PHLB09 – Biomedical Ethics
University of Toronto Scarborough, Winter 2019

Types of Ethics

Biomedical Ethics – sub-discipline of ethics focused on how we ought to act, focused on area of healthcare delivery, medical research, and public health (consider: organ distribution, informed consent, public hc vs private)
Descriptive Ethics – what in fact, people/groups/etc. believe (e.g. According to Abrahamic religions, interest is sin)
Normative Ethics – how in fact, we ought to act

- **Authoratative –** they are stronger than laws, conventions, customs
- **Objective –** there is no debate or dispute over the suggestions of them and are true independently
- **Universal –** do not change over time, persons, or places

Challenge – Cultural Relativism – *the moral norms for a given society are determined by that society's beliefs*
CR challenges the Objectivity and Universality of Normative Ethics.

Argument from Cultural Differences

1. Belief about moral conduct vary from society to society
2. Morality is relative to each culture. Morality is not objective.

Rachel's Responses

1. There exists differences in non-moral facts
2. Disagreement about X does not imply relativism about X
3. Reduction ad absurdium (moral progress does not exist, revolutionists are bad, unable to criticize)

Ethical Theories

Divine Command Theory – *A theory of ethics where morality stems directly from God(s) will alone*

1. If an act is commanded by God, there is an obligation to perform the action
2. An action is obligatory only if it is commanded by God

Euthyphro Dilemma – Socrates asks Euthyphro regarding what constitutes as *pious* – Euthyphro lacks a response because he needs to state one of two points, either:

1) An act is wrong **because God commands it** – therefore, it is arbitrary and no constraints on what is moral obligations
2) God **commands an act because it is wrong** – therefore stating the existence of another, higher decider of 'morality' beyond God

Utilitarianism – Created by Bentham, *The right course of conduct is to produce the best outcome (human welfare, pleasure, happiness)*

Act Utilitarianism – Focused on the best outcome per action
Rule Utilitarianism – Focused on the best overall outcome by a set of rules for society
Trolley Problem – five people on a track, one person on another track. You can pull a lever to redirect unstoppable train towards the one person, otherwise the five people die. Do you do it?
Organ Donation Problem – An objection to Utilitarianism, similar to the Trolley Problem, as a physician in a war zone, do you kill a newborn infant who has no chance of surviving if you can donate its organs to five other infants who will die otherwise?
Utilitarian response – Epistemological differences in the scenarios (you don't know if the five will survive), decays public trust in healthcare physicians
Supererogatory – Permitted but not required – above and beyond duty. (e.g. venture into warzone to save infants)

Doctrine of Double Effect – *bad effects are permissible if they are merely the side effects of otherwise good actions*

1. The action has one good effect and one bad effect
2. The bad effect is not a means to obtaining the good effect
3. The bad effect is merely foreseen and not intended
4. The good effect is great enough to outweigh the bad

If a harmful result is **intended** or is a **necessary** means to bringing about a good effect, then the action is not permissible on the doctrine of double effect. Examples for war:

1. It is impermissible to target civilians to instill fear in the general population to force peace
2. It is permissible to target military installations, even though some civilians might die

Kantian Ethics – Emphasizes means (way to consequence) and motive of agents towards an action

1) Act only according to a maxim by which you can at the same time will that it should be a universal law
2) Act so that you treat humanity [i.e. rationality], in your own person as well as in that of another, always also as an end and never only as a means

Objections - knowing how to formulate the maxim (the principle or rule) of an action

"whenever it is beneficial, making a lying promise"

"whenever in desperate need of help, make a lying promise"

Universalizability flaws, also catch-22s – "only go to the beach when it's empty"

Virtue Ethics – *Character traits should be prioritized over principles of actions*

How do we know what traits to develop? Is the ideal person not the one who makes the right choices?

Beauchamp and Childress' four-principles approach

- Non-maleficence
- Beneficence
- Respect autonomy
- Justice

Rossian Model:

- Moral principles have prima facie significance (face-value significance)
- Each principle can outweigh the other, depending on the circumstances
- The act that is most prima facie required (among one's options) is one's actual duty
    - Autonomy can conflict with beneficence (Right to refuse treatment)
    - Autonomy can conflict with autonomy (Conscientious objection)
    - Autonomy can conflict with non-maleficence (Duty to refrain from treatment

Paternalism – restricting a person's liberty for their own benefit (withholding truth, forced treatment, etc)

Procreative Beneficence

Definition: prospective parents have a duty to use PGD to select for positive qualities in their future offspring and select against negative qualities. This usually is with:

Preimplantation genetic diagnosis (PGD) is a procedure used prior to implantation to help identify genetic defects within embryos.

