



10-1-1992

Getting Rid of the Vegetables

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Original Citation

David F. Forte, Getting Rid of the Vegetables, *First Things* no. 26 p. 13 (October 1992)

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In 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

The 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 shrunken. 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 guidance. The family physician, who had treated my mother for many years, received permission to examine her (he was not associated with the hospital). 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 function. However, because of the underlying nutritional 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 secondary effects (regurgitation, diarrhea, dehydration of the mouth) that could not be 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.

Whenever 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 shalt 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 inconvenient 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 permanently 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 "vegetable" 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 Nonconscious Condition" would imply. The condition of the patient is persistent: it resists medical interventions designed to reverse it. But the condition 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 persistive 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. "Homey" 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

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