

Ethics on Call

Fall/Winter 2007

From the Editor-in-Chief

From the Director

Bruce A. Arrigo, Ph.D.
Professor
Department of Criminal Justice



Dear Newsletter Readers,

In this Issue of *Ethics on Call*, a wide range of topics are critically reviewed that demonstrate how questions of choice, freedom, moral sensibility, and social/personal responsibility permeate many facets of social life.

Rosemarie Tong, Ph.D.
Director, Center for Professional
and Applied Ethics



Stem-Cell Research and the Affirmation of Life

Whether or not they are fully informed about its intricacies, almost everyone in the United States seems to have an opinion about stem-cell research. Stem-cells are either totipotent or pluripotent cells. They have the amazing ability to develop into many (pluri) or even all (toti) the different types of cells that constitute the human body. Their cell lines are “immortal” in the sense that they can be cultivated indefinitely to produce a virtually unlimited supply of cells testifying to the strength, resilience, and determination of life itself. Although progress in stem-cell research has been somewhat slow due to technical hurdles, political debates, and moral controversies (described below), most scientists believe stem cells will ultimately prove useful in treating damaged human cells and tissues (including major organs), testing pharmaceutical products for safety, studying embryo development, and discovering new gene-therapy techniques.

Where do we obtain human stem cells? A limited number are found in adults’ tissues and in newborns’ umbilical cord blood. In addition, recent studies indicate that stem cells may also be present in amniotic fluid, amniotic membrane, and the placenta. However, scientists remain divided about the usefulness of these cells. Some scientists think these kinds of cells are only able to differentiate into a relatively narrow array of cells (for example, blood stem cells producing blood elements but not nervous tissues). Other scientists are much more enthusiastic about these cells, however. They point out that so far, the only successful stem-cell derived treatments have come from adult or umbilical-cord stem cells. Examples include using adult stem cells found

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What this suggests is that integrity, accountability, duty, consequences, and virtue are not mere artifacts of philosophical speculation but are essential dimensions of living an examined life.

In our Section titled, **From the Director**, Rosie Tong comments on a number of thorny ethical debates surrounding human stem cell research (e.g., embryo destruction). Fundamentally her essay considers the contexts in which these investigations affirm or fail to affirm

life. In our **Feature Essay**, Chris Williams discusses moral sense and ethical action in cases like the Michael Vick dog-fighting incident. At issue is whether acts of human indecency (evil) are principally identifiable through moral engagement or through something more akin to common sense. In our **Case Report** section, Judge John H. Bailey Jr., comments on the Duke Lacrosse scandal. He discusses the role of the prosecutor who handled the case and addresses the ethical fall-out that ensued. The section titled, **Ethics and Work**, is new. Essays focus on how critical thinking, reasoned judgment, and moral contemplation inform practice in and across the professions. Ellyn Ritterskamp explores this issue in her construction of a new ethics code for *The Charlotte Observer*. In the **Ethics and Public Policy** section, Bill Brandon interviews Bruce Arrigo. Together, they unpack some of the philosophical and political aspects of capital punishment, as well as lethal injection as an increasingly preferred means of execution. Finally, another new section of the Newsletter includes the **Book Review**. These essays explore diverse ethical themes of interest to our readership. In this Issue, Michael J. Kelley discusses the book, *Medical Apartheid*, authored by Harriet A. Washington.

From the Director Cont.

in bone marrow to help victims of heart attack and using umbilical-cord stem cells to treat rare enzyme malfunctions like Krabbe's Leukodystrophy, a devastating condition that destroys neurological capacities. These same scientists are also very enthused about recent successes in programming adult mice skin cells back to pluripotent form. The hope is that similar methods can be used to reprogram a wide variety of human cells back to pluripotent form, so that the need for totipotent stem cells is gradually eliminated.

Whatever promise adult stem cells, umbilical-cord blood cells, and amniotic fluid stem cells hold, most stem-cell researchers still think that, at present, the best source of stem

cells is either in the gonadal tissue of aborted fetuses or in the inner mass of blastocysts (a stage in the development of an embryo that occurs four days after fertilization). Thus, it is not surprising that both embryonic gonadal (EG) stem-cell research and embryonic stem-cell (ES) research generate moral controversy. Anyone who believes that human life and, therefore, human personhood begins at the moment of conception will view such research as morally wrong. They will claim that to destroy an embryo, even for a good purpose such as curing Alzheimer's disease, is as wrong as killing an adult so that his or her organs can be distributed to six or seven other adults who might otherwise die. But is the wrong done in both of these cases really of



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the same kind and magnitude? I think not, for a variety of reasons sketched below.

Consider the case of embryonic gonadal (EG) stem cells first. According to Rev. Tadeusz Pacholezyk, Ph.D., it is morally permissible to use EG cells from spontaneous abortions (miscarriages), provided the parents give informed consent, but morally forbidden to use EG cells from elective abortions, whether or not parents give informed consent. But what about EG cells from therapeutic abortions, abortions that must be performed to save the mother's very life? Are not these abortions more like spontaneous abortions than elective abortions in intent? Chances are that a woman who has to undergo a therapeutic abortion does not want to terminate her pregnancy any more than a woman who has a spontaneous miscarriage. Why, then, should it not be morally permissible to use EG cells from her aborted fetus? In any event, subsequent to any kind of abortion – spontaneous, therapeutic or elective – which is morally worse: to use the aborted embryo for research purposes or to discard it? Provided that a woman does not get pregnant with the deliberate intent to abort her fetus for the purpose of research, it would seem morally good to use EG cells from her aborted fetus to potentially save other human lives. Regulations can be put into place prohibiting women/parents from directing that the EG stem cells removed from their aborted fetus be used to develop treatments for particular person(s), as was the case when a woman allegedly had an abortion so that the tissue from her aborted fetus could be used to treat her father for Parkinson's Disease.

