Do No Harm:
The Shifting Standard in Medicine

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IMAGINE RECEIVING A CALL THAT YOUR TEENAGE SON HAS BEEN IN A HORRIBLE CAR ACCIDENT AND HAS SUFFERED A BRAIN INJURY. YOU RACE TO THE HOSPITAL AND DISCOVER HE IS BURNING UP WITH A 105 DEGREE FEVER. THE DOCTOR REFUSES TO GIVE HIM MEDICINE TO REDUCE HIS FEVER CLAIMING THAT YOUR SON'S LIFE ISN'T WORTH SAVING.

Imagine rushing your disabled infant to the hospital because he is having trouble breathing. He is placed on a ventilator. He is stable and alert. Then, over your objections, the hospital staff decides that he's not worth treating. They stop bathing him, changing his diaper and feeding him. They cut off his ventilator.

You may think you are reading futuristic fiction. Yet, unfortunately, both are true stories, which occurred here in the United States; the first in 1994 and the latter in November 2009.

The movement driving the legalization of abortion has come full circle. Society's acceptance of destroying the most vulnerable of human life threatens the lives of everyone, including the physically and mentally challenged, the elderly, the severely infirmed, and anyone and everyone deemed to be lacking in "usefulness."

These two cases are not unique and are becoming all-too-common-place in American hospitals and nursing homes. Traditionally, public policy has upheld a "sanctity of life" ethic, that the intentional killing of innocent human life is always morally wrong. Yet, now family members are being encouraged to "let go" of their infant with severe deformities, to "let go" of their mother with Alzheimer's, or to "let go" of their brother severely brain-damaged from a car accident. Such doctors and others in the medical profession are orchestrating their deaths, many times over the objections of the patient or loved ones. They say a life "not worth living" is not worth saving either. Medicine's shift from a "sanctity of life" ethic to a "quality of life" morality endangers the lives of all of us.

Historical Perspectives

Medical ethics—the ethics code of behavior controlling what should be done in medical research and clinical care of patients—has existed since

medicine began. In Western Culture, this code of conduct was shaped by a theological principle—unlike other living creatures, human life is sacred because man has a soul and is made in the image and likeness of God. Doctors adhered to the principles mirrored in the ancient Hippocratic Oath—to do no harm. Doctors and medical professionals were obliged to cure the sick and comfort the dying. History testifies to the ramifications of doctors abandoning these basic tenets.

The European Eugenics Movement

Hitler's Holocaust remains one of the most disgraceful examples. In his book, *The Third Reich at War,* Richard Evans reported that under the Nazi Regime, in the 1930s, some 360,000 people were forcibly sterilized, abortion on eugenic grounds was legalized, and doctors were given the authority to kill "sick people who by human estimation are incurable … [i]nfants suffering from Downs Syndrome, microcephally, the absence of a limb or deformities of the head or spine, cerebral palsy and similar conditions and vaguely defined conditions such as 'idiocy.'" The Jews were the last to be targeted for extinction.

It is important to underscore a critical point. Hitler did not create the underlying attitude in society that made this extreme depreciation of human life possible. That responsibility lies with the scientific and medical communities, which, since the beginning of the 20th century, had been promoting a morality which devalued human life.

This orchestrated effort by the medical profession to "weed out" undesirables in society was the Eugenics Movement. Aspects of it were the brainchild of Francis Galton, a cousin of Charles Darwin and a scientist who lived from 1822-1911. Influenced by his cousin's theory of evolution, Galton believed that society would be improved through the propagation only of those individuals with desirable traits—physically, intellectually, and morally. Only a generation later, Hitler was citing the Eugenics Movement in the United States.

The U.S. Eugenics Movement

The Eugenics Movement was actually born in the United States. In the early 1900s, the Race Betterment Foundation, the Galton Society, and the American Eugenics Society were established in the U.S. to promote eugenics. The American Eugenics Society is "credited" with successfully promoting forced sterilization laws against the mentally disabled. By 1944, state-authorized programs had sterilized over 40,000 "feeble-minded" or "insane" individuals in 30 states. One investigation revealed that the practice continued until the 1970s with close to 8,000 women sterilized in North Carolina alone.

