

BOOK REVIEW

George J Annas, Judging Medicine, Humana Press, New Jersey

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George J Annas, Judging Medicine, Humana Press, New Jersey, i-xviii, 1-406; References 407-421; Index 423-438, hardcover \$US29.95, cloth \$US24.95.

Professor George Annas is Professor of Health Law at Boston University School of Medicine. Yet from his university qualifications, it appears that he began life as a lawyer. He soon became interested in the law as it concerns medical practice. In the early 1970s he became a leading proponent in the United States of patients' rights. He approaches the subject of medico-legal controversies, freed from a deferential respect for judges. His is armed with a wide-ranging knowledge of the fascinating problems which are now presenting themselves to society and the law.

The structure of this book derives from what it is. It is made up by the republication of essays originally prepared by Annas for the Hastings Center Report. This is a bimonthly publication on bioethical questions. Since 1976 Annas has provided a column. His object is to write a short essay of interest to health care professionals, lawyers, law-makers, judges and anyone else interested in bioethics. Nowadays that includes a large public audience constantly stimulated, shocked, alarmed and amazed by advances in biotechnology.

Each of the essays is about seven printed pages in length. The list of the headings gives the clue to the

concerns of Professor Annas: patient's rights; conception; pregnancy and birth; reproductive medicine; medical practice; the mentally retarded and mentally ill patient; death, dying and refusing medical treatment; government regulation; transplants and implants.

Inevitably with the reprinting of such a collection of essays there is a variation in their quality. Most of the essays were stimulated by a high profile case. Rushing to his typewriter, fresh from the report in the daily press, Annas composed another well constructed contribution for the Hastings Center. His typical essay begins with a catchy title designed to bait the reader. There is nothing wrong with this. In an often tedious world, bombarded by too much information, the clever intellectual will use every wile to snare the attention of the reader. Take "Forced Caesareans: the most unkindest cut of all" or "Let them eat cake" - a quote from Justice Harry Blackmun in the Supreme Court of the United States concerning the attitude of the law to abortion for the poor. And who would not be tempted by a bioethical essay titled "The Prostitute, the Playboy and the Poet"?. As it happens it is about rationing schemes for organ transplantation. Why should one person have priority over another?

After the catchy title the temptation to read on is usually maintained by an interesting opening allusion to literature. This displays the wide reading of this author - beyond law and medicine. Then Annas plunges into the case in

hand. And pity help the judge who is guilty of superficial, ignorant or prejudiced treatment of a sensitive subject of bioethics.

I suppose that it is the streak of masochism in me that caused me to enjoy most in this book the nasty attacks on judges who did not make Annas' grade. Thus poor Judge Eugene M Premo of the Juvenile Court in San José, California, little suspected that his logic and style would be taken to pieces when he gave an ex tempore judgment on a case concerning the need of a Down Syndrome child to have radical surgical treatment. The judge dismissed a challenge to the parents' decision not to consent to such an operation. Judge Premo's treatment is described as "rambling". He is criticised for not reserving to think about the evidence, legal authority, and ethical principles. But the judgment of the California Appeals Court on the appeal is denounced as "if anything less well reasoned". The resulting precedent is criticised as evidencing a "remarkable eugenic policy" whilst paying lip service to the "best interests of the child".

The criticism of the reasoning of the judges is one of Annas' chief concerns. He is unsatisfied by the fact that a judge reaches the right conclusion. Often the way the judge has done this is described as involving "appalling methodology". For Annas it is at least important that the right conclusion should be reached as that it should be arrived at by logical steps of insightful ethical reasoning. Sometimes I felt like protesting: Spare a thought for a

judge of the Juvenile Court, in the midst of a busy case list, disposing of a case without adequate research assistance or the luxury of reflective contemplation. Just the same, as Annas constantly points out, we are dealing with some of the most precious features of existence - human life, respect for individuals at a time of vulnerability and the entirely novel problems presented by new technology. The well known American cases of In re Quinlan 70 NJ 10, 355 A 2d 647 (1976) and Super. of Belchertown v Saikewicz 370 NE 2d 417 (1977) are the subjects of several essays. The judges, particularly in Quinlan get taken to task. One suspects that, had they been sitting in Professor Annas' class in Boston, they would have just scraped a pass or even - horrors - suffered a fail grade.

