

# PostScript

## BOOK REVIEWS

### Risk and Luck in Medical Ethics

D Dickenson. Polity Press, 2002, £15.99, pp 280. ISBN 0745621465

In *Risk and Luck in Medical Ethics* Donna Dickenson explains in brilliant fashion the tension between ethics and luck, be it luck in outcomes of action on the one hand or luck in antecedent circumstances, the problems that have to be faced, or character on the other. According to Dickenson, most of the philosophical debate so far has focused on how luck in outcomes affects agents' ability to act as morally responsible people. But Dickenson thinks it is equally important to discuss how to modify one's own luck through character development and environmental changes.

Throughout her lively inquiry, packed with interesting real life case studies, Dickenson requires her readers to consider philosophers' desire "to minimize the effects of chance on moral character and the rightness of ethical choices" (p 2), a desire so intense that it led Kant to proclaim that even if the good will was "...wholly lacking in power to accomplish its purposes ... it would [still] sparkle like a jewel in its own right, as something that had full worth in itself" (p 2). Philosophers want to believe that human beings control their own destiny. Yet they fear that nothing is really in their own control, and that the foundation of morality—autonomy, choice, freedom—is illusory.

Dickenson claims that we can both acknowledge the role luck and risk play in our lives and maintain a robust Kantian sense of self (free, autonomous, and, above all, morally responsible) if we properly limit that *for* (Dickenson's emphasis) which we are responsible (p 19). Moral agents are not responsible for all the outcomes of their actions, but only for some. Similarly, moral agents are not responsible for the way they initially find themselves in the world; but they are responsible (to a greater or lesser extent) for how they shape themselves and their larger environment. Like Kant, wise moral agents are proud to be persons who can make choices; but not so obsessed about doing the right thing that they fear doing anything at all.

The first three chapters of Dickenson's book (on deontology, virtue ethics, and utilitarianism, respectively) provide Dickenson with the theoretical framework she uses to analyse the realm of medical ethics. Dickenson claims that neither virtue ethics (as formulated by Martha Nussbaum) nor utilitarianism can help us resolve the moral luck dilemma. But this fact does not overly concern Dickenson. Unlike some other contemporary philosophers (for example, Bernard Williams and Thomas Nagel), Dickenson thinks she has an "escape route"

from the moral luck dilemma as formulated by Michael Zimmerman:

- (1) A person *P* is morally responsible for an event *e*'s occurrence only if *e*'s occurring was not a matter of luck.
- (2) No event is such that its occurrence is not a matter of luck.
- (3) Therefore, no event is such that *P* is morally responsible for its occurrence (p 13).

As Dickenson sees it, Nagel denies the conclusion (3) but accepts both premises (1) and (2), whereas Williams accepts (2) but denies (1). Neither of them, in her estimation, deny (2). But Dickenson does deny (2) on the grounds that "[a]lthough all events are a matter of luck, they are not all a matter of moral luck, nor are they all moral events" (Dickenson's stress, p 13).

Not surprisingly, in applying her theory to particular problems in medical ethics, Dickenson identifies consent to treatment as "... a promising area in which to begin exploring the practical implications of moral luck for medical ethics—along with the associated concerns of risk analysis, uncertainty and rationality" (p 65). Provided that the physician obtains *proper* (my stress) informed consent for treatment from the patient, the (non-negligent) physician is not responsible if something goes wrong during or after the treatment. The patient's informed consent to treatment shifts risk and luck onto his or her shoulders and off the shoulders of the non-negligent physician. Thereafter, if some harm befalls the patient, the physician has no reason for remorse, although the physician may feel regret that things turned badly.

Equally as instructive as Dickenson's chapter on informed consent is her chapter on death and dying. Dickenson believes properly executed advance care directives ordinarily make patients responsible for how aggressively they are or are not treated. However, Dickenson is not a slave to patients' advance care directives. In particular, she dispels the worry that physicians must honour a patient's advance care directive about refusing life support in situation X, even if the patient now seems to be enjoying life in the previously dreaded situation X. When it comes to making a possibly wrong decision about withholding or withdrawing life sustaining treatment, Dickenson opines that "clinicians should err in favour of treatment" (p 103).

In order to defend her view about erring on behalf of life in some situations, Dickenson focuses on the case of Anthony Bland, an 18 year old patient in a persistent vegetative state (PVS), who was kept alive by a nasogastric feeding tube. At first, Dickenson thought it was right to release Tony from his "living death;" but the more she thought about his case, the less inclined she was to rush to judgment. In the end, Dickenson decided that because physicians "... are more responsible for cutting short the life of

someone in their care who might conceivably [make] some degree of mental recovery than for continuing to maintain someone in a "living death" (p 91), medical practitioners should treat PVS differently from other diagnoses, requiring a year before treatment can be withdrawn."

