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Against Bioethics

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BOOK REVIEW:

AGAINST BIOETHICS

Authored by: *Jonathan Baron**

In *Against Bioethics*, Professor Baron argues that applied bioethics often causes harm that could be avoided through the application of a kind of decision analysis based on utilitarianism. Such analysis in terms of expected consequences is designed to yield the best outcomes. When some other method of decision making is used, such as one based on application of intuitive or deontological principles, we should not be surprised if the consequences are worse than could be achieved if we focused on consequences. Of course, it could turn out that we achieve the best outcomes by trying to do something else, but I argue that we have little reason to think so, if our consequentialist analysis is sufficiently careful.

Reviewed by: *Dr. Margaret Byrne***

Against Bioethics is an exposition of how the field of bioethics could and should improve its methodology and approach in analysis of difficult ethical questions. The title does not reflect the actual goals of the book, as Dr. Baron is not against bioethics, but rather against bioethical analysis and debate as it is generally conducted. Bioethics, as is pointed out in this book, lacks a theoretical foundation that comes from a single coherent guiding principle;¹ bioethics uses tradition and intuitive judgments as the basis of much “ethical analysis.” Unfortunately, these judgments do not always lead to the best outcomes. Dr. Baron proposes and describes how bioethics could use

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¹ JONATHAN BARON, *AGAINST BIOETHICS* 4 (The MIT Press, ed. 2006) (Feb. 2006).

utilitarian decision analysis as the basis for analyses in this well-written, engaging, and important book.

The premise of this book is that applied bioethics includes a multitude of often conflicting basic principles and leads to conclusions that do not maximize social or even individual welfare because the bioethics discipline developed piecemeal as a reaction to “catastrophes” and suffers from a lack of coherent theory. The basic bioethical principles of respect for persons, beneficence and justice are shown to conflict not only with each other in many situations, but also with themselves.² Reconciliation among these principles in practice is difficult, and individuals will differ in which one they believe should dominate.³ Thus, different individuals will reach different conclusions as to the “right” thing to do, and situations will arise where adherence to traditional bioethical principles results in unfortunate situations.

Dr. Baron uses the case of Jesse Gelsinger to exemplify how conflicting principles and piecemeal development of bioethics codes have lead to situations with bad “rules” and bad outcomes. Gelsinger died at age eighteen following participation in a gene replacement study at the University of Pennsylvania. He had a mild metabolic disease, which in a severe form is quickly fatal for infants. The experimental gene therapy was hoped to be eventually used to treat these infants that would otherwise die within a few weeks of birth. Because of requirements for informed consent, the experimental therapy could not be tested in infants; thus, adult volunteers were used. Dr. Baron argues cogently that the restriction on using infants in a study of this type is nonsensical: the infants will die anyway in the absence of a successful treatment, and the research risks are transferred to adult individuals who would not benefit (much) from development of a successful treatment. Dr. Baron uses this case to illustrate how applied bioethics currently leads to situations that do not result in the best possible outcomes.

As a solution to the current state of affairs in bioethics, Dr. Baron proposes the use of utilitarianism and decision analysis as the theoretical foundation of bioethical analysis. Chapters Two lays out a comparison of “traditional” bioethics and utilitarianism, and Chapter Three describes utilitarianism and the decision analytic approach that is being advocated in the book. In utilitarianism, the goal is to maximize expected utility, and, thus, decisions based on utilitarianism in theory always lead to the best possible outcome. In fact, he takes the view that

² *Id.* at 10.

³ *Id.* at 15

“all of the basic principles used in applied bioethics can be understood as having utilitarian roots,”⁴ but it is when the utilitarian justification of these principles is forgotten that they “take on a life of their own, so that they are applied even in cases when they fail to maximize utility.”⁵ Thus, bioethics should go back to the fundamentals of utilitarianism. Of course, following a guiding theory of utilitarianism and decision analysis may lead to different outcomes from traditional bioethical principles, but the outcomes will be the best possible outcomes in terms of utility maximization.

Dr. Baron describes utilitarianism, expected utility theory and decision analysis theory in a straightforward, easy to understand manner. Conflicts and controversies surrounding these theories are discussed. For example, an important question for maximizing utility is whose utility should be maximized? Should we conduct analyses based on either an individual or a societal utility level? As there are many types of utilitarian models with specific forms, which one should we use?⁶ Some utilitarian formulations include utility for values that mirror deontological values, whereas others do not. Although decisions as to specific forms will have to be made, one of the touted strengths of the utilitarian/decision analysis approach is that the tradeoffs and judgments necessary to reach a decision are explicit. Through making these explicit, Dr. Baron argues that better decisions will be made.

