I recently received a voice mail message from a reader of the Bioethics Examiner, saying she enjoyed our articles about larger policy questions, and suggesting that the field of bioethics has been conspicuously silent on the issues surrounding the recent agreement between state attorneys general and the tobacco industry. Now that President Clinton seems to have rejected that plan in favor of further negotiations, the debate will be rejoined. How can bioethics add to that debate, and why should it be included among the disciplines included in discussions leading up to a final agreement?

One answer to these questions is that bioethics can offer much to discussions of the ethics of public health policy, an area that has received precious little attention from the bioethics community. While leadership for an agreement has been assumed by the legal community, the negotiations are fundamentally about public health—incentives for reducing teen smoking, funding prevention and education campaigns, and paying for the excess health care costs caused by...
return. Do they want clarification of issues, or a recommendation for action? If the latter, does anything ride on the content of the recommendation — money, future consults, political goodwill? Most people will concede the potential for bias. But as long there is a clear understanding of what is being agreed to, and the consultant feels free to offer an honest and uncoerced recommendation, most tell me they see no reason to worry.

Why, then, do I worry? Two reasons. The first simply concerns the question of who picks and pays for the ethicist. If the dispute has arisen between a hospital and a patient’s family, the appearance of impartiality (still less the reality of it) becomes hard to maintain when the hospital has chosen the ethicist, flown him or her in, paid for his lodging and then sent him away with a hefty fee. How would we reassure a family that the consultation was impartial if a consultant, chosen and paid for by the hospital, has recommended against what they sincerely believe is morally right?

At issue here are both the money and the choice of ethicist. If the ethicist is profiting in some way from the consultation, the possibility arises that the profit will influence the outcome of the consult — perhaps even unconsciously, not unlike the way that, as pharmaceutical companies have found, gifts to doctors influence their prescribing patterns. But there is also the issue of who chooses the ethicist and why. Bioethics thrives on controversy, and there is generally no shortage of ethicists who will support any number of moral stances on a complex issue. Surely shrewd administrators will do their homework and choose ethicists they can bet will support the position they prefer. Perhaps, then, to be fair, families should be permitted (or encouraged) to choose and hire their own ethicist. But is this really a direction we would like clinical ethics to take: each side in an ethical dispute hiring her own moral litigator?

In some ways, of course, there is little new here. Many hospitals, medical schools, and even some managed care organizations have ethics consultants on staff who are either paid directly by the organization itself or through some kind of other indirect financial arrangement, such as annual contributions to a bioethics center. Yet this should not put us entirely at ease. I am not sure that these more conventional arrangements are as innocent as they seem. Even if an ethicist’s fee (or salary) is not directly contingent on a particular consultation, subtler long-term pressures come into play, such as political inclusion in hospital affairs, or academic advancement, or more directly, the willingness of a hospital to continue to contribute to the salary of an ethicist who is consistently critical of their policies.

Which brings up a second, more elusive concern. Is moral advice something that should be bought and sold? By this I mean something apart from the question of where the money comes from, but, rather, the question of whether a price should be put on the consultation at all. Does the attachment of money to moral counsel change the nature of the act? If so, is this a change with which we should be comfortable?

The idea that some monetary exchanges should not be permitted is nothing new, of course; we do not allow the sale of votes, children or Nobel Prizes. Some exchanges we block because they would violate standards of justice, such as buying your way into political office or out of the military draft, but some we block because we feel that the exchange of money would alter the meaning of the good that is being exchanged. Buying sex and having sex are not the same thing, for example; and for a man to offer a woman money for sex is (unless she is in the business) often regarded as an insult. Likewise, Europeans laugh at rich Americans who try to buy aristocratic titles. To think that noble birth is something that can be bought betrays a misunderstanding of the nature of European aristocracy.

