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Scientific and clinical advances, social and political developments and the impact of healthcare on our lives raise profound ethical and legal questions. Medical law and ethics have become central to our understanding of these problems, and are important tools for the analysis and resolution of problems – real or imagined.

In this series, scholars at the forefront of biomedical law and ethics will contribute to the debates in this area, with accessible, thought-provoking, and sometimes controversial ideas. Each book in the series will develop an independent hypothesis and argue cogently for a particular position. One of the major contributions of this series is the extent to which both law and ethics are utilised in the content of the books, and the shape of the series itself.
Abortion Law and Policy

An Equal Opportunity Perspective

Kerry Petersen, La Trobe University, Australia

After at least half a century of political and legal agitation for the liberalization of abortion, most liberal democracies make provision for lawful abortion, but retain criminal penalties for unlawful abortion practices. Legal solutions which have redefined abortion as a health matter represent the views of the majority and accommodate the needs of most women seeking to terminate a pregnancy. Nevertheless, there are still minorities at both ends of the spectrum who refuse to accept the legalization of abortion for any reason, or who refused to accept any restriction on abortion prior to live birth. Periodically, public disputes arise or scandals occur which give minority view holders the opportunity to re-open the political debate and remind the public that the matter is far from settled. In some jurisdictions such as Britain and Australia, women do not have a right to abortion and in most of these jurisdictions both medical practitioners and women can be criminally liable under these abortion laws.

Abortion Law and Policy is a scholarly analysis of reproductive freedoms and rights within a legal and policy framework. The book looks at legal models in common law and civil law jurisdictions rather than specific laws, and draws substantially on developments in the United States, Canada, Australia and Britain. The book challenges the assumption that abortion should be regulated by law and exposes the discriminatory irrational and fragile foundations upon which abortion laws are currently based. Kerry Petersen argues that archaic criminal abortion laws and the more ‘enlightened’ health/criminal approaches to abortion are discriminatory in that they deprive approximately half of the population of the right to personal autonomy.

Offering a compelling critique of current abortion laws, this book will be of interest to students and scholars of law, healthcare studies, sociology, gender studies and social policy.


Assisted Dying

Reflections on the Need for Law Reform

Sheila McLean, University of Glasgow, UK

Assisted Dying explores the law relating to euthanasia and assisted suicide, tracing its development from prohibition through to the laissez faire attitude adopted in a number of countries in the 21st Century. This book provides an in-depth critique of the arguments surrounding legislative control of such practices and particularly looks into the regulatory role of the state. In the classical tradition of libertarianism, the state is generally presumed to have a remit to intervene where an individual’s actions threaten another, rather than harm the individuals themselves. This arguably leaves a question mark over the state’s determined intervention, in the UK and elsewhere, into the private and highly personal choices of individuals to die rather than live. The perceived role of the state in safeguarding the moral values of the community and the need for third party involvement in assisted suicide and euthanasia could be thought to raise these practices to a different level. These considerations may be in direct conflict with the so called right to die espoused by some individuals and groups within the community. However this book will argue that the state’s interests are and should be second to the interests that the people themselves have in choosing their own death.

Written by a leading thinker in the field, this book provides readers with an in-depth critique of the arguments for and against legislation.


2007: 234 x 156: 224pp
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For more information, visit: www.routledge.com/9781844720545
Autonomy, Consent and the Law

Sheila A.M. McLean, University of Glasgow, UK

Autonomy is often said to be the dominant ethical principle in modern bioethics, and it is also important in law. Respect for autonomy is said to underpin the law of consent, which is theoretically designed to protect the right of patients to make decisions based on their own values and for their own reasons. The notion that consent underpins beneficent and lawful medical intervention is deeply rooted in the jurisprudence of countries throughout the world. However, Autonomy, Consent and the Law challenges the relationship between consent rules and autonomy, arguing that the very nature of the legal process inhibits its ability to respect autonomy, specifically in cases where patients argue that their ability to act autonomously has been reduced or denied as a result of the withholding of information which they would have wanted to receive.