It is only at this point in the book where I have a few technical, economic based issues with the discussion. Although it is acknowledged that various forms of utilitarianism exist, the actual extent of the problem of specifying a functional form for the utility equation that will underlie utility maximization is swept under the carpet a bit. Economists, of which I am one, can spend months trying to develop a utility function that should be used in a particular modeling situation. Not only is there a question of what to include in such a function or how to weight each component (which is discussed), but another large question is also how the components relate to each other. Expected utility theory often uses a linear additive functional form; however, there are many other possibilities. Although the decision analyses that are based on expected utility theory are normative and not descriptive (as many economic models are), it is not obvious what form our utility functions should take, and the appropriate form may vary with different situations. Although I unreservedly agree that basing

⁴ *Id.* at 18.

⁵ *Id.* at 20.

⁶ BARON, *supra* note 1, at 27 n.1.

bioethics analysis on utilitarianism and decision analysis is more transparent because it makes processes explicit and will lead to better outcomes, more work is needed to develop more specifics as to how exactly the theory will be used in practice. However, as this is the first book proposing such an approach in bioethics, it is hard to fault the current work; rather, I would just emphasize the need for future work in this area.

Nevertheless, it is clear that decision analytic approaches can help us understand at a more fundamental level what the true conflicting issues are in any given situation. In several places, Dr. Baron acknowledges that decision analysis quantification will be difficult, and thus we might get the wrong numbers. However, in most cases, this will not matter: either the preferred outcome will be clear, or if it is very close, then the decision really could go either way anyway.

The remainder of the book touches on a number of important topics in bioethics, describes how these topics are often debated and how decision analysis theory would lead to different, and better conclusions by providing a cohesive guiding theory for analysis of these issues.

Examples of bioethics cases where people are accused of “trying to play God” are discussed in Chapter Four. This includes controversies over designer babies, embryonic stem cell research, and drugs designed to improve human performance as opposed to curing disease. A great number of the ethical arguments against these things are based on the naturalistic fallacy.⁷ The naturalistic fallacy is an intuitive heuristic of judging what is good by what is natural, i.e., what “is” is seen as indicative of what “should be.” However useful this may be at times, Baron argues that it has been overextended and thus may be harmful in a number of areas. Use of a utility maximizing principle for bioethical analysis would possibly avoid these harms in several domains; for example, in the development of new drugs, limits on reproduction, and possibly insufficient research on life extension. Dr. Baron stresses strongly here, and in other places, that many of the questions that are being debated, for example whether we should try to prolong life, are empirical questions that we just do not have enough data yet to decide. Thus, the debates should be tabled until we have the facts necessary for a meaningful discussion.

Death and the value of life is the subject of Chapter Five, focusing on the question of how to measure the value of life. Quality

⁷ *Id.* at 77.

adjusted life years (QALYs) are often used in health economics and medical decision making research to measure the utility of being alive.⁸ A careful description of QALYs is provided, including the advantages of this approach and the question of whose values to use. This chapter also brings to the forefront how a utility based approach may conflict with more traditional ethics approaches. An example of this conflict is the value of life of a blind person versus a sighted person. Research and our basic intuitions say that the quality of life for a blind person will be lower than for that of a sighted person. Thus, as the utility of the blind is less than the sighted, saving the life of a blind person must be worth less than saving that of a sighted person.⁹ Clearly, many people will protest this assertion, but it does illustrate the potential conflict between basing bioethical decisions on utilitarian principles versus traditional intuitive judgments.

A sketch of a decision analysis of assisted suicide is also presented in this chapter,¹⁰ and it clearly illustrates the steps by which decision analysis theory can be applied to difficult cases. Of course, because this approach has not been used in practice, the analysis is caught at the stage of having too little empirical information for the utility maximization process to reach a final conclusion. Even if more empirical evidence on relevant values were available, Dr. Baron acknowledges that there will still be errors and some uncertainties. Nevertheless, a formal analysis of the decision theory type allows one to explicitly state each of the underlying assumptions and values that are feeding into a recommendation. The recommendation may be accepted or not, but at least the basis of the recommendation will be known.

Chapter Six discusses broadly the issue of informed consent, which generally grows out of the principle of autonomy and respect for persons. However, holding that informed consent is an absolute value can have many damaging consequences and, in this chapter, Dr. Baron shows that utilitarian decision analysis can help make tradeoffs between the value of informed consent and other principles to achieve better outcomes. He notes that there are a number of utilitarian advantages to autonomy: people know their own values better than anyone, the quality of decisions improve as more are undertaken, and people may value autonomy for itself. However, for a specific situation, it will not always be the case that “respecting autonomy” by requiring

⁸ *Id.* at 84

⁹ *Id.* at 88.