Does the exchange of money alter the nature of an ethics consultation? I am inclined to answer yes. It turns moral counsel into a commodity that can be bought, sold, priced, marked down, haggled over, or withheld if the price is not right. This does not necessarily mean that such exchanges should be blocked, of course. But we should pause to think about the way the attachment of money will eventually come to shape the act of consultation. If, as Oscar Wilde said, a cynic is someone who knows the price of everything but the value of nothing, then perhaps by putting a price on ethical consultation we are yielding to our own unspoken cynicism about the field.
Faculty Profile
Carl Elliott, MD, PhD

Carl Elliott is Associate Professor and Co-Director of Graduate Studies in the Center for Bioethics. He was educated at Davidson College in North Carolina and Glasgow University in Scotland, where he received his PhD in philosophy. He received his MD from the Medical University of South Carolina. He joined the faculty at the University of Minnesota in July 1997 after four years at McGill University in Montreal, where he held appointments in the Biomedical Ethics Unit and the Montreal Children’s Hospital and directed the Master’s degree specialization in Bioethics. Prior to his appointment at McGill he held postdoctoral or visiting appointments at the University of Chicago Center for Clinical Medical Ethics, East Carolina University School of Medicine’s Department of Medical Humanities, and the Bioethics Research Centre at the University of Otago in Dunedin, New Zealand. In 1992 he worked as a postdoctoral research fellow at the University of Natal Medical School, the first medical school in South Africa for non-white students.

His research has focused largely on philosophical and ethical questions in psychiatry and pediatrics, the later work of Ludwig Wittgenstein, and the links between literature, medicine, and philosophy, especially in the writing of the novelist Walker Percy. He and John Lantos have co-edited a book of essays on Percy and medicine, The Last Physician, which Duke University Press will publish next year, along with a collection edited by Dr. Elliott exploring connections between bioethics and the work of Wittgenstein entitled Bioethics and Wittgenstein. He is also finishing a book for Routledge provisionally titled A Philosophical Disease: Bioethics, Culture and Identity.

In 1996-97 he took part in a Hastings Center project on the ethics of using medical technology to enhance human capacities. In 1997 he assembled a research team which was awarded a grant on “Enhancement Technology and Human Identity” by the Social Sciences and Humanities Research Council of Canada. The Enhancement Technologies Group is based at McGill University and is focusing on the use of medical technology to alter human characteristics in three broad areas: genetics and aging, sexual identity, and psychiatry.

Selected Publications:

**Books**


Elliott C. A Philosophical Disease: Bioethics, Culture and Identity. Routledge, forthcoming.


**Articles**


Elliott C, Kahn J. Docs on the Box, or How We Learned to Stop Worrying and Love the Tube. The Hastings Center Report 1994;24(6):22-23.


Communicative Ethics for Bioethics

by Robert Gatter, JD, MA

Many theoretical approaches have been proposed for bioethics as alternatives or complements to the dominant approach of principlism. They include casuistry, ethics of care, narrative ethics, approaches critical of power distribution according to gender and race, and others. These approaches should be added communicative ethics. This article describes a portion of the research I conducted at the Center this past year. Communicative ethics teaches that communication designed to reach mutual understanding among two or more persons enables reasoned analysis of moral values and integration of disparate moral viewpoints. Moreover, it outlines a set of rules to assure that communication is fair and that the results of communication are worthy of respect. Communicative ethics can make a valuable contribution to bioethics. Bioethics already relies on communication as a vital mechanism in promoting patient understanding, and reaching consensus-based resolution of cases and policy matters before ethics committees and public commissions. Communicative ethics provides a theoretical basis and standards for such use of communication in bioethics. In addition, communicative ethics is critical of the way power structures can undermine communication. Thus, it is useful in the more recent efforts of bioethicists to account for power structures embedded in health care delivery. In what follows, I will describe communicative ethics and provide some suggestions about how it can contribute to the ongoing work of bioethics.

Communicative ethics derives from Jurgen Habermas’s theory of communicative action. It is based on the idea that a unique kind of reasoning is associated with the activity of communication. Underlying every statement communicated from one person to another is the implicit claim that the speaker can make herself understood to the other. This includes making her language comprehensible and providing explanations and reasons for her substantive claims. Habermas calls this kind of reasoning “communicative reasoning” or “communicative rationality.” Communicative reasoning can enable speakers with different moral viewpoints to reach a mutual understanding about a moral claim. On the basis of this philosophy of language and communication, Habermas argues for an ethic to serve a morally diverse society. He calls this ethics “communicative ethics” or “discourse ethics.” The goal of communicative ethics is to provide a justification for norms which claim to be universal.

