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Privacy in the Computer Age

To make its research readily available to a broad audience, the Center for Philosophy and Public Policy publishes a quarterly newsletter: *QQ—Report from the Center for Philosophy and Public Policy*. Named after the abbreviation for “questions,” *QQ* summarizes and supplements Center books and working papers and features other selected work on public policy questions. Articles in *QQ* are intended to advance philosophically informed debate on current policy choices; the views presented are not necessarily those of the Center or its sponsors.

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The odds are good that some computer somewhere knows something about you that you would rather it didn't. The databases of the federal government contain 4 billion separate records about American citizens — seventeen items apiece. Recently, different government files have been electronically compared to uncover tell-tale discrepancies: personnel files of federal employees have been matched against state welfare rolls to flag welfare fraud; lists of eighteen-year-old male dependents generated from IRS records have been matched against Selective Service registrations to identify draft evaders. The FBI's National Crime Information Center is a massive computer network linking more than 57,000 federal, state, and local criminal justice agencies and offering instant access to information on stolen property, missing and wanted persons, and criminal histories. This last category is of particular interest to prospective employers, who were responsible for half of the over 200 million inquiries directed to the network last year. It's worth their while to bother checking: one in five Americans will be arrested at some time in their lives.

The federal government is joined in its computerized information gathering by behemoths in the private sector. A giant computerized credit company like TRW makes available to thousands of merchants all over the country a tidy balance sheet on any of almost 90 million Americans in a matter of three or four seconds. AT&T holds precise minute-by-minute records of the 500 million phone calls made daily from the nation's 130 million telephones, information that has been used by government investigators

in a number of cases. Such information, notes David Burnham, author of *The Rise of the Computer State*, "can be extraordinarily revealing. . . investigators can learn what numbers an individual has called, what time of day and day of week the calls were made, the length of each conversation, and the number of times an incorrect number was dialed. Considered as a whole, such information can pinpoint the location of an individual at a particular moment, indicate his daily patterns of work and sleep, and even suggest his state of mind."

In many businesses, computers are used directly and overtly for worker surveillance. A recent nationwide survey of video display terminal operators showed that 35 percent were monitored by computer. Computer monitoring has been used to keep a daily log of the room-tidying speed of maids at Washington's Ritz-Carlton Hotel, to clock the "average work time" of AT&T telephone operators, to see how fast the cashiers at the Giant Food Store process customers, and to tabulate the performance of United Parcel drivers to the hundredth of an hour.

Many charge that these cases amount to a flagrant and frightening invasion of privacy. They ask whether privacy in any recognizable form can survive the computer age. But just what kind of a threat to privacy is posed by the long memory and unblinking eye of the computer? What is privacy and why do we value it personally and as a society? How do we weigh the threatened value of privacy against the manifold marvels the computer promises to unfold before us?

What Is Privacy?

Privacy has been defined in a number of ways. On one account, it is the measure of *control* a person has over access

to information about herself, or to the most intimate aspects of her life. Privacy is a matter here, not of how much others know about the details of one's life, but of the extent to which the person herself decides what information they are to have. On another account, privacy is the *state* or *condition* of limited access to a person. On this view, someone's privacy is diminished in some measure whenever others come to know more about her.

Ferdinand Schoeman, a professor of philosophy at the University of South Carolina currently in residence at the Center for Philosophy and Public Policy, favors the second account. He argues that "a person who chose to exercise his discretionary control over information about himself by divulging everything cannot be said to have

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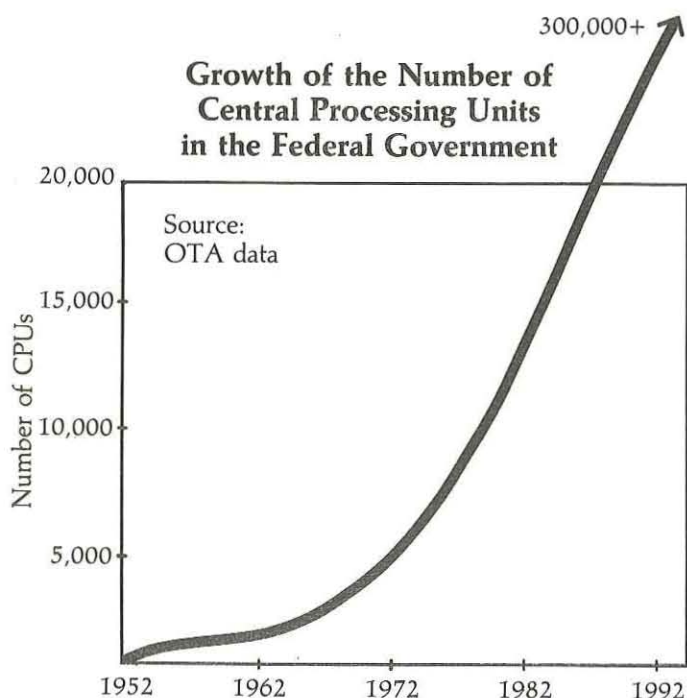
lost control, although he surely cannot be said to have any privacy." And an individual can lose some control over access to personal information (if, for instance, a national security agency is authorized to monitor international phone conversations) without losing any privacy at all (if his conversations are not among those monitored). The *right* to privacy, according to Schoeman, has to do with the question of the individual's control; privacy itself concerns what the individual has control of.

Thus either privacy itself or certainly the right to privacy is diminished when huge databases stock vast quantities of information about us (and particularly when computerized matching programs reveal to one agency, without our authorization, information disclosed to another). Access to personal information about us is increased, and our control over who has access to this information, and what kind of access, is decreased.

Why does this matter? Why is it important that access to information about our lives remain limited, or that we control such access?

Why Privacy Matters

One reason why we might value privacy is that it carves out a space within which we can do bad things without being found out. Those with criminal intentions have good reason to ward off too-close scrutiny of their affairs. But this reason for valuing privacy will not carry much weight with the rest of us, who have nothing criminal to hide. We would rather eliminate welfare fraud than shield the defrauder from a computerized matching program that would uncover his double identity.



Privacy also allows the convicted miscreant the hope that in time her past misdeeds will fade from public attention and be forgotten. The FBI's master file of computerized histories ensures, on the contrary, that memory will be steadfast and long. Legal theorist and now federal judge Richard Posner argues that this is all to the good, that people should be thwarted in concealing disadvantageous information about themselves. Such concealment, he thinks, amounts to fraud in "selling" oneself to prospective employers and friends. But Richard Wasserstrom, professor of philosophy at the University of California at Santa Cruz, suggests that "there are important gains that come from living in a society in which certain kinds of derogatory information about an individual are permitted to disappear from view after a certain amount of time. What is involved is the creation of a kind of social environment that holds out to the members of the society the possibility of self-renewal and change . . . of genuine individual redemption."

