

Legal Issues in Human Reproduction

Edited by Sheila McLean, 238 pages, Aldershot, £29.50 hb, £14.95 pb, Gower, 1989

This collection comprises nine essays: Michael Kirby points to the lacuna between the advances of medical technology and contemporary family law; Douglas Cusine gives a number of thumbnail sketches of some key issues; Ken Mason subjects abortion legislation to critical review; Bernard Dickens shows the inadequacy of developing tort law as a policy to affect the incidence of abortion; David Meyers compares US and UK precedents in the selective non-treatment of handicapped infants; Christopher Heginbotham challenges the claim that the sterilisation of a non-competent minor or adult will never be in the person's best interests; Michael Freeman analyses arguments against surrogacy, arguing that the principal objection to it – that it exploits or dehumanises women – cannot be sustained; Rebecca Cook assesses, in the context of maternal mortality rates, the task of establishing and enforcing a legally constituted human right to women's reproductive health; and Sheila McLean concludes the collection by highlighting a paradox: what she sees as peripheral issues – such as the techniques medically selected for terminating pregnancies, viability, embryo experiments, fetal 'rights', sexual behaviour and sexual preference – have circumvented the real moral debate about the rights of those who have legitimate interests in contraception, pregnancy, childbirth and access to modern reproductive technology.

The contributors are mostly from the legal professions, or the contributors' professional work has demanded familiarity with legal practice and process. One of the book's most useful features is the overview which the contributors give of legal responses to specific disputes concerning people's reproductive capacities. For example, Dickens provides an admirably clear and succinct account of the US system of differentiating claims for wrongful pregnancy, wrongful conception, wrongful birth, wrongful life and dissatisfied life. Another good feature is that the contributors go beyond the niceties of legal argument to address the

practical matter of realisable legal or institutional reforms, or at least to indicate the moral stance which they think should inform the direction those reforms should take.

Each contribution can be read as a self-contained essay. But there are several recurrent themes in the book as a whole. In this respect, one surmises that, *pace* the disclaimers in her introduction, the Editor must have had a principle of selection other than her intention merely to sample the various interests in the field. Similarly, whilst one sympathises with the Editor's reluctance to impose a party line on the contributors, her disappointingly brief introduction misses the opportunity to make connections between the chapters. Here are two examples of themes linking contributions. First, international comparisons made within chapters raise the wider issue of whether some jurisdictions are more suited than others to addressing the implications of medical advances, in particular the implementation of the type of moral rights which McLean herself wants to see retrieved from the margins of the debate. Secondly, several contributors remark on the peculiar position of women in the area of reproductive rights. Heginbotham, for example, notes the typical assumption, in disputes about the sterilisation of people with mental handicaps, that it is women, not men, who are to be sterilised. From this observation through the chapters by Freeman, Cook and McLean, the theme of what might be called the gendered nature of reproductive rights recurs more and more explicitly. To conclude, it would be a pity if readers attended only to chapters on topics they are already interested in, rather than treating the collection as a whole, but there is a risk that they will read the book in this way.

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Hare and Critics: Essays on Moral Thinking

Edited by D Seanor and N Fotion, viii + 307 pages, Oxford, £30.00, Clarendon Press, 1988

This book is a collection of essays by

very well known philosophers written in criticism of R M Hare's book, *Moral Thinking*, with detailed replies to the critics by Professor Hare himself.

Hare's thought has shown a remarkable consistency over the years, as W D Hudson explains in his masterly summary of it in this volume. Hare's basic idea is that moral judgements are, by their very nature, prescriptive and universalisable. The thesis that they are prescriptive embodies two claims: that they neither state facts nor are logically entailed by any facts, and that anyone who sincerely assents to a moral judgement is prepared to accept the imperative that it be acted on – actually act on it himself, if he is in the relevant situation. The thesis that they are universalisable entails that any reason adduced in support of a moral judgement implies a universal principle. A moral decision requires the agent to put himself in the place of each of those affected by possible actions (universalisability) and consider from that standpoint what he would be willing to prescribe (prescriptivity); his eventual prescription emerges from a sort of weighing-up of the total satisfactions arising from each of the possible courses of action. Hare's system thus seems to provide a kind of formal foundation for utilitarianism, and in *Moral Thinking* he develops the utilitarian aspect of his work by introducing a distinction between intuitive and critical levels of moral thinking. This is related to that commonly drawn between act and rule utilitarianism, and Hare believes it enables him to meet many of the usual criticisms of utilitarianism.

It is easy to see why Hare's work continues to fascinate (one might almost say obsess) other moral philosophers. Starting from minimal foundations, concerning what is necessarily involved in making moral judgements at all, he claims to be able to derive very powerful arguments in favour of substantive moral conclusions, and thus to defend morality as a rational and in a sense objective activity which yet does not require the existence of any kind of moral fact or any agreed moral starting points. There have always been numerous critics to attack both Hare's account of what moral judgement is and the conclusions which he draws from this account, and the essays in this book, which are trenchant and lucid, are a formidable addition to the genre. Hare replies with his customary unrepentant precision.