Sheila McLean further argues that the bioethical debate about the true nature of autonomy — while rich and challenging — has had little if any impact on the law. Using the alleged distinction between the individualistic and the relational models of autonomy as a template, the author proposes that, while it might be assumed that the version ostensibly preferred by law — roughly equivalent to the individualistic model — would be transparently and consistently applied, in fact courts have vacillated between the two to achieve policy-based objectives. This is highlighted by examination of four specific areas of the law which most readily lend themselves to consideration of the application of the autonomy principle: namely refusal of life-sustaining treatment and assisted dying, maternal/foetal issues, genetics and transplantation.

This book will be of great interest to scholars of medical law and bioethics.

Select Contents:
1. Autonomy Introduced
2. Autonomy in Law
3. Consent and the Law
4. Autonomy and Pregnancy
5. Autonomy at the End of Life
6. Autonomy and Transplantation
7. Autonomy and Genetics
8. Autonomy and Consent Revisited

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The Best Interests of the Child in Healthcare

Sarah Elliston, University of Glasgow, UK

Topical and compelling, this volume provides an excellent re-evaluation of the ‘best interests,’ test in the healthcare arena; the ways in which it has developed, the inherent difficulties in its use and its interpretation in legal cases concerning the medical care of children.

Comprehensively covering both the English and Scottish position within the context of the European Convention of Human Rights and the UN Convention on the Rights of the Child, the author examines a wide range of healthcare situations, from the commonly occurring to the unusual, offering a detailed analysis of legislation, case law, cases and their implications.

It includes discussions on:
• the extent to which a child’s body can be examined, operated on and affected by medicines, devices or procedures intended to bring about medical change
• the appropriate scope of parental choice and authority and at what stage of their development children should be allowed to make their own decisions
• the response to situations where the interests of children may be in conflict - the cases of conjoined twins or the donation of organs to siblings.

This work is a key resource for postgraduates and researchers working and studying in the fields of law, healthcare and medicine.

Select Contents:
1. Introduction
2. Standards in Decision Making Concerning Children
3. Best Interests and Consent
4. Best Interests and Refusal
5. Best Interests between Children
6. Best Interests and Withholding/Withdrawing Treatment
7. Best Interests and Medical Research
8. Conclusions

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Bioethics and the Humanities

Attitudes and Perceptions

Robin Downie, University of Glasgow, UK and Jane Macnaughton, University of Durham, UK

Critiquing many areas of medical practice and research whilst making constructive suggestions about medical education, this book extends the scope of medical ethics beyond sole concern with regulation. Critiquing many areas of medical practice and research whilst making constructive suggestions about medical education, this book extends the scope of medical ethics beyond sole concern with regulation.

Illustrating some humanistic ways of understanding patients, this volume explores the connections between medical ethics, healthcare and subjects, such as philosophy, literature, creative writing and medical history and how they can affect the attitudes of doctors towards patients and the perceptions of medicine, health and disease which have become part of contemporary culture.

The authors examine a range of ideas in medical practice and research, including:

- the idea that patient status or the doctor/patient relationship can be understood via quantitative scales
- the illusion fostered by medical ethics that doctors, unlike those in other professions, are uniquely beneficent and indeed altruistic.

An excellent text for undergraduate and postgraduate students of law, medical ethics and medical healthcare law, Bioethics and the Humanities shows the real ethical achievements, problems and half-truths of contemporary medicine.


NEW

Bioethics

Methods, Theories, Scopes

Marcus Düwell, Utrecht University, the Netherlands

“This is a book that embraces neither a single ethical theory nor a pragmatic melange of just-so-principles. It is a thoughtful and engaging analysis of diverse theoretical foundations in Bioethics. It is also an enormous step towards conceptual and philosophical clarity in this fascinating area.” – Professor Christian Illies, Chair for Practical Philosophy at the Otto-Friedrich University Bamberg, Germany

This book is a philosophically-oriented introduction to bioethics. It offers the reader an overview of key current debates in bioethics in the areas including organ retrieval, stem cell research, justice in healthcare and issues in environmental ethics including issues surrounding food and agriculture. But the book also seeks to go beyond describing the issues in order to provide the reader with the methodological and theoretical tools for a more comprehensive understanding of bioethical debates. The book investigates the theoretical foundations and normative implications of bioethical debates and situates the areas of ethics into their philosophical context.


