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**Futility without a Dichotomy: Towards an
Ideal Physician-Patient Relationship**

Annie Lelie and Marcel Verweij

The futility debate may be considered as an effort to provide a clear and justified borderline between physician and patient decision-making authority. In this paper we argue that the search for a definition of futility that provides physicians with a final argument in discussions about life-prolonging treatment is misplaced. An acceptable and meaningful criterion of futility that satisfied this effort seems impossible. As a consequence, we reject a dichotomous domain of decision-making power as the starting point for definitions of futility. A good decision about withholding life-sustaining treatment should be justified from the perspectives of both physician and patient. In this light, a range of definitions of futility is still useful as it can clarify intuitions that a treatment is inappropriate.

**Germ-Line Engineering, Freedom,
and Future Generations**

Elizabeth F. Cooke

New technologies in germ-line engineering have raised many questions about obligations to future generations. In this article, I focus on the importance of increasing free-

dom and the equality of freedom for present and future generations, because these two ideals are necessary for a just society and because they are most threatened by the wide-scale privatization of GLE technologies. However, there are ambiguities in applying these ideals to the issue of genetic technologies. I argue that Amartya Sen's capability theory can be used as a framework to ensure freedom and equality in the use of GLE technology. Capability theory articulates the goal of equalizing real freedom by bringing all people up to a threshold of basic human capabilities. Sen's capability theory can clarify the proper moral goal of GLE insofar as this technology could be used to bring people up to certain basic human capabilities, thereby increasing their real freedom. And by increasing the freedom of those who lack basic human capabilities, GLE can aid in decreasing the inequalities of freedom among classes of people.

**The Conjoined Twins and the Limits
of Rationality in Applied Ethics**

Christopher Cowley

In this article I consider the case of the surgical separation of conjoined twins resulting in the immediate and predictable death of the weaker one. The case was submitted to English law by the hospital, and the operation permitted against the parents' wishes. I consider the relationship between the legal decision and the moral reasons adduced in its support, reasons gaining their force against the framework of much mainstream normative ethical theory. I argue that in a few morally dilemmatic situations, such as a legalistic-theoretical approach cannot plausibly accommodate certain irreducible and ineliminable features of the ethical experience of any concrete individual implicated in the situation, and that this failure partly undermines its self-appointed role of guiding such an individual's conduct. For example, the problem as experienced by the judge and by the parents might not be the same problem at all, and some of their respective reasons may be mutually unintelligible or impotent. I certainly do not

argue for a rejection of law or of moral theory; I merely challenge their implicit claim to comprehensiveness and their fixation with an idealized and putatively universal rationality modeled on converging scientific enquiry. Finally, I claim that at least in the twins' case there may be insufficient normative robustness to the conclusions reached, or indeed reachable, by the court in a situation where intuitions and moral reasons pull in fundamentally incommensurable directions; as such, there may be room for an acknowledgment of the spiritual, through a humble abstinence from making a decision—which is not to be confused with deciding to do nothing.

**The Problematic Role of 'Irreversibility'
in the Definition of Death**

David Hershenov

Most definitions of death—whether cardiopulmonary, whole brain and brain stem, or just upper brain—include an irreversibility condition. Cessation of function is not enough to declare death. Irreversibility should be limited to an organism's ability to 'restart' itself after vital organs have ceased to function. However, this would mean that every hour people who cannot be revived without the intervention of medical personnel and their technology are coming back from the dead. However, the alternative of irreversibility being dependent upon technology will add to even more counterintuitive results such as: some people are dead at a particular time and place, but others in more technologically advanced eras and locations are alive despite their being in identical physical states; in the future, millions of cryogenically frozen human beings could spend centuries in a non-dead state because of the future technological breakthroughs; or large numbers of 'frozen' people are dead for eons but coroners are not able to declare them so because they are unaware of what biological conditions science will never be able to reverse. So death should be defined only in non-relational biological terms with a self-starting condition similar to that once advocated by Lawrence Becker.

