PERSONHOOD, MORALITY AND MEDICAL CHOICE

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At a time of great diversity of normative ethical theories and of widespread disagreement—even hostility and violent action in regard to the abortion controversy—Hudson has a vision of what the current moral scene requires: "There is an urgent need for a moral position which can actually be used to guide decision-making, a position which is neither relativistic nor arbitrary, and within the general framework of which constructive moral discussions can work out the details of what morality requires."[1]

It is Hudson's contention that the judgments of thoughtful persons "based on principles derived from human reason" should "increasingly converge toward agreement" and that unbiased and informed persons should be able to "understand them and appreciate the rational force of the reasoning upon which the obligations they entail is based" (60). I take it to be significant that Hudson does not stipulate that thoughtful persons will *agree* on these moral principles, but rather that they will *understand* and *appreciate* the reasons set forth to justify them. It would certainly improve the current moral climate if the opposing factions in the pro-life/pro-choice debate, for example, would openly acknowledge the legitimacy of the *reasoning* upon which the obligations proposed by their opponent is based without endorsing the *practices* the opponent proposes. A pluralistic society needs this unity-in-diversity. If Hudson's proposal could help to facilitate this shift, it would be most welcomed indeed.

The source and locus of all value for Hudson is a "certain type of conscious awareness" (62). This theory of value has its roots in the Philosophy of Personalism advocated by Borden P. Bowne, Edgar S. Brightman, and, most recently, by Peter A. Bertocci.[2] In Hudson's own words: "All intrinsic value occurs in conscious experience and it is the conscious awareness of value-discriminating beings which is the foundation and occasion of all the

value there is" (62). Only in the conscious experience of persons does intrinsic or inherent value reside. All objects of awareness and even organic life have no intrinsic value in themselves; they are valuable only if and when they contribute "to the capacity for value-realizing conscious awareness" (62).

Personhood is the label Hudson gives to any being with the capacity for conscious awareness, thereby enabling that being to appreciate and realize value; it is persons and only persons who possess inherent value. However, not everything persons experience or even enjoy is thereby good since in some cases it brings about so much suffering in the experience of other persons that it violates the rights of other persons.

Hudson proposes both an objectivist conception of value in which values are neither arbitrary nor relative to personal whims and a subjectivist view which holds that value is actualized only in the conscious experence of persons with the capacity for the creation and enjoyment of value. It seems to me that he could have clarified the issue if he had explicitly distinguished between value-possibilities and the actualization of these possibilities in the world which human beings do not create and which do not depend for their potential valuableness on anyone's knowing them. However, as Bertocci has noted, such objects exist only as potentially valuable unless someone does choose them thereby actualizing their value-potential.[3]

In terms of Hudson's position, why not call the necessary conditions for the realization of awareness potential-value or as possessing value-possibilities rather than dismissing "mere organic metabolism" as of "no value in itself" (63). Indeed, as Hudson notes later on: "A sleeping human being who may lack any conscious awareness at the moment is nevertheless a person because s/he is a potential locus of such value-creating awareness" (67). In fact, the young child according to Hudson, "whose powers have yet to mature .... is a person because the full

potential for personhood is present" (67). The same reasoning would presumably extend potential personhood to the fetus, though Hudson hedges on drawing this conclusion (74 n. 10). In any case, the point is that value-potentialities are not to be confused with the actual realization of value in the experience of persons, but the possibilities for value-experience exist independent of persons and their *potential* valuableness is not dependent on anyone's awareness of them. This distinction retains and clarifies both the objective and subjective elements in Hudson's theory of value.

Personhood is thus the key concept for Hudson. It means the capacity for conscious awareness enabling a person to appreciate and realize value. In light of the exalted status of pesons, it would seem central to Hudson's task to be able to distinguish a person from a non-person by specifying the identifying marks of personhood. Hudson, however, is sceptical of any attempt to specify a simple set of distinguishing criteria. He criticizes the previous efforts of Kluge and Fletcher for including neurological functioning and excluding the appreciation and creation of value in their conceptions of personhood. Even here, Hudson's point would be clearer if he made specific the distinction between value-possibilities and value-experience.

The well known Report of the *Ad Hoc* Committee of the Harvard Medical School entitled, "A Definition of Irreversible Coma," is praised by Hudson for setting forth a set of explicit and satisfactory criteria for brain death, though "vague in some measure."[4] Clearly there are problems here but they seem different from the ones that concern Hudson as Robert Veatch makes clear in his criticism of the Harvard Report. Veatch's legitimate concern is the confusion too often made between a technical judgment and a moral one or the false transfer of expertise from the technical to the moral realm. In terms of the

Harvard Report this takes the form of a confusion between the empirical criteria for identifying irreversible coma and the moral and general philosophical/theological criteria for defining death: "to claim that expertise in establishing that acurate predicting criteria for irreversible coma is also expertise in arguing that irreversible coma is synonymous with death is to commit the error of generalizing expertise."[5] As we shall see below, I think this confusion is also part of Hudson's problem.