¹⁰ *Id.* at 92.

informed consent would take precedent, as is shown in a simple decision analysis of whether informed consent should be required in the case of emergency surgery. The overarching thrust of this chapter is to argue that consent procedures should be analyzed in terms of their costs and benefits, in utility terms, not as a rigid requirement for autonomy and competence.

Although the broad topic of Chapter Seven is conflict of interest, much of the chapter focuses on using decision analysis to tackle the issues of Institutional Review Board (IRB) oversight. I would doubt there is a medical researcher in the country that has not had delays, frustrations, arguments, controversies, and even abandoned projects due to oversight from an IRB. Dr. Baron is no exception and provides examples of IRB interference that would be amusing if they were not true.¹¹ If a decision analysis weighed the benefits and costs of the current practice of IRB, it seems fairly clear that the costs would far outweigh the benefits. An alternative system is proposed in which the IRB does not require prior approval for research, but would increase its disciplinary power. Thus, the IRB would intervene at the point where risky behavior is committed, not before. It would have been instructive and illustrative for this chapter to include a more detailed sketch of what a decision analytic approach to evaluating these two options would include. Although data might not be available for measurement, a more complete description of components would be instructive.

Various aspects of research conduct are analyzed and discussed in Chapter Nine, which is entitled "Drug research," although the discussion applies much more broadly. The premise of this chapter is that the development of new drugs is one of the most efficient ways to improve health and prolong life, yet drug approval is slow and these delays cause harm. Thus, two options for increasing the speed at which trials can be done are discussed: payments to subjects and using subjects in poor countries. For each of these, the usual "ethical" arguments against them are described and effectively refuted by Dr. Baron. Payments to subjects are most likely to benefit everyone, and it is illogical to say that payments take away individuals' choices, as the whole point of autonomy is to allow people to choose. As individuals can always choose not to participate in research, the provision of payments can not be coercive. However, others have argued that large payments will impel individuals to join trials that are risky, and thus we should not provide payments. Dr. Baron argues that the question of

¹¹ BARON, *supra* note 1, at 140.

whether money blinds people to risk is an empirical question, although I have to chime in that I think this whole argument is a non-starter. If we think that providing money will drive people to join a study that we are worried is too risky, then we probably should not be doing that study! Providing a financial incentive or not does not change the risk inherent in the trial. If it is too risky with a payment, it is also too risky without one.

A decision theoretic perspective is also taken to examine the question of research that uses subjects in poor countries. From that perspective, arguments against such research do not make sense. The example of a placebo controlled trial of AZT in Africa in 1997 is discussed.¹² In Africa, the “best available alternative treatment” for HIV transmission was nothing; yet, there was great controversy over conducting the placebo controlled trial. However, from a decision theoretic/utility maximizing point of view, individuals were better off from having the trial conducted, and, thus, “this [was] a clear case of a moral intuition about fairness getting in the way of people’s good.”¹³

The very important issue of allocation of resources is discussed in Chapter Nine. From a utilitarian approach of course, allocation holds that resources should be allocated to do the most good. Unlike traditional ethical approaches that often seem to compare options to some ideal and when the options are found deficient, rejected, decision analysis can be used to evaluate realistic options concerning allocations. That is, realistic options that policy makers face now can be compared to determine which is the better option. Unfortunately, allocations are more often based on intuition or heuristics that suffer from a long list of biases, including: omission bias, protected values, ex ante bias, proportionality and zero risk, confusions of marginal and average, and matching versus maximizing. These biases have led to inconsistencies and less than optimal outcomes in many allocation areas, including organ distribution, insurance, and Oregon’s experiment with rationing health care, which are described here. Education, particularly teaching people about decision theory, is touted as a means of reducing these biases to improve outcomes.

Finally, the concluding chapter looks at the “Bigger Picture” and the problems of allocation at a universal level. A summary of what utilitarian decision analysis teaches us to do includes: thinking

¹² *Id.* at 164.

¹³ *Id.* at 165.

quantitatively, comparing options, considering the future and psychological effects, and combining utilities.

Dr. Baron's book is an example of a provocative and necessary critique of the traditional foundations of bioethics, but, most importantly, provides a clear and convincing picture of an alternative approach. Utility maximization and decision analysis theory can fruitfully be used to analyze many difficult situations and ethical dilemmas. They are based on a sound conceptual basis that has strength in explicitly laying out of all of the underlying assumptions to an analysis. This is a tremendous improvement over much of the traditional ethical debate where, because it is not formalized, underlying assumptions are often not made clear, which leaves any conclusions on shaky ground. This book should be widely read by all those who advise on or practice bioethics or bioethical-related issues.