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AS UNTOUCHABLE, INVIOLATE, UNREASONABLE, **THE SACRED IS ANENCEPHALIC** (BRAINLESS)

Reflections on today's Cape Cod Hospital Ethics Panel on "Baby K: Medical Futility and the Free Exercise of Religion," Stephen G. Post, JOURNAL OF LAW, MEDICINE & ETHICS, 23:1 (Spring/95)

Glossary:

SLP The unqualified "sanctity of life" principle. Absolute prohibition against killing or letting die. Quality of life cannot be factored into decisions about the prolongation/shortening of human life. Every fraction of human life has infinite value.

qSLP The qualified sanctity-of-life principle is much more common: sometimes it's permissible to refrain from preventing death. (My comment: Since the sacred is inviolate, "sanctity" should not be used in reference to a life whose quality is judged too low to justify efforts at continuance. I can show the oxymoron of qSLP by proposing this phrase: "the sanctity of quality life.")

PVS Persistent vegetative state, no medical prospect of recovery of full human consciousness/relationability. The author is correct in seeing here a convergence of SLPers: "Protestant fundamentalists, Orthodox Jews, and conservative pro-life Catholics."

SITUATION: Anencephalic neonate "Baby K"'s SLP mother "opposes the discontinuation of ventilator treatment when Baby K experiences respiratory distress because she believes that all human life has value....Ms. H has a firm Christian faith that all human life should be protected. She believes that God will work a miracle if that is his will." Post holds she, the SLPers, "must be respected," & the First Amendment's free-exercise-of-religion clause provides legal ground for this respect; "religious beliefs should not be trivialized in clinical ethics"; free exercise should not be overridden in the name of a concept as vague as **futility**"; *& "free exercise of religion deserves serious discussion in the futility debate, and significant religious accommodation must be included in any hospital or societal futility policies."*

1 While the legal & medical aspects of the Baby K case are fascinating, my central concern in this Thinksheet is the **theo-ethical**. Awareness & concern are increasing that all of us in the relevant professions are in this together (of which I remarked to our gathering of some 50). The game of pass-along fragmentation is a musical-chairs cop-out. Theologians must not skip theodicy & pass Baby K along to the ethicists; nor ethicists to health-care professions, nor they to lawyers & judges. So what do theo-ethicists, combining the two disciplines, have to say? In the meeting, I mentioned some of the pieces, including the following:

2 As Mircea Eliade has shown in a number of directions, the sense of the **sacred** is native to humanity, so respect for it is a characteristic of cohesive societies. Where a society, culture, or subculture locates the sacred is (I add) the prime determinant of its destiny. But I must state a worry: If the society/culture/subculture itself is apprehended as sacred & therefore as unchangeable & unchallengeable, life stagnates & then (as a body of water with neither inlets nor outlets) dries up. It happened to Islam in the past millenium, & current outbursts of "Islamic [political] fundamentalism" (e.g., the Kaliban) are pathetic renewals of that sacred-totalitarian mentality. Within Christianity, I worry about the "right to life" & "gospel of life" SLP preachments, which strike me as sacralizing human flesh from conceptus to coma with the placenta (unavailable to research & healing!) in between: **sarxolatry** I call it, the idol-worship of human flesh, a pathological mislocation of the sacred.

3 The nonsacred must be argued ***for***, the sacred need not be (so is brainless [anencephalic!] in premise, though not in process) but in process is argued ***from***. (In the group, I said "We have here *two* cases of anencephaly, Baby K & her mother.) SLP says that "of course" the brainless baby should be kept alive no matter the cost to the public (in one such case, ca.$1.5 million over a three-year period). Live human tissue is an absolute good, so it's right to keep it alive, & we (everybody!) should find & use the most appropriate means of doing so.

