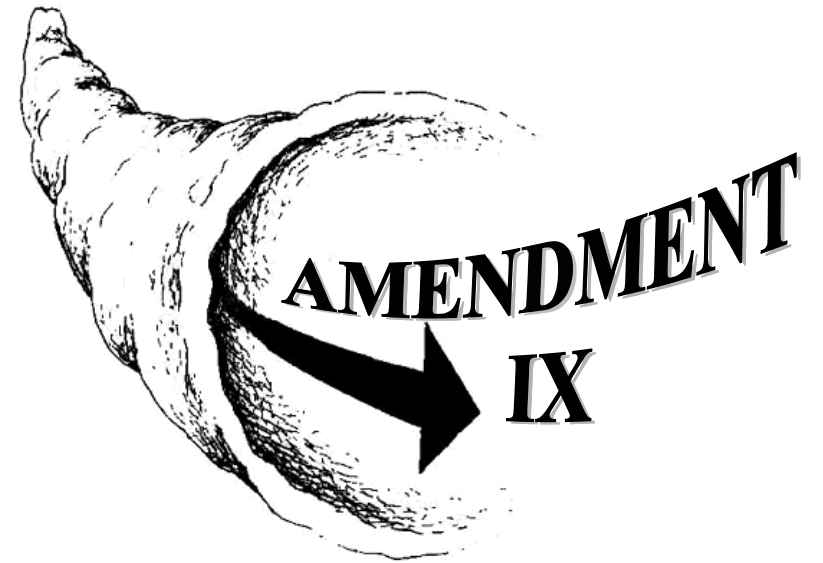


Our Cornucopia of
RIGHTS

JACK KEVORKIAN, M.D.



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*Whatever America hopes to bring to pass in the world
must first come to pass in the heart of America.*

—Dwight D. Eisenhower, cit. by Prochnow,⁴⁶ 468
(1890-1969)

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ABOUT THE AUTHOR

Dr. Kevorkian, now age 77, is in his seventh year of imprisonment in Michigan.

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I. Liberty's Lineage

On 7 September 1787 thirty-nine delegates from twelve states signed the newly drafted Constitution of the United States, and it took effect after approval by nine of them.¹ It is claimed that as Benjamin Franklin was exiting Independence Hall he said, "Everything appears to promise that our Constitution will last, but in this world nothing is certain but death and taxes."² During as well as after our war of independence Jefferson was decidedly pessimistic about the future with regard to the people's vigilance over preservation of their rights and over the integrity of their leaders.³ Franklin's jot of concern was echoed by George Mason and several other Convention delegates who were uneasy about the Constitution's lack of *explicit* guarantee of basic human rights.⁴ According to Alexander Hamilton this was the most serious objection to the document being considered.⁵

Mason was aware of the persistent 13th century campaign in England by Stephen Langton, the activist Archbishop of Canterbury, against King John's tyranny.⁶ It culminated in the historic Magna Carta which acknowledged certain rights of the people. Mason also knew that several centuries later English activists like John Lilburne were frequently imprisoned for their relentless struggle to secure and keep fundamental rights.⁷ Some of them were included by Mason in the Virginia Declaration of Rights. Although subsequently he helped to write the United States Constitution, Mason and three other delegates refused to sign it because

Liberty means responsibility; that is why most men dread it.

—George Bernard Shaw, cit. by Winokur,¹¹ 170
(1856-1950)

Amendment IX:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

endorsement of the suggested rights was not included.¹

In 1765 the English Parliament passed an Act dealing with a group of rights to which the people were entitled. Working on his *Commentaries* at that time, Sir William Blackstone compiled a list of them that was called the bill of rights.⁵ At the Constitutional Convention a delegate from South Carolina, Edward Rutledge, was aware of Blackstone's work; and on 28 September 1774 he advocated the inclusion of such a list. Madison and Jefferson agreed, but Hamilton said it was unnecessary.⁵

As a member of the first House of Representatives, James Madison, whose plan had laid much of the groundwork for the Constitution, argued passionately for various rights and sponsored twelve amendments incorporating them. Ten were ratified by the states, and these first amendments became our Bill of Rights (now with capital letters).⁸

“ — ”

We are under a constitution, but the constitution is what the judges say it is.

—Chief Justice Charles Evans Hughes, cit. by
(1862-1948) Prochnow,⁴⁶ 14

We must take action to save the Constitution from the Court and Court from itself.

—Franklin Delano Roosevelt, cit. by Cook,⁵¹ 435
(1882-1945)

Liberty lies in the hearts of men and women. When it dies, no constitution, no law, no court can save it.

—Justice Learned Hand, cit. by Garbus,²² 292
(1872-1961)

(E)xtrêmeism in the defense of liberty is no vice and . . . moderation in the pursuit of justice is no virtue.

—Barry Goldwater, cit. by Whitman,⁵⁶ 262
(1909-98)

Can any of you seriously say the Bill of Rights could get through Congress today? It wouldn't even get out of committee.

—F. Lee Bailey, *ibid.*, 137
(1933-)

II. Some Wronged Rights

Frequently misguided or biased interpretation of the fundamental provisions of parts of the Bill and its derivatives was and still is a cause for concern. In the past that led to disastrous and even shameful rulings by a sometimes prejudicially afflicted United States Supreme Court. The following are a few examples of such mind-boggling decisions⁹ that caused incalculable human misery and despair:

- Barron v. Baltimore* (1833): amendments included in the Bill of Rights are not binding on state governments;
- Prigg v. Pennsylvania* (1842): struck down states’ “personal liberty laws” banning forcible seizure and removal of fugitive slaves;
- Dred Scott v. Sandford* (1857): the right of property in a slave is distinctly and expressly affirmed in the Constitution;
- Ableman v. Booth* (1859): the Fugitive Slave Law is constitutional;
- Plessy v. Ferguson* (1896): railroad accommodations for Blacks must be separate but equal;
- Williams v. Mississippi* (1898): disenfranchised Blacks by means of poll taxes and literacy tests for voting;
- Abrams v. U.S.* (1919): upheld the 1918 Sedition Law;
- Rice v. Gong Lim* (1927): banned Chinese from attending white schools;¹⁰

—*Korematsu v. U.S.* (1944): upheld the uprooting and relocation of Japanese-Americans in remote concentration camps.

Tragically the above list will most likely continue to lengthen in the future. One of the blameworthy defects is the inference that rights enumerated in the Bill are created and benevolently bestowed on citizens by some sort of supreme authority resident in the Constitution and laws of a concocted federal government and its Congress.

It is easy to misconstrue the source of a right, as evidenced in phrases such as “. . . to be prescribed by law, . . .” (Amendment III); “. . . without due process of law, . . .” (Amendment V); and “according to the rules of the common law” (Amendment VII). These wordings denote statutory enablement of the exercise of specific actions, enablement gratuitously called rights ostensibly created and enforced by a man-made *extrinsic* agency. Their validity can be questioned, because their existence is precariously dependent upon the prevailing whim of the enabling sources which operate and are in control of the Constitution’s amendment and enforcement policies and procedures. Montesquieu acknowledged as much with a terse assertion: “Liberty is the right to do whatever the law permits.”¹¹

“ — ”

Harvard Medical School did not admit a woman until 1949.

—cit. by Menand,⁴⁸ 9

Every government . . . in its dealings with its own people . . . plays a brutal and witless game with their natural rights.

—Henry L. Mencken, cit. by Prochnow,⁴⁶ 195
(1880-1956)

Ninety percent of judicial decisions are based on bias, prejudices, and personal and political motivations, and the other ten percent is based on law.

—Chief Justice Charles Evans Hughes, cit. by
Garbus,²² 10-11
(1862-1948)

Men use thought only to justify their injustices and speech only to disguise their thoughts.

—Voltaire, cit. by Andrews,² 265
(1694-1778)

The illegal we do immediately, the unconstitutional takes a little longer.

—Henry A. Kissinger, cit. by Whitman,⁵⁶ 92
(1923-)

III. The Really Right Rights

What exactly is a right? In essence it is an abstraction generally considered to embody certain advantages and privileges bestowed by tradition, law, and nature.¹² The degree of authenticity of a right should be directly proportional to the magnitude of the consistency, stability, and permanence of its source. The capricious nature of law as a source was alluded to above. The inscrutable complex of variables that constitute tradition would seem to render it even more vagarious than law. Individually or combined, law and tradition can only permit or thwart an act born of volition. They cannot be the source of volition which is an innate factor, an *intrinsic* enabler, a factor relatively more permanent and unalterable,—and absolutely natural.

