2010

Can there be a Progressive Bioethics?

Richard O. Lempert
University of Michigan Law School, rlempert@umich.edu

Publication Information & Recommended Citation

Lempert, Richard O. "Can there be a Progressive Bioethics?" In *Progress in Bioethics*, edited by Jonathan Moreno and Sam Berger, 23-43. Cambridge, MA: The MIT Press 2010.

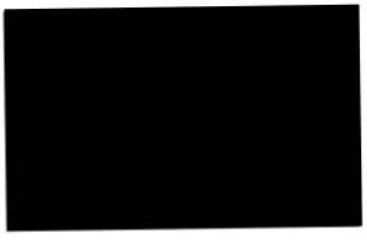
Basic Bioethics
Glenn McGee and Arthur Caplan, editors

For a list of the series, see page 285.

Progress in Bioethics

Science, Policy, and Politics

edited by Jonathan D. Moreno and Sam Berger



The MIT Press
Cambridge, Massachusetts
London, England

First MIT Press paperback edition, 2012

Set in Sabon by SNP Best-set Typesetter Ltd., Hong Kong. Printed and bound in the United States of America.

Library of Congress Cataloging-in-Publication Data

Progress in bioethics : science, policy, and politics / edited by Jonathan D. Moreno and Sam Berger; foreword by Harold Shapiro.
p. cm.—(Basic bioethics)
Includes bibliographical references and index.
ISBN 978-0-262-13488-0 (hc. : alk. paper)—978-0-262-51742-3 (pb. : alk. paper)
1. Medical ethics. I. Moreno, Jonathan D. II. Berger, Sam, 1982–
R724.P736 2010
174.2—dc22

2009015646

10 9 8 7 6 5 4 3 2

Contents

Series Foreword

I am pleased to present the twenty-sixth book in the series Basic Bioethics. The series presents innovative works in bioethics to a broad audience and introduces seminal scholarly manuscripts, state-of-the-art reference works, and textbooks. Such broad areas as the philosophy of medicine, advancing genetics and biotechnology, end-of-life care, health and social policy, and the empirical study of biomedical life are engaged.

Arthur Caplan

McGerr, Michael. 2003. *A Fierce Discontent.* Free Press.

Moreno, Jonathan. 1994. *Deciding Together: Bioethics and Moral Consensus.* Oxford University Press.

Moreno, Jonathan. 2007. The clone wars. *Democracy* 5: 110–116.

Moreno, Jonathan, and Sam Berger. 2007. "Rush" to judgment. http://www.americanprogress.org.

Moyers, Bill. 2003. This is your story—the progressive story of America. Pass it on. Speech at Take Back America Conference, June 4, Washington.

Mundy, Liza. 2007. *Everything Conceivable.* Knopf.

Schambra, William. 2006. The conservative message machine? Speech at Washington conference titled Building a Better Message Machine: Do Ideas Matter?

2

Can There Be a Progressive Bioethics?

Richard Lempert

Progressive bioethics—the words are not an oxymoron. Far from it; they are more redundant than oppositional. Yet they leave me almost as uneasy, as if they were contradictory. My unease exists because bioethics should be neither progressive nor regressive, neither right wing nor left wing, neither liberal nor conservative. It should be just good, sound ethics applied to the often difficult moral problems posed by present-day medicine and the genomic revolution.

I do not mean to suggest by this that all bioethicists need agree. Respectable ethicists using established modes of ethical analysis have long disagreed on and argued for different conceptions of the ethical across a range of issues far broader than the biologic. Ethical arguments are, however, not all created equal. While some philosophers have gone so far as to argue that ethical discussions are meaningless assertions of preference (Ayer 1936), these discussions in fact influence personal decisions and public policy. Moreover, ethical arguments, as Stephen Toulmin (1950) pointed out, may be well or poorly reasoned, and may be accepted or rejected on this basis.

There is no *a priori* reason to think that sound ethical arguments will necessarily support positions more congenial to liberal political philosophies or to conservative ones. Even progressive bioethics, as I conceive of the term, can lead to conclusions that the right, including the religious right, will find more congenial than the left, for in my view progressive bioethics entails more of a methodological commitment than a commitment to ends. Indeed it is precisely because agenda-driven conclusions are passed off as the necessary implications of ethically driven analysis

that a commitment to progressive bioethics is important at this moment in political time.

Let me sketch the ingredients of a progressive bioethics, as I see them. First and foremost is a commitment to sound science and a willingness to build on the best current scientific knowledge to the extent that knowledge is relevant to ethical analysis. Reality should not be distorted so as to favor a desired end, no matter how worthy that end may appear. This is true when facts are known, but it also applies when all science can provide us with is estimates of probabilities. Probabilities should not be distorted or unduly disparaged in the interest of making a more convincing argument.