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Healthcare Ethics**

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**Conflicting Professional Values
in Medical Education**

Jack Coulehan and Peter C. Williams

In this paper, we summarize our analysis of the medical socialization process as it relates to the development of professionalism and, in a broader sense, to the generation of "good" doctors. We have presented these reflections in more detail elsewhere, but here we wish to frame them in the context of professionalism as an ethical issue. During the decades that the presumed crisis in professionalization was developing, biomedical ethics as a discipline entered the scene at virtually every North American medical school, and more and more ethicists began to ply their trade in the classroom and hospital. In the present paper, we suggest the broad outlines of an ethical response—that is, a more moral medical curriculum. In an accompanying paper, we analyze the specific failure of biomedical ethics teaching to inspire students to become better, more socially responsible physicians.

Christian Bioethics

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**Culture Wars in New York State: Ongoing
Political Resistance by Religious Groups
to the Family Health Care Decisions Act**

Jack Freer and Stephan Wear

In summary, the FHCDA is a legislative solution to a judicially produced dilemma in New York State. This dilemma was created by a series of appellate court rulings that are widely viewed as causing great suffering if applied strictly. The proposed legislation was designed by a task force acknowledged to represent the highest standard of health care public policy advisory panels. The proposed legislation is thoughtful, balanced, and workable. It does not appear to violate any religious tenet of any of the major American religions. Despite this, there is strong opposition from some religious groups representing substantial constituencies in New York. The tone and substance of the objections represent the *orthodox impulse* within the Jewish and Catholic communities. It certainly does not represent a majority of Jewish citizens or Jewish clergy (outside of Orthodox Judaism). While more difficult to assess, it is unlikely that it represents the view of Catholic citizens or even a majority of Catholic clergy. We suggest that this represents a clear instance of *culture conflict* in which the *orthodox impulse* of various denominations join forces to fight a perceived destructive force in society.

Must the Church Be Mute Lest Its Truths Be Distorted? A Response to Engelhardt

*Edmund D. Pellegrino,
John Collins Harvey,
and Kevin T. FitzGerald, S.J.*

Those familiar with the work of H. Tristram Engelhardt, Jr., may disagree with his often-provocative conclusions but most admire his erudition and his challenging dialectic. He is undeniably a seminal thinker in both secular and Christian bioethics. We are all the more dismayed, therefore, at his virulence and incorrect criticism of the efforts of the Roman Catholic Church to influence secular society in the direction of social justice, particularly in its designs for a health care system.

In this response, we not only take exception to Engelhardt's conclusions but also to the line and logic of his argument. We will pass over the intemperate tone of his prose.

Ethics

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Contempt as a Moral Attitude

Michelle Mason

I have argued that, with the conditions discussed herein in place, properly focused contempt can be a morally justified response to persons who manifest a bad moral character. A natural question to ask at this point is whether such contempt is not merely morally justifiable but, perhaps, morally required in certain circumstances. Although I cannot defend such a requirement here, there remain considerations I think that weigh in favor of a conclusion stronger than the one I argue for here: the conclusion that a failure to regard certain vicious characters with contempt may itself amount to a vice.

Ethics and Medicine

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The Conception View of Personhood: A Review

Dennis M. Sullivan, M.D.

In this paper, I have attempted to outline the major reasons for the conception view of personhood. I began with the biblical basis, analyzing how Scripture affirms the inherent value and dignity of man and that this value begins in the womb. I then discussed philosophical ideas of personhood and showed that functionalist views are inadequate and that a substance/dualist view of persons is philosophically and intuitively consistent and conforms to Judeo-Christian thought.

Finally, I examined several decisive moments in the biological development of human beings and showed that syngamy is the only unique point in time on which to base personhood. In short, a human being is a person from the moment of conception. This unique dignity attaches to every subsequent moment.

