The Right to Die, the Bio-Ethical Frontier: Creating an Agenda*

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The willingness of society to contemplate death at close range is itself an invitation to one of the most conclusive debates in the contemporary world. Society's stake in survival has converted the secret elements of conscience into agendas for public discussion.

The Right to Die stipulates that individuals may determine the circumstances of their own death and decide whether their lives should or should not be prolonged by medical technology.[1] The concept that human beings control life and death in general and their own lives in particular runs counter to the Judeo-Christian tradition which undergirds much of the legal and moral traditions of the Western world as they pertain to life and death. For, according to that continuing element in Western civilization, the termination of life—of others and of self—by human hands, outside of war, is murder. There is also no differentiation made, except for a slight variation from established religious law, between active and passive termination. The withdrawal of the support for life is considered in the same category as the killing of life. The variation exists in the attitude of rabbinic law and the interpretation of Catholic doctrine regarding the final phase of a person's life when all hope for life by any definition has been surrendered and the person is then allowed to slip unimpeded into death. With that single exception, which is open to interpretation, there is no recognized Right to Die for the individual.

The classical tradition of the West argues that a swift and easy passage to death is preferable to long and agonizing death. In so far as the biblical Book of Job is considered to be a product of the early Hellenistic period, when the genre of wisdom literature began to flourish throughout the Eastern Mediterranean basin, it too reflects a preference for death rather than a lingering painful life. The revival of classical values in the English Renaissance is perhaps responsible for the presence of this sentiment in the works of Thomas More and Francis Bacon.[2]

Clearly, however, neither the societies of the ancient classical world nor as yet the period of the European Renaissance conceived of human rights. The centrality of the human being in a morally homeocentric universe and the replacement of Divine Will by Human Will as equatable controlling factors in the destiny of man is a recent conception. The measurement of human values by human standards rather than by those of an immutable divine will is similarly a product of the secular society dominated by the idea of human progress.[3]

The contrast between secularity and religion is nevertheless not warranted since advocates of the Right to Die have frequently been religionists who have either taken stands against the tenets of the established faith or who have argued that their religious tradition contains a variety of streams of thought some of which are not predisposed against the individual's Right to Die. Indeed, while the Catholic and Jewish traditions are clear as they were formulated by Aquinas and Maimonides, there is no single Protestant viewpoint.[4] Furthermore, the debate on the Right to Die within Catholic ranks has not only pitted Daniel McGuire against Joseph Sullivan, but the interpretations of the papal legate to the United States, Jean Cardinal Villot, against those of the Archbishop of Westminster, John Cardinal Heenan. The encyclicals of Popes Pius XII and Paul VI were clear statements in support of the canonical tradition; but they left opportunities for interpretations that would support an easy passage into death.[5]

While the lines of demarcation between the secular and religious are not drawn on the issue that one view supports the Right to Die and the other opposes it, there appears to be a common target that the supporters of the Right to Die have attacked. That enemy, as it were, is medical technology. More broadly put, the enemy is human technological progress and the support of the Right to Die is a protest against the prolific and indiscriminate use of medical technology, simply because it is available, to interfere with the normal almost preordained capacity of the human species to live. Put in biblical language, the Right to Die is succinctly expressed in the words of *Ecclesiastes*, "There is a time to live and a time to die." Medical technology has erased the boundary of "the time to die" and effectively dislocated the acknowledged rhythm of life which is finite. The paradox is that traditional religious positions which argue that life is in divine hands are upholding modern man's ability to prolong life, while advocates of the Right to Die who attack traditional religious positions are arguing in favor of preserving the individual's alloted time.[6] The conclusion that may be drawn from this consideration of the typology of viewpoints, their motivations and origins in Western civilization, is that traditional categories of thought do not fit or express the complexity of the issue of the Right to Die in its religious or philosophical settings.

It is clear that no debate exists over the value of human life, but over its definition and in regard to the authority which defines its limits. By defining the humanities in their widest application, that is, to any aspect of knowledge which touches on human life, there is a possibility of rallying the most varied range of knowledge to focus on the evolving nature of the definition of death and its implication for contemporary culture. The distinction between the sciences and the humanities that are found in an academic curriculum, for example, would be entirely too limiting if those disciplines that are included within the sciences were left out and only those that traditionally fall into the humanities were considered useful. The professional disciplines (was the study of the law ever solely a professional discipline or always an aspect of the humanities?) must be involved because of the need to introduce new components into the training of professionals in the fields of law, medicine, nursing and social work and because the fabric of the law and the direction of the legal system will undoubtedly feel the impact of any changes that may take place in the elemental definition of death.