Those who would have nothing to fear from the disclosure of complete and accurate information about themselves might, of course, have a good deal to fear from the disclosure of partial and false information. Unfortunately partial and false information are just what most databases have an abundance of. Burnham reports the results of one study that found that only 45.9 percent of the records in the FBI's computerized criminal history file were "complete, accurate, and unambiguous." Anyone who has tangled with a computer over a simple billing error knows how difficult it can be to erase a faulty bit of information from the computer's elephantine memory. Furthermore, even accurate information can be subject to misinterpretation; Burnham also points to sociological experiments indicating that employers are reluctant to hire workers with arrest records, even where charges were later dropped, or where a court trial resulted in acquittal. Once arrested, one is presumed guilty even after being proved innocent! While privacy per se is not at issue in the disclosure of *false* information about ourselves, it at least reduces the sheer volume of personal information stored, thus minimizing the danger of error.

By enhancing and fostering a clear sphere of the private, privacy helps to rein in the sphere of the public, to mark out a clear boundary that we prohibit the state from crossing.

People differ in how approvingly they regard the current government, but no one has much trouble imagining some possible future government that would be far worse. It seems wise, then, to curb the power of the state over its citizens, to make sure that the state doesn't come to know too much. By enhancing and fostering a clear sphere of the private, privacy helps to rein in the sphere of the public, to mark out a clear boundary that we prohibit the state from crossing. It is the crossing of this boundary that is feared

Photo courtesy of International Business Machines Corporation



The FBI's National Crime Information Center offers instant access to information on stolen property, missing and wanted persons, and criminal histories.

when computerized databanks are likened to an Orwellian Big Brother.

These concerns, however potent, still do not seem to capture all there is that matters to us about preserving our privacy from computerized intrusions. If these doubts could be met in other ways — by strictly enforcing a periodical review of stored records for completeness and accuracy, say, or erecting other barriers against official abuse — we would still feel that there was some deeper worry left untouched. Privacy is important not only for what it saves us from, but for what it has been argued to make possible: freedom and dignity, on the one hand, and intimate human relationships, on the other.

Freedom and Dignity

Privacy protects freedom: not only the freedom, as noted earlier, to misbehave, but the freedom to do anything that we would be inhibited in doing by the presence of external observation. Think how many actions we would feel less free to perform if there were someone — anyone — intently watching us every minute of the day, taking account of every movement we made, every syllable we uttered. Such relentless scrutiny would make one reluctant to do anything commonly perceived, for whatever reason, as foolish or embarrassing; it would curtail groping, experimentation, risk taking, trial and error. Imagine trying to write a paper, a poem, a love letter, with every preliminary scribble inspected by an uninvited third party. We are less free to act, to speak, to dream in public

than in private, and practices of privacy maintain the barrier between the two realms.

Do current uses of computer technology undermine privacy in a way that poses a threat to freedom? The minute-by-minute computerized surveillance of workers that is increasingly relied upon as a management technique seems clearly to make workers less free. When, as in some workplaces, every keystroke is tallied electronically, every momentary respite recorded — every nose-blowing, every stretch, every bathroom break — the state of observation is too total, and too totalitarian.

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To a much lesser degree, projected levels of centralized data collection and storage could also take a toll on freedom and spontaneity. With the routine storage of enormous quantities of information, Wasserstrom speculates, “every transaction in which one engages would . . . take on an additional significance. In such a society one would be both buying a tank of gas and leaving a part of a systematic record of where one was on that particular date. . . . An inevitable consequence of such a practice of data collection is that persons would think more carefully before they did things that would become part of the record. . . . we would go through life encumbered by a wariness and deliberateness that would make it less easy to live what we take to be the life of a free person.”

Privacy is critical as well to the affirmation of human dignity. Jeffrey Reiman, a philosopher at American University, suggests that the cluster of behaviors that makes up the social practice of privacy has as its purpose a resonant societal declaration of respect for the dignity of the individual: “Privacy is a social ritual by means of which an individual's moral title to his existence is conferred. Privacy is an essential part of the complex social practice by means of which the social group recognizes — and communicates to the individual — that his existence is his own.”

The right to privacy, on Reiman's view, “is the right to the existence of a social practice which makes it possible for me to think of this existence as *mine*.” The specific nature and form of this practice may differ from society to society and may change over time. This means that the growth of computerized databanks need not undermine privacy in our society if other practices in the complex privacy ritual receive compensatory emphasis or new practices develop. But there is a danger that the weakening of one strand in the cluster will weaken others as well. Wasserstrom warns, “If it became routine to record and have readily accessible vast quantities of information

about every individual, we might come to hold the belief that the detailed inspection of any individual's behavior is a perfectly appropriate societal undertaking. We might become insensitive to the legitimate claims of an individual to a sphere of life in which the individual is at present autonomous and around which he or she can erect whatever shield is wished.”

Privacy and Intimate Relationships

In one sense, privacy builds fences around persons through which others are not permitted to peer and beyond which they may not trespass. The right to privacy has been categorized as the right to be let alone. Yet here, too, it has been argued that “good fences make good neighbors” — that privacy not only protects individual freedom and dignity but is itself a necessary precondition of our entering into a wide range of diverse human relationships.

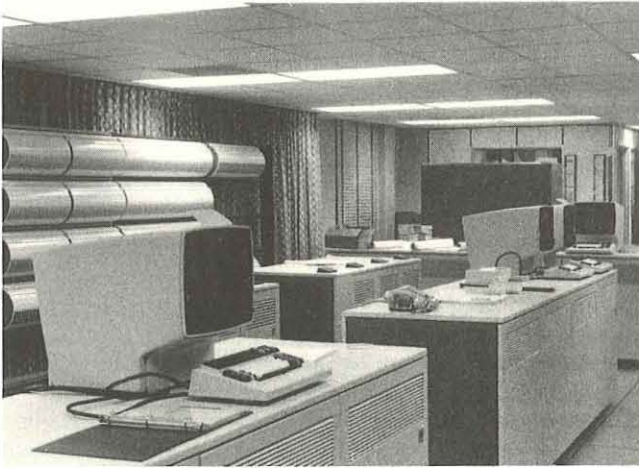
According to University of Alabama philosopher James Rachels, “There is a close connection between our ability to control who has access to us and to information about us, and our ability to create and maintain different sorts of social relationships with different people.” An essential part of what distinguishes one sort of relationship from another is “a conception of the kind and degree of knowledge concerning one another which it is appropriate for [the parties] to have.” Thus we disclose different amounts of information about different aspects of our lives to our doctor, employer, neighbors, children, casual acquaintances, close friends, spouse. If we could not control the level of disclosure and choose to be selective in our revelations, Rachels argues, we could not maintain an array of diverse personal and professional relationships.