Implicit in the process of triggering communicative reasoning and testing claims through communication are certain procedural rules. First, the communicative process must be fair. Communication must be open to all who have an interest in the acceptance of the claim, and each participant must have an opportunity to express her beliefs, to accept, challenge or reject proposed claims, and to introduce competing claims. Second, the process must be non-coercive. The process of communication and each person’s participation must not be controlled by any power other than the power of the better argument. Third, each participant must pursue mutual understanding among all participants as their goal. Thus, communication must be a collaborative effort and cannot include self-interested efforts to undermine mutual understanding. These rules are the conditions for ideal communication.

While much has been written about communicative ethics, very little attention has been paid to it by bioethicists. Yet, communicative ethics has much to offer bioethics. From a theoretical perspective, communicative ethics provides a foundation for claims that casuistry aids in the resolution of cases and in the formulation and application of principles. Casuistry promotes reasoning through argument as an alternative to the deductive reasoning associated with principlism. Communicative ethics provides a foundation for such argumentation in the philosophy of language, and it establishes rules for argumentation so that its results can claim normative validity. Moreover, the communicative process can be used not only to resolve individual cases but to identify the rules and principles that have gained universal acceptance in the resolution of cases. Thus, communicative ethics is an engine for reflective equilibrium between principle-based and case-based reasoning.

Closely related to the relationship of casuistry and principlism is the place of both context and rules in bioethical theory. Communicative ethics is skeptical of rules unless they have been tested through communicative reasoning. Importantly, such communicative testing is sensitive to context. For example, the participant in communication is not
asked to ignore the realities of her circumstances or those of other participants, including health status, economic status, race, gender, ethnicity, and other factors.

In addition, the goal of mutual understanding among all participants permits participants to refer to any reason which might persuade others of their point, including reasons related to the contextual features of the matter in dispute. Thus, communicative ethics pursues universally acceptable resolution of cases without ignoring the context of each case and each communicative participant. Accordingly, communicative ethics should be valuable to bioethicists who favor approaches that are sensitive to preserving human relationships and promote thick descriptions of cases.

Of course, communicative ethics is not a panacea. It has limitations and faults. Most notably, communicative ethics establishes an ideal that we cannot expect to fully achieve. For example, it asks that all persons with an interest in the outcome of a case be permitted to participate in deliberation of that case. In a typical case before an ethics committee, the number of interested individuals would be enormous — the patient, her family and friends, members of her health care team, members of her insurance pool, members of the community served by the institution in which she is being treated, and perhaps more. Similarly, communicative ethics pursues consensus in every disputed matter, and does not offer a procedure for addressing disagreements that persist despite efforts at communication. In addition, it insists that participants in communication adopt a collaborative attitude towards each other and pursue mutual understanding over self-interest. This asks participants to be unbiased, which is not completely possible, and it does not offer a mechanism for enforcing that rule in a world where we must assume that some individuals will place self-interest above community interests. For these reasons, communicative ethics must be interpreted to create an ideal towards which we strive. We also need to wrestle with the questions of how to apply communicative ethics in a way that adequately addresses the practical concerns listed above while still respecting the core teachings of the ethical approach. Finally, because communicative ethics is largely a procedural ethic, it cannot replace substantive bioethics and should be viewed instead as a complementary ethic. Despite these limitations, however, I believe that bioethicists should not ignore the contribution communicative ethics can make to their work. My goal here is to simply introduce readers to communicative ethics and suggest its value to bioethics.

Notes


5. It is interesting to note that in his development of communicative ethics, Habermas relies on Stephen Toulmin’s theory of argumentation. Jurgen Habermas, “Discourse Ethics,” supra n.1.