Thus one might say that a natural right is a vital and inseparable *congenital* component of innate human physiology. It can never be created or abolished by fiat of any kind. This can be clarified and validated by resorting to an analogy that will reveal “. . .inapparent relationships between abstract functions, one of which is understood, the other not”¹³ One of the abstract functions can be the drive, motivation, or urge to procreate (the sex drive); the other function the drive, motivation, or urge for freedom. No human language, such as the semantics of law, can by any stretch of fantasy be construed to be the progenitor of what Kant might have deemed the categorical *biological* imperative called the urge or instinct to procreate. The same is true of the categorical biological imperative

called a natural right (or even instinct) to liberty. Both functions are foreordained by nature in every living thing,—powerful, always absolutely defiant of and resistant to any external restraints.

Thus statutes can permit the exercise of natural rights, as exemplified by the fundamental Law called Amendment I which prevents laws from “. . . prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people . . . to assemble, . . .;” but laws cannot create rights any more than they can create instincts.

It is conceded that natural rights “are those which grow out of the nature of man and . . . which he ought to have realized for him in a jural society.”¹⁴ These include the rights to life, liberty, and privacy. The latter has already been seriously eroded by increasingly draconian laws. The other two listed rights have always suffered subtle infringement through tradition and laws that block access to their negative options. Thus according to current legal and social attitudes with regard to these options, one can choose life (positive) but cannot choose nonlife (negative), and can choose freedom but cannot choose enslavement. The late longshoreman and celebrated philosopher, Eric Hoffer, said it very well: “The basic test of freedom is perhaps less in what we are free to do than in what we are free not to do.”¹⁵ Our hypocritically moralistic society fails his basic test.

“ — ”

(C)ertain rights . . . “may be seen as implicit in man’s nature as an individual and as a member of society and to follow from the fundamental right to live.”

—UNESCO Philosophers’ Committee (1947)⁵⁵

America did not invent human rights. In a very real sense it is the other way around. Human rights invented America.

—Jimmy Carter, cit. by Whitman,⁵⁶ 274
(1924-)

In a community such as ours, liberty must include the freedom not to conform.

—Justice John Paul Stevens, cit. by Garbus,²² 102
(1920-)

The bigger the unit you deal with, the hollower, the more brutal, the more mendacious is the life displayed. So I am against all big organizations as such, national ones first and foremost, . . . and in favor of the eternal forces of truth that always work in the individual and immediately unsuccessful way, till history comes, after they are long dead, and puts them on the top.

—William James⁴⁸
(1842-1910)

That so few dare to be eccentric marks the chief danger of the time.

—John Stuart Mill, cit. by Andrews,² 51
(1806-73)

Human salvation lies in the hands of the creatively maladjusted.

—Martin Luther King, Jr., *ibid.*, 232
(1929-68)

When a nation's young men are conservative, its funeral bell is already rung.

—Henry Ward Beecher, *ibid.*, 52
(1913-87)

IV. Rules, “Relative” & Natural Rights

Every human being is born with the lifelong, powerful, unalterable, essentially instinctual will or drive to *absolute* personal freedom. Of course, for a smoothly functioning, civilized community that absolute drive must be tempered through the judicious modulating effect of so-called relative rights essentially consisting of commonsense rules elaborated for the optimization of harmonious communal existence, and codified by means of wide-ranging, if not universal, public consensus.

Under ordinary circumstances this limited, relatively trivial collective waiver of a reasonable modicum of individual personal autonomy for the common good assures society's structural and functional integrity without significantly compromising a person's residual self-determination of practically infinite scope. In rare instances the limitation of certain specific rights justifiably may be expanded, but only temporarily; e.g. in case of *massive*, obviously dangerous and *bona fide* threat to America's national security (as in World War II),—but in all likelihood unjustified in order to facilitate our government's mockheroically ruthless, self-righteous aggression. That not only fostered the now very loudly trumpeted and not necessarily *bona fide* threat to America, but also, contrarily, *is a bona fide* military threat to most of an understandably cringing world.

The full power of natural rights is latent in Amendment IX of the Bill of Rights. Much of the bitter controversy and often bloody violence fostered by

highly contentious issues throughout history could have been ameliorated or averted if responsible authorities had done their duty by tapping the trove that the Ninth offers. This point is well exemplified by the passionate battles over medical abortion (or the choice *not* to bear life) and medical euthanasia (or the choice *not* to live intolerably suffering). With regard to the former, in its 1973 *Roe v. Wade* ruling the Supreme Court struck down all state laws barring women's choice to have an abortion and physicians' choice to perform it. The Court's action merely produced a kind of vague statutory enablement, a contingent option or quasi-right easily abused by a shrill barrage of inane sophistry dealing with human ontogeny from die-hard abortion opponents fanatically determined to blocking exercise of the shaky "right" by any means, including arson and murder. The Court neglected to invoke its full power authorized in Amendment IX of the Bill of Rights to certify incontestably, by definitive proclamation, this absolutely unconditional natural right of choice for every woman.

That would have been the optimal action for the Court to take. Its negligence was tacitly abetted by an ethically addled medical guild that effutely relies on secular law to determine its vaunted code of conduct.

That "legislated" code has always espoused eccentric Pythagorean dicta theologically resurrected during the pietistically depraved Middle and Dark Ages. It is patently inadequate—indeed harmful—to serve as a solid ethical foundation for the quasi-scientific and highly technicalized modern medical practice.

“ — ”

Any fool can make a rule, and every fool will mind it.
—Henry David Thoreau, cit. by Prochnow,⁴⁶ 371
(1817-62)

The right of a woman to control her body . . . flows directly from that right to privacy which is based on our traditions and history.
—Justice William O. Douglas, cit. by Garbus,²² 85
(1898-1980)

But the Ninth Amendment, on which some of the majority justices relied . . . is a constitutional reservoir from which the right of privacy can be drawn.
—Garbus, *ibid.*, 84

In matters of conscience, the law of the majority has no place.
—Mohandas K. Gandhi, cit. by Ruwart,²⁹ 11
(1869-1948)

How long soever it hath continued, if it be against reason, it is of no force in law.
—Sir Edward Coke, cit. by Andrews,² 267
(1552-1634)

V. Our Tyrants' Troika

The originally ethical medical services of abortion and euthanasia were criminalized in the past by laws based on secularly irrational religious doctrines. It is incredible, and fortunate, that the discovery and use of anesthetic agents in the 19th century narrowly escaped the same fate that now looms over very promising stem-cell research in the 21st century.

Today the shackles on medical euthanasia, abortion, and stem-cell research are imposed through a subtle and very successful tripartite conspiracy. It involves the furtive collusion of an imperiously self-serving medical cabal of obediently docile doctors in concert with the powerful and purportedly infallible Catholic church and the corrupt legislatures they influence and control. Thomas Jefferson, *who privately advocated euthanasia for terminally ill cancer patients*,¹⁶ expressed his keen awareness of the church's role: "In every country and in every age the priest has been hostile to liberty; he is always in allegiance with the despot, abetting his abuses in return for protection of his own."¹⁷ The pernicious effect of this antithetical medico-theological agenda is realized through the overriding tyranny of an increasingly secretive and stealthily totalitarian government sustained by the perfunctory approval every four years from a fearfully acquiescent, hopelessly ovine populace.

The medical faction is particularly despicable for its refusal to create a suitably modern and genuinely *medical* ethical code in order to establish a coherent

philosophical base for its uniquely *secular* activity. The socially insensitive guild has a long history of short-sighted hostility to innovations that eventually became indispensable for the people's welfare. For example, the Sheppard-Tower Act of 1921 which "... provided health education, well baby clinics, childhood nutrition, and prenatal nursing care," and which the Supreme Court ruled to have been constitutional in 1923, was opposed by the American Medical Association and Red scare groups. They called it a conspiracy to "Sovietize" America! Their attacks continued until 1927 when funding ran out for this first federal act to protect mothers and children.

Furthermore, the well organized medical guild was "devotedly opposed to health insurance, [and] caused the president to withdraw that provision from the report submitted to his committee on economic security."⁵¹ In addition, the guild vehemently opposed the institution of medical insurance in the 1930s,⁵² and its fierce (and luckily futile) opposition to Medicare in the 1960s is still fresh in the minds of our elderly population. It is only rational to conclude from this deplorable litany that the attitude and the opinions of the American Medical Association with regard to important socio-medical issues should be highly suspect and disdainfully ignored.

Abortion and euthanasia were unquestionably ethical in almost all parts of ancient Hippocratic Greece.¹⁸ Only the strange, secretive minority sect of Pythagoreans denounced them. Unfortunately some of the sect's tenets happened to be consonant with and consequently

assimilated by the dogma of early Christianity. The subsequent merger of rudimentary medical practice with medieval Catholic hospices unavoidably resulted in religiously tainted medical ethics dictated by Catholic prerogatives. It is not surprising that some of the latter comprise part of the famous Oath misleadingly and cleverly ascribed to Hippocrates.

