PostScript

BOOK REVIEWS

Ethics in medicine

Jennifer Jackson. Cambridge: Published by Polity Press, 2006, £15.99 (\$24.95), pp 232. ISBN 0-7456-2569-X

What makes for a good book on ethics in medicine? Given that no one can do another's moral thinking for them, this much at least: it should stimulate in the reader an inclination to critical reflection that will persist when the book goes back on the shelf. And, since no one can do another's philosophical thinking for them either, this requirement is doubly true when the basis of the work lies in moral philosophy. In addition, where the book is likely to be used as an introduction, it has to achieve this for readers who may have little experience of philosophy or natural sympathy with its problems and methods. No doubt there are various ways of attempting this task, but one is to try to draw readers into the subject by giving them a sense of what it is to be involved in doing philosophy, with all its characteristic difficulties and doubts, rather than merely studying the results of some that was done earlier. I think that Jennifer Jackson has produced an excellent book of this kind; one that should engage the interest of anyone prepared to make a little effort. It is a lively and refreshing work, full of argument and comprising a good mixture of scholarly caution and forthright commitment. Rather than looking at the many specific issues, however, I will concentrate on the philosophical position that underlies the work as a whole.

The book begins by taking seriously the doubts that exist about the place of philosophy in medical ethics and does particularly well in making the appropriate concessions, while still giving a firm defence of its relevance. There follow four chapters setting out an account of the virtues, the tradition in moral theory that Jackson sees as central to her project. As she points out, however, this is not necessarily "virtue ethics" as it features in its most recent revival. To my mind, Jackson has taken the most plausible approach to the virtues, in which a reference to dispositions is a necessary part of any full account of both moral education and action, but not one that can replace such elements as principles in our overall understanding of how we should act. However, this is bound to leave open the question of the extent to which the account of the dispositions actually characterises and supports the specific moral judgements that emerge, rather than simply being an adjunct to an account of right action that has been, or could have been, devised independently. And this in turn will be relevant to how we might most effectively take issue with the judgements, were we to be so inclined.

To take an example, in the course of rejecting utilitarianism (pp 40-41), Jackson tells us that reflection on the virtues helps us see that "What is the right thing to do?" does not always make sense, and even that the question "does not arise" in regard to virtues and vices.

Instead we should assume that much of the time morality is permissive, demanding nothing of us but the omission of unjust actions. It is a familiar picture in the context of deontology, but I was not clear exactly how it had been shown here. Before this point, the virtues have been characterised and defended as those traits with which we are more likely to fare well in life, including those that will have this effect by their role in helping to secure the possibility of cooperation from others. Are we then to regard this test as setting some substantive limit to how demanding morality will be, perhaps through an assessment of which dispositions it is psychologically possible to maintain? Or is it simply a fundamental moral given (as is perhaps suggested on p 93) that much of the time we have this "primitive liberty", and thus something established independently of anything specifically characteristic of the virtues? Or, indeed, is it a fundamental non-moral given, a limit that common sense sets to the moral?

A slightly more specific issue may help to show why this matters. Of all the virtues, justice is the main preoccupation of Jackson's work; not least because in her judgement nothing will be gained, with respect to the acquisition or application of the various other personal qualities that are valuable in healthcare, by reading books on philosophy. However, justice is to be understood in the general sense of attending to rights, obligations and what is owed to others, including, but not exhausted by, the familiar issues of fairness in distribution. As mentioned, the account of this virtue rather reflects the tradition of deontology that is dominated by negative injunctions and guided by the requirement to avoid acting unjustly, leaving an area of life where nothing positive is required of us. Yet, despite appearances, there may be reasons why it would not be appropriate to go further and label her views "libertarian". One, somewhat provocative, reason is given (p 93) by Jackson herself: that we should not give a partisan label to a truism. Another reason, not explicitly identified as such, is that she seems at least open to accepting (pp 95-9) that justice imposes general duties of assistance, not merely those dependent on a contractual or otherwise special relationship. Interestingly, however, although Jackson's work bears the influence of Aquinas and natural law theory, it shows uncertainty about whether to uphold an important claim that is familiar, from Aquinas and others in that tradition: that those among the needy who cannot help themselves have a claim by right to some of the abundance of others. Uncertainty is no crime in philosophy, of course, or its prisons would be full, but it would be good to have a better sense of how Jackson thinks the issue should be approached in the absence of the teleology that was available to earlier writers.

To follow up one lead, we can note that in considering the possibility of a general right to assistance, Jackson writes: "Maybe, a community cannot hold together if its members are wont to stand aloof when faced with each other's need of easy rescue" (p 96). Is this, then, in the end, the test we are to apply? If so, it might be feared that communities are

disturbingly resilient, surviving in the face of much preventable suffering by some of their number, who would thus lead lives surely not to be thought good or fortunate from the perspective of virtue ethics. With this in mind, we might look for a less radical version of the test. Such a move, though, seems to make some awkward distributive questions inevitable, however unwelcome they may be. For example, what predicted balance of welfare among those faring well and those faring badly is taken to be desirable (or in some other respect appropriate) when we are assessing whether the likely effect of a given disposition is such as to give it the status of a virtue? Suppose, for the sake of argument, that a disposition to treat extreme need as establishing a claim of right would probably be difficult to instil, felt as burdensome (in which we must include a frequent sense of moral shortcoming) and thus only partially effective, but that the overall result would nevertheless be highly beneficial to the lives of a subgroup that would otherwise have fared very badly. If we leave aside the problem of choosing among different variants of such a speculation, can we at least say that in general this is how we should decide whether assistance is to be a matter of justice rather than of, say, optional benevolence? And if so, should the method be applied only here, or also (as Jackson does not) to such questions as the permissibility of abortion? Or is it rather that the approach is mistaken, that nothing really distinctive to the virtues has anything to tell us on the matter and that we need to look elsewhere for guidance?