Objections:

- What is the best life? **Savulescu** – complex, but should not lead us to be skeptical of improvement
- Harm – uses children as a means, closes off 'open future', and imposes excessive expectations, unseen traits
- Discrimination – selecting against traits reduces number of people w/traits and accessibility services
- Absurd implications – selection for sex, race, etc. (can this lead to Eugenics?)

Genohype – the underlying nature of being human – implies that those with disabilities are less than human

Gedge – worried about expressivist critique – sends a message to disabled people that their lives are not worth living

Savulescu – no tests for non-disease genes (height, intelligence, character, etc.) but may arise in the future

Savulescu says that there should be information, free choice, and non-coercive advice

PART II – Post Midterm to Final

Informed Consent

Respecting Autonomy requires **informed consent** → the right to self-determination
Beneficience →patient understands their own values more than others

Can only be attained when:

- Competent → capable of decision making for themselves (mental capacities)
- Informant → the patient must be provided with relevant information to make a decision
- Understands → understands the implications and procedures
- Assents → agrees, the expression of choice
- Acts without duress → voluntarily, not coerced

Competence:

Buchanan & Brock – competence is not a general capacity possessed by a person, relative to nature of decision and context of decision-making (blood transfusion vs cold medication, surgery vs vaccine)
Also subject to **subjective capacities** – dementia, medication, stress, environment, etc.
Needs capacity for **communication** and **understanding –** becoming informed and articulate their decision and understanding alternatives etc.
Needs capacity for **reasoning** and **deliberation –** appreciate the consequences, outcomes, and cause/effects
Needs **relatively stable set of values**
Competency is a **threshold –** not a measure of degrees. They are either competent or not
Two Errors – balancing the value of self-determination vs. patient's best interests
Decision Relativity – accepting/denying a treatment has different competence requirements
---
Benjamin Freedman – respecting people involves respecting their capacities, people only need to have a track record of making reasonable decisions, open to discussion, and responsible. A mini-course on medical science is not required, meaning that only the essentials of the situation and the decision itself are necessary information.

- If consent is determined by the risks of a decision, we are not genuinely concerned with the patient's autonomy, but their well-being. The purpose of informed consent is autonomy and not beneficence

---
Ontario's Approach – a person is competent if they understand the relevant information pertaining to decision and are capable of appreciating the reasonably foreseeable consequences of their decision. **Not B&B.**
Mulloy vs. Hop Sang (hand cut off)
Malette vs. Shulman (blood transfusion refused for religious reasons, saved patient but sued)

Riebl vs. Hughes – Riebl underwent surgery to lower chance of stroke, but suffered one as a result of procedure. Was not informed of this risk during the procedure.

Standards of Disclosure – what is involved in the duty to disclose information? This is subjective (values, paternalism). This is difficult to measure as some people have varying individualistic values. But R vs. H failed because it was reasonable information that people would have expected.

Professional standard – physicians and other healthcare professionals are held accountable to professional standards, but allows profession to determine what patient needs to know
Objective standard – whatever a reasonable person would want to know, but some people have highly individualistic values and its hard to know what reasonable people want to know without specifying values

Starson vs. Swayze – mentally ill patient who was deemed unfit to reject or accept the proposed treatment. Onus is on medical system to show person is incapable, patients are still capable until proven otherwise. Best interests are ignored.
Ontario Health Care Consent Act – patient can be treated without consent on grounds of lack of capacity

Halushka vs. USaskatchewan – 50$ study, told harmless and tested but caused immediate cardiac arrest for Walter H.
Murray vs. McMurchy – patient that consented to caesarean section was sterilized on basis of non-cancerous tumors
ICU Psychosis – under context of critical care, value of autonomy should be questioned. Misak's delusions question this. She was given a lot of freedoms that were not medically advisable because of her 'competency'. Strong 'quiet delusion'.

