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Constitutional Law - Compulsory Medical Treatment for an Adult - The Right of an Adult to Refuse Lifesaving Medical Treatment Based upon the Free Exercise Clause of the First Amendment

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Recent Decisions

CONSTITUTIONAL LAW—COMPULSORY MEDICAL TREATMENT FOR AN ADULT—THE RIGHT OF AN ADULT TO REFUSE LIFESAVING MEDICAL TREATMENT BASED UPON THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT—The Supreme Court of New Jersey has held that an adult, whose religious beliefs forbid blood transfusions but who risks death if a transfusion is not given, may be compelled to submit to such treatment.

John F. Kennedy Memorial Hospital v. Heston, 58 N.J. 576, 279 A.2d 670 (1971).

Delores Heston, a twenty-two year-old, single female, was severely injured in an automobile accident. She was taken to the plaintiff hospital where her injury was diagnosed as a ruptured spleen, necessitating surgery and a blood transfusion to save her life. Miss Heston and her parents were Jehovah's Witnesses and a tenet of their faith forbids blood transfusions.[1] The evidence indicates that Miss Heston was in shock when admitted to the hospital, and shortly thereafter became incoherent and lost consciousness, although she insisted that she expressed her refusal to accept a blood transfusion. The patient's mother

1. The basis for the Jehovah's Witnesses belief was expounded in *In re* Brooks' Estate, 32 Ill. 2d 361, 205 N.E.2d 435 (1965):

> Among the religious beliefs adhered to by members of this group is the principle that blood transfusions are a violation of the law of God, and that transgressors will be punished by God. This organization's publication, "Blood, Medicine and the Law of God", . . . states the principle: "The matter was not to be taken lightly. Any violation of the law on blood was a serious sin against God, and God himself would call the violator to account. 'As for any man of the house of Israel or some alien resident who is residing as an alien in your midst who eats any sort of blood, I shall certainly set my face against the soul that is eating the blood, and I shall indeed cut him off from among his people!.—Leviticus 17:10". Also a part of the foundation for this belief is the admonition found in the book of the Apostles, 15:28-29: "For it seemed good to the Holy Ghost, and to us, to lay upon you no greater burden than these necessary things; that ye abstain from meats offered to idols, and from blood, and from things strangled, and from fornication; from which if ye keep yourselves, ye shall do well". Various other Biblical texts are quoted as authority for the belief, including Genesis 9:3-4: "Every moving animal that is alive may serve as food for you. As in the case of green vegetation, I do give it all to you. Only flesh with its soul—its blood—you must not eat". Premised upon the belief that "The blood is the soul" (Deuteronomy 12:33) and that "We cannot drain from our body part of that blood, which represents our life, and still love God with our whole soul, because we have taken away part of 'our soul—our blood—' and given it to someone else" (Blood, Medicine and the Law of God, p. 8), members of Jehovah's Witnesses regard themselves commanded by God to neither give nor receive transfusions of blood.

Id. at 362-63, 205 N.E.2d at 436-37.

signed a release of civil liability for the hospital but fervently refused to sanction the blood transfusion.[2]

Death being imminent, the hospital, after notifying the mother, applied to a judge of the Superior Court of New Jersey seeking the appointment of a guardian capable of authorizing a transfusion of whole blood for the injured woman. The judge approved the hospital's request, thereby permitting the surgery and blood transfusion that saved the young woman's life. The defendants, Miss Heston and her mother, moved to vacate the superior court's order; but their motion was denied. The Supreme Court of New Jersey affirmed the lower court's decision,[3] holding that "the interest of the hospital and its staff, as well as the state's interest in life warranted the transfusion of blood under the circumstances of this case."[4]

The courts that have been confronted with the issue of compulsory medical treatment for an *adult* have encountered complex constitutional issues stemming from the direct conflict between the patient's constitutionally guaranteed rights of privacy[5] and freedom to exercise his religion,[6] and the government's interest in compelling such treatment. It is within these conflicting concepts that the courts must work in order to evolve a legal standard in the delicate area of compulsory medical treatment.