Thinking that it might be less morally controversial to use ES cells instead of EG cells in their work, many stem-cell researchers have sought to secure ES cells in one of two basic ways, each of which has turned out to have its own moral issues. Some stem-cell researchers have obtained embryonic stem-cells from surplus embryos left over from the process of in-vitro fertilization (IVF) (combining sperm and egg ex utero with the intention of transferring the conceptus to a woman's womb for reproductive purposes). When a couple produces more embryos than is prudent to transfer into the woman's womb, clinicians generally advise the couple to freeze some of the surplus embryos for possible future use. If the couple takes the clinicians' advice, they will be asked to sign a contract (which, by the way, is not legally enforceable in most states) that specifies their wishes for the surplus embryos should they decide not to use them after all.

Their options include keeping the embryos frozen, discarding them, putting them up for adoption, or earmarking them for research.

If the couple opts to keep their surplus embryos frozen, they will add yet more frozen embryos to the 900,000 already stored in U.S. embryo banks. In effect, their decision will constitute a decision to let their surplus embryos die a slow death, for, unlike stem cells, frozen embryos are not immortal. In contrast, if the couple opts to discard their surplus embryos, they will, in effect, be choosing to abort them. In this instance, men as well as women get to make the abortion decision; they as well as women are asked to decide whether or not to procreate. On the face of it, it would seem that opponents of abortion should be more troubled about these ex-utero abortions than about traditional in-utero abortions. After all, frozen surplus embryos do not in any way threaten a woman's life or health. There is no need, in their case, to weigh their right to life against a woman's right to life (or bodily integrity).

The couple's other two options – putting the surplus embryos up for adoption or earmarking them for research – are, in general, the most potentially life-affirming of their options. One problem with putting up surplus embryos for adoption, however, is that there are probably not nearly enough infertile couples who want them. Another problem with the adoption option is that some couples would rather discard their surplus embryos than have other couples bring them to term and rear them. They simply do not want to procreate at all. They cannot come to terms with the thought that "somewhere out there" their child is being reared by strangers. For couples with this mind set, as well as couples who would otherwise simply discard their surplus embryos or suspend them in frozen animation, earmarking surplus embryos for stem-cell research would seem the best moral option. At least such research has the goal of enhancing and extending human life.

Seeking to avoid the personal dramas of the in-vitro fertilization clinic, and in search of the best research embryos to use (the process of freezing and then later thawing embryos may, after all, damage or degrade them in some way), other researchers have opted to create their own embryos by combining in vitro the genetic material of willing sperm and egg donors. Still other researchers are working to perfect a process called somatic-cell nuclear transfer (SCNT), a form



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of therapeutic cloning. But to date they have had success cloning only animal embryos, not human embryos. Reports that a South Korean researcher had successfully cloned multiple human embryos turned out to be false – indeed a case of blatant scientific fraud.

One question that has been raised about embryos produced via SCNT is whether they are really embryos. After all, they are not the product of egg and sperm uniting; rather they are the product of a somatic cell and an enucleated egg fusing. Another question that has been raised about human SCNT research is whether women should be paid for their eggs and if so how much. Unlike sperm donation, egg donation is a somewhat arduous and risky process. Some potential egg donors who would not be willing to take risks for \$0 may be willing to take the same risks for \$3,000 to \$7,000, the range of money women who donate (sell? vend?) their eggs for reproductive purposes typically get. Is there any good moral reason that a woman who donates (sells? vends?) her eggs for research purposes should not be paid approximately the same amount a woman who donates (sells? vends?) her eggs for reproductive purposes?

In 2001, President Bush proclaimed that federal funds may be used for only certain types of stem-cell research; namely, adult stem-cell research, umbilical-cord blood stem-cell research, and embryonic stem-cell research on already existing stem-cell colonies (said to be 78 in number at that time). A staunch pro-life/antiabortion advocate, he reasoned that because there was no way to bring back from the dead the embryos that had already been destroyed to create existing stem-cell lines, some good (treatments for devastating disease) might as well come from their evil origin. However, President Bush emphasized in nearly the same breath that no federal money would be available either to create additional stem-cell lines from unwanted frozen embryos or to deliberately create new embryos solely for research purposes. Importantly, President Bush's ruling forbade only federal funding for research on stem-cell lines derived after August 9, 2001. It did not forbid state or private funding for such research, substantial amounts of which have been provided to researchers for over a decade now. But as it turned out, only 23 of the 78 stem-cell lines were available for research purposes. Of the original 78 stem-cell lines, 7 were duplicates, 31 were in overseas laboratories that were either unwilling or unable to transfer them to the National

Institutes of Health (NIH) for safekeeping and distribution, 16 died after being thawed, and 1 was withdrawn because the embryo donors withheld consent. Of the remaining 23 stem-cell lines, none were entirely safe. They had been grown in mouse culture or “feeders,” exposing them to possible contamination. Therefore, federally-funded researchers would not have enough stem-cell colonies with which to work. To produce new stem-cell colonies for cutting-edge research, they would have to seek funding from states, charitable private foundations (e.g., the Juvenile Diabetes Research Foundation and the Howard Hughes Medical Institute), profit-making corporations such as Geron, and/or foreign nations with little or nothing in the way of restrictions on stem-cell research.

Polling data indicates that close to 70 percent of Americans favor stem-cell research even when it requires embryo destruction. Particularly interesting about one poll conducted in 2005 by the Genetics and Public Policy Center at Johns Hopkins University was that 69 percent of Roman Catholics, 74 percent of Protestants, and 50 percent of Evangelicals supported stem-cell research. To be sure, just because a majority of people favor a practice does not guarantee its moral rightness. However, a growing majoritarian moral consensus on a subject that requires weighing several moral “goods” and “bads” against each other may indicate a need to reflect on ones' own moral views. Perhaps some change is in order.