Indeed, Charles Fried insists that without privacy our most intimate relationships “are simply inconceivable. . . . To be friends or lovers persons must be intimate to some

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degree with each other. But intimacy is the sharing of information about one's actions, beliefs, or emotions which one does not share with all, and which one has the right not to share with anyone. By conferring this right, privacy creates the moral capital which we spend in friendship and love. . . . Privacy grants the control over information which enables us to maintain degrees of intimacy.”

Is the possibility of genuine sharing within an intimate relationship precluded by the proliferation of centralized databanks in which the secrets that would be confided to the loved one are handily stored with billions of other tid-



The very impersonality of the computer's storage of intimate information can give rise to a feeling of violation.

bits of information on a magnetic tape? The answer would seem to depend in part on how many people in what capacity have access to the database. The Rachels-Fried view provides one argument for limiting access as far as possible — for not, for example, passing files about from one government agency to another.

Reiman argues, however, that Fried and Rachels are wrong to think that intimacy is bound up with privacy in the way they propose. Their view, he feels, "suggests a market conception of personal intimacy. The value and substance of intimacy — like the value and substance of my income — lies not merely in what I have but essentially in what other do *not* have." Intimacy, on this view, is constituted by its unavailability to others — in economic terms, by its scarcity. Reiman suggests instead that "what constitutes intimacy is not merely the sharing of otherwise withheld information, but the context of caring which makes the sharing of personal information significant." He goes on to say, "It is of little importance who has access to personal information about me. What matters is who cares about it and to whom I care to reveal it. Even if all those to whom I am indifferent and who return the compliment were to know the intimate details of my personal history, my capacity to enter into an intimate relationship would remain unhindered." Computers are no threat to intimacy on this view. What matters for intimacy is not how much some computer knows, but how much some human being cares.

Computers don't care, of course, and likely the human beings who input intimate information into a database at so many keystrokes a minute don't care, either. This in itself can give rise to a feeling of violation — Schoeman observes that we feel defiled when information that matters deeply to ourselves is handled without recognition of its specialness. He compares intimate information, information that is of the greatest importance to our conception of ourselves, to a holy object — "something that is appropriately revealed only in special circumstances. To use

such an object, even though it is a humble object when seen out of context, without the idea of its character in mind is to deprive the object of its sacredness. . . . Such an abuse is regarded as an affront."

None of this is to say that records of intimate information should not be committed to the computer. There are in many cases weighty societal reasons for collecting and storing the information that we do. But it is a good thing for us to remember periodically that the data we collect and analyze and scrutinize are at bottom a record of people's lives. We have a charge to treat them carefully, and with respect.

Conclusion

It is common to assume that technological changes inevitably pose a threat to privacy. But Schoeman notes that the industrial revolution brought in its wake a major increase in privacy, as the resultant urbanization led to heightened anonymity — "the privacy that results from the indifference of others." Generally, Schoeman suggests, "the degree to which privacy is threatened is a function of design rather than of mere consequence." The technology of the computer gives us new capabilities that would allow us to restrict the privacy of individuals in new ways, but it does not dictate how we will choose to use them. That choice depends on how important we, as a society, take privacy to be.

The views of Ferdinand Schoeman, Richard Posner, Richard Wasserstrom, Jeffrey Reiman, James Rachels, and Charles Fried are taken from their articles in Philosophical Dimensions of Privacy: An Anthology, edited by Ferdinand Schoeman (Cambridge: Cambridge University Press, 1984). The factual information in the article was drawn from The Rise of the Computer State, by David Burnham (New York: Vintage Books, 1984) and two articles that appeared in the Washington Post: "The Computer That Can Send You to Jail," by Bob Brown, September 23, 1984; and "Monitoring by Computers Sparks Employee Concerns," by Peter Perl, September 2, 1984.

PRIVATE FILES



C. Barsotti

Drawing by C. Barsotti; © 1984
The New Yorker Magazine, Inc.

Teaching Seditious: Some Dilemmas of Feminist Pedagogy

Teaching feminism *is* teaching sedition. Feminists are in revolt against the male dominant institutions and the androcentric culture that define this society — and perhaps all existing societies. Feminists seek to overthrow the established order and to replace it with a system in which people's life opportunities are not limited by their class, their race and, above all, their sex. Feminist scholars and teachers are one wing of the feminist assault force that is attacking the dominant culture.

To be perceived as, or indeed to be, seditious causes difficulties for anyone. It raises special problems for those of us who take it on ourselves to teach philosophy and public policy. I want to discuss some of those problems here.

Feminism as a Systematic Policy Perspective

The popular media, and even some feminists themselves, often identify certain issues as "women's issues." So-called women's issues include legal discrimination against women, affirmative action, abortion, divorce, child support, the ERA, non-sexist education, and pornography. Although these issues are obviously issues of legitimate public concern, they often seem to be among the less pressing public issues of our time. Compared to so-called "human" issues of war and peace and world starvation, concern with affirmative action and pornography may seem narrow or parochial.

Some people suggest that so-called women's issues are not the issues of primary concern even to women. The New Zealand representative to a U.N. conference on women in 1980 stated this view forcefully. She said: "To talk feminism to a woman who has no water, home, or food is to talk nonsense." If questioned on her view, it is plausible to suppose that she would have elaborated it as follows: "Women are human beings first and foremost. As such, women share with all other human beings, with men and with children, certain basic human needs. Students of public policy should give the highest priority to developing policies that could satisfy these basic human needs. Only when this has been achieved should we turn our attention to the special and therefore secondary needs of women."

At first sight, this view sounds like common sense. Increasingly, however, feminists are rejecting it, as they reject so much of what has passed traditionally for common sense. Many feminists claim that it is simply impossible to maintain a conceptual distinction between women's special needs on the one hand and general human needs on the other hand. They observe that in no society are people viewed simply as people, as human beings; instead,

people are categorized as men and women and they are shaped, psychologically and even physiologically, according to prevailing norms of masculinity and of femininity. No human needs are biologically determined; all needs are shaped by a certain social context, structured by prevailing norms of gender. Just as there is no such thing as human nature in general, so there are no such things as human needs in general. Instead, there are needs specific to different classes of individuals and, among these, needs that are specific to men and needs specific to women.