For Hudson the fact that no specifiable list of characteristics clearly distinguishes a person from a non-person can be drawn is not surprising. We should not expect to be able to articulate a set of sharply demarcated criteria here any more than in other areas where a continuum is the norm rather than either/or divisions—e.g., normal vs. abnormal behavior or the organic vs. the inorganic. The differences are more a matter of degree than of kind. Nonetheless, what can be specified are the essential features of personhood: "The ability to perceive, to feel, to think, to understand, to judge, to enjoy, to suffer, to appreciate, to communicate with others, and to respond to and interact with the environment" (67). Hence, we have no doubts about the personhood of "the mature, alert, rational adult who thinks, judges, evaluates, discriminates, and appreciates" (66). Nor are we in doubt about the lack of personhood of "the amoeba which merely absorbs nourishment and procreates by cell division" (63). Gradations of personhood among living organisms rather than absolute distinsctions are to be expected, as well as difficult borderline cases. Nonetheless, Hudson claims that if the focus on personhood is maintained, then a firm basis for judgment is available in deciding life-and-death issues in medical practice. Here, then is Hudson's thesis: whoever has the potential or actualized capacity for value-experience is to be treated as a person with inherent rights, viz., the right to live a full and a complete life and to die with dignity.

In applying his thesis to medical practice, Hudson proposes that life terminating procedures performed on persons or potential persons is *prima facie* wrong as in the cases of euthanasia and infanticide. It is not clear to me why abortion would not also be *prima facie* wrong for the same reasons, though Hudson hesitates to draw that conclusion. But what is more significant in terms of the present moral scene is Hudson's conclusion that whatever lacks or whoever loses personhood is thereby devoid of the inherent right to life and hence termination of such life is morally justified. Indeed, not only passive but even active euthanasia is viewed as morally justifiable in such cases. It is worth quoting Hudson's position fully on this point:

> The comatose, brain-damaged patient whose condition is such that there is no reasonable expectation of recovery of personhood—even though s/he does not satisfy the "Harvard criteria" of brain death—need not be continued on the life-support equipment which maintains organic metabolism but which cannot make the individual a person again. Similarly, infants which are so grossly malformed or damaged that there is no reasonable expectation that the kind of awareness that we are calling personhood will ever be achieved need not be sustained. In some cases .... morality not only permits withholding life-sustaining procedures, but requires that positive steps be taken to bring a prompt humane end to the life of the damaged organism (68-69).

Presumably Karen Quinlan was an example of what Hudson has in mind.

At this point Hudson makes what seems to be the unwarranted

claim that decisions regarding acts of euthanasia and infanticide are empirical and not moral judgments once we understand and accept personhood as the norm for moral decision making. As he states:

> The difficulty in justifying acts of euthanasia and infanticide with regard to such individuals is not a moral difficulty but a practical one: ascertaining whether or not in a particular case personhood or the complete potentiality for personhood is present or absent. This is a problem which must involve conscientious and humane expert medical judgment .... Where there is an appreciable measure of doubt, the decision must always be in favor of maintaining life rather than of terminating. But given the moral principles which follow from the concept of personhood, these decisions are practical and not moral ones. They have to do with determining the medical condition of the individual so that we may ascertain how the moral principles apply. (69-70)

Thus, Hudson advocates active killing as being more moral on occasions than merely letting die. Consistent with this view, Hudson proposes a change in the present law to permit what is commonly called "mercy killing" and thereby avoid what to Hudson is the morally unacceptable practice of allowing a patient to die a slow and painful death as in the case of "withholding feeding from defective babies so that they slowly starve to death" (67). On this point he agrees with Joseph Fletcher who states: "It is harder morally to justify letting somebody die a slow and ugly death, dehumanized, than it is to justify *helping* him to avoid it."[6]

There are, then, for Hudson two major radical inferences to be drawn from the moral norm of personhood that are especially

relevant to current medical practices: (1) the resources of modern medical technology should be focused on helping persons remain healthy (i.e., fully functioning persons) and to help those individuals who give evidence of benefiting from medical technology to be restored to personhood; (2) medical resources should *not* be wasted on sustaining the biological organism of those individuals with little or no prospect of ever becoming persons again.

A bold and forthright proposal has been made by Hudson that has clear consequences for the health profession, as well as for all of us as present or prospective patients. We are asked to take seriously the concept of personhood he has proposed and to use it as a moral norm for life and death decisions in regard to who should be kept alive by means of medical technology and whose life might well be terminated based on the judgment of whether or not a return to personhood is a reasonable prognosis.