A chapter of considerable interest in Dickenson's book deals with moral luck and the allocation of resources at both the "micro" and "macro" level. Dickenson notes that in delimiting that for which they are responsible, clinicians may wish to focus on two competing criteria for the just allocation of scarce medical resources. These two competing criteria are (1) *Clinical criteria: prognosis*, by which Dickenson understands the maxim that "resource[s] should go to those with the best chance of recovery (utilizing the input with maximum productive efficiency)" (p 107); and (2) *Equality*, by which Dickenson understands the maxim that "everyone should be treated equally in deciding how to share out the resource, regardless of need or merit" (p 108).

Dickenson decides that between these two competing criteria, equality is more likely to yield justice for patients. Specifically, she recommends that medical practitioners confront luck head on and "explicitly incorporat[e] chance into the allocation mechanism, in the form of randomized allocation or the principle of first come, first served" (p 110). Because luck plays a role in patient prognosis just as much as in patient diagnosis, social worth, and outcomes, the fairest way to handle the allocation of scarce organs, for example, is randomisation, even if "a ninety-year-old patient with terminal renal cancer gets the kidney" has been waiting in line for it longer than a "thirty-year-old with no other symptoms than kidney failure" (p 110).

Different sorts of questions about risk and luck arise in the area of reproductive ethics. Dickenson analyses a surrogacy case gone so wrong that it could provide several months of scripts for the typical US television soap opera. Specifically, she discusses three ways to manage luck and risk in the surrogacy business. The first approach bans at least commercial surrogacy, thereby deciding (paternalistically) that surrogate mothers may take no risks. The second approach permits surrogate mothers to bear any risks to which they give informed consent, including the risk of not having the terms of the surrogacy contract enforced in certain jurisdictions. The third approach, Dickenson's approach, claims that although there is a role for contract in "surrogacy", it is limited "to contracting for the women's labour, pain, and suffering in pregnancy and childbirth. Contract should not extend to the right or duty to contract away the baby" (p 130).

Although questions about risk, luck, and informed consent loom large in the world of surrogacy, they loom even larger in the realm of psychiatry. Because of the nature of many mental diseases, some of which undermine agents' ability to think and act morally and others which erode agents' ability to give proper informed consent, psychiatrists are

sometimes tempted to unnecessarily confine and/or over treat their patients. Psychiatrists face particularly difficult decisions when, during therapy, patients share confidences about inclinations to harm others. Should the psychiatrist keep the patient's "secrets" in order to build the relationship of trust that is necessary for effective therapy, or should the psychiatrist instead betray the patient and report threatened harms to third parties? Dickenson has much advice for psychiatrists who find themselves in such uncomfortable moral spots, but her main words of wisdom are distilled in a memorable maxim: "Withholding information means that one bears full responsibility for an adverse outcome, where sharing information with patients or other agencies might have averted tragedy" (p 148).

As interesting as I found all of Dickenson's discussions, I found most interesting her discussion of luck in character. What if a person is born totally unable to develop any sort of character, even a weak willed one? Does the presence of such troubled "souls" (if souls they have) in the human community make ethics impossible? Dickenson suggests that there are no such "souls"; that every human being able to think reasonably well probably has some capacity to develop a character, albeit a very weak one.

In the spirit of saving some of the best for last, Dickenson continues her discussion of the role of genetics with Ronald Dworkin's observation that the possibility of genetic engineering will dislocate the "crucial boundary between chance and choice" which constitutes "the spine of our ethics" (p 167). Suddenly, we will discover that we can use genetic technology to make ourselves in any image and likeness that strikes our fancy. Or, alternatively, we will discover that our genes are indeed us—that we are fools if we think we have choices and that we are moral agents.

Dismissing genetic determinism with the observation that "[t]he sort of extreme genetic determinism that denies all power of choice is ultimately paradoxical, because I have a choice about whether or not to accept genetic determinism" (p 186), Dickenson tackles relativism, the other enemy of morality. She sees in global ethics, particularly feminist versions of it, a way to find a measure of unity in our diversity. She shares my view that health care must become attentive to people's *differences* so that it can help people become the *same*—that is, equally autonomous and equally the recipients of beneficent clinical practices and just health-care policies. Although risk and luck pervade the medical realm, we can find in moral consensus the weapons we need to withstand their assaults on our good intentions. Dickenson's *Risk and Luck in Medical Ethics* is an optimistic book which teaches that failures to properly delimit moral responsibility for the antecedents and consequences of our actions, rather than good intentions, pave the path to the hell of remorse we often unnecessarily create for ourselves in the realm of medicine and elsewhere.