Consider, as an example, human embryo stem cell research (hESCR) and the clash between progressives who favor federal funding of such research and non-progressives who are opposed. The case for federal funding of hESCR would be ethically stronger and more politically persuasive if it could be claimed that expanding the nation's hESCR investment would soon yield cures for diabetes, multiple sclerosis, and Alzheimer's. It would be similarly strengthened if we were certain that no other source of stem cells could ever adequately substitute for human embryos. Progressive bioethicists cannot, however, make these claims. The claim that hESCR will soon lead to cures for dread diseases is today an expression more of hope than of fact, and the jury still appears out on whether the versatility and adaptive potential of embryonic stem cells can be matched by stem cells derived from other sources (Weiss 2007).

But those opposed to hESCR face similar strictures. Their arguments would be philosophically and politically more persuasive if they could honestly argue that the beneficent potential of stem cell research was a mere chimera, or that we could be confident that fetal cord, adult skin, or other stem cells had as much potential for realizing disease cures as human embryonic stem cells. They could also make a stronger case if they could honestly claim that progress in deriving cures through stem cell research was not likely to be delayed by focusing federal funding on stem cells from sources other than human embryos, and if they could honestly argue that the choice of what kinds of stem cell research to fund was based entirely on scientific rather than political reasons. But these claims, like proponents' suggestions that cures for dread diseases are

imminent, cannot be honestly made and so should not be made at all. The cases for and against federal funding of hESCR should proceed on the best current scientific estimates of the potential value of such research and its alternatives, rather than on disputants' wishes about what the truth will turn out to be.

Placing science first means there is no guarantee that bioethical analysis will inevitably favor the conclusions associated with established political progressive positions. Consider, for example, progressive support for allowing women to make choices about childbearing free from state coercion. The political case for largely unfettered freedom, and perhaps even the moral case, has been weakened by medical progress in lowering the gestational age at which fetuses can survive as infants and in diminishing, for given birth weights, the likely lifelong harms associated with premature delivery. Should further research reveal that past a certain gestational stage the fetus feels pain from abortion procedures, both the political and the ethical case for state regulation will be strengthened.

Neither the reduction in the time to onset of fetal viability nor (should it be shown) the ability of the fetus at a certain gestational stage to feel pain is a philosophical trump that defeats that ethical case for a woman's right to choose whether she wishes to carry a baby to term. An ethicist could still argue that a woman's right to control her own body and her role in reproduction free of state interference is a higher value than any interest of the fetus, even an interest in avoiding pain, and it could similarly be argued that access to abortion is ethically justified or even mandated when pregnancy results from rape or incest or would endanger a woman's health. But our capacity to preserve life at younger gestational ages enhances ethical arguments made by opponents of late-term abortion and is likely to aid political and judicial attacks on abortion access even with respect to earlier-term procedures. Such effects are likely to be multiplied if science finds strong evidence that abortion causes the fetus to feel pain. A progressive bioethics can seek to answer the arguments that such newly found facts would support, but if the facts are rooted in sound science, progressives should neither ignore nor deny them. Indeed, one can imagine facts that would lead at least some progressives to rethink their ethical positions.

A second commitment that should characterize progressive bioethics is a commitment to reasoning from principles. Some of these principles relate substantively to progressive positions; others concern analytic methodology and are largely content free. These latter include, most notably, the many flavors of utilitarian, deontological, and virtue-ethics arguments on which philosophers regularly draw in ethical analyses to justify the conclusions they reach. The progressive approach does not necessarily mandate a choice among these modes of justification, but it does preclude some approaches found in bioethical commentary.

One excluded approach turns to religious positions based on faith for answers to ethical questions, leaving no additional role for reason. This exclusion extends to arguments that seem to reason from ethical principles toward conclusions but in fact collapse if the faith-based premises on which they rest are denied. Arguments of this sort are not bioethical arguments and have only second-order relevance (explained below) to bioethics debates. Rather, they draw their propositions from religious dogma in order to question the morality of medical or other bioscience practice or otherwise to answer bioethical questions. Opposition to hESCR grounded directly or derivatively in the proposition that destroying human embryos is a sin rests, for example, on a religious argument, not a bioethical one. Resting bioethical conclusions on nothing more than religious dogma or related perceptions of "God's word" is inconsistent with the progressive view of how bioethical argument should proceed.

It is not, however, illegitimate or wrong to draw implications from religious ethics for biological practices so long as what is done is not disguised as something else, and progressives should recognize this. The view that the soul arrives to create a fully human life the minute an egg and a sperm come together, and that therefore the destruction of an embryo is the destruction of human life, akin to killing a baby, may not be widely shared, but it cannot be proved true or false. It just is. Moreover, it is not an evil view (like the view that people of some race are inherently less worthy than others), and it deserves to be respected. Respect does not mean accepting the prescriptions that follow from the view, nor does it require treating the belief as an acceptable bioethical argument, but it is also not an empty commitment.

