

Book reviews

Inside the ethical expert: problem solving in applied ethics

Theo van Willigenburg, 277 pages, the Netherlands, 1991, Kampen, Kok, £16.85

Inside the ethical expert, according to Theo van Willigenburg, is a rational individual willing to make difficult practical decisions. He or she recognises the complexity of situations in medicine or health-care and is reluctant to resort to familiar ethical orthodoxies, whether utilitarian or relativist.

The task, then, is first to clarify and analyse the situation; then weigh the various duties and responsibilities involved, finally reaching a practical moral decision. Willigenburg compares the ethical expert to the player in chess or to the language-translator. A kind of computational rationality is appropriate in which rules are applied, but flexibly. There is a pattern, but the evaluation of any particular case is a multi-dimensional undertaking in which principles play a part rather like the strategic rules of chess or grammar. The principles involved here, however, are to be seen as abstractions from particular cases – summaries of experience in which, in the end, the particular takes precedence over the general.

Willigenburg is extremely clear about what philosophical ethics can and cannot do – that it is not an empirical enquiry – but he is interested in the attempts that have been made to create artificial intelligence systems capable of solving ethical dilemmas. These result, however, in a hierarchical or ‘engineering’ model which Willigenburg believes to be less promising than the kind of ‘reflective

equilibrium’ approach used by Rawls and others.

In some areas – construction plans for bridges, flight-paths for aircraft – computers do better than humans. In others – language-learning, for example – they cannot get to the level of the average human child. Is ethics more like the latter case or more like the former? Unlike the computer case, Willigenburg believes, the human approach is a process of conjectures and adjustments, of gradually weaving a complete moral story for a given particular case. The idea is one of mentally trying out various interpretative patterns until one is found that fits the case.

Applied ethics, then, is, according to Willigenburg, a rational pursuit involving both a clear methodology and the explicit giving of reasons. Its endpoint is the giving of good expert advice. Willigenburg does not make the mistake of saying that applied ethics is *easy*. Nor does he suggest that the applied ethicist *knows* better than the ordinary person, only that he or she is better equipped to deal with the issues. Willigenburg is critical of much current work in applied ethics since it tends to be neutral and relativistic. He cites one typical contribution which advises: ‘Consider the case and options in the light of ethical theories.’ In reacting against the singular emptiness of this method, Willigenburg is doing something extremely valuable for the cause of applied ethics. For always, the important question is what to *do*, not how to solve the academic hypothetical: what *would* one do if one were a utilitarian, a Kantian, etc?

Inside the Ethical Expert is a rich complex discussion, not only of applied ethics, but also of many issues in theoretical ethics, all of which are dealt with in an insightful manner. It is a book to be widely commended for those interested in developing a coherent and constructive approach in

the important field of medical and health ethics.

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Biomedical politics

Edited by Kathi Hanna, 352 pages, Washington, DC, USA, 1991, National Academy Press, £25.95

The articles in Kathi Hanna’s collection report and comment on recent scientific and political developments in the USA regarding six issues in medical ethics. These issues are summed up by the following questions: 1) Does the urgency of the AIDS crisis justify doctors and legislators in permitting AIDS patients to use drug therapies which have not been adequately tested? 2) Does the availability of the abortifacient pill RU-486 create a different moral or social situation from that which obtains regarding other forms of abortion and contraception? 3) How should politicians compare the rights to be funded of two scientific projects, one of which has great long-term potential but yields no immediate benefit, while the other yields great immediate benefit but has no long-term potential? 4) State resources are finite, but people’s medical needs are indefinitely extendable; so can there be any fair way of limiting what medical aid the state will provide, other than saying that the state will provide none? 5) What guidelines should or can cover the use of tissue from aborted fetuses in medical research? 6) Are scientists capable of making enforceable agreements to eschew lines of research which lead in ethically ominous directions? If they are not, should governments, or should anyone else, enforce such scientific moratoriums?

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As the contributors to Hanna's volume make us realise afresh, these are deeply engaging questions for any member of a modern society. The interest of reading this book derives in large part from the fact that we all have commitments, one way or another, on the issues with which it is concerned. However, it is not the purpose of Hanna's book to answer these questions, and much of the time they are, indeed, not even addressed in any head-on fashion. This book is a chronicle of the development of these debates by means of case studies, not a contribution to them. By and large this historical, non-philosophical approach is fairly strictly adhered to by the contributors who write the main articles, although annexed to these there are commentaries which open up the ethical issues a little more explicitly.