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## Crafting a Cloning Policy: from Dolly to Stem Cells

A L Bonnicksen. Georgetown University Press, Washington DC, 2002, £11.95, pp 220. ISBN 087840371X

Heath Robinson (Rube Goldberg, for American readers) could perhaps draw a diagram that made sense of the legislative and regulatory structure Bonnicksen describes in this book. However Heath Robinson machines, no matter how baroque, actually achieve something: in the four years covered by this contemporary history the American "system" seems to have achieved very little. That we have not yet (at the time of writing) seen a confirmed cloned child produced in the USA or elsewhere does not seem due in any part to the activity that Bonnicksen describes. This is not a history of America's progress towards crafting a policy; it is an account of its failure to make one.

The bulk of this book details the legal and regulatory responses to emerging reproductive technology in America following the announcement of the birth of Dolly the cloned lamb in 1997. The remainder gives an overview of the position of other countries around the world, and a brief concluding chapter outlines the options open to the US in the future. Lest anything that follows might suggest otherwise, I found this book interesting and informative, and admirable in its clarity, depth of detail, and strictly neutral tone. The arguments presented are reported in brief but highly informative summaries, without any hint of judgement. The care and attention to detail is impressive, and the concluding chapter presents the future policy options in a manner that gives clear guidance without any noticeable preference expressed.

That said, this is not aimed at an audience outside the USA, and although it is a good historical account there are perhaps few who would rate this as essential reading. Even the chapter on the attitudes of the rest of the world is US centric, comparing and contrasting with the US only in order to show how the US position could be improved, (although members of the UK Human Embryology and Fertilisation Authority will be gratified to see that their flexible, considered, and informed approach is considered to be an example of best practice). For the rest of the book Bonnicksen is deeply immersed in the minutiae of the American legislative and regulatory system. It is to be expected that her account is often quite technical, and given the nature of the subject unavoidably repetitious, as the same figures presenting the same arguments reappear in front of the same or similar committees year after year. Perhaps the most off putting aspect of the book is the (again difficult to avoid) frequent use of acronyms. Hardly a page does not have one, many have more than 10. Bonnicksen has provided (on page xii) a list of 34 of the most commonly used acronyms and their translations, but having constantly to refer to it did not fully relieve the frustration and occasional confusion. This is perhaps a petty point—those familiar with the American system of two letter state codes, law report references, and the various committees,

offices, departments, and commissions will find it less opaque, but the general reader may choke over sentences like "During the NBAC cloning hearings for example, one witness told of the ending of the EAB, which had been created in the DHEW."

Despite this I found the story that unfolds fascinating, although often incredible, for although the author maintains a strictly non-judgemental tone throughout, this bare statement of the facts is a gently horrifying indictment of the American political and public policy system. To many readers the failure to achieve very much may be welcome, as lack of regulation may be preferable to the badly justified (or just plain bad) controls that some legislators proposed. To others the failure will be lamentable, because any control would be better than none. Either way it is clear from this account that for all the sound and fury (and there seems to have been a good deal of both) the arguments so far presented are generally poor, predictable, and not persuasive. The debate seems to have been largely based on moral panic, false assumptions, and political bandwagon jumping. In the midst of this unphilosophical and unscientific morass it is refreshing to find Bonnicksen's careful exposition of the science behind Somatic Cell Nuclear Transfer, Embryo Stem Cell, and Adult Stem Cell harvesting and cloning. This clear statement of the facts does much to deflate many of the more ridiculous fantasies on both sides, but as she points out the heart of the argument is not about the facts, it is the values that are carried over from the abortion debate. In the end it all turns on the status of the embryo, and the value of human life, people, and genetic uniqueness.

Yet these arguments are not responsible for what is happening in practice. It is notable that with a few publicity seeking exceptions, all of the medical and scientific researchers involved in the debate agree that the technology is not advanced enough to safely produce a human clone even now, and that it would be wrong to try until possible harms are minimised. It is this responsible consensus among the scientists and healthcare professionals that has guided the actions of the medical/biotechnology industry, rather than the few state laws and the restrictions on federal funding which have been put in place. Despite the accusations of "playing God" and the suggestion that the biotechnology industries are more interested in money than people, the integrity, humility, and humanity of the scientific and medical community shines through this account in sharp contrast to the scaremongering and misinformation peddling politicians and pressure groups who criticised them.

However, as it is sadly unlikely that policy makers will be prepared to leave them to it, I would recommend that all public officials and politicians who are involved in making decisions about the future of reproductive or therapeutic cloning, embryo stem cell research, or assisted reproductive technologies should regard this book as a "must read".

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