One reason for respect is that although religious mandates should not be confused with bioethical arguments, they may give rise to arguments that progressive bioethicists should answer, such as the argument that a person's integrity is offended when, as a taxpayer, he is forced to help fund research he considers deeply immoral. Even if respect for the views of others does not entail supporting morality-based tax avoidance,[1] it may, as an ethical matter, support lesser accommodations. The implications of people's views of right and wrong, whatever their roots, are a proper concern of bioethicists. Indeed, the degree to which moral preferences are shared is a fact, one that is even subject to loose determination through polling. If large numbers of people are troubled by an action, utilitarian philosophies, at least, would argue that their reactions have implications for moral assessment. The role of personal moral preferences is, however, of a second order; the fact that some people are troubled by a procedure or action is not a (first-order) bioethical argument for the immorality of that procedure. Their concern does mean that even if the principal action is ethical, there are utilitarian reasons for not engaging in it, because to do so would cause people pain.

Consider again the stem cell example. There are strong bioethical reasons for advocating the pursuit of hESCR. These have to do with the virtues of curing disease and the benefits (happiness) this will bring people. Deontological arguments can also be made to the same end. Indeed, it is hard to identify ethical arguments against engaging in hESCR, apart from the faith-based argument that, despite their early life stage, the embryos used in hESCR are, from a moral standpoint, human, and thereby entitled to the same respect accorded all humans even if, as is the case, they are doomed. The second-order argument that a relatively large number of people will be offended, saddened, or otherwise distressed should hESCR proceed cannot counter the bioethical case for advancing cures, because it does not even address it.[2] Suppose, however, that it became possible to derive stem cells from adult tissues that were identical to embryo stem cells in all therapeutically relevant respects. Then the existence of people distressed by the prospect of killing embryos should influence the ethical debate, and respect for those distressed would make the moral case for research using embryo-derived stem cells crumble since the health imperative would no longer require using embryonic stem cells.

A second approach that progressive bioethics excludes is the "yuck factor" test—what Kass (1997) terms the wisdom of repugnance. In such a test, an individual or a group is doing nothing more than asserting personal preferences as natural. To assert that something is disgusting is not to make an ethical argument, for it advances no reason for judgment apart from personal preference. Claims based on a person's disgust fail as ethical arguments because they cannot be countered by reason. This does not mean that a person's sense of the disgusting cannot motivate bioethical argument, for emotional reactions often stimulate reasoned claims.

One must also distinguish a shared sense of "yuck" from the assertion of a personal preference. Progressive bioethics need not deny, and indeed itself asserts, the validity of moral intuitions. The sense that some behavior is disgusting may be rooted in an act's immorality (e.g. disgust at torture), and a consensus that an act is immoral may be shaped by a shared gut-level sense that it is disgusting. Nevertheless, resting bioethical analysis and policy recommendations on what is collectively disgusting is problematic. The first difficulty is getting the collective reaction right. Those who find an action disgusting may feel that any morally sensitive person would feel the same way, but this does not make it so. Nothing is quite as hollow as an appeal to how "everyone feels" when everyone does not feel the same way. Also, the existence of a strong shared reaction to an act does not necessarily suggest a moral truth (Harris 1998; Nussbaum 2004). The pattern of death sentencing in the United States suggests, for example, that people are more repulsed by interracial murders when whites are the victims than when blacks are killed, but the fact that this sentiment seems widely shared does not mean that murder of a white by a black is morally more deplorable than the similar killing of a black by a white. Similarly, the moral case for hESCR must rest on more than the fact that a few people are instinctively repelled by descriptions of how stem cells are extracted from embryos or the procedures that egg donation requires.

It is particularly hard to build a moral case on "yuck" reactions in the medical sphere, for many well-accepted medical procedures—colostomies, for example—trigger emotions of disgust in ordinary people, and few people, if any, question the ethics of employing them. More generally, the assertion that visceral reactions are evidence of fundamental

ethical principles must be made with considerable humility, for history tells us that both visceral reactions and intuitions about what is ethical change. *In vitro* fertilization, for example, was once, and still is by some (see e.g. May 2003), opposed on the ground that it is unnatural procreation and that intuitively it seems wrong. But couples use *in vitro* technologies to start the baby-growing process every day. The virtues of *in vitro* technologies are manifested in the children produced, and opposition on the basis of moral intuition has largely disappeared, apart from some religious forums, in countries where these procedures are common.

Thus, even if collective disgust, like shared religious views, may be a second-order consideration in bioethical analysis, progressive bioethicists should seldom if ever rely on revulsion in grounding their arguments. Bioethics will be advanced only by examining and identifying the moral status of those aspects of a situation that lead to widespread disgust. If these aspects cannot be identified, we have no first-order reason for preferring one group's disgust to another group's lack of qualms.

Progressive bioethics is not only about taking science seriously and having commitment to reasoned analysis as a methodology. As importantly, it involves reasoning from a set of foundational principles. Although these principles may themselves be philosophically justified, progressive bioethics often treats them as taken-for-granted starting points. One such principle is that there is a positive value to the protection and promotion of human life, people's health, and the quality of people's lives, including freedom from pain. This means that actions that protect human life, work to counter disease and debilitation, and help people avoid pain are presumptively good from a progressive bioethics perspective.

