applied to her favorite study. Her stately German shrines, her beautiful Alexandrian home, her noble temples, were destroyed by philosophy. At these words she turned on me sharply and said: "That is not me, We gods have but one motto--those that honor us we honor. Give me the temples, give me the priests, give me the true worship, the old Hippocratic source of the art and of the science of ministering to man, and I will come." Doubtless she will come, but not till the present crude organization of our medical schools is changed, not until there is a fuller realization of internal medicine as a science as well as an art. (Osler 1908)

It is my thesis that the Oslerian tradition still guides medical pedagogy in America today. This tradition encompasses not only Osler's methodology for practical instruction in the art and science of medicine but in the transmission of a medical ethic--and this medical ethic has a theological grounding in the Judaic-Christian ethical system. This, I think is, still in this day, the ethical theory behind the clinic.

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Clinical Ethics: Balancing Praxis and Theory

Edmund D. Pellegrino

Theory and the Clinic

When André Hellegers founded the Kennedy Institute, he envisioned a close collaboration between ethics and clinical practice. He even called for physician specialists whose expertise would be in both fields (Reich 1994, p. 324). A quarter of a century later, his vision and prediction have become realities. Clinical ethics is today a thriving entity with its own literature, practitioners, and methodology.

This clinical turn has, on the whole, been salutary. The abstractness of ethical theory has been tempered by the concreteness of clinical realities; clinicians have been helped to make bedside decisions even in the face of theoretical uncertainty and dissonance; and a variety of disciplines besides theology and philosophy have entered ethical discourse and enriched it.

These advantages notwithstanding, clinical ethics has certain inherent traits that make it problematical. Some seek its norms in what "works" in practice or in paradigm cases (Jonsen and Toulmin 1988); others shape it to achieve consensus or satisfy the needs of public policy (Meilaender 1995); still others reduce bioethics to merely a method for the resolution of moral conflict. Rather than simply modulating theory by practice, clinical ethics can end up by repudiating theory entirely (Toulmin, in press). Taken to their logical conclusion, these tendencies make clinical ethics a species of the antifoundationalism that has strongly influenced moral philosophy in the last decade (Tollefsen 1995, pp. 3-18; Rockmore and Singer 1992). But antifoundationalism itself is a theory of ethics even though it supposedly denies the validity of any overarching theories.

Antifoundationalism presents its own difficulties. For one thing it begs important questions that will not go away: for example, how do we know that a decision is a good one? what does it mean to say that a decision "works"? is the **[End Page 347]** outcome of a good decisional procedure itself a good decision? and to what extent are compromise and exigency admissible in moral decisions? Theoretical and "foundational" questions of this sort will not evaporate because they are ignored. They inevitably will be answered by begging the essential questions or grounding them solely in prelogical presuppositions.

To avoid these difficulties, the advantages of clinical ethics must be retained without capitulation to the anti-theory bias of contemporary philosophy. This means that theory and practice must both be retained and be conceptually related to each other. To effect this we must take account of the long intellectual history of the relationship between the speculative and the practical intellect--i.e., between knowledge sought for its own sake and knowledge sought for some use beyond simply the possession of it (Lobkowicz 1967, pp. 78-81). Suffice it to say that medicine has long been the paradigm case for the union of theory and praxis. Relating them conceptually is an essential propaedeutic to any theory of moral praxis in medicine.

The rest of this essay examines the inextricability of theory and practice in two of the three major branches of clinical ethics--the substantive and the professional. The third branch, procedural ethics--i.. the ethics of the process of decision making--deals with informed consent, with respect for persons, professional colleagues, and families, and with the ethics of conflict resolution. Obviously, there are theoretical issues here as well. For want of space, procedural ethics will not be discussed, but it present the same conjunction of theory and practice encountered in professional and substantive ethics.

Substantive Ethics

Substantive ethics refers to the moral content rather than the process of moral decisions, to the moral status and permissibility of the specific clinical medical acts themselves--e.g., abortion, euthanasia, pre-implantation diagnosis, surrogate motherhood, withholding and withdrawing treatment, the physician as gatekeeper, and the like--the whole range of moral questions clinicians face in treating patients. Moral diversity and plurality on these issues is the most powerful force behind the dominance of procedural ethics. But, unfortunately, a morally valid decision-making procedure does not confer normative validity on the decision itself. Moral validity rests on questions that go beyond prevailing practices, on what we take to be the nature and moral status of persons, fetuses, and brain-damaged humans, the value or disvalue of certain lives.

These are the metaphysical presuppositions beyond practices per se. As Parkin (1995) shows, they are relevant and inescapable, and, pragmatists to the contrary, they are indeed relevant and make a difference in the way we act in practical moral situations (see Leavitt 1992). One or two examples will suffice. Michael Burleigh (1994), for example, shows how the "practice" of German physicians before and during the Holocaust was inspired by the belief that **[End Page 348]** codes of medical ethics were relative and that lives "unworthy of life" were owed a merciful death by involuntary or nonvoluntary euthanasia. Another example is the suggestion that humans in a permanent vegetative state, rather than healthy primates, should be used as experimental subjects (Frey 1988). Similarly, the creation of human embryos for purely experimental purposes has been defended on utilitarian grounds even while its proponents acknowledge the special moral status of those embryos (Report 1994, vol. 1, p. 2).

In each of these cases, the decisions "work," in some practical sense, to achieve some instrumental end. But simply working is not itself a moral justification. To be morally justified actions must produce a good end, and the definition of a good end is unavoidably a task for metaphysical reflection. If clinical ethics is to be at all "philosophical," it must evaluate itself against some normative source other than its own self-generated norms. This is why it has been suggested that practice of all kinds take the "philosophic turn" to see how, in government, corporations, medicine, and law, epistemological and metaphysical alternatives affect practices (Rorty 1989, p. 274). One need not, therefore, be accused of the Cartesian brand of foundationalism to argue for the necessity of metaphysically-based concepts like the dignity of persons and their inalienable rights to freedom, life, and political representation.

Professional Ethics

Professional ethics deals with the ethics of the health professional qua health professional, with those duties that flow from the act of profession and commitment to serve others in certain specific ways. The nature and extent of these obligations depends very much on what we think medicine or nursing *is*, what we mean by healing, and what virtues are entailed by the ends and purposes of healing. Clinical practice is guided by a philosophy of the healing relationship that establishes normative guidelines. But normative guidelines are themselves connected with the phenomena of healing and the healing relationship. Professional ethics, almost by definition, conjoins theory and practice. David Thomasma and I have argued that the ethics of medicine must be based in a philosophy of medicine and related to the ends of medicine as a specific kind of human activity (Pellegrino and Thomasma 1987).

This is consistent not only with the "Aristotelian hunger for concreteness" (Marx 1954), but also with Aristotle's search for the ontological foundation for the concrete--". . . that there is no science of the accidental is obvious; for all science is either of that which is always, or of that which is for the most part. For how else is one to learn to teach another?" (*Metaphysics* 1027a 19-22; McKeon 1968, p. 7[illegible] We learn what "is for the most part" by examining the concrete realities of whatever world we [illegible]

studying. For medicine this is the world of the clinical encounter where the speculative and practical intelligence simultaneously engage and re-enforce each other. **[End Page 349]**

Conclusion

Aristotle more convincingly than Plato recognized that human beings are not gods and that the best life for humans is one that combines theoria and praxis (Gadamer 1986). A life, or medical and clinical ethical practice, based solely in theory runs the risk of the tyranny of Cartesian rationalism, which would deduce physics, politics, ethics, and medicine from a few clear, eternally true ideas. The current turn to clinical ethics--to action, decision, and doing--is a welcome antidote to such an unbalanced foundationalism.

But practice, in its turn, may also impose its own form of conceptual tyranny in the moral skepticism of antifoundationalism. Clinical ethics needs a theory of praxis, something that bridges the realms of speculative and practical intelligence. A theory of medicine, guided by a theory of its praxis, can become the model for clinical ethics (Jaeger 1957). This seems the best fulfillment of Hellegers's hopes 25 years ago for the closest integration of medical ethics and clinical practice. It might also be a way for bioethics to recover the "soul" that some of its observers perceive missing in its present state (Meilaender 1995).

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The Clinic as Testing Ground for Moral Theory: A European View

Hans-Martin Sass

Theory and the Clinic

A Philosopher's View of Theory in the Clinical Setting

The clinic is a testing ground for theories. I am not clinician; I am a philosopher who has been in the clinic only as a patient or as an ethicist who never has had the final word nor was ever intended to have the final word. I have learned that in the clinical setting general norms and conceptualizations in the Kantian sense must be tailored to real-life situations. From the philosophical schools of analytical reasoning, I learned the skills needed to analyze words and meanings and to dissect problems and so-called "solutions." But even more impressive are the methodological skills of differential diagnosis, looking at medical problems from different angles and using different methods and instruments. The detail- and patient-oriented work of the clinician provides an excellent model of methodological clarity and professional devotion for a philosopher who assists those working for the "good of the patient." That model has led to the development of what I call a theory and methodology of differential ethics. **[End Page 351]**

Differential ethics is normative ethics, as it does not give up norms in favor of situational utility. Differential ethics does not venture out empty-handed in order to explore and find principles pre-existing in a given situation; rather it brings basic values and principles along with it and tries to discover the shape they must take and the priority they must be given in the situation at hand. Differential ethics differentiates between general norms and mid-level principles, virtues, and visions that must be introduced and protected effectively and specifically according to different scenarios (Sass 1993). From this European point of view, I shall briefly explain my position and comment on (1) the *controversy* between principlism and virtue theory, (2) *differentiating and balancing*, and (3) the importance of *trust*, both as a principle and as a virtue in the clinical setting.

Principlism Versus Virtue Theory: A Mistaken Controversy

From a European perspective, I find that the debate between the schools of virtue-theory and principlism in the United States is a mistaken controversy. The real conflict between the schools of thought is not methodology, but content. Tom Beauchamp (1995) gives examples of how one language or method can be translated into the other, and Edmund Pellegrino and David Thomasma (1988, p. 206) have formulated a rule for the virtuous physician that, in the language of principlism, reads "respect for autonomy," but in the language of virtue theory reads "To assist my patients to make choices that coincide with their own values or beliefs, without coercion, deception, or duplicity."

In different situations, however, some systems of reference are more authoritative and effective than others. Appealing to professional *virtues* would be the most efficacious way to address an audience

coherent in attitudes and concerned about personal character. Reaffirmation of personal and professional obligations in secular fraternities or religious communities works best when it includes an appeal to virtues in the language of the humanist tradition, moral theology, or professional ethics.But there are other situations in which authoritative attitudes and expectations are absent and society in general is searching for common, often dormant, principles that will hold it together whatever specific disagreements arise. Such a situation was present in 1978 when the Belmont Report (National Commission 1978) presented principles--respect for autonomy, nonmaleficence, beneficence, justice--and not virtues to guide moral and political reflections on and reactions to the ethical, legal, and social implications of modern biomedicine in a multi-faceted and multi-cultural society.

The formal difference between the systems of principlism, virtue theory, and value theory becomes even less important when clinical-ethical *questionnaires* are used to understand specific scenarios or cases and to assess different options for proceeding. Thus, my first thesis is: *Case discussion, scenario assessment,* **[End Page 352]** *and open questionnaires, rather than definite guidelines, bridge the difference between virtue theory and principlism, since such processes can employ any one language or a combination of all three.*

Differentiating and Balancing

My second thesis is: *Whatever system of reference is used, it is important that values, principles, visions, and goods be differentiated and balanced according to the case or scenario.* Values, such as the Kantian regulative ideas of God, liberty, and immortality or the constitutional rights to liberty, justice, and the pursuit of happiness, are conceptual and orientational *commodities* that must be tailored to real-life situations. Quite often conflicts in moral reasoning occur when values are used too generally and in a clumsy manner; differentiation typically is required.

Most guidelines, regulations, and other legal, technical, or moral instruments use what I call semi-finished mid-level or amalgamated principles or values, which are incomplete without further refinement. The term "harm," for example, as a semi-finished principle of medical harm, must be further differentiated into levels of discomfort, stress, injury, side effects, temporary or permanent loss of function, and the like. We may also term *semi-finished* those *mid-level* principles that apply to codes of conduct (professionally tailored, semi-finished forms of responsibility) or to rights of or requests for free speech (semi-finished forms of autonomy). Other semi-finished principles are amalgamated alloys, for example, informed consent, which amalgamates professional responsibility and client autonomy.

Values and principles also have to be balanced with regard to the specific requirements or possibilities of the scenario. Systems of law, codes of professional conduct, and house rules, whether in the clinic or a private residence, represent a given mix and balance of values or principles. The mix of values and principles is different in the clinical setting (e.g., patient autonomy, professional responsibility, do not harm, do good); the marketplace (e.g., consumer need, demand, stimulated demand, provider interest in market share, profit); and government-citizen interaction (e.g., liberty and security, justice, regulation versus market forces, social welfare versus individual responsibility).

