



The Right to Life and the Value of Life

Orientations in Law, Politics and Ethics

Edited by Jon Yorke ■

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Edited by

JON YORKE

Birmingham City University, UK



ASHGATE

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List of Contributors

Professor David Benatar is Professor and Head of the Department of Philosophy at the University of Cape Town in South Africa. He is the author of numerous articles, the editor of a number of books and the author of *Better Never to Have Been: The Harm of Coming into Existence* (Oxford University Press, 2006).

Professor Bill Bowring is an acknowledged expert on human rights legislation and Russian law. He was appointed Professor of Law at Birkbeck College, University of London in September 2006 and is a practising barrister. He is International Secretary of the Haldane Society of Socialist Lawyers, and President of the European Lawyers for Democracy and Human Rights (in eight European countries). He serves as an Executive Committee Member of the Bar Human Rights Committee of England and Wales, a Member of the Council of Liberty, and a Trustee of the Redress Trust, working for torture survivors. Prof. Bowring founded and is Chair of the International Steering Committee of the European Human Rights Advocacy Centre (EHRAC), which, in partnership with the Russian NGO *Memorial* and the Bar Human Rights Committee, is assisting with over 150 cases against Russia, Georgia and Latvia to the European Court of Human Rights. In his role as a barrister, he has represented applicants before the ECHR in cases against Azerbaijan, Georgia, Latvia, Russia, and Turkey. He regularly acts as expert for the Council of Europe (DGI, DGII and DGIV) on human and minority rights issues, and works as a trainer and expert for the Council, the European Union, Amnesty International and others. He has written many publications on topics of international law, human rights, minority rights and Russian law.

Dr Susan Breau is currently Reader in International Law at the University of Surrey and Assistant Associate Dean for Research in the Faculty of Management and Law. She was formerly the Dorset Fellow in Public International Law at the British Institute of International and Comparative Law conducting an active research agenda in International Law and the International Protection of Human Rights. She was awarded her doctorate from the London School of Economics and Political Science for her research into Humanitarian Intervention. Her book on this topic entitled *Humanitarian Intervention: The United Nations and Collective Responsibility* was published by Cameron May in 2005. She has also co-written a book on State Immunity and co-edited three books; two on international humanitarian law and one on religion and human rights. She has authored several chapters and articles on various aspects of international law and the international protection of human rights. Dr Breau is a barrister and a solicitor in the province

of Ontario, Canada (called to the Bar in 1981) and she practised law in Kingston, Ontario for 18 years. In her academic career, she has also taught international law at Queen's University Belfast, the London School of Economics, Pepperdine University and King's College London.

Dr Caroline Fournet (LLM Lund, DEA Strasbourg, PhD Leicester) is a senior lecturer in law at the University of Exeter (United Kingdom). Her research interests are Public International Law, Human Rights Law, International Humanitarian Law and International Criminal Law, with a particular emphasis on the law of genocide and the prohibition of torture. Her publications notably include two monographs: *International Crimes – Theories, Practice and Evolution*, with a foreword by Professor Malcolm N. Shaw QC (Cameron May, 2006) and *The Crime of Destruction and The Law of Genocide: Their Impact on Collective Memory* (Ashgate Publishing, 2007).

Professor Steven Freeland is Professor in International Law at the University of Western Sydney, Australia, where he teaches both postgraduate and undergraduate students in Public International Law, Human Rights Law, International Criminal Law and Commercial Aspects of Space Law. He is also Associate Head of School (Research) and coordinator of the School's International Law Mooting Program. He is a Visiting Professor in International Law at the University of Copenhagen, Denmark and has taught courses and presented guest lectures at Universities in The Netherlands, Denmark, United States, Australia, Austria, Bulgaria, Thailand and Singapore. He is also a Visiting Professional within the Appeals Chamber at the International Criminal Court, The Hague and has been a Special Advisor to the Danish Foreign Ministry in matters related to the International Criminal Court. After completing his LLB and BCom (with merit) in 1980, he worked in Australia, the United States, England and Belgium as an attorney with an international law firm, and is admitted to practice in Australia, the United Kingdom and Hong Kong. Subsequently, he worked as an investment banker for twelve years based primarily in Hong Kong with Asian regional responsibilities. After a professional career of almost twenty years, he returned to university studies and research in 1999 and completed his LLM in International Law at the University of Utrecht/University of New South Wales in 2000. Among other appointments, he is Chair of the International Law Action Group of the Lawyers Reform Association, a member of the Management Committee of the Australian Human Rights Centre, a member of the Transnational Enforcement of International Environmental Law Committee of the International Law Association, a member of the Space Law Committee of the International Law Association, a member of the Executive Committee of the International Law Association (Australian Branch), a member of the Australian and New Zealand Society of International Law, a member of the Directorate of Studies of the International Institute of Space Law, a member of the SUR/United Nations Human Rights University Network and a Fellow of the Tim Fischer Centre for Global Trade and Finance. He sits on the Editorial Board of both the

