

Bioethics and health and human rights: a critical view

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Recent decades have seen the emergence of two new fields of inquiry into ethical issues in medicine. These are the fields of bioethics and of health and human rights. In this critical review of these fields, the author argues that bioethics, partly because it has been construed so broadly, suffers from quality control problems. The author also argues that the field of health and human rights is superfluous because it does nothing that cannot be done by either bioethics or the law.

Ethical questions in medicine and the life sciences are the subject of not one but two relatively new academic fields: “bioethics” and “health and human rights”. Although moral questions about the ethics of medicine and related areas have been asked for as long as people have asked questions about ethics, it is only within the last few decades that new fields devoted specifically to such questions have arisen. The growth of these fields has stimulated further attention to important moral questions in medicine and biology. Although this is to be welcomed, there is also much to be regretted about the route bioethics has taken and about the very emergence of health and human rights as a distinct academic field. More specifically, bioethics suffers from some serious quality control problems, while health and human rights seems to be in violation of a disciplinary version of Occam’s razor, which proscribes the proliferation of disciplines or fields beyond necessity. In other words, health and human rights, as an academic field, does not seem to do anything that cannot be done either by bioethics, if the rights in question are moral rights, or by the law if the rights are legal rather than moral. Moreover, it is characterised by weaknesses that, unlike those of bioethics, cannot be overcome.

WHAT IS BIOETHICS?

“Bioethics” can be understood in a broader or narrower way. Following the broader construal, bioethics includes not only philosophical study of the ethics of medicine, but also such areas as medical law, medical anthropology, medical sociology, health politics, health economics and even some areas of medicine itself. On the narrower construal, bioethics, although it may draw on these other disciplines, is itself only an area of philosophical inquiry. More specifically, bioethics is one branch of practical (or applied) ethics, which is one branch of ethics, which in turn is one branch of philosophy.

Although the first of these views of bioethics is the dominant one, it is the latter view that is preferable. A number of reasons can be advanced in support of this. Firstly, given that law and anthropology, for example, are not part of ethics, there is no reason to think that medical law and medical anthropology should be part of *bioethics*. Secondly, the broader view of bioethics fosters some unfortunate mistakes that many are already prone to make. For example, taking medical law to be part of bioethics encourages the

common confusion between law and ethics, terms that are neither synonymous nor coextensive. Viewing such areas as medical anthropology or medical sociology as part of bioethics encourages the mistake of confusing descriptions with prescriptions. (This is not to suggest that the broader view of bioethics causes everybody to make this mistake, but only that it facilitates this mistake and thus causes more people to make it than would otherwise be the case.) Social scientific study of (the ethics of) medicine is aimed at describing what is the case. For example, anthropologists tell us what a particular culture’s ethical view of some medical practice is. This is not to deny that anthropologists, lawyers, psychologists, or economists engage in complicated ways of reasoning. It is to say that they reason and argue about the way things are—what some culture thinks, or what the law is, for example. By contrast, practical ethics involves advancing and examining arguments about what ought, morally, to be done and not done—about what is (actually, rather than merely thought to be) right and wrong.

To say that bioethics should be construed in the narrow way is not to deny the importance of the sciences, social sciences, and law to bioethics. These disciplines are clearly indispensable to practical ethics. One cannot reach an informed conclusion about what should be done in some practical case if one does not have all the relevant information about the way things are. Indeed, there are even circumstances where moral disagreement is entirely eliminated once the relevant facts are established (which is not to say that no room is then left for ethical questioning). Disciplines other than moral philosophy therefore play a crucial role. However, a problem arises when scientists, social scientists, and lawyers slip from doing what they are trained to do into doing moral philosophy. Although some do a reasonable job with the latter, very many do not.

There is a parallel problem for philosophers who work in the area of practical ethics. Because this area requires knowledge of science, social science, and sometimes law, practical philosophers have to familiarise themselves with scholarly discussions in these disciplines (unless they happen also to be expert in the relevant areas). This is unavoidable and is untroubling as long as the philosopher does not purport to be doing science, social science, or law but only reporting (or perhaps distilling) its findings. There are some cases, it must be conceded, where the analytic tools of the philosopher can actually help in assessing the evidence. In these cases the philosopher does more than simply report. Nevertheless, philosophers are ill advised to masquerade as scientists, social scientists, or lawyers.

