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Getting Rid of the Vegetables

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I
n American politics, the surer ground is usually the middle ground of perceived moderation. The two “extremes” are construed as those calling for abortion on demand and those calling for an absolute prohibition of abortion. In that context, the middle ground is support for the most protective abortion law that is politically and culturally sustainable. Political calculations aside, however, it is obvious that Roe and Casey have in no way “settled” or “resolved” the abortion conflict. The American people will not, and should not, accept the word of the current five-to-four majority as the definitive word. If President Bush has the chance to make it, the next nomination to the Court will provoke a battle that will turn “Borking” into a synonym for civility. But more important than the makeup of the Court, as Justice Scalia forcefully argues, is the right of the people to deliberate and decide what justice requires regarding “an issue involving life and death, freedom and subjugation.”

Abraham Lincoln had Dred Scott in mind when he asserted in his First Inaugural Address: “The candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.” As Lincoln would explain to the Stephen Douglasses of today, Casey is not “the law of the land.” It is one wrong decision of the Court affirming an earlier wrong decision of the Court. So long as it stands, it must guide the decisions of other courts, and those in government office must be mindful of that. But the Constitution is the law of the land and, contrary to some judicial “realists,” the Constitution is not whatever the Supreme Court says it is. In this land, in this constitutional order, the people, through their representatives, make the laws.

Before and after he became President, Lincoln strove earnestly for the overturn of Dred Scott. He failed, and war came. It is almost impossible to imagine that there could be a civil war like the last one. But the destructive effects of anomie and anger are already evident as a result of law divorced from constitutional text, moral argument, and democratic process. The ever-fragile bonds of civility are unravelled as politics becomes, to paraphrase Clausewitz, war pursued by other means. Lawless law is an invitation to lawlessness. The four justices dissenting from Casey are not alarmists, but they are raising an alarm. Those who refuse to listen bear responsibility for the consequences. “Against the Court,” writes Scalia, “are the twin facts that the American people love democracy and the American people are not fools.” They will not forever, they will not for long, be denied democracy and treated like fools.

William Lloyd Garrison and his fellow abolitionists publicly burned the Constitution, believing it to be—as interpreted by the Court—“a covenant with death and an agreement with hell.” The Court minority worries about the angry disillusionment of millions of Americans who have been denied their right to make the case in the political arena for protective abortion law. But also the main opinion in Casey is filled with ominous worries about the moral legitimacy of the Court and the difficulty of maintaining the rule of law. Indeed, in affirming Roe, only two justices (Blackmun and Stevens) are prepared to argue that it was rightly decided law. Kennedy, O’Connor, and Souter say that, right or wrong, precedent must be upheld in order to sustain the perceived legitimacy of the Court. So that they will not appear to be “surrendering to political pressure,” they surrender to the political pressure in favor of Roe. They are right to be anxious about the moral delegitimation of the Court and the undermining of the rule of law. The course that they have chosen is the surest way to the end that they fear.

Opinion

Getting Rid Of the Vegetables

David F. Forte

T
he other day, I cleaned out the vegetable bin in my refrigerator. Some leaves of the head lettuce had browned, an old zucchini was wrinkled with age, and a forgotten tomato was shrunked. I had little regret, for I was replacing the space with some fresh sweet corn and a nicely formed Holland pepper.

But some things in our lives cannot be replaced. A while ago, my eighty-year-old mother collapsed and was taken unconscious to the local hospital and placed in the intensive care unit. This very frail woman had suffered a massive subdural hemorrhage and was comatose. The hemorrhage was too extensive for ameliorative surgery. Clinical diagnosis indicated little cerebral activity beyond brain-stem function. After twenty-four hours, the attending physician, whom the family did not know, declared that he had decided to remove her from the respirator “to see how she will do on her own.” When the
family asked whether respiration would be re-
administered if her breathing stopped, the attending
physician stated that he would not do so, and
remained steadfast in his refusal even if the husband
and children insisted upon it.