Progressives can and do differ about whether human life has the same ethical relevance at all its stages and, indeed, when it can be said that life that counts as human begins and ends. Most progressive bioethicists would argue that, whatever the human-life interests of embryos and fetuses, they should count less heavily than the human-life interests of those who have been born. Some would further argue that at certain stages (the early embryonic stage, for example) there is no human-life interest that merits protection. Similarly, at the other end of the life span, most progressive bioethicists would agree that life has ended when a

person's brain has stopped functioning and there is no prospect of recovery, even if the heart is still pumping and the body is still warm. Thus, keeping a body vital after brain death to facilitate transplants that will save lives is not only unproblematic to progressive bioethicists, but it is also likely to be the morally right course of action.

In addition, few progressives would argue that the principles of promoting life, health, and quality of life are lexically ordered, such that life is always more precious than health or the quality of the life lived. Apart from the value of autonomy (discussed below), progressive bioethicists are likely to support rights to treatments that risk death to stop intolerable pain or the right to chose riskier interventions over less risky ones if the riskier intervention promises to leave the patient functioning at a noticeably higher level than could be expected after a less risky (i.e. less likely to be fatal) procedure.

Progressive bioethics also eschews romanticism in assessing the relationship between values. A progressive bioethicist might believe that human life begins with conception and accept the fact that a newly formed embryo is human life. But the progressive ethicist would also recognize that most laboratory-created human embryos will never be implanted in a womb, perhaps to grow to infancy. Rather, "excess" embryos are likely to be stored for a period and then discarded. Recognizing this yields a bioethical analysis that applies to our world rather than to an imagined world in which all embryos would, in the end, be children.

Similarly, when it comes to laws surrounding abortion, progressives are concerned not just with a woman's right to choose but also with whether outlawing abortion would prevent fetal deaths or simply drive abortions underground, saving few fetuses but greatly increasing the danger to the women who carry them. To the extent that the latter is likely, the progressive bioethicist, even if sympathetic to right-to-life concerns, sees outlawing abortions as hard to justify. Bioethics is, after all, concerned with what is justified in this world, and not about religious preparation for the next one.

Although the fetus's life and potential for personhood matter to most progressives, the value of the mother's life and health, her right to make autonomous decisions, and the life the fetus would enjoy if brought to

term also matter. If, for example, a fetus is known to have a genetic defect that will result in severe retardation and an early painful death, it would be the rare progressive ethicist who would find an abortion immoral even if the mother faced no danger from carrying the fetus to term and the diagnosis came rather late in the fetal developmental cycle. Indeed, some bioethicists would see early termination of the pregnancy as the ethically superior action.

Progressive bioethics also has little use for symbolic statements that serve primarily to assert the moral supremacy of one group's values over those of another group. It questions efforts to write sectarian ethics codes into law, and it is particularly suspicious of such efforts when a behavior to be prohibited has long existed and long been ignored. When the legalization of contested virtues carries costs, such as moving abortions from the clinic to the back alley or scaring doctors away from the best available pain control, progressives are likely to regard laws as morally flawed, even if they would regard the enactment as morally justified if its enactment and enforcement imposed no or different costs.

Progressives are not libertarians. Few, if any, would dispute the moral propriety of discouraging drug addiction and preventing the diversion of pain killers to black markets. But in assessing the moral status of enforcement guidelines designed to prevent the abuse of addictive painkillers, progressives would weigh in the moral balance interference with the doctor-patient relationship and possible chilling effects on effective pain-management therapies.

A second bedrock progressive value is autonomy. Progressive bioethics incorporates a presumption that those most directly affected by medical and related decisions have a right to make them. A corollary is that a person has the right to access the information needed to make an informed choice and should be free from coercion in making this choice. Autonomy also incorporates a right to privacy and the ability to control access to information about one's health. These values inform progressive bioethics on a wide variety of issues, including the doctor-patient relationship; the obligation of hospitals and caretakers to honor advance directives; rules governing drug trials; the circulation of patient information to relatives, insurance companies, and other third parties; and the availability of embryos for stem cell research.

Difficulties arise in several situations. One is when the person most directly affected by a medical decision is not capable of informed autonomous action, as is often true of young children, senile adults, and some people suffering mental disabilities. Difficulties also arise where honoring one person's autonomy or right to privacy will adversely affect others. A woman found to have a breast cancer gene might, for example, be unwilling to tell her sister what she has learned, though if the sister knew she would be better able to assess her own cancer danger and protect herself from it. A different difficulty arises when patients, asserting their autonomy, seek insured or subsidized payment for a treatment that is not cost justified, thereby raising the cost of necessary health care for everyone. Not surprisingly, the label 'progressive' says little about how a bioethicist will resolve these or other hard problems.