Australian Journal of Human Rights and the *Australian International Law Journal*, as well as a series of books entitled *Studies in Space Law*. He is also actively involved in the publication of a series of casebooks annotating the jurisprudence of the International Criminal Court, the International Criminal Tribunals for the former Yugoslavia and for Rwanda, the Special Court for Sierra Leone and the Special Panels for Serious Crimes in East Timor. He has published extensively on various aspects of International Law and is a frequent speaker at national and international conferences, having been invited to present conference papers and keynote speeches in Australia, Austria, Belgium, Canada, China, Denmark, France, Germany, India, Japan, The Netherlands, New Zealand, Singapore, Spain, Sweden, United Kingdom and United States.

Professor Johanna Gibson is Herchel Smith Professor of Intellectual Property Law and Director of the Queen Mary Intellectual Property Research Institute, Queen Mary University of London, where she researches and teaches in intellectual property law and policy, public health and traditional knowledge. Johanna maintains research interests in intellectual property policy and development, including medicine, public health and human rights. She has reported to the Scottish Executive on the ethical and legal aspects of public sector databases and has also been supported by the AHRC in her work on life patents and socio-cultural development. Johanna is the author of numerous articles as well as three books, all published by Ashgate: *Creating Selves: Intellectual Property and the Narration of Culture* (2006); *Community Resources: Intellectual Property, International Trade and Protection of Traditional Knowledge* (2005); and *Intellectual Property, Medicine and Health* (2009). She is the editor of the collection, *Patenting Lives: Life Patents, Culture and Development* (Ashgate, 2008).

Ms Agnieszka Jachec-Neale has over five years experience working with international organisations in South-Eastern Europe, where she specialised in monitoring domestic war crimes trials and human rights observation. Recently Agnieszka has served as a research fellow for the British Institute of International and Comparative Law (BIICL) and taught for three years at the Centre for International Studies and Diplomacy (SOAS). She is currently teaching the Laws of Armed Conflict course at the University of Essex. Her studies at the University of Gdansk (Poland) specialise in international criminal law, and she is currently pursuing doctoral studies in the law of armed conflicts at the University of Essex.

Ms Kerstin Klein, is currently a PhD student at the Bios Centre, London School of Economics and Political Science (LSE). She completed her Masters in Sociology and STS in the Department of Sociology and Institute of Science and Technology Studies (IWT) at Bielefeld University, Germany. She also worked as a researcher at the Social Science Research Centre Berlin (WZB), Free University Berlin; at the School of Archaeology and Anthropology, Faculty of Arts, Australian National University (ANU) and at St Petersburg State University, Faculty of Sociology.

Her research interests including conference presentations and up-coming publications, comprises of life science and society, biopolitics, political culture, and authoritarianism.

Professor Andrew Norris received his PhD from the Department of Rhetoric at UC Berkeley. Currently, he is Associate Professor in the Department of Political Science at the University of California, Santa Barbara. He is the editor of *The Claim to Community: Essays on Stanley Cavell and Political Philosophy* (Stanford University Press, 2006) and *Politics, Metaphysics, and Death: Essays on Giorgio Agamben's Homo Sacer* (Duke University Press, 2005), the co-editor of *Truth and Democratic Politics* (University of Pennsylvania Press, forthcoming), and the author of *Publicity and Partiality: Political Reflection in the Work of Stanley Cavell* (Stanford University Press, forthcoming).

Professor Mark Olssen is Professor of Political Theory and Education Policy in the Department of Political, International and Policy Studies, University of Surrey. He is author of *Toward A Global Thin Community: Nietzsche, Foucault and the Cosmopolitan Commitment* (Paradigm Press, 2008); *Michel Foucault: Materialism and Education* (Paradigm Press, 2006). He has also published a book with John Codd and Anne-Marie O'Neill titled *Education Policy: Globalisation, Citizenship, Democracy* (Sage, 2004); and an edited volume *Culture and Learning: Access and Opportunity in the Classroom* (IAP Press, 2004). He has published extensively in leading academic journals in Britain, America and in Australasia.