The first amendment guarantees, which insure the ability of individuals to exercise their religion, does not confer an absolute right. As early as 1878, the Supreme Court held that laws are made for the government of *actions*, and while they cannot interfere with mere religious belief and opinion, they may interfere with practices.[7] Hence, the Court has upheld government regulation of overt acts because the freedom to act, even when the action is in accord with one's religious con-

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2. At common law the rule was formulated that an operation by a physician without the consent of the patient or someone authorized to speak for him constituted a battery or trespass upon the patient for which the physician was liable in damages. *See* Schloendorff v. Society of N.Y. Hosp., 211 N.Y. 125, 129-30, 105 N.E. 92, 93 (1914).

3. John F. Kennedy Memorial Hosp. v. Heston, 58 N.J. 576, 579, 279 A.2d 670, 671 (1971). Since the issue was moot, the Supreme Court of New Jersey asserted that the public interest warranted a resolution of the controversy. *See* State v. Perricone, 37 N.J. 463, 469, 181 A.2d 751, 755, *cert. denied*, 371 U.S. 890 (1962).

4. 58 N.J. 576, 279 A.2d 670 (1971).

5. The right of privacy was held to exist not from any specific guarantee of the Bill of Rights, but from a "penumbra" of several of the amendments. Griswold v. Connecticut, 381 U.S. 479 (1965). The fourteenth amendment makes this provision applicable to the states. Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).

6. "Congress shall make no law respecting the establishment of religion or the *free exercise* thereof. . . ." U.S. CONST. amend. I (emphasis added).

7. Reynolds v. United States, 98 U.S. 145, 166 (1878).

victions, is not completely free from legislative restrictions.[8] But, before state encroachment upon an individual's first amendment right to practice his religion may be justified, a compelling state interest[9] must be demonstrated. Therefore, laws restricting religious *acts* that have a propensity to harm the safety,[10] morals,[11] health,[12] or general welfare[13] of the community are not repugnant to constitutional guarantees of religious freedom because a compelling state interest exists to justify state intervention.

Additionally significant for consideration within the area of individual rights is the assertion of Mr. Justice Brandeis that all Americans have the right to be "let alone."[14] This right of privacy extends to citizens because no injury to society or third persons is sustained; but dilution of the right becomes sanctionable when the citizen asserts the right beyond personal limits.

The blood transfusion cases arose against the background of the first amendment's religious exercise provisions, and the accepted concept of individual privacy, absent extenuating harm to society or third persons. Patients espousing religious objections to transfusions seized upon the words of Mr. Justice Brandeis and vigorously disclaimed harm to anyone but themselves. The state, asserting a harm to society, claimed

8. Braunfield v. Brown, 366 U.S. 599, 603 (1963). *See also* Jones v. Opelika, 316 U.S. 584 (1942):

> Courts, no more than Constitutions, can intrude into the consciences of men or compel them to believe contrary to their faith or think contrary to their convictions; but courts are competent to adjudge the *acts* men do under color of a constitutional right, such as that of freedom of speech or of the press or the free exercise of religion, and to determine whether the claimed right is limited by other recognized powers equally precious to mankind. So the mind and spirit of man remain forever free, while his *actions* rest subject to necessary accommodations to the competing needs of his fellows".

Id. at 593-94 (emphasis added).

9. The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms.

NAACP v. Button, 371 U.S. 415, 438 (1963).

10. "Protection of the safety of persons is one of the traditional uses of the police power of the state." Queenside Hills Realty Co. v. Saxl, 328 U.S. 80, 82 (1946).

11. "The rule is well settled that the police power may be exerted to preserve and protect the public morals." State v. Nelson, 126 Conn. 412, 425, 11 A.2d 856, 862 (1940).

12. "It is recognized without exception that the police power of a state extends to the right to regulate trades and callings concerning public health." Polhemus v. American Medical Ass'n, 145 F.2d 357, 359 (10th Cir. 1947).

13. East N.Y. Sav. Bank v. Hahn, 326 U.S. 230, 232 (1945).

14. The makers of our Constitution . . . sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone—the most comprehensive of rights and the rights most valued by civilized men. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.

Olmstead v. United States, 277 U.S. 438, 478 (1928) (dissenting opinion).

that an interest is possessed by society in the lives of its citizens and that, accordingly, blood transfusions can be compelled. Because of the direct disagreement between the two averments, the courts have encountered complex constitutional issues when patients, basing their decision on religious beliefs, have refused to consent to blood transfusions necessary to sustain their lives.