Suppose we grant Hudson's point and accept personhood as the moral norm for medical choice, does it follow that decisions regarding acts of euthanasia and of infanticide thereby become empirical, medical judgments rather than moral judgments? I think not. It is worth noting again Robert Veatch's criticism of the Harvard Report. It is Veatch's contention that the confusion in the report appears immediately between the title, "A Definition of Irreversible Coma" and the opening sentence of the article: "Our primary purpose is to define irreversible coma as a new criterion for death."[7] To establish empirical criteria that will enable the physician to determine and to predict irreversible coma is certainly the kind of medical expert judgment we seek. However, as Veatch notes: "To go on and say that the Committee is to define irreversible coma as a new definition of death is to leap into the realm of philosophy and public policy. This forces the committee into making the essentially moral and philosoph-

ical judgment that irreversible coma is synonymous with the loss of that which is essentially significant in the human body and, therefore, is justifiably called death."[8] At stake is a shift in the treatment of the patient as dead, but all that the empirical criteria can establish is that the patient is in irreversible coma. The expert judgment that determines irreversible coma is not to be equated with the kind of public policy necessary to establish death. As Veatch puts it: "There is no biological refutation of the counter claim, 'The patient is in irreversible coma, but he should still be treated as a living human being with all the legal and moral rights associated with one.'"[9]

Hudson seems to me to be guilty of precisely the kind of false transfer of expertise from the technical to the moral realm that Veatch so well analyzes. To claim that "human medical judgment" *alone* is required in justifying acts of euthanasia or of infanticide because all that is required is to determine 'the medical condition of the individual" is to confuse medical with public policy judgments, and to usurp the legitimate moral right of the patient, or of the patient's designated agent, to determine his or her own bodily destiny. To make a judgment on death is to make more than an empirical judgment regarding the patient's physical condition; it is also to render a moral judgment, sanctioned by society, regarding how we are to relate to the patient. As Veatch so astutely observes:

> What special training, knowledge, or skill would be derived from expert assistance in "fixing the boundries" for pronouncing death, i.e., determining the point at which legal and moral rights and obligations assigned to human life change. If death is a "fact,' it is a moral fact, a fact derived from the sphere of evaluation and policy making rather than from the biological laboratory.[10]

Ironically, it is because medical technology has enabled health professionals to sustain bodily functioning artificially and thereby keep patients "alive" whom previously society would have considered dead, that the moral issues surrounding death and dying have been raised. For example, states differ at present regarding the judgment of whether individuals who experience "brain death" are also to be treated as dead. Michigan has such a law and I agree with it, but, the point is, it should not be the decision of the physician alone, since more than medical expertise is at stake in equating brain damage with death. So too with "ascertaining," in Hudson's words, "whether or not in a particular case personhood or the complete potentiality for personhood is present or absent." Medical expertise can determine the present loss of consciousness or even irreversible coma, but, as has been proposed, that is not the same as determining that one should be treated as dead. The same should be the case in Hudson's position unless he is equating irreversible coma with loss of personhood, but if so then the moral significance of personhood is lost. Why turn to personhood as a moral norm for decision-making unless you mean something more than the empirical concept of conscious awareness. That is, if the concept of personhood is to function as a moral norm, then it seems inadequate to allow the determination of the fate of persons to be decided on strictly empirical grounds.

Would it not be more consistent with the moral status of personhood to place the burden of responsibility for the fate of persons clearly and explicitly on the patient, or, if the patient is incapacitated, on an agent designated by the patient to act on his or her behalf? This seems more in accord with the moral status of persons advocated by Hudson and applies the principles of freedom and self-determination so essential to the moral and legal system of our democracy to the crucial areas of life and death.

Granting the importance of establishing a moral norm for medical choice such as the concept of Personhood, it is at least equally important to establish a *method* for making bioethical decisions in life-threatening circumstances other than sole reliance on the judgment of the physician involved. What is being proposed is a procedural approach by which a decision-making process is established so that on-the-spot decisions can be made by an agent designated by the patient when he or she is incapacitated.[11] By allowing the patient to choose an agent who shares the patient's values and knows the patient's preferences a procedure for making difficult medical choices is established that is in accord with the doctrines of informed consent, of self-determination, and of privacy. In addition the method proposed allows for flexibility in the situation so as to meet the specific needs of the patient at the time. Patients who do not want to live under what they consider to be sub-human circumstances can so inform their agent ahead of time, whereas those who do want to be kept alive under those same circumstances may likewise make clear their desires to their agent. This would certainly mean that some people will be kept alive through medical technology whom Hudson might well consider to be a waste of medical resources. But that seems preferable despite the costs to the method he proposes which reduces essentially moral and public policy choices to technical ones. Hudson does concede that where there is significant doubt, then, the decision should be pro-life, but presumably the doubt is an empirical one without regard to any moral considerations, since the latter are irrelevant for him. But it is precisely that sharp separation of empirical from moral judgment that is in question. Granting the fact that physicians cannot always avoid making life threatening decisions, that is not the same as establishing a practice by which the determination of death in the cases of euthanasia and of infanticide is to be viewed as purely an empirical judgment to be rendered only by medical

experts. In these cases in particular the non-medical judgments of the patient or someone designated by the patient seems especially essential to protect the rights of the patient, and to recognize that decisions regarding death are not merely medical judgments but moral decisions as well that reflect the philosophical and theological views of society.