The family could not fathom the physician’s
motives, for he was not forthcoming about his
reasons, nor did he provide much information.
Members of the family then actively sought guid-
ance. The family physician, who had treated my
mother for many years, received permission to
examine her (he was not associated with the hos-
pital). His conclusions, plus those of neurologists
whom members of the family were able to contact
by telephone, finally gave us a clear picture of
mother’s clinical condition.

With that knowledge, the family agreed to have
her transferred from intensive care, to discontinue
respiration, and not to have resuscitative treatment
administered should there be cardiac or respiratory
arrest. If respiration did cease, we were convinced
it would come from her degenerating brain func-
tion. However, because of the underlying nutri-
tional weakness of the woman, the family insisted
that nutrition and hydration be given. The family
physician supported this resolution, telling us that
this was the “most humane” course under the
circumstances.

The decision was made during the second evening
of my mother’s hospitalization, and the night
attending physician entered the orders. The next
day, the respirator was turned off, but my mother
continued to breathe sufficiently well on her own.
She was transferred to a regular ward. However,
the regular attending physician still refused to begin
nutrition. There were no indications of any sec-
dary effects (regurgitation, diarrhea, dehydration
of the mouth) that could not he dealt with. He
simply rejected the family’s direction, even though
the treatment requested by the family was supported
by the family physician and, we were led to believe,
by other physicians at the hospital. The nurses
attending my mother were placed in an awkward
position, caught between the family and other
physicians on one side and the attending physician
on the other. During the debates and discussions
between the family members and the hospital, the
word “vegetable” was applied to my mother. It was
not a harmless sobriquet.

W

however we feel the need to free ourselves from
the moral command to care for and to treat
our weaker brothers and sisters, the easiest way to
avoid the command of conscience is to deny the
humanity of those dependent on our succor.
Whether the precept is formulated as “the just man
shall care for the widow and the orphan,” or “thou
shall love thy neighbor as thyself,” the innate sense
of the other person as like ourselves leads to the
universal ethical syllogism: we should care for our
fellow humans; Antoinette is a human person;
therefore, we must care for Antoinette.

We can free ourselves of the moral command by
denying the minor premise, i.e., by declaring that
Antoinette is not fully a human person, or as the
lawyer asked in the New Testament, “But who is
my neighbor?” In short, the empathetic bond can
be broken only by rejecting the personhood of the
other.

One of the most effective ways of stilling the
conscience is to place persons who become incon-
venient or offensive in a lower biological order.
Think of the epithets in our day that have been
attached to blacks or Jews as they were a century
ago to the Irish and the American Indian. They
are often described as less than human, and thus
no longer qualify to the status of neighbor, or
brother, or sister.

The medically invented phrase, “Persistent
Vegetative State,” has an inevitably pernicious effect
on the way we look at those whose cognitive
functions are drastically, and in most cases perma-
nently and terminally, impaired. With the use of
this phrase, we affix a label that places them not
only outside of the human species but outside of
the entire animal realm. It cannot but affect the
moral outlook of those—attending physicians and
others—who are called upon to treat patients
wearing the badge of our disregard.

It is true that the phrase was originally intended
to be purely descriptive, denoting that only the
“vegetative,” as opposed to the cognitive, functions
of the brain were still operating. But the term is
frequently and widely used for moral effect, no
matter what its original clinical provenance. In the
nineteenth century, the discussion of the “survival
of the fittest” transformed the notion of “fitness”
from an organism’s attributes in relation to its
environment to the inapposite conclusion that
humans who could not thrive in the industrialized
economy had no moral claim to survival. Today,
physicians and others who employ the word “veg-
etable” in describing the condition of comatose
patients and in “counseling” troubled relatives fall
into the same moral error.

