

757

THE AGE

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 \$29.95, cloth \$24.95.

When do you turn off a ventilator for a person who is brain dead? when do you operate to save the life of a retarded newborn child? Should doctors be legally liable for failing to terminate a deformed human life? Should mentally retarded girls be sterilized? Should the law forbid home births? They are just some of the questions in this latest book on bioethics. The author is Professor of Health Law at Boston University School of Medicine.

The structure of Professor Annas' book derives from what it is. It is made up by the republication of essays originally prepared by him 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. Inevitably with the reprinting of such a collection of essays there is a variation in their quality. The 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.

After a 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 his oral 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. And the judgment of the California Appeals Court on the appeal is denounced as "if anything less well reasoned".

The criticism of the reasoning of the judges in cases

involving bioethics is one of Annas' chief concerns. He is unsatisfied by the mere fact that a judge reaches the right conclusion. Often the way the judge has done this is described as involving "appalling methodology".

Of course it is easy for a professor to criticize judges. 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 and respect for individuals at a time of vulnerability and the entirely novel problems presented by new technology.

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. Such an ambition is elusive in

the types of decisions that are mentioned here. Life and death tend to evoke emotion.

Inevitably there are weaknesses 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 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.

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 impending review of the leading US Supreme Court's decision on the law of abortion. Sixteen years after that decision sanctioned the trimester system, it is now coming up for review.

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. It seems amazing that a book on medical problems could now be published without reference to AIDS and the legal issues which it brings. No doubt Professor Annas has now written of the case of Rock Hudson's lover. But it is not in this book.

Nevertheless the book parades many of the truly perplexing and controversial decisions of bioethics. They make the ordinary decisions of life - even of a judge's life - seem simple by comparison. Fortunate is the Australian judiciary which does not have to withstand Annas' critical view of its efforts on problems of this kind.