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Look What They've Done To My Brain Ma!: Ethical Issues in Brain and Behavior Control

*Kenneth Vaux**

Control and modification of the human brain and of human behavior are powers fraught with ethical significance because they simultaneously hold great promise and great danger. They are borderline problems for the mind and spirit to ponder. The question this paper considers, psychosurgery and behavioral chemotherapy in proxy consent populations, mainly children and prisoners, will by definition be a borderline question. The phrase, "borderline question," in the nomenclature of ethics has no diagnostic meaning. A borderline case appears at the boundaries of accepted scientific and moral insights. In ethics, a borderline case clarifies basic ethical principles because the uncertainty and novelty which inhere in the new situation force clarity at the fundamental level. In the area of brain and behavior control, we are dealing with a scientific frontier. Our knowledge base is still in its infancy. We are dealing with proxy consent which challenges the fundamental principle of informed consent. With the brain we are dealing with the higher reaches of human function. We also probe the periphery of that transcending sphere poets and artists have called the human mind, personality, soul, spirit.

Surgical and chemical treatment of the brain holds the promise of alleviating much human misery and releasing presently dormant capacities in man's mind. It is expected that correction and therapy will become available for problems such as memory loss, mental retardation, blindness, debilitating emotional illness, the incapacitation resulting from strokes and seizures, and a wide range of neurological handicaps. Enhancing the powers of the human mind from the perinatal period where brain growth and health is so critical to the period when aging and senility diminish the brain's powers is also promised.

The future is also foreboding and full of threat. The arts, including films and novels such as, *Clockwork Orange*,¹ *The Ruling Class*,²

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1. A. BURGESS, *CLOCKWORK ORANGE* (1963).
2. P. BARNES, *THE RULING CLASS* (1969).

and *Darkness at Noon*,³ record like a radar screen our society's premonitions. There is no doubt that the diminution of freedom through both invasive controls, ESB, surgery, drugs and extrinsic media education, as well as the danger of blunting and destroying personality, are powers carried in these developments.

Key themes in this topic, in other words, can be traced to the Latin verb *violare*. We are concerned with *violence*. When a person's behavior becomes so explosive and disruptive that it incapacitates or injures self and perhaps harms the fellowman, we look to measures, social or therapeutic, which will contain or ameliorate the distortion, bringing behavior back into the bounds of the acceptable. We also speak of the human mind as a sacred trust that is *inviolable*; that is, we will not permit it to be willfully violated.

In this paper I will begin with the assumption that the purpose of man is creating value in his history, taking an awesome and protective stance before the being of his fellow man. The borderline experience of proxy consent for brain and behavior control, I will contend, yields two important consequences of this assumption. The practical consequence is that an ethic and derivative legal policy should be encouraged which will allow experimental brain and behavior research and therapy within certain limits where consent is by proxy. I would argue in contrast with Mr. Kaimowitz that an ethical approach demands human investigations. In the spirit of his approach I would insist that this always be strictly reviewed and monitored. The theoretical position I will derive from this argument is that a transcendent estimate of man's value will best guide us into the future carried in these developments.

The sham of human review committees, like the one in the Detroit case⁴ where an ill-informed C.P.A. finally rendered the decision, must end. I agree with Leon Kass that all research protocols should pay knowledgeable ombudsmen and advocates of the subject's interest. Kass has urged that all publicly sponsored biomedical research should have a 1% budget allocation to insure human protection.⁵

First, a few words about my underlying assumption. If man's

3. A. KOESTLER, *DARKNESS AT NOON* (1949).

4. *Kaimowitz v. Department of Mental Health*, Civil No. 73-19,434-AW (Cir. Ct. Wayne Co., Mich., July 10, 1973).