We are, as I say, predisposed to care about stories which raise these questions; and moreover it is of obvious value to writers on the more purely theoretical side of medical ethics to keep themselves in close contact with developments in actual science and actual debate. For one thing, scientific developments happen so quickly (and academic articles reach print so slowly) that there is a real danger that current medical technology will simply leave would-be ethical commentators behind. For another thing, there is a regrettable disparity between academic debate and the rest of the debate about these issues. As this book's sections on (in particular) the abortion issue in the USA show all too clearly: the debate which is actually going on in the political and public arenas is dominated, on both sides, not by the fine distinctions of such writers as Rosalind Hursthouse and Judith Jarvis Thomson, but by knee-jerk reactions and public hysteria. Theorists have to keep in mind the size of the gap which they ought to try to close.

The prose-style of the writers ought to have attracted more criticism from the editor, and more direction towards standardisation, than it seems to have done. At best, we get some very readable technical English (as in the last contribution). At worst (as too often elsewhere), we get a painful and ungainly cross-over dialect compounded from *Newsweek* journalese and both soft and hard scientific jargon, and peppered with abbreviations, acronyms and special usages which are explained at most once. (For example: 'While dDI was always

closely linked with the concept of parallel track, once it became clear that it would take time to develop the concept into a working system, dDI and parallel track decoupled, at least in terms of a bureaucratic response'.)

However, this is just an immediately visible flaw in what (as persistence shows) is a very worthwhile piece of work. It is worthwhile, not only because it provides historical, political and sociological analysis of some recent controversial developments in medicine, but also because it provides students of medical ethics with the raw factual data which their work must take into account if it is not rapidly to become irrelevant and out of touch.

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Treat me right: essays in medical law and ethics

Ian Kennedy, 428 pages + xviii,
Oxford, 1991, Clarendon Press,
£14.95 pb

Ian Kennedy is Professor of Medical Law and Ethics at King's College, London, and Director of the Centre under that name, which he has made eminent. He knows as well as anyone what harm a money-grabbing litigiousness can do to the practice of medicine where it is rampant. He knows also what fantasies and ideological contentions 'ethicists' and propagandists can conjure up with scant regard to law or professional obligation. In the twenty chapters of this superb book he demonstrates with forceful lucidity how the common law, existing first for the protection of our liberties, is also the protector of an ethics of medicine grounded in the concept of duty: the duty of care required of one professing – that is, offering to patients in their vulnerability – the skills of medicine.

The papers date from 1973. All except the two last were published in the first hardback edition in 1988. Only the last two, therefore, will be noticed in detail here. But many of the others are of lasting value because of their careful analysis of the judgements in the cases – like *re B*, 1981, *Gillick*, 1985, and *Sidaway*, 1985 – brought to the courts by the ethical

dilemmas of this decade, and formative of the law now governing practice. Kennedy has had his days of fame as a critic – and he is one still; here is established also his durable reputation as an expositor.

In the chapter on *A Woman and her Unborn Child*, Kennedy asks what compulsion or limitation upon a woman is expedient and tolerable on occasions of serious conflict between her interests and those of the fetus in her womb? The English courts would not entertain actions, like those cited from the USA, to compel a woman to undergo caesarean section; neither would they extend custody or wardship over an unborn child. The protection of fetal interests, whose claim grows stronger *pari passu* with growth towards maturity, rests on maternal duty: the fetus has no legal right in itself until born alive. An exercise in moral calculus is then offered to yield criteria by which conflicts of interest may be adjusted or resolved. Kennedy, resisting pressure from the USA, would not advocate a statutory enactment to invest the fetus with rights or to give the law direct power over it. In general he would rely on education and social persuasion. The most he can contemplate is a statute which would empower a judge, in an outstanding case of flagrant threat to fetal interest, to weigh the moral calculus judicially and, if so determined, to authorise surgical intervention, or wardship of the unborn, or a care order at birth, for each case individually. He would prefer not to make this change, but rather to leave the fate of the unborn child to its mother, lest more legal regulation of her conduct be bought at too high a price.

The essay *Patients, Doctors and Human Rights* began as a chapter for a book entitled *Human Rights for the 1990s*. This perhaps explains a remarkable change: Ian Kennedy the common lawyer becomes a 'human rights lawyer'; and words written wisely and cogently, in earlier essays are now translated polemically into the language of rights, or repudiated if they will not fit. On page 78 he quotes with approval a conclusion of Woolf, J which 'allows for a legal analysis of the doctor's conduct based on the central legal and ethical concept of duty'. On page 318 he writes: 'If there is a unifying premiss which informs the law it is to be found, I submit, in the concept of duty'. Yet in this new chapter, at page 386, he ends a loose