

practical rules. Although much of this process has been positive, there are some aspects of it which are not. Each time one encounters a doctor who complains of being treated badly by excessively demanding patients, who has been the subject of groundless and ill-tempered complaints, who has been cast into depression by the prospect of litigation, one is inclined to reflect on the dark side of consumerism and the 'cult' of individual rights. Consumerism, as recent British experience has shown, leads to the shallow world of 'charters', and one wonders whether this is what we need. Perhaps we need more emphasis on obligations, private and public, to balance the talk of rights; we need to re-assert community, however that might be done. The processes which this book reveals all reflect the assertion of individual or sectional interest, and there must be much more debate on this. This well written and intriguing book will serve as an excellent starting point.

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## Medical confidentiality and legal privilege

Jean McHale, London, Routledge, 1993, 160 pages, £35.00

It is one of the nastier dilemmas facing a doctor: he is in the witness box and is asked a question about a patient. If he answers, he breaches the patient's confidence; if he declines to answer, he may be withholding evidence which could deny an accused person the chance of a proper defence. In the background, too, is the consideration that if he fails to answer, he may be imprisoned for his pains. Fortunately, this is not an everyday situation, but it is none the less a problem which does occur on occasion and which raises serious issues for the courts.

English law currently recognises an evidential privilege only in very limited circumstances, and does not extend it to doctors or to those engaged in other professions allied to medicine – Scots law takes much the same view. A lawyer is not compelled to disclose matters which have passed between himself and his client in relation to litigation, and may stay silent

with impunity, but a doctor, priest, nurse, psychotherapist or accountant has no such right. It will avail such persons naught that their code of ethics enjoins strict confidence; a failure to answer a relevant question in court will be a punishable offence.

The law has not been completely insensitive to the problem of confidentiality in the past. There have been some suggestions that there is a judicial discretion to exclude evidence relating to confidential matters, and the author cites several remarks by Lord Denning to this effect. Lord Denning, however, was a very special judge – with a marked sympathy for doctors – and if medical privilege is to be introduced it will have to be done by legislation rather than by judicial decision.

There are legal models to follow. Quebec, for example, specifically allows privilege to be claimed by priests, advocates, doctors and dentists, while in some Australian states privilege is allowed at least in relation to civil litigation. In the United States there is considerable privilege accorded to doctors in the witness box, and this is particularly so in the case of psychiatrists.

There are certainly sound pragmatic reasons for allowing medical privilege in court proceedings – the greater the public confidence in medical secrecy the more likely will the public be to trust and confide in doctors (particularly in sexual matters, such as those with a bearing on HIV infection). Yet the real issue here is whether the value of preserving medical confidentiality outweighs the interest which a civil litigant or a defendant in a criminal trial has in having all relevant matters revealed to the court. The author's thesis is that subject to several specific exceptions – such as those cases where the welfare of a child is at stake, or where a defendant stands to be convicted of a serious crime – the interest in preserving confidence deserves the greater protection.

If an evidential privilege statute were to be introduced, the effect would be to give the patient a veto on the disclosure in court of medical information which he or she wishes to keep confidential. In her final chapter, the author considers the practical impact of such a statute, and it is here that her case will probably be given its closest examination by lawyers. The author acknowledges potential objections, but points out that in practice courts and tribunals will be able to draw

appropriate conclusions even if they are denied access to medical information about a party to proceedings. It will not therefore be fatal to the case of an employer in unfair dismissal proceedings that there is no access to medical records; an employee's patterns of behaviour in the past may provide adequate evidence as to the likely pattern of events in the future. Possibly. In criminal proceedings, the privilege would be overruled, anyway, if the offence were of a sufficiently serious nature, and so there could be no question of privilege causing a miscarriage of justice.

If the impact of an evidential privilege statute were to be so cushioned, then the case for its introduction appears reasonably strong, particularly in view of the dilutions of the principle of confidentiality which seem to be occurring in other contexts. This interesting and well written book sets out the whole issue very clearly and should be a useful addition to the library of those who are interested in confidentiality and the dilemmas it creates.

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## A companion to ethics

Edited by Peter Singer, Oxford, Blackwell, 1993, 565 pages, pb £15.99

Do not expect a companion that slips comfortably into the pocket, a ready source of profit and pleasure while queuing at Sainsbury's. This is a large book, with nearly fifty articles informing us about the history of ethics (eastern and western), moral theory, applied ethics and meta-ethics and challenges from such critical standpoints as feminism and marxism. Despite its size, the excellent organisation and layout of the material has resulted in a thoroughly approachable book that is, in general terms, remarkably good value. However, suppose that we ask a more specific question. How useful would this book be to those with little background in philosophical ethics (presumably its principal target) who wish to make a study of problems in medical ethics? We can then focus on the two most pertinent kinds of contribution, those on the relevant parts of applied ethics and those on moral theory.