5. Conversations with Leon Kass, Kennedy Institute Center for Bioethics of Georgetown University, at periodic gatherings at the Hastings Institute, Hastings-on-Hudson, N.Y.

destiny on the earth is to generate value and honor the mystery of being in his fellows, he should be imaginative and creative within the bounds of caution. Max Lerner has said whimsically that

[I]n England, everything that's not especially forbidden is permitted; in Germany, everything that's not especially permitted is forbidden; in France, everything is permitted, even including that which is forbidden; and in Russia everything is forbidden, including that which is permitted.⁶

Surely the genius of our American civilization is that we courageously explore frontiers, maintaining all the while the precautions we inherited from our European heritage. We possess what Lerner elsewhere calls "a metaphysic of promise."⁷ We are willing to take chances and to allow others to test the unknown and the experimental. In this approach, value can be not only conserved but enriched and built up. Our spiritual heritage gives us a spirit of imagination and courage, not one of timidity and caution.

Before I develop the main practical and theoretical argument, let us examine three cases which will illustrate the personal and public dimensions of the problem. I draw the cases from the material we are considering in this symposium.

I. Dr. O. J. Andy has operated on children, some who are institutionalized, whose behavior has broken the bounds of acceptability, expressing itself in "erratic aggression," "hyperactivity," and "emotional instability." These children, we may assume, have violated or penetrated the boundaries of what we can endure—perhaps what their own bodies can endure. He has treated one nine year old epileptic boy from Mississippi, for example, by surgically invading first the thalamus, then the fornix, intervening in these brain structures related to emotion, to correct "hyperactive, combative, explosive, destructive, sadistic behavior."⁸

II. In February, 1954, the parents of 17-year old John Doe asked the court to commit their son to the Kalamazoo State Hospital. Shortly thereafter, the young man admitted luring a student nurse to the hospital basement, first strangling her with a necktie, then allegedly violating her dead body. Under Michigan law he was convicted as a criminal sexual psychopath and committed to the Ionia

6. Lerner, *Images of America and Man*, 3 GRADUATE J. 22 (1960).

7. *Id.* at 32.

8. M. PINES, *THE BRAIN CHANGERS: SCIENTISTS AND THE NEW MIND CONTROL* 227 (1974).

Detention Center "until such time as he is proven not to be a danger to society."⁹

After being institutionalized 18 years, John Doe was offered the opportunity to undergo brain surgery to alleviate his violent impulses. The now famous case of *Kaimowitz v. Department of Mental Health*¹⁰ ensued which finally revoked the law under which the boy was convicted and precipitated the suspension of the medical protocol under which the operation would have taken place.

III. The third illustration is the somewhat tongue-in-cheek proposal of Kenneth Clark, President of the American Psychological Association. He suggested at a recent meeting of the Association¹¹ that some form of medication which would soften aggression be given to effect "internal disarmament" in the leaders of the world, to prompt them to preserve peace. Such peace pills, dispensed to political leaders, would supposedly diminish barbarian instincts and foster geopolitical contentment.¹²

One immediately envisions a Delgadian image of the world as a great Tijuana Arena with the world heads of state as the charging bulls: Churchill, still beset with his childhood minimal brain dysfunction untempered by ritalin; Gerald Ford, as LBJ envisioned him, playing football too often without a helmet; King Faisal, before his deranged philosopher nephew did him in. Dr. Delgado holds the radio transmitter, controlling the dyalitrodes, releasing chemical or electrical modifiers into the heads of these raging, snorting, stampeding creatures—what an image!¹³

These provocative cases, all concerned with proxy individuals, *i.e.*, those who are once removed and who we are either responsible for or responsible to, throw us back to a very basic practical decision we now must make as a society. This practical question in turn forces us to take a stand on an even more fundamental value of the nature of human life. Let me first explore the practical decision.

The Department of Health, Education and Welfare has estab-

9. Detroit Free Press, Jan. 7, 1973, at 4-A. Mr. Kaimowitz has subsequently suggested that these news quotes were later repudiated. Question has also been raised as to whether the corpse was raped. To the time of this writing clarity on these points is still lacking.