Assessing scenarios on the basis of refined mid-level principles permits interplay between non-ethical and ethical principles and modifications in the scenario setup in order to more comfortably implement moral criteria. Working with mid-level principles circumvents a fight over general values, which might be necessary in some instances--e.g. general debates on abortion or on physician-assisted suicide, where basic convictions and values are indeed at stake--but not in the majority of clinical conflicts. **[End Page 353]**

Partnership In Trust

For too long, bioethics has focused almost exclusively on physician ethics and the ethics of research experts rather than on patient ethics and the layperson's competence in and responsibility for health. Progress in predictive and preventive medicine necessarily will have to shift attention from physician ethics toward patient ethics and a partnership in health care. From the perspective of trust-based communication and trust-based cooperation, it is only logical to strengthen the other side of the

partnership and make difficult cases of clinical decision making an issue for trust-based decision making in partnership. Classical European principles and values such as *solidarity* and *subsidiarity* will assist in the determination of the most appropriate or preferred provider for decision making. My third thesis, then, is: *The good of the patient can no longer be defined by the physician or the medical community heteronomously, but must be established in mutuality, by a partnership-in-trust.*

It has been suggested that the "the good of the patient" should be replaced by "the wishes of the patient," thereby treating the will of the patient as the final word in clinical decision making. But given the diversity in individual values, wishes, and visions, even this controversy must be settled by individuals and not by appeal to an objective standard. Experts and lay persons, as individuals, must set the ground-rules for their special interactions and must trust each other when doing so and when communicating and cooperating. Therefore, I formulate as my fourth thesis: *Trust becomes the overriding principle and virtue that establishes and safeguards all expert-lay interactions, particularly in the clinic.* The partnership model calls for replacing unilateral principlism, virtue-, or value-theory with *solidarity networks* of interactive and intertwined models of communication-in-trust and cooperation-in-trust (Sass 1994).

There are and always will be moral conflicts that, in a pluralistic society, cannot be resolved by appeals to uniform reasoning and governmental or majority behavior control. If we seriously believe in individual responsibility and self-determination, then we--and all other individuals and fractions in the society--have to respect individual conscience, values, and visions, which are different among educated and cultivated adults. It is here that another old-European principle comes into play, the principle of *subsidiarity*. Subsidiarity, as reformulated in the papal encyclical "Quadrogesimo anno" (Pius XI 1931), calls for the right of the individual or the small and primary group to do good based on their individual conscience and calling. It further requests that secondary groups or society in general honor individual conscience and withhold their own action and judgment when morally acting individuals accept the challenge.

When transported from the field of social ethics into the realm of bioethics, the principle of subsidiarity could, in postmodern language, be formulated in a fifth thesis: *Whenever politicians, theologians, philosophers, or pressure groups fight over principles, theories, and the preferred course of action, the primary* **[End Page 354]** *moral agent--i.e., the person closest to the moral challenge--should be given the right to follow her conscience and calling.* It was Spinoza who, in his "Tractato Theologic-Politicus" (1670), observed that giving justice and freedom to the individual person's conscience would not destroy the fabric of society, but rather strengthen it together with the individual's moral competence and responsibility, and that undermining an individual's conscience in the long run must undermine and destroy society altogether. The proof of Spinoza's postmodern vision of responsible individuals, solidarity, and subsidiarity can be seen in the collapse of modern societies previously based on the heteronomously given, uniform, and totalitarian rules and principles of fascism and Leninism against which the encyclical "Quadrogesimo Anno" argued so strongly.

The Philosopher'S Learning Curve

What does the Continental European philosopher take home from the encounter with practitioners in the clinic? He takes home the insight that there are certain aspects of the relationship between theory and practice and of the authority of theories that can only be learned in the confessional box, at the bedside, and in the ghettos we have created for the poor and the sick and those in despair. He also takes home yet another thesis, this time one directed toward his own craft, a thesis on progress in theory formation and theory application: *Theories will benefit if they accept the challenges of differentiating and balancing goods, values, virtues, and principles, brought upon the theoreticians by the practitioners and clinicians.*

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Informed Consent and Clinical Research

Ruth Faden

Theory and the Clinic

Informed consent is a powerful symbol of the commitment and impact of the new, interdisciplinary field of biomedical ethics that the Kennedy Institute has been so instrumental in developing. In the early years of biomedical ethics, there was considerable discussion about the nature of the doctor-patient relationship, about how it ought to be structured, and about how competing values within that relationship ought to be accommodated. By the 1970s and 1980s, the answer was for all practical purposes in. Biomedical ethics was engaged in a clearly reformist project, in step with the values of the times, to right a wrongful imbalance of power and control between physicians and patients.

The agenda was clear--to establish the moral authority of the patient to participate in medical decision making by placing respect for the autonomy of patients on the moral map of the medical community. The chief strategy that biomedical ethics adopted to accomplish this agenda was, of course, informed consent. Theories of autonomous action as well as informed consent were intentionally crafted to advance this reformist agenda.

In this paper, I examine how the theory of informed consent has fared in one particular realm of "the clinic" where, arguably, there has been considerable success. This is the realm of clinical research; research at the bedside where the patient is also the subject.

I rely heavily on the work of President Clinton's Advisory Committee on Human Radiation Experiments, which I chaired. The Advisory Committee was established in response to exposés in the press about alleged secret experiments during World War II and the Cold War in which patients had been injected with plutonium without their apparent knowledge or consent. As part of its work, the Advisory Committee undertook an oral history project in which we interviewed eminent physicians about the norms and practices of human research in the 1940s and 1950s.

Drawing on these interviews, I argue here for two seemingly inconsistent conclusions. First, that the ethical standards for clinical research have changed dramatically in the last 50 years--particularly with respect to informed consent. Second, that despite these important changes, the human dynamics of clinical research in many respects remain unchanged.

How the World of Clinical Research Has Changed

During the forties and fifties, duties to obtain informed consent, whether for treatment or for research, were simply not part of the doctor-patient experience. **[End Page 356]**

As one physician told us:

> In 1945, '50, the doctor . . . was king or queen. It never occurred to a doctor to ask for consent for anything. Doctors weren't in the habit of telling the patients anything (either). They were in charge and nobody questioned their authority. (Advisory Committee on Human Radiation Experiments 1996, p. 83)

This unquestioned authority extended to all decisions about the management of the patient, including whether patients were to receive experimental therapies or otherwise become the subjects of research or experimentation. Physicians were trained to be concerned with risk, and harm, and benefit, in keeping with the Hippocratic tradition. But in most institutions, the permission to try something new and to take unknown risks came, not from the patient, but from the chairman of the department.

In part, this broad license reflected the very newness of scientifically grounded medical practice. In the forties and fifties, many potentially therapeutic interventions were newly discovered and in this sense considered experimental, or at least innovative. The level of uncertainty about whether a treatment would work was generally high, whether the treatment was part of a research project or not. Moreover, the formalizing of medical science at the bedside was itself still in its infancy--it was not until 1948 that the first modern clinical trial in which patients were randomized to different treatment and control groups was reported in the literature. Much of the research of this period was informal and unsystematic.

Thus, it is not surprising that the physician's authority to make treatment decisions extended to treatments that were innovative or experimental, regardless of whether these innovative treatments were the subject of formal scientific investigation. What is perhaps more surprising is that physicians often acted the same way--that is, used patients as research subjects without consulting with them or asking their permission--even when the patients could not possibly benefit from the research and the purpose of the research was solely to advance medical knowledge.

One physician remembered a study of the then new technique of cardiac catheterization on patients with bacterial endocarditis, an invariably fatal disease at the time:

> [This is] something I wouldn't dare do now. It would do no good for the patient. They had to come to the lab and lie on a fluoroscopic table for a couple of hours, a catheter was put into the heart, a femoral needle was put in so we could get femoral arterial blood and so on. . . . I don't remember ever asking their permission to do it. . . . Such a thing as **[End Page 357]** informed consent, that term didn't even exist at that time. . . . [I]f I were ever on a hospital ethics committee today, I wouldn't ever pass on that particular study. (Advisory Committee on Human Radiation Experiments 1996, p. 83)

What is perhaps most important about this physician's recollection is the implication of his last comment--that today such practices would not be permitted. The world of clinical research is today very different than it was in the forties and fifties. This is true in large measure because of places like the Kennedy Institute founded by a physician--André Hellegers--who had the moral vision to see beyond the way he was trained and to embrace new values and new practices.

Today, research with patients no longer is authorized solely by the chair of the department. Today, the authorization, the moral warrant to proceed with research in a hospital setting, comes from both an institutional review committee and, most importantly, the patient. The rule is clearly articulated and widely accepted--competent patients may be enrolled as subjects in biomedical research only with their express, informed consent.

This, then, is my first conclusion. There could not be a more dramatic sea change in professional ethics than that represented by this rule of informed consent.

Consent and Clinical Research Today

This said, however, I want now to explore the moral meaning of this sea change in practical terms. Just how different is the world today? What, in fact, has informed consent brought to the experience of clinical research?

The physicians we interviewed endorsed the changes that have taken place over the course of their professional careers and saw these changes as instances of moral progress. At the same time, however, several of the physicians were quick to point out the limits of requirements to obtain informed consent. Most patients, we were told, readily agree to almost anything presented by their physicians. The sicker the patient, the poorer the prognosis, the more dependent and eager to please the patient generally becomes. This is understandable, it is human nature, these physicians of 50-years experience thoughtfully explained. Patients trust their doctors; they need to trust their doctors. In this respect, little has changed in 50 years. The dynamics of illness, dependency, and human need remain essentially the same. As important as requirements of informed consent may be, a patient's best protection, we were told, is not informed consent, but the integrity of the physician and the strength of her commitment to the patient's welfare.

Interestingly, we heard much the same view from people who are currently **[End Page 358]** patients. In addition to interviewing senior physicians, the Advisory Committee surveyed almost 1,900 patients receiving outpatient care in oncology and cardiology in 16 hospitals in 5 locations throughout the country, many of whom had had some experience with clinical research. More than 100 of these patients, all subjects in medical research projects, were interviewed in depth about their experiences as research subjects (Advisory Committee on Human Radiation Experiments 1996, pp. 459-88).

Virtually all of these patient-subjects reported that it had been their decision to participate in research. At the same time, however, many of them indicated that they had not focused much on either the consent process or the consent form. Their decision to participate in research was not influenced by descriptions of risks and potential benefits, but by their trust in the doctors. Many of them spoke powerfully about their belief that the doctors would not do anything to hurt them and would always act in their best interests. Sometimes these deep expressions of trust extended also to the research institutions in which they were receiving care.

Despite decades of discussion about the theory of informed consent and the moral commitments that underlie it, despite the best reformist efforts on the part of biomedical ethics to put respect for the autonomy of the patient at the core of the medical encounter, the dynamics of illness and the dynamics of the clinic remain, in important respects, unchanged.

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Virtues, Obligations, and the Prophetic Vision

Roy Branson

The Patient-Physician Relation

> Ethics at its best is only bad poetry--
> that is, it seeks to help us see what
> we see every day but fail to see rightly . . .
> If ethicists had talent, they might be poets,
> but in the absence of talent, they try to
> make their clanking conceptual and
> discursive chains do the work of art.
>
> --Stanley Hauerwas

The speaker was so severely bent over that his congenitally deformed back had to be supported. He was a young Ph.D. in history. We were some 50 physicians, lawyers, health care administrators, and ethicists studying the ethics of organ transplants. Before he arrived, the conference had discussed different understandings of equal access and the nuances of federal policies governing organ transplant distribution. [1] In his lecture, our guest matter-of-factly described his own condition. He then pointed out that not only in ancient civilization but in American history as well, the disabled had been killed just because they were disabled. Indeed, even now, he said, they were not being allowed to live.

In the question and answer session, he was immediately challenged by nationally prominent transplant surgeons. He responded by asking the surgeons: If two people could avoid death and anticipate significantly prolonged life from receiving an organ transplant and the only difference between them was that one was disabled and the other not, who would receive the life-saving transplant? The surgeons' initial, spirited defense of excluding the significantly disabled person died down as they began to realize that, as far as they were concerned anyway, they might not have allowed the lecturer to live. They were stunned by the realization that they had not felt the disabled were fully persons. In the silences between their sentences, the participants sensed that they had passed beyond the discussion of economic, medical, and legal terms to glimpse new horizons of responsibility. **[End Page 361]**

The conference was experiencing the truth of William F. May's claim that moral quandaries must be placed within "a fresh and liberating vision of the world;" within "metaphysical horizons" (May 1983, pp. 15, 19).

Pastoral Virtues

In the late sixties, André Hellegers, the dynamic physician and Catholic layman who founded the Kennedy Institute of Ethics and who claimed that he had invented the word bioethics, focused bioethics elsewhere--on virtue. "As the caring branches of medicine were gradually pushed aside by the curing

ones," Hellegers said, "there seemed to be less use for the Christian virtues." We must, he declared, "recapture the Christian virtues of care" (cited in McCormick 1985, p. 111). In a subsequent essay on the conceptual foundation of bioethics, Hellegers, writing with Albert Jonsen, did not invoke the word pastor, but he did argue that the codes drawn up for the ethical practice of medicine were, among other things, guides for the cure of physicians' souls (Jonsen and Hellegers 1976, pp. 35-36).

