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IN LAW AND MEDICINE

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A Child Cost?**

by James Burtchaell, C.S.C.

*An Educational Publication of
Americans United for Life, Inc.*



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How Much Should A Child Cost?*

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Editors Note: The following article was written in response to "Selective Nontreatment of Defective Newborns: An Ethical Analysis," by Paul R. Johnson, Ph.D. In that article, Dr. Johnson analyzes several possible positions, finally defending nontreatment of handicapped newborns "when relational potential is negligible or unable to be exercised." Fr. Burtchaell's piece was originally entitled "How Much Should a Child Cost? A Response to Paul Johnson"; both originally appeared in the Linacre Quarterly, Vol. 47, February, 1980.

Paul Johnson begins his inquiry into the ethics of letting defective infants die by rejecting the position of Joseph Fletcher that they may not, in some instances, be humans at all. In his well-known pieces on "indicators of humanhood" Fletcher has offered a checklist of qualities one might require of a being for him/her/it to qualify (and be protected) as a human: e.g., neo-cortical function, curiosity, a sense of time, self-awareness. Minimal intelligence, for instance, would be demanded: "Any individual of the species *homo sapiens* who falls below the I.Q. 40-mark in a standard Stanford-Binet test, amplified if you like by other tests, is questionably a person; below the 20-mark, not a person. *Homo* is indeed *sapiens*, in order to be *homo*."¹ Johnson disagrees. The question, he says, is not whether defective newborns are human children; all live progeny of women and men must be human. The question is, rather, what their relative value as humans might be.

I shall be arguing that the position Johnson takes is considerably more savage even than the barbarities Fletcher espouses.

To reckon the value of a given infant's life, Johnson explains, we must estimate the quality, realized or potential, that this life possesses. A child's value is related to the degree to which he or she can be expected to attain those higher functions which are most characteristic of human personhood and which distinguish

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humans from lower species of animal life. Since the purpose of human life is not merely biological existence, not simply to metabolize, we must calculate it as valuable to the extent that it attains higher goods, by being actively and fruitfully interpersonal. Relying on Richard McCormick, the distinguished Jesuit moralist, Johnson argues that it is an ability to relate to other humans which is the essential and validating activity for human persons. "McCormick places special emphasis on relational potential. Life is a good insofar as it affords access to higher goods, in particular to the goods of social relatedness and relationship to the transcendent through relationship to neighbor. Thus, this relational potential would be the touchstone of quality of life judgments. McCormick argues, "It is neither inhuman nor unchristian to say that there comes a point where an individual's condition itself represents the negation of any truly human—i.e., relational—potential....When in human judgment this potential is totally absent or would be, because of the condition of the individual, totally subordinated to the mere effort for survival, that life can be said to have achieved its potential.' "

The problem faced by parents, physicians, public servants and the ethicists who advise them is that the resources and attention needed for the survival of infants can vary greatly. Some seriously defective or damaged or diseased children need therapeutic care well beyond the means of most families, thus bringing a private need into the jurisdiction of public policy. Are we ethically obliged to nurture every infant, whatever the cost, whatever the benefit? Fletcher would relieve us of some burden by declaring some of the most crippled infants to be non-humans. Johnson is anxious to find some way, while insisting that all newborn children are humans, to assess their claims on our care according to some reasonable scale.

He begins by stipulating that all humans have value, and follows this with assurance that we should treat an infant with a "preference for its protection," and that this "bias toward life" should give a newborn the benefit of the doubt when we are deliberating whether he or she should live or be let die. What this seems to mean is that the burden of proof lies, not with the child struggling to live, but with anyone disposed to decide it should die. While this "bias toward life" is perhaps not so ardent that any of us would confidently entrust our own life or health to a medical staff so mildly motivated, it is difficult to quarrel with those who assert at the outset that all human life has value. Yet that is exactly where one needs to take issue, for there is a lethal error at the very threshold of this argument.

So many things can be valuable to us: a week's holiday from work, a loving parent, a collection of books, a garden with lawn

and flowers, strong athletic dexterity, a fine education, a full head of hair, a true friend, shoes that do not leak, a symphony concert, an air conditioner. Even social institutions like the state deal in many varied valuables: a park system, peace between nations, secure retirement benefits, prenatal care, stable banking, clean waterways, reliable pharmaceuticals. The thing about valuable things is that they have such different values. Not only are they unequal; they are sometimes incommensurable. How compare the value of a faithful, loving husband to that of a legal career...or of a second car in the garage? How assess the relative values of full employment and of better railway roadbeds? Or the relative disvalues of juvenile, drug-related crime and a soybean crop failure? How compare the incomparable? Yet we do this all the time, as anyone knows who has deliberated whether to move the family in order to secure a professional promotion, or has sat long on a budget committee.

