

## Biotechnology and Human Dignity, A Necessary and Compatible Union

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# BOOK REVIEW

## BIOTECHNOLOGY AND HUMAN DIGNITY, A NECESSARY AND COMPATIBLE UNION<sup>1</sup>

ELLA JUDGE HAYES\*

Kass begins his analysis with a historical review of the bioethical challenges we face today and will likely continue to face in the future. Although embryo research and human cloning are contemporary hot topics, neither subject is new. Both surfaced in the late 1960s and 1970s, following the successful cloning of tadpoles (1962) and the birth of the first human “test-tube baby” (1978).<sup>2</sup> Kass explains that the questions we face today are not identical to the ones faced twenty years ago but are not altogether different.<sup>3</sup> No one in the 60s or 70s talked about stem cells or the possibilities of regenerative medicine but the basic moral and political questions were the same as today: To what degree do we treat a human life as raw material? Where do we draw the line between procreation and manufacture? Who controls—and who will pay for—mastering human nature?<sup>4</sup> Kass fears that most forms of biotechnology represent a “slippery slope” that will actually make life worse rather than better.<sup>5</sup>

This conflict between the benefits of medical technology and maintaining our humanity is the basic premise of the book. Kass contends that human dignity, which he defines as an abstraction of “worthiness” or “virtue,”<sup>6</sup> must be maintained, even at the cost of a prolonged life, and fears that in striving for a “perfect” life, we will lose what life is truly about.<sup>7</sup> He uses Aldous Huxley’s *Brave New World*, where life has been “perfected” through genetic manipulation and psychoactive drugs, as an illustration of what our future may be like if we

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1. Leon R. Kass, M.D., *Life, Liberty and the Defense of Dignity: The Challenge for Bioethics* (2002) [hereinafter *Challenge for Bioethics*].

2. *Id.* at 1.

3. *Id.* at 2.

4. *Id.*

5. *See id.* at 22 (“It [technology] threatens human flourishing precisely because, in the absence of countervailing efforts, we may use the fear of death, our various freedoms and rights, and our unrestrained pursuit of profit and pleasure in ways that will make us into human midguts. Our embrace of technology would thus turn out to be tragic, unless we redeem ourselves by nontechnological ideas and practices, today both increasingly beleaguered.”).

6. *Challenge for Bioethics* at 15.

7. *See id.* at 20 (“It [modern biology] challenges our self-understanding as creatures of dignity, rendering us incapable of recognizing dangers to our humanity that arise from the very triumphs biology has made.”).

continue to expand the boundaries of medical technology.<sup>8</sup> In Kass' book, forms of biotechnology, including *in vitro* fertilization, stem cell research, organ transplantation, cloning, and a "right to die" are separately analyzed for their benefits and detriments to humankind.

This review will critique Kass' attempt to explain why nature should win over technology and why human suffering should be a part of life. Part I will summarize his analysis of each form of biotechnology and Part II, will assess his arguments and demonstrate what can be learned from them and what should be feared by them. Kass offers an insightful religious and philosophical perspective to view subjects that are usually only explored in a technological and medical framework. His summary of biotechnology is in depth and well explained to a reader new in the subject. However, he fails to provide support for his threshold "slippery slope" argument and leaves the reader unconvinced that humans will allow medical technology to turn us into the machines described in the *Brave New World*.<sup>9</sup>

## I. KASS' ANALYSIS

Reserving separate chapters for each of the forms of biotechnology, Kass explains why they came into existence, the present state and what might become in the future. He focuses not only on the medical technology itself but on its historical, moral, and philosophical origins. Alternatives for some forms are offered and complete termination of others are suggested. Kass regards modern science as one of the great monuments to the human intellect, yet sees this triumph of human achievement as a source of human degradation.<sup>10</sup>

### *A. Life in the Laboratory: In Vitro Fertilization and Stem Cell Research*

Kass first takes us into Aldous Huxley's *Brave New World*, where eggs are fertilized and incubated until they are ready for bottling, and that is the only way babies are born.<sup>11</sup> Kass sees us evolving in this direction if we continue with *in vitro* fertilization and genetic engineering.<sup>12</sup> This has been a public policy issue since the mid-1970s when the Secretary of Health, Education and Welfare published regulations regarding research, development and related activities. These activities included research involving fetuses, pregnant women, and *in vitro*

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8. *Id.* at 5-6.