There ought to be a more accurate term that
describes not just the medical condition but the
underlying humanity of the afflicted person.
Perhaps something like “Persistent Nonconscious
Condition” would be a more technically descriptive
and less morally freighted substitute. It would, in
fact, communicate a more complete picture of what
is going on.

Think for a moment what “Persistent Non-
conscious Condition” would imply. The condition
of the patient is persistent: it resists medical
interventions designed to reverse it. But the con-
dition is nonconscious, not “vegetative.” We can
thus say that the cognitive functions of the brain are no longer functioning without implying any disdain for the person suffering from the condition. Finally, the patient has a "condition." She has not been metamorphosed into another "state" of being. She remains fully human, albeit deeply impaired.

Changing the terminology does not necessarily mean that the appropriate medical treatment for those with a persistent nonconscious condition will be any different. Such a change might not, for example, affect the ethical or legal conditions necessary for the withdrawal of life-sustaining treatment. But it would help to assure that we continue to regard these very ill persons as persons, entitled to care, comfort, and whatever treatment is appropriate.

What happened to my mother? After the intervention of other staff physicians, the attending physician at last agreed to offer her artificial nutrition and hydration. Over the next few days, her condition marginally but noticeably improved. Her breathing and heart rate remained steady. Kidney function was undiminished. No side-effects from the administration of nutrition were encountered. Members of the family arrived to talk to her, sing to her, comb her hair. Pupil response improved slightly. Her right arm was no longer flaccid and she seemed to squeeze one's hand in response to questions. A priest who came to see her alone said that she reached for his hand when he approached the bed.

We shall never know to what extent these reactions were genuine responses or our own subjective transferences. Nor shall we know whether or not it was the nutrition that provided the family with time to begin the process of letting go. It did provide us the opportunity to determine that while death would not be opposed, in the interim we would care for mother as best we could.

Antoinette died seven days after the hemorrhage. The bleeding had never stopped. Her lungs had begun to fill with fluid. But when she died, she died as a person and we grieved for her as a person.

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Better Than Their Fathers

Russell E. Saltzman

My fourteen-year-old son has decided he is of the wrong race, culturally at any rate. He wants to be black—or is it now African-American? Well, whichever it is, that is what he wants to be.

As you might imagine, this is quite a change for a skinny blond kid with a German surname. I read Black Like Me back in the 1960s. The book's white author dyed his skin black and traveled through the Jim Crow South reporting his experiences, so I know a little about transformations of this sort. But the cultural evolution my son is undergoing is way beyond my comprehension. He has not yet dyed his skin. But I think it is only a matter of time.

I first became aware of his cultural odyssey when he begged me for a haircut with racing stripes, swirls, and his initials. Me, I am pretty much your buttoned-down type of white guy. The haircuts I am familiar with do not include patches trimmed in idiosyncratic patterns. Nonetheless, I do understand the need for individuality among the young, so I consented. Hair, I reasoned, does have the virtue of growing out. He wanted five stripes, I did not want any, and we compromised at three with no swirls, no initials.

Then came the tight-rolled jeans. This entails an elaborate, time-consuming process rolling up jean cuffs tightly against the ankles, urban warrior-style. Actually, I think it is a style mostly designed to consume precious moments every morning—jeans must be rolled just so and if not, start over, and over and over and over and over. This panics me into wondering if the kid ever will get ready for school on time. Can anybody tell me what possible difference there is between a perfectly or imperfectly tight-rolled cuff?

Next thing I knew, we needed $100 Nikes, Malcolm sunglasses, a Chicago Bulls cap, and an oversized shirt with nothing, but nothing, in the pocket. I tried to slip his ink pen into his pocket the other morning and thereby inadvertently committed an act of rank idiocy. "Honey" is the look he is after, as in "somebody like 'us'." Put a pen in the pocket and the kid might end up looking more or less like, well, one of "them." Meaning me, I guess. But okay. At least these are clothes to which I can still relate.

School officials, though, confiscated the cap. Rival hats create problems among rival students, the vice principal told me when I answered the