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[Book Review of] Life and Death Decision-Making, by Baruch Brody

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the book was part of a seminar on constitutional law. The reader, however, is not in the seminar. The patchwork and unevenness of the book is not up to Professor Tribe's usual standards of scholarship.

To conclude, I applaud Professor Tribe for addressing the abortion issue. The debate needs this learned voice and reasoned temperament. I think he has put his pen on the current impasse — values have been absolutized and public discourse has been gridlocked. Professor Tribe's latest book is an attempt to break the gridlock and advance the public debate about this crucial issue. It can only be hoped that others will work out a better way to resolve the clash of absolutes. However, Professor Tribe has helped us all to see the issues more clearly. And in this highly charged area of debate, this is no small achievement.

—William F. Maestri
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Life and Death Decision-Making

Baruch Brody

New York and Oxford, Oxford University Press, 1988, xii+250pp

One expects a high standard of performance from Baruch Brody, and this book does not disappoint. Brody is a professor of philosophy at Rice University and professor of biomedical ethics at the Baylor College of Medicine, both in Houston. His work displays traces of each, a combination of philosophical acumen with attention to clinical detail. In his preface Brody stresses the importance of avoiding the twin shortcomings of standard clinical thinking without attention to relevant moral theory, and abstract philosophical theory without attention to practical application. Brody succeeds in bringing together a discussion of the nuances of clinical settings with the use of abstract ethical principles.

The book contains seven chapters; the first four are more theoretical, the last three more practical. Although the book has considerable merit throughout, by far the best part is the last three chapters which contain very careful discussions of real cases and exhibit the use of ethical principles for thinking about the moral responsibilities of the patient, family, and care givers.

Chapter One is entitled, "The Need for a Moral Theory" and severely criticizes the view that sound moral thinking about specific cases can get along without a general moral theory. Decent motivations, a desire to do the right thing, says Brody, are not enough, and he presents several examples to illustrate the point that our thinking must be guided by the application of relevant moral principle if our desire to do the right thing stands a hope of being translated into act.

In this chapter, Brody first mentions his preferred moral theory, which he calls the "Model of Conflicting Moral Appeals." According to Brody, there are a number of different morally important principles that we ought to use in deciding how to act. Brody views these principles as independent of one another, in that the cogency of any one of them cannot be reduced to or founded on the cogency of any of the others. Brody thinks that someday we may be able to develop a unified theory that will systematize these independent and sometimes discordant principles, but he believes that we now are far from possessing one. In its absence, our best option is to hold that the morally right decision is the decision that most completely respects whatever moral appeals are relevant to the case at hand.

Chapter Two is important, for in it Brody lists and discusses the five different kinds of moral appeal that form the bedrock of his system. These are the appeals to (1) **consequences**

(which include promoting good, avoiding harm, and removing evil), (2) **rights**, (3) **respect for persons**, (4) **virtuous action** (particularly the virtues of integrity, compassion, courage, and honesty), and (5) **justice and fairness**. Brody believes that the shortcomings of other ethical theories can be traced to their tendency to focus on only one or two of these competing moral appeals to the wrongful disregard of the others. Brody thinks that the strength of his theory rests on its being "pluralistic." Perhaps "comprehensive" would be more apt here. Brody certainly intends to reject the common relativism that would leave moral thinking in the desperate condition of noting simply that what is right according to my principles is wrong according to yours.

Chapter Three contains Brody's criticisms of two competing models of moral analysis for biomedicine. The first of these he calls "the Contractual Model," which sees all moral issues as resolvable by appeal to the explicit or implicit terms of the agreement between patient and provider of health care. The second he calls "the Status Model," which would reduce all moral analysis to the social roles of patient and health care provider. Brody's criticisms of both are that they are insufficiently "pluralistic", that each model by its very nature is blind to certain relevant moral appeals. The Contractual Model, for instance, tends to ignore certain aspects of the right to treatment, the virtues of integrity and compassion, respect for persons, and attention to consequences. Brody brings similar charges against the Status Model, and his criticisms of both are in the main devastating.