9. *Id.* at 19-20.

10. *Id.* at 20.

11. Challenge for Bioethics at 19.

12. *See id.* at 19-20 ("Nothing humanly fine, let alone great, will come out of a society that has crushed the source of human aspiration, the germ of which is to be found in the meaning of sexually complementary 'two' that seek unity and wholeness, and willingly devote themselves to the well-being of their offspring.").

fertilization, and provided that no federal monies should be used for *in vitro* fertilization of human eggs until a special Ethics Advisory Board reviewed the ethical issues and offered advice regarding government support.<sup>13</sup> In 1979, the Board issued its report and recommended that research funding be permitted only in some types of *in vitro* research.<sup>14</sup> Until recently, however, no Secretary of Health and Human Services has been willing to act on that recommendation.<sup>15</sup>

In 1994, President Clinton directed the National Institutes of Health (NIH) not to allocate resources to "support the creation of human embryos for research purposes," but his directive said nothing about research involving "spare" embryos remaining from clinical *in vitro* fertilization procedures to help infertile couples become parents.<sup>16</sup> Congress halted the NIH from developing guidelines to support research using the "spare" embryos by enacting an amendment to the Omnibus Appropriations Bill that prohibited the NIH from using federal funds for all research on human embryos.<sup>17</sup> Private sector research, however, yielded remarkable discoveries that reignited the controversy over federal funding for human embryo research that we face today.<sup>18</sup> As it stands now, the federal government funds embryonic stem cell research on already existing stem cell lines but does not fund any further destruction of human embryos.<sup>19</sup>

Kass agrees that there should be no federal funding dedicated to, and perhaps no research performed at all, on human embryos.<sup>20</sup> What is at stake, Kass determines, is the very *humanness* of our human life and the meaning of our embodiment.<sup>21</sup> He cautions that we must be mindful of the big picture and see that an *in vitro* blastocyst is human in origin and has the potential to mature into a human being.<sup>22</sup> It comes from a mysterious power that must be respected not because it has "rights or claims or sentience . . . , but because of what it is, now and prospectively."<sup>23</sup> Kass refers briefly to the Supreme Court's determination that a fetus only becomes "viable" after about 24 weeks of pregnancy<sup>24</sup> and finds this placement of boundaries on "viability" to be careless and arbitrary.<sup>25</sup> The most sensible policy, Kass suggests, is to "treat the early embryo as a preivable fetus,

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13. *Id.* at 82-83.

14. *Id.* at 83.

15. *Id.*

16. Challenge for Bioethics at 83.

17. *Id.*

18. *Id.*

19. *Id.* at 84.

20. *Id.* at 107; see also *id.* at 101 ("The buying and selling of human flesh and the dehumanized uses of the human body ought not be encouraged.").

21. Challenge for Bioethics at 85.

22. *Id.* at 88.

23. *Id.* at 89.

24. *Roe v. Wade*, 410 U.S. 113, 160 (1973).

25. Challenge for Bioethics at 94-95.

with constraints imposed on early embryo research at least as great as those on fetal research.”<sup>26</sup> Kass concludes that although it is impossible to stop private researchers from advancing this technology, American tax-payers should not contribute to its funding.<sup>27</sup> He fears that the “slippery slope” has already begun in this area and we will reduce embryonic life to “raw material for human use, exploitation and commerce.”<sup>28</sup>

### *B. Cloning and the Un-human Future*

Here, Kass examines human cloning and treats it as the beginning of turning procreation into manufacture.<sup>29</sup> If human cloning were allowed, Kass postulates, children would be treated as “planned products to be perfected rather than mysterious gifts to be treasured.”<sup>30</sup> In the name of human dignity, Kass recommends a legislative ban on all human cloning.<sup>31</sup> Similar to embryonic research, he sees this area as a “slippery slope” where we will increasingly surrender our humanity and dignity for technical mastery.<sup>32</sup> He states that we have already begun to slide, as it has become harder to discern the true meaning of human cloning.<sup>33</sup> Moreover, a stable monogamous marriage, as the ideal home for procreation, is no longer the agreed upon cultural norm and the clone is the ultimate “single-parent child.”<sup>34</sup> Soon, only those children who fulfill our whims and desires will be fully acceptable and we will see children not linked to ancestors but as projects of our own self-creation.<sup>35</sup>

