

*Peter Singer*

## The 'Singer-Affair' and Practical Ethics: A Response

**Abstract:** This response to the articles in this issue of 'Analyse & Kritik' begins with some general remarks on the 'Singer-Affair' in which I suggest that while the rational discussion of the ethical issue of euthanasia poses no threat of a return to Nazism, there is a real danger in the creation of a climate in which people are ready to use force to suppress ideas with which they disagree. I then state and criticise two popular theses about the wrongness of killing: that there is a crucial moral distinction between an act and an omission, and that all human beings possess an intrinsic right to life that no nonhuman beings have. This serves as a background to the section that follows, in which I take up the detailed criticisms of my views made by Professors Lenzen, Birnbacher, J.C. Wolf and Hoerster.

### O. Introduction

It is, of course, an honour for any thinker to be deemed sufficiently significant to merit a special issue of a journal in which his or her work is held up to critical examination - even if, as in this case, the honour may have been bestowed for reasons not entirely derived from the intrinsic merit of the ideas under examination. In view of the general reception of my ideas in Germany, I am even more than usually pleased that the editors of *Analyse & Kritik* have arranged this special issue, and that they have succeeded in gathering together such a fine set of interesting and relevant articles. As Christoph Anstötz notes in his contribution to this issue, the reception of my ideas in Germany so far might be described as "Kritik ohne Analyse" (134); hence it is particularly important to show that there can also be critique that is based on analysis; critique, in other words, that takes care first of all to understand correctly the position that is to be criticised, and that is then based on rational argument rather than mere abuse. The contributions to this volume exemplify these central philosophical virtues. Thus this issue of *Analyse & Kritik* clearly demonstrates to those who have attempted to prevent me from expressing my views that there is a better, more rational and more mature way to object to my ideas than to attempt to drown them out in a chorus of whistles.

The structure of this response is as follows: in the first section I make some general remarks on the 'Singer-Affair' and on the issues raised by the contributors to Part I of this issue; in section 2 I very briefly indicate why I consider conventional moral views about killing to be untenable; and in the last section I respond to each of the critical articles in Part II of this issue.

### 1. Comments on Part I: The 'Singer-Affair'

The nature and extent of the German opposition to my ideas, which manifested itself during my visit in June 1989, came as an unpleasant surprise. I had lectured on similar topics in many other countries; my views on euthanasia have always been controversial, with opposition coming particularly from conservative religious elements. Many have stated their disagreement forcefully, but not once, before my visit to Germany in 1989 had it been suggested that my views on euthanasia should not be heard.

Naturally, in view of the past, I expected greater sensitivity to the topic of euthanasia in Germany. Such sensitivity is obviously desirable; but if the aim is, as it should be, to avoid repeating the mistakes of the past, then surely it must be obvious that to respond with fanatical intolerance to a calmly presented philosophical argument is to fall precisely into a mode of reaction that contributed greatly to the downfall of the Weimar Republic. As Stuart Hampshire has observed in the course of some recent reflections on "Nazism and Evil":

"The National Socialist programme was to destroy in Germany both the morality of literacy and of legality and the morality of fair negotiation. They wanted no more arguments, no more justice; just the excitement of conflict and of victory through violence." (Hampshire 1989, 70)

The fact that the British political tradition has never produced leaders like Hitler, nor atrocities like the Holocaust, has nothing to do with attitudes to euthanasia (which had its respected advocates in Britain and the United States as well as in Germany during the inter-war period) but rather with the maintenance, in Britain and other countries that share Britain's political traditions, of a political order and a social climate that respected the procedures of open debate and defended the values of tolerance and freedom of expression against threats from both right and left. Central to this political tradition is the assumption that if one believes an opponent to be wrong, the place to show this is in the forum of open public debate. In such debates, British fascists like Sir Oswald Mosley could never convince more than a tiny fraction of the voting public. In the last years of Weimar Germany, on the other hand, debate was stifled by the intimidation of the Storm Troopers. The ability to wield violence as a means of silencing

opponents became more important than the ability to reason or persuade. It was in this climate that Hitler came to power.

Because of the fundamental importance of freedom of expression for the health of the political process, I cannot accept Ursula Wolf's suggestion that there is a significant distinction to be drawn between freedom of discussion in the academic and the public forum. Admittedly, there may be some rare justifiable exceptions to freedom of expression in the public arena. In *On Liberty*, John Stuart Mill gave a celebrated example of circumstances in which even he would restrict freedom of speech. If at a time of high prices for corn, an excited mob gathers in front of the house of a corn dealer and someone gives an inflammatory speech, stating that the corn dealers are starving the poor for private profits, this might be stopped in the interests of public safety (Mill 1859, Ch. 3). But the same opinion ought not to be restricted, if delivered in a calmer moment where it was not likely to issue in immediate violence.

I regret, of course, that my writings have offended the feelings of the handicapped; but offence against feelings is not (as Wolf in the end agrees, at least in the present case) a sufficient ground for restricting freedom of speech. It must also be pointed out that if any handicapped people really felt that their lives were in any way threatened, the chief responsibility for any distress they may have experienced must lie with those who have so completely distorted the nature of my position (possibly, as Hartmut Kliemt suggests, to advance their own wider political agendas and distract attention from the internal problems of their own organizations).