None of these general concerns should detract from my earlier praise. Readers will find thought-provoking material throughout, on conscientious objection by healthcare professionals, the distinction between obtaining consent and fully informing, the celebrated medical imperative to avoid harm, on the development of the human being as crucial to the issue of abortion, on suicide and euthanasia, and much else. Everywhere Jackson shows a great talent for taking us quickly and without jargon or pedantry into deep philosophical questions, and I warmly recommend her work.

H Upton

Who should we treat? Rights, rationing and resources in the NHS

Christopher Newdick. Oxford: Published by Oxford University Press, 2005, £24.99 (paperback). ISBN 0-19926-417-1 (hardback); 0-19092-641-8-X (paperback)

When the first edition of the book *Who should we treat? Rights, rationing and resources in the NHS* was published in 1995, it immediately became the standard reference on the law of the National Health Service (NHS) in the UK. Given the pace and complexity of the almost continuous series of reforms of the NHS, this would have given the book a short shelf life. However, it was also a very important survey of the problem of rationing and resource

allocation considered from a lawyer's point of view. It described resource allocation as a problem in the reasonable and legally accountable administration of a set of public bodies, rather than as a problem in clinical medicine, economics or moral philosophy. As such it was a very important contribution to a vexed field, and did much to clarify debates, at least in the academic field.

This second edition is therefore to be warmly welcomed. The NHS has undergone an even more extensive change since the first edition was published, under the banner of modernisation. Of particular importance from the point of view of resource allocation are the arrival of the National Institute for Clinical Excellence, the reorganisation of healthcare commissioning around primary care trusts and, within medical science, the rise of evidence-based medicine and the arrival of new, highly expensive classes of drugs for treating chronic diseases.

The approach taken by the author in the second edition is to consider the nature of resource allocation itself, then to look in detail at how resource allocation can be carried out through clinical judgement, expert guidelines, government regulation and direct democratic decision making. He then goes on to look at how the NHS is managed, considering, rightly, that the most important resource allocation decisions are taken at the mid-range level of primary care and hospital budgeting. He describes the current structure of the NHS in some detail, identifying the scope of the different powers that lie with different tiers or centres of decision making and the role these have in resource allocation. The bulk of the book is then devoted in turn to the analysis of review by the courts of administrative decisions relating to the allocation of resources, medical negligence law (whether rationing can

create a case for action in negligence by causing the care offered to fall below a proper standard of care), the relationship between local decision makers and government policy, and governance and accountability processes. An important final chapter looks at the regulation of care provided under the auspices of the NHS by non-NHS providers at home and overseas.

The analysis and arguments are presented with admirable clarity and should be fully accessible to non-lawyers. However the structure of the NHS changes in the near future, short of outright privatisation, this book will remain a valuable guide to the issues of policy and practice.

Compared with the first edition, this edition is shorter and more focused on the guiding principles of the law and public policy in this area. The first edition was longer by about a quarter, and included chapters on complaints and professional discipline and on access to medical records (considered as means to make NHS decisions accountable to patients) as well as a more detailed treatment of the then effective "internal market". There was also some discussion of the relationship of resource allocation decisions with decisions about the value of life and end-of-life care. Most of this is missing from the second edition. This makes it a more focused book and one with a longer shelf life in view of likely changes in the NHS. However, scholars would be advised to keep their first editions on their shelves, as some of the now omitted material remains of both historical and intellectual interest. The new book has gained in focus and grasp of general principles, but has lost some of the "black letter" lawyer's attention to detail.

Overall, this as an important and fascinating book which deserves a wide readership among students, practitioners, managers, policy

makers and lawyers. No work on resource allocation can overlook it.

R E Ashcroft

CORRECTIONS

doi: 10.1136/jme.2005.013904corr1

An error has occurred on page 569 in the October issue, in the paper titled Decisions at the end of life: an empirical study on the involvement, legal understanding and ethical views of pre registration house officers (*J Med Ethics* 2006;**32**:567–70). Line 24 in the right hand column should read "of intravenous hydration to be morally appropriate, even...". The journal apologises for this error.

doi: 10.1136/jme.2005.14720corr1

In the paper titled, Distributive justice in screening for hearing in newborns (*J Med Ethics* 2006;**32**:588–91), an error has occurred in line 8 of the second paragraph. The correct sentence is, "These approaches are unlikely to diminish the resources available to other healthcare needs inequitably and they may in fact result in raising the overall standard of healthcare across the communities."

doi: 10.1136/jme.2005.15446corr1

In the paper titled, The objective structured clinical examination and student collusion: marks do not tell the whole truth (*J Med Ethics* 2006;**32**:734–9), the initial for the author Kenneth E Boyd is incorrect. It should be Kenneth M Boyd. The journal apologises for this error.