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Preface

This volume remains a substantially condensed revision of my earlier book *Who Lives, Who Dies, Who Decides?* The initial volume aimed to provide substantial detail on the historical events defining our struggle to come to terms with deeply important moral issues. This volume sharpens the focus to better identify underlying common themes, and to make the material more useful and accessible to those who would address these issues within a broader context.

Eugenics, abortion, neonatal care, assisted dying, lynching, and capital punishment involve quite distinct questions. The objective here is to identify the common threads that bind these issues of life and death together. We find these threads in the question: How do we justify, through our laws, religions, and customs, our violation of deeply important, perhaps universal, moral imperatives, all the while holding tightly to their importance? The answer we find is that we define life’s protective boundaries through an assessment of social worth and we set priorities as we balance competing demands of moral imperatives. We will find evidence for these conclusions throughout the following chapters.

In the process, we will also come across several more general lessons. These are presented in brief detail in the Epilogue. The assessment of social worth flows throughout. We find it in the logic of legal decisions as well as in the emotional empathy generated by rhetoric, visual images, and heart-wrenching stories. Through the power of empathy and constructed logic, we come to believe that chosen pathways are more or less infused with morality or injustice. The inherent dilemmas produced by the imperatives involved pull us first this way, then that. In the end we are left with cyclical change, each side believing deeply in the rightness of positions taken.

Three events, worthy of note, have taken place since the initial volume appeared. The first is a dramatic increase in legislation aimed at curbing the availability and use of
abortion. Between 2011 and 2013 more restrictions on abortion were enacted (205) across the U.S. than in the entire previous decade (189). These restrictions are being appealed and protested, providing excellent illustration yet again of what we have labeled Lesson Six in the final chapter: In many circumstances, unavoidable dilemmas, infused with uncertainty, emerge. The resolution of such dilemmas always leaves, by definition, residual tension. In such circumstances, when one argument prevails, the contrary position is likely to respond. Tension will always remain and cyclical change ensues.

The second set of recent events worthy of note underscores the importance of both logic and empathy when drawing the uncertain boundaries of life worthy of protection. In December 2013 a 13-year-old girl, Jahi McMath, was declared dead following a seemingly simple operation gone tragically wrong. The criteria used to determine her death were widely accepted, grounded in thorough development and discussion between the late 1960s and the early 1980s. The result being:

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

Everyone agreed. Jahi McMath’s brain revealed absolutely no activity. In this sense death had occurred. The problem was that a ventilator and drugs were maintaining her breathing lungs and beating heart. Seeing these indicators of life, Jahi’s parents, dealing with their grief over the tragic and unexpected loss of their young daughter, found it hard to let go. Jahi’s mother noted simply, “I would probably need for my child’s heart to stop to show me that she was dead. Her heart is still beating, so there’s still life there.” For their part, the attending physicians were uncomfortable maintaining a beating heart and breathing lungs in a dead person’s body. When establishing the boundaries of protected life and the
meaning of futility, the power of empathy and promise of hope sometime collide with logic and science.

The final set of recent events calling for note in this updated volume center on the uncertainties of removing the protective boundaries of life when we decide to execute someone. Even in states and regions of the U.S. where capital punishment is most frequently carried out, there is reluctance to kill persons who might not be accountable for their actions. We treat young persons different than adults, even when they perform very similar acts. Likewise, if a person has substantial intellectual disabilities, having the body of an adult but the mind of a child, adjustments in punishments are made. The question is: Where do we draw the line? In 2014, these issues came before the Supreme Court in a case, *Hall v. Florida*.

Freddie Lee Hall had been on death row just short of 36 years, awaiting execution for killing a young woman who was pregnant at the time. During his three-and-a-half decade stay on death row, the Supreme Court had held that it was unconstitutional to execute a person judged to be mentally retarded. The Court had left it to the States to determine what level should be used to determine retardation, or what came to be labeled substantial intellectual disability. In Florida the line was drawn at the score of 70 on the Wechsler IQ test. Freddie Lee Hall’s test scores indicated he was at or just above this point. He could be executed. Problem was, the Wechsler IQ test, like all tests, was subject to variation from one administration to the next, yielding what is referred to as standard error of measurement (SEM). No allowance was made for the SEM in Florida.

In May 2014, the Supreme Court held that this lack of attention to SEM made the Florida law unconstitutional. Freddie Lee Hall’s 36-year stay on death row would be extended further while this flaw was fixed. At this same time, nationwide concern over the use of capital punishment continued to gain momentum over the now widely acknowledged finding that we were deciding to kill innocent persons. Additional, largely
unrelated questions also arose over the use and supply of drugs for lethal injections and the occurrence of botched executions.

While support for capital punishment continued at around 60%, in 2014 this was the lowest point it had been in decades, and there was a noticeable trend among States to repeal capital punishment statutes. As this volume goes to press, the debate continues, as some advocates assert the justification of taking life for deeds done while others press for abolishment of what is by many standards a messy and meaningless system.