The elephant in this room, of course, is abortion. A woman cannot have an abortion without killing a fetus, so the autonomous choice for an abortion is arguably at the expense of another human life. One way to deal with this suggested conflict, which we see in some ethical analyses, is to deny the personhood of the fetus or to give it less than fully human status. Either allows the construction of an ethical case for a woman's right to choose when her life or health would be harmed by carrying the fetus to term. Denying personhood entirely frees the woman from even these constraints, but acknowledging that the fetus can to some degree claim the moral status of a person raises difficulties for those who would justify abortion whenever a woman prefers not to give birth.

One way some address this situation while retaining a woman's right to choose is to echo Justice Harry Blackmun's approach in *Roe v. Wade* and treat a fetus as differentially human depending on gestational age. For those taking this stance, the fetus during the first trimester is regarded as essentially lacking personhood, and a woman's choice to abort presents no ethical problems. During the third trimester, when the fetus has increasingly taken on the physical characteristics of infancy with increasing potential to survive outside the womb, the ethical balance shifts and a very good reason, such as a serious threat to the woman's health, is needed to justify an abortion. During the second trimester, matters are more ambiguous, and shift as fetal development proceeds. Here the likelihood that a woman would secure an abortion regardless of what the law

or abstract ethical analysis proscribes might play a role in practical ethical assessment.

A different approach to this conflict avoids contending with the possible personhood of the fetus. It argues that, no matter what the fetus's status as a person, ethics does not allow a regime that enlists a woman against her will and at some cost (even if only the normal stresses of pregnancy) to devote her body to the nurturance of another person (Thomson 1971). This view is consistent with the law's reluctance to require people to come to the aid of others even if the other's life is in danger and the rescuer would be barely inconvenienced (Regan 1979). For some this is no answer, because they regard the law's refusal to insist on altruistic behavior as a moral shortcoming. Moreover, opponents of this view point out that legal obligations to aid others do exist in special relationships, such as the parent-child relationship or after one has begin to extend aid. The fetus-host relationship is not a parent-child relationship, but in allowing a fetus to develop beyond the first few months of pregnancy a woman has arguably begun to extend the kind of aid that can impose an obligation to perfect a rescue. Thus, even if the legal analogy were accepted as a moral benchmark, some would still argue that gestational stage is relevant to the ethics of abortion.

A third bedrock principle of progressive bioethics is valuing equality. Progressives believe that morality requires that people be treated more or less equally, particularly with respect to fundamental goods such as health care. Progressives are wary of distinctions in treatment, research, and the availability of health services that disadvantage the less powerful, particularly minorities and women. For the progressive bioethicist, some of the most egregious examples of unethical behavior have been of this sort. The Tuskegee syphilis study, which, in the interest of understanding how syphilis progresses, allowed its black participants to go untreated for more than two decades after an effective treatment was available, is an iconic example (Jones 1993). Indeed, as commonly understood, the decision to allow study participants to remain untreated after penicillin became the standard syphilis treatment was unethical to the point where it should have been criminal. This is not just because people who could have been helped through drugs were allowed to suffer and die, but also because it appears inconceivable that the study would have continued to

the point it did had the men in the study been white rather than black. Although it has not achieved the same iconic status, the delayed attention to AIDS because it was perceived as a "gay disease" is similarly deplorable from a progressive ethical perspective.

Living in this world, progressives recognize that income differences will inevitably affect the quality of medical attention people receive, but they believe ameliorating income-based discrepancies to the extent possible and erasing racial and gender differences in care quality are ethical mandates. They similarly object on ethical grounds to research funding that, in relation to the harm caused, disproportionately invests in conditions that are especially likely to afflict better-off groups, including the wealthy, whites, and males.

The last core principle I shall mention is justice. Although related to equality, it is not the same thing. Justice involves fair treatment, which is not the same as similar treatment. For example, a kidney donor whose remaining kidney later fails might have a justice claim to move to the head of the queue for kidney transplants, but would not have an equality claim. Perhaps nowhere are justice claims more prominent than in discussions of the obligations owed by nations and companies to individuals in the developing world who participate in drug trials that would be more difficult if not impossible to arrange in developed nations. It has been argued that justice is offended when people instrumental in the development of a drug are, for financial reasons, unable to benefit from the advances they have made possible, and that, at a minimum, drug companies have an obligation to continue treating drug trial participants in the developing world for as long as their health requires after the trial has ended (Glantz et al. 1998).

Justice, as well as equality, is important when analyzing other issues, such as obligations to invest in drug development for so-called orphan diseases, similar obligations to invest in treatments for diseases largely confined to the developing world, and the obligation to furnish or (for drugs under patent) allow the furnishing of low-cost medications to people who cannot afford to pay normally charged prices.

