Medical ethics: who decides what?

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Author’s abstract
The JME symposium on teaching medical ethics takes up the issue of competence and responsibility in matters concerning bioethics (1). Foreseeably, the medical participants argue that physicians are prepared, or can be easily prepared, to handle all relevant aspects of medical ethics. The contrary position is sustained by the philosophically trained participants, who believe physicians do not, in fact cannot, sufficiently manage medico-ethical problems. This paper sees a role for both parties. Medical ethicists should properly be involved in medical education and in analytical and systematic study of medical ethics. They should not generally be involved in clinical medico-moral decision-making, which is properly the realm of patient and (ethically competent) doctor.

Physicians as ethicists
The main point of Professor Swales’s argument defends a clinical setting where the scope of medical decisions is maximally enlarged (2). While the existence of value judgments is not denied, they are simply incorporated as ‘part and parcel’ of clinical work. An ethicist is therefore misplaced at the level of clinical judgment. So far, this is an arguably conservative stance, which construes its position on the implicit premise that physicians have a classical education, are widely read, and have become finely-honed intellectuals capable of mastering their discipline and of predicting the moral consequences of their decisions. Beyond that, Professor Swales’s analysis shows three perilous pitfalls.

The first one is to consider clinical activity sufficiently characterised by its scientific component. There is wide though not unanimous agreement that clinical judgment, notably diagnosis, is based on, or at least strongly influenced by, scientific elements (3). But not even this more disciplined part of clinical judgment is so scientific as to be constituted of hypotheses amenable to corroboration or rejection through direct observation and experimentation. Much of medical practice is actually never subjected to epistemological control or correction (4). Diagnostic labels are not so much exact descriptions of an infirmity, but rather working hypotheses to direct therapy (5). After treatment is instituted the patient, say, improves: was this due to the specific element of therapy, to the non-specific components of the therapeutic situation of care, rest, less smoking and lighter eating, or was improvement perhaps coincidental but unrelated to the institution of therapy?

In addition to being infested with untestable assertions, clinical activity is thoroughly permeated by valuative and normative aspects which are amenable to ethical analysis. To declare someone ill and label her with specific disease-tags has normative consequences that impinge on the rights and duties of the individual (6). It does not suffice to say, as Professor Swales does, that clinical judgment has an element of uncertainty to it, rather it must be accepted that diagnosis and therapy are, to offer a very simplistic formula, science – of a peculiar nature – plus ethics.

Secondly, inasmuch as he accepts ethical components in medical decisions, Professor Swales considers physicians to be sufficiently capable of handling these situations, equipped with an average knowledge of utilitarian ethics. Religiously orientated ethicists, he claims, have too parochial a view to bring forth generally acceptable contributions, whereas ‘experts’ in ethics are medically too uninformed to be of help to any but the most inexperienced members of medical teams. True, medical ethics has become a self-sustaining, occasionally redundant discipline that is often divorced from medical practice and its concerns. But this line of argumentation dismisses the fact that physicians are, by education, idiosyncrasy and interests, no better equipped to handle ethical matters than other laypeople (7). Otherwise, there would be little need for oaths, codices, symposia, books, journals or courses on medical ethics.

Medicine is a solution-orientated, pragmatic activity, but its ethical dilemmas are not exhausted by utilitarianism. Experimental research with uninformed human beings has a tremendous potential to increase medical knowledge and benefit present and future generations. And yet, no simplistic utilitarian consideration can efface the fact that this kind of enterprise is unacceptable on deontological grounds related to

Key words
Medical ethics; medical ethicists; medical education.
autonomy and respect for the individual (8). Physicians have often disregarded rights of patients and non-medical ethicists have contributed to a rekindled interest in these matters, so that, all in all, past performance tips the balance against physicians being autonomous and good ethicists.

Thirdly, Professor Swales contends that scientific work functions independently of philosophical concerns. By analogy, medicine could do without ethical philosophy. However, there is an important difference between science and medicine. The main function of science is explanatory, an activity that has no ethical dimension per se, unless scientists get concerned with the reasons why certain problems are being attacked and others neglected, or become suspicious about applications of their explanations. Otherwise, there is no primary reason why scientists should be orientating their activities in accordance with metascientific philosophical inquiry. Medicine, on the contrary, is an activity tightly meshed with ethical considerations and is therefore bound to benefit from increased awareness of moral issues. Philosophical concern with bioethics is fundamentally analytic, but it also has a strong normative component that is bound to influence medical practice.