Even though I draw no sharp distinction between academic and public freedom of discussion, I do find it especially disturbing that those who have suppressed freedom of expression should have received so much support from professors and intellectuals who should understand the importance of freedom of discussion and who should have some confidence in the possibility of exposing error by analysis and argument, rather than by attempting to silence those whom they consider to be wrong. The quotation from Kant with which Rainer Hegselmann opens his article is precisely to the point here; so too is Kliemt's remark that:

"Die Freiheit der Wissenschaft beruht wesentlich darauf, daß man Argumenten mit Argumenten zu begegnen sucht und alle jene kritisiert, die der Versuchung nicht widerstehen, sich außerargumentativer Mechanismen zu bedienen, um in Kontroversen zu obsiegen." (185)

Unfortunately it seems that many of Kliemt's own university colleagues do not share this view. The importance of freedom of expression appears to be much less widely appreciated in Germany than in many other countries.

Among the most serious signs of this lack of proper concern for freedom of expression even in the universities are the attempts to force Anstötz to distance himself from my ideas, or be dismissed, and the failure of the University of Duisburg to provide unequivocal support for Kliemt against the disruption of his classes. On the other side, the declarations made by members of the 'Allgemeine Gesellschaft für Philosophie in Deutschland', and by the Berlin philosophers, show that there are some academics in Germany who do share the views of Kant and Kliemt on freedom of discussion.

There can be no serious comparison between Germany today and Germany in the years immediately preceding the Nazi seizure of power. One crucial difference is that today it is much more difficult to suppress ideas than it was in the 1930's. Anstötz quotes a statement by the protestors (136f.) to the effect that they do not want me to obtain an audience, or for my views to be regarded as important. In fact, as Kliemt correctly notes in refuting Reinhard Löw, the actions of the protestors have, quite predictably, enabled me to gain an audience, through newspapers and television, that is many thousand times larger than the few hundred who may have heard me in Dortmund and Marburg. The greater significance that the protests have given to my views can also be judged by the sales figures of the German translation of *Practical Ethics*. In the first five years of publication, from 1984-1988, the book sold a total of 4694 copies; in the eighteen month period from the beginning of 1989 to the end of June, 1990, it has sold 9090.<sup>1</sup>

So there are some grounds for hoping that, as Anstötz suggests, the 'Singer-Affair' may contribute to a greater understanding of how English-speaking philosophers and bioethicists approach practical issues. Yet at present there are also signs that some of the protestors are now trying to stop not only the discussion of euthanasia, but - astounding as it may seem - all discussions of issues in bioethics. In June 1990, the Fourth Annual Conference of the European Society for Philosophy of Medicine and Health Care, scheduled to be held in Bochum, was abruptly moved to Maastricht, in the Netherlands. Ironically, in view of what happened, the conference was on the theme "Konsensbildung und moralischer Urteilspruch im Gesundheitswesen". Neither I nor anyone closely connected with my work was to speak at it, and I am not a member of the 'European Society for Philosophy and Medicine'. Nevertheless "ein breites Bündnis von Behinderten-, Antifa- und Frauengruppen" organised themselves to prevent the conference taking place (cf. *Konkret* 6/90, 22). Their writings and propaganda leaflets gave several reasons why the conference should be stopped. One leaflet said:

"Hinter dem abstrakten Veranstaltungstitel verbirgt sich die Absicht, Strategien der Durchsetzbarkeit von reproduktions-medizinischen Technologieentwicklungen in den Bereichen 'Euthanasie, Todeskriterien, In-vitro-Ferti-

lisation, Zugang zu teuren medizinischen Behandlungsmethoden' zu diskutieren ..."<sup>2</sup>

The leaflet goes on to attack the German organizers, Professors Sass and Viefhues of the 'Zentrum für Medizinische Ethik' at the Ruhr-Universität, pointing out that Sass is connected with the 'Kennedy Institute of Ethics', in Washington/DC and describing the Kennedy Institute as "braintrust des ethic engineering" (whatever that might mean, it is obviously considered a bad thing). As a result of the agitation, Sass and Viefhues believed that they could not guarantee the safety of the participants, and so had no alternative but to shift the conference out of Germany.

The irrational, and at times hysterical, tone of this leaflet and others which fanned the flames of opposition to the Bochum conference, lends support to Hegselmann's thesis that at least a part of this anti-bioethics movement is driven by the difficulties of facing moral change or enlightenment. That opponents of bioethics are still trying to cling to what Hegselmann calls the "Maximierbarkeitsillusion" is also shown by an article in the Bochumer StudentInnen-Zeitung headed "Müssen neue Werte her?" and with the sub-heading "Medizinethik - ein neuer Wissenschaftszweig zur Eindämmung der Kosten im Gesundheitswesen". The article begins with an attack on Sass because he has discussed the question "ob MedizinerInnen den PatientInnen die Behandlung verweigern dürfen, wenn sie diese für wenig aussichtsreich halten" (Bochumer StudentInnenzeitung, 12. Juni 1990). Though Hegselmann's diagnosis may be right, a refusal even to discuss issues of medical costs suggests that there are still significant obstacles to be overcome before a less prejudiced, more rational discussion of ethical issues in medicine can take place in Germany. We can only hope that those who hold such views are a small, if militant and vocal, minority.