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For more information, visit: www.routledge.com/9781844720521
FORTHCOMING

Birth, Harm and the Role of Distributive Justice
Burdens, Blessings, Need and Desert
Alasdair Maclean, University of Dundee, UK
This book looks at the issue of harm in relation to wrongful birth, wrongful life and wrongful pregnancy claims. While addressing the issue of whether English Law is coherent and consistent in these cases, Alasdair Maclean also draws comparisons with other jurisdictions looking at the different legal approaches of the US, Australia, France and Holland. The book then goes on to investigate the issues of harm and the relationship between distributive justice and corrective justice, exploring the implications for tort theory more generally.


Defending the Genetic Supermarket
The Law and Ethics of Selecting the Next Generation
Colin Gavaghan, University of Glasgow, UK
The controversial topic of the technology of Pre-implantation Genetic Diagnosis, and the muddled approach to this subject adopted by the UK Parliament, is explored in detail in this volume. The author takes the viewpoint that the HFEA has taken insufficient notice to date of certain core ethical principles and makes the case for a much more ethically consistent and humane system than has been managed so far. Arguing that many of the fears and objections levied against Robert Nozick’s notion of the ‘genetic supermarket’ by disability activists, christian bioethicists and radical feminists, amongst others, are internally inconsistent, philosophically unsound or merely highly improbable, the author considers a number of individual policy decisions of the HFEA and addresses such questions as:
- Can a case be made out for state involvement in such decisions?
- Who stands to be harmed by a supermarket model?
- Are any ethical principles or societal interests threatened by it?

This book is an essential resource for law students of all levels and professionals working within or interested in medical and healthcare law and medical genetics.

Select Contents: The attack on the genetic supermarket; Autonomy and germinal choice; Children of the genetic supermarket; Impossible alternatives: Derek Parfit and the Non-Identity Principle; Disability, gender and the threat to the already disadvantaged; Saviour siblings and the ‘means-ends’ imperative; Justice and the genetic supermarket; Defending the genetic supermarket

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**Euthanasia, Ethics and the Law**
*From Conflict to Compromise*

Richard Huxtable, University of Bristol, UK

*Euthanasia, Ethics and the Law* argues that the law governing the ending of life in England and Wales is unclear, confused and often contradictory. The book shows that the rules are in competition because the ethical principles underlying the rules are also diverse and conflicting.

In mounting his case Richard Huxtable considers some familiar and topical debates, including assisted suicide and voluntary euthanasia, examining such situations as the Dianne Pretty litigation and Lord Joffe’s Assisted Dying for the Terminally Ill Bill. The book also enters some important, but less well-charted areas, looking at the advent of ‘death tourism’ and the real status of involuntary and passive euthanasia in English law, in addition to clarifying the confusion that surrounds the use of powerful painkillers like morphine. Dealing with both legal and ethical issues, the text concludes that the time has come to more openly adopt a compromise position - one that more honestly recognises and accommodates the competing values, whilst also restoring a measure of coherence to the law.

**Select Contents:**
1. Judging the End(ing) of Life: Conflict and Confusion
3. Assisted Suicide in ‘the Shadowy Area of Mercy Killing’
4. Get Out of Jail Free? Double Effect and Doctors in the Dock
5. Beyond Bland: Hedging Bets on the Value of Life?
6. Euthanasia and the Middle Ground: From conflict to Compromise

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**NEW**

**Genomic Negligence**
*An Interest in Autonomy as the Basis for Novel Negligence Claims Generated by Genetic Technology*

Victoria Chico, University of Sheffield, UK

Advances in genetic technology will lead to novel legal challenges. This book identifies four potential genomic claims which may be articulated as novel negligence challenges. Each of these claims is considered from the perspective of the English courts’ approach to novel kinds of damage. It is argued that these novel genomic claims are unlikely to be favourably received given the current judicial attitude to new forms of damage. However, Victoria Chico argues that the genomic claims could be conceived of as harm because they concern interferences with autonomy. Each claim is considered from the perspective of a hypothetical English negligence system imbued with explicit recognition of the interest in autonomy. Chico examines how recognition of this new form of damage would lead to novel genomic negligence claims being treated in a way which they would not, if considered within traditional parameters of harm in negligence.