**Xenotransplantation:
Animal Rights and Human Wrongs**

*Vasudevan Mani, Ryan Mathew, and
Shervanthi Homer-Vanniasinkam*

The first successful human-to-human organ transplant was performed in 1954 when a kidney was transferred between two identical twins. In the years since this groundbreaking operation improvements in transplant surgery and an increasing ability to control organ rejection using immunosuppressive medication has made transplantation the treatment of choice for a new generation. Unfortunately, these advancements have resulted in transplantation becoming a victim of its own success, as waiting lists have increased along with the waiting time for donor organs. For these reasons the use of animal organs for human transplantation is seriously being considered. Two groups of animals have been considered as donors: nonhuman primates and large nonprimates such as pigs.

Whilst many researchers in this field are very optimistic about the future, many opponents are concerned about the effects on public health and the environment. The primary barrier to transplantation is immunological rejection. With xenotransplantation, an additional mechanism of rejection called hyperacute rejection occurs. Immunosuppressive drugs cannot control hyperacute rejection. For this reason, the majority of xenotransplantation trials attempted to date in humans have used chimpanzee or baboon organs. However, the problem will occur with xenotransplantation into humans of organs from more distantly related species such as pigs.

**Eubios Journal of Asian
and International Bioethics**

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**Brain Death and Organ Transplantation:
Knowledge, Attitudes, and Practice
among Japanese Students**

Alireza Bagheri, M.D., et al.

No doubt, the incorrect idea that "brain dead is treatable," as 58.7% of the respondents in this survey believed, is a key aspect of social resistance to accept organ transplantation from brain dead donors; with such a belief, their reluctance to organ procurement from brain-dead donors is understandable. Perhaps public education on this matter should be reviewed. No significant differences were found between the students' responses to the questions that were aimed to evaluate their practice in a virtual situation with their responses to the questions designed to survey just their attitudes. Therefore, it seems that giving more correct medical information and drawing a picture of the patient's real situation and how their lives depend on receiving an organ might have changed the society's attitudes towards brain death. This would result in improvement of organ procurement from the brain dead.

Hastings Center Report

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**Physician-Assisted Suicide:
A Conservative Critique of Intervention**

Daniel E. Lee

Those of us opposed to physician-assisted suicide would do well to focus our efforts on helping others discover the meaning and hope that are possible in life, even in the midst of suffering. We can accomplish far more by reaching out in a loving, caring manner to those experiencing great suffering, instead of sitting around moralizing about what they should or should not do and threatening physicians with legal penalties if they act in ways at odds with values we hold dear. If we were to do a better job of responding to suffering individuals in a loving, caring manner, physician-assisted suicide would in all likelihood be an option rarely, if ever, chosen.

**Body Values: The Case against
Compensating for Transplant Organs**

Donald Joralemon and Phil Cox

This paper responds to the most frequent criticisms of the present altruism-based system and elaborates on the case for keeping the cash out of transplantation. The arguments canvassed here refer variously both to the cadaveric organ acquisition addressed by the AMA proposal and to the use of live donors—or vendors—which is known as “inter vivos” donation. Although the AMA proposal is only for cadaveric organ acquisition, a natural next step is to consider employing financial incentives for inter vivos donation.

**Revisiting Ethical Guidelines
for Research with Terminal Worn
and Brain-Dead Participants**

Rebecca D. Pentz et al.

Some research is too risky to be conducted on anyone whose life expectancy is more than a few hours. Yet sometimes, the research can still be carried out using subjects who are brain dead or are soon to undergo a terminal wean and who have articulated values that inclusion in the study can honor. So argues a team of ethicists and researchers at M.D. Anderson Cancer Center, where such research was recently undertaken.

Journal of Clinical Ethics

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**A Mediation/Medical Advisory Panel
Model for Resolving Disputes
about End-of-Life Care**

Susan Fox Buchanan et al.