## 2. Two Popular Theses about the Wrongness of Killing

The articles in Part II make many interesting and often helpful comments on my work. Before responding to them in detail, however, it may be helpful to state briefly why I consider the conventionally accepted moral view about killing to be untenable. I shall do this by stating and criticising two theses that are crucial to the popular moral view about the wrongness of killing. The theses are:

- i. It is sometimes justifiable to bring something about by an omission, when it would be very wrong to bring about the same result by an action.
- ii. All human beings possess a right to life of a kind that no nonhuman animal can have.

Those who wish to uphold today's generally accepted morality about killing must defend both these theses. Since I think that they are both indefensible, that is not an easy task. That is why we must be open to the possibility that conventional morality is wrong, and ready to attempt to develop a new ethic in this area. (At this stage I say nothing about what a practical and desirable public moral code about killing would be like. Since some of the criticisms of my position in this volume are aimed at this point, this is an important qualification: but it is necessary first to consider what is philosophically defensible, and only then to move to the level of a desirable public moral code.)

Let us begin with the first thesis. It is well-known that common medical practice allows doctors to decide not to treat some severely disabled infants, in the knowledge that those infants will then die. Sometimes the treatment that is withheld is quite simple and inexpensive; for instance, antibiotics. On other occasions, the treatment may involve the application of all the medical technology available to modern medicine. In either case, the foreseen outcome of withdrawing the treatment, or of not offering it in the first place, is that the infant will die. This practice is recognized in Germany in the 'Einbecker Empfehlungen' (Deutsche Gesellschaft für Medizinrecht 1986, 655); it is standard medical practice in every developed nation. Are such deliberate omissions of treatment any different, in their intrinsic moral nature, from deliberate acts that end the life of the infant, for instance, by giving a lethal injection? I cannot see that they are. Under the appropriate conditions, both the act and the omission involve a decision to bring a life to an end, and both will, without any doubt, achieve that end. Thus if it is sometimes justifiable deliberately to allow a severely disabled infant to die, it must sometimes be justifiable to take active steps to end the life of that infant; conversely, if it is always wrong to kill a severely disabled infant, it must always be wrong deliberately to let a severely disabled infant die.

In saying that these omissions are not intrinsically different from actions with the same consequences, I am not here denying that there may be extrinsic effects of an action that are different from those of an omission. One extrinsic effect might be that giving the lethal injection will have an undesirable effect on those who give it; another which counts in the opposite direction could be that allowing the infant to die by omitting treatment will inflict a slower and more painful death than that which would occur if an injection were given. Nevertheless, there is clearly something odd about simultaneously decrying the lethal injection as murder, while accepting bringing about death by omission as 'normal medical practice'. If we are to be consistent we must choose: either we accept active euthanasia, or we take the view that we should generally use all available medical technology to keep newborn infants alive, no matter how bad their life-prospects may be.

It is worth noting that many of those who protest against my views on euthanasia share my view that there is no great distinction between acts and omissions; for they include the 'Einbecker Empfehlungen' among their targets when they attack bioethics (vgl. "Müssen neue Werte her?", Bochumer StudentInnen-Zeitung, 12. Juni 1990). Do they therefore believe that all available medical technology should be used to keep every infant alive as long as possible? Presumably they do; but this belief is scarcely consistent with other positions that are widely (and I think with better reason) held among Greens and the Left, such as opposition to the 'technological imperative' that leads to the development of more and more expensive 'high-tech' medicine, thus diverting scarce medical resources that would be more effectively used to improve the basic health services available to the poor and disadvantaged members of our society.

Denying the second thesis strikes more deeply at the roots of the Western ethical view. I share Ursula Wolf's suspicion (160) that part of the fury with which my position has been attacked can be traced to the fact that I am willing to compare human beings with non-human animals. Yet, as Wolf adds, "Die empirische Tatsache, daß manche Menschen nur so viele oder weniger intellektuelle Fähigkeiten haben als manche Tiere, läßt sich als solche nicht bestreiten ...". So what can be said in defence of the popular view that all human life is infinitely more precious than the lives of non-human animals? Why is it that the protesters feel able to carry banners proclaiming, "Das Lebensrecht von Menschen kann nicht zur Diskussion gestellt werden", while at every meal-time, most of them effectively deny the right to life of animals who have higher intellectual abilities than some humans? How can it be the case that membership of one species (Homo sapiens) makes your right to life so certain that it cannot even be discussed, whereas membership of a different species means that you have no right to life at all, even though you may be more sensitive and more aware of the world around you than the being who is a member of the species Homo sapiens?

As with the previous thesis, I find it extraordinary that so-called anti-fascists and Greens can be so blind about this. As far as the anti-fascists are concerned, the parallel between such an attitude, and the attitude of the racist is clear: in each case there is an inner group that includes 'us', and an outer group that is 'not us'; we then attribute rights, value or significance to all within the boundary of our group, and deny them to all outside that boundary. The boundary itself, however, represents no characteristic of intrinsic moral significance. In fact in respect of any quality or characteristic that is of moral significance, there are some outside the boundary who possess that quality or characteristic to a higher degree than some inside the boundary. As the great Jewish writer Isaac Bashevis Singer has put it: "In their behavior towards creatures, all men (are) Nazis." (I.B. Singer 1972) And if the Greens have any concern for

nature and the other beings with whom we share this planet, they should be well aware of how human species-chauvinism has led to the destruction of nature and the extinction of other species. Why then do they support the idea that human, and only human, life is always sacrosanct in a way that nonhuman life can never be?