**Select Contents:**
1. Introduction
2. Some Genetic Science which is of Significance to Novel Genomic Negligence Claims
3. The Recognition of New Interests and Corresponding Duties of Care in English Negligence Law
4. An Interest in Autonomy as the Basis for a New Head of Damage in Negligence: Possible Interpretations and Limitations
5. Negligence in Reproductive Genetics: The Wrongfully Created Person and a Claim Based on the Interest in Autonomy
6. Negligence in Reproductive Genetics: The Parents’ Perspective
7. Genetic Information: Failure to Disclose a Genetic Risk

April 2011: 234 x 156: 216pp
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The Harm Paradox

Tort Law and the Unwanted Child in an Era of Choice

Nicolette Priaulx, University of Cardiff, UK

Offering the first comprehensive theoretical engagement with actions for wrongful conception and birth, The Harm Paradox provides readers with an insightful critique into the concepts of choice, responsibility and personhood. Raising fundamental questions relating to birth, abortion, family planning and disability, Priaulx challenges the law’s response that enforced parenthood is a harmless outcome and examines the concept of autonomy, gender and women’s reproductive freedom.

It explores a wealth of questions, including:

• Can a healthy child resulting from negligence in family planning procedures constitute ‘harm’ sounding in damages, when so many see its birth as a blessing?
• Can a pregnancy constitute an ‘injury’ when many women choose that very event?
• Are parents really harmed, when they choose to keep their much loved but ‘unwanted child’?
• Why don’t women seek an abortion if the consequences of pregnancy are seen as harmful?

An exciting and original contribution to the fields of medical law and ethics, tort law and feminist jurisprudence, this is an excellent resource for both students and practitioners.


2007: 234 x 156: 224pp
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Health Professionals and Trust

The Cure for Healthcare Law and Policy

Mark Henaghan, University of Otago, New Zealand

Over the past twenty years there has been a shift in medical law and practise to increasingly distrust the judgement of health professionals. An increasing number of codes of conduct, disciplinary bodies, ethics committees and bureaucratic policies now prescribe how health professional and health researchers should act and relate to their patients. The result of this, Mark Henaghan argues, has been to undermine trust and professional judgement in health professionals, while simultaneously failing to trust the patient to make decisions about their care.

This book will look at the issue of health professionals and trust comparatively in a number of countries including the USA, Canada, Australia, New Zealand and the UK. The book will show by historical analysis of legislation, case law, disciplinary proceedings reports, articles in medical and law journals and protocols produced by management teams in hospitals, how the shift from trust to lack of trust has happened. Drawing comparisons between situations where trust is respected such as in emergency situations, and where it is not for example routine decisions such as obtaining consent for an anaesthetic procedure, the book shows how this erosion of trust has the potential to dehumanise the special nature of the relationship between healthcare professionals and patients. The effect of this is that the practice of health care is turned into a mechanistic enterprise controlled by “management processes” rather than governed by trust and individual care and judgement.

This book will be an invaluable resource for students and scholars of medical law and medical sociology, public policy-makers and a range of associated professionals, from health service managers to medical science and clinical researchers.


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Healthcare Research Ethics and Law

Regulation, Review and Responsibility

Hazel Biggs, University of Lancaster, UK

The book explores and explains the relationship between law and ethics in the context of medically related research in order to provide a practical guide to understanding for members of research ethics committees (RECs), professionals involved with medical research and those with an academic interest in the subject.

Healthcare Research Ethics and Law sets out the law as it relates to the functions of Research Ethics Committees (RECs) within the context of the process of ethical review and aims to be accessible and readily understood by REC members. Each chapter begins by locating the material within the practical context of ethical review and then provides a more theoretical and analytical discussion detailing how the theory and practice fit together. The key legal issues of confidentiality, consent and negligence are addressed in detail, alongside practical guidance as to how and when liability may be incurred in these areas. In addition, the practical and legal implications of the implementation of European Directive 2001/20/EC, the Human Tissue Act 2004 and the Mental Capacity Act 2005 are considered alongside a discussion of their socio-political background and relevance for medical research in the UK.