The issue of the Right to Die is pervasive in the humanities and the professions; it may well be decisive in the area of constitutional legislation and in the direction our society will take. In a more imaginative sense, some of the social criticism of the 1984-like societies that seem to be in the making have indeed viewed the management of death as a central aspect of their futuristic visions. Gore Vidal's *Messiah* describes a society where death is swiftly and easily administered on request by a willing social order. The existence of public policy

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may in the first instance liberate individuals to determine the circumstances of their death. Once government is involved in legislation and administration, it may no longer be a liberating force, but a determining force shaping the behavior of practitioners and the choices of families and patients.[7] One conclusion must be drawn not only from the complexity of the issue but from its very pertinence to the shaping of society: There is no branch of knowledge that can afford to be excluded from the discussion. The fashionable term "interdisciplinary" only begins to point to the way in which knowledge must be pooled, shared, refined and heavily disseminated.

This last point is most critical. The very complexity of the issue and its meaning, no less than life and death, makes it imperative that the public be kept informed of the discussion at all stages. The Right to Know precedes the Right to Die since on the level of public policy and trust uninformed debate and a "politics as usual" approach would be disastrous. Indeed, the amount of public policy and administrative involvement in the entire issue will have to be carefully monitored and calibrated to prevent what may become the most serious infringements on the rights of individuals to prolong their existences regardless of any definition exterior to their own lives. A rather frightening scenario involving government can easily be constructed. Government funding, public health administration and policing, and ever-present concern about efficient use of funding, *combined* with a legally validated Right to Die creates a not unthinkable potential situation where the excruciating financial burden of prolonging life may suggest that the terminally ill or potentially terminally ill and their families be encouraged to make use of the "Living Will' as a means of providing relief to surviving loved ones—or to the funding agency.[8] The heightened guilt feelings of the patient may well provide the opportunity for manipulation of the subtlest sort to the end of saving on the budget. There is no need to awaken fear of a Nazi-type government that will utilize the Right to Die as a pathway for implementing its eugenic blueprints. There are sufficient possibilities available in a democratic society for government to work in more invisible ways for less dramatic ends.

The need to expose the public to as many aspects of the discussion as possible in community forums where public participation can be maximized does not need support beyond the common concern that all of us are susceptible to being personally caught up in this issue. Regardless of the longer range results of deliberations in the area of public policy, there is a present need to confront the reality that decisions regarding active and passive euthanasia are being made every day by patients, their families, physicians, nurses, and as a consequence, intended or not, of hospital policies.

While the discussion abounds, medical technology provides its facility and practitioners enact their judgments. Counselors, lawyers, and clergymen advise patients and their families and clergy and the medical professions minister to their other than technological needs. In the treatment of the terminally ill patient, the rabbinic formulation found in the liturgy of the Day of Atonement comes to mind: "Do not cast us away in our old age, when our strength fails us, do not abandon us." In the sense that prayer petitions are reflections of real-life needs, the plea not to be abandoned, or more strongly, not to be cast away, could not be more pertinent than in the assessments of the attitudes that grow and often prevail toward the terminally ill. In varying degrees, as Elisabeth Kubler-Ross has amply illustrated, the desire to abandon or even cast away the burden of the terminal patient frequently characterizes the kind of professional treatment which the patient receives and the way the family may turn against the patient.[9] The abject frustration involved in caring for the terminally ill is so bound up with the conviction that there is no way out of this endless process—except to prolong it—that the possibility of terminating life at a certain point is an idea that conveys welcome relief. The

guilt which the family fears if they even consider termination would be mitigated because the law and society validate that feeling. The Right to Die, in this instance, would become a desirable, legal, and guilt-free form—of abandonment and casting away. On the other hand, proponents of the Right to Die argue that there is nothing left of quality-level life that is being abandoned; it is life and the memory of life in its freshest and most beautiful form that is being preserved and beyond that we are dealing with physical husks and vegetative bodies.

Practitioners, patient and family alike are all caught in the web of the dilemma of abandonment vs. relief. Often, the reaction to this searing confrontation is the creation of a personal defense which takes the form of treating the patient or the relative as a case. Objectifying experience under the mantle of professionalism means avoiding the pain of loss; it is more difficult for the family that does not have a professional code or ritual to fall back on. Two observations emerge from considering this aspect of the problem. The first is that the family of the patient is both an agent and a sufferer. The family shares in the responsibility for decision-making and is affected by the decision in a way that the practitioner is not. The second point is that professional training must include the strongest dosage of concentration in the humane studies, that is, in the areas which deal with life and death as human values, and which suggest that the way we treat patients, especially the terminally ill, is a reflection of our civilized natures. The barometer of the humanities needs to be included as a measuring instrument in the training of those who minister to the terminally ill. Perhaps the issue of the Right to Die has produced in microcosm what the proliferation of nuclear weapons has otherwise shown: that we have the tools and now have to learn *whether* as well as how to use them.