The problem of “disciplinary slip”, where one slips from working in one’s own discipline, in which one is trained, to working in another, in which one is not, is more acute in some cases than in others. For example, there are fewer obstacles to health care workers or scientists slipping into doing moral philosophy than there are obstacles to philosophers slipping into medicine or science. This is partly because of the obviously special knowledge and training required to become a healthcare professional or a scientist. But it is also

partly because of the widespread but mistaken assumption that doing philosophy (well) does not really require any training or aptitude. Indeed, it is this attitude that underlies the common confidence to pronounce about moral and other philosophical matters without any sense of the complexity of these matters. I am not suggesting that only philosophers are entitled to make moral judgements, but I am suggesting that the expertise and skills of philosophers are often underrated. There are somewhat lesser obstacles to philosophers drifting into the softer sciences that are to be found under the umbrella of bioethics (broadly construed), but even these obstacles are greater than the obstacles in the reverse direction. Social scientists, I suspect, can slip into doing moral philosophy more readily than philosophers can slip into doing social science.

A second reason why there are fewer obstacles to medical professionals and scientists slipping into bioethics, is the fact that bioethics is making greater inroads into academic medical contexts than medicine and medical science are making into academic philosophy. Thus articles on bioethics are now quite commonly published in medical journals, and so-called “bioethicists” are invited to speak to groups of medical practitioners. It is much rarer for doctors and scientists to be publishing in philosophy journals (other than those doubling as bioethics journals) or for doctors to be giving academic talks to philosophers. The upshot of this, again, is that the audience for much bioethics writing and talk are people who, because they are not trained in philosophy, are much less discerning about what constitutes good philosophy. A parallel problem can occur when scientists do publish science in a bioethics journal. For example, Stuart Derbyshire advanced a scientific view—that neither foetuses (even at the end of gestation) nor neonates can feel pain—that would be rejected as outlandish by most experts.¹ Yet many non-scientists would not readily see this and might simply be misled by the needless technicality of his argument. Anybody purporting to be a bioethicist and who either knows slightly more than the audience or who can make it seem as though he or she does, can gain a hearing in many a medical audience.

These problems of disciplinary quality are exacerbated by a number of factors. Firstly, because the discipline of bioethics is currently understood in the broader way, it is filled with people who have slipped from their area of medical, scientific, or other non-philosophical expertise into moral philosophy. Given that the discipline is so populated with such people, many of them do not see that many of the rest are not doing moral philosophy very well.

Secondly, there has been a proliferation of courses, diplomas, and degrees in bioethics. As these courses are often aimed at those without philosophical training and lack the rigour and often duration of other courses of study, there are more and more people with formal but poor bioethics education. There is a whole enterprise of bioethics education that is creating “experts” if not instantly then certainly very quickly. In some cases, a brief course or a diploma is thought sufficient to transform a novice into a so-called “ethicist”, “bioethicist” or, worse still, a bioethics educator.

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 * That there are disciplinary standards in most disciplines does not entail that those standards are always met. Clearly there are better and worse scholars in any discipline. Thus, for example, there are moral philosophers who do moral philosophy badly. My argument does not commit me to denying this. I am arguing only that widespread disciplinary slip in the field of bioethics results in even more poor quality work than would be the case if the bioethics were construed narrowly or if bioethics in its broad construal had disciplinary standards.

Thirdly, the bioethics literature is also of very uneven quality. There is some outstanding work being done, but there are also an unusually large number of poor quality bioethics publications. It is striking, for example, that each issue of a widely read bioethics journal consists mainly of brief responses to a few substantial articles in the journal. The responses, which do not seem to have to pass the usual sort of professional peer review, have included quite a number that never would pass such review.

In summary then, whereas there are disciplinary standards in most disciplines, there are no such standards in bioethics.* Indeed, much of what goes on in bioethics is undisciplined. Some think that the absence of disciplinary standards is acceptable in bioethics because it is a “field” rather than a “discipline”, but this semantic point does not undermine the substantive points I have made about disciplinary slip within the field. Others seek some consolation in the claim that bioethics is a *new* field, which has yet to find its feet and establish standards. This, however, seems overly optimistic. It is not clear how the field’s becoming older and more established would prevent the disciplinary slip from occurring. Nor can we expect future bioethicists to be sufficiently expert in all the component disciplines that the problem of disciplinary slip evaporates. Even if disciplinary training in bioethics broadens it is more likely to produce Jacks and Jills of many trades, rather than experts in any.