In 1969, at the same time that André Hellegers was in the process of establishing the Kennedy Institute, Edmund Pellegrino, then a medical school dean, led in the founding of humanities programs within American medical schools. Pellegrino, like Hellegers, a physician and Catholic layman, also focused on virtue. Obligations are not irrelevant for Pellegrino, but in biomedical ethics "one starts always with one's commitment to be a certain kind of person and then approaches clinical quandaries, conflicts of values, and patient interests as a good person ought" (Pellegrino 1988, p. 123). Pellegrino knows that the classical and Christian tradition of Aristotle and Aquinas, a tradition with which he identifies, is concerned with the whole gamut of ethics. But for Pellegrino, that tradition teaches that "no matter to what depths a society may fall, virtuous persons will always be the beacons that light the way back to moral sensitivity" (p. 123). He freely acknowledges that "a virtue-based ethics is inherently elitist, in the best sense, because its adherents demand more of themselves than does the prevailing morality" (p. 123).

Hellegers and Pellegrino added to the need of physicians acquiring professional skills their responsibility to become the embodiment of the moral ideal in the patient-physician relationship by caring for the patient as a friend (see Laín Entralgo 1969, pp. 159, 175, 193).

Priestly Obligations

Philosophers and several of the theologians who became involved in bioethics in the late 1960s and early 1970s acknowledged the existence of virtues, but emphasized bioethics as the analysis of obligations. Scholars at the Kennedy Institute and the Hastings Center, established in 1969, emphasized principles **[End Page 362]** and norms. Out of the Kennedy Institute's Intensive Bioethics Course have come the four editions of the *Principles of Biomedical Ethics* by Tom Beauchamp and James Childress. Much of the work of Robert Veatch and LeRoy Walters have explored how general moral obligations apply to biomedical practice and research.

No one has more rigorously brought principles to bear on the doctor-patient relationship than Robert Veatch. Veatch recognizes the significance of the physician's virtues, so important to Hellegers and Pellegrino, but for Veatch virtue is not paramount. Obligations are all-important. For Veatch, rights and duties within a doctor-patient relationship arise from not one, but three contracts. Veatch insists that these contracts mean the practice of medicine must be governed by principles and obligations equally relevant to the patient as friend or as stranger (Veatch 1983).

The ethics of obligation has become a part of the established order. As Daniel Callahan, the co-founder and director of the Hastings Center, said, "applied ethics" must encompass "the policy-making process," where "general solutions and binding group norms need to be worked out" (Callahan 1980, pp. 1232-33). Theologians and philosophers working in bioethics served as commissioners and staff of a whole series of public policy bodies, beginning with the National Commission for the Protection of Biomedical and Behavioral Research. These ethicists have assumed that it is possible to identify moral principles derived from a common morality that are relevant, if not necessary, to the promulgation of government polices and regulations affecting biomedicine in America. Their role is very much like that of Biblical priests: Informing and clarifying the meaning of relevant moral principles for those exercising power.

But beyond forming the character of individuals and shaping public policy according to moral principles, more and more writers sense that we must grasp the meaning of the whole. Beyond the pastoral ethics of virtue and the priestly ethics of obligation, one glimpses the silhouette of the prophet and an ethics of vision.

Prophetic Vision

More consistently than anyone else, William F. May has taught bioethics that visions and images

"retrieve the past and chart the future. . . . Overriding images shape and order our experience and present us with the imperatives by which we live" (May 1983, p. 14). More than a decade ago, he called for professional ethics to regard as its goal the identification of a "corrective vision." Recently, Tris Engelhardt has underscored the importance for bioethics of there being no "common moral vision" (Engelhardt 1995). Robert Veatch is even ready to abandon informed consent if the doctor and patient are members of a community with a shared "fundamental world view" (Veatch 1995, p. 11).

An ethics of vision is dramatic. Imagination redeems us from the merely contemporary. The metaphors and symbols of the imagination threaten destruction **[End Page 363]** of the present by making the old or the new irresistible. We are attracted or repelled by our present, as we compare it with ideal pasts and futures that only the imagination can bring. By not only informing the intellect but by moving our passions, imagination activates the will and inaugurates new eras.

An ethics of vision is not shy about enlisting imagination to move the passions. As Martha Nussbaum has pointed out, passions can be forms of belief. If we see an outrage being perpetrated on an innocent and vulnerable person, and we feel nothing--or even feel very little--do we really *believe* an outrage is being committed (Nussbaum 1990, pp. 156-57)? When we see corporate executives knowingly pushing nicotine on children, a quarter of a billion of whom they know will die prematurely from using their product, and we feel very little, do we really believe that the presidents of Philip Morris and R. J. Reynolds are acting in a morally outrageous way?

Writers who emphasize an ethics of virtue often invoke biblical narratives, such as the gospels, that recount the actions of persons whose character exemplify canonical Christian virtues. Writers who explicate obligation, like Robert Veatch, frequently note the importance of contract; what May calls the covenantal vision of gift and response. Many scholars agree with Birch and Rasmussen, in their *Bible and Ethics in the Christian Life*, that the way to relate the Bible to ethics is to appropriate the Bible's "compelling vision." Still, discussions of moral vision have seldom drawn on the powerful imagination of those biblical poets we call prophets.

This may be because virtue ethics assumes a vision of caring, even loving harmony, and an obligation ethics dominated by the image of contract assumes a vision of at least negotiated settlement. Reconciliation is common to both. By contrast, the poetry of the prophet is often a revelation of conflict, defeat, and triumph and a passionate invitation to enlist in moral struggle.

An ethics of vision creates new understandings of the reality within which character is shaped and casuistry carried out. An ethics of virtue insists that the plantation owner should love the slave. An ethics of obligation argues that the legislature and the courts should acknowledge the rights of slaves in law. A visionary ethic dares to imagine a society without slavery at all.

An ethics of virtue teaches us to learn from the disabled how character is developed through adversity, to appreciate how the disabled can be the wounded healers of the uncompassionate healthy. An ethics of obligation explains the duties owed by individuals, society, and government to this population of the least advantaged. It clarifies the rights the disabled can claim. An ethics of vision overturns the accepted perception of disability; it expands and transforms our perception of who is included in the human community.

Roger Shattuck ends an essay on nineteenth and twentieth century European culture by lamenting that today "there seem to be no powerful imaginations at work on the institutions that serve." "Do we need a religion," he asks, "to inspire **[End Page 364]** the leap of imagination?" (cited in Branson 1988, p. 25). The answer is yes, because:

> After the seas are all cross'd
> (as they seem already cross'd)
> After the great captains and engineers have
> accomplish'd their work,
> After the noble inventors, after the scientists,
> the chemist, the geologist, ethnologist,
> Finally shall come the poet worthy that name,

The true son of God shall come singing his songs.

Walt Whitman, (Passage to India, 5:101-105, *Leaves of Grass*)

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Note

1. Paul K. Longmore, Research Fellow, Huntington Library, speaking at the conference, "The Heart of the Matter: An Invitational Conference on Ethics and Justice in Organ Transplantation," sponsored by Loma Linda University, Loma Linda, California, 17-18 November 1986. This account and some other materials in this essay are drawn from Branson (1988).

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Ethics and the Allocation of Organs for Transplantation

James F. Childress

Ethics and the Allocation of Scarce Resources

A quarter of a century ago, in my second year of teaching at the University of Virginia, I began to explore the emerging field of biomedical ethics through a seminar on "Artificial and Transplanted Organs," which included both faculty and students from law, medicine, and the humanities. My paper for the seminar was entitled "Who Shall Live When Not All Can Live?" This experience drew me into biomedical ethics, because of the complex mix of ethical, legal, and medical issues and the fruitfulness of interdisciplinary and interprofessional dialogue.

Several of the major problems confronting that seminar have persisted, often in altered form. In the area of organ transplantation, two significant issues continue to require society's attention: (1) how can the organ supply be increased, and (2) how should the available organs be allocated? I want to make a few points about ethical criteria in the allocation of donated organs, as a way to indicate some directions for organ allocation policies in the twenty-first century. I will focus on the second question because I believe that a tremendous and ever-widening gap will persist between the need for transplantable organs and the supply of human cadaveric organs.

Community Ownership of Donated Organs and Public Participation

Since the mid-1980s, the operative conception of the ownership of donated organs has shifted, with major implications for the procedures used to formulate policies for organ allocation. As vice-chair of the federal Task Force on Organ Transplantation in the mid-1980s, I did not immediately realize that debates about allocation policies often reflected different conceptions of the ownership of donated organs. More specifically, organ allocation policies largely presupposed that donated organs belonged to, or were under the dispositional authority of, transplant surgeons, with only limited public accountability. However, the Task Force (1986) held that donated organs belong to the community, and that transplant professionals are only trustees and stewards of those organs for the **[End Page 397]** community's welfare. This conception of ownership implies that the public should participate in setting the criteria for organ allocation.

According to Jeffrey Prottas (1994), another member of the Task Force, these shifts represent the "socialization" of organ transplantation. Although professional dominance, through knowledge and power, continues in the United Network for Organ Sharing (UNOS)--the national organ procurement and transplantation network that was established in the late 1980s--that dominance is now more circumscribed and accountable, particularly because UNOS, in developing any allocation policy, has to respond "to public criticisms with public answers." Not only is organ allocation policy now in the public domain--and thus a matter of public ethics rather than medical ethics--the terms of the debate have changed, as Prottas further notes, so that equity must be considered along with efficiency.

Balancing Several Ethical Principles or Values

The main ethical criteria for organ allocation express principles that are prominent in the major competing theories of justice, particularly libertarian, egalitarian, utilitarian, and communitarian theories. The principles of liberty, equality, utility, and community all play important roles, and organ allocation policies often seek to *balance* these competing principles, which frequently are specified or circumscribed--for instance, utility is specified as *medical utility*. Just or equitable policies are found in the process of balancing.

UNOS (1994) attempts to develop an equitable organ allocation system in light of a "set of basic principles" and "specific measurable objectives" that have been derived from these principles. It uses the metaphor of "balance" for its efforts to relate these different principles and objectives. For instance, it holds that balancing requires that "equal consideration" be given to both medical utility and to justice, so that neither can be ranked a priori over the other. However, it may not be possible to "give equal weight to [both] medical utility and justice" (UNOS 1994, p. 123) because trade-offs appear to be unavoidable in many policies and are consistent with the metaphor of balancing.

Medical Utility and Equality

Medical utility--maximizing the welfare of patients suffering from end-stage organ failure--includes, at a minimum, attention to the factors that influence both graft and patient survival, as well as to patient needs for transplantable organs. In kidney transplantation, the scientific and ethical debate about medical utility often focuses on tissue matching, especially in view of available immunosuppressive medications. This technical debate influences judgments about the conditions under which kidneys should be shared outside their community of origin. For example, since cyclosporine is nephrotoxic, many argue that a **[End Page 398]** donated kidney needs to be transplanted quickly in order to increase the chances of successful transplantation. A donated kidney can be used more quickly if it is used locally rather than shipped elsewhere.

It is essential to determine which degrees of tissue matching really make a significant difference in transplantation outcomes over time. It is also morally imperative to monitor tissue matching to determine if it has unjustified discriminatory effects, for example, against blacks and other minorities. If such discriminatory effects emerge and persist, it may be necessary to sacrifice some probability of success in order to take affirmative action to protect blacks and other minorities. A 1994 UNOS decision decreases the emphasis on tissue match and gives more priority to time on the waiting list, apparently without reducing successful outcomes.

According to the Council on Ethical and Judicial Affairs of the American Medical Association (1995), allocation policies for organs (and other scarce resources) should depart from equal opportunity mechanisms, such as time on the waiting list, *only* where there are *very substantial differences* in such factors as probability of success. Of course, there is debate about when differences between patients are very substantial. Specifically, the AMA Council contends that, in the absence of conclusive evidence on the importance of HLA matching in ensuring a successful graft, it may not be justifiable to give priority for a kidney to one patient over another merely because of his or her "marginally higher chance of a successful graft." However, while the AMA Council suggests that a 10 percent higher chance of successful graft survival is only "marginally higher," others might view it as substantially higher because of its possible impact on the patient's welfare as well as the patient's possible need for retransplantation and thus for another kidney from the scarce donor pool.

Equal Opportunity and Time on the Waiting List

Queuing is sometimes a favored criterion in microallocation because it appears to be objective and impersonal, but it is actually justified by appealing to values such as equal opportunity. Nevertheless, both practical and ethical problems emerge. For instance, it is not always easy to determine when a patient entered the waiting list. While time of entry to the UNOS list is currently used, critics note that physicians can manipulate this criterion--for example, by putting patients on the list for a kidney transplant before they become dialysis dependent.

The fairness of queuing (as well as of randomization) also depends in part on background conditions--for example, some people may not seek care as early as others because of limited financial resources and insurance, while others may receive inadequate medical advice about how early to seek transplantation. Even though some of the inequities in access to organ transplants appear to **[End Page 399]** occur at the point of admission to waiting lists, such decisions been left entirely in the hands of the transplant teams. In the absence of consistent criteria, patients are put on the waiting list at various stages in their development of end-stage organ failure as well as with various probabilities of successful outcome--e.g., some centers would not have listed Mickey Mantle as a transplant candidate. UNOS is now considering whether to establish minimum standards for admission to waiting lists.

Into the Next Century

In conclusion, I want to underline several important themes for debates about organ allocation into the next century. First, it will not be possible, I believe, to reverse the conception of the ownership of donated organs that has shaped many organ allocation policies over the last decade. Barring major changes in the methods of organ procurement, the community will continue to be viewed as the owner of donated organs, with the implication that transplant professionals serve as trustees and stewards of those organs, and that organ allocation policies must be formulated with public as well as professional input.