If I am right in thinking that both these theses are unjustifiable, the popular view about killing stands on very shaky grounds, philosophically speaking. Even if I am only half-right - that is, if only one of the two theses is unsound - the problem is scarcely any less serious. We shall see this as we turn to the criticisms of my views made by the authors of the articles in Part II.

### 3. Comments on Part II: About 'Practical Ethics'

#### 3.1 Wolfgang Lenzen on Abortion and the Interests of Future Beings

I am grateful to Wolfgang Lenzen for his detailed exposition of those aspects of my views that relate to abortion. The most important difference between us is that I see the painless death of a non-personal being, such as a fetus, as a loss that can be replaced by bringing into existence another being with equal prospects of living a good life; Lenzen, on the other hand, believes that the wrong done to any living being by depriving him or her of all future existence, can never be made up for by conferring a future existence on another, until then merely possible, being (197).

Lenzen's view is, at first glance, plausible; but I think it can be shown that it leads to bizarre judgments and impossible paradoxes. Consider the following implication of Lenzen's view, which he himself makes explicit. Suppose that a woman is pregnant and knows that if she continues the pregnancy, her future child will suffer from an extremely painful disease for a few months, and then die. This woman should, according to Lenzen, have an abortion. It would be morally wrong for her not to do so. In contrast, a woman who is not yet pregnant, but knows that if she conceives a child, that child will experience the same fate, does nothing morally wrong if she goes ahead and conceives the child. There is, Lenzen says, no moral problem here, only "ein entscheidungstheoretisches Problem" (201). I do not know what Lenzen means by this remark, unless he is merely stipulating that decisions about beings who do not yet exist are, by definition, not moral problems. But such a stipulation is unacceptable. Let us suppose that the woman lives in a society in which neither abortion nor euthanasia is possible. Then conceiving the child ensures that the child will be born, suffer for some time, and then die. How can a decision that will predictably lead to the needless suffering of a child for several months not be subject to moral evaluation?



For this reason I do not think that Lenzen has solved the difficult problem of how the utilitarian should take account of the possible welfare of future people, and hence he has not refuted the view of abortion that I have defended. At this point I should note, incidentally, one minor misinterpretation of my views in his otherwise careful exposition. Lenzen states that "(d)ie 'Vorausgesetzte-Existenz-Ansicht' ist zu eng, weil sie nur die Interessen der jeweils lebenden Individuen berücksichtigt" (198). But this is not so. I think that on this point the German version of Praktische Ethik (Singer 1984, 120) is less clear than the English, so I shall quote the original:

"The second approach is to count only beings who already exist, prior to the decision we are taking, or at least will exist independently of that decision. We can call this the 'prior existence' view." (Singer 1979a, 87)

Thus what Lenzen considers to be the correct variant of utilitarianism is in fact what I call the prior existence view: this view includes not only those who already exist at the time of decision, but also those who are going to exist anyway, whatever we may decide. As the above case suggests, however, and as Derek Parfit has argued in more detail in Reasons and Persons, the prior existence view faces apparently insuperable problems in cases in which the existence of a future being is not determined one way or the other.<sup>3</sup>

Possibly Lenzen assumes that a being who will have an interest in existing must now have an interest in surviving to that future stage, even though it now has no consciousness of its own existence over time. Indeed, since he draws no distinction between the possibly conscious fetus at a late stage of development, and the plainly nonconscious embryo a few days after conception, he must go even further, and hold that one can do a wrong or harm to a being that never has been conscious and, because one destroys it in its unconscious state, never will be conscious (197). I reject both these claims. In what sense does the destruction of the non-conscious embryo harm it, or deprive it of its future happiness? (Why, incidentally, would Lenzen say that destroying an embryo is a wrong done to it, whereas apparently he does not think that destroying an egg prior to fertilization is a wrong to the egg?) I think that it makes more sense to say that the destruction of the embryo (or of the egg) deprives a future sentient being of happiness, than to say that it is a wrong done to the embryo (or the egg). Nonconscious embryos have no interests. They can only be harmed in the loose, metaphorical sense in which we can harm a tree. In the sense relevant for utilitarian evaluation, they cannot be wronged.

### 3.2 Dieter Birnbacher on 'Tötungsverbot'

Dieter Birnbacher asks on what grounds a utilitarian can ground a 'Tötungsverbot'. I am of course sympathetic to his general endeavour to show that utilitarianism can provide an adequate account of the morality of killing, but I must begin by expressing some doubts about the way in which Birnbacher formulates the problem. His assumption is that a utilitarian must seek to provide a basis for a 'Tötungsverbot'. This term is a very general one: it seems to forbid all killing. But in the second paragraph of his article, Birnbacher rephrases the question as one about the grounds which the utilitarian has for forbidding the killing of 'Menschen'. More specifically, apparently (since he does not discuss killing in war-time, or capital punishment) he means the killing of innocent human beings. Now one must ask why it should be assumed that a utilitarian needs to provide a basis for forbidding all killing of innocent human beings - including embryos, fetuses, newborn infants who have been born with very severe misformations, and so on? It would be more conducive to clear discussion, I think, to ask, not how the utilitarian can provide a basis for a 'Tötungsverbot', but rather under what circumstances the utilitarian should regard killing as wrong.