### *C. Organ Transplantation*

Standing behind a principle of “one man, one liver,” Kass critiques proposals to establish markets in organs for transplantation and examines the meaning of the idea of “organs for sale.”<sup>36</sup> He uncovers the implications of this issue on our “sense of identity and integrity” and the commercial market’s “growing

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26. *Id.* at 90.

27. *See id.* at 112 (“I do not believe they [infertile couples] are entitled to the provision of a child at public expense, especially now, especially at this cost, especially by a procedure that also involves so many moral difficulties.”).

28. *Id.* at 23, 142.

29. *Id.* at 23, 142, 144.

30. *Challenge for Bioethics* at 23, 142, 144.

31. *Id.* at 166-67.

32. *See id.* at 142 (“... [E]thical issues of *in vitro* fertilization and cloning . . . were sequential steps down a slippery slope along which we would increasingly pay a toll in coin of our humanity and dignity for our growing technical mastery.”).

33. *Id.* at 142.

34. *Id.* at 144.

35. *Challenge for Bioethics* at 144.

36. *Id.* at 178-79, 181.

willingness to turn all human body parts into commodities” and change the generous gifting of organs into property rights and freedom of contract issues.<sup>37</sup> Although offering financial incentives to prospective donors could increase the supply and perhaps quality of organs, the sale of human organs is currently outlawed in the United States.<sup>38</sup> However, there is already a large market in organs elsewhere— even live organs.<sup>39</sup> In India, there is “open buying and selling of kidneys, skin, and even eyes from living donors.”<sup>40</sup> Kass understands the dilemma of the need for quality organs but does not think the sale of organs should be condoned as a property right.<sup>41</sup> Unlike the property rights we have in the fruits of our labor, “the rights in one’s person are inalienable.”<sup>42</sup> This is similar to one’s inalienable right to liberty, which cannot be transferred to another by selling oneself into slavery.<sup>43</sup> However, Kass realizes that the demand for organs far exceeds the present supply and concedes that if it were his own child in need, he would want the organ.<sup>44</sup> It is this form of medical technology that most perplexes Kass.<sup>45</sup> He cannot find morality in cutting into a healthy body not for its own benefit<sup>46</sup> and cannot find dignity in cutting up and using pieces of a corpse, yet he recognizes the need.<sup>47</sup> His only suggestion is that we carefully monitor our progress in this area and pay close attention to decency and propriety.<sup>48</sup>

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37. *Id.* at 23; *see id.* at 192 (“For the principle of autonomy, separated from specific need, would liberate us for all sorts of subsequent uses of the human body, especially should they become profitable.”).

38. Organ Procurement and Transplantation Network, 42 U.S.C. § 274(e) (2000) (“[U]nlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.”).

39. Challenge for Bioethics at 179.

40. *Id.*

41. *Id.* at 190.

42. *Id.* at 190-91.

43. *Id.*

44. *See* Challenge for Bioethics at 179 (“And though I favor the premodern principle, ‘One man, one liver,’ and am otherwise disinclined to be an organ donor, and though I can barely imagine it, I think I would readily sell one of my kidneys, were the practice legal, if it were the only way to pay for a lifesaving operation for my children or my wife.”).

45. *See id.* at 179, 198.

46. *Id.* at 185-86; *see also* Final Regulations Amending Basic H.H.S. Policy for the Protection of Human Research Subjects, 45 C.F.R. § 46, Subpart A (2002); *see also* Health and Human Services (HHS), Solicitation Provisions and Contract Clauses, 48 C.F.R. §352.270-8 (2002) (“regulations extend to the use of human organs, tissue, and body fluids from individually identifiable human subjects”); *See also* Nuremberg Code, Principle 1 (1949), available at <http://ohsr.od.nih.gov/nuremberg.php3> (last visited May 19, 2002), originally printed in TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW at No. 10, Vol. 2, 181-82 (U.S. Government Printing Office, 1949) [hereinafter Nuremberg Code].