The Eugenics Movement also left an indelible black mark on the private practice of medicine. In 1915, Dr. Harry Haiselden of Illinois became an overnight celebrity after he was acquitted of a murder charge for failing to provide treatment to a severely disabled newborn. Claiming that the doctor acted within his "professional rights" to decline treatment, the jury failed to convict the doctor, and he walked out of the courtroom as a free man. When Dr. Haiselden was asked by a reporter whether he considered his vindication a victory for eugenics, he responded, "Eugenics? Of course, it's eugenics." Dr. Haiselden continued to make headlines a few years later when he refused to operate on a child, claiming that the "kindest thing to do was to let the child die."

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Thankfully, the horrors of Aushwitz and Dachau served to turn American public opinion in the 1940s against the Eugenics Movement. Nevertheless, history forgotten is soon repeated. Many believed that the Eugenics Movement ended when the crematorium at Auschwitz was finally closed. In this country, however, it was simply smoldering in the ashes, waiting for some sort of kindling to set it ablaze. It did not have long to wait.

Rebirth in the U.S.

In the 1960s, Joseph Fletcher with his book, *Situation Ethics*, ushered into American thought (and public policy) a wholehearted rejection of the moral absolutes of the Christian ethic. The premise is that as long as love is your intention, the end—any end—justifies the means. Succinctly put, "For the situationist there are no rules, none at all."

Dismissed by the general public as extreme, Fletcher's ideas caught fire in the academic world, and did not take long to influence public policy. Bioethics was a new and upcoming subcategory of ethics. In 1979, Congress enacted legislation authorizing the creation of a commission to create guidelines through "consensus" on what was ethical in the fields of medical research, technology and patient care. Dominated by followers of Fletcher's "moral relativism," the field of bioethics in the 1990s drove a stake in the heart of the "sanctity of life" ethic.

An Australian psychologist by the name of Peter Singer was an ardent follower of Fletcher and his

theory of relativism. In 1993, Singer published a book entitled, *Practical Ethics,* which applied Fletcher's theory to the rights of man and the practice of medicine. In 1999, a small but influential band of intellectual elites ushered him from Australia to the halls of Princeton University as the Chair of Bioethics in the newly created Center for the Study of Human Values, where he has become the most widely known bioethicist in the world, and, unfortunately, one of the most influential.

Rejecting the "sanctity of life" ethic, Singer believes that certain categories of people do not have a right to life, and can be exterminated with moral impunity. His conclusion is based on the belief that "personhood" is defined by specified levels of cognitive ability. "Some non-human animals are persons," Singer says, and so, "killing a chimpanzee is worse than killing a human being who, because of congenital intellectual disability, is not and never can be a person."

Singer supports infanticide of newborns and euthanasia of some elderly because he believes that neither are "persons." "Killing a disabled infant is not morally equivalent to killing a person. Very often it is not wrong at all," he writes. Comparing the elderly with cognitive impairments to a disabled infant, he matter-of-factly states, "The considerations of a right to life or of respecting autonomy do not apply. If they have no experiences at all, and can never have any again, their lives have no intrinsic value."

Exterminating the Sick and Elderly

Ideas can have deadly consequences. The Futile Care Theory is a belief that it is morally acceptable for a doctor to refuse to treat a patient if the doctor believes the patient does not or will not have an acceptable "quality of life." Treatment withheld could include artificial food and hydration, medications to cure infections or a fever, ventilator support, or kidney dialysis. The theory represents the latest bioethical effort to implement the anti-life morality in medical practices and public policy.

Medical Practice

Traditionally, hospitals have refused to provide treatment on physiological grounds—the treatment would not save or physiologically improve the patient's life. For example, a patient could not march into a hospital demanding a heart transplant when his heart worked just fine. However, as Wesley Smith, an attorney and outspoken critic of the Futile Care Theory, has so aptly stated, it is "an exercise in raw social Darwinism in that it views some patients' lives as having so little quality, value, or worth that the treatment they request is not worth the investment of resources or emotion it would cost to provide." Proponents of the theory rarely articulate their position precisely. Instead, they speak in code words such as "quality of life," a "life not worth living," "limited resources," and "duty to die."