Our self-righteous medical guild continues to refer to that counterfeit Oath in its perfidious, self-serving denunciation of medical euthanasia. In fact, the guild's policy makers publicly declared it to be a criminal act. Having done so, they debauched the honor and integrity of several highly respected physicians in the past, such as Dr. Walter C. Alvarez who openly endorsed the practice in journal articles over six decades ago; Dr. Max Schur who in 1939 honored the last wish of his friend and patient, Dr. Sigmund Freud, to end the latter's suffering from invasive cancer of the jaw with lethal injections of morphine;¹⁹ and Lord Dawson who in 1936 as the king's physician and at the request of the royal family administered a lethal injection to curtail the terminal agony of George V.²⁰

Would the world's medical leaders dare to declare publicly today that these compassionate physicians were in conspiracy with Dr. Freud and King George V and his Royal Family to commit murder? And would the Pope, all his priests, and their worldwide flock brand them to have been the most depraved sinners? No, it was instead organized medicine that acted unethically by incessantly vilifying euthanasia and thereby making it easy for law to defile the originally pristine moral basis of the

procedure through the intromission of secrecy and fear. Such blatantly pejorative factors have no place in the motivation to perform any primordially ethical medical procedure. But that kind of moral travesty is committed on a grand scale today in prudently disingenuous hospices and hospitals that quietly condone, and by uneasy and equally deceitful doctors who secretly perform, clandestine—and *illicit*—euthanasia.

The church's stance is equally noisome. Over four centuries ago the eminent English statesman, author, idealist, and staunch Catholic, Sir Thomas More, advocated in his famous book, *Utopia*, both euthanasia and assisted suicide.²¹ Despite his obvious contradiction of current Catholic doctrine, he was canonized a saint in 1935! Instead of bestowing that ultimate honor, wouldn't a completely honest church have damned him for having openly promulgated a terrible sin?

That is only one example of hieratic duplicity. An even more striking and obscure instance occurred in East Germany at the end of World War II when many women were raped and impregnated by triumphant Red Army troops run amok. Responding to pleas by the women, a German Cardinal requested and was granted authority by the Pope to permit multiple medical abortions. These flagrant inconsistencies undeniably attest to an obviously equivocating church's mute acknowledgment that the medical services of euthanasia and abortion are not *absolute* transgressions, but on the contrary in certain circumstances are *moral imperatives*.

“ — ”

As men's prayers are a disease of the will, so are their creeds a disease of the intellect.

—Ralph Waldo Emerson, cit. by Bufe,³ 146
(1803-82)

This would be the best of all possible worlds if there were no religion in it.

—John Adams, *ibid.*, 143
(1735-1826)

Religion is the masterpiece of the art of animal training, for it trains people as to how they shall think.

—Arthur Schopenhauer, cit. by Winokur,¹¹ 234
(1788-1860)

Are civilized men seriously expected to believe that a wise, omnipotent and beneficent Being finds so much pleasure in watching the slow agonies of an innocent person that He will be angry with those who try to shorten the ordeal?

—Bertrand Russell, source unknown
(1872-1970)

VI. The Troika's Tribunal

Ultimately the triumvirate's nefarious aim has been accomplished with the collaboration of dishonest and very secretive secular governments that legislate and enforce the desired bans, and of the chimerical courts that validate them. Their joint effort was facilitated by a massive and intricate network of "independent" news media whose policies and content they control.

Although the social imbroglio with respect to medical euthanasia is relatively less violent, its intensity was aggravated by a recent Supreme Court decision. In *Glucksberg v. Washington* (1997) the Court ruled simply that access to the option is to be decided by each state individually. That hardly boded well for the acquisition of any kind of right, because state laws had already criminalized euthanasia; and repeal of the pertinent laws was unlikely. Nevertheless, an enlightened constituency in Oregon surprisingly and emphatically voted to permit the choice of specifically limited medical termination of suffering. The state's constraining limitation attests to the undeniably quasi status of that statutory enablement now under ferocious attack by our president and his attorneys general.

This Oregon case is a test for the Supreme Court. Will the justices adhere to the Court's familiar states' rights bias and decide in favor of a state law that enables an act repugnant to some of them?²²

In its *Glucksberg* ruling the timorous Court dodged its prime responsibility by ignominiously shunting it

to the states, thereby setting the stage for an inevitable nationwide checkered pattern of enablement of this specific right. In so doing, the justices apparently forgot, or worse yet ignored, democracy's hallowed concept of isonomy with principles of fairness and equal protection under law. Would that situation be tolerated today in connection with the rights of suffrage, worship or speech?

Our befuddled society blithely continues to abide this bizarre jurisprudential predicament created by its Court. Americans in only *one* state have been enabled to exercise their natural right to request an honorable and, for them alone, legal but unfortunately limited medical service when needed to end intolerable and irremediable suffering and/or terminal agony in a humane and at least acceptably ethical manner; and physicians in that one state have been enabled to choose to perform the required service, albeit within unjustifiably limiting legal guidelines. Yet the same service, which would attain ethical perfection if the desired, absolutely certain end result were guaranteed by the best method (i.e., the quick, painless, humane and *certain* end when performed by the physician) is for Americans and their physicians now in the other 49 states the extreme opposite, punishable as “murder!” That's democracy?

The Supreme Court's incredible irrationality with regard to rights involved in medical issues is highlighted by the above and the following dilemmas fostered by its arbitrariness. On the one hand, the erstwhile “crime” of medical abortion has been precariously rehabilitated through the Court's recent and somewhat tentative

blanket enablement of the right of choice that directly concerns only one-half—the distaff *half*—of our entire population. On the other hand, the current “crime” that is the above described service for suffering and terminal patients, which directly concerns the *entire* populace, entails far fewer vexatious and enigmatic moral aspects than does medical abortion. Surely such a service is equally if not more worthy of at least the same blanket approbation by a now inexplicably evasive Supreme Court. That's democracy?

In their comments on the *Glucksberg* decision, four justices stated that the right of medical termination of pain and suffering probably would have to be “revisited” in the future; and, according to one of them, especially if it were a “particularized” case. The case of Thomas Youk, which ideally involved the ethically and medically correct performance of a physician instead of a concerned lay family member or friend, was appealed to the Court as that desired example.

This superbly “particularized” case was on all fours as to the elements the Supreme Court wanted in its adjudication regarding the constitutional rights involved—that of an afflicted, irrepressibly suffering patient to choose to request the aid of a physician to end the agony in a professional manner, and the right of a compassionate physician to choose to honor the request. The official legalization of this service will allow the physician to consult with colleagues and other professionals in order to judge the quality and justification of the request and to investigate the latter's family situation.

As is the case with all medical services, the legal repeal of these statutory bans will lead to the official formulation by competent and experienced *medical* personnel of a suggested procedural protocol⁵⁷. All of its detailed provisions will have to be satisfactorily fulfilled and the patient's medical status deemed worthy of the service. Only then will the procedure be carried out after much prior interaction among patient, doctors and family members, and at a time and place stipulated by the patient. Ideally it would be in his or her home or in a hospital, attended by kin, friends, and perhaps physicians or clergy, in an atmosphere of dignified albeit melancholy serenity. That would contrast sharply with the awful anxiety and terror that prevail today when agonizing circumstances compel desperate patients and uneasy doctors to risk legal reprisal by “conspiring to commit” the sham pseudo-crime craftily invented by our tyrannical Troika.

It is easy to overlook the subtle fact that laws banning iatric euthanasia and assisted suicide are worse than immoral. They are downright *illegal*. In denying and disparaging these fundamental unenumerated rights, such laws clearly represent a deliberate violation of Amendment IX which specifically forbids that kind of defamatory construing. This insolent infringement of the highest law of the land obviously constitutes a high crime that must be eliminated immediately by legal abrogation of the sham “laws” which spawned it. In a just, open, and truly civilized society its perpetrators would be harshly punished—a vain thought in our thoroughly corrupt, secretly oppressed society.

All of the above choices are guaranteed by the easily understandable plain and simple English in Amendment IX that proclaims our untouchable natural endowment of personal freedom. None of the choices embodied in the Ninth involves any threat or harm to anyone or any property that would characterize a true crime (just as there can be no true crime when surgeons “commit” horrific mayhem on patients who voluntarily consent to necessary radical surgery).

The cowardly Supreme Court's refusal to accept the “particularized” case was sorely dismaying, but not at all surprising in view of the Court's often bleak history with regard to our natural rights.

Without a doubt the Court's insouciance and trepidation are welcomed and encouraged by extremely powerful lobbies representing antagonistic and self-serving financial, medical, pharmaceutical, governmental, and religious organizations. Despite the enormous pressure they and their economic and political clout can exert, a really dedicated, stalwart, and ethical Court would be doing its noble duty as the ultimate guardian of our innate natural rights by being perpetually and single-mindedly focused on the people's welfare and therefore constantly attuned to the evolution of mores—the fountainhead of so-called situational or casuistic ethics.