Professor Nikolas Rose is Martin White Professor of Sociology and Director of the BIOS Centre for the Study of Bioscience, Biomedicine, Biotechnology and Society at the London School of Economics and Political Science. The main focus of his current research is on the social implications of developments in the new brain sciences. His most recent books are *The Politics of Life Itself* (Princeton, 2006) and *Governing the Present* (with Peter Miller, Polity, 2008.)

Dr Stephen Smith is a Lecturer in Law at the Birmingham Law School and the Deputy Director of the Institute of Medical Law at Birmingham. Dr Smith has both a PhD from the University of Manchester, which he received in 2003, and a JD from Washington University School of Law, St. Louis, Missouri, USA, which he received in 1998. His research is primarily in the fields of medical law and bioethics especially issues of end of life care. He has published articles in the *Medical Law Review*, *The American Journal of Law and Medicine*, *Clinical Ethics* and *Medicine and Law*. He is currently working on a monograph about end of life decision-making.

Dr Ayo Wahlberg is Postdoctoral Research Fellow in the Department of Anthropology, University of Copenhagen, Denmark. He holds a PhD in Sociology from the London School of Economics and an MSc in International Development

Studies and Social Science from Roskilde University, Denmark. Academic publications include: 'Measuring progress – calculating the life of nations' in *Distinktion: Scandinavian Journal of Social Theory*, 2007, 'Bio-politics and the promotion of traditional herbal medicine in Vietnam', *Health: An Interdisciplinary Journal for the Social Study of Health, Illness and Medicine*, 2006, 'Above and beyond superstition – western herbal medicine and the decriminalising of placebo' in *History of the Human Sciences*, 2008, and 'Reproductive medicine and the concept of "quality"', in *Clinical Ethics*, 2008.

Dr Helen Watt is Director of the Linacre Centre for Healthcare Ethics, London. Before taking up this post in 2001, she held the position of Research Fellow at the Centre. From 1993 to 1996, she was also Senior Research Associate at Peterhouse, Cambridge. She holds a PhD in Philosophy from the University of Edinburgh, and an honors degree in Italian from the University of Western Australia. She is the author of *Life and Death in Healthcare Ethics: A Short Introduction* (Routledge, 2000) and the editor of *Cooperation, Complicity and Conscience* (Linacre Centre, 2005).

Dr Elizabeth Wicks is a Senior Lecturer in the Birmingham Law School at the University of Birmingham. Her research and teaching interests are in constitutional law, medical law and human rights. She is the author of two books: *The Evolution of a Constitution: Eight Key Moments in British Constitutional History* (2006) and *Human Rights and Healthcare* (2007), both published by Hart Publishing. She is currently writing a book on the Right to Life and Conflicting Interests, to be published by Oxford University Press.

Dr Jon Yorke is a Reader in Law, BCU Law School, Birmingham City University. His teaching and research interests are in medical law, public law, human rights and the death penalty. He has acted as a consultant for the British Institute of International and Comparative Law project on the death penalty in Commonwealth Africa, and has worked on state and federal capital cases in Oklahoma. He is on the editorial board of the death penalty journal *Amicus Journal* and is the editor of *Against the Death Penalty: International Initiatives and Implications* (Ashgate, 2008), and has published journal articles including in the *European Law Review*, *European Public Law* and the *International and Comparative Law Quarterly*. He is currently writing a book entitled *Europe and Abolition of the Death Penalty*, to be published by Cambridge University Press.

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List of Abbreviations

AbCHR	Arab Charter on Human Rights
ACHPR	African Charter on Human and People's Rights
ACHR	American Convention on Human Rights
ADRDM	American Declaration on the Rights and Duties of Man
AID	Artificial insemination by donor
AIH	Artificial insemination by husband
ANH	Artificial nutrition and hydration
ART	Assisted reproductive technologies
BBC	British Broadcasting Corporation
BIICL	British Institute of International and Comparative Law
CAS	Chinese Academy of Science
CCW	Convention on Certain Conventional Weapons
CESCR	Committee on Economic, Social and Cultural Rights
CIHL	Customary International Humanitarian Law
CISCHRFF	Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms
CPC	Communist Party of China
CRO	Contract research organisation
CSDH	Commission on Social Determinants of Health
DGD	Day of General Discussion
DNA	Deoxyribonucleic acid
DPH	Direct participants in hostilities
ECHR	European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
EHRAC	European Human Rights Advocacy Centre
FTA	Free trade agreement
GMC	General Medical Council
hESCR	Human embryonic stem cell research
HFEA	Human Fertilisation and Embryology Authority
HMO	Health Maintenance Organization
IAC	International armed conflict
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice

ICSI	Intracytoplasmic sperm injection
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IGWG	Intergovernmental Working Group on Public Health, Innovation and Intellectual Property
IHCT	Iraqi High Criminal Tribunal
IHL	International humanitarian law
IHRL	International human rights law
ILC	International Law Commission
IUI	Intrauterine insemination
IVF	<i>in vitro</i> fertilisation
MBE	Member of the British Empire
MDG	Millennium Development Goal
MOD	Ministry of Defence
MOH	Ministry of Health
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
NIAC	Non-international armed conflict
NICE	National Institute for Clinical Excellence
NSA	Non-state actors
OSCE	Organization for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PFII	Permanent Forum on Indigenous Issues
PVS	Permanent vegetative state
PRC	People's Republic of China
QALY	Quality adjusted life year
R&D	Research and development
RSFSR	Russian Socialist Federation of Soviet Republics
RPE	Rules of evidence and procedure
S&T	Science and technology
SCNT	Somatic cell nuclear transfer
SOL	Sanctity of life
STS	Science and technology studies
TRIPS	Trade-Related Aspects of Intellectual Property Rights (Agreement on)
USSR	Union of Soviet Socialist Republics
UDHR	Universal Declaration of Human Rights
VOL	Value of life
WHA	World Health Assembly
WHO	World Health Organization
WIPO	World Intellectual Property Organization

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Chapter 1

Introduction: The Right to Life and the Value of Life: Orientations in Law, Politics and Ethics

Jon Yorke

The biological and political processes which create, maintain, and end life, are assessed within the evolving parameters of the 'right to life' and the 'value of life.' These processes are the product of a multi-dimensional relationship between individuals, companies, and governments, and it is necessary to place these relationships under scrutiny to ensure that mortal choices are made legitimately (see Ramcharan 1985; Hood and Hoyle 2008; Schabas 2002 and Rose 2007). The assessment of the evolving spectrum of life scenarios from an isolation of life in its biological existence (Mathieu 2006, 9) through to life as a political expression requires a multi-disciplinary analysis. It is not enough for the right to life to remain within the ambit of law and legal critique, political science and philosophical exposition and other systems of thought (for example, those considering autopoietic sociology, feminism and religion) are also required.¹ Furthermore, the value of life cannot remain within the realm of economics and actuarial calculation, it must include a consideration of the ethical and sentimental circumstances (Rorty 1993) which infiltrate financial exchange. Hence there is a need for '*orienting* ourselves in thought' (Kant 1970, 241),² to continue the assessment of the questions which are currently in the public domain, for example the debates concerning the legitimacy of war, the death penalty and retribution in punishment, abortion and

1 Bertrand Ramcharan argued that human rights lawyers should not remain static in their understanding of the juridical boundaries of the right to life and he stated, '[t]he branch of international law concerned with the promotion and protection of human rights must, therefore, of necessity, be in the forefront of the discipline, charting new courses, breaking new grounds, and establishing new models and methods' (Ramcharan, 1985, 1).

2 Immanuel Kant explained in a footnote in 'What is Orientation in Thinking?' that '[t]hus to *orient* oneself in thought means to be guided, in one's conviction of truth, by a subjective principle of reason where objective principles of reason are inadequate' (Kant 1970, 240). Current examples of Kant's 'subjective principle of reason' dismantling inadequate 'objective principles,' can be found, *inter alia*, in the history of the worldwide campaign against the death penalty, the growing momentum for the legalisation of assisted suicide and certain forms of euthanasia, and the debates over the various cut-off dates for legalised abortion.

the propositions of the pro-life and pro-choice movements.³ There are also new and developing questions which require scrutiny, for example, those concerning human embryonic stem cell research, and therapeutic and non-therapeutic cloning, which seek to contribute to the health and macro-eugenic governmental strategies, and the micro-eugenic considerations by parents (see Rose, Wahlberg and Klein, this collection).⁴

What will become clear throughout this book is that there is uncertainty over the application of the right to life and the value of life to many of the different questions of life and death. Indeed, as life and death concepts become more nuanced a greater degree of sensitivity is required to engage the right to life and the value of life in legitimate ways. In the presence of the (different) decisions made by governments, companies and individuals, it becomes fundamental to determine how people and organisations act. What follows in this introduction is an overview of these issues and then it is proposed that the legitimate application of the boundaries of the right to life and the value of life are contingent upon the transparency of the various decision making processes (including those made by governments, the commercial sector and different religious organisations and theocracies) and the dissemination of information for the specific issues concerning life and death. It is argued that perceived legitimate life and death decisions can only be made, by all parties, after an adequate consideration of the most up-to-date information: following Gibson, this collection, this information must be sensitive to cultural variations and plural sentiments within society.