With ever increasing attention being paid to the Right to Die, the practice of law will increasingly be entwined with the evaluation of the practice of medicine.[10] In one case, the beating heart of a patient who had been declared legally dead under the law was transplanted to another patient. The family of the "donor" filed suit against the doctors and the issue was joined over the meaning of the law and the definition of death. The physiological basis for the definition of death was the cessation of brain waves; under this definition the beating heart, a living heart, one might argue, was removed from a dead body. The case tested every aspect of the many systems tied into the definition of death: law, medicine, education. The two professions, in the meantime, squared off for another battle.

It was not only the application of the new definition that was being tested, however, but a fundamental change in the way society views the very process of life and death. And, let it be clear, that it was the perception by society of the biological process that was at stake. One is reminded of the classical and biblical description of the heart as the seat of wisdom. Poetic or not, it was a perception of the biological process which had to be disregarded as an accurate scientific description of actual function. No practical decision regarding the disposition of the human body could be made on the basis of it. At a next stage in the evolution of human perception, life and death and the systems which sustained life or determined that it was over were based on the evaluation of this phenomenon of the beating heart. Now, brain waves are the determinant and evaluation of their efficacy is tested by electronic scanning. And yet, arguments in favor of the Right to Die have been made on the basis that even the continued functioning of the brain is a vital sign that persists beyond the point of life of any quality. Two dramatic episodes in recent American history, the periodic reports on the persistence of vital signs of Robert F. Kennedy and Dwight D. Eisenhower, serve the arguments of the advocates of the Right to Die. In their view, Senator Kennedy and President Eisenhower were no longer "alive" although their vital signs were ongoing.

The actual tests of which definition of death

will prevail in society will be made not in popular perceptions of another sort, but as a result of the definitions which will be incorporated in the law of the land and challenged or defended in the courts. At the same time, the legal profession may find itself in a combative position with the practice of medicine or nursing trying to restrict the discretion of doctors under the new definition, or for that matter, trying to enlarge their discretion. In the interpretation of laws relating to the Right to Die, lawyers will be dealing with one of the fulcrums of society. For, regardless of the discussion by humanists or anyone outside of the framework of making, administering, and testing the law, it will be the rule of law that will govern the application or the denial of the Right to Die. The law will likely set the standards that inhibit or enlarge individual freedom, and that will constrain or extend the ability of anyone else, patient, family or doctor to decide.[11] The need to have a firm impact from the humanities and their questions about the ultimate value of life upon the shapers and carriers of the law can hardly be minimized.

When all is said and done, no less than a new social contract is being demanded by the advocates of the Right to Die; no less than a radical change in the valuation of life which will affect all of the systems that deal with the transition from life to death. All authoritative bodies will have their constitutions questioned, especially the state, and every profession will have its credentials put under the severest scrutiny. Such a novel delineation of the directions our society will take, will inevitably be founded on new definitions of several basic conceptual components of the problem. The first concept is euthanasia, the "good death" that the Greeks envisioned that is not protracted, painful or debilitating on loved ones. A further refinement in the quest for a feasible definition of euthanasia in this society will be the distinction between active and passive euthanasia.[12] Specifically, the Right to Die is the right of patients or their legal representatives to require that treatment be withheld or that passive euthanasia be practiced. Evidently, however, withholding action is a form of action and the opponents of the Right to Die insist that the distinction between active and passive euthanasia is illusory.

A second concept involved in the Right to Die issue is "heroic measures."[13] In this case, once it is determined that a patient can only be kept alive by "heroic measures," it is the signal to the advocates of the Right to Die that the moment has come when life of any quality has already come to an end and that life itself should come to a peaceful and quick end. Still, the actual implementation of measures to perpetuate life may be "heroic" or simply unusual and the line between them is often subjective. Besides, the term "heroic measures" may not, as it seems in the first blush, pertain to the perceptions which only physicians entertain. To a kidney patient, a three-times-a-week dialysis may be "heroic," extraordinarily beyond the norm, which may suggest that the time has come to recognize that life linked to a dialysis machine is not worthy of being described as life. The Right to Die implies the right of the patient to refuse these—to him—heroic measures and to choose to die.[14]