Women's needs include not only needs for education or for reproductive freedom; they also include, of course, needs for water, home, and food. To the extent that men too need water, home, and food, one might infer that these are basic human needs which are not specific to either sex. But this inference would be fallacious, because water, home, and food have a different meaning for each sex. In all societies that I know of, access to the necessities of water, home, and food is different for each sex and so is even what counts as an adequate supply. For instance, in some societies, drinking water is obtained by women's carrying it for long distances; piped water would thus have a direct and immediate effect on women's lives that it would not have on men's. Moreover, a reduction in infant mortality resulting from water-borne diseases could help to transform women's lives as childbearers.

Similarly, changes in housing practices are likely to affect women very differently from men, in part because, in all societies, the home is the center of women's work. Finally, in all societies, the production and consumption of food is organized along gender lines. The diet of women and men is also likely to be quite different. In many societies, women are expected to eat last, after the men have eaten, and sometimes they have a totally different diet altogether, usually one that is lower in protein and often less tasty or nutritious. Even within our own society, women tend to consume more salad and more sweets while men eat more meat. There's more than a grain of truth in the title of the best-selling book *Real Men Don't Eat Quiche!*

One implication of all this is that practically *every* public policy issue can now be seen to be a women's issue. This does not mean simply that the major issues of public policy concern women as well as men: it means that these issues concern women *differently* from the way that they concern men. For instance, so-called aid to so-called developing countries affects women differently from the way it affects men. Often the "aid" may result in a relative or even absolute worsening of women's position, as men

become absorbed into the paid labor force of new development projects and women are left behind to do subsistence farming, including much of the work that men used to do in pre-"development" days.

Even the nuclear arms race affects women differently from men; for, although men will perish (almost?) equally with women in the final holocaust, the current cost of this arms race is being borne disproportionately by women. Women are not the recipients of most of the income generated by the high-technology weapons industries but women are primarily those in need of the social services that are cut to fund arms spending, and they suffer disproportionately from the inflation that results from this spending.

It is primarily feminists who have pointed out that many public policy issues are, in a sense, different issues

the ways that public policies have very different and often even contrary impacts on women and on men. This insensitivity is demonstrated by the very identification of certain issues as women's issues, with its unacceptable double implications both that some issues do not concern women and that "women's issues" are not matters of general concern.

It is thus not only permissible but actually mandatory that feminists should be involved in leading discussions about issues of public policy. Otherwise, evaluation of these issues will be incomplete and policies will be adopted that continue to favor the interests of men over women.

Feminism as Impartiality

What I have established so far is that it is not only

Photo credit Dick Sheaff, Wellesley College Publications Office



for women and for men. Moreover, it is usually feminists who have linked failures of certain public policies explicitly with the lower social status of women. For instance, feminists have shown that birth rates in Third World countries will remain high until better nutrition for women results in lower infant mortality and until women receive more education and are not forced to rely on their sons for economic support. In this example, adequate public policies on issues of education, employment, nutrition, and population cannot be developed without attention to the subordinate social status of women.

This example shows clearly that the subordinate status of women is not a self-contained or a secondary issue. Instead it is a key to understanding and evaluating a whole range of public policy alternatives. Unfortunately, this key tends to be used only by feminists. Non-feminists who discuss issues of public policy generally are insensitive to

legitimate but actually desirable for feminists to be involved in evaluating issues of public policy. But what about leading discussion of these issues in a classroom? Is it wise or even safe to have convinced feminists responsible for introducing these issues to impressionable young minds? Is an explicit political commitment to feminism compatible with the pedagogical commitment to impartiality?

It is very easy, indeed, it is quite common, for feminist teachers to be accused of bias. Students in courses on feminism sometimes express an interest in hearing "the other side" of the issue or complain about lack of "balance." Such complaints are more likely to occur if the instructor expresses any emotion, such as moral outrage, in the course of her presentation. The expression of emotion is generally taken to be incompatible with the cool objectivity of pure scholarship.

I think the feminist answer to this challenge lies in a counter-challenge to conventional assumptions about what constitutes objectivity or impartiality. For instance, feminists should point out that emotions are not necessarily counterposed to thoughts, and that feeling is not necessarily a distortion of perception in the way that bias is a distortion of objectivity.

That an individual has strong feelings about a certain public policy issue does not imply that she is necessarily biased or irrational in her thinking about the issue; the fact of strong feelings shows merely that she cares deeply about the issue — and her caring may well encourage her to *think* more deeply about it.

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The belief that objectivity and impartiality are incompatible with feeling and emotion often is associated with the view that objectivity and impartiality are incompatible with moral commitment. When impartiality is construed as neutrality between conflicting interests, it is inevitable that feminists will seem to be biased. For feminists do not claim to be operating from some neutral, Archimedean point outside the social world. There is no such point, they argue, and no such thing as moral neutrality. Instead, all systems of knowledge are shaped by human purposes and reflect human interests and values. Within a society that is divided by class and gender, prevailing knowledge reflects the interests and values of the dominant class and gender. Within male dominant society, feminists claim, the way we think about the world and the way that we conceptualize our options inevitably will be shaped by the interests of men, primarily the interests of men of the dominant race and class.

The male bias of prevailing knowledge, however, will not be immediately obvious. A characteristic feature of contemporary ideological portrayals of the world is that they purport to be value free, or else to reflect the interests of "society as a whole" or even of "all humanity." In the context of such high-flown talk, feminist claims often appear to be biased — just as the voice of a woman or of someone with a regional accent sounds parochial when contrasted with a BBC radio announcer, whose unemotional, upper-class, and male voice is perceived as class and sex *neutral*, making the BBC news seem to express a god's eye perspective on the world.

When feminists point out the male bias in prevailing systems of knowledge, or in prevailing public policies, the standard liberal response is to invite feminists to present "their side of the picture." The liberal idea is that feminism represents one among many competing points of view and that a just resolution of public policy issues is most likely to be reached if all points of view are heard and allowed to

compete in the marketplace of ideas. This notion is probably in the minds of those who complain that feminist teachers do not present all sides of an issue. In emphasizing the feminist aspects of public policy issues and in ignoring or criticizing anti-feminist positions, feminists again are seen as teaching in a way that is not fair or "balanced."