Second, I affirm the moral relevance of several moral principles or values in organ allocation, as well as the common metaphor of balancing. Even though it is not always possible to give each principle or value "equal weight" at every point in time, "an allocation system based upon any one factor would result in injustice" (UNOS 1994, p. 36).

Third, the process of balancing principles and values over time in organ allocation policies rightly involves public participation, justification, and accountability, which need to be extended to admission to the waiting list. There are important "moral connections" between organ procurement and organ allocation. Organs are donated by and for the public, and the public, as the owner of donated organs, should play an important role in setting the criteria for their allocation and distribution. Furthermore, confidence in the justice of policies of organ allocation and distribution appears to be an important condition for the public's willingness to donate cadaveric organs.

Fourth, balancing principles and values occurs over time so that UNOS can, quite legitimately, change the weights or points it assigns to different factors in allocation, in light of significant public principles and values and empirical evidence about the effects of existing allocation policies. In more general terms, as Guido Calabresi and Philip Bobbitt noted years ago in *Tragic Choices* (1977), a society often has to reaffirm a principle or value that it has neglected or downplayed in previous policies, and this process continues over time. The proper balance often can only be achieved over time, rather than at a single point in time.

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Why a Feminist Approach to Bioethics?

Margaret Olivia Little

Abstract. Many have asked how and why feminist theory makes a distinctive contribution to bioethics. In this essay, I outline two ways in which feminist reflection can enrich bioethical studies. First, feminist theory may expose certain themes of androcentric reasoning that can affect, in sometimes crude but often subtle ways, the substantive analysis of topics in bioethics; second, it can unearth the gendered nature of certain basic philosophical concepts that form the working tools of ethical theory.

Those who work in feminist bioethics are all too familiar with the question, "Why think that feminism offers a distinctive contribution to bioethics?" When asked respectfully, I take it to be a fair question. After all, even if we were to stipulate that the tenets of feminism are profound and wise, it would not guarantee that they offer substantial illumination in every subject matter. However, while it is a good question to ask, it also has a good answer. In this essay, I outline why it is, and how it is, that feminist insights provide such a valuable theoretical aid to the study of bioethics.

First, however, certain misunderstandings need to be addressed. Some individuals seem to understand feminist bioethics to be talk about women's issues in bioethics or, again, to be women talking about bioethics. But while the subject bears some relation to each, it is equivalent to neither. Feminist bioethics is the examination of all sorts of bioethical issues from the perspective of feminist *theory.* The question of feminism's contribution to bioethics can be understood, then, as a question about how and why bioethics might benefit from excursions into this sort of theory. And here the potential for dialogue is too often stunted by a tendency, on **[End Page 1]** the part of those who pose the question, to measure feminism's contribution solely in terms of any distinctive policy recommendations its advocates might give to familiar bioethical controversies. This tendency is often joined by frustration among those who have encountered the diversity within feminist thought, as they wonder how feminism's contribution to specific bioethical topics can be assessed until feminists resolve which camp--liberal, cultural, or radical, say--is correct. But this policy-oriented view of feminism, and of what would count as a "distinctive contribution," sets the stage for far too flat a conception of how feminist theory can enrich bioethics.

At its most general, feminist theory can be thought of as an attempt to uncover the ways in which conceptions of gender distort people's view of the world and to articulate the ways in which these distortions, which are hurtful to all, are particularly constraining to women. These efforts involve *theory*-- and not merely benign protestations of women's value or equality-- because the assumptions at issue are often so subtle or so familiar as to be invisible, and, crucially, because the assumptions about gender have shaped not only the ways in which we think about men and women, but also the contours of certain fundamental concepts-- from "motherhood" to "rationality"-- that constitute the working tools of theoretical analyses. According to feminist theory, that is, distorted and harmful conceptions of gender have come to affect the very ways in which we frame our vision of the world, affecting what we notice, what we value, and how we conceptualize what does come to attention.

If these claims are correct, then feminist theory will be useful to disciplines whose subject-matter or methods are appreciably affected by such distortions--and it will be useful in ways that far outstrip the particular policy recommendations that feminists might give to some standard checklist of topics. For one thing, feminist reflection may change the checklist--altering what questions people think to ask, what topics they regard as important, what strikes them as a puzzle in need of resolution. Or again, such reflection may change the analyses underlying policy recommendations--altering which assumptions are given uncontested status, which moves feel persuasive, what elements stand in need of explanation, and how substantive concepts are understood and deployed. If such reflections sometimes yield policies similar to those offered by nonfeminists, the differences in approach can still matter, and matter greatly, by influencing what precedent one takes oneself to have set, what **[End Page 2]** dangers one is alerted to watch for, what would later count as reason to abandon or re-think the policy. And if such reflections are sometimes followed by diverse policy recommendations, we should not be surprised, much less frustrated; for the diagnostic work that forms the core enterprise of feminist theory leads to policy recommendations only in combination with commitments on a variety of other fronts, from economic theory to the empirical facts of the case, about which feminists will understandably disagree.

This, however, is so far rather abstract. To give a more concrete sense of how feminist theory might contribute to bioethics, we need to dip into the theory itself. Accordingly, I want to outline two central themes common to virtually all feminist reflection and use them to illustrate two quite different ways in which attention to feminist insight offers illumination in health care ethics.

Androcentrism

One of the central themes of feminist theory is that human society, to put it broadly, tends to be androcentric, or male-centered. Under androcentrism, man is treated as the tacit standard for human: he is the measuring stick, the unstated point of reference, for what is paradigmatic of or normal for humans. To start with an obvious example, man is used as the supposedly generic representative of humanity. That is, when we want to refer to humans independently of gender, it is man that is cast for the job: in language ("Man does not live by bread alone"), in examples (such as the classic illustration of syllogistic reasoning, "All men are mortal, Socrates is a man, therefore Socrates is mortal"); in pictorial representations (according to the familiar depiction of evolution--still used in current biology texts--the indeterminate primate, gradually rising to bipedalism, is inevitably revealed in the last frame to be a man).

This depiction of "human"arguably places man in an unfairly privileged position, since he is not only a constituent, but the representative, of all humanity. But much deeper problems than this are at issue, for these supposedly neutral uses of man are not actually neutral. They are *false generics*, as revealed in our tendency to drop the so-called gender-neutral "he" in favor of "she" when speaking of professions (such as nanny) that are held mostly by women, or again by our difficulty in imagining the logic professor saying, "All men are mortal, Sally is a man (woman?), therefore Sally is mortal." **[End Page 3]**

The first problem resulting from this hidden bias is that androcentrism has a disturbing cumulative effect on our understanding of "human": over time, our substantive conception of what is normal for humans has come to be filled in by what is normal for men (excellent discussions of this general theme can be found in Bem 1993, especially Chapters 3 and 6; Minow 1990; and MacKinnon 1987, Part I). Certain features of men--their experiences, their bodies, their values--have subconsciously come to be regarded as constituting the human norm. His psychology, for instance, tends to define the human mind. In a famous study (Broverman et al. 1970), when psychologists were canvassed and asked to describe the "healthy" man, the "healthy" woman, and the "healthy" human, the list for men and humans turned out to be virtually identical, the list for women divergent. His body tends to define the human body. A clear, if depressing, example can be found in the Supreme Court decision in *General Electric Co. v. Gilbert* (429 U.S. 125, 1976). In a decision finally superseded legislatively by the Pregnancy Discrimination Act, the Court decided that businesses could permissibly exclude pregnancy disabilities from general insurance coverage. Their reasoning was that "pregnancy-related disabilities constitute an additional risk, unique to women, and the failure to compensate them for this risk does not destroy the presumed parity of the benefits that accrue to both men and women," even though (as the Court was aware) the list of traditionally protected benefits included all manner of medical procedures that were unique to men,

such as prostate operations and circumcisions. As Sandra Bem (1993, p. 76) puts it:

> The Court is androcentrically defining the male body as the standard human body; hence it sees nothing unusual or inappropriate about giving that standard human body full insurance coverage for each and every condition that might befall it. Consistent with this androcentric perspective, the Court is also defining equal protection as the granting to women of every conceivable benefit that this standard human body might require--which, of course, does not include disability coverage for pregnancy.

In addition, man's biography tends to define norms of practice in the work place. We need go no further than the academic tenure system for an example. Presumably, the idea of evaluating faculty for tenure after **[End Page 4]** their first seven years of employment is premised on the supposition that job performance during those seven years provides some rough indication of performance over the remainder of academic life. But, while this may be true for men, the same cannot be said for women. Factoring in the average time spent at graduate school, those seven years precisely correspond to likely childbearing years for women faculty--years most likely to involve pregnancy, birth, and breast-feeding, and hence most likely to involve severe sleep deprivation and time pressure. Of all the years of her academic career, these will be the ones *least* likely to represent her overall potential.

Second, treating man as the human norm affects, in subtle but deep ways, our concept of "woman." Males and females obviously differ from one another in various ways. "Different from" is a relation, of course, and a symmetrical one at that: if x is different from y, it is just as true that y is different from x. Under androcentrism, however, we tend to anchor man as the reference point and view woman's nature as a departure from his. A subtle but powerful message is communicated when we always anchor one side of what is logically a symmetrical relation as the fixed point of reference: the anchored point gains the status of the center; the other receives the status of the margin. Because man has been fixed as the reference point for so long, part of our very conception of woman has become the conception of "other"--she is, as Simone de Beauvoir (1952) put it, the *second* sex. Instead of thinking that men differ from women who differ from men, a subtle conceptual shift occurs, and we begin to think of women as simply "different"--as though "different" were an intrinsic property that adheres to them, instead of a relational property men also instantiate (see Minow 1990, pp. 53-56). In the end, it is a short step to regarding aspects of woman's distinct nature as vaguely *deviant*.

Further, woman becomes closely defined by the *content* of her departure from man. The fundamental ways in which women and men differ are, of course, in certain biological features. But when man's body is regarded as the neutral "human" body, woman's biological sex becomes highlighted in such a way that, in the end, awareness of woman very often is awareness of her sex. The phenomenon is akin to one that occurs with race. In white-dominated societies, being white gets anchored as the tacit reference point; over time, the fact that whites have a race tends to fade from consciousness, while people of color are seen as somehow more intrinsically raced (think of how many Americans use the phrase **[End Page 5]** "ethnic restaurants" to refer to non-European cuisine, as though Europeans had no ethnicity, or of how Western history books use the phrase "Ethnic Hoards" to refer, say, to the Mongolian invaders of Europe, but not, say, to the United States' invasion of Okinawa). In a similar way, woman's sex comes to be seen as more essential to her nature than man's sex is to his. We are more likely to see woman as ruled by the whims of her reproductive system than man is by his; more subtly, if no less dangerously, we are simply more likely to think of and be concerned with reproductive issues when thinking of women than of men. [1]

Finally, under androcentrism, woman is more easily viewed in instrumental terms--in terms, that is, of her relation to others and the functions she can serve them. We tend, for instance, to specify a woman's identity in relation to the identity of some man (think of how traditional titles of respect for women indicate her marital status while those for men do not). Or again, the norms of a good woman, unlike those of a good man, tend to value her function for others: an excellent man is one who is self-directive and creative; an excellent woman is one who is nurturing of others and beautiful for them to behold. More concretely, women's legal status often reflects an instrumentalist interpretation of her being. In certain countries, indeed, the interpretation is still as stark as it was in early English common law's doctrine of coverture, which declared, as the legalist William Blackstone ([1765-1769] 1979, Vol. 1, p.

430) wrote:

> By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs everything.

Awareness of these general androcentric themes will give new food for thought on any number of topics in bioethics. The medicalization of childbirth, for instance--too often packaged as a tiresome debate between those generically loyal to and those generically suspicious of technology--takes on more suggestive tones when we consider it in light of the historical tendency to regard women as "other" or deviant and hence in need of control (see, e.g., Rothman 1982). Certain patterns of research on women and AIDS emerge with greater clarity when viewed **[End Page 6]** against our proclivity to view women instrumentally: until very recently such research focused almost entirely on women as transmitters of the disease to their fetuses, rather than on how the disease manifests itself, and might be treated, in the women themselves (Faden, Kass, and McGraw, in press). Let me develop in slightly more detail, though, an example that brings to bear the full range of androcentric themes outlined above.

Many people were taken by surprise when a 1990 U.S. Government Accounting Office report (GAO 1990) indicated that women seemed to be underrepresented in clinical trials. To give a few now-famous examples, the Physicians Health Study, which concluded in 1988 that an aspirin a day may help decrease the risk of heart disease, studied 22,000 men and no women; the Baltimore Longitudinal Study, one of the largest projects ever to study the natural processes of aging, included no women at its inception in 1958 and still had no data on women by 1984, although women constitute 60 percent of the population over age 65 in the United States (see Laurence and Weinhouse 1994, p. 61). It is difficult to be precise about women's overall representation in medical research because information on participants' sex often is not gathered; but there does seem to be legitimate cause for concern. For one thing, U.S. Food and Drug Administration (FDA) guidelines from 1977 to 1993 barred all women of childbearing potential from early clinical trials, which seems to have discouraged their representation in later stages of drug research (Merton 1994). More broadly, a review of medical studies published in JAMA in 1990 and 1992 revealed that, in studies on non-gender-specific diseases, women were underrepresented in 2.7 times as many studies than were men (Bird 1994; see also Laurence and Weinhouse 1994, pp. 64-67).