Two things should be obvious from this list. One is that progressive principles do not yield determinate results, even if some arguments are ruled out and some principles enjoy a privileged status. Conflicts can

exist between core progressive principles, and largely like-minded people can differ in evaluating the priority of principles and determining what these imply. For example, justice and equality considerations, together with the progressive commitment to advancing health, counsel the provision of effective drugs at low cost to those who require them, even if this means overriding patent protections to produce and allow the distribution of generic equivalents. The concern for improving health similarly supports efforts to stimulate the production of effective new drugs. And an intellectual-property regime that allows drug patents to be ignored in countries where drugs are beyond the means of most disease sufferers reduces private incentives to invest in drug development, particularly for drugs that treat diseases endemic to poorer countries. So what does progressive bioethics say about allowing developing nations to produce or secure generic versions of life-saving drugs that are still under patent? Not surprisingly, bioethicists, even those who call themselves progressives, do not speak with a single voice.[3]

What those who call themselves progressives should hold in common is a commitment to base assessments not on speculation as to how the world operates but on the best available relevant information. Thus, the progressive bioethicist should be skeptical of the easy assumptions that, on the one hand, undercutting patent protections to benefit the ill in the developing world will dramatically reduce investments in new drug research and, on the other hand, that, because most people in the developing world cannot afford expensive drugs, allowing generics to be freely marketed in developing countries will have no effect on a patent holder's bottom line. Good empirical answers do not, however, exist for all the questions that bioethicists might ask about human and organizational behavior, and the real-world policies advocated in bioethical analyses, including those of progressives, must rest on empirical assumptions that are less than fully supported. Where this is the case, it is likely that policy and other preferences will influence the facts assumed, even by people making a good-faith effort to remain "objective."

The second point that should be obvious is that the concerns and methods of progressive bioethics do not differ that much from the concerns and methods of most bioethicists. Even if one associates progressives with liberals and sees the opposite of progressive as conservative,

there is no good reason why on most issues there should be large, consistent differences. Many of the matters that concern bioethics, like the conditions under which informed consent should be required and what adequate consent entails or the obligation of lab scientists to share materials developed with the aid of federal funding, yield answers built on principles widely shared in liberal and conservative communities. Other questions, like that of a genetic counselor's obligations when a gene test incidentally reveals that a woman's father could not be the person she calls "Dad," are so removed from politics that their answers cannot be placed on a liberal-conservative spectrum. Still other questions are difficult no matter one's political ideology. As a result, there are issues on which one finds disagreement among ethicists who have generally similar political values and issues on which one finds agreement among people of different political persuasions.

The situation is different with regard to religiously driven ethicists, who seek to import their religious beliefs into bioethics principles, arguing, for example, against behaviors they regard as sinful. The methodologies used by the progressive bioethicist and the religious ethicist are different, even if the latter will also muster rational, secular arguments to support their positions. Conclusions reached are often different as well. Progressives can, for example, find no principle in bioethics that justifies denying interested couples contraception or precluding abortions when a mother's life is in danger. Some religiously driven ethicists find reasons to support both prohibitions.

However, even across this divide it is easy to overstate differences, at least with respect to outcome preferences. The world has many religions, and the tenets of some accord with progressive principles. Moreover, even within religions whose dogmas apparently conflict with progressive preferences, there will be faithful members who share progressive views, often justifying them by aspects of their religious dogma that church leadership has ignored. Moreover, as with liberal and conservative differences, many bioethics issues do not line up on a spectrum likely to differentiate those who assess behavior by reference to religious values from those who reject the idea that religion can provide first principles.

Should we then reject the idea of a progressive bioethics altogether and go back to a world populated by bioethicists without any adjectives?

Part of me likes this idea, eschewing labels for a group whose members think differently about many issues. Yet there are senses in which progressive bioethicists can be distinguished within the bioethics communities, and ultimately they justify a separate label.[4] Progressive bioethicists tend to justify and advocate positions that appeal to members of the liberal and other progressive political communities. The route to these preferences should be from ethical foundation to political preferences, rather than the reverse, but it can sometimes be difficult to separate the two. If justification through "yuck" reactions or other gut instincts is not an acceptable way of arguing for an ethical position, a moral intuition that lies behind such reactions is not delegitimized on that account. Rather, the reaction is cause to examine first principles and to search for reasoned justifications for the intuition—justifications that go beyond the claim "I and others like me feel this way."

Progressives tend to share a number of moral intuitions. They become offended when people are treated worse than others with respect to health care, including less research attention to certain diseases, because of their race, gender, sexual orientation, ignorance, or poverty. They do not like it when people try to impose principles drawn from religious doctrines on those with different beliefs, or when groups seek to regulate private behavior (especially voluntary sexual behavior) that puts no one external to consenting participants at significant risk. Progressives are also offended by dishonest arguments made in support of preferred beliefs, such as arguments regarding the effects of abortions on women experiencing them that misstate social science findings to make the exceptional reaction sound usual. They also disapprove of, though some cannot help but admire, the way conservative advocates manipulate language to support their positions, such as the transformation of the fetus into an *unborn child* and the creation of the term *partial-birth abortion.* The problem progressives have with such nomenclatures is that they are designed and employed to promote political decisions based on emotion, rather than to encourage clear thinking about difficult ethical questions like those that abortion raises. Progressives also find the use of such language troubling because it seems to work, and if they could find their own emotional keys to political persuasion many progressives would, I expect, employ them despite their abstract belief in reason.