I have no difficulty with Birnbacher's first two reasons against killing, because they are, of their nature, limited to the killing of certain kinds of beings, not of all human beings: the first relates to beings who experience their lives as positive, on the whole; the second, to beings who are in relationships with others such that those others will be harmed by the loss of the being killed. It should be noted, though, that Birnbacher states his first reason in two different ways. As initially stated, the first reason applies to every conscious being who does not experience its life "dauerhaft als unerträglich". This formulation is repeated in the next paragraph, but then in the following paragraph we have a very different criterion, that of a life that is a "insgesamt als positiv empfundenen". Obviously, for the classical utilitarian, this last formulation is the correct one; the others are much too strict.

Birnbacher's third and fourth grounds are more problematic. The claims here are that a practice of killing will cause anxiety and insecurity to others, and that every exception to the 'Tötungsverbot' contains a risk that it will be misunderstood as a license for further, unjustified exceptions (the "Dammbruchargument"). I accept the force of these grounds as applied to the killing of a person, but, as Birnbacher subsequently notes (211) I would give them little weight when they are applied to the 'marginal cases': that is, to the killing of human beings before birth, or within a short period after birth (provided it is in accordance with the wish of the parents), or when the human being has expressed a considered desire to be killed. As Bentham pointed out long ago, infanticide cannot cause any

anxiety or uncertainty in anyone old enough to know that it happens. In Should the Baby Live?, Helga Kuhse and I described several societies in which infanticide was accepted, but there was no anxiety on the part of any other members of the society about their own safety (Kuhse/Singer 1985, Ch. 5). If this is true of infanticide, it is even more obviously true of abortion. Nor have I seen any evidence that the open practice of voluntary euthanasia in The Netherlands has caused an increase in anxiety among any members of the population (see, for example, Gevers 1987). Similarly, I see no evidence that these practices led or are leading to the killing of other beings in different categories. There is nothing in what Birnbacher says in his article that persuades me that I should give these arguments greater weight than I have done up to now, although I can well understand that these arguments - and particularly the Dammbruchargument - should seem to have more force in post-Nazi Germany than they do elsewhere.

Birnbacher's fifth reason ("die Auswirkungen von Tötungshandeln auf das Selbstverständnis indirekt betroffener Individuen") applies only in very limited circumstances. As Birnbacher makes clear in his discussions of this argument on pp. 213f., he has in mind the claims made by spokespeople for some German organizations of the disabled, that selective abortion and selective infant euthanasia of those with disabilities will be seen by others with disabilities as a judgment of their own lack of worth. But outside Germany, such claims by organisations of the disabled are made rarely, or not at all. Dr. John Lorber, a British paediatrician who played a leading role in developing the practice of selective non-treatment for infants born with severe forms of spina bifida, has reported that his selection criteria have been accepted by British spina bifida associations (cf. Lorber 1975, 54; 1981, 121). This is despite the fact that Lorber quite openly acknowledges that the objective in not treating infants born with severe forms of spina bifida is that the infants should die, as quickly and painlessly as possible. Similarly, if we put aside those who are opposed to all abortions, then, to the best of my knowledge, in no country other than Germany is there significant opposition to selective abortion where prenatal diagnosis reveals a serious handicap. (A recent survey of 19 nations found that the abortion of malformed fetuses was performed in every country except one, the exception being Brazil, where abortion is legal only in order to save the mother's life, cf. Wertz/Fletcher (eds.) 1989, 22.) Moreover if this argument applies to the killing of the disabled while in utero, it should equally apply to genetic counselling, so it is not specifically an objection to killing. (On this point, see also Ursula Wolf's persuasive analogy with a policy of having no more than two children, and the effect this might be alleged to have on third-born children, 155.)

In suggesting that preference utilitarianism has no special advantage over the classical version in explaining why killing is usually wrong, Birnbacher

appears to neglect the central point that classical utilitarianism cannot provide any direct reason against killing a person whose life cannot be expected to have a positive balance of conscious experiences, even if the person wants to go on living. Preference utilitarianism, however, can. This needs some further explanation.

Birnbacher's first reason is the only one of his reasons that suggests a direct wrong to the being who is killed. His other four reasons all explain the wrongness of killing as a wrong that is done not to the one who is killed, but to someone else. In some circumstances, however, for example the secret killing of a hermit, no others may know of the killing or be affected by it. Hence all the weight of the wrongness of killing in such a case must be borne by the first reason. (I am assuming here that we are concerned with individual morality; if we have in mind desirable social rules, the issues are different. I shall return to this point in my comments on Norbert Hoerster's article.)

Suppose that we know a hermit about whom no-one cares. We are sure that his life contains more suffering than joy, and will get worse rather than better as he grows older. There is nothing we can do to make his life go better, but we could kill him, painlessly, suddenly, and without any fear of anyone else knowing that he has been killed, or even that he has died. We also know that, despite his unpleasant life, the hermit has a strong and constant desire to go on living. This desire strikes us as perverse, but it is not founded on any false belief or confused thinking. For the classical utilitarian this desire is not relevant; it would seem that the classical utilitarian must hold that killing the hermit does no wrong or harm to the hermit, and everything else being equal, the hermit should be killed. The preference utilitarian, however, takes a different view. The hermit has a strong desire to go on living, and so to kill him is contrary to his strong preference. Therefore the killing would be a wrong done to the hermit, and other things being equal, the hermit should not be killed.