10. Civil No. 73-19,434-AW (Cir. Ct., Wayne Co., Mich., July 10, 1973).

11. Rensberger, *Can a Pill be Mightier Than the Sword?*, N.Y. Times, Sept. 12, 1971, at 9, col. 1.

12. *Id.*

13. J. DELGADO, *PHYSICAL CONTROL OF THE MIND: TOWARD A PSYCHOCIVILIZED SOCIETY* (1969).

lished a National Commission on Biomedical and Behavioral Research which is presently examining the question of fetal research and will soon turn its attention to the question of brain and behavior modification. A moratorium similar to the one now in effect in the fetal area may soon be imposed in the mental area. The pervasive mood in our society following the Edelin case,¹⁴ and the Tuskegee syphilis experience,¹⁵ etc., is one of caution, evaluation, and reflection. Out of this time of reevaluation we may hope an imaginative spirit will emerge that will lift us out of the present malaise of cynicism and caution. We would hope also that this new mood would reclaim the legal profession to the roles of advocacy and protection and away from the present concerns to encourage opportunism and exploitation. Part of the new creativity should be a renewed commitment to creativity in experimental research and treatment. This must always be tempered by an awesome respect for man and his dignity, thus yielding a commitment to justice, freedom and truthfulness.

At this point I would like to address the issue of the right of a person to submit her body to certain experimental procedures which may benefit herself and mankind. I want to argue that we should retain this privilege even for proxy consent populations (prisoners and children). I believe we should look much more seriously at the capacities for freely-elected informed determinations even in these groups.

We are dealing here with one of the fundamental opportunities for altruism, one approaching the image of self-sacrifice that the New Testament calls the "greater love": "Greater love has no man than this that he lay down his life for his friends."¹⁶ This virtue is rooted at the crux of our civilization. The exercise of this value should not be categorically denied any person, even those over whom we are custodians. The opportunity to perform the benevolent action, I would contend, is basic to man's freedom.

Robert Burt and Francis Allen, appointed as counsel to John Doe at the *Kaimowitz* trial¹⁷ argued that a prisoner with a supposed organic or psychopathic disturbance does not have the right, or in

14. *Commonwealth v. Edelin*, Civil No. 81,823 (Super. Ct. Suffolk Co., Mass., 1975).

15. HEW, FINAL REPORT OF THE TUSKEGEE SYPHILIS STUDY AD HOC ADVISORY PANEL (1973).

16. *John* 15:13.

17. *Kaimowitz v. Department of Mental Health*, Civil No. 73-19,434-AW (Cir. Ct. Wayne Co., Mich., July 10, 1973).

their language, the competence, to submit himself to psychosurgery. Their argument was based somewhat on Will Gaylin's point that the diseased organ in this case becomes the organ of consent.¹⁸ It is interesting that they also argued at the same time that the law under which he was convicted should be rescinded and he should be released back into the society. The correct decision was probably rendered in this case, especially in the light of John Doe's subsequent ambivalence as to whether he wanted the surgery or not. For all we know about brain structure and function, it may be that 18 years in the cooler has the same effect as an amygdalotomy, just as ten years of public school has a depressing effect similar to ritalin on hyperactivity, hypersensitivity, perhaps even creativity.

The point is intriguing because it raises the moral issue of whether the public should prevent individuals from making self-determinations that may be for their own good or for the subsequent good of others.

A recent hearing in Kentucky weighed the question of whether a mentally retarded sibling could donate a kidney to his brother.¹⁹ My persuasion on this issue is similar to my position on research on the aborted fetus. Why not allow some redeeming value to ensue from such unfortunate situations? John Erlichmann has recently pleaded that he be allowed to follow Hasidic tradition (I didn't know he was Jewish) in redeeming a bad deed with a good deed, by allowing him to serve his sentence doing volunteer work among the Pueblo Indians, rather than sitting in Lancaster Federal Prison writing his memoirs.²⁰ This may make some sense if our goals are both restriction and rehabilitation, punishment and purification. Dostoevsky and later Solzhenitsyn personally knew the death and salvation that crime and punishment afforded Raskolnikov.²¹