47. Challenge for Bioethics at 179, 185, 191, 198.

48. *Id.* at 187, 193, 198.

*D. A Right to Die*

The alleged new right to assisted suicide, Kass says, threatens the dignity and well being of the same dying patients that the "alleged right to die is intended to benefit."<sup>49</sup> Death in America is becoming not only managed by medicine but its timing is also "increasingly subject to deliberate choice."<sup>50</sup> From this choice is where the claims of a right to die emerge.<sup>51</sup> Kass does not believe there is any such right to die.<sup>52</sup> According to Kass, "[a] right, whether legal or moral, is not identical to a need or a desire or an interest."<sup>53</sup> A right, Kass finds, is a classical liberty.<sup>54</sup> To classic rights, modern thought has added "certain so-called welfare rights" which, entitle us to certain opportunities or goods which we expect others, like the government, to provide.<sup>55</sup> Kass contends a right to die has wrongfully been included in these welfare rights.<sup>56</sup>

The "right to die" in today's world often refers to a right to refuse life-sustaining medical treatment.<sup>57</sup> These treatments stem from the same medical technology that Kass warns us about earlier in the book.<sup>58</sup> People are now requesting to have the medical technology we fought so hard to develop removed.<sup>59</sup> Further, some people who are claiming a "right to die" are not demanding "merely the discontinuance of treatment but positive assistance from others in bringing about their deaths."<sup>60</sup> Kass states this "right to die" would be better called a "right to assisted suicide" or a "right to be mercifully killed."<sup>61</sup> Even beyond this, they claim not only a right to attempt suicide but a right to succeed with the assistance of others.<sup>62</sup> Kass claims this goes far beyond any existing common-law right to refuse unwanted medical treatment or right to commit suicide by oneself.<sup>63</sup> These "rights to die," Kass argues, are nonsensical.<sup>64</sup>

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49. *Id.* at 24, 206.

50. *Id.* at 201.

51. *Id.*

52. See *Challenge for Bioethics* at 210 ("Such reasons in favor of death might even lead me to think I had a duty to die—they do not, however, establish for me any right to become dead.").

53. *Id.* at 204.

54. *Id.*

55. *Id.* at 204-05.

56. *Id.*

57. *Id.* at 206.

58. See *Challenge for Bioethics* at 197 ("We expend enormous energy and vast sums of money to preserve and prolong bodily life, but in the process our embodied life is stripped of its gravity and much of its dignity. This is, in a word, progress as tragedy.").

59. *Id.* at 206.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Challenge for Bioethics* at 208.

64. *Id.* at 212-13.

The philosophical teachers of natural rights viewed death as an evil to be feared and right to life as a primary right.<sup>65</sup> Every other right ever claimed is an extension of this primary right to life and therefore one cannot get from this a right to death because it would be the opposite of the right from which it came.<sup>66</sup> Like the selling of organs, a human's rights over his or her own body is limited.<sup>67</sup> The property interest a man has in his own person is inalienable; a man cannot transfer title to himself by selling himself into slavery.<sup>68</sup> Kass agrees that a person has a right in the use of his body and life, but does not see a right to dispose of one's own life or someone else's.<sup>69</sup>

In 1990, the Supreme Court first explored this "right to die" in *Cruzan v. Director, Missouri Department of Health*,<sup>70</sup> where it ruled in favor of the state and against a generalized right to die. The Court again ruled for the state in 1997 in two companion cases, *Washington v. Glucksberg*<sup>71</sup> and *Vacco v. Quill*,<sup>72</sup> but failed to "reject a 'right to die' in categorical terms."<sup>73</sup> Although the Court ruled for the state under the circumstances of these three cases, it has left the ultimate decision to the legislature and therefore left the door open as to the existence of such a right.<sup>74</sup> In *Cruzan*, the Court actually determined that a competent person did have a right to avoid medical treatment.<sup>75</sup> Only Justice Scalia, in his concurring opinion, stated that there is definitely no constitutional right to die.<sup>76</sup> Kass concurs with Scalia and fears that a right to die may be granted by the Court in the future.<sup>77</sup>

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65. *Id.* at 213.