The possibility of significant underrepresentation has raised concerns that women are being denied equal opportunity to participate in something they may regard as valuable and that women may face compromised safety or efficacy in the drugs and procedures they receive (for instance, the difference in the average weights of women and men raises questions about the effects on women of drugs that are highly dosage-sensitive). Now, determining what policy we should advocate with respect to women's inclusion in medical research is a complicated matter--if only because adding sex as a variable in research protocols can significantly increase the cost of research. [2] What is clear, though, is that awareness of various androcentric motifs can highlight important issues **[End Page 7]** that might otherwise remain hidden or camouflaged. Without the perspective of feminist theory, that is, certain concerns are likely not even to make it to the table to be factored in when policy questions arise (for a related discussion, see DeBruin 1994). Let me give some examples.

One argument against the inclusion of women commonly offered by those running clinical trials is that women's hormones represent a "complication": the cyclicity of women's hormonal patterns introduces a variable that can make it harder to discern the effects of the drug or procedure being studied. Now this is an interesting argument, for acknowledging the causal power of women's hormonal cyclicity might also suggest the very reason that it might be important to include women in studies, namely, the possibility that the cyclicity affects the underlying action of the drug or procedure. Medicine has only begun to consider and study this possibility in earnest (see Cotton 1990; Hamilton and Parry 1983). Early results include preliminary evidence that surgical treatment for breast cancer is more effective if done in the second, rather than the first, half of a woman's menstrual cycle, and that the effectiveness of antidepressants varies across a woman's menstrual cycle, suggesting that women currently receive too much for one half of the month and too little for the other (see Laurence and Weinhouse 1994, p. 71). Trust in all-male studies seems to reflect a broad confidence in the neutrality of treating the male body as

the human norm and a familiar tendency to regard that which is distinct to woman as a distortion--in this case, by regarding women's hormonal pattern as merely distorting the evidence concerning the true effect of a drug or procedure, and hence as something that is best ignored, rather than regarding it as an important factor in its own right, one influencing the actual effect of the object studied.

Another reason often given for the underrepresentation of women by those running clinical trials is that women are harder to find and to keep in studies. There is an important element of truth here: questionnaires reveal that women report greater problems navigating the logistics of participating in drug trials--they find it more difficult, for instance, to arrange for transportation and child care (Cotton 1993; Laurence and Weinhouse 1994, pp. 70-71). But if it is currently harder for women to participate than for men, it is not because of some natural or neutral ordering of things; it is in large part because drug trials are currently organized to accommodate the logistical structure and hassles of men's lives. Organizers routinely locate trials where men are, such as the military, for instance, and to organize activities around work schedules in **[End Page 8]** the public economy. Again, there is a tendency to anchor what is normal for "participants" to features that are more typical of men. If women's distinctive needs show up on the radar screen at all, they appear as needs that would require "special" accommodation--and hence accommodation one may decline to make--as though accommodations for men have not already been made.

A different concern lay behind the now-defunct FDA guidelines barring women of childbearing potential from early clinical trials. Here the explicit rationale was fetal protection: the drugs women would be exposed to might harm fetuses they knowingly or unknowingly carried. A closer look, however, once again reveals the subtle presence of androcentrism: granting society's interest in fetal health, protective measures are applied quite differently to men and women. The guidelines in essence barred all fertile women from early trials--including single women not planning to have intercourse, women using reliable birth control, and women whose partners had had vasectomies (Merton 1994). In contrast, when trials were conducted on drugs suspected of increasing birth defects by affecting men's sperm (a possibility often forgotten), fertile men were simply required to sign a form promising to wear condoms during the trial (Laurence and Weinhouse 1994, pp. 72-73). The regulation was able to think of men under guises separate from their reproductive capacities, but, as Vanessa Merton (1994, p. 66) says, it "envisions all women as constantly poised for reproductive activity." Further, and again granting that fetal protection is important, one might argue that respect for parental autonomy argues in favor of allowing the individual to decide whether participation is worth the risk. But when respect for parental autonomy conflicts with protection for fetuses or children, society is much more willing to intrude on the autonomy if it belongs to a woman than to a man. Courts, for instance, have forced women to undergo cesarean sections in attempts to gain slight increases in a fetus's chance for survival, while they routinely deny requests to force fathers to donate organs--or even blood--to save the life of their children (see Daniels 1993).

Gendered Concepts

A second core theme of feminist theory maintains that assumptions about gender have, in subtle but important ways, distorted some of the broad conceptual tools that philosophers use. Certain key philosophical **[End Page 9]** concepts, such as reason and emotion or mind and body, seem in part to be *gendered* concepts--that is, concepts whose interpretations have been substantively shaped by their rich historical associations with certain narrow conceptions of male and female.

One such distortion stems from the fact that, historically, that which is tightly and consistently associated with woman tends to become devalued. Throughout history, woman has been regarded as a deficient human: as a group, at least, she does not measure up to the standard set by man. (Indeed, it would be surprising if there were not some such evaluation lurking behind the scenes of androcentrism, for it would otherwise be puzzling why it is man who is ubiquitously cast as the human norm.) Aristotle *defined* woman as "a mutilated male," placing her just above slaves in the natural hierarchy (*Generation of Animals*, Books I and II; *Politics*, Book I). In post-Darwinian Victorian society, when a theory emerged according to which "lower forms" of human remained closer to embryonic type, a flurry of studies claimed to demonstrate the child-like aspects of woman's anatomy. She was, as one chapter heading called her, "Undeveloped Man;" in the words of James Allan, a famous and particularly succinct

anthropologist, "Physically, mentally, and morally, woman is a kind of adult child . . . Man is the head of creation" (both cited in Russett 1989, pp. 74, 55). Against this background, those things associated with woman can gradually inherit a depreciated status. "Womanly" attributes, or aspects of the world regarded as somehow "feminine," become devalued (which, of course, only serves to reinforce the poor judgment of women, as they are now associated with things of little value). To give just one illustration, think of the associations we carry about voice types and authority. A resonant baritone carries a psychological authority missing in a high squeaky voice. This is often cited as a reason women have trouble being viewed as authority figures; but it is also worth asking why authority came to be associated with a baritone rather than a soprano in the first place. Clearly, the association both reflects a prior conception of man as naturally more authoritative and reinforces that commitment, as women's voices then stand in the way of their meeting the "neutral" standard of authority.

Another common distortion stems from the fact that pairs of concepts whose members are associated with man and woman, respectively, tend to become interpreted in particularly dualistic ways. For much of Western history, but especially since the Scientific Revolution, men and women have been understood as having different appropriate spheres of **[End Page 10]** function (see, e.g., Gatens 1991, Pateman 1989, Bordo 1986, Lloyd 1983, Okin 1979). [3] Man's central role was in the public sphere--economics, politics, religion, culture; woman's central role was in the private sphere--the domestic realm of care taking for the most natural, embodied, and personal aspects of humans. This separation of spheres was understood to constitute a complementary system in which each contributed something of value that, when combined, made an ideal whole--the marriage unit. Of course, given the devaluation of that which is associated with woman, it is not surprising that woman's sphere was regarded as less intrinsically valuable: it is man, and what is accomplished in the public sphere, that represents the human ideal (a view reflected in history books, which are histories of wars and political upheavals, not of hearth and home). In any event, because the division was understood as grounded in the natures of man and woman, the separation was a rigid one; the idea that either side of the division could offer something useful to the other's realm would simply not emerge as a possibility. This dualistic picture of the nature and function of women and men, with its subtle devaluing of women, can bleed over to concepts that have been tightly associated with the sexes. When abstract concepts, such as, say, mind and body, come to be paired with the concepts of male and female consistently enough, their substantive interpretations often become tainted with the dualism that characterizes the understanding of those latter concepts. The nature of each comes to be understood largely in opposition to the other, and, while the pair is understood as forming a complementary whole, the functions of the components are regarded as rigidly separated, and the one that is regarded as "male"--here, mind--is held in higher philosophical esteem.

These themes are mirrored in the interpretation of certain central philosophical concepts. An important instance is the traditional conception of reason and emotion, which plays a large role in moral philosophy. For all the hotly disputed debates in the history of ideas, one theme that emerges with remarkable consistency is an association of women with emotion and men with reason (see Tuana 1992, Chapters 2-4; Lloyd 1984). According to Aristotle (*Politics*, 1260a15), women have rationality "but without authority;" Rousseau (1979, p. 386) gives Sophie a different education from Emile because "the search for abstract and speculative truths, principles and axioms in the sciences, for everything that tends to general ideas, is not within the competence of women;" and according to Kant (1960, p. 79), "women's philosophy is **[End Page 11]** not to reason but to sense." Science has contributed its support--for example, tracing woman's supposedly greater proclivity towards volatile emotions to disorders of the womb (hence "uterus" as the root of "hysteria") and her restricted intellect to the "hormonal hurricanes" of her menstrual cycle (see Smith-Rosenberg 1972; Russett 1989, especially Chapter 4; and Fausto-Sterling 1992, Chapter 4). As James Allan wrote, "In intellectual labor, man has surpassed, does now, and always will surpass woman for the obvious reason that nature does not periodically interrupt his thought in application" (cited in Russett 1989, p. 30). (Apparently Allan suffered no concern that man's rather more constant hormonal activity might be rather more constantly interrupting his thought!)

The conception of reason and emotion found in much of traditional ethical theory bears the mark of these entrenched associations (see Jaggar 1989, Lloyd 1983). There is a tendency to regard reason and emotion as having completely separate functions and to regard emotion, at best, as irrelevant to the

moral enterprise and, at worst, as something that infects, renders impure, and constantly threatens to disrupt moral efforts. Emotion is conceptualized as something more to do with the body we have as animals than the mind we have as humans; it is viewed as a faculty of blind urges, akin to pains and tickles, rather than as responses that reflect evaluations of the world, and that hence can be "tutored" or developed into mature stances.

Thus, most traditional moral epistemology stresses that the stance appropriate to moral wisdom is a dispassionate one. To make considered, sound moral judgments, we are told to abstract from our emotions, feelings, and sentiments. Emotions are not part of the equipment needed to discern moral answers; indeed, only trouble can come of their intrusion into deliberations about what to do, for they "cloud" our judgment and "bias" our reasoning. To be objective is to be detached; to be clear-sighted is to achieve distance; to be careful in deliberation is to be cool and calm. Further, the tradition tends to discount the idea that experiencing appropriate emotion is an integral part of being moral. Moral theory tends to focus exclusively on questions about what actions are obligated or prohibited, or perhaps on what intention or motive one should have in acting, not on what emotional stance a moral agent should be feeling. Indeed, much of traditional moral theory has a positive suspicion of emotion as a basis for moral action. Emotions such as love or indignation, as opposed to some cerebral "respect for duty," are **[End Page 12]** deemed fickle and unreliable (metaphors, of course, for the female); they "incite" and "provoke" us, rather than moving us by way of their reasonability. Finally, traditional moral theory vastly underplays the importance of the "emotional work" of life--of nurturing children, offering sympathetic support to colleagues, or displaying felt concern for patients. To the extent that the value of such work is recognized at all--as, for example, in treatises on "mother love"--it is often accorded a lesser status, regarded as reflective of instinct rather than skill, and hence not qualifying as moral work at all, or as relevant only in limited spheres of life, such as nursing or parenting, that are accorded lower value than other more impersonal enterprises.

Feminists argue that these presuppositions may not survive their gendered origins. Possession of appropriate emotion, for instance, arguably forms an indispensable component of a wise person's epistemic repertoire (see Little 1995). While our passions and inclinations can mislead us and distort our perceptions, they can also guide them. To give just one example, if one is deprived of felt concern for a patient, it is unlikely that one will be attuned to the subtle and unique nuances of his situation. Instead of discerning the contours of his particular needs, one is likely to see his case as an instance of one's current favorite generality. Distance, that is, does not always clarify. Sometimes truth is better revealed, the landscape most clearly seen, from a position that has been called "loving perception" or "sympathetic thinking" (Lugones 1987, Jaggar 1989, Walker 1992b). And again, emotion arguably forms an integral part of being moral. Simply to perform a required action--while certainly better than nothing--is often not enough. Being moral frequently involves feeling appropriate emotions, including anger, indignation, and especially caring. The friend who only ever helps one out of a sense of duty rather than a feeling of generous reciprocity is not in the end a good friend; the citizen who gives money to the poor, but is devoid of any empathy, is not as moral as the one whose help flows from felt concern. This is not to say that we owe personal love to all who walk the earth--proper caring comes in different forms for different relationships. Nor is proper caring to be conflated with self-abnegation. Suspicions about the moral imperative to care often tacitly rely on self-sacrificial models of care, in which the boundary between self and other is overly blurred. From a feminist perspective, it is not surprising that this is the model of care we have inherited, for caring has usually been regarded as women's work, and traditional norms for women have stressed a denial of self. **[End Page 13]** Feminist reflection, acutely aware of the limitations of these norms, precisely invites us to develop a healthier and more robust conception of proper caring (for further discussion, see Carse and Nelson 1996).