Chapter Four, along with Chapter Two, provides the theoretical heart of Brody's work. In it he offers most helpful advice about how to weigh the seriousness of competing moral claims.

In Chapters Five, Six, and Seven, Brody deals with specific cases from his own clinical experience in order to show the relevance of the competing appeals presented in Chapter Two. Chapter Five deals with competent adults, some of whom wish to be treated and some of whom do not. Chapter Six covers cases of incompetent adults, some without families, some with families who wish treatment, some with families who do not wish treatment. And Chapter Seven examines cases of children, some newborns with parents who wish treatment, some newborns with parents who do not wish treatment, some adolescent or teenage children.

Each case is extremely well argued. Brody examines the plausible options, considers reasons favoring and opposing them, and offers his own conclusions. His views are presented in a non-emotional manner. But he compels the reader to enter into the analysis and to reflect on the nature of the conflicting moral appeals present in the individual case. The reader who disagrees with Brody's conclusions finds himself forced to argue on Brody's own terms. Brody does such a good job of showing the worth and relevance of the different moral appeals, that no one who attends carefully to Brody's presentation can ignore the power of his analysis.

Brody's own conclusions will be found acceptable by most adherents of traditional morality. That is to say, Brody avoids the twin dangers of treat-at-any-cost vitalism on the one hand, and the abandonment of "useless eaters" on the other. Brody is a clear, unemotional, and incisive analytic thinker. He also possesses genuine humanity and wisdom.

But the book has two serious theoretical shortcomings. The first of these Brody takes to be a strength — that the five sometimes competing moral appeals are all equally fundamental and irreducible to one another. Our moral theory may not be in the best of shape, but it is not quite the hodgepodge Brody makes it out to be. Most importantly, Brody believes that the twin appeals to rights and to respect for persons are not reducible to one another. Thus, although the right to life is possessed by all living members of the human species (and abortion is therefore morally wrong), not all members of the human species are equally deserving of respect because not all members of the human species are equally capable of free choice.

The mutual irreducibility of rights and respect for persons generates considerable oddity. On the one hand, it is morally wrong to kill an irreversibly comatose patient not because respect is owed him as a person (the power of free choice has been lost forever) but because

his right to life would be violated. On the other hand, it is morally wrong to assist a patient's suicide not because his right to life would thus be violated (the patient could waive the right) but because to do so is to fail to respect him as a person.

All rights, according to Brody, can be waived. The notion of an "inalienable" right, a right that cannot be alienated or waived, is nonsense in Brody's view, as though "rights are burdens with which we are stuck" (p. 22). Brody fails to attend to the fact that the status of personhood can at times appear to be "a burden with which we are stuck," if, for instance, it prevents us from suicide when we are in intractable pain. Why we can be stuck with the burden of personhood but not with that of rights is a question to which Brody offers no answer. Nor does he even think to raise the question of where rights come from except to say that "rights are relationships between people which exist as correlatives of obligations." But about what constitutes the grounds of obligations Brody apparently has no idea.

Second, Brody lacks the conceptual tools for analyzing the concept of action because he fails to understand the role of intentions. This does not lead him into practical moral error regarding his conclusions about the specific cases he treats. But it does mean that for all the book's strengths, it provides an inadequate theoretical guide for confidence in dealing with the thorniest practical difficulties.

The ultimate inadequacy of Brody's analysis can be most easily seen in his explication of the right to life. **Part** (but only part) of the right to life is the right not to be killed, which Brody defines as follows. "X has a right not to be killed against everyone since everyone has an obligation not to deprive X of X's life (where that means not to cause the loss of X's life)" (p. 24).

This will not do, and it is essential to see why it will not do. In Brody's view, if the Soviets were to place East German infants on the turrets of their tanks and send them through the Fulda Gap, NATO could do nothing to stop the tanks, at least if we assume with Brody that the infants possess the right not to be killed (as part of the right to life) and that the right to life is a fundamental right that may not be violated. To shoot at the tanks would certainly be to cause the loss of the children's lives, and so would violate their right not to be killed and so would violate their right to life. One alternative (not Brody's) is to admit that shooting at the tanks would be to violate the children's right to life, but that sometimes violation of the right to life can be justified under conditions of extreme necessity. But that way madness (and the gas chamber) lies.