Most courts, intentionally avoiding confrontation with the issue, have supported the resolution of the controversy by finding distinguishing factors. *Parens patriae*[15] and the state police power have been upheld as state interests sufficient to warrant state interference with religious practices. State regulation of snakehandling,[16] compulsory education,[17] the unlicensed practice of medicine,[18] and compulsory vaccination for contagious diseases,[19] are but a few examples of religious objections having been suppressed under the sanctions of the state police power. In addition, *parens patriae* has enabled the state to compel treatment for children[20] or incompetents[21] over the religious objections of their parents.

Excluding *Heston*, five courts have specifically addressed themselves to situations where adults have refused blood transfusions rather than sacrifice religious beliefs. Four of these courts have permitted the transfusions over the patient's objections; but, the issue of compulsory medical treatment for an adult was avoided as the courts found factual distinctions to support the transfusions.[22]

Sustaining a request for a transfusion, a single judge of the United

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15. *Parens patriae* is defined:
In the United States, the state, as sovereign power of guardianship over persons under disability; such as minors, and insane and incompetent persons.
BLACK'S LAW DICTIONARY 1269 (4th ed. 1951).

16. Bunn v. North Carolina, 366 U.S. 942 (1949); Lawson v. Commonwealth, 291 Ky. 437, 164 S.W.2d 972 (1942); Harden v. State, 188 Tenn. 17, 216 S.W.2d 708 (1948).

17. Acting to guard the general interest in youth's well being the state as *parens patriae* may restrict the parents control by requiring school attendance. . . .
Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

18. The power of a State to make reasonable provisions for determining the qualifications of those engaging in the practice of medicine and punishing those who attempt to engage therein in defiance of such statutory provisions, is not open to question.
Reetz v. Michigan, 188 U.S. 505, 506 (1903).

19. Board of Educ. v. Maas, 56 N.J. Super. 245, 152 A.2d 394 (Super. Ct. 1959).

20. "The state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare. . . ." Prince v. Massachusetts, 321 U.S. 158, 167 (1944).

21. But the power and duty imposed by the *parens patriae* doctrine is much broader and extends to personal liberty of persons who are under a disability whether by reason of infancy, incompetence, habitual drunkenness, imbecility. . . .
Johnston v. State, 18 N.J. 422, 430, 114 A.2d 1, 5 (1955).

22. A detailed distinction of these cases on the facts is beyond the scope of this paper.

States District Court of Appeals for the District of Columbia authorized a transfusion for the mother of an infant in *Application of President & Directors of Georgetown College, Inc.*[23] The court felt the patient was *in extremis* and hardly *compos mentis*, and hence, incompetent to decide the proper course of action to be taken. In conjunction with this determination, the court relied on the state's *parens patriae* interest to prevent the abandonment of children. It was also noted that the doctors and the hospital are placed in a precarious position when the patient imposes such a restriction; but, the judge concluded that "[t]he final and compelling reason for the granting of the emergency writ was that a life hung in the balance . . . I determined to act on the side of life."[24] Relying on *Georgetown*, the court in *United States v. George*[25] authorized a transfusion after speaking with the patient at the hospital. The court ascertained that the patient would not oppose a court ordered transfusion because " 'his conscience was clear', and the responsibility for the act was 'upon the conscience of the court'."[26] Considerable emphasis was placed upon the doctor's conscience and professional oath.[27]

In *Powell v. Columbia Presbyterian Medical Center*,[28] the court authorized a transfusion after learning that the patient would not object to a court-ordered transfusion. The decision apparently was based on the judge's personal response to the situation rather than on any pronounced theory of law.[29]

A New Jersey court in *Raleigh-Fitkin Paul Morgan Memorial Hospital v. Anderson*[30] employed *parens patriae* to authorize a transfusion for an expectant mother over her religious protests in order to sustain the life of her unborn child. The court recognized the difficult question of compulsory treatment for an adult, but postponed the resolution of that issue.[31]

23. 31 F.2d 1000 (D.C. Cir. 1964), *cert. denied*, 377 U.S. 978 (1965).
24. *Id.* at 1009-10.
25. 239 F. Supp. 752 (D. Conn. 1965).
26. *Id.* at 753.
27. *Id.* at 754.
28. 49 Misc. 2d 215, 267 N.Y.S.2d 450 (Sup. Ct. 1965).
29. How legalistic minded our society has become, and what an ultra-legalistic maze we have created to the extent that society and the individual have become enmeshed and paralyzed by its unrealistic entanglements! I was reminded of "The Fall" by Camus, and I knew that no release—no legalistic absolution—would absolve me or the Court from responsibility if I, speaking for the Court, answered "No" to the question "Am I my brother's keeper?" This woman wanted to live. I could not let her die!