This is surely a clear advantage of the preference version over the classical version. I find it odd that Birnbacher should not have seen this, especially since he acknowledges the objection that utilitarianism can provide only indirect and contingent reasons against killing. To this he replies by asking "wie eine direkte Begründung des Tötungsverbots aussehen könnte" (209). I agree entirely with what he then goes on to say about the unhelpful nature of merely asserting that killing is prohibited, as a deontological ethic would do. But I think the preference utilitarian account provides an answer to Birnbacher's question.

The example just given also explains the direct relevance of the status of being a person, that is, of the capacity to have a desire to go on living. Birnbacher thinks that the status of persons is irrelevant for a utilitarian

account of killing (212). In fact it is irrelevant only to a classical utilitarian account of killing.

Why does Birnbacher not appreciate that preference utilitarianism can provide a direct and plausible account of why it is normally wrong to kill a being who wants to go on living? Perhaps a clue may be found in his comments (208) that future preferences may be confused and therefore their satisfaction may not lead to an increase in gratification. But for the preference utilitarian, this is besides the point. We ought to do what is in accord with the preferences of sentient creatures, because that is what universalizing our attitude to our own desires leads us to (see Singer 1984, 20-25), not because satisfying the desires produces greater gratification. It is the bringing about of what is desired that the preference utilitarian values, not the satisfaction that may result from bringing this about. That is precisely the distinction between the preference and the classical versions of utilitarianism.

Incidentally, I was surprised to learn from Birnbacher that I hold a variant of preference utilitarianism according to which it is the actual preferences that are taken into account, rather than the preferences that a being would have under certain counterfactual conditions of rationality and full information (209). I would have liked to know where I have stated this, but was disappointed to find no reference for this assertion. My stated position in *Praktische Ethik* refers to "Abwägung aller relevanten Fakten" (1984, 112), and thus is the opposite of what Birnbacher says I believe. I must admit, however, that quite recently I have developed some doubts about this, without, as far as I recall, putting these doubts into print as yet. (Some of these doubts were induced by Dan Egonsson's persuasive recent statement of the case for basing preference utilitarianism on actual preferences.<sup>4</sup>)

I also do not know what to make of Birnbacher's remark to the effect that I alter my support for the classical or preference versions in an opportunistic manner, according to whichever one fits the particular case. Again, no reference is given to where I have allegedly done this. This makes it difficult to respond.

### 3.3 Jean-Claude Wolf on Rights

Wolf begins his article by stating, quite correctly, that in my view the language of rights is a shorthand way of referring to the conclusion of a moral argument; rights cannot serve as the foundation for a moral position. Wolf disagrees. He thinks that I have ignored the function of rights, both in a society and in the life of an individual.

It is important to keep in mind the fact that my view in no way denies the value of a system of legal rights in a society, nor even of the recognition, by the society, of a set of moral rights or entitlements; in other words, of social conventions, upon which people can rely, about what they can expect from others, and what others can expect from them. Thus I agree with Wolf when he asserts that a benevolent despotism is less desirable than a democratic form of government in which citizens have certain rights guaranteed by law or by social convention. There are very good utilitarian reasons for taking this view. My point is merely that rights on which the democracy is based are not self-evident. They need to be defended by moral arguments that refer to considerations other than rights. Wolf has, himself, provided just such arguments. But he has not shown how rights can be given an independent foundation that does not depend on arguments from values other than rights. (At the most, he might have shown that it is good if rights are generally thought of as something that we all have in virtue of what we are, rather than as something that a society should have because it is desirable for the society as a whole. But that argument - if it is successful - would be an argument for the value of a widespread belief in an independent basis for rights, rather than an argument for the existence of such an independent basis.)

When Wolf turns to arguments about the right to life, a slight misunderstanding of my position (perhaps due to my own failure to state it with sufficient precision) leads him astray. He paraphrases my view of a right to life as holding that "an Leben können aber nur Wesen ein Interesse haben, die überhaupt verstehen, worum es bei der Option zwischen Leben und Tod geht" (220). In fact it is not the understanding itself that is important, but the ability to have desires about one's future existence. Killing a being with such desires does the being a wrong because it makes it impossible for those desires to be satisfied. In practice, of course, the ability to have desires about one's future existence may well be linked to the ability to understand "worum es bei der Option zwischen Leben und Tod geht". But the significance of the distinction can be seen from the way in which Wolf then goes on to challenge my view by contrasting his version of my requirements for possession of a right to life with what I say about the rights of newborn infants to "Nahrung, Wärme und Hygiene". He is correct, of course, in thinking that a newborn infant cannot understand "die Optionen 'Wärme-Kälte', 'Nahrung-Hunger', 'Hygiene-Verunreinigung'" in the sense of grasping the relevant concepts; but the infant can have the relevant desires, that is, the desires to be warmer, to be fed, and to be clean (or more specifically, perhaps, to have an uncomfortable soiled nappy removed!). Once we understand that it is the possession of the relevant desires, not the understanding of the concepts, that serves as the basis for a right to life, then it is easy to see there is no inconsistency in holding that the newborn infant has rights to the warmth, food and cleanliness that it desires, but not to a future existence

about which the infant has no desires at all. The baby desires food because of hunger, not because of a desire to be nourished so as to continue living.

