

Ethical Dilemmas: Who Should Decide - Scientists, God Or Lawyers?

We listen to the news of pro-life appeals for Jodie and Mary and agonise over the prices in the organic food section of the supermarket. With precision technology we can manipulate aspects of the fruit, vegetables and animal products we eat. With medical advances we can separate successfully conjoined twins born fused at the base of the spine, we can maintain patients semi-permanently in a vegetative state, we can even select the sex of our children through manipulation of embryos. But in some respects everyday life is harder, and more frightening, than before. Just who has the skill, the authority, and our trust to make decisions about the rights and duties involved in these complex matters? How can human beings protect ourselves from the potential for physical destruction and political abuse which accompany our new quite miraculous technological expertise?

The idea of a specialist court to deal with issues associated with scientific developments was formally proposed in the United States as early as the 1970s. A Task Force set up by the Presidential Advisory Group on Anticipated Advances in Science and Technology recommended creating a Science Court. The main difficulty with this proposal was that scientific experts would be tasked with providing scientific advice on the assumption their approach was ethnically neutral. As science is a social process, this will never be completely true. A specialist tribunal may not be the answer to bio-ethical dilemmas.

The teachings of major religions include many principles which can be applied to bio-ethical dilemmas. Where individuals need to take decisions they may be able to call on their God to help them. Where decisions have to be made for a society the situation is more complex. Acceptance of authority's decisions depends on whether these decisions reflect the values of society -- in a community of many faiths this is a challenge for decision-makers.

International codes can assist with certain problems. For example, the Cartagena Protocol of 29 January 2000 typifies a pragmatic, constitutionally sound and realistic approach to difficulties posed by scientific developments. The Protocol creates new internationally agreed mechanisms for the international transfer of living modified organisms. A successful outcome to the Kyoto Protocol negotiations on climate change would also demonstrate what can be achieved through international co-operation. However, international codes deal best with international issues. Individual cases about whether to switch off a life-support system, or whether to separate conjoined twins, are in their own category. The decisions in these cases have to depend on the values of each society.

The Courts are society's mechanism for making decisions on hard cases not already provided for by legislation. The judiciary is a body specialising in the thorough assessment of troublesome scenarios, and the identification of outcomes consonant with society's values. What then, should be done within the justice system with respect to bio-ethical dilemmas? How can we make the work of judges easier?

Sensible, down-to-earth responses to bio-ethical dilemmas which should be considered are as follows.

First, there must be a **focus on good information**, both in wider society and within the courtroom. Where ethics are at stake so is the conscience of society, and court-appointed expertise ought to be contemplated with more regularity than at present. Court expertise can help identify adversarial distortions of facts and allow the identification of the genuine uncertainties in a case.

Secondly, **good judgment** is vital. Processes of appointment to the bench must continue to ensure that judges are chosen above all for the quality to evaluate situations in true perspective to the intangible ethics of a community. Refresher training for the judiciary should be designed to include components of exposure to the views and experiences, hopes and frustrations, of people from many different situations in life. This can be done through a variety of media, such as field trips, documentaries, and selected readings. Only with such a broad foundation can our judges make decisions for our societies on such matters as the discontinuance of life and the the uses of artificial reproductive technology.

Thirdly, **procedural fairness** is an essential component of successful justice. For decisions on issues with ethical ramifications to be accepted by the populace all parties with a substantive interest must have the opportunity to be heard. The reception of amicus briefs may be used to supplement the rules on standing. Rules of

evidence and procedure, including those on the burden and standard of proof, must be applied judiciously and with a sense of the overall context of a case.

Fourthly, the institutions of justice must offer **opportunities for appeal**, so that society can be comfortable that all issues have been considered. The fabric of our legal system depends entirely on how judgments are received by society - the availability of appeals is a vital pressure-release valve for difficult decisions. Grounds for appeal on fact and law should be kept under careful review as the Courts increasingly have to cope with bio-ethical decisions.

Fifthly, and finally, for the purposes of this essay, the power of applied science legitimates a **note of caution** in legal processes. Certain decisions are irrevocable, and the moral health of all weighs in the balance. Our litigants, advocates, judges and media must be faithful to the broader considerations accompanying every one of these difficult cases. Technology may offer special hope for individuals in difficult personal situations - but long-term vision is needed. The judge must have an eye to the future, with a sense for human nature and the havoc we could so easily cause for future generations.

In conclusion, to charge the Courts with the resolution of our bio-ethical dilemmas is to acknowledge that the answers lie within a society. We have created the scientific developments giving rise to difficult cases, and we must take responsibility for this. The justice system is a vital part of the community, with a challenging role to play: to act as a mirror of our own souls.

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