The time frame of the pilot project was sufficiently brief (approximately six months) and the case volume was sufficiently low ($n = 12$) to warrant extreme caution in reaching any conclusions. The following postulations should be recognized as subjective impressions, rather than quantifiable results. Nevertheless, they may be useful for future efforts.

In order to maintain visibility and a “safety net” around hospital staff participating in a pilot project, the project needs recognized internal champions with stature who

are “native” and recognized in the hospital environment, rather than visiting emissaries. According to one mediation expert, “Only a mediator who knows the institutional ‘players’—including quality assurance and utilization review bodies and the heads of departments and medical committees—will thoroughly understand the substantive positions and the authority of all the people involved in a conflict.” In addition, the project needs administrative encouragement. “Alternative dispute procedures will succeed only if they are embedded in institutions with credibility and authority. The procedures must be in place long before there is a real need, so they can become known, gain credibility and acceptance, and be viewed as a valid and effective forum for resolving disputes.”

Case referral procedures should be “automatic” and securely in place in each department, so that individual physicians do not feel that they are being “picked on.” For example, a hospital policy referring all cases with significant morbidity factors and conflicted family decision makers could set a precedent for nondiscriminatory case referrals.

The institutional culture has a significant, if unspoken, effect upon a project such as ours. The efficacy of a Mediation/Panel intervention depends in part on the extent to which it complements, duplicates, or interferes with existing pathways or conflict resolution methods that are already in place. Cooperation between the project and the existing hospital ethics committees, social work departments, clergy, and other “informal problem solvers” is a key factor.

Despite significant limiting factors and considerations unique to each pilot-site hospital’s environment and culture, we believe that mediation and Medical Advisory Panel can make positive contributions to resolving patient care conflicts and harmonizing communication among treatment teams, patients, and families.

Journal of Medical Ethics

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Confidentiality and its Limits: Some Contributions from Christianity

I.R. Torrance

The issue is whether Christianity, of its nature, would seek to prevent a justifiable breach of confidentiality or could endorse it, under certain circumstances, as the act which is fundamentally more loving or more truthful. The individualistic nature of Western Christianity is noted. The Lutheran theologian Dietrich Bonhoeffer is used to show Christian support for dynamic rather than literal truth telling, and for awareness of the contexts and power relations within which persons stand.

Research on the Mentally Incompetent

M. Cuéod and J. Gasser

The specific problems of consent for the mentally incompetent are reviewed. Scientific research is essential to test the validity of present treatments and to develop new ones. The respective role of the physician and the researcher have to be clearly defined. The vulnerability of psychiatric patients has to be taken into consideration in such a way that some research can be conducted. It is emphasized that the ethical restrictions for research, although highly justified and necessary, are in part responsible for the relatively slow progress in the application of modern neurosciences to psychiatric diseases.

**Misled and Confused? Telling
the Public about MMR Vaccine Safety***C.J. Clements and S. Ratzan*

The extraordinary events surrounding the measles, mumps, and rubella (MMR) vaccine in the United Kingdom have not only placed in jeopardy the use of this triple vaccine but have also spread concern to other parts of the world. Examination of the public's worry about MMR vaccine reveals they have been exposed to a range of conflicting views resulting in the feeling of having been misled about the safety of the vaccine. There are various groups and individuals who have legitimate roles in informing the public about such subjects. But is each one behaving in an ethically responsible way? And if confidence falters, vaccine coverage dips, and an outbreak of measles, mumps, or rubella ensues, who, if anyone, will stand and say "I misled them, I confused them, this is my responsibility"? We examine the ethical issues of each group with a voice in the debate about vaccine safety.