Professor Swales, in sum, considers medicine ethically self-sufficient and rejects the grafting of bioethicists into the clinical setting. In this dislike he is not alone, for in the same symposium it is argued that ethics committees, codes of ethics and bioethicists’ advice are untimely and inefficient normative instruments compared to the law, and that only adequate legislation could eventually offer ethical guidelines on controversial medico-ethical issues (9). In other words, the bioethicist’s place is not in the wards, but in court and in parliament. This analysis disregards the fact that most collisions between ethics and the law address excessive rather than too sparse legislation. Abortion is explicitly prohibited or limited, euthanasia is not allowed or equated with murder, involuntary commitment is expressly authorised, the introduction of pharmacological agents is tightly regulated. All these are examples of current protectionist legislation that reduces ethical leeway and narrows liberty down to a minimum. It is true that additional liberal legislation has softened previous absolutism, but what ethicists should aim at is, fundamentally, de-legislation. Only thus will ethical decisions be extricated from the rigidity of the law and regain the true possibilities of alternative actions chosen in freedom.

The symposium participants are right in rejecting Professor Swales’s bon mot that medical ethics is too important a subject to merit curricular autonomy. If it is so essential, then it becomes irrelevant in which form ethics is taught, provided the curriculum does not neglect the subject. Equally secondary, because obvious, is the point made by Dr Smith that knowledge of medico-ethical issues cannot be divorced from familiarity with general ethics.

Bioethicists in clinical settings

Probably the most fruitful controversy of the symposium on the importance of medical ethics is the one addressing the intersection between clinical decisions and ethical decisions. Professor Swales sees no distinction between the two kinds of judgment and consequently denies the necessity for a philosophical expert to cover ethics in medicine. His detractors claim that occasionally medical issues masquerade as ethical ones and vice versa, but that a fundamental separation between the two types of judgment is possible and desirable (10). Unfortunately, they support their argument with faulty examples. Whether a woman with breast cancer should have lumpectomy or radical mastectomy is definitely not an ethical issue, it is a matter of clinical judgment as to which method more effectively treats the disease. If she prefers a less safe but cosmetically acceptable lumpectomy because otherwise her marriage might suffer, she may be legitimately disregarding sound medical advice, but nothing in this example addresses a conflict of medical ethics.

But there are, undoubtedly, many instances of medico-ethical judgments that require a broad view of the patient’s circumstances and interests. Arras and Murray flatly deny that physicians are capable of overall assessment of patients’ circumstances in ethically explosive situations, and they base their misgivings on the assumption that physicians are encased in behaviour patterns that are non-conducive to this sort of enlightened attitude. Impersonal patient/physician relationships, they claim, also militate against the physician’s acceptance of the patient as a human being rather than merely a clinical case.

If this part of Arras and Murray’s essay is correct, then medicine is in deep trouble. For it would appear that physicians cannot but relate deficiently with their patients, unless guided and taught by enlightened bioethicists. As previously noted, doctors are in fact not particularly well equipped to handle moral problems, but to make a matter of principle out of this average insufficiency seems unwarranted and prejudiced.

Whether physicians are so dull and callous, bioethicists so judicious, and ethical judgment so smoothly transferable from philosophers to physicians, are all matters of opinion. But it repeatedly occurs that bioethicists illustrate this point with unimaginative examples. Thus, the misguided surgeon portrayed by Arras and Murray, who doesn’t face his technical errors, deserves a malpractice suit rather than ethical counselling. At this level of gross medical misjudgment, one can hardly find support for the role of an ethicist. Every reasonable clinician will accept that professional review, legal control and economic sanctions should regulate unethical medical conduct or coarse technical errors. Nor, to comment on another example of this symposium, does an ethicist seem necessary to discourse on the reasons for scarcity of life-saving medical resources. He may, though, con-
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