Featured Essay

Moral Sense and Nonsense

Christopher R. Williams, Ph.D.

Associate Professor, Department of Sociology and Criminology, University of West Georgia

As I write this, Michael Vick has yet again made headlines – this time, indicted by a Virginia grand jury on state dog fighting charges. As a consequence of his previous indictment on and guilty plea to federal charges stemming from the same incidents, Vick has undergone an abrupt identity transformation – from sports icon to poster boy for animal cruelty. Of all the natural talents and abilities that Vick



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has, perhaps moral awareness is not one of them. Granted, I have never met Michael Vick; yet where intentional (and admitted) human action would seem to indicate imperviousness to suffering, perhaps we are entitled to some evaluative liberties when it comes to moral character.

As I think about the Michael Vick case – as well as countless other acts of human indecency that scroll across the daily news headlines – I am reminded of a number of notable philosophers such as G.E. Moore and W.D. Ross who popularized the notion that the discernment of moral evil and, by extension, our awareness of morality, justice, and their applicability to everyday situations ultimately comes from something like a moral “sense.” Most of us, at least, are able to intuitively grasp right, wrong, good, evil, justice and injustice. If we witness torture, for instance, the cruelty and moral wrongness of the act and the suffering that it brings should be self-evident. We need not turn to authority, popular opinion or, for that matter, even reason to sense the malevolence inherent in what has transpired. Assuming we have the requisite moral sensibilities, we can and should be able to immediately apprehend the moral properties in any given situation and employ that apprehension to make good moral judgments. This intuitive moral sense thus becomes the basis for moral knowledge, belief, decision-making, and so forth.

In fact, intuition has always been regarded as one of the basic ways in which we can know the world. Along with sense perception, reason and logic, and authority (to name just a few), intuition is considered by some as a reason for maintaining a belief and as justification for claiming certain types of knowledge. Not only does torture offend my basic moral sensibilities, but on that basis I can claim to “know” that torture is wrong. Not because I have necessarily seen (i.e. perceived or witnessed) that it is wrong or because the “greatest happiness principle” tells me that it is; rather, I claim to know that torture is wrong simply because it “feels” wrong on a very basic level. This “feeling” is a product of moral sense – or so goes the argument. Suppose that, taking a leisurely stroll down the street following a dinner out, I witness a woman being sexually assaulted in an alley. I need not logically reflect nor call upon formal moral rules or principles to understand the wrongful nature of the event. What I should do in such a situation – namely, act so as to impede the evil and remedy the suffering – should reveal itself to

me as well. It is not revealed by God, law, or any other external source but, rather, by my intuitive moral sensibilities. Whether I have the courage to, in fact, respond appropriately is another matter altogether.

If there are indeed good reasons for believing in the existence of such a moral sense, we might equally presume that at least some people either do not have that sense or that the mental faculty responsible for it is either insufficiently developed, has corroded to the point of ineffectiveness, or is obstructed by some more powerful force. Perhaps this moral sense is differentially distributed by nature, such that some people “have it” and others don’t? Perhaps it is an innate and universal faculty, present in all people at birth, but requiring proper nourishment and practice? Perhaps it is enhanced by certain types of experiences and equally capable of having its force diminished by other types of experiences? It was Karl Marx who suggested that our consciousness – intuition presumably included – is a product of our material existence, including class, race, gender, culture, and so forth. To the degree that this is true, we might question whether there is anything like a universal or shared moral sense. Instead, we might presume that intuition would lead different people to different conclusions based, in part, on who and where they are, have been, and hope to be.

I would be the first to admit that much of what has historically been deemed morally evil is far from universally recognizable through the faculty of moral intuition. Perverse sexual practices, some varieties of drug use, and Harry Potter, for instance, seem to be convenient adversaries for religious and political interests rather than intuitively-grasped objects of moral reproach. Moral judgments are, have always been, and will always be sensitive to the influences of time and place. However true this may be, we need not commit ourselves to the clutches of moral relativism – a commitment which virtually eliminates any means of differentiating between opposing values and leaves us unable to distinguish right from wrong, good from evil, or to condemn wrongful or harmful laws, policies, and behaviors. Indeed, few – if any – of us wants to live in a world in which no moral sensibilities have stout roots. Though human existence has much room – and need – for variation in lifestyle and taste, certain types of attitudes and behaviors seem to have no appreciable moral grounds by which they can be legitimated (in any culture or time period). Perhaps it is these behaviors to which moral intuition or the moral “sense” is most responsive.



FEATURED ESSAY CONT.

Returning to the case of Michael Vick, we might do well to remember that scientists once believed that dogs were sorts of machines, incapable of experiencing suffering. The scientists proceeded to utilize the dogs for heinous experimental purposes with this belief in mind. Are we to judge their moral character, the moral quality of their actions, and doubt the sufficiency of their moral intuition when they were acting under the influence of such premises – premises that were derived from the common or shared sense of the scientific community at the time? Does moral sense fail to reveal itself if ignorance, whether personal or collective, leaves us blind to the facts of the situation? Even so, surely we cannot believe that, in the twenty-first century at least, those who would torture animals, commit various other unforgivable acts of cruelty and, through their actions, reveal not the slightest hint of humanity are simply ignorant of the harm and suffering that they are causing. Desensitized to harm and suffering? Probably. Lacking empathy, absent compassion? Maybe. But certainly not ignorant.