Note here what I may call tridimensional or three-storey ethics. The top floor is the realm of the sacred, the absolute-ideal good, ultimate sanctions which one need only state & (as "tradition") hand on. "God said it: I believe it: that settles it." And, for this ethical mentality, God lives on this top floor, where healing includes "more than just the mobilization of patient powers, such as laughter, courage, tenacity, and hope; it must also include the operation of a real power than can override the perceived mechanisms of the physical universe....(Matt.4:24). In many

narratives of healing, faith plays an important precondition." God made all Baby K's other parts: maybe he's just slow, for some reason unknown to us, in finishing her off with a brain. Maybe what appears to be her PVS is only persistent, not permanent. While I judge the mother to be brainless in her negative-positive tabu about human flesh (negative, thou shalt not kill; positive, though shalt not limit efforts to keep alive), we do not know whether she was mindless. Might she not have been mindful in the Abrahamic-promissory sense (absolute-unconditional-mindless obedience to God's revelatory-guiding call)? Just think how much poorer the world would be without the "blind [brainless, uncalculating] obedience" of the saints! The biblical concept is even more radical: God's revelatory activity is *anti*-brain, against our calculating intelligence: he asks Gideon to fight after reducing his army to comparatively nothing; he produces a geriatric birth in Sarah & a virgin birth in Mary; he becomes a dead man but doesn't stay dead! Biblical revelation looks like a deliberate divine insult to our intelligence, reducing us to morons (to free our minds!) as it insists that we all see ourselves as sinners (to free our hearts!). Only the truly penitent can see & embrace the insult as blessing: "If with all your hearts ye truly seek him, ye shall ever surely find him." The fact that Baby K's mother is, in this narrow sense, brainless does not mean that she's crazy: faith whispers that everybody else may be--so we strident antiSLPers could do with a dash of Kierkegaardian "fear & trembling." No awe, no religion; no fear, no awe. A right-thinking guard, reasoning that he needed to keep the Ark of the Covenant from tipping over, touched it & dropped dead (2Sam.6.6-8; 1Chron.13.9-10).

Thus do considerations of the good stir in me conflicting cogitations, momentarily endangering both my passion for **truth** (I hear St.Jn. of the Cross: "When the evening of life comes, we shall be judged on love") & my boldness of **witness** (I hear Cromwell: "Bethink thee, by the bowels [compassion] of Christ, that thou mayest be wrong"). I almost drown in a mood-sea of excessive kindness.

4 But God did not make us to live only on the third floor, its walls decorated with strangely calming/disturbing scriptures (such as "Love your enemies") & its floor carpeted with the knowledge of God "as the waters cover the sea." Yes: God is good, creation is good, & we are called to "do good unto all" (Gal.6.10; CEV, "help people whenever we can"). But as we are given incisors (to confound vegetarians), we are given brains to instrument our minds toward problem-solving, that we might aspire to "a right [ethically, the best available] judgment in all things." And we use our mind-brains on the second floor, where we decide situationally what's the right thing to do (the unchosen actions being thus functionally wrong). (Reagan didn't say, on the second floor, that communism is wrong; on the third floor he denounced the USSR as an "evil [antonym of "good"] empire." On the first two floors he argued against communism: on the third floor, he argued assumptionally, *without further thought* (& in this sense brainlessly), from his prior conclusion of evil. On the third floor it was no longer necessary to argue against the USSR, & those below who were still defending the USSR were put to shame or at least silenced.)

5 On the first floor the lighting is very poor. (It's better on the second floor & best on the third.) We fumble about for the most appropriate action, the most fitting, the most useful--on the basis of what we've learned from prior (-ma) actions (prag-: yep, that's what "pragmatic" means). Sanctionally, the good is ideal, the right is juridical, & the appropriate is pragmatic. The top floor operates by ultimate (sacred, unconditional, inviolable) sanctions; the other two, by sanctions of consequence, the calculating of consequences being the rational component.

6 Rhetoric (i.e., public argumentation), to convince, must be **reasonable**. Post in his excellent article is pleading that "reasonable" include (though the analogy is mine, not his) all three floors of ethical consciousness--not just "medical futility" (floors 1 & 2) but also "the free exercise of religion" (floor 3). Devilishly difficult! (Literally: The devil tries to make it impossible, & has so far generally succeeded.) "Machy" is war (force, coercion, violence), "logomachy" is (literally) word-war, the alternative. Two years before our Declaration of Independence, Sir Wm.Browne put it neatly: "The king to Oxford sent a troop of horse, / For Tories own no argument but force; / With equal skill to Cambridge books he sent, / For Whigs admit no force but argument." (Early New England leaders were from Cambridge, not Oxford.)