There are just two articles that bear directly on problems of medical ethics. Both are successful, though in quite different ways. Helga Kuhse on euthanasia could hardly be bettered for a brief, clear, systematic and thorough introduction to the subject, leaving readers to form their own view on the basis of the possibilities that are set out. On abortion, Mary Anne Warren is less dispassionate, forcibly advancing a relatively liberal position. She argues that although persons are of special significance, in virtue of their capacity for moral reciprocity, the protection of a wider class of beings demands that full moral rights be extended to all sentient human beings, including sentient fetuses. Yet where equal rights cannot be accorded to each party in a conflict, such as to fetus and mother, personhood is again relevant and results in those of the fetus being limited. The piece lacks quite the measured clarity of Kuhse, but has the advantage of being challenging as well as informative.

Our putative students are perhaps less well served when it comes to moral theory. Interesting though Philip Pettit's article may be, I think it too difficult to be recommended as an introduction to consequentialism. Nancy Davis on deontology will also be found hard going, though here there is surely more excuse in the subject matter. Rights are given a clear treatment by Brenda Almond, although it is a pity that the analysis of claims, liberties, powers and immunities is carried out only by means of examples. This is one case, I think, where a more general account would have been more illuminating. On the last of the familiar four, virtue theory, Greg Pence does well in arguing that its role must be a limited one, but does not really show whether, and if so why, we should regard this approach as a moral theory. Since it is often proposed as an alternative to the preoccupation with ideas of consequences and right action, a more explicit discussion of how it relates to the traditional framework of the right and the good would have been useful. Whether *any* theoretical framework is needed is discussed well in an article by Dale Jamieson.

There is of course much else that might interest the student of medical ethics, and certainly I know of no other book that will so clearly inform the reader of the sheer variety of problems that are examined in moral philosophy. There is, though, a more stringent requirement if the book is to

be strongly recommended in our case: that we would select nearly all of the directly relevant articles as being especially suited to beginners. I think that it is not met.

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## Genetic screening: ethical issues

Nuffield Council on Bioethics,  
London, Nuffield Council on  
Bioethics, 1993, 115 pages, £6.00

This report is the outcome of a Nuffield Council working party on genetic screening, its brief being (i) to report on advances in genetic screening, (ii) to review experience of the benefits and costs of genetic screening so far, (iii) to identify and discuss relevant ethical issues.

The report is a model of its kind. It is well structured, clearly written and, most important, balanced and reasonable. Those who are unfamiliar with genetics and genetic screening will find concise introductions in two chapters. Ethical issues considered are the following:

1. *Informed consent:* The report summarises the kinds of information people require in order to decide whether to participate in a screening programme. Frequently throughout the report one finds useful and practical guidance for those involved in screening programmes. Here, for example, it is suggested that information be provided both orally and in leaflet form, in language appropriate to the individual. The report stresses the importance of assurance of confidentiality, of lack of coercion, and of counselling.

2. *Confidentiality:* Again, the approach is pragmatic. The report uses everyday moral concepts which have earned a widely accepted place in our language, and does not adopt any implausible, single-principled ethical theory. It allows for rights, such as a right to privacy which extends to cover personal information. But these rights are not inviolable. If, for example, a male maliciously withholds the results of his screening test when his partner is pregnant and has herself tested positively for cystic fibrosis, a doctor may be justified in passing on the

information to the woman after attempts to persuade the man have failed. The report does not put all the onus on medical staff. It notes the responsibility of individuals to their families.

3. *Employment:* The report summarises well the conflicting interests in this area. Employers want healthy workers, while employees may in some cases justifiably wish to work rather than suffer exclusion through screening. The report concludes that exclusion should occur only where it can be shown to be absolutely necessary.

4. *Insurance:* Insurers are faced with the problem of adverse selection. A person may know that she will almost certainly develop Huntington's, for example, and an insurance company may claim that it has a right to know this fact when considering her for life insurance. The report notes that insurance companies can expect to benefit overall from screening programmes, and argues that British companies should continue with their policy of not requiring genetic screening, and also should not require disclosure of genetic data. The report allows two exceptions to the latter recommendation: (i) cases where a member of a family with a clear history of genetic disease applies for insurance; (ii) policies where large sums are involved. I believe that the report is too conservative at this point. The working party appears to accept the principle of equity, according to which those who face equal risks should pay equal premiums. But this principle is quite inconsistent with the other principle said to justify insurance schemes, that of solidarity, which requires the sharing of risks. The solidarity principle is grounded on the moral principle of fairness, *viz* that it is unfair that anyone does worse than others through no fault of her own. Genetic screening merely makes more visible the unfairness of much present insurance, and strengthens the case for radical government re-structuring, perhaps even the nationalisation, of insurance.

5. *Genetic screening and public policy:* The report takes a long term view, and advocates a programme of education in genetics, which should perhaps involve inclusion of genetics within the national curriculum. Such education will provide safeguards against abuse of genetic screening, and enable screening schemes to function better both practically and morally. The report also recommends that the