There is, of course, a need for assessing the medical and moral judgments made whoever makes them. For example, on the view I have proposed, there is always the possibility of a corrupt agent who wishes the patient dead or wants to see the patient suffer. Granted this possibility cannot be entirely eliminated, the likelihood is minimized since the advantage of the approach proposed is that the patient has the right to appoint a trusted agent to act on his or her behalf. Abuse is possible under any practice, but seems less likely under the procedural approach since the expressed interests of the patient is the focus. As John Stuart Mill stated: "There is no difficulty in proving any ethical standard whatever to work ill if we suppose universal idiocy to be conjoined with it."[12]

Furthermore, following the legal precedents already established in the case of court appointed guardians, the agent's right to accept or to reject treatment is not absolute, but is subject to the criteria of "reasonableness of the decision" and "in the best interests of the patient." Finally, an agent's decision may be contested in court by the physician or a member of the family.

This method of making moral choices in medical matters of life and death significantly modifies the radical application of Hudson's moral norm of personhood by restricting the application of it in cases of euthanasia and infanticide on both moral and practical grounds. The choice to "pull the plug" or to continue treatment should not be treated as a strictly empirical judgment; it is a moral judgment as well and requires a method which

accommodates the best interests of the patient and the concerns of the community at large.

Hudson is to be commended for attempting to bring both clarity and sanity into the controversial and highly emotional area of moral decision-making in medicine. He has only partially succeeded in his aim, but then the complexity and perplexity of the issues at stake render unrealistic a complete solution at this stage. As an initial step in the dialectic, Hudson has moved us forward in what I hope will become an on-going quest toward greater moral consensus in the bioethical choices we face.

Notes

[1]Yeager Hudson, "Personhood: Toward a foundation for Medical-Ethical Decision Making," *The Personalist Forum*, Vol. 1, No. 2 (Fall, 1985), 60. Further references to this article will be indicated by page numbers in parentheses following the references.

[2]See especially, Edgar Sheffield Brightman, *An Introduction to Philosophy* (rev. ed.: New York: Henry Holt and Company, 1951), chapters VII and VIII; and Brightman, *A Philosophy of Religion* (New York: Prentice-Hall, Inc., 1940), chapter 3; Peter A. Bertocci, *Introduction of the Philosophy of Religion* (New York: Prentice-Hall, Inc., 1951), chapter 10.

[3]See Bertocci, pp. 255-267; also, Peter A. Bertocci and Richard M. Millard, *Personality and the Good: Psychological and Ethical Perspectives* (New York: David McKay Company, Inc., 1963), chapter 14; and Jack F. Padgett, *The Christian Philosophy of William Temple* (The Hague: Martinus Nijhoff, 1974), pp. 274-275.

[4]"A Definition of Irreversible Coma: Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death," *The Journal of the American Medical Association* (August 5, 1968), Vol. 205, pp. 337-340.

[5]Robert M. Veatch, "Generalization of Expertise," *The Hastings Center Studies*, Vol. 1, No. 2, (1973), p. 30.

[6]Joseph Fletcher, "Ethics and Euthanasia," in Robert H. Wiliams (ed.),

To Live and to Die: When, Why, and How (New York: Springer-Verlag, 1974), p. 119.

[7]"A Definition of Irreversible Coma," p. 337.

[8]Veatch, p. 30.

[9]*Ibid.*, p. 31.

[10]*Ibid.*, pp. 29-30.

[11]An attempt has been made to translate the procedural approach advocated by Robert Veatch into state law by the Legislative Task Force on Death and Dying in the State of Michigan under the leadership of State Representative David Hollister. Recent efforts of the Task Force have been directed toward passage of a bill, which seeks to amend the current Probate Code in the state, making explicit the right of a competent adult to designate, under the durable power of attorney, another individual (known as Attorney in Fact) to make health care decisions on behalf of the principal, should the person become incapacitated and unable to make decisions for him or herself. The proposed bill also protects the health care professional who follows the wishes of the Attorney in Fact. The bill does not create a new right in law, but seeks to clarify a right that already exists under the Probate Code. See Robert M. Veatch, *Death, Dying and the Biological Revolution: Our Last Quest for Responsibility* (New Haven: Yale University Press, 1976), pp. 167-203.

[12]John Stuart Mill, *Utilitarianism* (New York: The Liberal Arts Press, Inc., 1957), pp. 30-31.