It can be argued that we should not forbid prisoners, children, or politicians for that matter, the opportunity to present themselves as experimental subjects. One senses two arguments from those who seek to protect the prisoner from the dangers of medical trials. The first argument is valid. These people should not be coerced, enticed,

18. Gaylin, *The Law and the Biological Revolution*, 10 COLUM. J. LAW & SOC. PROB. 46, 76 (1973).

19. *Strunk v. Strunk*, 445 S.W.2d 145 (Ky. 1969).

20. N.Y. Times, Mar. 23, 1975, at PE-15.

21. The main character of *Crime and Punishment*. F. DOSTOEVSKY, CRIME AND PUNISHMENT (1968).

or selectively rewarded by their willingness to become guinea pigs. The second argument is less convincing. Prisoners are there for punishment. They should not be allowed the conscience-soothing option of testing new treatments for the benefit of their fellow-man.

I would argue that the vindictive spirit should not be so extreme as to limit any redeeming act by one for whom the act would be exonerating and spiritually restoring. The desire for reform, regeneration, and redirection of life should prompt us not to remove from the criminal the option of benevolent, repenting action. We should hold open the opportunity for life to be redeemed from the pit.

The *Kaimowitz* case, of course, is different. Here the surgery is supposedly for John Doe's own good. It will diminish his violent passions and make him more socially safe and acceptable. I think we should be particularly careful to safeguard the freedoms and rights of children and prisoners. When society finds itself in the role of *parens patriae*, we should bend over backward to see that our decisions "for their own good" really are not serving our own interests. The conquistadores, in order to serve the supposed good of the pagan children in the regions they conquered, performed psychosurgery with a vengeance. They baptized the children, then slammed their heads against the rocks. It was for their own good that they were spared the trauma of life in this tragic world.

The *Kaimowitz* case is similar to one in Colorado where a man convicted of many cases of rape was given the opportunity of suspended sentence if he would submit to castration.²² Two elements are present in these cases. The first is the protection of the society. The second is the good of the person himself. The argument being made is that these particular crimes of passion and violence are initiated by physico-chemical processes—"behind every twisted thought there is a twisted molecule."²³ The instigating process can be localized in the limbic system, perhaps in the amygdala. The patient loses control and cannot be held responsible for his actions. We intervene for his own good and our protection.

We need to be careful in forming policy in this field. Let me conclude this first point by mentioning four safeguards that should always be present in order to contour the proclivity to experimental innovation and the right of persons to participate in such.

22. Johnson, *Sex Offender's Emasculation Stirs Controversy*, NATIONAL OBSERVER, Sept. 2, 1972, at 11.

23. A. ROSENFELD, *THE SECOND GENESIS: THE COMING CONTROL OF LIFE* (1969).

First, the mind should evoke an awesome protecting response from us. John Lilly closed down his labs and his work with dolphins because he felt he could no longer "run a concentration camp for advanced beings."²⁴ Although this may be taking the sense of transcendence a little too far, the attitude of awe and wonder is commendable. "It is only when one has learned to contemplate (betrachten) nature," said Kepler, "that one can come to understand and respectfully use nature."²⁵

Secondly, as a general rule we should see diminished sensitivity as undesirable, even if it does create greater social ease. We have rejected lobotomies precisely because of their permanent and irremedial blunting and dulling effect. Peter Breggin has kept before us the fact that all psychosurgery is "emotionally blunting." It may render one contented and "cow-like," but have we sacrificed man's genius and power and perhaps violated his very identity in the process? We always seek the easy solution; drugs and surgery are easier than the responsible reconstruction of the environment. If children with heightened sensitivity and activity and boring schools do not mix we tranquilize the kids.