There are two issues that are almost iconic in their capacity to distinguish progressive bioethicists from those whom they see as principal antagonists: abortion and hESCR. Recognizing that there are difficult issues surrounding abortion and that the fetus, while not a baby, is also not an inanimate object with no relation to human life, a progressive weighing of conflicting values supports a woman's right to choose whether she wishes to carry a baby to term, at least when the decision is made within the first three to six months of pregnancy or at any time if a woman's life is endangered. Also, while progressives can understand and respect opposition to hESCR rooted in religious doctrine, from a bioethical standpoint allowing such research seems almost a "no-brainer." It is true that human tissue is involved, but in all other respects no one except a minority of the religiously motivated would call the embryos from which stem cells are extracted human beings.

Apart from their DNA, embryos have none of the features that make a person, or even a fetus, distinctly human. No one could tell from looking whether a particular embryo was human in origin, and there can be no pain associated with hESCR because embryos have neither nervous systems nor brains. Moreover, the embryos whose stem cells would be used in research are not produced for research purposes but are a by-product of people who seek to bear children with the aid of *in vitro* conception. There is no chance that the embryos used for research will become even "unborn children," for these embryos would otherwise be destroyed by being discarded. "Embryo adoption" is almost unheard of, and everyone interested in embryo adoption could do so without affecting research.

On the benefit side, hESCR promises to enable treatments of diseases and other conditions that could save lives or improve their quality in ways that no other currently contemplated therapy might. While unforeseen obstacles may mean that this promise is never realized, the only way to discover this is through research. It is also possible that umbilical cord stem cells, bone marrow stem cells, or even adult skin stem cells could do the work that human embryonic stem cells are expected to do, but we don't know this for a fact, and there is reason to doubt whether cells from these sources would be as versatile as those from embryos. Moreover, even if these other possibilities would pan out, waiting for them to

come to pass would delay, perhaps by decades, advances that might come from working today with embryonic stem cells.

The George W. Bush administration's compromise on stem cell research, which allowed federal funding only for the few cell lines that pre-existed President Bush's August 9, 2001 decision on the issue, is from a progressive bioethics standpoint particularly perverse. To begin with, it was built on bad science, because it assumed the preexisting stem cell lines were sufficient to allow a rich array of research to proceed when it was clear they were not (Association of American Universities 2005). It was also inconsistent, in that if it were truly immoral to use human embryonic stem cells for research purposes, the private sector should not be allowed to freely do so, and if it is not immoral, the federal government should be supporting hESCR because of the moral imperative to work to cure disease. It was also counterproductive. It discouraged some leading biological researchers from working in American laboratories. It imposed unnecessary costs on universities, their faculties, and their students because those universities that sought to support this research were forced to duplicate existing facilities and to ensure that no expenditures that might in the smallest degree be traced to federal funds, including the universities' general indirect cost pool, went to support research with embryonic stem cells (Moreno et al. 2007). Finally, to the extent that aspects of this research should be regulated, by not funding such research the federal government abandoned its regulatory authority. It is no wonder progressives' hackles were raised. Their question is, why weren't everyone's?

Much of my description of how progressive bioethicists view, analyze, and resolve contemporary issues in bioethics is familiar in the academy, for most academic bioethicists acknowledge as legitimate, and in large measure share, both the methodological commitments and the values I attribute to progressive bioethicists. Thus, "academic bioethicists" might be substituted for "progressive bioethicists" at many places in this essay, and, with the caveat that there is greater diversity in the academy in general than among self-identified progressives in particular, most of what I write characterizes the approaches and views that dominate in the academy. But there is one way in which progressive bioethics attempts to go beyond the mere academic: it seeks to actively engage the policy,

and hence political, world. Progressive bioethics speaks not just to other ethicists and to bioethics students, but also is a distinct voice in the political marketplace of ideas. Its arguments are, or should be, constructed to appeal not just to intellectual elites, but to political leaders and ordinary people—to blacks and whites, churchgoers and non-churchgoers, white-collar workers and blue-collar workers, the working woman and the full-time homemaker, the employed and the unemployed, college graduates and high school dropouts. These are the people who determine how bioethical arguments come to be embodied in state practice. They ultimately determine what restrictions will be placed on abortions or the degree to which hESCR will be federally promoted. If these people are not reached, the best bioethical analysis can be an empty exercise, satisfying for like-minded people to contemplate but ultimately ineffectual.