A third concept, which has already been put into the form of an instrument is the Living Will, the legal formulation of any individual's desire in the case of irreversible illness or injury.[15] The Living Will provides for annual review, for a time span to pass between its execution and the event which may call for its implementation, and for the individual to cancel its provisions immediately. The Living Will is considered to be a major first step in the eyes of the advocates of the Right to Die in providing guidance to all potential survivors. Nevertheless, at this stage, the Living Will is not considered binding on physicians or family. Nor, it has been argued, does a document prepared while a person is in good health express the wishes of a patient *in extremis*. Nor does it necessarily spell out the length and type of illness or accident which can signal the specific point or circumstances that the individual believed should be considered the time or criteria for termination.[16] Proponents of the Living Will would argue that at the very least the matter of termination is out in the open. Public knowledge has taken over from frequent subterfuge and efforts to gloss over rationale for a decision. The highly personalized and undercover actions of practitioners, the incomplete and guilt-ridden impulses of the family, the presence of mutual suspicion, which permeates much of the process dealing with the terminally ill, would come to an end with the presence of a document, as legally imperfect as it may be, that is moral and above board in its quality.

The willingness of society to contemplate death at close range is itself an invitation to one of the most conclusive debates in the contemporary world. Society's stake in survival has converted the secret elements of conscience into agendas for public discussion. In essence, there are substantial linkages between participants in the debates over the Right to Life, the Quality of Life, and the Right to Die.[17] They are all engaged in a conscious planned effort to make the best of a relatively short time that the human being spends on this planet. The swelling number of persons who believe in the Right to Die are uniquely convinced that the natural course of life is impeded by the advances of human technology. In the past and today, people clamored against the divine will that cut life too short. Now, the complaint is against human genius which keeps life too long. In either case, human aspirations appear to have no end, especially as they seek to wrench power over life from forces outside of the existence of the individual. The Right to Die is also uniquely expressive of our contemporary desire to control the microcosm of our own lives. Creating an agenda on the Right to Die may well be the beginning of a turning point in contemporary society.

Notes

1. Literature prior to 1970 deals with euthanasia rather than with the Right to Die. More recent works on the Right to Die includes Milton D. Heifetz, M.D. with Charles Mangel, *The Right to Die: A Neurosurgeon Speaks of Death with Candor* (G.P. Putnam's Sons, New York, 1975); Herbert Waltzer, "People Who Choose to Die" in Claude A. Frazier, M.D., ed., *Is It Moral to Modify Man?* (Charles C. Thomas, Springfield, Ill., 1973); Jerry B. Wilson, *Death By Decision: The Medical, Moral, and Legal Dilemmas of Euthanasia* (The Westminster Press, Philadelphia, 1975); Paul Ramsey, *The Patient as Person: Explorations in Medical Ethics*, (Yale University Press, New Haven and London, 1970; Henry A. Davidson, "Death by Choice: The Good and Evil of Euthanasia" in Claude A. Frazier, M.D., ed. *Should Doctors Play God?* (Broadman Press, Nashville, Tenn., 1971); John A. Behnke and Sissela Bok, eds., *The Dilemmas of Euthanasia* (Anchor Press/Doubleday, Garden City, N.Y., 1975); Jonathan Gould and Lord Craigmyle, eds., *Your Death Warrant: The Implications of Euthanasia: A medical, legal, and ethical study*, (Arlington House, New Rochelle, N.Y., 1971); Daniel C. Maguire, *Death by Choice* (Doubleday: Garden City, N.Y., 1974); A.B. Downing, ed., *Euthanasia and the Right to Death* (Humanities Press, New York, 1970); Melvin J. Krant, M.D., *Dying and Dignity: The Meaning and Control of a Personal Death* (Charles C. Thomas, Springfield, Ill., 1974); Diana Crane, *The Sanctity of Social Life: Physicians' Treatment of Critically Ill Patients* (Russell Sage Foundation, New York, 1975). A more popularized discussion of the issues is contained in Marya Mannes *Last Rights* (William Morrow, New York, 1974).

Useful bibliographies appear in Milton Heifetz *The Right to Die*, 229-34; David Hendin, *Death as a Fact of Life*, (Norton, New York, 1973), 229-41; in John A Behnke and Sissela Bok, *The Dilemmas of Euthanasia*, passim; Marvin Kohl, ed., *Beneficent Euthanasia* (Prometheus Books, Buffalo, N.Y., 1975), passim. Less recent material is contained in Robert Fulton, ed., *Death and Identity* (John Wiley, New York, 1965); Barney G. Glaser and Anselm L. Strauss, *Awareness of Dying* (Aldine, Chicago, 1966); Elisabeth Kubler-Ross, *Death: The Final Stage of Growth* (Prentice-Hall, Englewood Cliffs, N.J., 1975), is among the most forthright and sensitive. Very important is Samuel Gorovitz, et al, *Moral Problems in Medicine* (Prentice-Hall, Englewood Cliffs, N.J., 1976); cf. also Milton McC. Gatch, *Meaning and Morality in Christian Thought and Contemporary Culture* (Seabury Press, New York, 1969); and Joseph V. Sullivan, *The Morality of Mercy Killing* (The Newman Press, Westminster, Md., 1950).