This collection would be enjoyed by anyone interested in modern academic

moral philosophy. But although Hare is himself interested in first-order issues including medical ethics and has written extensively on them, these essays at least are pitched at a highly abstract level; I do not think it would be easy for the philosophical layman to relate them to medical ethics.

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People as Patients and Patients as People

Office of Health Economics, 32 pages,
London, £2.50, Office of Health
Economics, 1989

This booklet is a collection of ten papers delivered to a symposium held to celebrate the 40th Anniversary of the National Health Service. The purpose of the symposium 'was to re-emphasise that the NHS was above all conceived to treat individuals'. Professor Sir David Weatherall talks briefly about 'Hospitals for human beings' and Professor Charles George talks about 'The prescriber's viewpoint'. The contents are somewhat biased towards the pharmaceutical industry: 'A desire to take medicine is perhaps the great feature which distinguishes man from the other animals!'

Professor Teeling Smith, in 'The taxpayer and the patient', reviews some of the well known conflicts which exist in the NHS, with its basic concept of the wealthy well paying for the poor sick. These conflicts include the 'moral hazard' of a service which is being paid for collectively by a large group, and in which each individual tends to make higher demands than he would if he paid for what he was demanding himself.

Then there is the basic conflict of the NHS whereby the taxpayer is financing expensive care for others who are no longer able to pay. Here the healthy taxpayer wants to reduce his outlay, whereas the sick consumer wants the best care regardless of cost. In the NHS, where services are made available regardless of the consumer's ability to pay his immediate cost, Professor Teeling Smith believes that the providers have a special responsibility to ensure that their service is good value for money.

He also believes that the balance of power between doctors and their patients is shifting (towards the patients) with the increased use of measures of patients' well-being. Professor Weatherall notes that 'unfortunately, there have been few investigations of consumer reactions to hospitals' and calls for more data of this type, because 'despite efforts to maintain patient service, areas of shortfall remain, particularly on the pastoral side of medical care'. These reductions in the standard of patient care, Professor Weatherall believes, are due to the increased throughput in the NHS.

So what is the overall impression after reading these papers about people as patients and patients as people? It is that there have been determined attempts by some to improve the treatment of patients as people (and the Department of Health has now formally recognised the need for this), but other pressures, notably financial, have made it harder to do this and there is still a great deal of improvement that could be made.

But any improvement would be at a cost, either financial or of a reduction in the level of service and we know surprisingly little about patients' preferences about the trade-off between quantity and quality. Until we know more about patients' preferences we can say little about whether we want to concentrate on increasing the quantity or quality of care.

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Morality: A New Justification of the Moral Rules

Bernard Gert, 317 pages, Oxford,
£27.00, Oxford University Press, 1988

This is the fullest exposition of Gert's moral theory, which first appeared in his book, *The Moral Rules*, in 1970. It is an objective moral theory applicable to all rational persons, which according to Gert, underpins our common moral system of rules, prohibiting evil acts and promoting ideals which encourage the relief of suffering. From a philosophical standpoint the moral theory has two commendable features. First, it is an objective theory which allows for limited moral disagreement.

For example, when abortion is discussed the scope for rational disagreement is found in the emphasis placed respectively on empirical and non-empirical questions. Typical empirical questions are: 'What effect will allowing abortion have on the way rational persons treat one another?' 'Will allowing abortion result in less concern for human life?' In contrast, non-empirical questions yield discussion on the degree of concern for unborn children.

The second important feature of Gert's moral theory is that it lends itself directly to the resolution of real moral problems. In the early chapters Gert provides a detailed analysis of the central concepts, such as morality, rationality, impartiality, good and evil, moral rules and their justification, virtue and vice, moral judgements, and the relationship between morality and society. He then outlines an approach which he describes as 'morality as impartial rationality'. This is a moral system that would be chosen by an impartial rational observer. Of central importance here is Gert's treatment of the interplay between rationality, impartiality, and specific moral rules which provides the structure for his moral theory. The system of moral rules, which is grounded in Gert's analysis of impartial rationality, underpins imperatives such as do not kill, cause pain, disable, deprive another of freedom or pleasure, do not deceive, do keep promises, obey the law, and do your duty. These are obligatory at all times, and must be distinguished from the moral ideals, such as help the needy, relieve pain, and so on which do not have the same force. For example, punishment may be used to enforce certain moral rules, although it would not be proper to apply it to those who fail to follow a moral ideal.

The final chapter considers ways in which the moral theory can be accepted by any impartial rational person, as a guide to her conduct and others' conduct. The two central topics here are paternalism and euthanasia. As both require justification Gert considers several case studies in which paternalistic behaviour is subjected to the standard of acceptability by an impartial rational person (for example, no impartial rational person would publicly approve of lying to a patient in a situation in which trust is extremely important). Gert's treatment of euthanasia involves an elaborate treatment of the distinctions between active and passive euthanasia which cannot be fully assessed in the space of a