Positions Available

The Department of Bioethics at the Cleveland Clinic Foundation invites application for a one year Bioethics Fellowship, beginning July 1, 1998.

The program has an interdisciplinary focus and includes academic, clinical, and research bioethics components. Each fellowship is tailored to meet individual strengths, needs, and interests. Application deadline is January 15, 1998. For information, contact Martin L. Smith, STD, Department of Bioethics, P-31, Cleveland Clinic Foundation, 9500 Euclid Avenue, Cleveland, OH 44195. Phone 216-444-8720, Email: smithm@cesmtp.ccf.org

Call for Abstracts

The Institute for Health Services Research, University of Minnesota School of Public Health, will hold its second annual Minnesota Health Services Research Conference on February 24, 1998 at the Radisson Hotel Metrodome in Minneapolis, MN. Conference organizers are soliciting abstracts on a variety of topics. To receive a brochure and information about the conference, contact Susan M. Hayes, Institute for Health Services Research, University of Minnesota, Box 729, 420 Delaware St. SE, Minneapolis, MN 55455-0392. Fax 612-624-2196, Email: hayes019@tc.umn.edu.

Faculty News

Steven Miles, MD, received a continuation award from the Soros Foundation for his work with Project on Death in America. The three year, $220,000 grant, supports Dr. Miles’ work on end-of-life care in managed health care systems.

Dr. Miles was also one of fifteen physicians profiled in the August issue of Minnesota Physician in the publication’s 1997 Physician Research Recognition Program. Dr. Miles’ work with Project DECIDE (ethical issues on end of life in managed care) and the Project on Death in America were profiled.

Kathy Faber-Langendoen, MD, was recognized in the August issue of Minnesota Physician for her efforts to formulate practice guidelines when a patient decides to forgo life-sustaining treatment.

Recent Faculty Publications

Articles and Book Chapters


smoking. The attorneys on both sides of the negotiations must sort out what the tobacco companies ought to receive in return for cash settlements and agreements that the government’s power to regulate the industry can increase. But such broad and sweeping agreements will have profound impacts on society far outreaching the hundreds of billions of dollars in payments that the legal negotiations seek.

**Ethical analysis can help frame the issues and help understand the appropriate limits to place on the sale and marketing of tobacco products.** It can add an important perspective in assessing the justifications for imposing high financial penalties for the excess costs of smoking, including the underlying assumptions in setting excise tax levels on tobacco products; and it can be used in examining the ethical responsibilities of corporations that manufacture and sell dangerous products. For example, public policy toward taxes on cigarettes has long relied on the dual justifications of recouping the excess costs borne by society due to smoking, and the public health goal of discouraging the habit by high cost. These justifications are based on very different principles. One is punitive, in that it requires smokers to pay the social costs of their behavior. The other is preventive and protective, in that it discourages unhealthy behavior by setting its costs at a price sensitive level. Examining the basis of the proposals that are part of the current negotiations in this way can help make explicit the principles at issue and lead to more consistent and clear policy.

**In addition, ethical analysis of tobacco policy must include more than health policy so narrowly construed.** Our country’s agriculture and trade policy and behavior have long been at odds with general public health goals and specific health policy towards tobacco. We will have accomplished little more than shifting the burden of tobacco-related disease if by making it more difficult and costly to market and sell tobacco products in America, we merely encourage stepped up sales and marketing abroad. The foreign market is waiting, where the number of current smokers in China alone is greater than the entire population of the United States, and demand for American cigarettes abroad is high. This fact is not lost on policy makers or tobacco companies. American foreign trade policy has long endorsed opening markets to American tobacco products.

**Thinking by those engaged in bioethics has much to offer the tobacco negotiations, and deserves a voice in the analysis of the various proposals.** A relevant criticism of our field is that we too often react to important issues rather than help formulate policy in prospect. The ongoing tobacco policy discussion is just such an opportunity we ought not miss.

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**Conference Update:**

**“Visions for Ethics & Humanities in a Changing Healthcare Environment”**

November 5-9, 1997, Baltimore, MD.