Awareness of the prevailing mood of the people is the essentially infallible guide to the circumvention of widespread public unrest that always presages the need for ethical reassessment and its mandated action.

This guide will inform the court when it should act on its own in behalf of all the people by resorting to the authority of Amendment IX to “reify” or proclaim into action the *preexistent* natural right(s) called for. The time to do that came long ago for medical abortion and euthanasia. It is here now for the unfettered exploitation of embryonic stem cell research.

“ — ”

Although we may never know with complete certainty the identity of the winner of this year's [2000] presidential election, the identity of the loser is perfectly clear; it is the nation's confidence in the judge as an impartial guardian of the rule of law.

—Justice John Paul Stevens, cit. by Whitman,⁵⁶ 56
(1920-)

We the people are the rightful masters of both Congress and the courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution.

—Abraham Lincoln, *ibid.*, 145
(1809-65)

You can do anything you want at the Supreme Court with five votes.

—Justice William J. Brennan, Jr., cit. by Garbus,²² 283
(1906-97)

The Supreme Court is not infallible because it is always correct; it is infallible only because it has the final word.

—Justice Robert H. Jackson, *ibid.*, 103
(1892-1954)

Freedom of the press is limited to those who own one.

—Abbott J. Leibling, cit. by Winokur,¹¹ 103
(1904-63)

Newspapers: truth itself becomes suspicious by being put into that polluted vehicle.

—Thomas Jefferson, cit. by Chernow,¹ 397
(1743-1826)

The man who never looks into a newspaper is better informed than he who reads them, inasmuch as he who knows nothing is nearer the truth than he whose mind is filled with falsehoods and error.

—Thomas Jefferson, cit. by Dershowitz⁵⁰

VII. Our Quintessential Cornucopia

Such is the enormous potential benefit inherent in that extraordinary amendment. Having been concerned by the absence of some foreseeable rights in the proposed ten amendments comprising the Bill of Rights, a few signers of the Constitution suggested, and James Madison insisted, that one of them be a sort of catch-all for future contingencies. That one became the Ninth. Fortunately its brevity is devoid of *any* stipulation that would necessitate the involvement of a potentially enfeebling extrinsic enabler such as a statute. **Amendment IX** states that:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

It is implied that the “others” are genuine natural rights independent of legislation, and that their retention remains unalterable, permanent, and quasi-instinctual until biological death. This makes possible the facile and immediate activation by an honest Supreme Court of many hitherto dormant natural rights if and when needed to empower the people with the means to resist and foil any and all Machiavellian designs of tyrants. The Court is justified in this unilateral action on the basis of authority of the highest law that is Amendment IX of the Constitution which essentially is the most fundamental extrinsic enabler. The latter can be considered a mundane cognate of the universal natural “law” that specifies and warrants the countless, biologically intrinsic natural

rights ensconced in and certified by Amendment IX. The existence of these basically abstract rights is always independent of any enumerative language, including the words comprising the amendment itself.

The ill-fated Ninth has been the tragic victim of planned neglect. Its continued obscurity almost certainly is not accidental. In over two centuries of its existence the Ninth has never been the basis of any Supreme Court ruling. Only rarely has it been cited in briefs and arguments; and it is not difficult to guess why so rarely. One prime reason was implied in the 18th century by the noted English historian, Edward Gibbon: “Corruption is the most infallible symptom of constitutional liberty.”²³ Today it is rampant at all levels of leadership and authority, a state of affairs that Jefferson long ago predicted.³ It is exemplified by the dread on the part of an inert Supreme Court of releasing an uncontrollable torrent of absolutely inviolable and peremptory natural rights for all the people.

Our artificial, indeed phony rights now (based on laws) are vulnerable to the manipulation of their statutory enablers by the debased and powerful organizations and industries mentioned earlier. Without compunction they subvert or negate the impact, range, or purpose of such “rights” in assuaging a wicked obsession to enhance their power and profit with little or no regard for the people’s welfare; and that chicanery in turn abets despots’ further enslavement of the people. Contrariwise the enabler of natural rights proclaimed through Amendment IX is intrinsic and therefore much less manipulable. So long as the Ninth remains unused, one can be sure that corruption and tyranny will flourish as liberty gradually vanishes.

“ — ”

A politician will do anything to keep his job, even become a patriot.

—William Randolph Hearst, cit. by Whitman,⁵⁶ 52
(1863-1951)

An honest politician is one who, when he is bought, will stay bought.

—Simon Cameron, cit. by Andrews,² 201
(1799-1889)

Elections: there’s small choice in rotten apples.

—Shakespeare, *ibid.*, 80
(1564-1616)

Few men have virtue to withstand the highest bidder.

—George Washington, cit. by Prochnow,⁴⁶ 446
(1732-99)

We cannot yield our constitutional destiny to the personal judgments of a few men [and now women] who, being fearful of the future would deny us of the necessary means of dealing with the present.

—Franklin Delano Roosevelt, cit. by Cook,⁵¹ 435
(1882-1945)

VIII. Tapping the Cornucopia

It defies logic and common sense to deny the existence of latent natural rights not enumerated in the Bill but that can be called into existence on the basis of the Ninth. In essence it alone renders all the Bill's other amendments superfluous. It eliminates the need to "cannibalize" some of them for use in the convoluted fabrication of other essentially unnecessary amendments (such as the Fourteenth) espousing ersatz statutory "rights" under the rubrics of equal protection and due process. The Ninth would also obviate the cause of heated controversies over abortion, drugs, and "gay" rights that often result in bloody violence. To demonstrate how all that can be achieved, I will now audaciously personify a Supreme Court and invoke the authority of Amendment IX to enumerate a few of its incorporated natural rights retained by me (and every other human being).

The first one listed below subsumes all the others which are mere corollaries, and its emphasized qualifying admonition also pertains to all of them. Therefore, I have a basic natural right:

- To do or not to do and to say or not to say anything, anywhere, to anybody, at any time, in any way, *so long as anyone else and/or his or her property are not verifiably threatened or harmed, and no personal obligation is imposed on anybody else without the latter's consent;*
- To choose with whom and/or what to associate and/or deal, and whom or what to shun;

- To refuse to cooperate with and/or participate in any coercive endeavor;
- To choose where, when, and how to live and to die;
- To express openly anywhere, at any time, in any way, and by any means one's opinion;
- To possess and/or carry anything on one's person;
- To create and/or destroy anything of one's own;
- To eschew public or religious education for one's children to be tutored privately;
- To operate any vehicle without using helmets or belts;
- To choose to indulge in mutually voluntary commercial or recreational coitus;
- To choose whom one will live with, love, and/or marry;
- To choose to do anything that may affect one's own body externally or internally, including the purchase of another's, or the sale of one's own, bodily organ(s) or part(s) thereof for medical purposes;
- To choose to read and/or write anything, for any purpose, and to create and/or see any visual presentation;
- To choose to legally procure and to display or to destroy on one's private property, or on property for use by the public, any symbols or flags of any group or nation;
- Etc.,
- Etc.,
- Etc.,

Now consider the implications of such unbridled autonomy under the emphasized conditions indicated above. Individuals privately *could possess for their own use* marijuana and other easily available drugs at a monetary cost and with the likelihood of mischievous or deleterious consequences and abuse comparable to those associated with the current free use of alcoholic and tobacco products. There would be much less crime to “feed” habits, fewer prisons, and of course countless lives and families kept intact. Resources of corrections and police departments and of medical facilities could be used for more important tasks. Above all, the people would enjoy an enormously expanded spectrum of inviolable rights in all spheres of life, *which is the hallmark of a truly enlightened democracy.*

“ — ”

Declaration . . . [stated] that fundamental rights are recognized rather than conferred.

—Universal Declaration of Human Rights (1948),
cit. by Glendon,⁵⁵ 176

The state cannot restrict activity that affects no other than two consenting adults.

—Justice Thurgood Marshall, cit. by Garbus,²² 112
(1908-93)

The more prohibitions you have, the less virtuous people will be Try to make people moral, and you lay the groundwork for vice.

—Lao Tsu (6th cent. B.C.), cit. by Ruwart,²⁹ 222

The savior who wants to turn men into angels is as much a hater of human nature as the totalitarian despot who wants to turn them into puppets.

—Eric Hoffer, cit. by Apple,⁴⁹ 174
(1902-83)

The infliction of cruelty with a good conscience is a delight to moralists.