Id. at 216, 267 N.Y.S.2d at 457.
30. 42 N.J. 421, 201 A.2d 537, *cert. denied*, 377 U.S. 985 (1964).
31. We have no difficulty in so deciding with respect to the infant child. The more

Two courts have refused to order transfusions. The court in *Erickson v. Dilgard*[32] faced a patient who expressed a willingness to submit to an operation to correct internal bleeding, but was adamant in his refusal of a blood transfusion.[33] The patient was completely informed of the increased risk of the operation without the transfusion. The court held that,

> the individual who is the subject of a medical decision has the final say and that must necessarily be so in a system of government which gives the greatest possible protection to the individual in the furtherance of his own desires.[34]

A similar negative response was elicited from the reviewing court in *In re Estate of Brooks*[35] after the trial court had allowed the transfusion. The patient did not have minor children and had informed her physician over the course of the two preceding years that her religious beliefs as a Jehovah's Witness precluded her acceptance of a blood transfusion. The patient and her husband signed a release of civil liability for the hospital and were assured that there would be no further attempts to persuade her to accept a transfusion. She was unquestionably competent, so the common law grounds such as *parens patriae* and abandonment were not available to the court. Meeting the compulsory medical treatment issue squarely, the reviewing court found no clear or present danger to society,[36] and, therefore, expunged all orders in the conservatorship proceeding.

Prior to the evolvement of the first blood transfusion cases, dicta[37]

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difficult question is whether an adult may be compelled to submit to such medical procedures when necessary to save his life. Here we think it is unnecessary to decide that question in broad terms because the welfare of the child and the mother are so intertwined . . . .

Id. at 423, 201 A.2d at 538.

32. 44 Misc. 2d 27, 252 N.Y.S.2d 705 (Sup. Ct. 1962).

33. The patient in *Erickson* did not refuse to be transfused on religious grounds. He simply refused to give consent to the transfusion. *Id.* at 27-28, 252 N.Y.S.2d at 706.

34. *Id.* at 28, 252 N.Y.S.2d at 706.

35. 32 Ill. 2d 361, 205 N.E.2d 435 (1965).

36. *Id.* at 373, 205 N.E.2d at 442.

37. Anglo-American law starts with the premise of thorough-going self determination. It follows that each man is considered to be master of his own body, and he may, if he be of sound mind, expressly prohibit the performance of life-saving surgery, or other medical treatment. A doctor might well believe that an operation or form of treatment is desirable or necessary but the law does not permit him to substitute his own judgment for that of the patient . . . .

Natanson v. Kline, 186 Kan. 393, 406-07, 350 P.2d 1093, 1104 (1960);

An adult person, if he be of sound mind, is considered to have the right to determine for himself whether a recommended treatment or surgery shall be performed upon him, and to have the right even to expressly prohibit life-saving surgery or other medical treatment.

Woods v. Brumlop, 71 N.M. 221, 227, 377 P.2d 520, 524 (1962);

in several cases seemingly established the unqualified right of an adult to refuse life-saving medical treatment and to conduct himself as he pleased, provided that he injured no third person or society. A cursory examination, however, of the early blood transfusion cases demonstrates the reluctance of the courts to accept this early dicta. Only the *Brooks* court squarely addressed the issue of compulsory blood transfusions for an adult on the merits, while the remainder of the courts found factual distinctions. It is interesting that both the *Heston* court and the *Brooks* court sought to balance the interest of the patient against the interests of society; yet they achieved opposite results. The courts parted company because the *Heston* court found an injury to society whereas the *Brooks* court did not. An analysis of the factors that distinguish the two cases aids in understanding where the law has been and where it appears to be going.

There are several factors that distinguish *Brooks* from *Heston* although both courts isolated the same issue. The *Brooks* court employed the *clear and present danger* test developed in the freedom of speech cases, an application of clear and present danger which has been subjected to serious criticism when applied to religious rights.[38] The modern test evolved in *Sherbert v. Verner*,[39] where the Court recognized that indirect burdens on religious freedom can be justified by a compelling state interest in the regulation of a subject which is within the state's constitutional power to regulate.[40] The significant difference between the two tests is that there may be a *compelling state interest* that could be protected under the *Sherbert* test, although there is no threat to the public health, safety or welfare, and absent such a threat, there is no justifiable basis upon which the *clear and present danger* test used in *Brooks* could be sustained.