2. Cf. the excellent summation by Raanan Gillon, "Suicide and Voluntary Euthanasia: Historical Perspective," in A.B. Downing, *Euthanasia and the Right to Death: The Case for Voluntary Euthanasia* (Peter Owen, London, 1969), 173-192. In general, the English have been more sophisticated in their viewing of euthanasia and the Right to Die as phenomenon bound up with the course of western civilization. The arguments put forward in the works of Glanville Williams and Mary Rose Barrington, samples of which are contained in Downing's collection of essays, are most urbane; cf. Stanley Joel Reiser, "The Dilemma of Euthanasia in Modern Medical History: The English and American Experience," in Behnke and Bok, *Dilemmas*, 27-50. More encompassing is Morris H. Saffron, et al., *Attitudes Toward Euthanasia in Ancient Times and Today* (Euthanasia Educational Council, Inc., New York, 1970).

3. Thus, Camus' reference to suicide: "There is but one truly serious philosophical problem and that is suicide. Judging whether life is or is not worth living amounts to answering the fundamental question of philosophy. All the rest . . . comes afterwards. These are games; one must first answer." *The Myth of Sisyphus and Other Essays*, trans. Justin O'Brien (Knopf, New York, 1955), 21. The nexus of the problem was strikingly portrayed by Fromm in asking why most people do not become insane in view of the contrast that the symbolic self has given man a sense of infinite worth while the body—at the time of his publication—was worth about 98 cents; Erich Fromm, *The Sane Society* (Fawcett Books, New York, 1955), 34.

4. Immanuel Jacobovits, "The Dying and Their Treatment in Jewish Law," *Hebrew Medical Journal* 2 (1961) and Fred Resner, "Jewish Attitudes Toward Euthanasia," *New York State Journal of Medicine* 67 (1967), 2499-2506; cf. also Jacobovits, *Jewish Medical Ethics* (Bloch Publishing Company, New York, 1959), 121-125; Fred Resner, *Studies in Torah Judaism; Modern Medicine and Jewish Law* (Yeshiva University, New York, 1972), 107-131, present summations of the classical rabbinic views which are the foundations of governing Jewish law and praxis. Byron L. Sherwin, "Jewish Views of Euthanasia," in Kohl, 3-11, is a weak attempt at formulating a position favorable to the practice of euthanasia within the framework of rabbinic law. A very rigorously enforced limited form of passive euthanasia in the rabbinic law "sanctions the withdrawal of any factor—whether extraneous to the patient himself or not—which may artificially delay his demise in the final phase." The "final phase" is defined as the final three days of life; Jacobovits, "The Dying and Their Treatment," 251. Active euthanasia is out of the question. The view of the Book of Job—"Wherefore is light given to him. . . who longs for death, but it cometh not? (3:20) or "My soul chooses strangling and death rather than these my bones" (3:7)—is not reflected in the discussions which do exist among Jewish scholars. The dilemmas of the issue for the practicing Jew were noted in the Kahn interview with Dr. Joseph Baumgarten (September 27, 1976).

A more sophisticated *responsum* (the technical term for a rabbinic answer to a question within the province of Jewish Law), "Allowing a terminal patient to die," was developed by the Committee on Responsa of the Central Conference of American Rabbis under the chairmanship of Solomon B. Freehof, who wrote the responsum; see "Report of the Committee on Responsa," *Central Conference of American Rabbis Year Book*, Vol. 79 (1969) pp. 118-121, in which Freehof carefully sifts the classical and medieval sources of Jewish legal opinion and concludes: "According to the spirit of Jewish tradition, just as a man has a right to live, so there come times when he has a right to die," most particularly basing himself on the commentary of the Spanish scholar, Nissim Gerondi, to the Talmudic tractate *Nedarim* 40a and on the *Sefer Chasidim* (Frankfurt edition, #315-318) which reads: "If a man is dying, we do not pray too hard that his soul return and that he revive from the coma; he can at best live only a few days and in those days will endure great suffering; so 'there is a time to die.' " On the distinction between active and passive euthansia, Freehof comments (p. 121): "If the patient is a hopelessly dying patient, the physician has no duty to keep him alive a little longer. He is entitled to die. If the physician attempts actively to hasten the death, that is against the ethics of Jewish law. In the case as described, the term used in the question, 'to hasten death,' is perhaps not correct, or at least should be modified. The physician is not really hastening the death; he has simply ceased his efforts to delay it."

