

THE BABY DOE GUIDELINES

One of the most famous cases of infanticide—or the killing of an infant—is that of Baby Doe.

Baby Doe: Suffered from Down syndrome, typically associated with lower levels of IQ. Baby Doe also suffered from an unformed esophagus (the passage from the mouth to the stomach). In other words, food put in the mouth did not reach the stomach.

The doctors recommended not going ahead with the operation to restore the esophagus, but to instead let him die while giving him drugs ensuring that he would be in no pain. The parents consented, and the baby died within a couple of days. Public reactions, however, were hostile to the decision made, and to the parents.

The Reagan administration—officially a strong defender of the pro-life movement—quickly put in effect what came to be known as *the baby doe guidelines*. The guidelines were framed in terms of an attempt to protect the disabled. Squads of lawyers, doctors, and government officials were set up for the purpose of being dispatched to locations of complaints within an hour's notice. No investigation revealed violation of the guidelines.

Still, the guidelines were later struck down, since they had been developed without consulting those affected. The Department of Health and Human Services (HHS) developed a new guideline, which suggested that the law “[...] does not require the imposition of futile therapies which merely temporarily prolong the process of dying of an infant terminally ill, such as a child born with anencephaly or intra-cranial bleeding.”

Singer: Any concession to the effect that life sometimes should not be maintained amounts to a departure from the idea of the sanctity of life. In other words, what is notable is that, in attempting to defend the sanctity of life in law, the Reagan administration ended up defending a *quality* of life ethic, on which all lives need not be maintained.

However, the new guidelines were not accepted by those asked to comment on it. For this reason, HHS issued its ‘Final Rule,’ which exchanged talk of ‘futile treatments’ with treatments that are not ‘medically beneficial.’

Singer: This is, if anything, an even clearer example of a quality of life ethic.

Not even this guideline was accepted, however. The Reagan administration appealed to the Supreme Court, but without any success. Supporters of the guidelines in congress tried a new tack. They appended a clause to a bill reauthorizing a federal government program against child abuse. However, even this clause accepted treatments that would “merely prolong dying” or that “would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.” It came into effect in 1984.

DR. LORBER ON SPINA BIFIDA

One condition that people arguing that infanticide is sometimes morally permissible usually bring up is *spina bifida*.

Spina bifida: Literally means divided spine. Involves a complete paralysis of the legs, and a complete inability to control the bowel or bladder. The spine may also be deformed. The condition sometimes, but not always, involves intellectual disability.

Before the 1950's, almost all infants that suffered from spina bifida died, either due to infection or because doctors and midwives made sure that they didn't live. However, after the 1950's, antibiotics became available to deal with the infections, and new surgical procedures became available that would handle the many physical defects involved.

Dr. John Lorber was a pediatrician in Sheffield. He initially argued that all babies suffering from spina bifida should be operated on. However, after a decade of practicing, he began to have his doubts and analyzed the records of 848 of the

children he had treated. Here is what he found:

Half had died, most of these during the first year of life. Of those who had survived, only six had no handicap, and seventy-three were only moderately handicapped. More than 80 percent were severely handicapped: that is, they had at least two, but usually more, of the following conditions: no bowel and bladder control, or a urinary bypass with frequent kidney infections and progressive chronic kidney damage which sometimes led to kidney failure; paralysis to such a degree that they were unable to walk without caliper splints, crutches, or other appliances and that do rely on wheelchair for part of the day; pressure sores on feet, knees, or buttocks; hydrocephalus [fluid accumulation in the brain] which was treated by a drainage tube, requiring new operations to deal with frequent complications. In addition to these physical problems, approximately one-third of the surviving children were intellectually disabled (Singer 1994, p 117).

In light of this, Lorber called for a reassessment of priorities, and for selective treatment. He found that the size and location of the opening of the spine were good predictors of the severity of disability that the child would have. He suggested that those predicted to suffer from severe disabilities should be “kept comfortable and free from pain” while treated to die.

HARD CASES AND HARDER CASES

This, clearly, amounts to a quality of life ethic on part of Lorber—a consequence that Singer, naturally, welcomes. However, it remains to be specified exactly how such an ethic is to be applied. Consider the following cases:

Re J

A brain-damaged, premature baby. At five months, he still had difficulty breathing without a ventilator, was paralyzed, appeared to be blind, and likely to become deaf. In addition, it was unlikely that he would ever be able to sit up or hold his head up.

Re B

Similar to Baby Doe. Suffered from Down's Syndrome and a blockage of the intestine, which could have been removed by way of a fairly simple procedure. The effect of not operation was starvation.

John Pearson

Suffered from Down's Syndrome, but had no other abnormalities.

In all these cases, doctors were able to perform (passive) infanticide without any legal repercussions. (They were all brought before courts, but led to no convictions.) However, it seems that the question whether it is morally permissible to perform infanticide becomes less and less straightforward as we move from the left-most case to the right-most case.

FOR DISCUSSION

The Article. A contemporary commentary from the British newspaper *the Guardian* on the John Pearson case, and the doctor that was responsible for his care, Dr. Leonard Arthur.

Questions.

- Under what conditions does the Commission say that it might be morally permissible to perform infanticide?
- Going by the Commission's view, was it right to kill John Pearson?