—Bertrand Russell, cit. by Andrews,² 59
(1872-1970)

IX. Natural Rights, Law and Crime

In many dictionaries crime is incorrectly defined as unlawful activity. In the first place, the fundamental essence of a true crime is absolutely unalterable: once a crime, always a crime, under any conditions and regardless of any laws. Yet, throughout history certain acts have been made criminal by laws, only later to be reinstated as legitimate through abrogation of those laws. A prime example was the historic religious insanity of prohibition almost a century ago.

The essence of criminality is not at all arbitrary. The legislative trick of designating what in reality are pseudo-crimes is a subtle way secular and sacerdotal despots cleverly subvert a people's self-determination in order to habituate them to serenely acquiesce to the imposed legislated morality that would nullify many of our secular choices. Already such inroads have narrowed the breach between the church and our state to magnify the chilling specter of looming ironclad Christian theocracy. Such unreasonable, *licit* infringement of autonomy has the veneer of authenticity through the people's willing but *fearful* compliance guaranteed by the so-called laws' threat of and/or enforced physical arrest and/or harsh punishment.

Such arbitrarily whimsical legislation of pseudo-crimes is the time-tested *sine qua non* for all tyrannical regimes. It is why decades ago in Nazi Germany, where population growth was a top priority for the maintenance of its armed forces, at least one doctor was executed for having committed the contrived *capital* pseudo-crime

of medical abortion! Fanatically anti-abortion, so-called Christians today should praise the memory of a fellow Catholic with an appreciative straight-armed salute and a resounding "*Heil Hitler!*" for his *ne plus ultra* "pro-life" law.

A *genuine crime* can be defined as menacing action and/or speech that accosts and/or physically or psychologically impacts, without consent, one or more persons and/or their property, thereby inflicting on them and/or their property measurable and verifiable harm. No law need be involved. All that is needed for true justice is the steadily objective and focused evaluation by unimpeachably rational judges (which of course is the problem in the United States) of the circumstances involved in any instance of alleged harm.

Imagine what the fair and consistent application of the above definition of a true crime might have achieved in the recent past: women suffragists never would have existed, let alone been jailed; Rosa Parks would have sat in a bus comfortably unnoticed and without ado; Martin Luther King, Jr., would be alive, an ordinary minister delivering his moving sermons; the persecuted and jailed birth control pioneer, Margaret Sanger, today would have been just another unknown public health nurse in New York; Joseph McCarthy likewise just an old unimportant and forgotten senator; and many individuals in the 1920s who chose to "traffic" in alcoholic beverages, as well as those in the 1930s who chose to "traffic" in gold bullion and certain coins, either would not have died violently or not have suffered humiliating incarceration in federal prisons.

“ — ”

The strongest bulwark of authority is uniformity; the least divergence from it is the greatest crime.

—Emma Goldman, cit. by Andrews,² 51
(1869-1940)

The more corrupt the state, the more laws.

—Tacitus, cit. by Henry,⁵⁴ 49
(c.55-c.117)

The state calls its own violence law, but that of the individual crime.

—Max Stiner, cit. by Bufe,³ 25
(1806-56)

Whosoever undertakes to artificially restrict the natural fertility of the German people to the injury of the nation, or . . . furthers such attempts . . . shall be punished for racial treason.

—Addendum to Nazi Criminal Code, *ibid.*, 130
(1930)

Your body belongs to your country.

—First of Ten Commandments, Hitler Youth, *ibid.*, 16
(1930)

X. Is Absolute Autonomy Workable?

Only the full exploitation of the Ninth's bounty can assure absolute autonomy and unrestricted self-determination for every individual. It will frustrate or prevent government's attempt to control a citizen's life and body; will mollify intermittent fits of vindictive jurisprudence and immoral prosecution and detention (e.g., McCarthyism); will reduce or eliminate the need for future constitutional amendments; and will quell the spate of impulsive, ill-advised, foolish, and harmful legislation (e.g., the Sedition, Volstead, and Patriot Acts).

Does this all sound too idealistic and impractical, too utopian? It may seem to be for those accustomed to a lifelong barrage of saccharine propaganda concerning what in reality are our fake rights. The essayist and poet, Ralph Waldo Emerson, expressed it more pointedly: "Nothing is more disgusting than the crowing about liberty by slaves, *as most men are*, and the flippant mistaking for freedom of some paper preamble like the Declaration of Independence, or the *statute right* to vote, by those who never dared to think or act"²⁴ (emphasis added). That is why a sudden exposure like this to the real thing might be unsettling, to say the least; but the few who dare to think and the even fewer who dare to act realize that, once acquired, this ultimate degree of personal freedom will more than compensate for the meretricious trappings of our current cryptic bondage.

Still, some may argue, one shouldn't forget the onus of human nature with its penchant for corrupting. After

all, the practical value of any right, natural or quasi, depends upon the integrity of the persons who exercise it and of those entrusted to monitor the quality of the exercising. That's the nub of the problem. Americans are known to be headstrong, greedy materialists somewhat refractory to self-discipline. They fail to realize that, as mentioned earlier, there are no "rights" to a job or decent wage, to personal health care, to adequate housing, or to anything that entails a casual or coerced obligation or demand on somebody else *without the latter's freely given consent*. Such "rights" are merely artificial contingencies in the form of benevolent or altruistic reciprocity granted, either voluntarily or coerced, by private individuals, charitable organizations, or specified governmental agencies.

This adverse situation is an inevitable result of an innate, apparently ineradicable negative imbalance in human nature that favors venality over virtue, and that compels the preferred choice of a personally least disagreeable or difficult solution to any problem, no matter how harmful it may be in the long run. That preferred choice may be a reflection of our inadvertent misinterpretation of the real meaning of the right "to pursue happiness." Jefferson discovered that phrase, which he inserted into the Declaration of Independence, in a book published in 1751.⁵³ Its author concluded that there may be a primary law of nature stipulating that each of us pursuing personal happiness be *equally* concerned with the happiness of all; and that such a utilitarian principle may be rejected if it is inconsistent with human nature. Considering that to be the case,

Jefferson chose to transpose the principle to apply to the right of the individual to pursue only his or her happiness.

A seriously flawed human nature seems to engender undesirable American traits that foster an ever increasing number of "easy solutions" which eventually coalesce into expected and demanded pseudo-rights mentioned above, exercise of which usually infringes the natural rights of others. These so-called rights tend to be espoused and ostensibly legitimized by self-serving tyrants' ukases and laws specifically designed to discourage their justified violation. As stated earlier such artfully delineated pseudo-crimes are indispensable for the establishment and perpetuation of all oppressive regimes and their imbruted tyrants for whom a subjugated people's absolute personal self-determination is absolute anathema.

There is little doubt that a hopelessly defective human nature will foster abuse of many of the listed unenumerated natural rights, even to the extent of qualifying as true crimes that merit just punishment. Nevertheless, awareness of that incorrigible flaw should not diminish one's confidence in controlling the expected abuse through diligent enforcement of the strict conditions stipulated above in connection with the prime natural right. Those conditions warn unmistakably that, as Oliver Wendell Holmes succinctly pointed out, any abuser who ignores common decency and misapprehends uninhibited freedom for wanton license and shouts "fire" in a crowded assembly hall will be prosecuted and punished.

“ — ”

As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence.

—James Madison, cit. by Glendon,⁵⁵ 112

It is easier to denature plutonium than to denature the evil spirit of man.

—Albert Einstein, cit. by Andrews,² 126
(1879-1955)

What men value in this world is not rights, but privileges.

—Henry L. Mencken, *ibid.*, 211
(1880-1956)

Whenever a man has cast a longing eye on offices, a rottenness begins in his conduct.

—Thomas Jefferson, cit. by Bufe,³ 7
(1723-1826)

The liberty of the individual must thus far be limited: he must not make himself a nuisance to other people.

—John Stuart Mill, *ibid.*, 42
(1806-73)

XI. Madison's Mockers

One thing is sure. The promising Ninth has languished far too long “on the books,” demeaned, ignored, and forgotten. Perhaps it was a colossal mistake, because in all that time it has not yielded a single certified unenumerated right. Although there has never been a definitive court ruling based solely on the Ninth, in the case of *Griswold v. Connecticut* (1964) at least three justices agreed that the unenumerated right of privacy is indeed found in Amendment IX.²⁵ Eleanor Roosevelt also knew that there are other such rights when in 1948 she implicitly paraphrased that amendment: “Certain rights can *never* be granted to the government, *but must be kept in the hands of the people*”²⁶ (emphasis added).

Even if Amendment IX were rescinded (which is quite probable in this looming theocracy), it should not be forgotten that We the People will always retain all those precious natural rights that cannot be disparaged or denied—or rescinded. They are eternally invincible. Tyrants can only expunge the words attesting to the existence of natural rights; but, as mentioned earlier that does not expunge the rights.