The joint meeting of the American Association of Bioethics (AAB), Society for Health and Human Values (SHHV), and Society for Bioethics Consultation (SBC) to be held at the Baltimore Marriott Inner Harbor is fast approaching. Keep abreast of the many changes taking place in bioethics and the medical humanities through section and interest group meetings, mentoring lunches, paper presentations, workshops, and keynote addresses. Keynote speakers are Ruth R. Faden, PhD, MPH, speaking on “Crossroads in Clinical Ethics in Transition,” William F. May, PhD, “Money and Medicine,” and Paul Starr, PhD, “The Ethics of Incremental Health Reform.”
Calendar of Events

Oct 9
Jeffrey Kahn, PhD, MPH, will speak on “Ethics of Cloning” at the National Convention of Biology Teachers Round Table in Minneapolis, MN. For information, contact Dr. Robert McKinnell at 612-624-2285.

Oct 9
Susan Wolf, JD, will speak on “Law at the End of Life” at a conference in Colorado Springs, CO, on “The Ethics of What’s Driving Medical Care” sponsored by the Colorado Springs Osteopathic Foundation. For information, call 719-635-9057.

Oct 18
Steven Miles, MD, will be a panelist at the Creighton University Center for Health Policy and Ethics 10th Anniversary Celebration to be held at the Embassy Suites Hotel in Omaha. For information, contact Sally O’Neill at 402-280-1830.

Oct 18 & Nov 17
The University of Minnesota’s Program in Human Rights & Medicine, Department of Obstetrics & Gynecology, is sponsoring the following seminars. Oct 18—“The Fertility Cost Warranty Program — A New Paradigm of Payment for Assisted Reproductive Technologies” by Theodore C. Nagel, MD, at 9:00 AM in 2-520 Moos Tower, University of Minnesota. Nov 22—A lecture on the recent Supreme Court rulings concerning assisted suicide will be given by Paul Benjamin Linton, the former General Counsel of Americans United for Life, at 10:00 AM in 355 Ford Hall, University of Minnesota. For information, contact the Department of Obstetrics & Gynecology at 612-626-6559.

Oct 23-24
The Minnesota Center for Health Care Ethics presents a conference, “Cultural Challenges in Health Care Ethics: Building Successful Relationships Between Hmong Patients and Western Clinicians” at the Town and Country Club in St. Paul, Minnesota. For information, contact Margie Noonan at 612-690-7895/ fax 612-690-7774/ Email: manoonan@stkat.edu.

Oct 24
Dianne Bartels RN, MA, will speak at the Howard Young Health Care’s Ministerium Day in Woodruff, WI. The topic of the meeting will be “Medical, Ethical, and Spiritual Challenges at the End of Life.” For information, contact Donna Richardson, Howard Young Medical Center, PO Box 470, Woodruff, WI 54568. Telephone 715-356-8685.

Oct 24
Jeffrey Kahn, PhD, MPH, will speak on “Ethical Issues in Clinical Research: Past and Present” and “Ethical Issues in Managed Care: Lessons from Minnesota” at Millard Fillmore Health Center in Buffalo, NY. For information, contact Dr. Jack Freer at 716-871-1571.

Oct 29
Jeffrey Kahn, PhD, MPH, will speak on “The Unkindest Cuts: The History of Radiation Research on Children and Lessons for Clinical Research,” at the Department Pediatric Grand Rounds, University of Minnesota Medical School, Minneapolis, MN. For information, contact Mary Jo Jansen at 612-626-4600.

Nov 6 & Dec 8-9
PRIM&R conferences: Nov. 6—“Reviewing and Revising the Expedited Categories of Research,” will be held at the Hyatt Regency in Bethesda, MD. Dec 8-9—“Ethical Research in an Ethical Society” will be held at the Sheraton Hotel, Boston, MA. For information, contact PRIM&R at 617-423-4112.

Nov 13
Jeffrey Kahn, PhD, MPH, will speak on “Ethical Issues in Clinical Research: Past and Present Lessons from Cold War Human Radiation Experiments” at NASA’s Lyndon B. Johnson Space Center in Houston, TX. For information, phone Mary Flores at 281-212-1468.