66. *Id.*

67. *Id.* at 190-92.

68. *Id.*

69. Challenge for Bioethics at 215 ("My body and my life, while mine to use, are not mine to dispose of. In the deepest sense, my body is nobody's body, not even mine.").

70. *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 279 (1990) (holding that the Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition).

71. *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997).

72. *Vacco v. Quill*, 521 U.S. 793, 809 (1997).

73. Challenge for Bioethics at 218.

74. See *id.* at 218-19 ("[L]eaving open the possibility that a "right to die" majority opinion might still one day be written.").

75. *Cruzan*, 497 U.S. at 278 ("The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our previous decisions.").

76. *Id.* at 300 (Scalia, J., concurring).

77. Challenge for Bioethics at 218-19, 221.

## II. CRITIQUE OF KASS' ANALYSIS

### *A. Life in the Laboratory: In Vitro Fertilization and Stem Cell Research*

Kass appears to be excessively scrupulous in the area of *in vitro* fertilization and stem cell research by stating that an embryo should be treated the same as a previsible fetus, yet characterizes the cells as not appearing at all human.<sup>78</sup> His determinations as to what to allow, and what not to allow, in this area appear to be inconsistent, and lack a foundation in any ascertainable ethical principle. He states that an embryo should be treated with the dignity of a living being and should not be used for stem cell research or genetic testing, yet finds an exception for using embryos for *in vitro* fertilization.<sup>79</sup>

The use of an *in vitro* embryo, Kass explains, should be restricted to aiding infertile couples, but they should not be actively killed or used in manipulative experimentation.<sup>80</sup> He explains this reasoning by finding that, for fertilization purposes, there is no disrespect intended by the fact that several eggs are removed to increase the chance of success.<sup>81</sup> The demise of the unimplanted embryos is "analogous to the loss of numerous embryos wasted in the normal *in vitro* attempts to generate a child."<sup>82</sup> However, any other use or destruction, Kass finds, is disrespectful to the embryo.<sup>83</sup> Even for fertility purposes, if the transfer is extramarital, Kass does not think it should be allowed because: "Clarity about your origin is crucial for self-identity, itself important for self-respect."<sup>84</sup> Any unnatural, extramarital union does not appear to be righteous in Kass's view.<sup>85</sup> Although Kass makes the reader take a look back at lineage, identity, and respect for humanity, he fails to support his rationale that unmarried people should not be awarded the same treatment that married couples are afforded.<sup>86</sup>

78. See *id.* at 87 ("... [T]he largest embryo under discussion is the blastocyst, a spherical, relatively undifferentiated mass of cells, barely visible to the naked eye. In appearance, it does not look human; indeed, only the most careful scrutiny by the most experienced scientist might distinguish it from similar blastocyst of other mammals."); *id.* at 90.

79. See *id.* at 87 ("The zygote and early embryonic stages are clearly alive. Though not yet organized into distinctive parts or organs, the blastocyst is an organic whole, self-developing, genetically unique and distinct from the egg and sperm whose union marked the beginning of its career as a discrete, unfolding being."); *id.* at 91-95.

80. *Id.* at 91-95; *But see A.Z. v. B.Z.*, 725 N.E.2d 1051, 1058 (Mass. 2000) ("[F]orced procreation [of a divorced spouse] is not an area amenable to judicial enforcement.").

81. Challenge for Bioethics at 91-95.

82. *Id.* at 92.

83. *Id.*

84. *Id.* at 100.

85. *Id.*

86. See *Zablocki v. Redhail*, 434 U.S. 374, 387 (1978) (holding that the state unnecessarily interfered with the fundamental right to marry).

Just as the Supreme Court holds that the right to marry is fundamental, Kass must realize that people also have the right to choose not to marry.<sup>87</sup> Further, he leaves the reader unconvinced that human dignity will be diminished by stem cell research and that this risk should therefore outweigh the benefits of curing disease. Kass uses respect for *humanness* as the basis of his argument against most forms of embryo use. However, he must also pay deference to human restraint, for the “baby factory” conjured up in the *Brave New World* has yet to come to pass.