Dealing with Values

When we deal in values we are treating of "lesser" and "greater" and "different." And yet we can choose among them. It is said that every thing has its price, and that every person can be bought. But the fundamental measure of value is neither money, nor the work that money represents, nor the portion of our life and time and energy given to the work. The basic measure of our value is our own self: how much do I value this thing, this opportunity, this person? What other valued things am I willing to give for it, for her, for him? The medium of barter among valuable things may not always be money, but they all can be and are traded off against one another.

What I mean when I accord you value is that you have a worth for me. Other humans are valued insofar as they serve needs or wants. We possess a calculus whereby to reckon who is worth what. To the scale of other person's needs I can apply the scale of my own resources, and also the scale of how generously I would yield the resources to meet others' needs, according to how valuable those persons are to me.

The Johnson-McCormick argument on selective withholding of treatment from defective newborn children appears to pivot around what value such treatment might have for the infants themselves. But a close examination of this value-theory discloses that the pivotal value is not internal to the lives and interests of the infants, but what value those children have to others.

Let me try to illustrate this first by comparisons. A short while ago a young orderly in a Swedish home for the elderly was accused of killing a dozen or more of the residents by offer-

ing them carbonated drinks laced with corrosive acid. These old people, he later explained were leading meaningless lives. What did this "meaningless" mean? Was the young man stating that, in his judgment, the relational potential of these old people was now totally used up, or that it had become totally subordinated to the mere effort for survival? Or was he saying simply that they were now more trouble than they were worth? Whatever his drift, he was making a life-and-death judgment that appears to involve three variables: how much care the old people required; how much relational or spiritual activity so much care would make possible, and how dear these persons were to him. For himself as a staffer, or for the Swedish public whose interests he decided to assert, there seemed to be no adequately "meaningful" outcome from institutional care. The old folks' lives may have had some fundamental value, but now no longer enough value to justify continued care. Now, although his statement may appear to have considered the matter from the standpoint and interests of the old men and women, the decisive variable was related, not to them (how much meaningful outcome), but to himself and the public he claimed to represent (how meaningful it was having them around to care for). The measure of meaning was not the victims, but the one who sent them to their deaths.

One remembers similar applications of this value-theory. The orderly's judgment about "meaningful life" put me in mind of the Nazi formula, *lebensunwertes Leben* (life not worth living), which was frequently used when the Third Reich had recourse to judgments of relative value on human lives. The Slavs, they decided, were *Untermenschen*, sub-humans fit only for slave labor. Well below them on the value scale were Gypsies and, lower still, Jews, the bacilli of society. Values at this lowest level were finely calculated. There were Jews, and *Mischlinge* (cross-breeds) first-class, and *Mischlinge* second-class. These categories could be subdivided into "productive" and "non-productive." Bolshevik commissars in the Soviet army were also quite unvaluable, as were other "useless eaters" and "anti-socials": mental patients, the enfeebled elderly, unrecoverably wounded soldiers, "racially valueless children" and, to come full circle to what we are presently considering, defective newborn children (the very first of all these categories for whom Hitler approved an extermination order). It cannot be said that the Nazis assigned no value to human life. Their programs were grounded precisely on an elaborate scale of values. At its base the value system was quite simple. As Hitler once explained to a gathering of general officers, he decided upon the "removal of the Jews from our nation, not because we would begrudge them their existence—we congratulate the rest of the world on their company—but because the existence of our own nation is a thousand times more important to us than that of an alien

race."²

A few decades earlier, liberal reformers in England had been proposing and legislating social policies that, in their way, were also value-responsive. "It was, to illustrate, the law of the land that upon certification of any two doctors, any person might be incarcerated indefinitely for feeble-mindedness. Charles Wicksteed Armstrong was saying: 'the nation which first begins to breed for efficiency—denying the right of the scum to beget millions of their kind...is the nation destined to rule the earth.... To diminish the dangerous fertility of the unfit there are three methods: the lethal chamber, segregation and sterilization.' The professor of eugenics at London University was proposing that paupers, tramps, and the insane be left to starve; otherwise the fertile but unfit could continue to reproduce and prevent England from continuing as a world power. A physician with governmental authority who was concerned with mental deficiency tested his theory that it was due to small skulls by operating on children's heads; a fourth of them died. When the National Insurance Act required compulsory contributions from all workers, it provided that workmen could be denied unemployment compensation if they had been discharged for misconduct—insolence, for example. Pensions were withheld from those who had been in prison or had 'persistently failed to work.'"³

Assigning a Variable Value

When one is prepared to assign a variable value to other human beings according as they are expected to rise to a high level of social performance, and then to allot to them a corresponding measure of life's sustenance, this is no ethical refinement. It is the same old business of the runt of the litter getting pushed away from the teat. All too often when we apologize that it would be too unkind to make some creature face so unsatisfying an existence, what we really mean is that we don't want to pay his or her bills.