Wolf also objects to my view that in considering whether an infant should live, the parents and doctor may take into account its probable future quality of life. He argues that if quality of life plays a role with an infant, it should always play a role, and that therefore I am committed to hastening the death of a man who is dying from a painful condition, but does not want to have his death hastened (222). Wolf may be right in holding that for a consequentialist there can be no absolute prohibitions; even, for example, the torture of an innocent child could be justified if it were the only way to compel the child's father, a deranged terrorist, to reveal the location of a nuclear bomb that would otherwise shortly explode, destroying an entire city. Yet outside such extraordinary and improbable circumstances, it is - for the very reasons Wolf has himself given - very important to allow people to make their own choices about matters that primarily affect their lives. Respect for individual autonomy strengthens self-esteem and fosters the development of a society with greater respect for individual freedom. It also allays any fears that those who are not dying may have about what will happen to them when they fall ill. Therefore as a social policy, we should always leave the decision to live or die to those who are capable of making such decisions.

I do not accept Wolf's suggestion that in order to reach this conclusion I give absolute priority to the preference to live, or that I smuggle in a "Prinzip der Höherbewertung von bewußtem Willen und Autonomie". It is true that I discuss such a principle in Praktische Ethik (115-7), and at various later points in the book indicate how adherence to it might affect our decisions about killing. This is in accordance with one of the aims of the book, namely to allow readers to come to their own conclusions about the relative merits of utilitarian and non-utilitarian approaches to practical problems (see 25). But in regard to the principle of autonomy, I specifically state:

"Utilitaristen respektieren Autonomie nicht um ihrer selbst willen, obwohl sie dem Wunsch einer Person, weiterzuleben, großes Gewicht beimessen mögen ... Sind wir aber Präferenz-Utilitaristen, so müssen wir einräumen, daß der Wunsch nach dem Weiterleben von anderen Wünschen aufgewogen werden kann ..." (Singer 1984, 116)

So I grant that the desire to live is one desire among others. Nor will it necessarily be the most intensely felt desire at a particular moment. People have their own structuring of relative importance of desires, however, and the preference utilitarian should accept this weighting, rather than taking felt intensity as the criterion. For someone who has, after long deliberation

about smoking and health, just given up smoking, the most intensely felt desire may be to have a cigarette; but we should not therefore conclude that we are acting in accordance with that person's overall preferences if we offer her a cigarette. Similarly a person may want to go on living, even while at the very same time as she has this want, her most intense desire is that her pain should stop immediately. Assume that the only way in which we can stop her pain immediately is by killing her - other methods of pain-relief take a little longer. This does not mean that to kill her would be to respect her preferences.

I accept that there are problems for the preference utilitarian in establishing which desires should be regarded as having most weight. The problem is especially serious if, under varying conditions, for example pain that comes and goes, a person's desires fluctuate. I cannot explore these problems further here. So I shall conclude my discussion of this issue by noting that when I discuss involuntary euthanasia in *Praktische Ethik*, I do not say that it is absolutely to be excluded in all possible cases, but rather that the rule against involuntary euthanasia should be regarded as absolute "für alle praktischen Zwecke" (1984, 200). Perhaps, in the light of the doubts Wolf has raised about whether this conclusion can be given a direct justification that is consistent with preference-utilitarianism, it would have been useful here to appeal also to indirect reasons, in particular the importance of avoiding anxiety and insecurity in others.

Wolf's final point is that voluntary euthanasia may not be genuinely voluntary, because people may be influenced by their society's views about whether their life is worth living, and may thus make a choice that is not truly autonomous. Conversely, as Wolf himself notes, a person may be affected by fear of punishment in hell, and may therefore refuse to be assisted to die, also without this being his or her own fully autonomous choice. I accept that these pressures exist, but it does not seem to me that they are an argument for denying all possibility of choosing euthanasia for oneself. All of our choices, not only those for or against euthanasia, are influenced by social factors to a greater or lesser degree. If Wolf's argument justifies paternalism in this case, it may justify it in many other areas as well: abortion, career selection, voting, and so on. The autonomy of decision-making is not an all-or-nothing thing, it is a matter of degree. If we are to allow people to make decisions in the real world, we cannot insist on unrealistically high standards.

### 3.4 Norbert Hoerster and the Regulation of Infanticide

Hoerster begins his article by noting that although my views about the killing of infants apply quite generally, to all such infants, I have not made any general suggestions as to how such killing might be regulated in



a modern society. The only proposal that I have made (together with my co-author, Helga Kuhse, in Should the Baby Live?) concerns infants born with serious disabilities (Kuhse/Singer 1985, Ch. 8).

Hoerster is correct. He is also right about the three reasons he suggests for this focus, although I would add another one. I am a consequentialist in my practice as well as in my theory. For the foreseeable future it will be difficult enough to persuade any legislature to pass laws allowing active euthanasia for severely disabled newborn - even in countries where the discussion of this issue has been more reasonable than in Germany. To change the law so as to allow a wider range of infant killing - assuming for the moment that this can truly be shown to be desirable - would be out of the question. My attitude was: since it won't happen, why spend a lot of time thinking precisely how it might best be done?

Nevertheless, after reading Hoerster's article, I can see that the question is of intrinsic interest, and also that it throws some light on broader moral questions. So I welcome his investigation of the issue, especially since, as he says (232), he is not doing so on the assumption that to show my views to be at odds with commonly accepted moral convictions is thereby to discredit them.