### *B. Cloning and the Un-human Future*

Because the public demand for cloning has thus far proved extremely low, and statistics indicate that the majority of people are indeed opposed to it, cloning may not be as great of a threat as Kass fears.<sup>88</sup> The success rate of cloning, at least at first, will probably not be very high. For example, to produce Dolly, Scottish scientists transferred 277 adult nuclei into sheep eggs and implanted 29 embryos before achieving her birth.<sup>89</sup> Still, however, Kass fears that:

Should commercial interests develop in ‘nucleus banking,’ as they have in sperm banking and egg harvesting; should famous athletes or other celebrities decide to market their DNA the way they now market their autographs . . . should techniques of embryo and germ-line genetic testing and manipulation arrive . . . increasing the use of laboratory assistance in order to obtain ‘better’ babies . . . cloning, if it is permitted, could become more than a marginal practice . . .<sup>90</sup>

The author agrees with this part of Kass’ analysis. There appears to be no reason for cloning. However, when Kass equates cloning with inbreeding and as a replacement for sex, he goes too far.<sup>91</sup> There is no support for his argument that we will become like the characters in the *Brave New World*.<sup>92</sup> At some point in time, there might be a use for cloning<sup>93</sup> and that use might not be as detrimental to

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87. *See id.* at 386.

88. Challenge for Bioethics at 147; *see also* How Canadians Perceive Cloning Humans, available at <http://www.legermarketing.com> (last visited May 17, 2002) (“[N]ine individuals out of ten oppose human cloning.”).

89. Challenge for Bioethics at 148.

90. *Id.*

91. *See id.* at 150-51. Kass states that we should be repelled by the prospect of human cloning for the same reasons that we feel revulsion towards incest and inbreeding and that cloning will be seen as an extension of existing techniques for assisting reproduction and determining the genetic makeup of children. *Id.*

92. *See id.* at 141 (“I refer to the prospect of human cloning, a practice absolutely central to Huxley’s fictional world. Indeed, creating and manipulating life in the laboratory is the gateway to a *Brave New World*, not only in fiction but also in fact.”).

93. *See id.* at 142 (“[Human cloning] could help us overcome the unpredictable variety that still rules human reproduction and allow us to benefit from perpetuating superior genetic endowments.”); *see also* The Benefits of Human Cloning, at <http://www.humancloning.org/benefits.htm> (last visited

humankind as Kass thinks. Kass speaks of respect, however, he too must have respect for humans to act responsibly and ethically. It is true that pharmaceutical companies and researchers want to have access to human clones.<sup>94</sup> This is only, however, to use the clone stem cells as regenerative and replacement tissue in the original subject.<sup>95</sup> The aim is not to make a perfect human, rather it is only to improve the health of already existing humans.

### C. Organ Transplantation

Kass is correct and convincing in his description of the dilemma of the sale of organs.<sup>96</sup> If we allow organs to be sold, the poor will be exploited and the rich will be able to buy whatever organ they need or desire.<sup>97</sup> Further, boundaries should be defined regarding what we can and cannot sell.<sup>98</sup> For example, once we allow the selling of human flesh for transplantation, it may become hard to prevent its sale for luxury cuisine.<sup>99</sup> However, Kass' ethical arguments regarding both living donors and cadaver donations are unconvincing.<sup>100</sup>

Regarding live donors (or for that matter sellers), Kass states that "surgeons are loath to cut into a healthy body not for its own benefit"<sup>101</sup> and most would "not perform transplants using kidneys or livers from unrelated living donors."<sup>102</sup> This appears to be at odds with the purpose of organ donation—saving lives—and the choice of someone who wants to give (or sell).<sup>103</sup>

Feb. 26, 2003) (listing infertility, defective genes, and organ regeneration as possible benefits of human cloning).

94. Challenge for Bioethics at 169-70.

95. *Id.* at 170.

96. *See id.* at 179 ("For notwithstanding my revulsion at the idea, I am prepared to believe that offering financial incentives to prospective donors could very well increase the supply and perhaps even the quality of organs. I cannot deny that the dead human body has become a valuable resource which, rationally regarded, is being allowed to go to waste—burial or cremation.").