If our responsible authorities are so convinced that no such rights exist, despite the fact that Jefferson and Madison believed that some natural rights had not yet been translated into the laws of England and the colonies,²⁷ and the fact that a couple of subsequent centuries would seem to have been enough time to find out, then why do they slyly let that essentially dead

post-colonial addendum continue to needlessly clutter their hallowed Bill? Is it merely to keep the public fooled while they comfortably continue their despicable corrupting? They should at least try to be a little more honest with the Constitution and themselves by frankly admitting what their damning inaction already implies: that Madison was wrong. In that case they are obligated to do what obviously is correct and honorable. They should eliminate without delay a lingering constitutional defect by rescinding Amendment IX that apparently has always been derisively judged by the Supreme Court to have been a cruel hoax born of Madison's folly.

“ — ”

If a majority be united by a common interest, the rights of the minority will be insecure. The tyranny of the majority requires safeguards to protect one part of the society against injustice of the other part.

—James Madison, cit. by Garbus,²² 217
(1751-1836)

Madison feared we would have religious-dominated parties.

—ibid., 261

All Catholics should do all in their power to cause the constitutions of states and legislation to be modeled on the principles of the true church.

—Pope Leo XIII, (in *Immortale Dei*), cit. by Bufe,³ 7
(1878-1903)

Civilization will not attain to its perfection until the last stone from the last church falls on the last priest.

—Emile Zola, ibid., 157
(1840-1902)

XII. Theocratic Plutocracy to Cacocracy

Today it is easy to grasp why Amendment IX is so important. We are dangerously close to, if not already beyond, the point of no return in the accelerating spiritual and moral disintegration of a once promising secular republic. Jefferson's somber predictions were cannily accurate.³ Our leaders *are* corrupt and *have* forgotten about the people whom they no longer need. And in their frantic pursuit of money the people themselves have forgotten about vigilance over their own rights and the excesses of their diabolical leaders whom they blindly obey while sinking deeper into thralldom. According to the late South African political activist Steve Biko: "The most important weapon in the hands of the oppressor is the mind of the oppressed."²⁸

The putridity of our current government is manifested by whom and what our leaders imitate in their quest for absolute domination. Consider what comes to mind when reading this warning by Julius Caesar twenty centuries ago: "Beware the leader who bangs the drums of war in order to whip the citizenry into patriotic fervor, for patriotism is indeed a double-edged sword. It emboldens the blood just as it narrows the mind."²⁹ Does that remind you of somebody? Now consider this advice from the notorious number two Nazi over a half century ago: "Voice or no voice, the people can always be brought to the bidding of the leaders. All you have to do is to tell them they are being attacked, and denounce the pacifists for lack of patriotism and exposing the country to danger."³⁰ Sound familiar?

Guess who took the Nazi's advice. With regard to the flag-waving kind of patriotism such leaders need and want, Voltaire's opinion will do: "It is lamentable that to be a good patriot one must become the enemy of the rest of mankind."³¹

The encroachment of totalitarianism in America is now rampant and apparently unstoppable. It is difficult not to doubt that the shock known as 9/11 was the long awaited, convenient stalking horse needed to cover its full-scale implementation and acceleration. The signs are legion:

(1) We have a very common man called president, originally appointed by derelict courts on the basis of a bogus electoral system, who now claims to have a people's mandate that all dictators covet. Doubtlessly he will use it soon to effect radical constitutional changes in line with his illusory mission to serve the designs of some kind of god. To achieve this he will "pack" the Supreme Court with sympathetic ideologues who will subvert the Constitution's lawmaking mechanism with court opinions which will have the force of formal amendments.³² Like all tyrants he curries favor and support by lavishing the epithet "hero" on warriors or civilians merely doing their jobs, oblivious of the fact that "hero-worship is strongest where there is least regard for human freedom."³³

(2) He and his administration have a pathological obsession with secrecy that is the essence of several cabalistic societies of which they are loyal members. They often brazenly break laws and rules in doggedly

trying to hide vital information from public scrutiny. Apparently they are unaware or contemptuous of political philosopher Jeremy Bentham's sage warning: "Secrecy, being an instrument of conspiracy, ought never to be the system of a regular government."³⁴

(3) Both of our major political parties, today only ostensibly and spuriously adversarial, have proved that in the 17th century Lord Halifax was right when he charged: "The best political party is but a conspiracy against the rest of the nation."³⁵ Indeed, Jefferson feared a possible "elective despotism" of rule by people's representatives alone that could be as oppressive as the tyranny of a dictator.²⁷ This is especially dangerous if the parties comprising the House and Senate are aligned with religious organizations. Madison too was aware of and dreaded this possibility, because prior to the revolution, churches did control politics.³⁶ What they feared has now become our reality of a Supreme Court and certainly one major political party (and probably its so-called opposition party also) in the firm grip of religious fanaticism that foreshadows an ugly replay of Tomaso Torquemada's notorious Spanish Inquisition.

Thus corrupted, our ethically lax Congress quickly and nonchalantly copied the Nazis' Enabling Act to unleash on the rest of the nation the dictatorial oppression of a so-called Patriot Act. The Nazi version soon led to an absolute autocracy which changed their democratic constitution and stripped the German states of power.³⁷ The same debacle is happening in our country, but as yet at a benumbingly slower pace.

(4) They tightened the shackles when that obsequious Congress produced the American version of Himmler's Gestapo under the inanely reassuring title of Homeland Security (a title also used by the Nazis). It wasn't long before a nationwide campaign was launched to spread fear of sabotage to further alarm an already anxious public. Puerile warnings were contrived and blazoned in the form of a rather absurd "chromatic terrorometer" dutifully ballyhooed by servile news media.

That ploy paved the way for the consolidation of an organized secret state police directed by a specially appointed "Gestapo" chief having the misleadingly euphemistic title of Director of National Intelligence. Despite his officially proclaimed mandate to safeguard citizens' civil rights (or what's left of them) in pursuing his organization's designated mission, even a fool can guess its real purpose. Make no mistake: that tightly coordinated network of more than a dozen separate and usually highly secret autonomous spying units comprising a secret state police force will help accelerate and probably complete the vanishment of our personal liberty.

(5) In the meantime the junta obsessed with secrecy unashamedly concocted lies in order to justify its merciless and extremely undemocratic (and illegal) "preemptive strike" against real people in a sovereign Near East country that did America no obvious harm, and against a bombastically declared worldwide "war" against an abstraction called terror—for which America is partly to blame. The evil junta callously ignored the

foreseeably horrendous cost in huge budget deficits, in the many thousands of lives of innocent adults and children, and in almost universal worldwide disrespect and dishonor. It has stigmatized the United States with the loathsome distinction of having become an almost global Public Enemy Number One!

(6) In the early 20th century the most powerful fascist dictatorships used their temporary military superiority in reckless and unprovoked aggression against many nations. They did so with contempt for and defiance of the League of Nations, international law, the World Court, and worldwide public opinion in a frenzy of coercive proselytism of their political philosophies and ways of life. The United States was the only power capable of stopping them, resulting in American domination of the world and the growing corruption that always accompanies absolute power.

Now it's America that scorns and defies the United Nations, international law, the International Court of Justice, and worldwide public opinion in reckless and unprovoked aggression in a monomaniacal "crusade" to proselytize its own political philosophy and, in the process, its way of life. There is no power on earth that can stop it, other than Americans themselves when they realize that *destructive and lethal violence . . . to force the liberty of the other person into wanting what I want him to want . . . is an impossible ideal*³⁸ (emphasis added).

(7) It will be very difficult to halt and reverse what the slick manipulation of all the above factors has

produced. Most worrisome is the cardinal characteristic of a developing fascist state: an American public purposely so terrified by its own leaders as to want anxiously to trade its residual freedom for the leaders' cheap promise of "rescue" from an artificial nightmare the leaders themselves created.

After he experienced exactly this condition in the modern, brutally totalitarian state of Nazi Germany, at the end of the Second World War the eminent psychiatrist and philosopher, Karl Jaspers, was convinced that it could never happen again. Postwar developments caused him to change his mind and conclude that it could and very well might happen again. Now the United States forebodes that it probably will—and most likely in spades!³⁹

“ — ”

Wise and good men are the strength of a state; much more so than riches or arms, which under the management of ignorance and wickedness often draw on destruction, instead of providing for the safety of the people.

—Benjamin Franklin, cit. by Prochnow,⁴⁶ 403
(1706-90)

[John] Adams' policy of stubborn faith in diplomacy . . . established the vital precedent that timely, well-executed diplomacy can forestall the need for military force.

—cit. by Chernow,¹ 630

I don't care to boss my neighbors and to require them to want something different from what they do—even when, as frequently, I think their wishes more or less suicidal.

—Oliver Wendell Holmes, cit. by Menand,⁴⁸ 94
(1809-94)

'My country right or wrong' is like saying, 'my mother drunk or sober.'