A second distinguishing factor results from the repeated refusals to be transfused by the patient in *Brooks*, which preceded her admission to the hospital by two years and continued after she was admitted, while the patient in *Heston* was an emergency patient who was thrust upon the hospital as a result of the injuries sustained in an automobile accident. Looking to the dilemma of the doctors, the *Heston* court found that the doctors are forced to make a judgment: "[T]he hospital

Every human being of adult years and sound mind has a right to determine what shall be done with his own body . . . .
Schloendorff v. Society of N.Y. Hosp., 211 N.Y. 125, 129-30, 105 N.E. 92, 93 (1914).

38. *See* 44 TEXAS L. REV. 190 (1965) for an excellent discussion of this concept.
39. 374 U.S. 398, 403 (1963).
40. *Id.; see* note 9 *supra.*

could hardly avoid the problem by compelling the removal of a dying patient . . . ."[41] The doctor who administers a blood transfusion over the objection of the patient would subject himself to a battery prosecution,[42] whereas the doctor who honors the patient's religious abstention and passively permits the patient to die, may breach a duty owed to the patient and subject himself to a criminal prosecution for manslaughter.[43] Of interest is *Collins v. Davis*,[44] a case involving a comatose patient whose wife refused to consent to a transfusion. The court, refusing to allow the patient and his wife to put the hospital to the impossible choice of performing the operation or letting the patient die for want of consent, authorized the transfusion.[45] The *Heston* court also implied that the doctor's conscience and professional ethics[46] may sway him to transfuse the patient despite the lack of consent.

Considering the number of Jehovah's Witnesses[47] and other denominations whose religious beliefs do not permit certain forms of medical treatment, it is very likely that compulsory medical treatment will be an issue to be reconciled by courts in the future. It is suggested that there are state interests that effectively counterbalance the right of patients to refuse medical treatment.

Although not concerned with blood transfusions, the court in *State v. Congdon*[48] convicted several individuals for failure to take cover during an air raid drill. The court by so deciding, effectively upheld the state's police power to protect citizens irrespective of whether the citizen wishes to be protected.[49] In *Harden v. State*,[50] the Tennessee Su-

41. 58 N.J. at 582-83, 279 A.2d at 673.
42. *See* note 2 *supra*.
43. Hurley v. Eddingfield, 156 Ind. 416, 59 N.E. 1058 (1901); State v. Malley, 139 Mont. 599, 366 P.2d 868 (1961).
44. 44 Misc. 2d 622, 254 N.Y.S.2d 666 (Sup. Ct. 1964).
45. *Id.* at 623, 254 N.Y.S.2d at 667.
46. Note, *Compulsory Medical Treatment and the Free Exercise of Religion*, 42 IND. L.J. 386 (1966):

> The Hippocratic Oath requires that a physician "give no deadly medicine to anyone if asked, nor suggest any such counsel." MALOY, MEDICAL DICTIONARY FOR LAWYERS 372 (3d ed. 1960). Similarly, the International Code of Ethics, adopted by the World Medical Association in Geneva in 1949, states that a "doctor shall not in any circumstances do, or authorize to be done, or condone anything that would weaken the physical or mental resistance of a human being, except for the prevention and treatment of disease . . . . A doctor must always bear in mind the importance of preserving human life from the time of conception until death." HADFIELD, LAW AND ETHICS FOR DOCTORS 41, (1958) . . . .

Id. at 402 n.97.
47. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1971 42 (92d ed. 1971), reports that there are 359,000 Jehovah's Witnesses in the United States.
48. 76 N.J. Super. 493, 185 A.2d 21 (Super. Ct. 1963).
49. *Id.* at 511-12, 185 A.2d at 31.
50. 188 Tenn. 17, 216 S.W.2d 708 (1948).

preme Court's decision exemplified the state's interest in the life of the citizen through its ruling concerning the handling of poisonous snakes in religious rituals. Despite precautions to protect observers, the court found that such precautions do not protect those who are actually handling poisonous snakes.[51] It is proper to recognize these precedents within the area of compulsory medical treatment since the state's interest in life is equally applicable within both realms.