Hoerster accepts that only in the case of a being of the kind I refer to as a 'person', are there adequate reasons of principle for a individual right to life. He then asks "Wie sollen wir jene Norm zur Regelung des Lebensrechtes genau formulieren, die von diesem Standpunkt aus zur Aufnahme in Sozialmoral und Rechtsordnung vorgeschlagen zu werden verdient?" (232) The nature of this inquiry is such that his answer - that birth should remain the point from which human life is to be protected - does not contradict the general ethical arguments I have put forward in Praktische Ethik and Should the Baby Live?. One can quite consistently hold, both that it is morally permissible for parents to kill their newborn infants under specified circumstances, and that the law should prohibit such acts.

This position is not merely a theoretical possibility. It seems to be held by the current French Minister for Health, Claude Evin, and the eminent French cancer specialist Leon Schwartzberg. Schwartzberg was recently suspended for one year by the Paris board of the French Medical Association, after admitting that he had helped an incurable patient to die. Claude Evin, the French health minister, joined Schwartzberg in filing an appeal, and in calling for broad public debate on euthanasia. Evin has been quoted as saying: "The main thing is to relieve suffering, even if that means the end of life." Yet apparently neither Evin nor Schwartzberg favour a change in legislation. Schwartzberg defends this position on the grounds that: "for the French, anything that is law is normal, and

euthanasia can never be normal." (*New Scientist* July 28, 1990) In other words, Schwartzberg, and presumably Evin too, believe that euthanasia should sometimes be performed, but that it should remain illegal (at least for the French!).

I do not think such a position is at all persuasive in the case of voluntary euthanasia. There is no insuperable difficulty about drawing a boundary between those who request euthanasia and those who do not. The current social experiment in The Netherlands to which I have already referred, is showing that there is a better way (for non-French people?) than that which Evin and Schwartzberg recommend. Hoerster does, however, provide several reasons why a sharp moral boundary may be more difficult to maintain in the case of infants (see Part III of his article). These reasons provide good grounds for restricting any change in the law on infanticide to cases of severely disabled infants. Such grounds are compatible with a view like mine which implies, as Hoerster explains in Part II, that at the level of individual ethical decision-making, infanticide could be justified in other cases as well. But would even the restricted permissibility for infanticide in these cases lead to such undesirable consequences that it would be better not to allow it?

As I was reading Hoerster's arguments in Part III, I kept in mind the extreme suffering of some infants who are born with very severe conditions, and whose suffering is prolonged because, as human beings, they are not allowed to be treated with the same mercy that we apply to non-human animals in similar situations. I had in mind also the mental anguish of the parents of these children, who know what their babies are going through, but are powerless to stop it. (Unless, like one father in a tragic recent American case, they are prepared to take a gun into the hospital and use it to ensure that the nurses do not interfere while the respirator is disconnected and the baby allowed to die.<sup>5</sup>) I thought that if the price of drawing the boundary line at birth was that this suffering must continue, then despite all the sound points that Hoerster was making, it might be worth taking the risk of shifting the boundary in some carefully restricted circumstances. When I came to the final section of Hoerster's article, however, and read his own positive proposal, I realized that he is as aware of the need to prevent such suffering as I am, and has thought of a different way in which it can be done.

So there seem to be two alternative strategies for achieving similar goals. Both allow active non-voluntary euthanasia in some situations. The merits of my approach are that it allows a greater role for the parents in the decision whether their child lives or dies, and it may be less expensive for the state, because there may be fewer children in state institutions. I give considerable weight to the former factor, and much less weight to the latter (at least in an affluent society). The great merit of Hoerster's

approach is that it allows birth to remain as a simple and visible moment at which a human being is considered to have the same right to life as any other human being. At this stage I find myself unable to find good reasons for regarding the approach I have taken as better than that suggested by Hoerster. It would be good if there could be a rational and informed public discussion of these alternative proposals. Then we may find some additional reasons for regarding one or other of the proposals as preferable.

#### 4. Conclusion

Although the discussion of these issues has been carried on for many years now in English-speaking countries, and also for some time in such other European nations as Sweden, The Netherlands, and Italy, this is to my knowledge the first systematic discussion of these questions in Germany. I have learned much from the comments on my work, many of which have taken a perspective that differs in subtle ways from those of my English-speaking colleagues. (For example, there has been a greater, and useful, emphasis on social rules, rather than individual moral decision-making.)

These are difficult issues, and they will not be settled quickly. I am sure that this issue of Analyse & Kritik will contribute to the clarification of several points that are of both philosophical and practical significance. I welcome it also as a sign of the growth of an international philosophical community in applied ethics.<sup>6</sup>

#### Notes

- 1 The protestors need not worry that they are making me wealthy. In accordance with the views I develop in Chapter 8 ("Arm und Reich"), all royalties go directly to Oxfam, a British overseas aid organization. So their protests have, in fact, been helping to save human life, if not exactly in the way they imagine.
- 2 "Es gibt tausend gute Gründe gegen einen Konsens mit Tötungsethikern - Verhindern wir den internationalen Kongreß der BioEthik-Strategen!" (Typed, unidentified leaflet)
- 3 See Parfit 1984, Part IV; I have also briefly discussed this issue in 1979b.
- 4 Cf. Egonsson 1990, Ch. 4; the entire book is well worth consulting, as it contains useful discussion of many issues raised in the present discussion, including the nature of preference utilitarianism, the obligation to bring potential beings into existence, and the distinction in moral standing between different beings, human and non-human.

- 5 I refer to the case of Rudy Linares, which took place in 1989; see Pence 1990, 162.
- 6 I thank Helga Kuhse for reading the critical articles in this issue and discussing them with me. Several of her comments have been incorporated in this response.

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