By evaluating human beings insofar as they are "relational," or by "what they can come to be," or by their "personal or social consciousness," their "quality of life," their "access to higher goods," their potential for attaining a "truly human life," we assign to our fellows a value measured by their active participation in our society. The ideally valuable, "truly human life" at its best appears to belong to a tax-paying adult who earns a living. To the extent that one falls short of this ideal, by infancy or senility or criminality or retardation or infirmity, one slips down the value scale. Behind all this calculation lurks a readiness to appraise others according as they are pleasant or congenial or contributory towards ourselves, and then to act on

this appraisal.

I discern two ethical impediments here. First, in this business of applied values, one appears to be considering three distinct factors: how much this other person needs (burden on the benefactor), how much good it would do this person if helped (benefit to the beneficiary), and how dear this other person is to me (relationship of beneficiary to benefactor). The interplay of all these factors would seem to promise a fair judgment. I must consider how much claim on my own life and resources is being made, how much proportionate gain this will bring my neighbor, and how dear to me my neighbor is or how beholden or bound to him or her I am. But when one calculates the anticipated benefits to the other person by that person's anticipated social response, then the factor supposedly respecting my neighbor's welfare is turned around and becomes, in effect, an indicator of how pleasant it is to have that person around. The benefits anticipated are measured, not intrinsically with respect to him or her, but extrinsically with respect to myself and others who stand to gain from a grudging judgment. The calculation is no longer an interplay of interests; it is put entirely at the pleasure of the one in power. The neighbor and the neighbor's future are cast into dependence on how useful I reckon him to be to the rest of us. So when H. Tristram Engelhardt, Jr. wants to relieve some infant of the "injury of continued existence" or SS Gruppenfuhrer Prof. Karl Brandt describes the elimination of "useless eaters" and "undesirable individuals" as an "act of grace," I suspect that this is an injury I should pray for and a grace I should shun. This concern for "quality of life" is a self-concern bearing the likeness of other-concern.

The second ethical impediment is raised by the readiness to treat persons according as it would be valuable for them. I do not wish to question the way in which persons are evaluated. Quite clearly others are more or less valuable according as they become socially valuable, or as they realize their "relational potential." What I would dispute is that we have any ethical warrant to make this value the first basis for our treatment of others.

Let me suggest another way of approach. Rather than designating all human life as valuable, I would propose that all human beings are not valuable. They are invaluable. Our fellow humans are not merely the most valuable things around; they are off the scale, truly incommensurable, not even to be introduced into the rate of exchange whereby we convert the relative values of other things. A human being can be valued, as has been described. But a human being ought also, and more importantly and fundamentally, be revered. Possibly this would support the way some folks have of calling life sacred:

not because of any necessary relationship to God, but because it seems an appropriate category in which to shelter those very precious beings of transcendent goodness. As Simon Peter explained to Simon Magus, there are some things too valuable to have a price. The governing insight in this assertion that human persons are beyond value—legitimate without recourse to religious premises—is that mankind is obliged, if they are to live and grow in spirit, to deal with others not simply according to what good it may produce, what use it serves, what response it subsidizes.

Corrupted Morally, Destroyed Spiritually

We are corrupted morally and destroyed spiritually if we treat others only as they are valuable. We have of course only limited goods and service to dispose of, and fellow humans whose needs and claims far exceed our wherewithal. In matching our resources to their needs we are presented with a most rudimentary moral option: whether to exert ourselves to meet those endless neighbor-needs, or whether to adjudicate those needs and claims to serve our pleasure by calculating their social benefit potential. There is obviously no congruence or conformity between the invaluable persons we confront and the value-benefits we might afford them. But there is a telltale and deep-cleft difference whether they are the measure of our lives or we the measure of theirs.