Feminists should respond to this challenge by denying that all positions are equally worthy of consideration. In discussing issues of racial discrimination, one is not obliged to study the agitational propaganda of the Nazis or of the Klu Klux Klan. The most interesting issues of public policy are multi-faceted rather than two-sided, and time constraints usually will not allow exploration of every conceivable position on an issue. From the feminist perspective, one can know almost a priori that approaches to public policy that fail to examine the specific policy implications for women are quite inadequate and do not merit valuable class time.

Impartiality is not the same as neutrality. To be neutral on an issue is to have no position, not to know or not to care what is the right thing to do. On some occasions, individuals may be in positions of genuine neutrality, but often the appearance of neutrality is a cover for underlying interest. Whatever students may believe, issues of public policy can hardly be presented to a class in a neutral way: the facts that are selected and the principles that are identified, even the way that the issue is defined, inevitably will predispose the hearer to accept one policy rather than another.

To be impartial on an issue is not to be indifferent as to its outcome; instead, it is to be open-minded, to consider seriously unorthodox opinions, to listen to voices that speak without established authority as well as those with official credentials. It is to give equal weight to the interests of all, to refuse to discount some individuals or groups.

Impartiality is quite consistent with commitment. Indeed, feminists believe that a genuinely impartial consideration of contemporary social life must generate inevitably a commitment to feminism.

Impartiality is quite consistent with commitment. Indeed, feminists believe that a genuinely impartial consideration of contemporary social life must generate inevitably a commitment to feminism. Anyone who examines contemporary social institutions with an open mind, who gives equal weight to the interests of all individuals or social groups, and who listens seriously to women's voices cannot help but perceive that many public policies discriminate systematically against women and so reinforce male dominance. If women's interests were genuinely given equal weight with men's, many public policies would be different. From the feminist point of view, it is not feminism that is irrational or biased, but rather positions that ignore or discount the specific in-

terests of women. Far from constituting a disqualifying bias, feminist commitment is a defense against one very common and damaging form of bias. Impartiality is not undermined by feminism; instead, feminist commitment helps to safeguard impartiality.

Of course, feminists are not the only ones charged with teaching sedition. Socrates was only the first in a distinguished line accused of corrupting the youth. Not all philosophy teachers face exactly the same dilemmas as do feminists. The western philosophical tradition in practice has tended to reinforce male dominance rather than to undermine it; for instance, it has valued public over private life, reason over emotion, and has emphasized the

meeting of minds rather than of whole persons. Nevertheless, in my opinion, philosophy itself is intrinsically subversive to a hierarchical, authoritarian, and male dominant society. For this reason all teachers of philosophy confront at least some version of the feminist dilemma.

—Alison M. Jaggar

Alison M. Jaggar is currently the first occupant of the state-endowed chair in Women's Studies at Douglass College of Rutgers University. This article was drawn from the first two-thirds of the keynote address she presented at Teaching Philosophy and Public Policy, a workshop sponsored by the Center for Philosophy and Public Policy, held in Washington, D.C., June 27-29, 1984.

Workers, Owners, and Factory Closings

In *The Fight Against Shutdowns*, Staughton Lynd writes: "Workers in Youngstown and elsewhere are beginning to ask: Why is the company allowed to make a shutdown decision unilaterally? Since the decision affects my life so much, why can't I have a voice in the decision? . . . The communities in which shutdowns occur are starting to ask the same questions."

The thrust of these questions is moral, not practical. Lynd is asking why companies *ought* to be allowed to exclude workers and communities from shutdown decisions, and he is suggesting that the latter have a *right* — a moral right, which ought perhaps to be made a legal right — to participate in these decisions.

From some perspectives, these questions seem to answer themselves. The free market defender may say: it is the company that owns the factory, makes the investments, and takes the risks; in accepting jobs, workers freely consent to certain ground rules. Thus, the firm has the right to move whenever it chooses. The committed democrat, on the other hand, may insist that a person ought to have some say in matters that crucially affect his or her life. A shutdown decision touches deeply the lives of workers, their families, and their communities; so they ought to have a say in what happens to the factory on which their livelihood depends.

These are polar views, framed in the strongest terms — in terms of rights, moral "musts." But there are positions short of the poles which, though expressing some of the same underlying concerns, do not state the issues as inescapable moral imperatives. Defenders of laissez-faire may think not that firms have a natural or God-given *right* to make shutdown decisions unilaterally, only that our kind of economic system is preferable and that for it to work, firms must completely control investment deci-

sions. Similarly, advocates of workers' participation in company decisions may think not that they have a *right* to participate, but simply that the possibly disastrous consequences of plant closings make a moral claim on our concern.

How can we adjudicate between these conflicting points of view? Suppose we begin with the view that challenges the status quo, in which workers have no voice in shutdown decisions. What reasons are there for thinking that the status quo is not as it should be, that workers and communities ought to have some say in decisions about whether a plant stays or goes?

At least two basic kinds of argument support worker participation. One focuses on the idea that although in our legal system factories belong to stockholders, workers may acquire a kind of moral property right, a moral claim to some control over their workplaces. The other emphasizes that, through their relations over time with workers, firms have incurred obligations to them that preclude unilateral shutdown decisions.

The first view rests on the labor theory of property, originally developed by John Locke. The germ of the theory is that property rights are acquired by "mixing one's labor" with, and thereby adding value to, external objects. To make this view workable requires many qualifications, but its essential core is persuasive: having worked on an object and transformed it into a socially valuable commodity gives one *some* claim to the fruits of one's labor.

The second argument for workers' rights to a say in shutdown decisions expresses the idea that when a company has dug deep over generations into people's lives, perhaps affecting a whole community, it incurs obligations to those people and that community. Although the com-

pany may have entered freely, it is no longer at liberty simply to withdraw from relationships that have developed over years or even generations.

These are mere sketches of arguments, and I shall not flesh them out here. For some, no elaborate argument is necessary; for others, none will be convincing. Here I shall assume that, at least in the abstract, these views seem persuasive: it seems plausible that workers have some moral claim to the factories in which they labor, and that companies have incurred obligations to these workers and communities that they are not free simply to renounce.

The sticking point is in the phrase "in the abstract." Moral questions are not altogether separable from practical ones. Indeed, much of the controversy about

trickles down. If companies are prevented from closing and seeking higher profits elsewhere, it is argued, in the long run the total pie will shrink, and everyone, workers included, will suffer.

Two claims are implicit here. First, permitting companies to move when they deem fit is *efficient*, that is, will produce more wealth overall. Second, this greater overall wealth will be *distributed* in a way that benefits workers. Each of these claims needs to be considered more carefully.

Does Management's Freedom to Move Increase Efficiency?