In another important instance, that which is associated with the private or domestic sphere is given short shrift in moral theory. Relations in the private sphere, such as parent-child relations, are marked by intimacies and dependencies, appropriate kinds of partiality, and positive but unchosen obligations that cannot be modelled as "contracts between equals." Furthermore, few would imagine that deliberations about how to handle such relations could be settled by some list of codified rules--wisdom here requires skills of discernment and judgment, not the internalization of set principles. But traditional moral theory tends to concentrate on moral questions that adjudicate relations between equal and self-sufficient strangers, to stress impartiality, to acknowledge obligations beyond duties of noninterference only when they are incurred by voluntary contract, and to emphasize a search for algorithmic moral principles or

"policies" that one could apply to any situation to derive right action (Walker 1992a, Baier 1987).

This tendency to subsume all moral questions under a public "juridical" model tends, for one thing, to restrict the issues that will be acknowledged as important to those cast in terms of rights. "The" moral question about abortion, for instance, is often automatically cast as a battle between maternal and fetal rights, to the exclusion of, say, difficult and nuanced questions about whether and what distinctly maternal responsibilities might accompany pregnancy. And it often does violence to our considered sensibilities about the morality of relations involving dependencies and involuntary positive obligations. For instance, in considering what it is to respect patient autonomy, many seem to feel forced into a narrow consumer-provider model of the issue, in which the alternative to simply informing and then carrying out the patient's wishes must be regarded as paternalism. While such a model may be appropriate to, say, business relations between self-sufficient equals, it seems highly impoverished as a model for relations marked by the unequal vulnerabilities inherent in physician-patient relations. In these sorts of relations, all of the rich moral possibilities lie in between the two poles of merely providing information, on the one hand, and wresting the decision from the patient, on the other. For example, a proper moral stance might involve proactively helping a patient to sift through options, or **[End Page 14]** proactively fostering the patient's independence by, say, discussing sensitive questions outside the presence of overly interfering family members.

Finally, when ethical approaches more characteristic of the private sphere do make it onto the radar screen, there is still a tendency to segregate these approaches from those we take to the public sphere. That is, in stark contrast to the tendency to subsume the morality of intimates into the morality of strangers, rarely do we ask how the moral lessons garnered from reflecting on private relations might shed light on moral issues that arise outside of the purely domestic context. To give just one example, patients often feel a deep sense of abandonment when their surgeons do not personally display a caring attitude toward them: the caring they may receive from other health care professionals, welcome as it may be, seems unable to compensate for this loss. This phenomenon will seem less puzzling if, borrowing a concept from the private realm, we realize that surgery involves a special kind of *intimacy*, as the surgeon dips into the patient's body. Seen under this guise, the patient's need becomes more understandable--and the surgeon's nontransferable duty to care clearer--for reflection on more familiar, domestic intimacies, such as those involved in sexual interactions, reminds us that intimacy followed by a vacuum of care can constitute a kind of abandonment.

In summary, then, reflection in feminist theory is important to bioethics in at least two distinct ways. First, it can reveal androcentric reasoning present in analyses of substantive bioethical issues--reasoning that can bias not only which policies are adopted, but what gets counted as an important question or persuasive argument. Second, it can help bioethicists to rethink the very conceptual tools used in bioethics--specifically, helping to identify where assumptions about gender have distorted the concepts commonly invoked in moral theory and, in doing so, clearing the way for the development of what might best be called "feminist-inspired" moral theory.

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Notes

1. For excellent discussions of this theme in the history of science, see Russett (1989), Fausto-Sterling (1992, Chapter 4), and Rosenberg (1976, Chapter 2).

2. For extensive analysis of issues relating to public policy, see the essays in Institute of Medicine (1994, vol. 1).

3. Portions of this and the next few paragraphs are taken from my article, "Seeing and Caring: The Role of Affect in Feminist Moral Epistemology" (Little 1995).

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Feminism, Law, and Bioethics

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Abstract. Feminist legal theory provides a healthy skepticism toward legal doctrine and insists that we reexamine even formally gender-neutral rules to uncover problematic assumptions behind them. The article first outlines feminist legal theory from the perspectives of liberal, cultural, and radical feminism. Examples of how each theory influences legal practice, case law, and legislation are highlighted. Each perspective is then applied to a contemporary bioethical issue, egg donation. Following a brief discussion of the common themes shared by feminist jurisprudence, the article incorporates a narrative reflecting on the integration of the common feminist themes in the context of the passage of the Maryland Health Care Decisions Act. The article concludes that gender does matter and that an understanding of feminist legal theory and practice will enrich the analysis of contemporary bioethical issues.

Feminism seeks to understand and to value the experiences, insights, and logic of women's lives. Feminist legal theory provides a healthy skepticism toward traditional legal doctrine and insists that we reexamine even formally gender-neutral rules to uncover the problematic assumptions behind them. It also challenges the traditional split between private and public spheres, as well as the way in which traditional conceptions of justice translate into public policy. Finally, feminist perspectives tend to value the importance of narrative, thereby challenging the traditionally "objective" approach to case law reporting. Stories put issues in context, just as case studies do for ethicists and health care providers, and hence help us to challenge the assumptions we make about individuals and the role of the law in their lives.

These important themes are reflected in a diversity of feminist legal theories. [1] In this article, I outline the major feminist theories in order to **[End Page 69]** put the application of feminist jurisprudence in a broader analytical framework. Hopefully, this framework will help to clarify the societal implications of the legal rules, processes, and practices that shape our responses to bioethical challenges. I illustrate the differences among these theories by applying them to a contemporary bioethical issue, egg donation. I then reflect on the common themes shared by various feminist theories by providing a narrative describing how feminist thought influenced recent Maryland legislation on health care decision making.

Feminist Theory, Jurisprudence, and Practice

Liberal Feminism

Liberal feminism is based on a belief in formal gender equality, particularly in the economic and political arenas (see, e.g., Ginsburg 1971, 1975; Williams 1982). Since women possess the same capabilities as men, liberal feminists claim that women should be entitled to equal rights, equal employment opportunities, and equal pay. Under this equality model, gender classifications are to be challenged because they reflect and reinforce stereotypes that fail to treat men and women as

individuals. Liberal feminism draws heavily on the notions of rationality, individual autonomy, and choice that are central to liberal political theory. Thus, liberal feminists have focused primarily on the goals of eliminating state-imposed gender distinctions and of preventing the state from limiting individual choice.

One significant source of law for liberal feminist theory is the Equal Protection Clause of the 14th Amendment to the U.S. Constitution, which provides that no state shall deny to any person, equal protection of the law. Simply put, similarly situated persons, namely men and women, should be treated equally. Advocates for women's equality first tried, unsuccessfully, to utilize the Equal Protection Clause almost 125 years ago when a woman was refused the right to practice law (*Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 21 L.Ed. 442 (1872); *In re Goodell*, 39 Wis. 232 (1875)), and then again at the turn of the century to challenge "protective" labor laws that limited the number of hours women could work (*Muller v. Oregon*, 208 U.S. 412 (1908)). In both types of cases, the court justified treating women differently from men based on women's physical and mental attributes, their "nature," and their supposed need to be protected. **[End Page 70]**

It was not until the early 1970s that tenets of liberal feminism began to take hold in the courts. The first case defending women's rights on liberal feminist grounds invalidated a statutory preference for men over women in the appointment of estate administrators (*Reed v. Reed*, 404 U.S. 71 (1971)). Many cases soon followed that challenged the constitutionality of laws that treated men and women differently and that advocated applying a higher standard of scrutiny to such cases. Ironically, many of the successful test cases were brought by men who claimed that various laws were unfair and unconstitutional--for instance, laws requiring men to meet more stringent tests of spousal dependency in order to claim government benefits (*Frontiero v. Richardson*, 411 U.S. 677 (1973)), laws establishing a higher legal drinking age for men (*Craig v. Boren*, 429 U.S. 190 (1976)), and laws rendering men ineligible for alimony (*Orr v. Orr*, 440 U.S. 268 (1979)).

Concurrently, activists and the courts began to discover additional protections in the Equal Pay Act of 1963 (29 U.S.C.A. §§206(d), 216-217), which mandated that employers pay women the same wages as men holding the same jobs, and in Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §2000e et seq.), which banned sex discrimination in employment and labor organizations. By 1971, the Supreme Court upheld a finding of sex discrimination under Title VII when an employer refused to hire mothers but not fathers with preschool children (*Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971)).

Perhaps the biggest challenge for liberal feminists has involved issues that relate to pregnancy and childbearing. In 1974, the Supreme Court upheld the constitutionality of a comprehensive state disability insurance plan that excluded benefits for pregnancy (*Geduldig v. Aiello*, 417 U.S. 484 (1974)) and, in 1976, held that an employer was not in violation of Title VII when medical benefits did not include costs associated with pregnancy (*General Electric Co. v. Gilbert*, 429 U.S. 125 (1976)). Following these two rulings, feminists lobbied Congress to pass the Pregnancy Discrimination Act of 1978 (42 U.S.C.A. §2000e(k)), which specifically states that sex discrimination under Title VII includes distinctions based on pregnancy, childbirth, or related medical conditions. The Supreme Court has since held that an employer's fetal-protection policy that excluded fertile women from certain jobs constituted sex discrimination under Title VII (*International Union, UAW v. Johnson Controls, Inc.*, 499 U.S. 187 (1991)), but it has not issued any similar rulings based on a constitutional analysis. **[End Page 71]**

Although liberal feminism has been quite successful in expanding political and economic opportunities available to white, middle class women, it has been criticized for ignoring the constraints of race and class and for adopting an assimilation model that benefits women only to the extent that they act like men. In fact, some critics of "formal equality" argue that affirmative action and certain "special" accommodations to women, such as childrearing leave, special child custody standards, and comparable worth schemes for job classifications, are necessary to counteract unfairness that results from what appear to be gender-neutral rules (see, e.g., Littleton 1987; Law 1984). Many liberal feminists continue to maintain, however, that women will not ultimately benefit from strategies that promote special treatment and reinforce gender differences (see, e.g., Williams 1982).

Cultural Feminism

While liberal feminism basically emphasizes the essential sameness of men and women, cultural or relational feminism focuses on their differences (see, e.g., Bender 1990; West 1988). Cultural feminism is grounded in the work of Carol Gilligan (1982) and other contemporary psychologists who suggest that men and women speak in a "different voice." These theorists argue that men, on average, tend to analyze problems in terms of abstract rules and competing rights and to emphasize the importance of autonomy. Women, by contrast, tend to be more contextual in their analysis of problems and to place more emphasis on preserving personal relationships.

Cultural feminists argue that many traditional legal doctrines and practices are based on "masculine" values of autonomy and abstraction and fail to value the positive "feminine" concerns of responsibility, relationship, and essential connectedness experienced, for example, in the mother-child relationship. They have sought to balance the traditional legal emphasis on male values by promoting a jurisprudential theory that espouses a female ethic of care rather than a morality of rights. For example, cultural feminists have suggested that the law look for mechanisms to resolve disputes that would provide alternatives to the traditional adversary paradigm (Menkel-Meadow 1983). Feminist models of mediation have also been proposed to address bioethical disputes about medical decision making among family members and health care professionals. It is believed, for example, that ethics committees are better **[End Page 72]** equipped than the adversarial court system to foster and maintain family and physician-patient relationships. Similarly, cultural feminists have suggested that courts apply a feminist ethic of care when determining standards of negligence in order to recognize a duty to rescue strangers where none currently exists (Bender 1988). In order to promote and support a caring society, they argue, why should health care professionals not have a legal duty to have to stop by the side of the road and provide medical assistance to a person injured in an automobile accident? Cultural feminists also have challenged the categorization of physician-assisted suicide as "a criminal act of murder," rather than as "an act of caring" that would alleviate pain and suffering (Bender 1992).

Cultural feminism may also question current standards of proper informed consent. Currently, standards of informed consent require the disclosure of information that a "reasonable person" would want to know in order to make an informed decision. However, if men and women think and speak in "different voices," there may be no one common conception of a reasonable person. Indeed, current conceptions of such a person tend to reflect a masculine notion of reasonability, and cultural feminists urge that we expand this notion to include women's values.

Radical Feminism

Radical or dominance feminism, like cultural feminism, arose in large part as a response to the perceived inadequacies in liberal feminist theory. Catherine MacKinnon, the major proponent of dominance theory, argues with cultural feminists that men and women are different; however, unlike cultural feminists, she argues that these differences largely reflect the fact that in society women are subordinate and men are dominant (MacKinnon 1987; see also Littleton 1989). According to dominance theorists, it is this inequality in power to which the law must respond. Moreover, since the primary source of women's oppression is private power, particularly the threat of sexual violence, the solution is not--as the liberal feminists often claim--less state intervention, but more. Radical feminists argue, for example, that the legal system should abandon its traditional "hands-off" attitude toward violence in the family and move more aggressively to protect women from the abusive power of men in the private sphere. These arguments have produced concrete changes in some state laws that have made it easier for the **[End Page 73]** police to intervene in domestic violence disputes and for criminal law to recognize that rape is a violent act that can occur within the marital relationship.