Brody confuses the **causal act of killing** with the **moral act of intended killing**. The right not to be killed is (among other things) not the right not to have one's death **caused** but the right not to have one's death **sought**. Reckless disregard of or indifference to another person's life is also wrong, but the absolute prohibition cannot be interpreted to apply to the sheer causing of death, as the illustration shows.

The theoretical weakness of Brody's position could be ignored by readers of this journal if it had implications only for matters of warfare. But inadequacies in the very foundations of a theory are almost certain to display themselves in a systematic fashion throughout the various fields of application, and this is true in Brody's case.

Consider how Brody distinguishes active from passive euthanasia. "Active euthanasia is causing the death of the patient. Passive euthanasia is allowing the patient's disease processes to kill the patient without intervening to prevent that from happening" (p. 120). Again, we see Brody attempting to build his analysis on what is **caused** and not on what is **sought**. Would the deministering of a large dose of morphine be active euthanasia if death is caused but not sought? Would failure to turn on the heat in a room so that the patient might contract pneumonia and so die be passive euthanasia but not active? It is both theoretically and practically superior to define the act of euthanasia by what is intended (death), and leave the issue of what is caused as a possible side effect to be assessed using the principle of proportionality.

An article which can be used to explain the defective character of both features of Brody's theoretical presentation is a work with which everyone in the field of health care ought to be thoroughly familiar. It is by Richard Stith, entitled "Toward Freedom from Value," was originally published in *Thr Jurist* (1978), and has been republished in several anthologies.

It is as important an article as exists in the field of biomedicine. It explains what is involved in the notion of respect for persons, and defends as one of the paramount principles in biomedicine (or any other field) — “Do not act, or fail to act, in order that the patient [or any innocent human] might die.”

Brody's book has much to recommend it. This reviewer could not advise anything more helpful for clinical medicine than Brody's work supplemented by Stith's article.

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The Homosexual Person: New Thinking in Pastoral Care

John F. Harvey, O.S.F.S.

Ignatius Press, San Francisco, 249 pp.

For the average citizen, homosexuality is a condition poorly understood, repellent, and confusing. For this reason, it is essential that this recently published book by Father Harvey be widely read by physicians, nurses, medically oriented persons, and religious. Laymen interested in this problem will also gain deep insights into the many individuals afflicted with this disorder.

John Harvey is a moral theologian and psychologist who has devoted more than 34 years to studying, researching and counseling. He brings deep insight to this field of homosexuality.

In this book, Father Harvey grounds his observations on the sound foundation of the magisterial teaching of the Catholic Church and integrates medical, psychological and psychiatric research into the various chapters.

In the first chapter, he discusses at length the definitions of homosexuality and the distinctions between homosexual activity and orientation, compulsive and non-compulsive activity. In Chapter 2, he reviews the more recent theories concerning the origins of homosexuality. In Chapter 5, he deals with the major dissenting theological views of Charles Curran, Philip Keane, John McNeil and Gregory Baum. Following up on this is an excellent section elucidating the argument from revelation and reason in favor of the official teaching of the Church.

Chapter 7 is, perhaps, the most practical section of this book, as Harvey presents pastoral perspectives and programs for those afflicted by this disorder. This chapter describes one-to-one counseling and its relationship to group therapy and group spiritual direction. This is an especially strong chapter. It gives hope to all that they can lead deep spiritual, chaste lives. Relying heavily on spiritual and psychological counseling, following the 12 steps of Alcoholics Anonymous, many homosexuals have been freed from the tyranny of their own condition and gone on to live chaste and integrated lives. For special criticism, Harvey points out the deficiencies of Dignity and New Ways Ministry, organizations of dissenting Catholics.

In Chapter 8, he deals with the problems of the married homosexual, the apparent adolescent homosexual and AIDS. His ninth chapter is devoted to psychological and pastoral reflections on pedophilia and its treatment, along with the ethical aspects of the treatment. The final chapter is a capsule summary of the entire book in which he succinctly states his conclusions.