The analogies between suicide and the rejection of lifesaving medical treatment have been rejected by most courts premised upon the distinction that death is an unwanted side effect[52] since there is no *intent* to die.[53] But regardless of the semantic arguments that may be made concerning intent, the prohibitions against suicide do, indeed, reflect the interest of society in the lives of its citizens, and it would appear to be circular logic which would permit a patient to reject his last chance of survival when he wanted to live, yet restrain or punish those who intend to die.[54] Turning to the issue of intent, it has been argued that

> [A]lthough the adherents of this religion might not technically "wish to die" in the literal sense, they do refuse medical treatment which they know will prevent death, and implicit in that refusal is a willingness to die.[55]

One author[56] has argued that *parens patriae* should be extended to protect adults, as well as children or incompetents, from unwise decisions. He cites state refusal to enforce contracts that unduly restrict future business activities, laws against dueling, compulsory social security savings, safety statutes requiring the wearing of seat belts by

51. *Id.* at 24, 216 S.W.2d at 710. *See also* Lawson v. Commonwealth, 291 Ky. 437, 164 S.W.2d 972 (1942). The court forbade snake handling ceremonies, holding that it was constitutional to enforce a "law prohibiting the practice of a religious rite which endangers the lives, health or safety of the participants . . . ." *Id.* at 441-42, 164 S.W.2d at 974.

52. "Death, to Mrs. Jones, was not a religiously commanded goal, but an unwanted side effect of a religious scruple." Application of President & Directors of Georgetown College, Inc., 331 F.2d 1000, 1009 (D.C. Cir.), *cert. denied*, 377 U.S. 978 (1964).

53. "The Gordian knot of this suicide question may be cut by the simple fact that Mrs. Jones did not want to die." *Id.* at 1009.

54. An outstanding argument was made in 53 CAL. L. REV. 860 (1965) that illustrates the problem in dealing with the 'intent' to die:

> Take, for example, two hospital patients both in dire need of blood transfusions. One rejects them because of a desire to die, the other because of religious convictions. Should the law allow the patient wishing to live but preferring death to breach of religious faith, to die, while forcing the one wishing to die, to live? To ask the question is to answer it.

Id. at 871.

55. 7 HOUSTON L. REV. 662, 664-65 (1970).

56. *See* 42 IND. L.J. 386 (1967).

motorists, and protective headgear for cyclists as examples of state intervention to protect an adult from his own foolishness.[57] Apart from the *parens patriae* argument, the examples cited are excellent illustrations of the state's interest in the lives of its citizens.

Those cases that have established the right of the individual to determine what shall be done with his body[58] have approached the issue in cases dealing with children. Although transfusions invariably have been upheld to sustain a child's life, the courts have constructed a wall of dicta around the adult who falls within the same category.[59] Now that courts are being forced to confront the compulsory medical treatment issue when refusals are asserted by adults, without the benefit of children to be used as a distinguishing device, courts seem unwilling to accept the dicta as binding precedent. Yet, they remain hesitant to disagree directly. Hopefully, courts that assay this problem in the future will begin to rebuild the law by specifically holding that a strong state interest exists to compel treatment for an adult, as well as for children.

In addition to the state's interest in life, the position of the hospital must be considered a viable state interest. An individual who comes to a hospital for treatment, but refuses to accept elementary medical procedures, jeopardizes not only his own safety, but also the safety of other patients. Society suffers when doctors are precluded from practicing basic medical procedures because the physician's valuable time which could be devoted to the other patients is focused on the individual who seems destined to expire.

The predicament of the medical profession is illustrated by cases where the life or death decision was thrust upon judges. Even impartial judges isolated from the physical presence of the dying patient, have determined to "act on the side of life."[60] Considering the difficulty judges have encountered in making such a decision, the arduous position of the doctor, who *knows* that a simple blood transfusion would save his patient's life, becomes more vexatious. The sincerity of a patient's religious belief which mandates death as the fruit of compliance must be afforded the highest degree of respect. But it is un-

57. *Id.* at 397-98.
58. *See* note 37 *supra.*
59. "Parents may be free to become martyrs themselves." Prince v. Massachusetts, 321 U.S. 158, 170 (1944).
60. Several courts have specifically decided to act on the side of life. *See* Application of President & Directors of Georgetown College, Inc., 331 F.2d 1000, 1010 (D.C. Cir.), *cert. denied*, 377 U.S. 978 (1964); United States v. George, 239 F. Supp. 752, 754 (D. Conn. 1965); Powell v. Columbia Presbyterian Medical Center, 49 Misc. 2d 215, 267 N.Y.S.2d 450, 451-52 (Sup. Ct. 1965).

conscionable to force a doctor to make a life or death decision by permitting a patient to place the doctor in the precarious position where he must decide to transfuse or allow the patient to die. Although a patient's belief of such magnitude should not be hastily appropriated, it is felt that the rights of the individual are outbalanced by the interests of the state and the medical profession. Therefore, the rights of the individual should succumb to the state's interest in preserving life, in a life or death situation.