—G. K. Chesterton, cit. by Winokur,¹¹ 213
(1874-1936)

You're not to be so blind with patriotism that you can't face reality. Wrong is wrong, no matter who does it or says it.

—Malcolm X, cit. by Whitman,⁵⁶ 197
(1925-65)

Patriotism is the willingness to kill and be killed for trivial reasons.

—Bertrand Russell, *ibid.*, 237
(1872-1970)

The broad mass of a nation . . . will more easily fall victim to a big lie than to a small one.

—Adolf Hitler, *ibid.*, 89
(1889-1945)

I believe I am acting in accordance with the will of the Almighty Creator: by defending myself against the Jews I am fighting for the Lord.

—Adolf Hitler (in *Mein Kampf*), cit. by Bufe,³ 147

I believe I am acting in accordance with the will of the Almighty Creator: by defending myself against Moslem terrorists I am fighting for the Lord.

—George W. Bush, paraphrased—accurately
(1946-)

The man who says to men, "Believe as I do, or God will damn you," will presently say, "Believe as I do, or I shall kill you."

—Voltaire, cit. by Bufe,³ 156
(1694-1778)

XIII. Tocsin? Or Knell?

If our sputtering “noble” experiment in democracy is to survive as such in the 21st century, then it behooves every concerned American to bear in mind and heed the incisive words of Martin Luther King, Jr.: “Freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.”⁴⁰ That calls for a duped populace that really cares for liberty to shake off its lethargy and meld their determined voices in demanding unbridled access now to a natural endowment of unadulterated self-determination securely enshrined in the constitutional repository that is Amendment IX.

It may be impossible to galvanize those voices into a loud, cohesive, and effective force. But time is running out. Perhaps Jefferson’s own words will stress just how dire our immediate future may be:

“The spirit of the times may alter, will alter. Our rulers will become corrupt, our people careless. . . . From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They will be forgotten, therefore, and their rights disregarded. They will forget themselves in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war, will be heavier and heavier; till our rights shall revive or expire in a convulsion.”³
(emphasis added).

Who can doubt the astonishing accuracy of Jefferson’s vision? All of it has come to pass,—all, except the convulsion. And will that, too, soon become a nightmare?

“ — ”

WHEREAS it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

—Preamble, Universal Declaration of Human Rights (1948), cit. by Glendon,⁵⁵ 310

*Duas tantem res anxius optat, panem et circenses.
Two things only the people anxiously desire, bread and circus [Superbowl?] games.*

—Juvenal, cit. by Andrews,² 251
(?60-?140 A.D.)

Amusement is the happiness of those who cannot think.

—Alexander Pope, *ibid.*, 96
(1668-1744)

Let the people think they govern and they will be governed.

—William Penn, *ibid.*, 68
(1644-1718)

Democracy is when the indigent, and not the men of property, are the rulers.

—Aristotle, cit. by Whitman,⁵⁶ 185

Our democracy is but a name. We vote? What does that mean? It means that we choose between two bodies of real, though not avowed, autocrats, we choose between Tweedledum and Tweedledee.

—Helen Keller, *ibid.*, 173
(1880-1968)

Democracy substitutes election by the incompetent many for appointment by the corrupt few.

—George Bernard Shaw, cit. by Prochnow,⁴⁶ 121
(1856-1950)

XIV. Slim Odds

Perhaps there's a small chance of escaping such a catastrophe, but that will require *drastic* action, most likely in a milieu of violence. Even Jefferson himself acknowledged that “. . . a little rebellion now and then is a good thing. Liberty must occasionally be refreshed with blood of patriots and tyrants.”⁴¹ The candor of this statement, coupled with his calamitous assessment expressed above, starkly implies that Jefferson was convinced of the inevitability of yet another American revolutionary “war,” this time to liberate the people from intolerable *internecine* oppression. After all, he was aware of the “right of the People to alter *and abolish*” their government (emphasis added), which was openly acknowledged in his revolutionary time and specifically guaranteed in the Declaration of Independence.⁴²

Indeed, we may soon need another such declaration to unite all concerned, helplessly frustrated citizens into a movement strong enough to overpower the virulent despotism now wracking America. To comprehend why this may be impossible to accomplish, one need only review the relatively similar but far more oppressive circumstances experienced by various resistance groups in Nazi Germany that feared to organize and openly attempt to overthrow their tyrannizers: “Once terror, with all its brutality, had been incorporated in the law, both open and clandestine resistance jeopardized life and limb to such an extent that it took extraordinary courage to risk the consequences [such as the courage displayed by the openly resistant German students

of the ‘White Rose’ movement who were summarily executed] An incessant barrage of propaganda had blunted the consciences of many, and . . . the regime they opposed was created and supported by a sizable section of their own people. In addition, they had to face the strong belief from most of their countrymen that their actions constituted high-treason and disgraceful disloyalty toward their own nation in wartime.”⁴³ Similarities indeed!

Jasper’s conclusion was prophetic. The terror he dreaded over six decades ago with all its legalized brutality symbolized by the red, white, and black swastika seems to have been resurrected on a smaller but broadening scale symbolized this time by the red, white, and blue stars and stripes. Fortunately this renascent oppression in America at present is less solidly entrenched; and, in contrast to the much direr situation facing colonial America two hundred twenty-nine years ago, may be eliminated without resorting to another violently destructive “convulsion.” Surely it will require a freedom-loving American public less cowed and more united and willing to dare⁴⁴ than were the cowed, freedom-loving Germans who tragically lacked a palladium like our Amendment IX. Its seismic power will help us restore our struggling Republic’s tarnished glory.

“ — ”

Unchecked power in the hands of a small group of individuals would inevitably bring disaster, and popular rights and liberties would be sacrificed . . . Only the eternal vigilance of a virtuous people could prevent such an accumulation of power.

—Abigail Adams, cit. by Withey,⁴⁷ 47
(1744-1818)

A populace never rebels from passion for attack, but from impatience of suffering.

—Edmund Burke, cit. by Andrews,² 222
(1729-97)

If a man hasn't discovered something that he will die for, he isn't fit to live.

—Martin Luther King, Jr., *ibid.*, 167
(1929-68)

It is a fine thing to face machine guns for immortality and a medal, but isn't it a fine thing, too, to face calumny, injustice and loneliness for the truth which makes men free?

—Henry L. Mencken, cit. by Winokur,¹¹ 1-8
(1880-1956)

XV. Testing a People's Worthiness

Madison bequeathed to us the key to salvation and the reason to use it resolutely despite the dismal odds. The crucial questions are whether or not our Supreme Court is honest, competent, and dedicated enough to provide the requisite support and encouragement; and whether or not We the People have the strength of character, motivation, and courage to endure the sacrifices that will be extracted. Only such a people would be worthy of the absolutely free democratic Republic we've always envisioned with treacly lip service but which we've never had.

It is extremely doubtful that Jefferson's foreseen ominous and decisive upheaval can be delayed or prevented,—and it will not be pleasant. Nevertheless, a people considering itself to be virtuous would make a most herculean effort to try at least to staunch and then reverse America's decline, no matter how minuscule the prospect of success. Exploiting the awesome authority of Amendment IX, We the People can mount that effort and divert America's morally degraded course now headed toward degeneration, redirecting it instead toward the lofty goal of a truly civilized open society befitting a great nation,—one that guarantees absolute human freedom and universal social justice⁴⁵—unencumbered by any kind of secularly nonsensical religious morality.

We the People who care and dare must begin *now* to set the stage for the realization of America's reason for existence, before the magnitude of our enslavement renders such a goal hopelessly quixotic. That calls for

boldly preemptive action involving considerable risk. The most promising and honorable first step would be without significant risk: every concerned American should boycott every national and state election. The silent impact of such a non-violent, entirely passive gesture entails no real sacrifice, because it is obvious that there is no political entity that can, dares, or wants to challenge our current totalitarian regime. Our recent experience has demonstrated the ludicrous futility of hope for change through over-hyped, flawed and merely token elections. Nevertheless, the boycott would alarm our oppressors by serving notice that We the People are ready and determined to engage them in a battle for the life of our republic.

As a follow-up an even more promising and potent action would be the inaction of a passive “convulsion” in the form of well-coordinated, massive, nationwide, non-violent civil disobedience to fortify our demand that all our natural rights be proclaimed, untrammled and respected. In so doing, we must never forget that the nature of the regime we will thereby forcefully “petition” is fascist, but disarmingly subtle and no less determined, confident, and ruthless than others of that ilk.

Therefore, we must remain aware of the Waco atrocities and be prepared to endure the backlash of a violent “convulsion” fomented by the panicky troika’s inevitable reliance on illegal, secret, isolated detention and ultimately military force.