The Right to Life and the Value of Life

The right to life has been both ‘defined’ and ‘enumerated’ in the international human rights instruments following World War Two, but there is still uncertainty over its scope. There are many instances where the drafters of various treaties were unsure, and in some cases in conflict, over the textual formulation of the

3 For the ‘pro-life’ position see, the International Right to Life Federation, www.internationalrighttolife.com, the Society for the Protection of Unborn Children, www.spuc.org.uk, and ProLife America, www.prolifeamerica.com. For the ‘pro-choice’ position see, Pro-Choice Majority, www.prochoicemajority.org.uk, and Prochoice, <http://prochoice.com>. Indeed, the issue of abortion not only involves antagonistic debates surrounding the right to life of the foetus, but also, the right to life of physicians, as is witnessed when pro-life activists kill pro-choice physicians administering abortions. An example in the United States was the shooting of Dr George Tiller in Kansas on 31 May 2009.

4 This collection is not concerned with identifying any *per se* ‘meaning of life.’ However, the chapters in this book do provide a certain level of ‘meaning’ within the specific juridical, political and philosophical boundaries with which the contributors are concerned. For the appropriateness of the question of an inherent meaning of life see the excellent introductions by Cottingham 2003 and Eagleton 2007, and see also Grayling 2001 and Belshaw 2005. For an overview of the converse issues surrounding ‘death,’ see, Enright 1983.

right (Colon-Collazo 1985; Ramcharan 1985), and specific examples can be seen from the recorded drafting debates of both the International Covenant on Civil and Political Rights (see Schabas 2002, 45-92) and the European Convention on Human Rights (see Council of Europe 1975; Wicks 2000; Yorke, this collection, and 2010). The right to life is included in the Universal Declaration of Human Rights, article 3, as an ‘enumeration’ that ‘[e]veryone has the right to life, liberty and security of person.’⁵ The text is recorded through a basic articulation which gives room for a reflexive interpretive mechanism to encompass the different life and death concepts as they evolve. While other instruments provide ‘definitions’ of the scope of the right to life, for example, the International Covenant on Civil and Political Rights, article 6, which begins with an enumeration that ‘[e]very human being has the inherent right to life,’ and then details that no one shall be arbitrarily deprived of life, and then specific issues concerning the death penalty are recorded, including the prohibition on the reintroduction of the punishment once abolished, the right of pardon, and the non-application of the punishment for people below the age of eighteen, and pregnant women.⁶ There are both advantages and disadvantages in using definitions. An advantage is that the text may produce certainty in the law with regard to the specific listed circumstances, but a disadvantage may be that it renders the text inflexible to the evolving, and new, life and death questions.⁷

The textual variation supplied by the enumeration or definition of the right to life has not created a clear legal position. Hugo Bedau stated that the ‘salient fact about this right is the considerable disagreement over its scope’ (Bedau 1968, 550). In the 1980s and 1990s the Association of International Consultants on Human Rights investigated the parameters of the right to life and identified the expanding and varying boundaries of the right (Association of International Consultants on Human Rights 1992, 3). William Schabas has observed that the right is ‘intangible in scope, and vexingly difficult to define’ (Schabas 2002, 8), and James Griffin notes that the ‘scope of the right seems irresistibly to expand,’ and that there is a ‘ballooning of the content’ (Griffin 2008, 212-213). As a consequence this right does not have a ‘clear boundary’ because what ‘starts off as the least problematic of rights becomes, on reflection, distinctly problematic’ (ibid., 213). Torkel Opsahl affirmed that the right to life, and the ‘context in which it operates will show that what at first seemed simple may have problematic points’ (Opsahl 1993, 207), and Jacques Derrida goes

5 Other international instruments providing enumerations are the: American Declaration on the Rights and Duties of Man, article 1; African Charter of Human and People’s Rights article 4; Arab Charter on Human Rights, article 5.

6 Other international instruments providing definitions are the: European Convention on Human Rights, article 2(1); American Convention on Human Rights article 4; Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, article 2.

7 One way around this problem is the adoption of additional instruments and most of the contributors to this collection engage with this possibility.