Thirdly, the rights of privacy, self-determination, informed consent, and the consent of the governed are bed-rock values that should be overridden only by very compelling social reasons. Hopefully, a post-Watergate generation will never again justify suspension of the democratic system for what some man feels to be national security interests. We need to reconstitute the advocate, ombudsman role in our society; and it is very unlikely that the legal profession has the credibility to fulfill this role. "Public interests" such as diminished aggression, "conquering the mind," or sparing the patient the cruel and unusual punishment of having to make a decision should always be scrutinized in terms of the values of personal freedom and responsibility.

As a final protecting guideline I would suggest that human responses such as anxiety, guilt, aggression, fear, love, obsessive behavior, etc., though often troubling and disruptive, should be respected in their basic ambivalence. These are multifactorial powers involving mind and environment. They are at once the genius and the danger inherent in man's being. They should not be manipulated except for absolutely compelling reasons.

24. M. PINES, *THE BRAIN CHANGERS: SCIENTISTS AND THE NEW MIND CONTROL* 17 (1974).

25. J. KEPLER, *THE WISDOM*

This leads to the final point regarding the estimate of human nature that will be needed to transit us successfully through an age where wisdom is going to lag behind our knowledge and our technology.

Paul Weiss has reminded us that the ninth amendment guarantees to individuals all rights which are not explicitly given to the federal government. It is not said what those rights are. Henry Beecher is now talking of the right to be left alone. Others speak to the right of not being left alone. In any case Weiss is correct when he says: "We must ask, what is man? Our answer will tell us what his rights are."²⁶

The classic question of who is man and whether he is a beast or an angel is again invoked. Rene Dubos explicitly uses the motif, arguing that the creative genius of man is his ability to both accept and transcend his animality. He must recognize and exult in the fact that he is "So Human an Animal."²⁷

Is man only an animal, as anthropologists and ethnologists from Lorenz to Desmond Morris to Aubrey have suggested? Are the essential elements of aggression, territoriality, and violence endemic to man, that is, natural to him as an animal? Or are they contradictions, flaws, or distortions which he brings to his nature, for which he is responsible, and criminally liable? Are they diseases which should be modulated into silent stupor, or cut or burned out through invasive brain surgery?

On this argument, Edward Shils is our Peter Breggin and B. F. Skinner our O. J. Andy. Shils, arguing from the repulsion we feel at invasive brain control and deliberate modification, says that we cannot accept personality manipulation because it contravenes "the affirmation that life is sacred."²⁸ By accepting these procedures, we reduce man to an animal; and the question may be asked: "Why should man's life be regarded with any more reverence than we regard the lives of wild and domestic animals which we hunt and eat, or pets which we breed and cherish?"²⁹

Alternatively, B. F. Skinner and the host of behaviorists now at work in hospitals, schools, the media and just about everywhere,

26. HASTINGS CENTER REPORT 6 (Spec. Supp. 1973).

27. R. DUBOS, *SO HUMAN AN ANIMAL* (1968).

28. Quoted in Burt, *Why We Should Keep Prisoners from the Doctor: Reflections on Psychosurgery in the Detroit Case*, 5 HASTINGS CENTER REPORT 22, 31 (1975).

29. *Id.*

value man in a Pavlovian manner, stressing his vulnerability to behavioral conditioning and rendering normative the skills of stimulus response and interactivity. Skinner has said:

Animal, is a pejorative term, but only because "man" has been made spuriously honorific. Some people have argued that whereas the traditional view supports Hamlet's exclamation, "How like a god!" Pavlov, the behavioral scientist, emphasized, "How like a dog!" But that was a step forward. A God is the archetypal pattern of an explanatory fiction, of a miracle-working mind, of the metaphysical. Man is much more than a dog, but like a dog he is within range of scientific analysis."³⁰

Jose Delgado argues, in the spirit of Skinner, that man should welcome his animality, should be proud that he has at long last gotten over the inhibition to probe the human brain and is willing now to draw even this majestic organ within the "experimental reach." Now that this is true, we should deliberately set out not only to correct mental distortions through psychosurgery and ESB, but should begin to work more profound transformations on our brains to enlarge and enhance our intellectual and affectual capacity.