Defenders of the broader conception of bioethics may wish to defend it in the following way. They may say that because answering bioethics questions involves answering both philosophical and non-philosophical questions, the field of bioethics must incorporate both. To bolster their point, they might want to claim that what unites these two kinds of questions and marks out the field is a distinctive kind of bioethics reasoning. But this suggestion is implausible on at least two counts. Firstly, it is unlikely that bioethics reasoning differs (in anything other than content) from other forms of practical ethics reasoning. Secondly, although answering practical ethics questions does require both philosophical and non-philosophical reasoning, there is no overarching distinct form of reasoning that unites these two. As the scientific, social scientific, and legal questions that are integral to bioethics can also be asked and answered quite independently of any ethical interest, they are not distinctively ethical. They are scientific, social scientific, and legal questions and must be answered by those best equipped to answer them, employing the tools of the relevant discipline. How the answers to those questions are to be woven into answering an ethical question is part of (practical) ethical reasoning and thus is in the domain of moral philosophy, or at least its practical branch.

Although the problem of academic standards in bioethics might not be avoided entirely if the narrower construal of bioethics were to prevail, it is certainly the case that the broader construal contributes significantly to the problem. There is a real danger that the surge of interest in bioethics that we have witnessed will give way, in due course, to a pendulum swing in the opposite direction, once the poverty of bioethics, as it is currently practised, becomes evident. That would be regrettable.

HEALTH AND HUMAN RIGHTS

Some of those engaged in academic work on moral problems in medicine identify their field as “health and human rights”, which they see as distinct from bioethics. According to the health and human rights view, the moral defects of medical practice, and human life more generally, are to be rectified through the promotion of human rights. Those advocates of health and human rights who think that the relevant rights are legal ones, either national or international, face an

obvious difficulty. Law and morality are neither the same thing nor are they coextensive. The law can be morally defective, and moral rights can fail to be incorporated into law, or be incorporated only inadequately. The upshot of this is that legal rights, like law in general, are inadequate to the task of resolving *moral* dilemmas or rectifying the *moral* defects of medical practice.

The health and human rights paradigm is defective, however, even if the rights in question are moral rather than legal ones. The poverty of this paradigm becomes apparent when we consider what human rights are and how these relate to ethics and bioethics.

One of the distinctive features of rights is that they have correlative duties. To ascribe a right is also to ascribe the correlative duty. There simply could not be a right without its correlative duty. For example, my right not to be killed is correlated with the duty of others not to kill me. I could not have a right not to be killed if others were under no duty not to kill me. A second distinctive feature of rights is that they have unusual moral strength. They are said to have “trumping” power. That is to say, they can defeat other moral considerations.

Human rights, presumably, are rights someone has in virtue of being human. In other words, a human right is a kind of natural right—a right that somebody has on account of his (human) nature. Not all rights that humans have are human rights. Some rights are possessed not on account of the bearer’s nature but rather because of some other consideration. For example, if you lend me £100, you acquire a right to receive £100 from me. This is not a human right, but rather a right arising from the loan.

We see, then, that human rights are but one kind of right. However, even the expanded class of rights obviously does not exhaust the range of moral concepts that can be employed to understand and evaluate an ethical issue. There are a host of other moral concepts including “duty”, “the good”, “virtue”, and “supererogation”.

Although rights have correlative duties, it does not follow that all duties have correlative rights. There may well be duties, such as the duty to give charity, that are not correlated with anybody’s right. One has a duty to give, without anybody else having a right to receive. A duty to give charity would be one that, though binding, would carry a degree of discretion with regard to how it is discharged. An ethical approach, such as health and human rights, that takes rights to be the only concept necessary for discussion of ethical issues in medicine, ignores those duties that are not correlated with rights.

Nor can it consider “the good”. There are different conceptions of the good, but we do not need to decide between these to realise that an ethical evaluation that fails to consider any such conception is impoverished. Rights may be able to trump the good, at least sometimes, but this is not to say that the good has no value. If one only considers rights, one will not be able to assess the value of the good.

Neither can the virtues or good character be discussed comprehensively in the language of rights, unless one has such an impoverished notion of the virtues that respecting rights is the only virtue. Speaking only the language of rights, one cannot comprehensively explain the value of courage, patience, or temperance, for example.

A moral lexicon consisting only of rights is similarly unable to explain the concept of supererogation—that is, the concept of going beyond the call of duty. One can say that others have no right to one’s acting in a supererogatory manner but that one has a right to act in such a way if one so wishes. This, however, does not begin to capture the moral value of supererogation. For example, rights language cannot distinguish supererogation from a mere liberty right. In both cases

one has a right to do something and others have no right that one does it.