Apart from the fact that the book is well written, interesting and readily digested (served as it is in handy slices), it has many other strengths. It exposes the unsatisfactory nature of the generalities to which lawyers often resort to solve hard problems. Thus references to the "best interest" of a child or a patient can sometimes, as Annas points out, involve little more than an incantation which masks (perhaps for the lawyer too) the unravelling of the many issues which need to be considered and which are not susceptible to the application of such a simple formula.

Another strength of the book is the stress which Annas places upon the need for lawyers and other persons involved in public health decisions, to strive for neutral and

principled decision-making. Greater insight on the part of the decision-maker into the complex of considerations is necessary if a just and informed decision is to be made. In tune with this realism, Professor Annas refuses to acknowledge that ethics committees, made up of many worthy people, are necessarily the best place in which to solve questions such as the dilemmas of transplant patients, scarce resources, terminating life support, artificial conception etc. Choose the personnel of such a committee and, effectively, you may choose the result at which it will arrive.

Inevitably there are weakness in a book of essays of this kind. The treatment of subjects is necessarily brief and therefore can rarely be in depth. There is some repetition and overlap in discussion of particular cases. There is also occasional apparent inconsistency in the basic principles which Annas urges to govern the solution of particular problems. Of course, a book of ethics would not be human, but divine, if it lacked an occasional mortal inconsistency.

Some of the essays now seem a little dated. Certainly virtually all of them are related to controversies of the United States scene. A number have not troubled other countries. Some are unlikely to do so. Thus the chapter on "creation science" is fascinating but monumentally irrelevant to ethical debates in Australia. Also irrelevant is the discussion of whether there is a privacy right under the

United States Constitution. Yet such is the vigour and energy of the US legal system that the discussion of the cases gives a pointer to lawyers in other lands of what possibly to expect, to copy, and (sometimes) to avoid.

There are two subjects which are not covered in the book but which are now central to bioethical concerns in the United States. These involve the coming review of the US Supreme Court's decision in Roe v Wade 410 US 113 (1973). Sixteen years after that leading decision on the law of abortion, the trimester system which it sanctioned is coming up for reconsideration. Not only is this because of the changed composition of the US Supreme Court and changing attitudes in a more conservative society. It is also because the decision rested on the science and technology known in 1973. Developments since then make earlier births "viable" and also later abortions safer to the patient. So this is another case where science has overtaken the law and rendered old judgments - arguably right for their time - in need of fresh consideration.

The other major bioethical issue not covered in the book is Acquired Immuno-Deficiency Syndrome (AIDS). There are now whole books - let alone brief essays - on the ethical implications of AIDS. (See e.g. (1986) 60 ALJ 324). It is a sign of the change of the times that a book published in 1988, and containing essays up to 1986, could omit entirely the many new and unexpected problems presented by this deadly disease and its epidemic spread. I have no doubt that Annas

has already put pen to paper about the Rock Hudson estate litigation. But we will have to wait for his verdict.

If I have a criticism of the substance of the book it is its Americo-centrism. There is scarcely a mention of any other country. Nor is there more than a passing thought for the different kinds of bio-ethical problems that exist in, say, developing countries. Perhaps these were found in essays which ended on the editor's floor.

Reading this book and the truly perplexing and controversial decisions which it surveys makes the ordinary decisions of life - even of a judge's life - seem simple by comparison. I shall now return to judgment writing, relieved that I shall not today face the quandaries which Annas considers. But even more relieved that I will not face Annas' critical review of my efforts!