This utilitarian view of life and the "duty to die" mentality has been embraced and promoted since the 1990s by many influential bioethicists, who have discarded the "sanctity of human life" ethic in favor of the "quality of life" morality or, as one pro-life ethicist has described them, "death culture" policies. The inclusion of this view in numerous highly respected bioethics journals began to affect the practice of medicine. Long before state legislatures began imposing "futile care" laws, hospitals and medical institutions were incorporating their "quality of life" morality into hospital protocols. More recently, the Futile Care Theory has been expanded to suggest that "reasonable treatment" for a patient should also take into account the "needs of other members of society." In other words, "how will providing the treatments one patient demands burden or benefit others in the community?"

Public Policy

Two state legislatures have codified the "quality of life" morality into law—Texas in 1999 and Virginia in 2006. Idaho came very close in 2009, but to date, proponents of the Futile Care Theory have not succeeded in Idaho. Noteworthy, however, is that 24 states provide no effective protection of a patient's wishes for life-preserving measures if a doctor refuses treatment. Only 11 states have laws to protect a patient's directives for life-saving measures.

In July 2008, a 53-year old Oregon man, diagnosed with prostate cancer, applied to the state-run health plan for help. He received a letter saying that the state would not cover the man's pricey treatment—it did not meet the requirement of providing a greater than five percent chance of prolonging the man's life for five more years—but would pay

for the cost of physician-assisted suicide, which is legal in Oregon. The state was not willing to help the man live, but was happy to foot the bill to kill him. The man fought back and received the care he needed to help save his life.

North Carolina has no relevant provision protecting a patient's wishes. Instead, the legislature has skipped down the path toward codifying the Futile Care Theory. In 2007, the legislature authorized Medical Orders for Life-Sustaining Treatment (MOST), which are documents that may override a patient's Advance Directives. Furthermore, the statute authorizing the MOST document states that physicians are not prohibited from issuing orders "in accordance with acceptable medical practice and the facilities' policies." If the facility has adopted a "futile care" policy based on "quality of life," it is unclear whether the doctor's order would supercede the MOST or medical directive.

The Solution

The problem of treatment based on a "quality of life" ethic is so evasive in the medical community and public policy, according to futile care critic Smith, that the best approach is containment. Sanctity of life advocates must focus attention on what bioethics is, why it is important, and the real-life consequences of an unabated "culture of death."

Secondly, pro-life doctors and lawyers should band together to provide needed assistance to families fighting hospitals and insurance companies who have adopted the Futile Care Theory. Doctors should refuse to participate in "futile care" protocols and should fight for the lives of their patients. Some do, but not enough. Lawyers should be willing to legally fight for patients if their wishes are not protected.

Thirdly, there are a number of steps state legislatures should take to protect the sanctity of human life (see sidebar for suggestions).

- Repeal laws that provide legal immunity for hospitals and doctors if they base care on the Futile Care Theory in violation of patients' wishes.
- Enact legislation that specifically protects a patient's medical directives to obtain food, water, and medicines, and provides specific criminal and civil liability for doctors and hospitals who override the patient's medical directives for this basic care.
- Prohibit the withdrawal of artificial food and water, food and water by mouth, and the withdrawal of medical treatments if withdrawal of food and water and medical treatments is intended to cause death.
- Repeal, if enacted, the Medical Orders for Life-Sustaining Treatments (MOST) documents and any other documents that allow the suspension of a patient's medical directives. North Carolina is one of seven states to codify MOST documents.
- Reconsider statutes authorizing living wills. Living wills were enacted to protect loved ones from doctors who were trying to keep patients artificially alive on machines. Time has shown that it is almost impossible to predict every medical condition and adequately address them with a rigid set of directives. With the Futile Care Theory imbedded in many hospital protocols, living wills could be used to kill patients. It may be time to kill the living will.

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Conclusion

Doctors' actions at Hitler's death camps at Auschwitz, Dachau, and Treblinka remain forever burned into the memory of those who lived through the Holocaust. As Elie Wiesel wrote, "Thus, instead of doing their job, instead of bringing assistance and comfort to the sick people who needed them most, instead of helping the mutilated and the handicapped to live, eat, and hope one more day, one more hour, doctors became their executioners."

History will treat us no differently if we turn a blind eye to this travesty in American medicine.

We need to be a nation where the weak are protected from the strong, where our right to live will not be judged by our "usefulness" to society, where doctors and medical professionals return to the basic goal to heal rather than to harm. ❖

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