The *Heston* court's holding, enabling the state to compel transfusion to prevent *permanent injury*,[61] appears to be a premature extension of the state's interest in compelling medical treatment. The problem emanates from the unpredictable nature of the permanent injury concept, and the present inability to balance individual rights against the state's interest in preventing permanent injury. Two present practices that may raise conflicts between the state's interest in preventing permanent injury and the individual's right to exercise her religion are abortion and birth control. A woman religiously precluded from practicing birth control or receiving an abortion might be compelled to receive such treatment if the risks of permanent injury to either herself or the child are sufficient to warrant state interference.

Unlike a life or death situation, balancing the rights of the individual against the state's interest in preventing permanent injury seems to be an exceedingly difficult equation to reconcile at the present stage of legal evolution. Life is a sanctity in which the state has a demonstrated interest; but, the extremes to which compulsory treatment to prevent permanent injury may be carried remain ambiguous.

Unfortunately, predisposition governs in this area of the law, so that a comparison may be drawn to such other unresolvable controversies as abortion, euthanasia, and birth control. Individual conceptions of inherent values govern the weight to be afforded the elements of contention in such a controversy, therefore equally strong arguments avail themselves to individuals who assign the values differently. With respect for individual differences of opinion, it is suggested that the

61. The permanent injury concept is reported only in the headnotes of the New Jersey and Atlantic reporters:

> An adult, whose religious beliefs forbade blood transfusions but who risks death or *permanent injury* if transfusion is not given, may be compelled to submit to such treatment.

58 N.J. at 578, 279 A.2d at 670 (emphasis added). No authority can be found within the case itself to support state interference to prevent permanent injury.

state's interest in life and the interest of the hospital and its staff outweigh the religiously motivated refusal of the patient to accept a blood transfusion. Constitutional rights do not exist in a vacuum—clashes between separate constitutional principles are unavoidable. However, the balance struck by the *Heston* court reflects a humane step that the courts have seemed intuitively led to take.

W. Robert Ament

CONSTITUTIONAL LAW—SEARCH AND SEIZURE—REGULATORY INSPECTIONS—The Supreme Court of the United States has held that a warrantless search and seizure, if authorized by a valid inspection statute limited in scope, time, and place, does not violate fourth amendment principles.

United States v. Biswell, 406 U.S. 311 (1972).

Biswell, a pawnshop owner, was convicted in federal district court for violating firearms laws. His contention, throughout his trial and appeal, was that the Gun Control Act of 1968,[1] as it applied to him, was unconstitutional. He based his argument on two beliefs. First, the apparent authorization to search, as contained in the Act,[2] was invalid without a warrant. Second, since such authorization was invalid, any subsequent acquiescence in a search could not be deemed voluntary. The Court of Appeals for the Tenth Circuit sustained both of Biswell's contentions.[3] The Supreme Court granted certiorari[4] to consider the allegations of the U.S. Attorney's office that the authorization to search was valid. In the alternative, the government argued that Biswell consented to a search of his storeroom.

Accepting the government's argument, thereby reversing the court of appeals, the Supreme Court held that consent is not an issue where

1. 18 U.S.C. § 923(g) (1970) provides, in part:
The Secretary may enter during business hours the premises (including places of storage) of any firearms . . . dealer . . . for the purpose of inspecting or examining (1) any records or documents required to be kept by such . . . dealer . . . under the provisions of this chapter, and (2) any firearms . . . kept or stored by such . . . dealer . . . at such premises.
2. *Id.*
3. United States v. Biswell, 442 F.2d 1189 (10th Cir. 1971). The opinion of the court was written by Clark, J., Associate Justice of the Supreme Court, retired, sitting by designation.
4. 404 U.S. 983 (1971).