It was the French philosopher Jean Jacques Rousseau who warned us that modern society was corrupting our

most basic sensibilities – that whatever sort of basic humanity defines us as human beings was slowly disintegrating under a cloud of competitive self-interest. We no longer concern ourselves with the suffering of others. Not, to be sure, because we are absent the capacity for compassion and care. These deepest inclinations are what define us as human beings. Yet our impulses of non-harm and benevolent concern for other living beings have in some important sense been repressed by modern social and cultural decrees. We care more about money and material possessions than we do about human relationships and the well-being of those with whom we share the earth. Just the other day a colleague asked if I would be willing to throw a pet (in my case a cat, but dogs work equally well) off of a cliff for five million dollars. Money is important to nearly all of us, but the value of life (along with basic compassionate awareness) seems to prevail for most people. This is, after all, what moral character is all about. Then again, there are others who would happily toss animals off of cliffs for the sheer thrill of causing injury to or the death of another living thing. There are those for whom torturing animals – even without financial incentive – is an exercise in experimental hedonism, not unlike street racing, graffiti writing, or stealing gasoline. Perhaps culture erodes moral intuition; then again, perhaps cruelty is merely a byproduct of nature’s variable distribution of moral resources.

Case Report

The Duke Lacrosse Case

By John H. Bailey, Jr.

Doctor of Jurisprudence from John Marshall Law School, 1979

Chief Judge of Superior Courts, Northern Judicial Circuit of Georgia

As a former career prosecutor the Duke lacrosse case shook me to my very core. From the District Attorney’s first televised statement I felt that things in this case just were not “right”. Although I cannot recall the name of the film, there is a line uttered by an actor in the film that I wrote down years ago that reads as follows: “I am a prosecutor. I am a part of the business of accusing, judging, and punishing. I explore the evidence of a crime and

determine who is charged; who is to be brought to this room and tried before his peers. I present my evidence to the jury and they deliberate on it. They must determine what really happened. If they cannot, we will not know if the accused deserves to be freed, or should be punished. If they cannot find the truth, what is our hope of justice?” There is no more powerful position in the criminal justice system than that of the public prosecutor. I daresay there are few positions in all of government that are more powerful than that of the prosecutor. It is because of this great power that prosecutors must adhere to strict ethical standards and considerations.

Attorneys take an oath to represent their clients zealously. The Canons of Ethics adopted by the various state bar associations impose this duty upon their members. More is expected of public prosecutors. In many states the oath of office administered to prosecutors imposes upon them the duty to seek justice. I believe that most career prosecutors would agree that their job is



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not necessarily to obtain convictions, but rather to take the necessary steps to see that justice, in every case, is done. In this regard the prosecutor not only represents the state, but also the defendant. It is the prosecutor's duty to insure that the defendant receives a fair trial. What did the district attorney in the Duke lacrosse case do that was unethical? Let us take a look at just two things.

Every defendant is entitled to a trial by jurors who have not previously formed and expressed any opinion as to the guilt of the accused. During the course of this case the district attorney gave more than fifty interviews. During some of the interviews he stated that he was confident that a rape had occurred and he made derogatory remarks describing the defendants. These interviews received wide coverage in both the print media and on television not only in the Durham County, North Carolina area, but also nationally, thereby possibly tainting a large portion of the potential jury pool. Most prosecutors know that discussing the facts of a case while giving an interview is inadvisable at best. Whether the district attorney's reason for his comments was to influence potential jurors or if it was just bad judgment, his actions were unethical.

DNA evidence is very powerful. The nature of DNA evi-

dence is that it will either conclusively tie the suspect to the crime or it will exclude the suspect. Because of the nature of DNA evidence many jurisdictions, North Carolina included, now require the final DNA results be reported immediately to the defense. The district attorney was accused, along with the DNA lab director, of withholding exculpatory evidence from the defense. At his trial on state ethics violations the district attorney admitted that he knew there was no DNA evidence which would link two of the accused parties to the alleged victim in the case. At the end of this sordid tale the district attorney was disbarred and all charges against the accused young men were dismissed. One could say that now, at last, justice has been served. Has it? The four accused Duke students have had their reputations sullied, and have had to incur enormous legal expenses defending themselves against charges that should have been resolved very early in the case. Many citizens now look upon public prosecutors with suspicion, which affects the way the public's business is conducted in the criminal courts.

Whether intentional or unintentional, the ethical lapses on the part of this one public official have caused more harm than could have been imagined. This all could have been avoided had this one person kept in his mind his duty to seek justice for all.

Ethics and Work

Ethics In Practice

By Ellyn Ritterskamp, M.A. in Ethics and Applied Philosophy

For my practicum in the M.A. program, I asked the Managing Editor and the Human Resources director at *The Charlotte Observer* if they needed any work done in ethics. I knew I could find another company, but I have worked at *The Observer* for 19 years in production, and trained in journalism in high school and college. I had an unusual combination of perspectives to apply my ethics training.

The M.E. said she needed a new ethics code, as it had not been revised in several years. My plan was to read old and new perspectives on journalism ethics. I wanted to see how they fit with my understanding of virtue theory, to create a new policy that is not a list of rules, but a statement of the kind of people we want to be.

Background

I began with Jeremy Igger's book on journalism ethics today. He is a journalist with a Ph.D. in philosophy; this book grew out of his dissertation. He argues that traditional ethical rules of journalism should not apply today; rather, we must construct a new set of guidelines that reflect the new roles of journalism.



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He studied John Dewey's *The Public and Its Problems*, so I did, as well. This book is a series of lectures from the 1920s, in which Dewey challenged journalists to serve as communicators. He saw that responsible citizens in a democracy need information about their government and about each other. Stephen J. A. Ward's history shows why some rules of journalism were put in place, and why many of them no longer fit. Iggers, Dewey, and Ward all agree that the traditional concept of objectivity cannot work in contemporary journalism. Philosophers agree that absolute objectivity is not possible; we each see the same object with different perspectives. We cannot be totally objective. Everything we do is colored by our backgrounds.

The first step we must take is to acknowledge this inability to be objective, and the second step is to commit to being as fair as we can be. It is possible for us to compensate for our tendencies and biases, even as much as we do not want to admit we have biases.