These arguments recall the classic ideas of C. S. Lewis in his study on *The Problem of Pain*.³¹ Although the animals deserve pain neither as punishment nor as purification, they participate in the cosmic agony of growth and disease, brokenness and healing, well-being and death. For this reason we abhor cruelty to animals, such as the willful starvation of horses now in the fields of Texas. We put the dog and the horse to sleep rather than protracting her suffering. But man's suffering is to be endured, for it is purposive. Though like the animals his life comes from the earth and will return to the earth, he yearns to be set free. He knows he will die. The enigma of death and the prefiguration of mortality in pain signals to him the meaning and destiny of his life.

Man therefore should be esteemed as the transcending creature in our public philosophy, our law, our medicine. That which sustains his basic humanity from deliterious effect is acceptable therapy. Secondary effects should be carefully pondered, however, especially when proxy decisions are required.

This need for a transcending reference for our ethical decisions is the theme of a new play of Broadway called *Equus*.³² "What do

30. *Id.* at 22.

31. C. LEWIS, *THE PROBLEM OF PAIN* (1947).

32. P. SHAFFER, *EQUUS & SHRIVINGS* (Atheneum ed. 1974) [hereinafter cited as *EQUUS*].

you do when the old gods have died and the new have not appeared?" asks Morris Kaplan, reviewing the play in a recent issue of *The Hastings Center Report*.³³ A psychotic young man of 17, in a fit of rage, has blinded not one but six horses with a sharp iron spike. He is sent by the law to Martin Dysart, a psychiatrist in a provincial British hospital. The play, which invokes some of the profound themes of Greek drama, concentrates principally on what goes on in the mind of the doctor. It explores the illuminating agony that graces physicians who dare to cure themselves, while they carve, however mercifully, into the pain of others.

The young patient is possessed by a rich though fantastic world of primitive images. He dreams of an all-seeing Christ—chained, scourged, beaten, and driven like a horse toward calvary. He is obsessed with horses. These distorted symbols remind the psychiatrist of the poverty of his own symbolic world and the need to transcend the weak visions and values that proceed from secular rationality.

"Oh the primitive world," I say. "What instinctual truths were lost with it." And while I sit there, baiting a poor unimaginative woman (Dysart's wife) with the word, that freaky boy tries to conjure the reality. I sit looking at pages of centaurs trampling the soil of Argos—and outside my window he is trying to *become one* in a Hampshire field.³⁴

Yet this nostalgia for a pagan mythology will not suffice, no matter how passionately Dr. Dysart and our world, caught up in Promethean tasks, desire it. Our sense of transcendent obligation and the bewildering demand for decisions should awaken us to the very simple insight that we discover in the at once terrifying and awesome transcendent in human interaction. The ethical obligation of that transcending perception is simply human responsibility; honesty, justice, fairness, concern. In the face-to-face, person-to-person responsiveness we discover what is the right, the good. This is the deep philosophical meaning of informed consent, of therapy, of healing. I conclude with the words of Dr. Dysart.

The normal is the good smile in a child's eyes—all right. It is also the dead stare in a million adults. It both sustains and kills—like a God. It is the Ordinary made beautiful; it is also the average made lethal. The Normal is the indispensable, murderous God of Health, and I am his Priest. My tools are

33. Kaplan, "Equus"—A Psychiatrist Questions His Priestly Powers, 5 HASTINGS CENTER REPORT 9 (1975).

34. EQUUS at 31.

very delicate. My compassion is honest. I have honestly assisted children in this room.

I have talked away terrors and relieved many agonies. But also—beyond question—I have cut from them parts of individuality repugnant to the God in both his aspects. Parts sacred to rarer and more wonderful gods.³⁵

To live with this excruciating uncertainty, yet to act with courage, sensitivity, responsibility, guilt, forgiveness—this is becoming mature.

35. *Id.* at 63-64.