Research on Humans

Clinical Trials – prospective experiments on human subjects used to evaluate the safety/efficacy of a medical treatment
they are usually the most reliable source of info, others have bias or confounding factors

Why can't we let patients choose? Desperate patients may seek out experimental therapy, income, sex, age, etc.
Randomization interferes with patient's preference for clinical trials but helps make dataset better
Placebos for control groups → violate beneficence because does not actually treat people. Use existing therapy as control
If the trial has more promise than normal treatment, does physician not have duty to provide all with the trial?
Beneficence seems to demand that we provide the experimental therapy over the existing treatment

Theoretical Equipoise: A state of uncertainty about the merits of two treatments being tested because reasons supporting each is precisely balanced **in the mind of the physician** (e.g. Tylenol vs Advil)

Issues: RCTs are usually only run after evidence that proposed trial is superior, preliminary trials may show its superior, then do physicians have requirement to switch? It is **fragile** and **idiosyncratic**.

Freedman – we are comparing apples and oranges

1. Easily disturbed since it requires perfect balance
2. Difficult to measure because it spans large range of variables
3. Idiosyncratic

Clinical equipoise: There is no consensus within the expert clinical community about the comparative merits of alternatives being tested

Miller and Brody – clinical equipoise is not necessary for a RCT despite what Freedman says. No equipoise is.
Therapeutic Misconception –the mistaken belief that scientific elements of a study are meant to benefit them
Therapy – governed by therapeutic beneficence and non-maleficence
Research – the goal is not beneficence, but aiming at knowledge that will help others (for groups instd. Individs.)
Example → treatment for depression, therapy changes amounts, dosages, and etc… useless for research
Research needs stuff like biopsies, imaging, blood drawing, no compensating for individ. But necessary for info
Informed Consent instead of **Equipoise** should be concern, due to trials not being beneficent
Miller and Weijer – typically mandate that proposed research must outweigh risks to subjects –
Component analysis Therapeutic risks/benefits, non-therapeutic risks (justified through benefit to society)

Brody/Miller
→ since beneficence is being abandoned, equipoise can be abandoned
→informed consent is sufficient for running a clinical trial
Miller/Weijer
→ since experimentation still involves therapeutic benefits, equipoise can still govern these risks
→informed consent is not sufficient standard to govern relationships built on trust. Physicians should be bound by beneficence to ensure their duty, cannot always imagine that patient has luxury to refuse (might be serious)

Conception and Embryos

What is the moral status on human embryos? It determines what kind of treatment an entity warrants
Human Embryo – an early developmental stage of a human organism, distinguished from a fetus
Stem cell research can be facilitated by creation and destruction of human embryos (contain **pluripotent** SCs)
Canadian context – IVF is legal, but results in destruction of embryos, research purposes alone is illegal though
Sagan/Singer – stem cells should not have moral status. Consider arguments, reject them, conclude destroy is ok.
Capacity argument – embryos have capacity to develop into mature human, thus affords them moral status.
Implications: destroying embryos is disallowed, but so are destroying stem cells as they can become human too
Counterpoint: we then have a duty to develop innumerable cells into mature humans, duty is absurd. Capacity does not grand moral status.
Interfering with nature – embryos should not be disturbed as it impacts nature's plans for it. Rejection is that all of medicine involves changing nature's course.
Intrinsic ability for embryo to become adult – yes, stem cells lack this but embryos also need environment (womb)
Lee and George – embryos are not potential adults, but actual human beings at earliest stage of development – rejection is that this is an unclear differentiation, and that somatic cells have the same capacity if needed. Also murder of a human (termination of hopes, infringement of autonomy, sentience) does not apply to an embryo.
Holm's the ethical case against stem cell research → rejects no status (liberal) and full status (conservative)
Against liberals – many infants also lack personhood, liberal argument would say that it is permissible to kill them then. It affords no status to embryos so they can be destroyed for any (little) reason
Against conservatives – Conservatives believe embryos are early stage humans. This means abortion, IVF, research, etc are all wrong. Does not distinguish between dectruction of embryos and fetuses and infants, this seems wrong!
Gradualism – human life has value at all stages, increasing through a person's development. Reasons to destroy them

- Killing infants is wrong vs embryos
- Purpose served by destruction matters

Embryo destruction – each embryo destroyed must save 3-5 lives (number of embryos required for a new life)
McLeod and Baylis – reject an argument for impermissibility of commodifying embryos/gametes. They reject that **embryos are unalienable from us**. They are not necessary for human flourishing, so they are indeed alienable

Fetuses and Abortion

Fetuses are distinguished from embryos based on stage of development (usually past 9 months)
Destruction of fetuses are primarily concerning pregnancy and abortion
Most agree that if fetus is a person, killing it needs some justification
When does a fetus become a person?