The Writing

I began by writing down everything I wanted to include – broad topics and detailed discussions, all mixed up. For the first time since elementary school, I used index cards to sort the material. Using the cards, I wrote the frame.

I knew a newsroom committee had been in progress on a policy in 2001, and that I would be using some of that work, so I would not have to write this entire policy myself. Much of the work was already done, by a group that had to set aside their project in the wake of September 11.

I had corresponded with some of the members of that group. Education reporter Ann Doss Helms said she had learned in the earlier project that people of good intention will disagree, and that perhaps a good code would be a series of recommendations rather than a list of rules. I was thrilled, because my intention all along was to create such a document. My preference in ethical systems is toward virtue theory, or systems in which we do not ask ourselves, "What is the right action?" but instead, "What kind of person do I want to be?"

This document uses that approach. There are a few actions that will bring immediate dismissal, as they are absolutely and always wrong. Most other actions, if they make you feel funny, are also wrong. But some things are not easy and obvious – if they were, we would all agree on them. It is these gray areas that challenge us. It is these choices that reflect who we are. The purpose of this code is to suggest who it is we want to be, in broad strokes rather than crushing detail.

The next step was to incorporate portions of the 2001 policy draft that fit. I used much of it, with modifications. A few elements I deleted, some because they were no longer relevant, and some because I had written about them in my framing piece. I changed some language from phrases like "We should do a thing" to "We will do a thing." These changes bring more commitment to the prose.

The Process

The next step is the review process, during which the code is examined by the Managing Editor and other interested newsroom staff, and also my supervising professor. His function was to make sure I stayed on track with the project, and that my work fulfills educational goals, as well as being of use to a non-academic institution. One of his specialties is language, and he has made several helpful suggestions about ways to say things, and about topics I might not have looked for, since I work inside the institution.

The review process is on hold due to more urgent changes of staffing, computer hardware, and paper size. Here are some highlights of the draft:



ETHICS AND WORK CONT.

OUR VALUES

We are people of integrity. We have courage to do the right thing even when it is not easy – especially when it is not easy. We know we do not always know what the right thing is but we will keep looking.

We know our readers are more than customers; they are citizens. Our content and presentation will meet their everyday needs, and also give them the information they need to be good citizens.

We are fair. We will notice when we are unable to be objective or neutral, but we will always be fair.

WHO WE ARE, AND WHO WE WANT TO BE

We at *The Charlotte Observer* are part of a tradition of public service to Charlotte and the Carolinas. Now, we also serve the world.

Our function is to provide readers with the tools and information they need to become good citizens. This is the primary role of a free press in a pluralistic democracy. Our traditions of service and usefulness will reach into the future. When we consider our past, we will not see it in nostalgic wistfulness, but in view of our ongoing transformation.

(Other highlights include sections on integrity, courage, and fairness; content and presentation; conflicts and perceived conflicts; and journalists as experts.)

IN SHORT

Trust your gut.

Not every situation is easy and obvious. If the answer was easy and obvious, we would all agree. Thoughtful people of good intention will disagree.

Disclose. Talk to people.

We are in service to the interests of the public.



ETHICS IN PUBLIC POLICY

Capital Punishment and Methods of Execution: An Interview with Professor Bruce A. Arrigo

William P. Brandon, PhD, MPH
Department of Political Science

Background: For the purposes of this interview, I want to set aside the ethical and prudential issues involved in the debate about capital punishment per se. Instead, let's focus on the means of execution. The issue is at once local, national and global. North Carolina currently has executions on hold. N.C. law requires that a physician participate in the administration of lethal drugs, the only form of execution now legal in the State. However, the North Carolina Medical Board threatens to discipline physicians who participate on the ground that medical ethics requires doctors to save lives and never to take them.

North Carolina and 36 other states of the 38 states that allow capital punishment, the federal government and the military use lethal injection. There were 42 executions in North Carolina from 1984 through August 2006. A 2007 study (n=33) reported mean times between administering the common three-drug cocktail until death ranged from 9 to 13 ½ minutes depending on drug protocol; eyewitnesses reported "convulsions and attempts to sit up in 4 executions."¹

In September 2007 the U.S. Supreme Court agreed to hear Baze v. Rees (No. 07-5439), a death penalty case appealed from Kentucky. It raises questions regarding the standards for deciding whether lethal injection constitutes the cruel and unusual punishment prohibited by the Constitution's Eighth Amendment.²

On the international level, the U.S. public was shaken when Saddam Hussein was hanged and more dismayed when a miscalculation resulted in decapitation rather than the hanging of one of his codefendants. American media and political leaders present beheading as a barbarous act when conducted by U.S. enemies and seldom mention public beheadings conducted by our close allies in Saudi Arabia.

Q: How did those States in the U.S. that still execute prisoners come to "medicalize" the process of capital

punishment? Was the evolution from hanging and the firing squad to the electric chair, the gas chamber and a lethal "cocktail" of drugs driven by ethical concerns?

A: *The medicalization of capital punishment is an extension of the disease model of medicine. The disease model of medicine reasons that the body can be treated or cured. To this extent, the body is "terroritized" and commodified as if it is THE disease necessitating correction. However, what this logic fails to consider is how the body and disease are then conflated, absent a consideration of what Erich Fromm defined as "social" and "systematic" pathology. The former refers to the unreflective conformity of people who insist that science and technology can be fitted neatly to individual failings and shortcomings; the latter refers to the breadth of this "pseudo-thinking" as found throughout social institutions (e.g., law, medicine, education).*

Q: Is it true that in the Elizabethan period one of the perks of nobility was the right to be beheaded, whereas commoners were forced to undergo the indignity of hanging? If true, what lay behind that distinction?

