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Correspondence

The 'baby Brown' case and the Dr Arthur verdict

SIR

There is cause for concern in the different outcomes of the trials in the cases of baby Brown's parents and Dr Leonard Arthur respectively. Mr Brown was found guilty of manslaughter and sentenced to five years imprisonment amid public opprobium for supposedly killing his 'mongol infant' (the euphemism is clumsy!), in drunken disappointment; whereas, Dr Arthur was acquitted amid almost universal plaudits having admittedly and dispassionately ordered doses of a medically unnecessary and potentially lethal sedative in order to make a no-feed regime tolerable to those responsible for the care of a similar baby also rejected by its parents. Does this mean that in future parents will reasonably expect their paediatricians to do away with unwanted handicapped babies on their behalf, when to do so themselves would put them in peril of the law and attract the disapproval of the mob – bearing in mind that the same baby, when at an advanced state of fetal development, could legitimately have been aborted? I well remember a distinguished obstetric colleague saying to me when I thoughtlessly expressed myself in favour of abortion on demand, on the grounds that babies need a facilitating environment after as well as before birth, retorting that he was in favour of infanticide on demand because in that case I, not he, would have to do it. The arguments about medical ethics in such situations do not sufficiently take into account the damage murder or infanticide, or abortion does to the 'executioner', however well intentioned he and his or her associates are. Does Professor Kennedy have an answer to this aspect of the problem?

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Response to Professor Davis

SIR

I am not sure I have an answer to Professor Davis's question. I can, however, offer a couple of observations. First, like him, I was interested in the different responses, publicly and legally, to the two cases. I had drawn attention to this possibility in my book in 1983 when I compared Dr Arthur's case with that of Nicholas Reed, the ex-secretary of Exit, who was convicted of aiding and abetting suicide.

The legal analysis of Mr Brown's case, in the light of *R v Arthur* is a bit complicated.

i. Take the following facts first; Mr Brown, instead of taking action to kill his child, opted to 'let nature take its course', at home, in the light of an unequivocal diagnosis by experts, by keeping the child sedated so that it did not request food and succumbed to an infection.

What fate would have been meted out to him? If he had been convicted of murder, then it would be hard to avoid a conclusion that there is one law for professionals and another for the rest. If he had not been charged or convicted of murder, then the law would, in the light of his real fate, seem to embrace (as it did in Dr Arthur's case) the distinction between killing and letting die (ignoring the fact that Dr Arthur prescribed drugs in the manner described by Professor Davis). But, this distinction is morally and legally untenable in circumstances in which the person involved has a legal duty to care for the child, as did both Dr Arthur and Mr Brown in their respective cases. So, in such a set of facts, *both* should be guilty, which is what I think the law requires, or neither should be guilty, which rests on an improper view of the law.

ii. Take, alternatively, the facts as they were; Mr Brown took action to kill his child. Mr Brown could have been convicted (as he was) on the basis that he intended to kill the child and took steps to achieve this end. This would be legally proper. It would also mean, however, that Dr Arthur should have been convicted, unless the untenable distinction between killing and letting die were improperly relied upon.

Alternatively, Mr Brown could have been acquitted on the ground that there being no difference in law between killing and letting die in these circumstances, his case is the same as Dr Arthur's. This would mean that the law recognises that in exceptional circumstances a child's life may be brought to an end at the parent's behest. This is what Dr Arthur's case may have decided and accords with what many doctors and others think entirely proper. The only debate, then, is about what circumstances are exceptional. Mr Brown's case seemed to fit within the criteria set out by Mr Justice Farcquharson in *R v Arthur*, in that the child was severely disabled (Down's Syndrome) and rejected by the parent(s). This conclusion may concern some by suggesting that parents can lawfully 'do away with' their children. But, if they think the law is otherwise, they must accept that it will, on my analysis, apply just as much to the Dr Arthurs of the world as to the Mr Browns.

This leads me to the second issue raised by Professor Davis. If doctors enjoy a special place (or immunity) in the law, they could, he fears, encounter pressure 'to do away with unwanted handicapped babies'. In my view, however, doctors enjoy no such special place or immunity. Nor should they be asked to accept it nor be offered it.

Instead, the law should be clarified as