Instead of how to convince politically, focus on: **moral standing of killing** and **account of autonomy** for killing
Don Marquis – why abortion is immoral. Abortion is immoral in most cases from considering why killing is wrong

1. Inflicting the loss of a valuable future is wrong
2. Killing a fetus deprives it of a valuable future
3. Killing a fetus is wrong

Wrongfulness of Killing – loss of a valuable future, lose what we value
Badness of Death – concerned about absence of what we will experience, murder deprives most experiences
Contraception – Marquis says that contraception prevents a valuable future, but does not deprive an entity of one
Sumner – conservative position grants full moral status at conception, liberals grant at birth. No significance on gestation
Moderate because liberal is applied prior to some threshold stage, conservative after some threshold stage
Threshold is: capacity of experience pain/pleasure, disappointed, mood/emotions, feelings
Moral status is ground in **sentience –** it explains the moral distinctions we draw in nature (sentience means possible to have a good/bad life, interests. It is not just consciousness)
Is there a duty to gestate? Are we required to bring fetuses to term? It involves close inter-connection of two beings
Mandating gestation involves liberty harm
You face no burden by refraining to kill people, but you do face a burden by continuing a pregnancy
Violinist Dilemma – you're strapped to a violinist for 9 months, do you leave and be free or take it and save him?

Physician Assisted Death

Is it morally permissible to **provide an individual with assistance** in dying?
Should we establish policy of providing patients with access to receive assistance in dying?
Policy expansion – we are committed to autonomy in xyz, so make it consistent in commitment to assist suicide/euth
Argument:

- We have a right to decide what is to be done with our bodies
- Euth/assisted suicide is a decision that pertains to ones body
- We have a right to assisted suicide/euthanasia

Liberal State – the state should try to foster autonomy of citizens, they have no state religion, no decision of marriage, occupation, etc. **The state is unjustified in restricting the liberty of citizens** besides preventing harm unto others
Slippery Slope – PAD could lead to unethical deaths, PAD and voluntary euthanasia → involuntary euthanasia (fallacious)
Conceptual slippery slope – the concepts used in any scheme for providing access to PAD will be vague, the vagueness of concepts will lead to cases of unethical PAD, so any scheme of Pad will have unethical implications
Rejection: Competence comes in degrees, A-Z are all diminishing in competency, difference in one is not incompetent but there must be a threshold. (example: 1 hair does not make a beard). We need some **cutoff** like for driving, drinking, etc.
Causal slippery slope – the adoption of a policy that allows assisted deaths will cause some unacceptable death
If we allow assisted suicide for competent patients, physicians will be more likely to offer voluntary euthanasia for competent patients … → physicians want to allow for patients with no expressed wishes
Objection – PAD involves the risk of a serious wrong – allowing incompetent people to kill themselves. If there is any way to prevent wrongful deaths, we should do so → complete ban on PAD.
Response 1 – maximally restrictive safeguards do not always guarantee effectiveness (alcohol, prostitution)
Response 2 – we can also limit driving to prevent all deaths, but we don't. public policy should not prevent all
Voluntary Euthanasia – act of one person killing another person in accordance with competently expressed wishes of that person. The person who dies does not take the action that proximately causes their death. *Physician lethal injection*
Assisted Suicide – the act of intentionally killing oneself with the assistance of another person. They cause their own death. *A physician provides a lethal dose of medication that the patient takes themselves*
Canadian perspective: 18y/o, serious incurable disease/disability, request in writing, 2 witnesses, 10 day waiting period
Ideas → **allowing PAD reduces resources for other forms of care (palliative care)**

Harm principle – is not principle of law, government may intervene and restrict self-harming/immoral activity (cannibal)
Rodriguez case – challenged SCC for euthanasia when her ALS stopped her from ending her life, SCC challenge failed
Majority – slippery slope for abuse of PAD **Dissent –** slippery slope is speculative, suffering is not
Freedman – there is a **negative right** to suicide, not a positive one. (nobody is permitted to interfere, but state does not have obligation to ensure that people are able to take their own life). Just because some people can commit suicide does not mean that the positive right to suicide needs to follow from the negative right. **Most of society's rights** are negative
McLachlin – there is no mora ldifference between removing life-saving treatment and providing lethal dose of medication
Smith vs Jones – smith kills his cousin, jones watches his cousin die. Is there a difference in morality here?
Carter v Canada – ending ones own life is not crime, providing assistance to someone was a crime, even with consent
Engages S7 because: suffering can cause some people to end life early (right to life) and causes some people to suffer if they do not (right to security of the person). S7 criminalizes important expression of autonomy