MacKinnon (1979) was also instrumental in persuading lawmakers to recognize that sexual harassment in the work place is sex discrimination, and not just a private matter between individuals. Within the last decade, the evolution of sexual harassment as a legal claim has significantly changed the problematic dynamics of many historically male-dominated professions, including law and medicine. (Of course, the nursing profession has, for a long time, been all too aware of the negative dynamics that result from male domination.)

Whereas liberal feminists have concentrated primarily on expanding women's choices and cultural feminists have concentrated on reforming legal rules to reflect women's real experiences and to affirm

women's values, radical feminists have argued that law should address the harms to women that arise from conduct of other private actors, particularly men and particularly with respect to sex and violence.

Postmodern Feminism

Postmodern feminism is a more recent addition to feminist discourse. This perspective rejects the assumptions and generalizations at the core of the preceding feminist theories. According to postmodern feminists, no objective reality can describe the "essential" woman; consequently, such feminists embrace the particular "situated" realities of all individual women. Postmodernists encourage feminists to consider real life experiences influenced by each woman's race, class, age, and sexual orientation (see Frug 1992; Bartlett 1994, pp. 13-18; Cain 1990, pp. 838-41). Critical legal feminist scholars have incorporated themes of postmodernism by rejecting abstract universal theory and embracing the need for a social policy that provides practical and just solutions to real life problems (see, e.g., Rhode 1990; Radin 1990).

Applying Different Feminist Perspectives: Egg Donation[2]

How might the three major feminist theories enrich the debate over contemporary issues in bioethics and public policy? Here I shall consider the issue of egg "donation," a process more accurately described as the harvesting of eggs from one woman, usually with compensation, by **[End Page 74]** an IVF clinic for use by a contracting woman and/or couple who desires the birth of a baby. How might each feminist theory help us to frame and answer the questions raised by the process?

The liberal feminist would frame the issue in terms of the similarities and differences in the roles men and women face in such situations. For instance, although men do not donate or sell eggs, they do donate and sell sperm; since men can sell sperm and liberal feminists want to promote choice, perhaps women should be able to sell their reproductive material as well. If we allow a market for sperm, why not allow a market for eggs? On the other hand, liberal feminists will call our attention to the extent to which egg and sperm donation are not truly analogous. For example, egg retrieval is much more complex, risky, and time-consuming than is sperm donation. Thus, proper compensation would be greater for the sale of eggs, but not so great as to preclude economic arrangements between the infertile and those who want to sell their eggs. As part of promoting "procreative liberty," however, the liberal feminist will argue that it is important to have an informed consent process in place that clearly spells out the benefits and risks of the procedure both to the woman supplying the eggs and to the woman receiving them, as well as the intent of all parties. For example, the woman who agrees to have her eggs extracted should have no expectation of maternal rights and, absent a prior relationship, no involvement with the intended mother or any future child. Such policies would closely parallel those currently in place for sperm donation. Given full disclosure and a fair and reasonable compensation scheme, liberal feminists would support a public policy that recognizes egg donation as a choice for women.

In contrast, cultural feminists might frame the issue by asking what impact egg donation would have on family relationships, future connections, and the role of motherhood. If egg donation is viewed as a paradigm in which altruistic women help infertile women to become mothers, the cultural feminist might support it in the context of a noncommercial arrangement. Egg donation would be characterized as a caring gesture, involving an open arrangement in which the relationship among both women and any offspring could continue to grow. On the other hand, cultural feminists are not likely to support a market for women's eggs by IVF clinics. Such a scheme might be viewed as commodifying motherhood and undermining caring relationships.

Radical feminists, finally, would be very suspicious of egg donation. Whereas artificial insemination can be done with a turkey baster, egg **[End Page 75]** donation and IVF procedures require a high level of reproductive technology. Radical feminists argue that this technology, which is controlled by the male-dominated medical establishment, has historically tended to manipulate women's reproductive lives. Thus, women who participate in these procedures will be subject to the subordination of male power and the medical hierarchy. Furthermore, radical feminists worry about the potential for exploitation that such arrangements bring with them. First, poor women will be vulnerable to exploitation, undergoing invasive procedures and selling their eggs because they need the money.

Second, infertile women seeking eggs, while they tend to be wealthier, will be exploited by society's pressure to reproduce. At the same time, the male-dominated medical establishment and any middlemen, including lawyers, will financially profit from the arrangement. Finally, even in the noncommercial setting, radical feminists might argue that egg donation requires women to use other women to perpetuate a sex stereotype that only values women in the context of reproductive capacities. Thus, egg donation in any context may result in the exploitation of women.

Applying Common Feminist Themes: The Maryland Health Care Decisions Act

In spite of these different perspectives, there are a number of themes, as noted earlier, that unite feminist theory. First, gender does matter. All feminists ask what impact a rule, practice, or policy will have on gender and, more specifically, on the lives of women from diverse backgrounds and experiences. Second, all feminist legal theory questions the objectivity of legal doctrine and its seeming gender neutrality, since laws and policies that are gender neutral on their face may not be so in result or application. Third, it reevaluates the traditional distinction between public and private spheres and the view that the law should respond only to public issues. To make these various considerations come to life, feminists value the importance of the narrative to give voice and context to the personal experiences of women.

The themes shared by feminist theories may be integrated to enrich the analysis of important bioethical and public policy issues. Let me share my narrative and perspective on how this integration, quite undeliberately, enhanced the development of a major piece of recent health care legislation, the Maryland Health Care Decisions Act of 1993 (*Md. Code Ann., Health-Gen.* §§5-601 to 618 (1994)). [3]
[End Page 76]

By the early 1990s, the *Cruzan* decision (*Cruzan v. Director, Mo. Dep't. of Health*, 497 U.S. 261 (1990)) caused many states, including Maryland, to recognize the need for a comprehensive legislative approach to the termination of life-sustaining medical treatment. Prior to this time, Maryland had very little judicial guidance in the area--only advisory opinions from the Attorney General's Office and a narrowly drafted living will statute that was limited to those with a terminal condition. In addition, Maryland had no durable power of attorney statute that extended to health care decisions, and its surrogate consent statute did not specifically address the termination of life-sustaining medical treatment.

By March 1992, a drafting committee was formed under the auspices of the Maryland Conference of Circuit Judges to consider comprehensive legislation that would address medical decision making for competent and incompetent persons, advanced directives, surrogate/family decision making, emergency treatment and other health care decisions by physicians, and judicial standards under Maryland guardianship law. The committee was chaired by Judge John Carroll Byrnes, Circuit Court of Baltimore City, and included four additional members from the Office of the Attorney General, the Health Law section of the Maryland Bar, the Maryland Disability Law Center, and the University of Maryland School of Medicine. It is worth noting that this five-member committee was all white and all male.

Within a few months the committee circulated drafts of its proposed legislation for public comment to a limited number of "interested parties." My first reaction was that while the committee did attempt to address a number of issues, the result was a very lengthy, detailed, and complex document. It seemed to cover every possible situation, and for every grant of authority, there seemed to be a caveat, and then an exception to each caveat (Hoffmann 1994, p. 1086). In addition to my concern with the legalistic nature of the proposal, I noticed certain obvious problems that had disturbing gender implications. First, the living will provisions of the proposal still maintained the pregnancy clause from Maryland's 1985 living will statute, which stipulated that a living will would not be honored during a woman's pregnancy. Thus, a pregnant woman, regardless of the viability of the fetus she carried, would have fewer rights to terminate life support than similarly situated men and nonpregnant women. Such a view is problematic from the perspective of **[End Page 77]** each of the feminist theories. Liberal feminists would argue that such a pregnancy clause would violate the constitutional rights of pregnant women and would make bad public policy. Cultural feminists might argue that the state should not impose its judgment on that of the pregnant woman who is the one best equipped to evaluate her needs in the context of her relationships. Radical feminists would object to a law that subordinates pregnant women to the state in the

determination of what is best for her and her fetus. In spite of such concerns, members of the drafting committee believed that maintaining the pregnancy clause might prove to be a nonnegotiable issue with the Catholic Conference and ultimately with the Maryland Legislature.

A second problem with the proposal was its inclusion of provisions that appeared gender neutral on their face but proved not to be on closer inspection. The proposal declared that the state has an interest in ensuring that the welfare of minor children not be impaired as a result of a competent individual's decision to withhold or withdraw life-sustaining procedures (Hoffmann 1994, pp. 1074-75). Thus, although the proposal declared that a competent individual has a right to refuse life-sustaining medical treatment, it stated that if the individual was the sole provider of a minor child and life-sustaining treatment would allow the individual to continue to care for the child, that individual would have to seek court approval before being permitted to refuse life support. The provision considered neither the nature of the proposed treatment nor the religious conviction of the individual (Hoffmann 1994, pp. 1070-71, n. 19). Although the term "individual" includes both men and women, in fact the large majority of sole providers of minor children are women--often women who are suffering from HIV/AIDS. Thus, this provision had an unfair and disparate impact on women. This reality was brought to the attention of the committee by a number of public interest lawyers, almost all of whom were women.

Third, and more generally, many of the proposal's provisions appeared to excessively burden the family in the decision-making process by requiring a legalistic rather than a supportive approach to family relationships. The approach taken reflected a presumption that the state needs to protect the individual from harm in every possible situation: for example, family members would have to go to court under delineated conditions to prove that their ill relative would have wanted to discontinue life support or that doing so would be in the relative's best **[End Page 78]** interests (Hoffmann 1994, p. 1101). The proposal required written certification and justifications of actions by clear and convincing evidence. In an early draft, even artificial feeding and hydration could not be withheld or withdrawn from an incapacitated person unless the patient had previously stated in writing or orally the desire not to be kept alive specifically by these means (Hoffmann 1994, p. 1104). Such restrictive language gave little or no voice to the family to act in good faith on behalf of a loved one.

By December 1992, the committee decided to present the proposal to a broader audience, and the University of Maryland's Law and Health Care Program agreed to organize a conference that would include public comment on the committee's proposal. I agreed to critique the proposal at the conference. I did not ground my critique in any one particular feminist theory; in fact, my approach integrated several feminist perspectives.

To put the issues in context, I started my critique with a true story. A week prior to the conference, a friend of mine had called me to ask for some advice. Her mother had suffered a massive stroke and was no longer able to speak. My friend could not care for her and had her admitted into a nursing home in Maryland. A few years previously, her mother had signed a standard living will form, which failed to specify many details, such as whether she would want artificial nutrition and hydration withheld or withdrawn. Neither my friend nor her mother knew that the form only applied to a terminal condition. Her mother had not gone to a lawyer to seek advice on how to fill out the form--in fact, her mother had never been to a lawyer in her life. My friend was upset because her mother had told her many times that she would not want to be kept alive on feeding tubes and that she did not want to be a burden to the family if she could no longer care for herself. Of course, her mother had never written any of this down. The nursing home was claiming that they had no choice but to insert a feeding tube and that these conversations and the living will form were of no relevance.

With this narrative as a frame of reference, I was able to ask whether the committee's proposal addressed concerns such as those of my friend. Obviously, many of the provider and consumer groups attending the conference had similar stories and frustrations, and many expressed concern that the proposal was too restrictive of both individual and family/ surrogate decision making. I argued that any proposal to legislate medical **[End Page 79]** decision making should establish the presumption that family and friends with close relationships to the patient are best able to give voice to a family member or friend with limited decision-making capacity. As we all agreed, most individuals do not sign advanced directives or write their wishes down, but that does not mean that only a court can protect their interests. Not having filled out a form should not mean that your family has no voice to act on your behalf. Rather,

when a health care provider, institution, or the state wants to challenge the decision of a surrogate, they should have the burden to petition the court, not the other way around. Obviously, there may be times when an individual needs the court's protection, but these circumstances should be regarded as the exception rather than the rule. In addition, I urged that the patient care advisory committee may serve as an alternative to the judicial process to mediate such matters. Clearly, the perspectives of cultural feminism helped to frame the deference to family decision making and the shift from a presumption of distrust and protectionism to one of trust and support of caring relationships.

Following this analysis, I focused more specifically on the gender implications of the proposal and its distrust of women. Not only were families not to be trusted, but pregnant women would not be able to exercise their right to have a living will respected and sole care givers of minor children, the majority of whom are women, would not be able to terminate life-sustaining treatment without the court's approval. As a result, the proposal treated these women differently from all other competent individuals.

Many other participants at the conference expressed significant problems with the content and approach of the committee proposal. As a result, a coalition was formed to draft an alternative. The coalition included representatives of the elderly, women's groups, an Alzheimer's association, and a number of medical, hospital, and legal organizations. As I would later testify at a hearing on the issue, the original proposal had ignored reality because it failed to recognize that not all feelings and contingencies can be codified (Hoffmann 1994, p. 1104); the alternative proposal was much shorter, simpler, and less legalistic. Further, the coalition's alternative shifted the presumption to trusting the family, not the state, to make decisions. To the extent that safeguards were included, it was felt that they should not overly burden care givers making decisions for incapacitated patients. Even though some recent empirical data suggest that surrogates may not make the same decisions that patients **[End Page 80]** would make for themselves, many individuals still prefer that their family members, rather than physicians and judges, make these decisions (Hoffmann 1994, p. 1102, n. 151, 152).

