

cance of the Willowbrook experiments, the medical benefits to mankind which could reasonably be expected to come from them, does nothing to justify them so long as the "dignity" of the experimental subject is not somehow respected.

Let us pass on, then, to consider the next to the last item in the Willowbrook justification: The mildness of the disease.

Would it not be an insane moral logic in which the fact that an evil is "mild" would count as *justifying* the infliction of it? To harm another human being is wrong unless there is a morally acceptable reason for doing so and the fact that the harm is "mild" cannot qualify as such a reason. Imagine a man hauled into court on a battery charge who presents as his only defense the fact that the lump that he produced on his victim's face was "small" or that the abrasions and contusions resulting from his attack were "mild." Would he be acquitted or sent for psychological examination?

It would seem then that, as suggested earlier, we must understand the fact of mildness to be connected in the minds of the experimenters with the principle of "no discernible risk" if its relevance to the justification of the experiments is to be intelligible. On this reading, since the disease was mild, there was "no discernible risk" to the children and hence the infliction of the disease as an experiment was justified.

But what does "risk" mean? Certainly, there was a very high risk that the children would contract hepatitis! This by itself would seem to exclude the experiments from the class of those involving no discernible risk.

But even if we are extremely generous and understand by *risk* "risk of death or permanent injury to health," it would still seem necessary to condemn the experiments. It is pointed out, for example, in support of the mildness of the virus strain prevalent at Willowbrook that no deaths had thus far occurred. But could death be ruled out entirely as a possible consequence? Was it known with certainty that no one could possibly die or was this only highly unlikely?

And what about liver damage? Did the experimenters *know* that none of the infected children would suffer permanent liver damage in spite of the fact that cirrhosis results more often from hepa-

titis than from excessive drinking? Finally, there is a real question whether some of the children might not have been made more susceptible to serious hepatitis as a result of the manner in which the experiments were carried out.

So there were risks and discernible risks in the Willowbrook experiments even if we concede, and we shouldn't, that the degree of probability that what was risked would materialize was small.

But how significant is the question of risk anyway? Is the absence of risk sufficient to justify using a person in an experiment? One could object that in an experiment, except in cases where one is using a substance expelled from the body or removed from the body with no more risk than that involved in simply living, there is always risk. Even where there is no discernible risk there is always undiscerned risk.

Recent research on the role of viral infection in chromosomal damage is instructive both with regard to Willowbrook and to the general question of our ability to "discern risk." But there is still deeper objection to the sufficiency of "no discernible risk" or even simply "no risk" as justification of human experimentation. This objection rests on the principle of respect for human dignity discussed above in the form of Kant's categorical imperative.

According to this principle, risk or no risk is a strictly secondary consideration. Primary is the self-determination of the experimental subject: The use of his body for science must be consistent with his purposes, must be the end which he wills.

The point can be illustrated nicely by a consideration of the law governing assault and battery. It is not merely a harmful attack which is defined as assault in the law but even "unconsented touching." A person is wronged not only when he is harmed (When something risky is done to him) but also when something totally harmless is done to him but done against or just without his will. Not only harmfully using someone or using someone in a way that involves risk violates his person, but also simply using him with no attendant harm or risk if he is deprived of the right to determine himself how and when this use of his body will occur.

Tomorrow: More comment on the justification.