5. The debate within Catholic circles has been joined by Joseph V. Sullivan and Daniel Maguire. A summation of their views is found in Kohl, *Beneficent Euthanasia* (Joseph V. Sullivan, "The Immorality of Euthanasia," 12-33; Daniel C. Maguire, "A Catholic View of Mercy Killing," 34-43). Briefly, Sullivan cites Augustine (City of God 1, 20) Aquinas (Summa Theologica 11, 11, Q. 64, art. 5), and Pope Pius XII's Encyclical *Mystici Corporis* (1943) in support of the view that "tradition of the West is therefore sternly set against any form of the direct killing of the innocent." (p. 23) and in warning that the legalization of voluntary euthanasia would be followed at a later date by other legislation for compulsory euthanasia. Maguire quotes Aquinas (Summa 1, 11, Q. 18, art. 3) on the general principle that "human actions are good and bad according to their circumstances" which in Maguire's view establishes Aquinas as "a situationist in ethics," (p. 37). Be that as it may, Maguire recalls the address to the International Federation of Catholic Medical Associations in 1970 by the Vatican Secretary of State, Jean Cardinal Villot: "The doctor's duty here is rather to ease the suffering instead of prolonging as long as possible, by any means whatsoever and in any condition whatsoever, a life no longer human and which is closing to its natural end . . ." *L'Osservatore Romano*, October 12-13, 1970 (p. 35). See also Frank Ayd, "The Hopeless Case," *Journal of the American Medical Association* 181 (1962), 1099-1102 for a discussion of the view of Pope Pius XII, Pope Paul VI denounced euthanasia in 1970 at a convention of Roman Catholic physicians in a statement which included abortion and infanticide as examples of the "materialistic concepts of a pagan eugenics which tend to make the most wrongful practices respectable again." The Pope continued, "Without the consent of the sick person euthanasia is murder. His consent would make it suicide. Morally, this is a crime which cannot become legal by any means." A modification of this viewpoint was offered by the United States Catholic Conference meeting in November, 1971, which condemned euthanasia in principle, with the following proviso: "The failure to supply the *ordinary* means of preserving life is equivalent to euthanasia. However, neither physician nor patient is obligated to use *extraordinary* means," (italics theirs); previous quotations are from Richard Trubo, An Act of Mercy: Euthanasia Today (Nash Publishing, Los Angeles, 1973), 90 (Papal quotations), 96 (Conference). John Gould and Lord Craigmyle, *Your Death Warrant? The Implications of Euthanasia* (Arlington House, New Rochelle, N.Y., 1971) is a broadside attack by English Catholics on the euthanasia movement which began in England in 1935. The vigorousness of the opposition is reflected in the preface by John Cardinal Heenan: "Hijacking aircraft, tossing bombs into crowded shopping centres and selling drugs to your children are not sins mentioned in the Bible. Nor is euthanasia. So keep religion out of this. Just read about this plan to kill you and anyone else who becomes old or incurably sick."

6. The theoretical basis for euthanasia in this country has been laid down primarily by Joseph Fletcher: Cf. *Morals and Medicine* (Beacon Press, Boston, 1960), 172-210; "Elective Death," in E.F. Torvey, ed., *Ethical Issues in Medicine* (Little, Brown, Boston, 1968), 139-157; "Ethics and Euthanasia," in R.H. Williams, ed., *To Live or to Die* (Springer-Verlag, New York, 1973), 113-22. "The logic of what I am saying," Fletcher argues, "is that we should drop the classical sanctity of life ethics and embrace a quality-of-life ethic instead," in "The 'Right' to Live and the 'Right' to Die," Kohl, 44-56. Marvin Kohl has similarly attempted to create a conceptual framework for euthanasia, see *The Morality of Killing* (Peter Owen, London, 1974).

The seminar conducted by Professor Kahn including Professors Baumgarten, Friday, Father Monios, Chaplain Greenawald, Messrs. Kent and Sykes voiced very significant concern over the need for increased discussion and discovery of an overall ethical framework for decisions to discontinue life and more intensive awareness of the varied "accepted" meanings of the terms "life" and "death."