This shift in presumption to one of trust in caring relationships permeated the coalition proposal. The coalition proposal extended the conditions under which a surrogate could make decisions to withhold or withdraw life support and gave a clear decision-making priority to those most likely to be closest to the patient (Hoffmann 1994, p. 1093). It recognized that a close friend, and not just family members, might have the authority to make decisions for an incompetent patient. It expanded the use of an oral advanced directive to include appointment of a health care proxy. The coalition proposal also prohibited a health care provider from overriding the instructions of a surrogate without first going to court and proving that the surrogate was not following statutory guidelines for decision making (Hoffmann 1994). The proposal modified the guardianship law to allow a guardian to authorize the withholding or withdrawal of life support without court approval if the patient had executed an advanced directive, and it treated artificial feeding and hydration like other forms of life-sustaining treatment. Further, both the coalition proposal and the committee's final proposal eliminated the provision that required competent individuals who were the sole care givers of minor children to seek court approval for termination of life-support decisions. Finally, and significantly, the coalition proposal did not include a clause restricting the right of pregnant women to have their advance directives followed.

Ultimately, the Maryland Legislature considered modifications of both proposals. Political compromise resulted in the passage of the Maryland Health Care Decisions Act on May 12, 1993. The statute incorporated advanced directive forms that do include a section allowing women to write additional instructions concerning pregnancy. If the section is left blank, it is presumed that her choice of treatment will be the same independent of whether she is pregnant. More generally, the legislation adopted the approach of the coalition proposal to presume trust of care givers rather than courts with a few additional safeguards (Hoffmann 1994, pp. 1108-30).

This legislative approach, which shifts reliance from the court to the family, may have significant gender implications. An analysis of "right-to-die" cases by Miles and August (1990) found asymmetric gender patterned reasoning in which judges were less likely to consider evidence of **[End Page 81]** women's preferences with regard to life-sustaining treatment. The authors concluded that "the arbitrariness of gender patterned reasoning and its effect of these cases amply illustrates the vicissitudes of institutional reasoning" (Miles and August 1990, p. 286). Thus, they suggested that courts not attempt to construct a person's preferences, but rather empower care givers to make decisions on behalf of an incompetent

family member or friend.

Just as significantly, the legislation rejects an approach that presumes that laws need to be crafted to protect us from "bad actors" rather than to support care givers. As Leslie Bender, a cultural feminist, has observed, "The social and ethical price of designing our laws and rules for the bad actors is significant suffering and indignity to innocent, humane people because of unnecessary restraints on their freedom to act out of care in a manner responsive to particularized circumstances of need" (Bender 1992, p. 532; Hoffmann 1994, p. 1102-3, n. 28).

On reflection, I believe that the Maryland Health Care Decisions Act was enriched by the integration of feminist perspectives. Although gender issues were not always front and center, feminist legal theory did, in fact, contribute to the challenging of legal rules and presumptions. Obviously, the bioethical and public policy debate over the new reproductive technologies, including egg donation, will also be enriched by the diversity of feminist legal theory. Hopefully, both lawyers and bioethicists will recognize that gender matters and will insist that "women's experiences, varied as they are, be taken into account" (Carbone 1994, p. 183). In the end this is what feminism is all about.

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Notes

1. See Rothenberg (1995). The analytical framework for describing the major feminist theories was crafted in part from the following outstanding works: *Feminist Legal Theory: Foundations* (Weisberg 1993); *Feminist Legal Theory: Readings in Law and Gender* (Bartlett and Kennedy 1991); "Gender Law" (Bartlett 1994), "Feminist Jurisprudence: Grounding the Theories" (Cain 1989); and "Feminism and the Limits of Equality" (Cain 1990).

2. This analysis was inspired in part by an outstanding presentation by Rosemarie Tong at "Bioethics, Feminism and Reproductive Technology," AALS Annual Meeting, New Orleans, 8 January 1995.

3. For an outstanding discussion of the evolution of the legislation, see Diane Hoffmann (1994).

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Science in the National Interest

OSTP S&T Report

Progress in Health

Progress in Agriculture

NBAC

Building Public Trust

Glenn Bill (S.193)

Human Subject Abuse

Varmus - Human Subject Protection

Satcher - Human Subject Protection

Tuskegee Legacy Report

Gulf War

Scientific Freedom

S&T and Economy

Returns to R&D

Supporting R&D

Technology in the National Interest

5/8/97 Memo

OSTP
DRAFT 5/8/97

Possible Approach for Morgan State

I) Our commitment to science and technology

- Reiterate strategy of fiscal responsibility, streamlining government while at the same time protecting investments in education and research. The enduring Federal commitment to science, to technology, to learning, to research -- is the key to our future, essential to our economy, health, environment, security. Our strategy is working. It's gratifying that Congress is moving with us.

- The pace of science, and the resulting technological advances, is accelerating so rapidly that textbooks are frequently obsolete before they're printed. Humankind places a tremendous premium on (a) an increasingly sophisticated base of skilled human resources and knowledge, (b) a well-functioning and resilient natural resource system. As populations grow and economic activities expand, our hopes for sustained progress -- sustainable development -- hinge on human ingenuity.

- With global linkages growing stronger, the rapid movement of people, goods, information has permanently altered commerce, national security, demographics and health. The cost of "natural" disasters that can be greatly lessened through S&T now amounts for the U.S. alone to about $1 billion per week; how the potential of enormous impacts of global climate change can be lessened with timely action; the opportunity to capitalize on the revolutions in biology and biomedicine to improve human health, agriculture, etc.]

II) Health and Disease

- Evidence abounds of the returns from scientific research and potential for the future. Today's doctors treat symptoms. The human body and its ailments are so complex that it may be that we are better at diagnosing and curing what is wrong with our cars than with ourselves. We need to give our doctors a toolbox as good as a mechanic's.

- Tomorrow's doctors will have the tools to predict and prevent. Understanding the chain of events that cause disease offers real insight into what can be done to cure it, or preferably, prevent it from occurring in the first place. There is growing optimism regarding new drugs to treat AIDS or a vaccine to prevent its spread. Chronic, debilitating diseases such as diabetes, high blood pressure, arthritis and sickle cell anemia may succumb to innovative new therapies.

III) Ethics

- Our ethics must be as good as our science.

- In American tradition, freedom of scientific inquiry is likened to freedom of speech and holds very great respect. There is a practical dimension to this attitude in that allowing scientific opportunity to guide research directions has proven benefits (examples of unpredicted payoffs and those in unrelated fields).

- Knowledge, in and of itself, is value-neutral; but knowledge may be used for good or evil. The very success of science and the technology that emerges from it is a distinct form of power that must be nurtured and governed with a watchful eye.

- We acknowledge the need for societal governance of the use of science and technology, but we also acknowledge the imperative that such governance be thoughtful and careful, that liberty and privacy (respect for persons, beneficence and justice), for example, be protected. It is a complex line. Our choices carry great weight. That is why federal oversight is necessary in some cases to ensure that societal values, informed by cultural/religious views, are not trumped, while at the same time continuing our tradition of freedom of scientific inquiry. It is for this reason that the President created NBAC.

- Accounts of past abuses of the human subjects of research (Tuskegee, radiation) and the desire to prevent abuse from ever occurring again, along with the increasing power of technology to work with the forces of nature, joined to form an imperative need for continuing thoughtful *prospective* governance of our Nation's biomedical and behavioral research enterprise.

IV) Policy

- Extension of NBAC charter

- Diabetes initiative

- Long-term goal for R&D support. Strengthening our S&T investments will reap ample rewards. We must all be the constituency of the future.

- Others

- The gulf between the cultures of science and politics. Their different time perspectives. Ozone depletion, global warming, loss of biodiversity have long time constants. While it may take two decades for Nobel recognition or five decades for climate change, political change often comes about in hours or days.

- We are in the formative stages of coupling the physical, biological and social sciences in the pursuit of global knowledge. C.P. Snow's admonition that we must bridge the gap between our cultures of natural science and social science if we are to effectively tackle the research challenges and opportunities ahead. The challenge is to build those bridges, not only to the next century, but across the cultural divides that we must not allow to separate us.

What we need from a writing perspective:

* Science / esp. life sciences — what their importance will be

* Ethics issues — moral framework
  - religious perspective
  - problem areas in the past
    e.g., Tuskegee.
  - good e.g.'s of "scare headlines."

* Research + the importance of basic research.

* minority science issues.

What we need here are journal[redacted] articles, books, speeches, reports, fact sheets, etc.

This does not really refer to the policy initiatives.

FACTS + ANECDOTES we need: 5/8

CHECKLIST

from Michael Waldman

✓ (1) * increased importance of science (statistics & anecdotes), this past century and future.

Mentoring -

✓ (2) * specific examples of progress we've made in recent years, esp. on medicine and health.

✓ (3) * specific predictions / suppositions re: future (new technologies, cures, breakthroughs) from NIH, Waldman, Advancement of research

Bioethics —

✓ (4) * examples of misuse in past — Tuskegee, radiation are ones we know — others? NBAC.

✓ (5) * increasing importance of ocience & tech. to our economy — e.g., US high tech industries that are now leading in world competition, # of jobs. (Steerforth)

(CEA - 1 yr.)

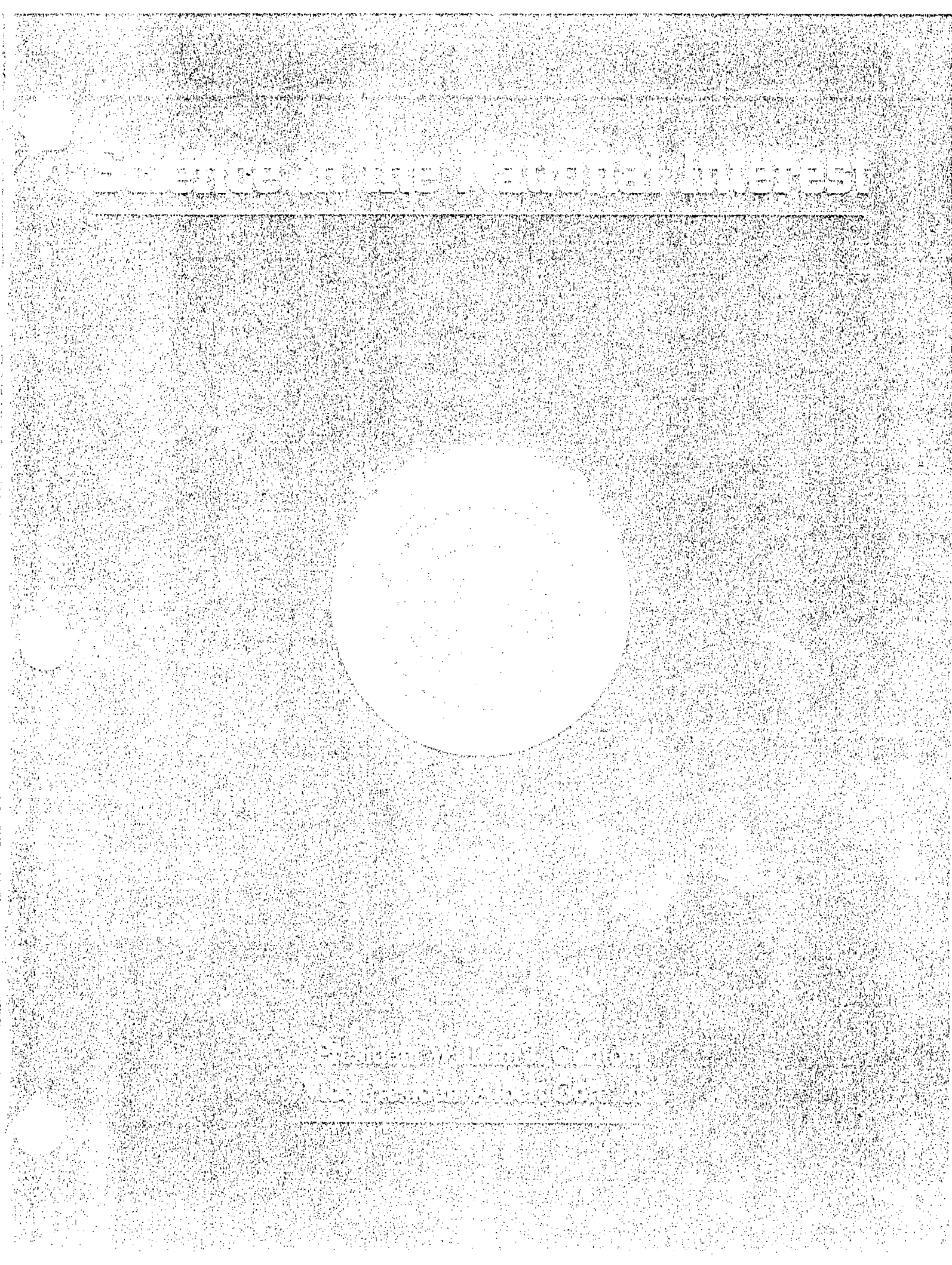
~~* AIDS — human impact~~

(6) ALSO... speeches/essays by · Gibbons, Gore, Varmus, Satcher (Reuters)
· other Presidents (e.g., Eisenhower, post-Sputnik Kennedy)
· religious figures - Pope?

(7) Clean Biotech 805 wheats corn

(8) Freedom of Scientific Inquiry

Science in the National
Interest



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