Select Contents:
1. Introduction
2. Brief History of Research Ethics
3. Research Ethics in Theory and Practice
4. Legal Liabilities of RECs
5. Consent
6. Confidentiality Issues in Research
7. Researching Vulnerable Groups
8. Human Tissue
9. Conclusions and Thorny Issues

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Human Fertilisation and Embryology

Reproducing Regulation

Edited by Kirsty Horsey, University of Kent, UK and Hazel Biggs, University of Southampton, UK

Relevant to students, academics and practitioners across the globe, this original volume highlights contemporary issues associated with assisted reproduction and embryo and critically analyzes the law surrounding human reproduction in the light of case law and technological developments since the Human Fertilisation and Embryology Act (HFE Act) Act was passed in 1990. Tackling issues from an interdisciplinary perspective, the authors identify and evaluate areas that have provoked intense public and academic debate as well as those where further or renewed regulation is needed. Focusing primarily on the legal and ethical issues involved in regulating this area in the UK, which is at the forefront of developing legislation in this area, this book has international relevance as many countries have used the UK as a model for their own legislation.

This text is suitable for a broad range of readers, including legal academics, law students and practitioners interested in the areas of medical/healthcare law and ethics, bioethics and moral philosophy, family law, sociology and reproductive medicine and genetics.

Select Contents:
1. The Quest for a Perfect Child: How Far Should the Law Intervene?
2. Conceptions of Welfare
3. Rethinking the Pre-conception Welfare Principle
4. Paying Gamete Donors Does not Wrong the Future Child
5. Unforeseen Uses of Preimplantation Genetic Diagnosis: Ethical and Legal Issues
7. Parenting Genetically Unrelated Children: A Comparison of Embryo Donation and Adoption
8. Unconsidered Inconsistencies: Parenthood and Assisted Conception
9. Beyond Genetic and Gestational Dualities: Surrogacy Agreements, Legal Parenthood and Choice in Family Formation
10. Beyond Health and Disability: Rethinking the ‘Foetal Abnormality’ Ground in Abortion Law
11. The Abortion Debate Today

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RECOMMEND KEY TITLES TO YOUR LIBRARIAN!
Impairment and Disability
Law and Ethics at the Beginning and End of Life
Sheila McLean and Laura Williamson, both at the University of Glasgow, UK

This book explores legislation intended to protect the interests of people with disabilities or impairments. Considering a broad range of ethical and legal concerns which arise in issues of life, death and disability, it covers the social and legal responses to the equality rights of disabled people, focusing on those responses to:

- the right to life
- the end of life
- assisted suicide.

This work engages with contemporary debates, examines case studies and explores the problems surrounding many legal concepts within the context of disability and impairment. The authors argue that it is crucial to distinguish between unjust discrimination and differential treatment and unify the disagreements surrounding the issues by highlighting ethical ideals that should be shared by all stakeholders in life and death decisions that impact on people with disabilities.

Topical and contemporary, this book is a perfect supplementary text for students of all levels and researchers working in the areas of law, applied ethics and disability theory.


Intention and Causation in Medical Non-Killing
The Impact of Criminal Law Concepts on Euthanasia and Assisted Suicide
Glenys Williams, University of Aberystwyth, UK

Analyzing the concepts of intention and causation in euthanasia, this timely new book explores a broad selection of disciplines, including criminal and medical law, medical ethics, philosophy and social policy and suggests an alternative solution to the one currently used by the courts, based on grading different categories of killing into a formalized justificatory defence.

This text explores how culpability, blameworthiness and liability are ascribed and how ascertaining mens rea and actus reus are problematic in an end-of-life decision-making scenario. Williams criticizes the way the courts rely so exclusively on the criminal concepts of intention and causation in such medical scenarios and examines and raises awareness of the inadequate and inappropriate legal framework within which judges have to operate.

Topical and compelling, this significant contribution argues for a more open and honest approach which would, in turn, provide the certainty, consistency and equality required by the law.

This is a quintessential read for all students studying medical and healthcare law and the legal aspects of health and medicine.

Forthcoming

**Medicine and Law at the Limits of Life**

**Clinical Ethics in Action**

**Richard Huxtable**, University of Bristol, UK

There has been a recent flurry of judicial and legislative activity in the realm of end-of-life decision-making, particularly around decisions to provide, or deny, life-supporting treatment to critically ill patients who are not capable of expressing their wishes. This book will focus upon decisions to withhold or withdraw life-supporting treatment from incompetent patients. The book offers a critical examination of the latest developments such as the Mental Capacity Act 2005, alongside more familiar principles such as the “best interests” standard, with a view to developing a new framework for resolving disputes in the clinic that is not only theoretically robust but also practically relevant.