A: *Yes. However, underlying this distinction was the conviction that a beheading was swift, certain, and severe whereas a hanging, though gruesome, was not so swift or certain. In a sense, then, the nobility were put out of their misery while commoners suffered a particularly protracted death. Of course, both were public spectacles which furthered the interests of the state as the authoritative executioner.*

Q: Where does the contribution of Dr. Guillotine, the physician who invented the guillotine at the time of the French Revolution, fit into this evolution? Did he invent the guillotine to make execution more humane or just more efficient?

A: *Efficiency has always played an important role in capital punishment but it serves to create the illusion of humane-ness. This was true in Dr. Guillotin's era as much as it is today. Efficiency and utility are linked to the logic of capital or, if you will, to economic interests. The more improved the method of execution becomes, the more likely that the method will be replicated and adopted elsewhere. The more that this occurs, the easier it is to argue that the pains of capital punishment for the person executed are minimal or non-existent. This helps to create legitimacy in the practice of capital punishment and in its preferred method. Thus,*



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for example, today's strategy of lethal injection conveys the message that it is efficient, safe, and completely (or mostly) painless. In fact, some would argue that it is the most humane method of state-sanctioned killing to date.

Q: Is Dr. Guillotin's contribution the first example of medicalization, which involves changing the focus from the unsettling outcome of the state taking a life to a focus on humanizing the process by which that happens?

A: *I don't know if it is the first but it is one of the more dramatic examples of how territorializing and vanquishing the body through efficient (and presumably humane) efforts to kill draws support from medicine. But again, this approach makes the person the disease; that is, it makes the two indistinguishable without regard for those structural relations that create, nurture, and sustain pathology in the first place.*

Q: The means of execution that we have discussed—if “executed” competently—appear to share in common the fact that death is essentially instantaneous or the condemned is already unconscious and regarded as insensate (in the case of the gas chamber, electrocution and lethal drugs). In contrast, history informs us of many gruesome ways to die—crucifixion, drawing and quartering and, if the western movies are accurate, staking prisoners under the blistering sun over ant hills. This observation leads to the question where the real ethical distinction for societies that continue to practice capital punishment is to be found, as distinct from conventional or societal preference or taste. Is the ethical distinction between methods that should be instantaneous versus those which seem to be designed to create as much pain as possible? Or are we right to make a red-line ethical distinction between those that medicalize the execution versus those that are also instantaneous but which do not involve medical intervention, such as hanging or beheading?

A: *The ethical distinction lies in what execution signifies for those cultures that practice it. In the United States, when the body is medicalized (treated) through execution the person is virtually indistinguishable from the disease or dangerousness that he or she is said to represent. As such, this disease must be corrected. In response, efficient, inventive, and technical modes of execution (and their corresponding pretense of civility) function as mechanisms that trivialize the execution (the harm), rendering it nothing more than a mere “procedure.” This trivialization – enacted through scientific*

advances and legitimized by the state – enables the public to displace its responsibility in fostering or, at least, sustaining political and economic conditions that make capital punishment acceptable and commonplace. In short, punishment as “industry” (lethal injection for capital punishment) sanitizes the harm done through execution. This is a harm that extends beyond the person on death row, beyond family members of victims and innocents, to social and systemic pathology in which status quo conditions are perceived to be healthy, natural, and inevitable. Thus, the ethical issue is not that the person on death row has victimized; this is understood and warrants a measured and thoughtful response. The ethical tension is in the state's response. In the United States capital punishment is used to fuel the prison industrial complex in which medicalization poses as a panacea when, in fact, medicalization is a symptom of a deeper unresolved malaise.³

Q: Torture and other human rights violations are done secretly and governments and political movements that practice them generally go to great lengths to cover up information about such acts. But some of the American public's revulsion over some kinds of instantaneous execution appears to stem mainly from the decision to make the execution public. From an ethical standpoint, is there a difference if executions are public or private—or semi-private, as seems to have been the case with Saddam Hussein?

A: *When executions are made public, society confronts the limits of its humanity. By the same token, if executions are regularly made public citizens become desensitized to the horror of the event. Moreover, when executions are made public – say, for example, through television or through other electronic viewing – the event becomes a “spectacle.” What is consumed is not the object (capital punishment) but the image-object. In our culture, such conspicuous consumption is anchored in economics (advertisements, commercials, infotainment) in which the state-sanctioned killing is reduced to its prurient and sensationalistic appeal. The execution becomes an artifact of a culture that values image, sound-bites, captions, iconic emblems, and the virtual over real, authentic, and lived experience. In a sense, we may think of this not merely as a question of ethical sensibilities but of re-ontologizing the subject – the person who views, the person who is viewed, and those who make such viewing possible. Given these collective limitations on public versus private execution, the fundamental ethical dilemma is to unpack what capital punishment signifies in a (capitalistic and me-*



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dia manufactured) society.

Q: But our Saudi friends would undoubtedly claim that the greatest deterrent effect in beheading criminals and terrorists is achieved when the execution attracts public attention, rather than happening in the dead of night in remote locations, as is typical of capital punishment in the U.S. Is there any truth in this claim?

A: *Distinct cultures promote different values. The same could be said here. However, the question for cross-cultural consideration from a virtue ethics perspective is whether capital punishment serves the interests of the government and whether these interests advance the good of its citizenry, enabling them to flourish. Thus, to the extent public executions fulfill this objective, arguments about deterrence represent consequentialist reasoning. In my estimation this approach is less appealing in that arguments for utility (here read as deterrent effect) could easily be found in any policy. However, I would much rather ask the following: how does a public execution advance the human potential of a society and its citizens, whether in the U.S. or abroad? In my estimation, it does not.*

Q: Finally, what is the relevance, if any, of our conclusions about the ethical issues involved in the means of execution for the acceptability of capital punishment itself?