The idea that if owners, rather than workers, are legally entitled to make shutdown decisions the economy will be

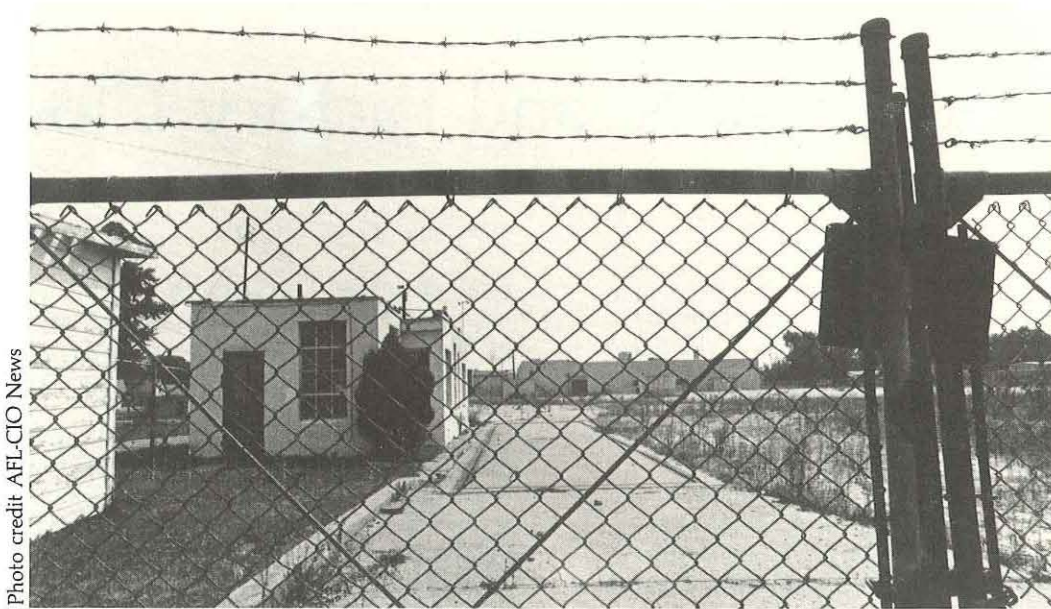


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Should workers have a say in decisions about plant shutdowns?

employee versus management claims in plant shutdowns rests precisely on disagreement about what would in fact happen if owners were not free to make such decisions unilaterally. To decide, then, whether the abstract moral arguments for worker participation are plausible when concrete, we need to know more about the consequences of such legal and institutional changes.

One important argument against the rights of workers or the duties of owners is that plants like those in the Youngstown area are no longer sufficiently profitable; so it is both natural and appropriate to abandon them for more profitable ventures.

"Not sufficiently profitable" may look like an easy cover for greed. But many economists argue that the tendency to seek higher profits, though it may be motivated only by self-interest, benefits others too. They say that the profit motive leads to the creation of more wealth, and in the long run, not only firms and corporations but also workers and the general population benefit. The wealth spreads, or

more efficient is refuted by a well-known theorem of economics. According to this theorem, if the two parties (in this case, owners and workers) are free to bargain with each other, and each is guided only by economic motives, the most efficient outcome will be reached no matter who possesses the legal entitlement. For whichever side stands to benefit most will simply buy out the other side's entitlement, if it doesn't possess the entitlement itself.

Take a simple example. Suppose a company will realize savings in labor costs of \$4 million a year if it moves a plant from Ohio to South Carolina. Suppose also that the Ohio workers will lose \$3 million, the difference between their present wages and their income, from other jobs or from unemployment compensation, if the plant moves. In this case, it is efficient for the factory to move; for efficiency is a matter of realizing the greatest net benefit overall. Now whoever is legally entitled to make the shutdown decision, the plant will move. Suppose the owners have the entitlement. It won't be in the workers' interests to pay

more than \$3 million to get the plant to stay, and it won't be in the owners' interests to accept less than \$4 million. No agreement will be reached, and the plant will move. Now suppose the workers possess the entitlement. Then it will be in the owners' interests to pay up to \$4 million to the workers to be allowed to move, and it will be in the workers' interests to accept something above \$3 million to allow the plant to move. Owners and workers will reach an agreement under which the plant moves — the efficient outcome.

Now imagine instead that the owners will realize savings of \$4 million if the plant relocates, but the workers will lose \$5 million. Then it is efficient for the plant to stay. Suppose the workers possess the entitlement. It won't be in the owners' interests to pay more than \$4 million to be permitted to move, and it won't be in the workers' interests to accept less than \$5 million. No agreement will be reached, and the plant will stay. What if the owners possess the entitlement? Then it will be in the workers' interests to pay up to \$5 million to prevent the plant from going, and it will be in the owners' interests to accept something above \$4 million. Owners and workers will come to an agreement under which the plant stays — again, the efficient outcome.

There is, then, no merit to the claim that allowing workers to have some control over shutdown decisions is bad for the economy because it is inefficient. The difference between the system in which owners are entitled to make these decisions and the system in which workers are is not a difference in the *total* amount of wealth produced, but in *who* gets the better economic deal. So, for example, in the first case, where owners will save \$4 million if the plant moves but workers will lose \$3 million, if the owners have the entitlement, they will move straightaway, saving \$4 million while the workers lose \$3 million; whereas if the workers have the entitlement, they will be able to bargain for a better deal. The question is not how much wealth, but in whose hands?

Does Management's Freedom to Move Benefit Workers?

If it is a question of improving the lot of already well-off owners as against much less well-off workers, many people will see no dilemma. But the issue is not so simple. When factories close down in the old industrial centers of the North and Northeast, they move to places that have traditionally been poorer: to the South, now fashionably called the Sunbelt, or to Third World countries whose standard of living is incomparably below that of the average American. The new factories create jobs for workers in these places and may greatly improve their standard of living. This fact seems to confront us with a discomfiting dilemma. We are now forced to weigh not the welfare of workers against that of owners, but rather the welfare of Youngstown workers against that of workers in South Carolina or Korea. And framed in these terms, it may seem there are good grounds for preferring South Carolinians or Koreans. For these people, especially those in the Third World, are generally much poorer than

workers in Ohio, even laid-off workers. Shouldn't we give more weight to the welfare of the worse off than the better off?

So the concern with Youngstown workers might appear to rest on a partial view; when we extend our vision beyond one town or one region, a different picture seems to emerge.