This is not, as I say, a religious position, though it might be. The injunction that mankind is to be provided for, from each according to means and to each according to need (an injunction more gracious than all this calculation of values), may be ascribed either to first century Jerusalem Christians or 19th century Russian-German atheists. Both were of the mind that it is not enough to run a cost-benefit analysis on one's neighbor' (though that is exactly what most Communist powers and some Christian institutions are now doing). In any case, what I know of Christian faith reinforces the conviction that no follower of Jesus, holding in his or her hand the powers of life and death over those less advantaged, should begin to wield such powers by asking how much social yield there will be from any given material investment. We owe things of value to persons beyond value. Indeed, we live by a belief that it is the least able, the least forthcoming who have strongest claim on our lives and substance.

One is often reminded that, whatever our disposition to treat our fellows as invaluable, there are still certain situations in which it is both allowable and dutiful to appraise others in a strictly utilitarian way. Triage is the typical situation put forward. At a field hospital in a combat zone, battle will produce

casualties that swamp the capacity of the hospital. It becomes an inexorable fact that some must be saved and some left to die. A triage officer stands at the entry, sorting casualties so that the medical facility can accomplish the most practical good. One soldier disastrously wounded has to be set aside in favor of five others who, in the same amount of time, can have their lives saved. The battalion commander is sent in and the assistant cook held back. Officers have priority over enlisted men. Enemy wounded are given last place after one's own comrades whose survival will help the war effort. Faced with life-and-death needs and inadequate resources, the triage officer does his duty precisely by being ruthlessly utilitarian. The wounded are evacuated; they are treated in accordance with their value to the group and to the struggle. People are sent for saving treatment or are left to die on grounds of the pay-offs a given amount of care will produce.

About triage as a paradigm of ethical choice I would make several observations. First, even when it seems quite justified, it has a way of consuming a person. For a doctor, the fibers of whose self are braided into lifelines of generous concern, it snarls the soul, not simply to lose a patient to death, but to mark him or her for death. It may require uncommonly high and durable virtue to perform this task without making a vice out of necessity. To illustrate: during the Holocaust, certain Jewish community leaders after agonizing at the Nazi order, consented to select numbers of their communities to be sent to their destruction, in the hope that some others—the right others—might be spared. One such *Altteste*, leader of the ghetto in Lodz, Poland, explained: "Now, when we are deporting 10,000 people from the ghetto, I cannot pass over this tragic subject in silence. Unfortunately, in this respect, I received a ruthless order, an order which I had to carry out in order to prevent its being carried out by others. Within the framework of my possibilities...I have tried to mitigate the severity of the decree. I have settled the matter so that I assigned for deportation that portion which was for the ghetto a suppurating abscess. So the list included the ousted operators of the underground, scum, and all sorts of persons harmful to the ghetto."⁴ Another in Upper Silesia argued that the Jews should accept from the Gestapo the onus of selecting the contingents for extermination, so as to preserve for the community its most helpful elements. First to go, on his lists, were informers, thieves, and "undesirables"; next went the insane, the sick, and the defective children.⁵ The victims had, by acquiescing in the work, somehow been contaminated by the minds of the oppressors. Even when necessity seems to call for it, can a person long deal with his or her neighbors in this way, calculating their "worth to society," their relational potential, without soon acquiring the perverse habit of mind which one

wants to resist but perhaps cannot?

Triage Easily Invoked

Another thing about triage: it is so easily invoked. A few years back one had to decide which patients could have use of the few kidney dialysis machines and which could not. There was much evaluating then. And there could be little argument, and little misgiving, for there simply were no more machines to be had. But in a world where medical resources are never likely to satisfy medical needs, is not every day one of triage? Are not all medical practitioners who administer life and death likely to calculate the relative value of their patients? And will this reckoning not be heavily influenced by what this treatment, what this survival would mean to them, the medics? It goes far beyond medicine. Johnson reminds us of "the competition for scarce monetary and manpower resources in society," and Garret Hardin is arguing that the United States had better leave the poorer nations to starve if it wants to preserve the good life.

A recent newspaper canvass of citizen comment on the "boat people" from Southeast Asia who were frantically seeking asylum elicited a wave of hostile statements from Americans who insisted that our country could not harbor endless waves of feckless refugees. Knowing the devastation the United States has visited upon the homelands of these people, and that their predecessors have been some of America's most industrious and self-reliant immigrants, and that our country enjoys such relative abundance among the nations of the earth, what is one to think of these claims that a welcome for these refugees would be wasted? Why is it that the powerful and affluent and gorged of this world are always the most aware that there is not enough to go around and that there are so many people who will make poor use of what is given them?