A: *As I've already indicated, the means of execution must*

be subjected to critical interrogation. In the United States, our response has been to create increasingly technical and efficient means of execution (lethal injection) that objectify the person subjected to capital punishment, that de-realize the event, and that sanitize the termination of life all in the interests of sustaining the state's political-economic agenda. These conditions tell us something about our collective (in)humanity as well as our inability (or unwillingness) to respond to victimization in ways that renounce the harm without vilifying or demonizing the one who harms. Creating these alternative conditions is the ethical challenge that awaits our deliberate and thoughtful attention.

¹Zimmer, TA, et al. 2007, Lethal Injection for Execution: Chemical Asphyxiation? *Public Library of Science Journal Medicine*, 4(4):e156.

²Greenhouse, Linda. 2007. Justices to Enter the Debate over Lethal Injection. *New York Times*, 26 September 2007, p. A24 and Supreme Court Memo: Trying to Decipher the Justices Current State of the Death Penalty. *New York Times*, 19 October 2007, p. A21.

³For a more detailed discussion of this deeper malaise, see Fromm on both systemic and social pathology. Fromm, E. 1941/1994. *Escape From Freedom*. New York, NC: Henry Holt & Co.



BOOK REVIEW

Review of MEDICAL APARTHEID, by HARRIET A. WASHINGTON

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“For it is mutual trust, even more than mutual interest that holds human associations together. Our friends seldom profit us but they make us feel safe...” H. L. Mencken

Trust is one of the keystones of medicine. Patients, in their most vulnerable moments, whether in the midst of giving birth or in the waning moments of life, must trust their physicians. Many patients trust physicians with their inner-most concerns and problems; they bare their bodies but also their souls, and the bond that develops forms the basis of the physician-patient relationship referred to by Hippocrates in the “Oath”: “And whatsoever I shall see or hear in the course of my profession...I will never divulge, holding things to be holy secrets.”

In *Medical Apartheid*, Harriet A. Washington traces the history of medical experimentation involving African Americans. In so doing, the author shakes the very foundation of medicine referred to by Hippocrates, namely the trust that must exist between a patient and his/her physician. Why the distrust that appears, even today, to exist between African Americans and medical researchers? Why indeed is there skepticism among African Americans and the whole medical establishment? Ms. Washington purports to explain these questions by going back through the early history of American medical research and tracing the thread of distrust through to the present day. She begins by describing the dawn of US medicine in the South, first in recounting medical abuse on the plantation (“Southern Discomfort”) and then medical experimentation on slaves (“Profitable Wonders”). She continues with chapters on the public display of black bodies at fairs, circuses and zoos (“Circus Africanus”) and the use of blacks as “clinical material” for diagnosis, treatment, surgery and autopsy in “poor clinics” in mostly southern medical schools in a chapter entitled “The Surgical Theater.”

Although the author uses the term “scientific racists” to describe the physicians and researchers of the time, she admits

that many of the chilling details of abuse of blacks “...simply reflected the social realities of the slave-holding South.” She barely mentions that similar experiments were undertaken on poor whites as well, including the eleven-year study by William Beaumont on the physiology of digestion on the exposed stomach of bullet-wounded Alexis St. Martin.

Of interest is that Washington, a medical journalist, utilizes references in the first four chapters that include historical texts, personal journals, plantation records, newspaper articles, oral histories of slaves and texts on racism. These sources account for all but 15 of her 292 references. The 15 are from medical journals. Unfortunately, much of this material is presented in the somewhat strident voice of a front-page expose, with discussion of people and events more in keeping with the language of the *National Inquirer* than with a reasoned inquiry into this country’s medical history. Ms. Washington’s opinions of the medical community of the pre-Civil War and antebellum South are summed up in the following unreferenced sentence from chapter 4:

“The white physicians who were trained by peering at, ridiculing, and practicing upon the captive bodies of African Americans had been taught to view these bodies as expendable. When loosed upon the world as practitioners, they continued to view African Americans as subjects rather than patients. Graduate physicians utilized unwilling blacks to display their therapeutic prowess or as material for research for papers and surgical reputations.”

In Chapter 5, “The Restless Dead”, the author continues to demean the mostly white medical profession with terms and phrases such as:

“...physicians lust for cadavers...”

“...medical racism...”

“...physicians still possess books bound in the skins of African Americans...” Reference—“Personal communication to the author”

“...The nature of the medical abuse is racial...”

“...Quote from a Yale historian (no text or article cited): ...a symbolic parallel is also clearly visible between the formal stance in the dual tableaux of commemorative professional portraits of medical students and the commemorative portraits



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of whites celebrating the lynching of African American men and women.”

One surprising revelation, given the author’s penchant for viewing things through a racial prism, is her references to involvement in medical victimization of blacks by blacks. Grave-robbing for profit to provide cadavers for anatomy laboratories in the South was apparently common. She details the role played by black porters (aka “resurrectionists”) such as Grandison Harris and Levi Chew in these “bodies for profit” schemes. Ms Washington however dismisses the “occasional victimization of blacks by blacks...as due to class and self interest.”

The infamous case of the Tuskegee Syphilis Study (1932-1972), which took place at the Tuskegee Institute, the black university founded by Booker T. Washington, is discussed in detail in the chapter entitled “A Notoriously Syphilis-soaked Race.” These details, which are now very well known, are supplemented with the surprising facts about the main coordinator of this project, Eunice Rivers, the nurse-steward of the Tuskegee project. Ms. Rivers was involved from the project’s inception in soliciting black men to sign up and then getting them to continue to come back for follow up for their “treatments” for “bad blood” for the entire 40 year duration of the study. There is plenty of blame to go around for this ill-conceived project that continued even after there was knowledge of an efficacious treatment for syphilis. When this blame is distributed, however, one should not forget Eunice Rivers, an African American nurse, who looked the other way as her fellow blacks continued to suffer and die from untreated syphilis.