**Incapacity to Give Informed Consent
Owing to Mental Disorder***C.W. Van Staden and C. Krüger*

What renders some mentally disordered patients incapable of informed consent to medical interventions? It is argued that a patient is incapable of giving informed consent owing to mental disorder, if a mental disorder prevents a patient from understanding what s/he consents to; if a mental disorder prevents a patient from choosing decisively; if a mental disorder prevents a patient from communicating his/her consent; or if a mental disorder prevents a patient from accepting

the need for a medical intervention. This paper holds that a patient's capacity to give informed consent should be assessed clinically by using these conditions necessary for informed consent and should be assessed specifically for each intervention and specifically at the time when the consent has to be given. The paper considers patients' incapacity to give informed consent to treatment, to give informed consent to be examined clinically, and to give informed consent to participate in research.

**Journal of
Medicine and Philosophy**

**Volume 27, Number 6
December 2002****Defending Principlism Well Understood***Michael Quante and Andreas Vieth*

After presenting the current version of principlism, in the process repudiating a widespread deductivist misinterpretation, a fundamental metaethical disagreement is developed by outlining the deductivistic critique of principles. Once the grounds for this critique have been understood, the dispute between casuistry, deductivism, and principlism can be restructured, and the model of "application" proven to be the central difference. In the concluding section it is argued that principlism is the most attractive position, if the perceptual model of weak intuitionism is made more explicit.

**Theoretical Medicine
and Bioethics**

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**Confining Choices: Should Inmates'
Participation In Research Be Limited?**

Lynn Pasquerella

Historically, prisoners in the United States have served as an inexpensive and readily available source of human subjects for research. Coinciding with the civil rights movement, however, was an emerging conception of prisoners' rights that led to the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research being charged with investigating the use of prisoners as research subjects. The recommendations that evolved and the subsequent guidelines that have been implemented by the Department of Health and Human Services significantly curtail the use of prisoners as research subjects. While these measures are designed to protect inmates from the abuses of the past, of particular concern to many health care officials is exclusion of inmates from experimental HIV/AIDS and hepatitis treatments. This paper addresses whether the vulnerability of prisoners in the United States due to their incarceration is sufficient to prohibit them from participation in clinical trials that offer the possibility of life-saving treatment. It first outlines the evolution in moral thinking that has led to laws broadly prohibiting prisoners from biomedical research studies and then analyzes cases in the law to develop ethical arguments in support of the view that prisoners should be allowed to participate in clinical trials. The conclusion is that prisoners should be allowed to participate in such trials.

Zygon

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Kantian Ethics: After Darwin

John Teehan

In this article I reevaluate Immanuel Kant's moral philosophy from a post-Darwinian perspective. Taking an evolutionary approach to human reasoning and incorporating some recent work on the science of the emotions, I argue that the Kantian bifurcation of reason and emotion, which underlies his moral philosophy, is no longer tenable. Kant's practical defense of his ethics as being the only option that can save morality from the dangers posed by naturalism is also considered and rejected. Instead, I argue that an evolutionary view of reason and emotion can provide an adequate ground for morality and explore the possibility and advantages of such an ethics.

**The Theological Structure
of Christian Faith and the Feasibility
of a Global Ecological Ethic**

Gordon D. Kaufman

Scientific evolutionary/ecological thinking is the basis for today's understanding that we are now in an ecological crisis. Religions, however, often resist reordering their thinking in light of scientific ideas, and this presents difficulties in trying to develop a viable global ecological ethic. In both the West and Asia religio-moral ecological concerns continue to be formulated largely in terms of traditional concepts rather than in more global terms, as scientific thinking

about ecological matters might encourage them to do. The majority of this article is devoted to the kind of reformulation of Western Christian conceptions of God, humanity, and the relation between them that is necessary to address this problem. The question is then raised whether similar critical thinking about religio-moral issues raised by today's evolutionary/ecological

scientific thinking is going on in Asian religions and whether it would be too presumptuous (in view of our colonial history) for us Westerners to ask for such rethinking. This leads to a final question: Without such transformations in religious traditions East and West, is the development of a truly global ecological ethic really feasible?