97. *See id.* at 188 ("The most common objections to permitting the sale of body parts, especially from live donors, have to do with matters of equity, exploitation of the poor and the unemployed, and the dangers of abuse—not excluding theft and even murder to obtain valuable commodities.").

98. *See id.* at 193 ("This is slippery business. Once the principle of private right and autonomy is taken as the standard, it will prove difficult—if not impossible to hold the line.").

99. Challenge for Bioethics at 193.

100. *Id.* at 185.

101. *See* Final Regulations Amending Basic H.H.S. Policy for the Protection of Human Research Subjects, 45 C.F.R. § 46, Subpart A (1991); *see also* HHS, Solicitation Provisions and Contract Clauses, 48 C.F.R. § 352.270-8 (2002) ("[R]egulations extend to the use of human organs, tissue, and body fluids from individually identifiable human subjects"); *see also* Nuremberg Code, *supra* note 46, at Principle 1.

102. Challenge for Bioethics at 185.

103. *See id.* at 179 ("Because of our scruples against sales, potential beneficiaries of transplantation are probably dying; less troubling but also true, their benefactors, actual and potential—unlike the transplant surgeons—are not permitted to reap tangible rewards for their acts of service.").

The author found Kass' argument that cadaver donation is equal to mutilating a corpse and defiles its integrity even more unpersuasive.<sup>104</sup> Kass states that utilization of a corpse's body parts violates its dignity,<sup>105</sup> and that despite how many lives are saved, it is not good for how we live.<sup>106</sup> It is arguably more disrespectful of human dignity to squander lives that could be saved by replacing an organ. Kass may be surprised to learn that there are those who believe there may be a way to increase the amount of available organs without relinquishing our dignity. For example, Kass refers to a practice proposed more than thirty years ago where "families that shared in premortem giving of organs" could freely receive an organ should one of their families need a transplant.<sup>107</sup> Practices such as this could solve the problem of finding a non-monetary way to compensate a family for organs and increase organ donation.<sup>108</sup> Although Kass' summary of the dilemma of organ sale is informative and enlightening, his ethical arguments against organ transplantation appear to be without solid footing. His arguments against transplantation also appear to be hypocritical when juxtaposed against his statement that he would condone selling an organ if it were to save a member of *his* family.

#### *D. A Right to Die*

Kass succeeds in opening the reader's mind to some of the moral and underlying issues of the "right to die." However, he fails to justify letting someone endure pain-filled days for the sake of morality.<sup>109</sup> In explaining away the apparent contradiction of why we daily put animals out of their misery by putting them to sleep, yet allow humans to linger with painful and terminal disease, Kass simply says animals are dumb.<sup>110</sup> Therefore, they do not know they are dying and can make nothing of their misery and mortality or face their own suffering or dying.<sup>111</sup> This reasoning, however, offers no support for why we should not spare a dying child or an Alzheimer's patient from misery when neither is cognizant of what is

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104. *Id.* at 185.

105. *Id.*

106. *Id.* at 193.

107. *Id.* at 195-96.

108. Challenge for Bioethics at 195.

109. See *id.* at 253 ("When a conscious human being asks us for death, by that very action he displays the presence of something that precludes our regarding him as a dumb animal. Humanity is owed the bolstering of the human, even or especially in its dying moments, in resistance to the temptation to ignore its presence in the sight of suffering.").

110. *Id.* at 252-53.

111. See *id.* ("Compassion for their [animals'] weakness and dumbness is our only appropriate emotion, and given our responsibility for their care and well-being, we do the only humane thing we can.").

happening.<sup>112</sup> Kass even assumes that a person in a vegetative state prefers to remain alive but fails to address that many people express that they would prefer to die than remain in a vegetative state.<sup>113</sup> This he assumes even though he admits that we have no idea what they are actually thinking.<sup>114</sup> This line of reasoning also appears to contradict his logic that because we are smarter than dumb animals, humans should not be spared misery.<sup>115</sup>

