Finally, with or without IRB consideration, citizens have legal recourse for injuries they sustain, HHS may deny future funds to unethical investigators, professional organizations are becoming more involved in defining ethical standards, and tough regulations may be reinstituted if needed. Social researchers have not been cut loose from the many remaining sources of social control.

The system of *prior review* for questionnaires that Mr. Veatch advocates is, in fact, more stringent than the regulation of automobile drivers and in some states more stringent than regulations governing the purchase and use of firearms.

Veatch goes on, "One of the great benefits of the emerging HHS regulations over the past fifteen years has been a gradual restoration of confidence in the research enterprise." If he refers to some form of lay opinion on a national level, he is in error. Public confidence has not been altered by HHS regulations. Finally, he writes, "If researchers are only shrewd enough to conduct research [such as the Tuskegee syphilis and Willowbrook hepatitis studies] without using HHS funds, their experiments will escape the body of regulation that has improved the moral and scientific climate of research using human subjects." "Shrewd enough," Mr. Veatch? Really, you go too far.

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Robert Veatch replies:

Dr. Seiler seems to be confused by my analysis of the new regulations. He accuses me of failing to consider the wide range of governmental, professional, and institutional forces available to protect subjects of social science research. That was my point when I argued that the withdrawal of DHHS from the regulation of certain classes of research "will mean a new sense of responsibility for other groups, individuals, and government bodies." Furthermore, I argue that researchers will have to rely, as they have in the past, on their own moral integrity. I am puzzled why Dr. Seiler sees any of this as "inventing facts" or being insulting to researchers. He shows not a single instance of either.

If we have any disagreement at all, it would be over whether rational people who are potential subjects for research would consent to participate in such research unless they had some assurance that their rights and welfare were going to be protected. I maintain that they would not and that the local IRB review of research, including social science research, has in the past provided some degree of such assurance. I have never suggested that researchers in any but the rarest and most extreme case would maliciously harm a subject or violate rights. The real problem is that individual researchers, though nobly motivated and dedicated, may unknowingly harm some subjects or violate their rights. In all the IRBs on which I have served over the years, I have never participated in a vote that blocked a piece of survey research. I have on many occasions, however, seen researchers decide to modify their procedures as a result of the collegial discussion with the IRB and, on one occasion, I saw a researcher withdraw his research after IRB approval on the grounds that he could not cope adequately with the ethical questions raised by the IRB.

If a researcher is hostile enough to the spirit of cooperation among colleagues and between investigators and subjects, he can find legal strategies to accomplish his objectives. As a sometime survey researcher, I fear that that attitude will hurt not only subjects but, in the long run, the research enterprise itself.

No one has ever suggested, prior to Dr. Seiler's letter, that publication of a volume by a university press is sufficient institutional involvement to trigger IRB review. Data analysis using university facilities or any comparable institutional involvement, however, I would continue to maintain should be reviewed—for the sake of the subjects, the institution, and the research enterprise.

On "Morality and Sex Change"

The recent symposium on "Morality and Sex Change" (*Hastings Center Report*, August 1981, pp.8-13) is interesting and informative but it strikes me as "skewed," to borrow a word from one of its contributors. The authors are ostensibly dealing with the question of the *morality* (moral rightness, goodness, wrongness, or badness) of a hypothetical sex-change operation, not just its *legality*, but it is not clear that they are actually doing this. Each one writes from the point of view of an established tradition, which he is asked to interpret and apply to the case. For Baruch Brody this is the Jewish, for Richard McCormick the Catholic, for David Smith the (or a) Protestant, and for Stephen Toulmin the common law, tradition. Not one of them is giving his own answer to the question. Nor is it clear that they are giving *moral* answers. Common law is, after all, common *law*, and a judgment in its terms is a legal, and not a moral one. It is true, as Toulmin says, that such law normally has "shared moral insights" behind it but this is not essential to its being common law; all that is essential is that customs be recognized by the courts, and customs are not necessarily moral (even when they are not immoral). Etiquette is also custom. As for Brody, he says, "I will draw upon *halachic* (legal) principles, "i.e., on a kind of Jewish *law* that cannot simply be assumed to be moral and is in fact, at least in part, religious or ethnic rather than moral. For all we are told here, the casuistic traditions used by McCormick and Smith may also be religious rather than moral. Religious principles and traditions are not necessarily moral, for example, the command to respect the seventh day or the traditions of "ceremonial" law.

In short, none of the authors is clearly doing what one must do to answer a *moral* question *directly*. Each is telling us how a certain tradition would answer a particular question, where the tradition may or may not be acceptable to him and may not even be a moral one. Doing this is all right if everyone—and especially the reader—is clear about what is being done and why. In my opinion, however, not enough was done to clarify the purpose of the symposium. The unwary reader is likely to think that the way to answer a moral question about a particular case is simply to apply some tradition of the sorts used here.

If one means to answer a moral question, that is to come to a first-hand moral judgment about a proposed action, then one must take a (or the) *moral* point of view *oneself* (either by genuinely and reflectively subscribing to a moral tradition, or by more autonomous means), look carefully at the relevant facts, think clearly, and so on. One may, even on reflection, appeal to some authority, but then one should still be clear that one is seeking advice on *moral*, not legal or religious, matters. For example, it is not clear to me that advice based on the first five of the Ten Commandments is moral; the reasons attached to them are mostly appeals to self-interest. At any rate, those of the Second Table, where no reasons are attached, are more clearly moral, as has often been recognized by theologians. Yet, if they are interpreted as theological voluntarists interpret them, that is as "positive" commands on a par with the fourth, then it is not obvious that even they are moral, unless one assumes that God is taking the moral point of view in promulgating them.

There is a great deal of discussion about "casuistic" questions these days, and a great difference of opinion about how to handle them. I think this symposium is helpful, but I also believe the approach cannot be finally satisfactory. All of the contributors recognize this, I know, and were working under the constraints of their assignment. Still, my criticism holds. While I am not entirely happy about the shift from "abstract and general principles" to "case ethics" that Toulmin discusses in his introduction, I am for discussing cases too. But discussing cases is not just a matter of applying a tradition, and one cannot arrive at moral judgments about cases by applying traditions that are not clearly moral.

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Editor's note:

In further correspondence arising from the article "Marriage, Morality, and Sex-Change Surgery," Michael Schwartz of the Catholic League for Religious and Civil Rights and James Carmody return to the case of Mother Seton. In their view, Stephen Toulmin's reply ("Correspondence," *Hastings Center Report*, December 1981, p. 44) to previous objections against his undocumented reference to her in his original article is insufficient, and only makes matters worse, adding a "further slur" where "a gracious apology" was in order.

The editors wish to express their regret and to state that they have no reason to doubt the dates of Mother Seton's husband's death (1803) and her conversion to Catholicism (1805) as given in standard reference books.

Stephen Toulmin adds that he also regrets that the reference to Mother Seton and the subsequent controversy "have distracted attention from the primary issue—the merits of the historical traditions of case-by-case analysis in ethics, to which Catholic moral theologians from Aquinas on have in the past made such notable contributions."