Key questions addressed by the book include:

- Which legal and ethical principles ought to guide health care professionals in deciding whether or not to provide life-supporting treatment to an incompetent patient?
- Who should have a say over whether or not treatment is provided, and whose voice – if anyone’s – ought to be loudest?
- What mechanisms ought to be in place for resolving disputes and disagreements when they arise in end-of-life care?
- What role can and should clinical ethics committees play in these decisions?

This book will be of interest to students and scholars in the fields of health care law, bioethics, jurisprudence, applied ethics, theology, and policy studies, as well as health professionals and members of clinical ethics committees.


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**Medicine, Malpractice and Misapprehensions**

**V.H. Harpwood**, University of Cardiff, UK

Analyzing the level of claims for clinical negligence in the light of the most recent trends and discovering whether there is indeed a litigation crisis in healthcare, this book is a topical and compelling exploration of healthcare and doctor-patient relationships.

The author:

- identifies and analyzes the growing pressures on doctors in modern society, placing their role in context
- explores some of the myths surrounding media claims about malpractice
- considers the practice of ‘defensive medicine’ and the difference between defensive practices and sensible risk management
- examines external pressures, such as political interference with clinical practice in the form of target-setting and what might be described as a culture of creeping privatization of healthcare.

Covering the topics of medicine and the media and the causes of occupational stress among doctors, this volume is a must read for all students of medical law and medical ethics.


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The Body in Bioethics

Alastair V. Campbell, National University of Singapore, Singapore

Recent debates about uses and abuses of the human body in medicine have highlighted the need for a thorough discussion of the ethics of the uses of bodies, both living and dead.

Thorough and comprehensive, this volume explores different views of the significance of the human body and contrasting those which regard it as a commodity or personal possession with those which stress its moral value as integral to the personal identity of individuals. The Body in Bioethics addresses a number of key questions including:

- Should it be legal to sell human organs for transplantation?
- Are public displays of plastinated bodies or public autopsies morally justifiable?
- Should there be restrictions on the uses of human tissue in teaching and research?
- Is the rapid increase in volume and range of cosmetic surgery a matter for moral concern?

This careful study of moral values provides essential background to many of the current controversies in medical ethics and is essential reading for all students of law, medical law and medical ethics.


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The Jurisprudence of Pregnancy

Concepts of Conflict, Persons and Property

Mary Ford, University of Strathclyde, UK

This book takes a critical conceptual approach to the jurisprudence of pregnancy, examining how the three concepts of conflict, personhood and property are key to the legal analysis and decision-making surrounding pregnancy. The book begins by questioning the "conflict model" which is often assumed to capture the essence of legal debates on maternal/foetal issues, asking why it exerts such discursive power despite the lack of a genuine conflict of interest in the legal sense.

The book goes on to critically examine the concept of personhood, questioning its usefulness. Mary Ford argues that legal personhood lack justificatory force while the philosophical concept of moral personhood is fundamentally unsound, so that the concept of personhood is insufficient in this context. The book finally moves to examine the concept of property, analysing whether embryos could or should be regarded as property. It is argued that the avoidance of property does the jurisprudence of pregnancy few favours, and that an engagement with the neglected concept of property has the potential to refresh our thinking about pregnancy, and about the way we frame our legal debates about maternal/foetal issues.


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Values in Medicine

What are We Really Doing to Patients?

Donald Evans, University of Otago, New Zealand

Written by a leading proponent of the philosophy and ethics of healthcare, this volume is filled with thought-provoking and frequently controversial ideas and arguments. Accessibly written, it provides readers with a timely contribution to the current literature on medical ethics, in which the concept of subjectivity is a key issue characterizing current medical humanities.

Examining the critical assumption that scientifically-demonstrable facts will remove all uncertainty, the author argues that ethical dimensions of clinical practice do not always arise from undisputed facts, but that they are sometimes to be found at the level of the determinations of the facts themselves.

Firmly placing the patient back on centre stage, without underestimating the crucial role which science plays in modern medicine, this volume is an excellent account of ethics and science in healthcare and their proper place in assessing and meeting people’s health needs.


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