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7 Reasonable? Reasoning is thinking on the ground of what "counts" (the Lat. root) & "fits" (the Gk. root) in a particular culture with a particular sacred pole in the center of a particular clearing in the jungle of human consciousness (of which the Net, the new jungle, is an outgrowth). What's reasonable is what's intelligible/plausible & therefore credible vis-a-vis the particular pole (understanding & celebration of **the sacred**). Societal gestalten (life-patterns) "reason" by using various thought-sequences (i.e., logics) tied like Maypole festoons on the community's sacred pole. (That "everybody" should agree on what's logical & reasonable is an ethnocentric illusion.) Can anything, in the interest of our common humanity, manage this diversity, give the lie to the skeptic & the cynic?

I think (!) so. All the poles (ways of worship/reason/logic) are in the same jungle, which the Bible sees as God's garden in which he sets us down, having made us first (it says here in Gn.2.7; next verse, God "planted a garden...and there he put the man he had formed": the Bible's first two God-metaphors are 1st the potter & 2nd the gardener). When we've exhausted the horse named Prose (which is culture-bound), we mount Poetry (which is culture-originated) & ride into an Eden that is culture-transcendent (the garden being an icon in all cultures above the hunter-gatherer level). Further, there are some what-I'll-call urgestalten, patterns of consciousness/thinking common to humanity (one of which is +/- [worship/tabu] response to the sacred [an aspect of this subterranean commonality being Noam Chomsky's "grammar of grammar"]). And under even that lies the final "ur" (source), which in his "Our Town" Thornton Wilder calls **"the mind of God"** (about which the current Darwinian "no/design" controversy is raging).

8 So if the jungle itself is to make sense (be reasonable!) to us, along with all that goes on in it as chaos & garden-cosmos, we shall have to be serious, in our own lives/relationships/studies, about the sacred. And we shall have to confess that in "the West," which has become the global society, (1) the funded wisdom of sacred lore has been neglected & (2) prejudice against the sacred has suppressed sacred lore (which has been called mere "belief"/"faith," in pejorative contrast to scientific "knowledge") & (4) the sacred has emerged negatively as the demonic (e.g., Hitler) & positively as the pseudo-divine, the celebrity culture (e.g., Princess Di & Jn.-Jn.). But science itself is now helping us grow cold in the worship of Scientism, & "spirituality" (even some forms of "religion") is once again becoming respectable enough to be an acceptable conversation-topic among the cultural elite (the shapers of the controlling cultural images).

9 Before getting back to the Baby K case & how best to process it in case-method education, let's look at some **forms** in which the sacred appears in societies. (1) As **political idealism**, of numerous types: (a) ethnic, e.g. "blood & soil" Nazism; (b) romantic (idea-driven), e.g. Marxism-Leninism-Stalinism; (c) pragmatic (results-guided), e.g. American democracy. (2) The sacred appears at the heart of the honorable gentleman: America's FF (founding fathers) risked "our lives, our property, and our *sacred* honor." (3) The sacred may be experienced as resident in "holy" places, where the veil between the in/visible worlds is (as Geo.McCleod said of the island of Iona) "thin." (Most of this evening, 1.13.00, we spent with Sister Cintra Pemberton, an Episcopal nun of the Order of St.Helena, who is famous as a spiritual pilgrimage guide to Celtic sites: A pilgrimage is "a journey undertaken in search of that which is holy": "The exterior journey is a reflection of the interior journey." In the world's religions, there's now "a resurgence" of pilgrimage to holy places, where of saints there are memories/memorials/relics. The most ancient Celtic sites, of which my wife has visited many, are springs [called "wells," i.e. wellsprings].) (4) So-called "native" people locate the holy in their land &/or in nature &/or in their ancestors. (5) Landless people, & scholars, locate the holy in books (e.g., "The *Holy* Bible." That, & most books--especially Bunyan's PILGRIM'S PROGRESS--were, for Ab.Lincoln, holy places.) (6) What was in Lincoln most sacred was the sense of duty. (7) Besides the sacrality of one's own land, some locate the sacred in the biosphere, which humanity is gradually degrading. (In only 21 years, the U.S. population will have doubled.) (8) Live parentage is, for some, sacred. Some say the 6-year-old Cuban boy, whose mother gave her life to gain him freedom, should be sent back to Cuba to be with his live parent who separated from the mother, remarried,