7. On the implications of governmental roles in euthanasia, see Yale Kamisar, "Euthanasia Legislation: Some Non-Religious Objections," in A. B. Downing, ed., *Euthanasia and the Right to Die* (Peter Owen, London, 1967), 85-133, especially 132-33, notes 123-26 which review the arguments derived from the evidence of the Nurenberg War Criminals Trials. A fuller version of Kamisar's article is in the *Minnesota Law Review* 42 (1958); cf. also Arthur Dyck, "Beneficent Euthanasia and Benemortasia," in Kohl, 117-129, particularly his comments in the "wedge argument," 120-21. Cf, also "Biomedical Ethics and the Shadow of Naziism," *The Hastings Center Report* 6 (August 1976), Special Supplement. Mannes, *Last Rights*, 60-72. Kahn interview with John Kent, Esq., August 16, 1976, indicated that the state at this point prefers to remain neutral.

8. The compelling position of the financial burden and its potentially determining role is reflected in the New York Times editorial comment of California Governor Edmund Brown Jr.'s signing of the nation's first Right to Die bill into law (New York

Times, October 5, 1976). After pointing out that it is a mistake to assume that doctors can determine whether death is imminent and that the California bill inspired anxiety over whether it was merely the first step to legalize euthanasia of the aged, the editorial went on: ". . . at some point, the question must be raised about the expenditure of limited resources for such cases, when funds are needed for others who have better prospects for achieving full health and for contributing actively to their families and to society." Similar views were expressed in the Kahn interview with John Kent, Esq.

9. On the dilemma of medical practitioners in confronting the terminally ill, see Elizabeth Kubler-Ross, On *Death and Dying* (Macmillan, New York, 1969); Barbara E. Davis, "The Nurses Dilemma," in *Dilemmas of Euthanasia* (Euthanasia Educational Fund, New York, 1971), 14-18; Glanville Williams, "Euthanasia and the Physician," in Kohl, 145-68.

The role of the family is described by Maguire *Death by Choice,* 75-130; the comments by Chaplain Carl Greenawald (Kahn interview) were especially sensitive and insightful here.

10. Cf. the report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death. "A Definition of Irreversible Coma," *Journal of the American Medical Association,* 205 (1968), 85-88. This definition was adopted in Kansas, Maryland, and California; cf. *Death With Dignity: Legislative Manual,* Society for the Right to Die (250 W. 57th St., New York, N.Y., 10019); Howard W. Brill, "Death with Dignity: A Recommendation for Statutory Change, "Florida *Law Review* 12 (1970), 368-83; Paul Ramsey, *The Patient as Person,* 89-104. The conflict between the perceptions held by medical and legal practitioners is reflected in M. M. Halley and W. F. Harvey, "Medical vs. Legal Definitions of Death," *Journal of the American Medical Association* 204 (1968), 423-25; cf. Also William P. Cannon, "the Right to Die," *Houston Law Review* 7 (1970), 654-70; S. P. Fletcher, "Legal Aspects of the Decision Not to Prolong Life," *Journal of the AMA* 203 (1968), 65-68. Cf. also Task Force on Death and Dying. Institute of Society, Ethics and the Life Sciences, "Refinements in Criteria for the Determination of Death: An Appraisal, "*Journal of the AMA* (1972); Helen Silving, "Euthanasia: A Study in comparative Criminal Law," *Pennsylvania Law Review* 103 (1954), 350-89. Interview by Kahn of Rev. Carl Greenawald, Chaplain of University Hospital, September 27, 1976.

11. On the rights of patients, cf. Department of Health, Education and Welfare, "Protection of Human Subjects—Proposed Policy," *Federal register* 39:165: 30648 (August 23, 1974) on the definition of "informed consent." The American Hospital Association Statement, "A Patient's Bill of Rights," is reprinted in John A. Behnke and Sissela Bok, eds., The Dilemma of *Euthanasia* (Anchor Press/ Doubleday, Garden City, N.Y., 1975), 157-59; see L.K. Altman, "Hospital Patients' Bill of Rights Backed," *New York Times,* (January 9, 1973); C. Montange, "Informed Consent and the Dying Patient," *The Yale Law Journal* 83 (1974), 1647-64; Ralph J. Alfidi, "Informed Consent: A Study of Patient Reaction," *Journal of the American Medical Association* (1971), 1325-29; more generally Henry K. Beecher, "Ethics and Clinical Research," *New England Journal of Medicine* (1966), 1354-60; Robert M. Veatch and Sharmon Sollitto, "Human Experimentation: The Ethical Questions Persist," *The Hastings Center Report* 3 (1937), 1-3.

12. On the proposed differences between active and passive euthanasia, see Joseph Fletcher, "The Patient's Right to Die," in Downing, ed., Euthanasia *and the Right to Death,* 61-70; James Rachels, Active and Passive Euthanasia," *The New England Journal of Medicine* (1975), 78-80; on passive euthanasia, see David W. Meyers, "The Legal Aspects of Medical Euthanasia," in Behnke and Bok, *Dilemmas,* 51-68; Sissella Bok, "Euthanasia and the Care of the Dying," *ibid.*, 1-26. The morality of active euthanasia is defended by Daniel Maguire, "The Freedom to Die," *Commonweal* (August, 1972), 423-37 and, more generally, in his *Death by Choice* (Doubleday, Garden City, N.Y., 1974).