Or does it? Will workers worldwide be better off in the long run if plants are permitted to move when they choose, or not? We can begin by asking why it is that Ohio workers are better off now than their counterparts in the American South or the Third World. There seem to be several reasons. When the Northeast became industrialized in the nineteenth century, practical necessity dictated the location of factories: they were built close to the source of raw materials, or convenient to waterways or railroads. Labor was relatively scarce, so workers were in an advantageous bargaining position compared to most modern factory workers. In addition, it became clear that collectively they could exert a power they didn't possess as individuals. They formed unions and were able to extract concessions from the companies. Owners and managers were no longer able to say: take what we offer or leave it. They were forced to operate partly on workers' terms.

When Ohio workers have achieved a certain degree of power, companies undermine that power in the only way now available to them: by threatening not to "play the game" anymore. But this has consequences far beyond Ohio.

So the situation remained as long as there was no viable alternative to the factories staying where they were: companies could not set the terms of work unilaterally. But as technology developed the situation changed: the reasons keeping factories in the Northeast (like convenience to waterways) were less weighty, and the attractions of moving — primarily, cheap, unorganized labor elsewhere — became increasingly compelling. The companies could now avoid having to come to a mutually satisfactory agreement with their employees by moving, or threatening to move, if workers did not accept management's terms.

Now, it is obvious what the effects of shutdowns or relocations are on workers in threatened factories. But we are at the moment considering their effects on workers elsewhere — we are considering the claim that such workers, in greater need, may benefit by such actions. But the two issues are not separate. When Ohio workers have achieved a certain degree of power, companies undermine that power in the only way now available to them: by threatening not to "play the game" anymore. But this has consequences far beyond Ohio. It means undermining the hard-won strides labor has made over the years, and that affects not only the communities in which shutdowns occur, but workers elsewhere as well. For there will always

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be unorganized workers to act as a magnet for companies when their own employees get into a position to make unwelcome demands.

Thus, even though in the short run workers in South Carolina or Korea might benefit from Ohio plant closings — and might benefit from them more, economically, than Ohio workers are harmed — over time, corporate autonomy in shutdown decisions is a setback for labor, not an advance. This is even more obvious if we think not only in the narrowest economic terms: not simply in terms of dollars but also in terms of self-respect and the ability to determine important aspects of one's own life. What workers who would gain (in the short run) from plant closings would gain are jobs and money — nothing to sneeze at, to be sure. But what they would not gain, and what Ohio workers and ultimately all workers would lose, is the power to affect in any way a crucial aspect of their lives, their work, and livelihood. For they would be forever at the mercy of employers who can say: take it or leave it.

Conclusion

We began by mentioning two (not unrelated) kinds of arguments for the conclusion that workers ought to have a say in decisions about plant shutdowns and relocations. The first, rooted in the labor theory of property, supports the view that not only owners but workers may come to have property rights in their workplaces. The other argues that in view of relationships developed over years and even generations, companies come to have certain obligations to workers that are incompatible with abrupt withdrawal. We hope to have dispelled pragmatic objections to these arguments.

Our conclusion is that the company's ownership of the factory cannot settle the issue of its responsibility in plant closings. "It's mine" is no longer an argument-stopper. We can interpret this in either of two ways: (1) It may be yours, but that doesn't mean you can do with it whatever you please; (2) It may have been all yours once, but other people have now acquired rights in it, so it is no longer just yours to do with as you please. The first interpretation grants the original owner an exclusive property right, but asserts that it has been limited or qualified by his or her own actions; the second interpretation denies the original owner an exclusive property right.

The practical conclusion is the same in either case: companies should not be permitted to make decisions about plant closings and relocations unilaterally. This conclusion is supported by a variety of moral considerations, having to do with fairness, self-respect, autonomy, and the interests of workers in general over the long run. It is, in addition, a conclusion that seems to survive the harsh scrutiny of economics.

— Judith Lichtenberg

This article was drawn from "Workers, Owners, and Factory Closings," which will appear in Moral Rights in the Workplace, a forthcoming collection of essays edited by Gertrude Ezorsky, under the sponsorship of the Society for Philosophy and Public Affairs.

Life-Support Decisions for Newborns

Baby Jane Doe is only the most recent, and certainly not the last, of the extraordinarily difficult and troubling cases about life-sustaining treatment for seriously handicapped newborns to gain the attention of the courts, the media, and ultimately the public. Baby Jane Doe was born with spina bifida, a condition in which the spinal column is exposed, commonly resulting in lack of bowel and bladder control, paralysis below the waist, and mental retardation. The degree of disability can vary widely. Her parents decided, together with their physician, not to provide maximally aggressive treatment which might have permit-

ted the infant to live to perhaps age 20 and without which she was likely to die by age two.

Public and government attention had been focused on this area nearly two years earlier in the so-called "Baby-Doe" case in Bloomington, Indiana, when an infant who suffered from Down's syndrome was allowed to starve to death after its parents refused to permit surgery to repair its esophagus. The Reagan administration, in an initially heavy-handed response to the very real problem, put hospitals on notice that withholding nutritional sustenance or medical or surgical treatment to correct a life-

threatening condition in an infant because the infant is handicapped is unlawful and in violation of Section 504 of the Rehabilitation Act of 1963. The notice was accompanied with threats of loss of all federal financial aid to the hospital, the establishment of a hotline for confidential reporting of purported violations, and Baby Doe squads to investigate possible violations.

In the face of successful court challenges and widespread opposition, the administration partially backed off from its initial position and suggested, among other things, that hospitals establish ethics committees to review such decisions. The President's Commission for the Study of

Birth is a problematic point at which to draw a great moral difference in the wrongness of killing. Newborns may be seen as occupying a moral status somewhere between that of unborn fetuses and adults. And unborn fetuses are often considered replaceable. . . .

Ethical Problems in Medicine also recommended in its report, "Deciding to Forgo Life-Sustaining Treatment," that hospital ethics committees be established to review decisions to forgo life-sustaining treatment for defective newborns. Recently passed federal child-abuse legislation dealing with life-sustaining treatment for seriously ill newborns included a similar recommendation. Neither the administration, the President's Commission, nor Congress wished such committees to replace parents and physicians as decision-makers about care. But because of the significant potential for conflict of interest between such infants and their parents, who commonly will assume the often enormous burdens of care involved, the President's Commission believed that regular review of such decisions was desirable. Since very few of the nation's hospitals have ethics committees, our experience with them is necessarily limited and their potential effectiveness in this area uncertain. Nevertheless, experience over the last 15 years with the establishment of Institutional Review Boards charged with reviewing the protection of human research subjects suggests that ethics committees might successfully play a similar review role here. Thus, I believe the administration and Congress's recommendation for ethics committees to review these decisions, unlike some other aspects of their response to this problem, is basically sound. Improving procedures by which such difficult and important decisions are made is surely to be welcomed, perhaps especially where there is no consensus regarding the proper decisions to appeal to in responding to public concern.