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& is now under Castro arrest (so the U.S.Gov't. cannot even determine if the father wants the son). Others locate the sacred in what is best for the child. Still others say that the decisive value (i.e., the sacred) is the U.S.Immigration law against wet-backing: send the criminal back to Cuba. Hagiomachy, a clash among rival sacreds. (9) Some say birth-condition is sacred; anencephaly, spina bifada (Lat., "split back-bone"), cleft palate ("The Lord made him that way, & that's the way he's going to stay," said an Appalachian mother to Dr. May Wharton, who'd offered to operate for no charge), homosexuality (oops! maybe not a born condition: the jury's still out; but "We're born this way" is the centerpiece of gay-rights argumentation & political action). (10) Some locate the sacred in some virtue (in #2991, kindness). In America, **tolerance** is sacred--not just in the negative sense ("Live & let live") but also in the new positive sense ("All POVs, all religions, all races, all cultures, are equal" --a latitudinarian attitude relativizing truth & thus privatizing religion). (11) Back to Baby K, whose mother (you remember) believes all live human flesh is sacred (the religiophilosophical base of the pro-life, anti-death-penalty, & anti-physician-assisted-death movements). The mother's SLP ethic is struggling with the quality-of-life ethic (here in resultant form: the "medical futility" conclusion).

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10 The mother has two sacreds going for her, viz. her SLP ethic & the First Amendment (arguably the most sacred statement in the Constitution/Bill of Rights, parallel in sacrality to the Declar. of Indep.'s "all men are created equal"). The medical staff had only one sacred, viz. QL (quality of life). Weighing the sacreds, the court put the FA (First Amendment) on the mother's side--so she won 2:1. This sacrality analysis is simple but not simplistic. It's an essential dimension of court action & needs to be added, as the scales of justice teetertotter, to such secular weights as "rights" & "values" & "precedents" & "prospects." We Americans agree that government instrumentalities, including courts, are not to favor a (i.e., any one) religion; but the impoverishing opposite of "establishment" is elimination, religion (a prominent dimension of the people's life) having no voice. No voice in courts. No voice in medical facilities. No voice in public education. No voice.... In any society, clericalism is disastrous; we're finding out that so is laicism.

11 The chief impediment to religion's presence at the public decisional table is the secular elite's success in capturing the semantic domain of the "**reasonable,**" so defining it as to exclude religion. In his THE CULTURE OF DISBELIEF: How American Law and Politics Trivializes Religious Devotion (Basic/93, p3), Stephen L. Carter argues against the secular liberalism that has created "a political and legal culture that presses the religiously faithful to be other than themselves, to act publicly, and sometimes privately as well, as though their faith does not matter to them." In consequence, he observes what was true in the Baby K litigation, viz. the elimination of the religious factor in jurisprudence. Says Post, "the district court," considering the religious factor, "reached a reasonable decision. The court of appeals erred in categorically eliminating the consideration of religous freedom."

12 But what when state interests are "clear and compelling" over against an appeal to religion? In his RELIGION IN AMERICAN PUBLIC LIFE (Brookings/85, p167), A. James Reichley well says that "in its interpretation of the free exercise clause, the [U.S.] Supreme Court has on the whole maintained a **balanced** course [my ital.], providing the opportunity for a wide variety of religious expression while protecting the legitimate needs of civil society." I agree here with Post: "My view is that we play God when we attempt to extend the lives of anencephalics." The mother "asserts a positive right--one for which others are economically responsible....How respectful of pluralism can we financially afford to be?" But if the mother is overruled, "what is gained for the public good is lost for religious freedom....Many Christians think that health care enjoys no automatic claim to precedence over other essential values--for example, housing, the war against drugs, education, and restoring the inner cities (where violence claims many lives...)." Further, "no physician who dissents from ventilator support in the name of futility should be required to act against his or her personal conviction. The freedom of the physician also deserves respect."

13 But "futile" medical treatment has some eminent defenders. Karl Barth (THE DOCTRINE OF CREATION, III.4 (T&TClark/61): "The value of this kind of life is God's secret." And Gilbert Meilaender's "natural trajectory" (Hastings Center 23.4;25).