13. Torrey Brown (September 1, 1976 interview), however, points out that radical advances in medical technology often transform the unusual and the heroic measure into the more usual in a brief period of time. Cf. also Diana Crane, *The Sanctity of Social Life,* 103-97. Kahn interview with Francis D. Murnaghan, Jr., (August 19, 1976) portrays the concern of the legal profession that a patient's decision to terminate treatment raises issues concerning estates, life insurance, and other financial implications and vested interests. That the impact of economic dislocation on the family can be extremely deep and crippling was pointed out in the Lilienfeld interview. The economic costs of "heroic measures" on medical institutions, deployment of medical personnel and the delivery of medical care was discussed in the Kent interview. Concerning government policy, one paper given at a recent seminar on "Death and Dying: An investigation of Legislative and Policy issues," raised the following question: "Should health *policy* consist of fostering the good birth, the good life, and the good death, or should it be a policy of all possible death prevention . . .?;" see the report of the seminar sponsored by the AAAS and the Georgetown University Health Policy Center (June 30, 1976), by Nancy C. Joyce, "Death and Dying Policy: A Bold Exchange," *Science* 194 (October 1, 1976), 49-50. The author is indebted to his colleague, Professor Abraham M. Lilienfeld for this reference. The Kahn interview with Torrey Brown challenged the very concept that a good death is possible; interview September 1, 1976.

14. See A.A. Levisohn, "Voluntary Mercy Deaths: Sociolegal Aspects of Euthanasia," *Journal of Forensic Medicine* 8 (1961), 57-79; Norman L. Cantor, "A Patient's Decision to Decline Life-Saving Medical Treatment: Bodily integrity Versus the Preservation of Life," *Rutgers Law Review* 26, 228-64; "The Decision to no Longer Live on Dialysis," *American Journal of Psychiatry* 128 (1971), 267-74; for a report of the Raasch Case (January 21, 1972), where the Milwaukee court refused to deny a patient the right to refuse surgery, see *Milwaukee Sentinel,* January 22, 1972 and following dates, and *Milwaukee Journal,* January 21, 1972 and following dates. A survey of mercy-killing cases is in Daniel C. Maguire, "Death, Legal and Illegal," *The Atlantic* 233 (1974), 72-85. For a spurt of popular reaction against euthanasia, see the report of hearings conducted on the Right to Survive by Senator Edward M. Kennedy, *New York Times,* August 8, 1972.

15. The Living Will in its English form is reprinted in Kohl, XXII; an American version is reprinted in Appendix 1, Behnke and Bok, *Dilemmas,* 153-54. For a philosophical justification of the Living Will, see Eike-Henner W. Kluge, *The Practice of Death* (Yale University Press, New Haven and London, 1975), 154-63; Paul Ramsey, "Indignity of 'Death and Dignity,' " *Studies, The Hastings Center Report* 2 (1974). David Dempsey, *The Way We Die: An Investigation of Death and Dying in America Today* (Macmillan, New York, 1975), 107, estimates that 750,000 Living Wills have been distributed. The interviews with Francis D. Murnaghan and Torrey Brown revealed considerable concern over the binding quality of the Living Will.

16. Beth Israel Hospital in Boston has adopted a policy on cardiopulmonary resuscitation. The decision-making process is carefully detailed in Mitchell T. Rabkin (M.D.), Gerald Gillerman (J.D.), and Nancy R. Rice (J.D.), "Orders Not to Resuscitate," *New England Journal of Medicine* 295 (1967), 364-366; cf. also Diana Crane, *The Sanctity of Social Life,* 33-65; Mannes, *Last Rights,* 22-48; H.T. Wright, *The Matthew Tree* (Pantheon/Random House, New York, 1975). Proposals and descriptions of advisory committees in Maryland were provided by Rabbi Jacob B. Agus (Kahn interview, August 13, 1976), Oscar Newman (Kahn interview, September 23, 1976), and Torrey Brown. Deep concern over the necessity and functions of these committees was evident during the Hebrew College Seminar (September 27, 1976).

17. That the argumentation for a "good birth" in the Right to Life movement is not dissimilar to the advocacy of the Right to Die was explored by Dr. Abraham M. Lilienfeld (Kahn interview, September 19, 1976); also the Murnaghan interview and Kahn conversation with Fr. Robert Friday, September 27, 1976.