Nevertheless, I believe it would be a mistake to expect that improved procedures, with review of decisions by hospital ethics committees, will put the controversy to rest. It should be emphasized that most decisions to stop life support for newborns do not raise troubling moral issues. Most involve infants who are known at birth to be non-viable, incapable of living beyond a few weeks or months, or who in the course of treatment, usually for

conditions associated with extreme prematurity and low birth weight, reach a point where they have become non-viable. In each of these cases, a point comes at which further life support is futile. But questions arise about providing life support that will result in a life of seriously diminished quality. This kind of case, exemplified by some instances of Down's syndrome, spina bifida, and extreme prematurity, touches areas of deep moral uncertainty and disagreement in our society. Some of the controversy concerns appropriate decision-making procedures — most importantly, the legitimate role, if any, for government and the courts, and the degree of decision-making discretion properly accorded to parents — but the controversy extends beyond these. I want to suggest briefly what some of the issues are which make these decisions so morally intractable, whatever our confidence in decision-making procedures.

First is the fundamental question of whether it is as seriously wrong morally to allow a newborn infant to die, or to kill it, as it is a normal adult human. The law in general gives a newborn the same legal protections regarding life as an adult. But there are reasons to believe that the moral issue is not as straightforward. One reason is familiar from the abortion controversy. Birth is a problematic point at which to draw a great moral difference in the wrongness of killing. Newborns may be seen as occupying a moral status somewhere between that of unborn fetuses and adults. And unborn fetuses are often considered replaceable; if amniocentesis indicates that a fetus is defective, for example, many believe that it is permissibly destroyed, in order to try again for a normal pregnancy. A second reason lies in one plausible account of why killing a normal adult human is a serious moral wrong. That is that in doing so we deprive that person of most of what he or she desires — to have a future and to pursue his or her aims in that future. But a newborn infant is probably unable to conceive of itself as having a future and in turn to have any desires about its future that might

. . . a newborn infant is probably unable to conceive of itself as having a future and in turn to have any desires about its future that might be frustrated by its being killed.

be frustrated by its being killed. This first question, then, concerns whether infanticide might be morally permissible in some circumstances in which killing an adult person would not be.

Second is the question of what role quality of life considerations properly have in decisions about sustaining life. One interpretation of the recent federal legislation is that the expected quality of the infant's life may play no role in such decisions. However, such a view is morally problematic. Competent adults do commonly weigh the expected quality of their lives in deciding whether to accept or reject life-sustaining medical treatment. Some

competent adults also say that they would want their lives ended if they should ever be in conditions similar to those of many handicapped newborns. Of course, these adults have a normal life behind them and experience these new reduced circumstances as a loss, whereas a handicapped newborn may never know a different quality of life and so may adjust to the life it is given in a way adults might choose not to do. On the other hand, there is a powerful moral tradition that all human lives are equally valuable, and equally to be protected. But this is a difficult view to sustain with the most defective newborns, such as those born anencephalic, that is, missing all or most of their brains. And if considerations of the quality of life are relevant, which ones and in what way? Do we weigh prospects for pleasure and pain, capacities for social interaction, possibilities for eventual self-sufficiency? Sometimes an appeal to the likely quality of these infants' lives represents an unjustified discrimination against the handicapped, but it need not always be that. Sometimes it represents genuine moral uncertainty about the relevance of quality of life to decisions about sustaining or taking life.

A third general difficulty is what role hardships and costs to others, in particular to other family members and the larger society, should be allowed to play in these decisions. The hardships are real and often overwhelming, and it would be callously insensitive to deny their existence. The limited availability of continuing support services for seriously handicapped children exacerbates the burdens placed on family members.

And the general societal costs for supporting such persons are often very high, with many handicapped unable ever to make normal social contributions. In utilitarian moral views such considerations are not in principle irrelevant to whether life must be sustained or may be taken. On the other hand, many believe there is a serious moral right not to be killed, or in these cases allowed to die, one point of which is precisely to make such effects on others, whether family or society, morally irrelevant to these decisions.

Fourth is that several controversial distinctions concerning the moral permissibility of forgoing life-sustaining treatment generally arise also in the case of newborns. Let me illustrate with the case of turning off a life-sustaining respirator. Is doing so killing the infant, or is it "merely" allowing it to die? In the usual circumstances in which it occurs, many would characterize this as turning off the respirator and thereby allowing the infant to die. Yet if the very same action were done for a different reason, say to protect an inheritance instead of to end the infant's suffering, it would be understood as killing. So it is controversial whether such decisions result in killing or allowing to die because it is unclear just what the difference is. But it is also unclear whether it matters morally in itself whether this is killing or allowing to die. Many believe that killing is, in itself and apart from any other features of the action, morally worse than allowing to die. Others, myself included, hold this view to be mistaken. And so this controversy, too, intrudes itself into the general debate about sustaining the lives of handicapped newborns. But matters

are worse still, for problematic distinctions abound in this area, such as the distinction between not starting and stopping treatment, between ordinary and extraordinary and heroic treatment, and so forth. In my view, none of these distinctions, as they are usually understood, is in itself morally important, but whether that is correct further complicates decisions about life-sustaining treatment for handicapped newborns.

Throughout all these issues lurk concerns about the possible well-intentioned misuse or ill-intentioned abuse of public or legal policies permitting non-treatment of handicapped newborns. Even if one believes that considerations of quality of life or burdens to others could sometimes justify forgoing treatment, one might consistently oppose public policy permitting non-treatment on these grounds, because of worries that such policies would be misapplied more often, or in more serious ways, than not. But, of course, it is very uncertain to what extent any changes in policies would actually lead to more abuse, that is, to what extent the "slope" from here to an overall worse situation is indeed sufficiently slippery to warrant not moving onto it at all.

I would emphasize that I have not sought to defend any particular view here about when forgoing life-sustaining treatment for handicapped newborns is justified. On the contrary, if I am correct that the issues to which I have drawn attention are deeply implicated in this controversy, then a far more detailed and lengthy argument than could be attempted here is needed. Hospital ethics committees are, I believe, a step in the right direction in providing regular review and continuing discussion of these decisions. But some decisions not to treat seriously handicapped infants raise such complex and controversial issues that they will undoubtedly remain deeply troubling and tragic.

— Dan W. Brock

Dan W. Brock is chairman of the philosophy department at Brown University. In 1981 — 82 he served on the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research.

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