We the People will not be dishonored, even when condemned to abject despotic enslavement, if such a

sincere endeavor fails. On the other hand, we should always bear in mind that our success will pave the way to what is, and always was, America’s real *raison d’être*—to develop and nurture a paradigm of the aforementioned open society.

Empowered with the full scope of Amendment IX, we can fulfill the late President Eisenhower’s mandate quoted earlier by creating a model for an envisioned global alliance of many similar open societies.⁴⁵ The latter in turn would offer the only realistic hope for eliminating, or at least diminishing, the crushing worldwide scourges of hunger, poverty, illiteracy, religious and racial strife, overpopulation, environmental devastation, as well as old and new deadly pestilences.

Above all, that momentous American achievement would clearly signal to a weary world at least the beginning of its emergence from a persistent Dark Age now, unbelievably, almost two millennia old!

“ — ”

America is the only nation in history which, miraculously, has gone directly from barbarism to degeneration without the usual interlude of civilization.

—Georges Clemenceau, cit. by Andrews,² 10
(1841-1929)

Force is all-conquering, but its victories are short-lived.

—Abraham Lincoln, cit. by Henry,⁵⁴ 97
(1809-65)

We think our civilization near its meridian, but we are yet only at the cock-crowing and the morning star.

—Ralph Waldo Emerson, *ibid.*, 39
(1803-82)

Western civilization: it would be a good idea.

—Mohandas K. Gandhi, cit. by Winokur,¹¹ 283
(1869-1948)

There is nothing more exciting than building a new social order.

—Eleanor Roosevelt, cit. by Cook,⁵¹ 91
(1885-1975)

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Appendix A: The Bill Of Rights

Amendments 1-10 of the Constitution

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Appendix B: Letter to Supreme Court

The following suppliant letter to the Chief Justice of the United States Supreme Court on behalf of this precious unenumerated right was written by the author in his own hand, in the seventeenth month of his incarceration.

September 15, 2000

*Hon. William Hubbs Rehnquist
Chief Justice, Supreme Court of the United States
Washington D.C. 20543-0001*

Sir:

The issue of medical euthanasia, or physician aid in dying, is now of prime importance in the United States and several other countries. Clarification of its relation to rights and laws is urgently needed. Is the procedure to be governed by a capricious farrago of variegated state laws, or is it to be accorded the exalted status of a uniform, all-pervasive constitutional sanction?

A right is a mere abstraction which becomes concretely relevant and useful through the free choice to exercise it. To be sure, there is no constitutional right for euthanasia per se that in some way would obligate others. However, there is a constitutional right to choose to request such a medical service, and a constitutional right for physicians to choose to comply. One is always free to request anything

at any time, whether or not reasonable, and irrespective of hope or possibility of attainment. It is the actual or envisioned consequence of fulfillment of a request, such as the magnitude of benefit for the individual or for society, that should determine if the choice to request it is worthy of constitutional protection.

Medical art and science are entirely secular and serve a dual purpose: to lengthen life and to preserve or enhance its quality. Theoretically both aims are equally important, but arbitrary (and mainly sectarian) bias fostered an obsession to prolong life, no matter how inimical to its quality. The benefits of medicine permit its practitioners to perform acts that ordinarily are crimes. Thus we condone and even laud surgical mutilation and mayhem as well as the occasionally nearly lethal poisoning of chemotherapy. The resultant quality of life is always subordinate to the chief aim of prolonging it. Why shouldn't the ranking sometimes be reversed? Why should we not just as readily condone and laud the chief aim of expunging—humanely, quickly, and with certainty—an intolerably low quality of individual life through a medical act ordinarily deemed to be homicide?

The mere availability of the euthanasia option often improves the quality of, and even prolongs, the life of many terminal or incurably suffering patients. Having such a choice seems to dissipate the panic of helplessness by assuring a modicum of personal control. Consequently, the vast majority of patients go on to die “naturally” and with few complaints despite continued excruciating suffering. This greatly eases the burden of families and caretakers. My own extensive experience and that of physicians in The

Netherlands, Australia (where a corroborative study is planned), and Oregon confirm this finding. Furthermore, there is no doubt that unfettered access to this option coupled with unencumbered medical consultation will dramatically improve the quality of life and drastically reduce the appalling suicide rate among the lonely, isolated elderly.

That medical euthanasia is a just and honorable procedure becomes obvious from its comparison with the justifiable homicide of judicial execution by lethal injection. The first major difference is in the intent. A physician's only aim is to end the subject's suffering (positive result), which unfortunately entails death (negative result), balancing out to neutral at best. The executioner's only aim is the subject's death (totally negative) in behalf of society's additional aims of inflicting punishment, extracting retribution, or coercing penitence, all of which is totally nullified by the death (negative); and the executioner's role in wreaking society's vengeance makes the balance here abysmally negative.

From a somewhat philosophical standpoint the differences are even more convincing. On the one hand is the executioner, an executant agent for a man-made abstraction called the State, who is authorized by a man-made abstraction called the Constitution and, oblivious of the lack of consent, ends with a lethal injection the life of a healthy individual pleading vainly not to die, but irrevocably doomed by fallible human authorities enforcing their fallible abstractions called Laws. On the other hand is the physician, an executant agent for a superior and omnipotent abstraction called "physis" or nature, who is

authorized by an inscrutably natural abstraction called transcendental "categorically imperative" morality, and who, with fully informed consent, ends with a lethal injection the life of an irremediably agonized individual sincerely pleading for death foreordained by infallible nature through its infallible laws. The State's agent is respected, legally franchised and well paid. Nature's agent is persecuted, manacled, and imprisoned. Isn't something terribly wrong here?

Medical euthanasia was honorable and widely practiced in ancient Hippocratic Greece, but later criminalized by the church. The Renaissance philosopher-scientist, Francis Bacon, advocated that "the medical profession should be permitted to ease and quicken death where the end would be otherwise only delayed for a few days and at the cost of great pain." In 17th century England, Sir Edward Coke, a distinguished lawyer and judge, dismissed charges against a physician who openly performed euthanasia. It was Coke's dictum that "how long so ever it hath continued, if it be against reason, it is of no force in law." Accordingly, the long continued criminalization of euthanasia is of no force because it is flagrantly against reason.

Almost two centuries later Thomas Jefferson advocated the use of a drug to end the terminal suffering from "the inveterate cancer." In 1910, Mark Twain asked his physician to end his suffering from heart disease. Dr. Sigmund Freud's terminal agony, and also in 1936 that of England's King George V, ended with injections by their personal physicians, both vociferous advocates of the practice. The late distinguished American physician and

author, Dr. Walter Alvarez, several decades ago published his strong endorsement of medical euthanasia. Today more than half of all American physicians and an overwhelming majority of the public favor decriminalization of the practice, and a significant number of physicians admit to performing it furtively. The State of Oregon has permitted a limited form of aid in dying through ill-advised, overly restrictive legislation. It appears that the State of Maine may soon do the same. These state laws prohibit the most humane and preferable method of lethal injection.

The Constitutional Court in the predominantly Catholic nation, Colombia, in 1997 declared simply and correctly that access to medical euthanasia is a right of the people. The Netherlands now is in the process of formally decriminalizing it after two or more decades of having permitted the practice within carefully set guidelines. It is also allowed in Switzerland, Germany, and Uruguay, and may soon be legalized in Catholic Belgium and France, and in Japan. One must wonder why the English-speaking countries lag in this humanitarian trend.

All physicians will not want or, by temperament, be able to perform euthanasia. For them and for patients alike it's a matter of free choice based on personal belief, faith, or philosophy of life. The service should be a kind of medical specialty staffed by experienced and competent practitioners to whom reticent colleagues may refer inquiries. Because medical guidelines change frequently as a result of research and clinical experience, such procedural details cannot be dictated by law.

The Colombian High Court's action is exemplary. For the sake of unnecessarily suffering humanity I respectfully

implore your High Court to exercise its prerogative under the supreme authority of the Ninth Amendment by validating as constitutionally protected the choice of suffering patients to request medical euthanasia and the choice of physicians to assess all aspects of that request and to honor it according to stringent guidelines. This right is as fundamental as that of life or liberty, and is certainly worthy of being the first right officially empowered through the Ninth Amendment. Concurrently, it is essential that a commission of highly respected physicians be impaneled to establish the guidelines

As a secular profession, medicine is relevant to the full spectrum of human existence from conception through death. Any arbitrary legal constriction of that relevance is irrational, cruel, and barbaric. As guardians of human rights, you and your colleagues have the authority, opportunity, and obligation to rid society of this lingering medieval malady by using the Ninth Amendment to guarantee this most precious and humane right of choice for all Americans.

Sincerely and respectfully,

*Jack Kevoorkian, M.D.
Inmate No. 284797*

There was no reply.

Amendment IX:

**The enumeration in the Constitution, of
certain rights, shall not be construed to deny or
disparage others retained by the people.**

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