And as for the necessity that imposes triage on us: granted the battle, it may be justified to pick some wounded to die because they are less worthwhile. But why grant the battle in the first place? Granted the inadequacy of medical care in poor communities, some people must be left to ail and to die who might otherwise be saved. But why grant the inadequacy? So often we consent to participate in what we lament as "tragic" decisions that cost other people their lives or well-being without challenging the social injustice that has imposed the tragedy. One is reminded of a proposal submitted to Adolph Eichmann: "There is an imminent danger that not all the Jews can be supplied with food in the coming winter. We must seriously consider if it would not be more humane to finish off the Jews, insofar as they are not fit for labor mobilization, with some quick-

acting means. In any case this would be more agreeable than to let them die of hunger.”⁶ There is no triage when the same people who offer humane death are the ones who cause the imminent danger. And so it often is.

There is, behind this application of value-theory, the possibility of great mischief (though I see Johnson and McCormick as willing parties to none of it). This can be seen perhaps by considering the canon drawn up at the conference at the University of California, San Francisco: “Life-preserving intervention should be understood as doing harm to an infant who cannot survive infancy....” Compare this to the medical experience in Holland during the Second World War. “When Seiss-Inquart, Reich Commissar for the Occupied Netherlands Territories, wanted to draw the Dutch physicians into the orbit of the activities of the German medical profession, he did not tell them ‘You must send your chronic patients to the death factories’ or ‘You must give lethal injections at Government request in your offices,’ but he couched his order in most careful and superficially acceptable terms. One of the paragraphs in the order of the Reich Commissar of the Netherlands Territories concerning the Netherlands doctors of 19 December 1941 reads as follows: ‘It is the duty of the doctor, through advice and effort, conscientiously and to his best ability, to assist as helper the person entrusted to his care in the maintenance, improvement and re-establishment of his vitality, physical efficiency and health. The accomplishment of this duty is a public task.’ The physicians of Holland rejected this order unanimously because they saw what it actually meant—namely, the concentration of their efforts on mere rehabilitation of the sick for useful labor, and abolition of medical secrecy. Although on the surface the new order appeared not too grossly unacceptable, the Dutch physicians decided that it is the first, although slight, step away from principle that is the most important one. The Dutch physicians declared that they would not obey this order. When Seiss-Inquart threatened them with revocation of their licenses, they returned their licenses, removed their shingles and, while seeing their own patients secretly, no longer wrote death or birth certificates. Seiss-Inquart retraced his steps and tried to cajole them—still to no effect. Then he arrested 100 Dutch physicians and sent them to concentration camps. The medical profession remained adamant and quietly took care of their widows and orphans, but would not give in. Thus it came about that not a single euthanasia or non-therapeutic sterilization was recommended or participated in by any Dutch physician.”⁷

Truly human, relational potential was the guiding star over San Francisco. In Holland they seem to have held—with costly stubbornness—that as doctors they would often have to tend

patients who could never be cured. They knew their job was not to produce a healthy, working population, nor to eliminate the stunted; it was their profession to heal whom they could, alleviate the affliction of those they could not, and stand by all whom they served. They would have agreed with Johnson that death is not the ultimate enemy (though perhaps abandonment is). Their dedication, though, would be not to human life, as Johnson would say, but to human beings whose lives we heal if we can, but still serve if we cannot.

Does it follow that all defective infants must, because revered as our invaluable human comrades, be given every available medical treatment, no matter what the cost? I am not urging that this must necessarily follow. What I am asking is that the issue be remanded for further and different consideration. One would require that when parents, physicians and statesmen look into a crib to ask themselves whether it be right to let death claim a blighted child, they not consider what measure of potential the infant has to become truly human. For their purposes, that stunted, afflicted fellow human of theirs is already as invaluablely valuable as he or she ever will or would be, and is far more dependent on them than are most children for the protection of its person and its life.

REFERENCES

1. Fletcher, Joseph, “Indicators of Humanhood: A Tentative Profile of Man,” 2 *The Hastings Center Report*, 5 (Nov., 1972), p. 1.
2. Dawidowicz, Lucy S., *The War Against the Jews 1933 - 1945* (New York: Holt, Rinehart & Winston, 1975), p. 163.
3. Burtchaell, James, “Reheating the Mutton Chop of Chesterton,” *The Review of Politics* XL, 4 (Oct., 1978), p. 550, reviewing Margaret Canovan, *G. K. Chesterton: Radical Populist*.
4. Dawidowicz, *op. cit.*, pp. 291 - 192.
5. *Ibid*, p. 229.
6. *Ibid*, p. 162.
7. Alexander, Leo, M.D., “Medical Science Under Dictatorship,” 241 *New England Journal of Medicine* 2 (July 14, 1949), pp. 44 - 45.