Because of the advances in medical technology, people today are increasingly likely to die in institutions and their suffering must be addressed.<sup>116</sup> To address this problem, many states now permit—living wills—allowing patients to elect withdrawal or refusal of life-sustaining medical treatment even though they have become incompetent.<sup>117</sup> Kass is wrong in contending that humans want an easy way out or that euthanasia is equal to murder.<sup>118</sup> He claims that suffering is a part of life and dignity, but he fails to acknowledge that having compassion and relieving the suffering of others are also a part of life and humanity.<sup>119</sup> Allowing

112. *See id.* at 244 (“Human dignity would be no more vindicated by euthanizing patients with Alzheimer’s disease than it would by executing as polluted the victims of rape.”); *see also Cruzan*, 497 U.S. at 187 (finding that where the patient is incompetent, the state may constitutionally refuse to allow medical procedures to be terminated except where there is “clear and convincing evidence” that this is what the patient would have wanted).

113. *See Challenge for Bioethics* at 254 (“[O]ne probably cannot be absolutely sure, even here, about the complete absence of inner life or awareness of their surroundings. In some cases, admittedly extremely rare, persons recover from profound coma; and they sometimes report having had partial yet vivid awareness of what was said and done to them, though they had given no external evidence of the same.”). *See also id.* at 253 (“Many people in greatly reduced states still retain clear, even if partial, participation in human relations. They may respond to kind words or familiar music; they may be able to return a smile or a glance in response to a drink of water or a change of bedding or a bath.”); *see also Cruzan*, 497 U.S. at 187 (finding that where the patient is incompetent, the state may constitutionally allow medical procedures to be terminated when there is “clear and convincing evidence” that this is what the patient would have wanted).

114. *See Challenge for Bioethics* at 253-54 (“Because we really do not know their inner life—what they feel and understand—we run the risk of robbing them of opportunities for dignity by treating them as if they had none. It does not follow from the fact that we would never willingly trade places with them that they have nothing left worth respecting.”).

115. *Id.* at 252-53.

116. President’s Comm’n for the Study of Ethical Problems in Med. and Biomedical and Behavioral Res. 16-18 (1983); *see also Challenge for Bioethics* at 226:

The welcome triumphs against disease have been purchased at the price of the medicalized dehumanization of the end of life; to put it starkly, once we lick cancer and stroke, we can all live long enough to get Alzheimer’s disease. And if the insurance holds out, we can die in the intensive care unit, suitably intubated. Fear of the very medical power we engaged to do battle against death now leads us to demand that it give us poison.

117. *Vacco*, 521 U.S. at 804-06.

118. *Challenge for Bioethics* at 227 (“The right to die, especially as it comes to embrace a right to ‘aid-in-dying,’ or assisted suicide, or euthanasia, will translate into an obligation on the part of others to kill or help kill.”).

119. *See id.* at 244.

One cannot, by an act of euthanasia, deter or correct or obtain justice from the ‘violator’ of human dignity; senility and terminal illness are of natural origin and can be blamed on no human agent.

someone to be tortured with a disease is not dignified or humane, but barbaric. We also must not let the fact that we can prolong life with medical technology that is sometimes not appropriate or wanted to hinder our growth in the medical field.

#### CONCLUSION

*Kass' Life, Liberty and the Defense of Dignity: The Challenge for Bioethics* is an insightful analysis of the moral and ethical principles underlying biomedical research and practices. His evaluation of the continuing effort to break down the natural barriers we face in our attempts to refashion the human body into a perfect instrument causes the reader to reexamine the goals of science and technology and pause to reflect on the true meaning of human. He fails, however, to assuage the fears faced by all who encounter health and death issues. Furthermore, Kass fails to adequately address our desire to live and prolong life to the best of our abilities. The author respects Kass' prediction that we humans will be overtaken by runaway science but believes he should respect our ability to continue to learn and grow while at the same time maintaining our *humanness*.

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To be precise, these evils may in their result undermine human dignity, but, lacking malevolent intention, cannot be said to insult it or deny it. They are reasons for sadness, not indignation, unless one believes, as the tyrant does, that the cosmos owes him good and not evil and exists to satisfy his every wish. Moreover, one does not come to the defense of diminished human dignity by finishing the job, by annihilating the victim. *Id.*