Morality is a complex matter. This complexity cannot be managed competently with only the concept of rights—and *a fortiori* with only the concept of *human* rights. A health and human rights approach is unable to consider a non-natural right, such as a right arising from a promise or from membership in a medical insurance scheme. Even if the notion of “human rights” were extended to include not only natural rights possessed by humans but also non-natural rights possessed by humans, the human rights approach would still be unable adequately to approach important issues in medicine. For example, it could not take account of the interests of those animals on which medical experimentation is conducted. Even those who think that such experimentation is morally justifiable must agree that reaching that conclusion via an ethical approach that considers only the *rights of humans*, and nothing else, is highly unreliable.

Using only the language of rights to grapple with every moral issue is analogous to treating every sickness with the same medication (or class of medication) or it is like trying to speak by using only nouns. It is crude and ineffective.

Discussion about (moral) rights is part of what ethics or bioethics involves, but these disciplines need not restrict themselves to this one moral concept. Unlike the human rights approach, those who do bioethics need not commit the error of mistaking the part for the whole. Rights are part of ethics, but they are not all there is to ethics. Thus, those doing ethics or bioethics can and do employ whatever moral concepts are relevant to some issue. It is hard to see, therefore, why advocates of the human rights approach think that their approach can either replace bioethics or be superior to it. One suggestion could be that the human rights approach to ethical problems in health and health care is an activist approach. It aims at bringing about positive change. The objection here is that bioethics is too much of an academic exercise and too little a mechanism for social change. (This is the explanation also for the more subtle position that instead of replacing bioethics with health and human rights, bioethics should focus more on human rights issues.)

There are a few ways to respond to this. The first is to note that bioethics can (although it need not) be coupled with activism. The second response is to question whether activism is really a desirable feature in a field of academic work. The primary purpose of academic work is to enlighten. Some may choose to enlist such enlightenment for political or moral purposes in order to bring about positive change, but that enterprise, although linked to the academic one, is distinct from it. A third response takes the second one a step further. Activism *in* (rather than as a *consequence of*) an academic field may actually undermine the academic enterprise. Indeed the health and human rights approach runs this very risk. It is prone to join popular moral discourse in employing rights claims as a substitute for moral argument. In other words, instead of doing the difficult academic work of determining whether some action is right or wrong, there will be the temptation simply to ascribe either a right to perform that action or a right against others acting in this way. An activist agenda is more likely to presuppose which rights should be ascribed (or which rights should prevail) than it is to engage, as dispassionately as possible, the question about whether these rights ascriptions are warranted. Scholarship becomes but a handmaiden to the predetermined activist agenda.

An impetus to activism, then, is not a ground for founding an academic field. Given the existence of the discipline or subsdiscipline of bioethics (and the existence of the discipline

of law), there is no need for an academic discipline or field of health and human rights.

CONCLUSION

The criticisms offered above will be met with indignation. For example, health and human rights scholars will be threatened by the suggestion that their discipline is misguided. Medical professionals, scientists, and social scientists who enjoy venturing into moral philosophy will be threatened or outraged by the suggestion that most of them either should not do so, or at least that they should not do so quite so boldly.

Although I recognise the threat that my comments pose to such people and thus understand the indignation, my position need not be taken as badly as it is likely to be taken. Human rights scholars could distinguish between their scholarship and their activism. They could agree that the former should be subsumed under bioethics (or under law, depending on whether they work on moral or legal rights), while remaining committed to the not implausible view that rights (at least in our age) are an especially effective instrument for social and global improvement. Bioethicists' indignation could be minimised by not misunderstanding my position. I have not argued, for example, that all bioethics is done badly. There is much bioethics work to be admired. Nor have I argued that moral philosophers should be working unaided on moral problems in medicine. I *am* arguing, however, that moral philosophers, and not most others,

should do the "ethics" in "bioethics" (although I leave open, here, the difficult question of what exactly a "moral philosopher" is). This does not preclude lawyers, doctors, and scientists of various kinds from working with philosophers on practical ethical issues, or working independently to answer questions that are crucial to ethical decision making. Nor is it to suggest that the crossing of disciplinary boundaries is inappropriate. It is only to suggest the manner in which those boundaries may be crossed. They should be crossed to learn something from experts in other areas and to teach them something about one's own area of expertise. My comments only preclude crossing disciplinary boundaries in order to do the work that is best done by others.

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