Nov 17
Steven Miles, MD, will participate in a symposium “From Fringe to Mainstream and Beyond: Updates from Trailblazers to Restraint-Free Research” sponsored by the Gerontological Society of America, Cincinnati, OH. For information, call 202-842-1275.

Nov 18
Susan Wolf, JD, will lecture at the University of Seattle Law School Speakers’ Series. For information, contact Anne Enquist, Chair, Colloquium Committee at 206-591-2230.

Nov 20-22
Emory University will host the 23rd annual conference of the Association for Moral Education. The theme of this year’s conference is “The Voices of Care and Justice: Enhancing the Dialogue among Theorists, Researchers, and Practitioners.” For information, contact John Snarey, Emory University, 3 Pitts Library Bldg., Atlanta, GA 30322. Email: jsnarey@emory.edu

Nov 21
The Vermont Ethics Network will present “Journey’s End: A Conference on Improving Care at the End of Life” at the Lake Morey Inn Resort, Fairlee, VT. For information, contact the Vermont Ethics Network at 802-828-2909.

Jan 10, 1998
Susan Wolf, JD, will moderate and speak on a panel on “Physician-Assisted Suicide: After Washington v. Glucksberg and Vacco v. Quill” at the Association of American Law Schools annual meeting in San Francisco. For more information, contact Professor Wolf at 612-625-3406. Continued on Page 9
**Center Publications and Tapes**

**Audio Tapes**
A series of 27 audio tapes are available from the October/November 1996 conferences, "ICU Care at the End of Life: Ethics and Practice," and "End of Life Health Care in Managed Care Systems." Tapes are $10 each or $100 for the complete set.

**Reading Packets**
Center reading packets contain an overview of legal and ethical issues, key articles, and a bibliography. Reading packets are available for $5 each:
- **No. 1:** Organ Transplantation (revised September 1993)
- **No. 2:** Withholding or Withdrawing Artificial Nutrition and Hydration (revised September 1993)
- **No. 3:** Termination of Treatment of Adults (revised September 1993)
- **No. 4:** Baby Makers: The New Ethics of Reproduction (October 1995)
- **No. 5:** Distributing Limited Health Care Resources (revised April 1997)

**No. 6:** Resuscitation Decisions (revised June 1997)
**No. 7:** The Determination of Death (revised May 1997)
**No. 8:** New Frontiers in Genetic Testing and Screening: The Human Genome Project (August 1993)

**Managed Care and End-of-Life Care Packets**
A Center program addressing ethical issues in managed care has led to the publication of documents on end-of-life care that are available for $5 each:
- References on Ethical Issues in Managed Care—a continually updated annotated bibliography of articles addressing ethical issues in managed care.
- Advance Directives — an annotated bibliography focusing on empirical research related to the dissemination, clinical use, and effects of advance directives.
- Palliative Care — an annotated bibliography of articles describing clinical, legal, and ethical issues in pain control for terminally ill persons and articles describing and comparing hospice care to conventional care for terminally ill persons.

**Reports**
The Role of Bioethics in Health Care Policy/Broadening the Bioethics Agenda? transcript proceedings from the May 1994 conference held in Washington, DC. The Greenwall Foundation makes this report available at no charge.


**Ordering Information**
To order reading packets, tapes, or reports, please make checks payable to: Center for Bioethics, University of Minnesota. Send to: Center for Bioethics, University of Minnesota, Suite N504, 410 Church Street SE, Minneapolis, MN, 55455. All orders must be prepaid.
End-of-Life Care Controversies: Spirituality, Assisted Suicide and Professional Responsibility
By Timothy Quill, MD
October 16, 1997
An academic health center public forum moderated by Kathy Faber-Langendoen, MD, will be held at 7:30 p.m. in 2-650 Moos Tower, University of Minnesota. Panel respondents include Gregory Plotnikoff, MD, MTS; Mary Casey, CSJ; and Eric Anderson, MD. For information, contact the Center for Bioethics at 612-624-9440.
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