Washington’s list of medical research misdeeds is extensive. One wonders, therefore, why, in Chapter 6 (“Diagnosis Freedom”) she thought it necessary to deviate from the subject and include data about the sixth U.S. census of 1840. This census purported to show that free African Americans had poorer mental and physical health than those who remained enslaved. She seems to use these questionable statistics, which are not an example of misplaced medical experimentation, to bolster her own ideological views, that this data “provided a powerful argument for slavery.” She also gives an in depth description of P. T. Barnum’s use of black Americans as sources of entertainment. This is exploitation. It is not medical experimentation gone awry.

Following her detailed handling of the Tuskegee experiment, the author presents material about lesser known abuse and experimentation involving black Americans. These include chapters about experiments conducted by the government, the armed forces, prisons and a few private institutions. References for Chapter 9 that presents allegations about abuses involving radiation treatments after World War II are mainly lacking and include oral histories, undated memos and submitted but unpublished manuscripts.

Today, as the author points out, research involving prisoners means research involving blacks, who in 2004 constituted 44-46% of the prison population. Due to current punishment for drug infractions, black women make up the fastest growing population in American prisons. Although many abuses are cited, the protections for these prisoners are in place. Regulations (Section 46.301-6 of Federal Regulations) forbid research on treatment not directed to prisoner’s conditions as well as diseases unrelated to prisoner-related illnesses. As Tristram Englehardt points out in *The Foundation of Bioethics*, “...although there is much to be said for the protection afforded by federal regulations to prison populations, these restrictions remove the prisoners’ opportunity to contribute to society and to recapture a sense of moral dignity though such altruism...and...further lower the dignity and moral capacity of prisoners.”

In her chapter on abuse of black children involved in medical research (“The Children’s Crusade”), the author dismisses parents and guardians, IRBs, the NIH, and the FDA for their failures to protect children from “stigmatizing testing,” stigmatizing medical research,” “experimentation reflecting segregation and discrimination” and what she calls “medicalization” of violence against black boys. Again, the protections are in place. In the Code of Federal Regulations involving federally funded research involving children (46.406), it is stated that “...federally funded research involving children should not require greater than minimal risk to the subjects if it has no prospect of directly benefiting the individual subject, unless it is likely to yield generalized knowledge about the subject’s disorder or condition.” Of this and the regulations on the protection of prisoners, Ms Washington asks “What, for example, constitutes minimal risk?” The definition is clearly stated in the regulation: risks that “...are greater, considering probability and magnitude, than those ordinarily encountered in daily life or during per-



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formance of routine physical or psychological examinations or tests.”

In a chapter entitled “Genetic Perdition,” Ms Washington praises the work of the “O.J. Dream Team” Barry Scheck and Peter Neufeld, for their work on DNA testing to overturn the sentences of erroneously convicted blacks. This laudable work is soon transformed into another lament that “tens of thousands of innocent people are trapped in jail.” There does emerge from this chapter the hopeful information that has come from studies involving the human genome, namely, that race is not biological and that there is little variation among the genomes of what have been thought of as separate racial groups. If race is not biological, then why speak of race-based therapeutics? As the author correctly points out, most genetically distinct diseases and differences between ethnic groups account for only a small fraction of the illness and death in any community.

Harriet Washington has voiced many reasons as to why the African American community should be wary of healthcare and medical research. It is a story that should be told, and arriving at what is the objective truth is certainly not an easy task. My concern is that by reading this book and accepting much of it as fact, even more African Americans will develop a heightened distrust in medical research and physicians. While lamenting this mistrust, I fear that the author has sown the seeds of more distrust. In an ironic twist, in the Epilogue to *Medical Apartheid*, the author states that medical research in the United States today “is more than safe for African Americans; it is *necessary*.”

Look at these facts given in the introduction of *Medical Apartheid*:

-A black woman is 2.2 times as likely as a white woman to die of breast cancer.

-Black men have the highest rates of developing and dying of prostate and lung cancer.

-Heart disease claims 50 percent more African Americans than whites.

-African Americans are more likely to develop hepatitis C and die from liver disease.

-Forty-nine percent of HIV-infected Americans are African Americans.

-Eighty percent of children with AIDS are African American or Hispanic.

-Infant mortality of African Americans is twice that of whites.

-African Americans suffer the nation’s highest rate of cancer and cancer deaths.

-The diabetes rate in blacks is double that of whites.

-The life expectancy of African Americans is as much as six years less than that of whites.

Washington states that, “We must acknowledge the past in order to regain trust and to seize the future.” The facts belie this hopeful comment, as currently, “as many as twenty million Americans have enrolled in formal biomedical studies—but fewer than one percent are African American.”

Some ideas suggested by Ms. Washington in her Epilogue are worthy of exploration. These include adding more patient advocates and peers to IRBs; appointing medical ethicists to IRBs; and educating medical researchers in the ethical conduct of biomedical research.

Let us leave this review on a positive note and take some sage advice from a medical ethicist who has thought in depth about these issues. He offers us a direction for ethicists assigned to IRBs of the future. (I only wish that his name had appeared in the Bibliography of *Medical Apartheid*):

“The use of human subjects in research is thus tied to the need to afford special protection for free and informed consent as to ensure that adequate knowledge is communicated and that consent is free of coercion...subjects may often confuse research without benefit for them with treatment that could improve their health...students, prisoners, and other special populations [read African Americans] may be both overtly and covertly coerced to participate in medical research. The principle of autonomy requires that, as a condition of mutual respect, individuals be protected against both deception and coercion. The principle of beneficence requires that there be



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a net benefit to others...one's moral concerns regarding the practice of human experimentation will in part depend on one's view of the safety of health care in the absence of rigorous research. One need only fear the reckless use of humans in medical research. One should also fear the costs of reckless treatment—treatment not based on adequate research. The other side of the concern to *protect human subjects is the concern to protect patients against untested and ill-founded treatments.*"

H. Tristram Englehardt, Jr.
The Foundation of Bioethics

Seasons Greetings and Best Wishes for a Happy New Year!

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