There are significant challenges, which progressive bioethicists have not yet mastered, to being effective voices in the public sphere. One challenge is to balance the demands of honesty and principle with the demands of effective persuasion. In the battle over abortion rights, for example, and in particular the battle over Medicaid-funded abortions, the most effective popular argument might, with some empirical support, be encapsulated in the slogan "unwanted children kill wanted children" (Donahue and Levitt 2001). But progressive bioethicists have not made this argument and should not. For one, we don't know if it is true, as research suggesting it might be has been strongly criticized (Joyce 2004). But more important, it would be very easy for a campaign based on such a theme to feed, and feed on, racism, with many people thinking in terms of unwanted black children and wanted white ones. Hence, to engage the public with this argument would be to subordinate important progressive principles to the attainment of a desired end.

There are, however, ways that progressives can frame bioethical issues to make their points more persuasive and their conclusions more generally acceptable. Perhaps the greatest triumph of the anti-abortion movement has been to transform the fetus into the *unborn child.* Arguments that are easy to ignore when one is talking of fetuses resonate when the conversation is about unborn children. Yet even media and reporters sympathetic to abortion rights now often use this term. This

transformation has worked for two reasons. One is that abortion opponents use it consistently in almost all they say and write. Anyone who wishes to quote what they say must use it too. But the other reason is that it contains a good deal of truth. Long ago, some opponents of abortion rights referred to fetuses as *babies*. This never caught on, because fetuses and babies are separate concepts, and no matter how much a fetus may come to resemble a baby, there remains a hard-to-defeat intuitive difference. But a fetus is a potential child, with the potentiality indicated by the word 'unborn'. One cannot dispute the fact that a fetus carried to term and born alive would be a child.

Progressives need to employ similar tactics when it comes to influencing how issues are framed. They have certainly tried, and to some extent have succeeded, in the abortion context by emphasizing that an abortion involves a woman's right to *choose*. But they are at a disadvantage because those who would restrict abortion and who accuse abortion-rights supporters of killing unborn children not only can use more emotionally laden terms than the defenders of abortion, but can use visuals, both appealing and shocking, to make their case that abortions kill soon-to-be-children.

When it comes to hESCR, however, the advantage is reversed. Here progressives can proceed on two fronts. One, already used effectively, is to show the human face of diseases that might be cured if stem cell research is allowed to proceed. We might think of this as the Michael J. Fox or Nancy Reagan effect. The second, which we have not yet seen, is the creation of language that emphasizes an important morally relevant fact: that the embryos whose stem cells would be extracted for research would be destroyed in any event. Rather than speak of *human embryo* stem cell research, progressives seeking to win the battle of public opinion would be wise to talk about *discarded embryo* stem cell research. This has the virtue of accuracy, and does not call to mind the image of a potential child in the way the word 'human' does.

I still am made uneasy by the term 'progressive bioethics', because I believe that what so-called progressive bioethicists stand for is, for the most part, nothing more than sound bioethical analysis. However, I ultimately accept the idea that there is a place for the term and for the movement it represents. Progressives accent values in the bioethical

marketplace of ideas somewhat differently than people without progressive commitments, and the progressive interest in practical policy can justify the use of a political term to describe what is largely an academic movement. Indeed, the major challenge confronting the progressive bioethical movement is neither clarifying its moral bases nor finding consensus on progressive principles. Rather, it is to develop the political effectiveness needed to advance the application of sound bioethical principles in public life.

Notes

1. The practical answer to the objection has been provided again and again; the taxpayer has no standing to complain. The religious objector to hESCR stands in the same position as the religious objector to war. A respectable ethical argument may be made against coercing through taxes contributions to actions that offend, but it is an argument that in the United States has never carried the political day.

2. Of course, if enough people felt this way, principles of democracy might allow the majority to forbid federal funding for hESCR or even all hESCR no matter what the funding source. However, this kind of determination would not be based on bioethical grounds, but on religious or other ethical grounds, coupled with a political system that in most spheres allows a majority to impose its will, whatever its basis, on a minority.

3. Paragraph 30 of the World Medical Association's Declaration of Helsinki which deals with ethical issues in medical research involving human subjects provides that "at the conclusion of the study, every patient entered into the study should be assured of access to the best proven prophylactic, diagnostic and therapeutic methods identified by the study." Efforts to amend this paragraph to deal with matters left open (e.g. for how long must access be provided) have failed because of an inability to reach consensus. The most that could be agreed upon at the 2004 meetings was that a description of the plans for providing post-trial access arrangements or other care must be part of the protocol that is initially submitted for ethical review.

4. Whether 'progressive' is the best way to label this group is, for me, an open question, but at least for the moment it seems to be the label this group has.

Works Cited

Association of American Universities. 2005. Letter to all members of the House of Representatives regarding the Stem Cell Research Enhancement Act of 2005, May 23.

Ayer, Alfred J. 1936. *Language, Truth, and Logic.* Gollancz.

Donohue, John J., and Steven D. Levitt. 2001. The impact of legalized abortion on crime. *Quarterly Journal of Economics* 116: 379–420.

Glantz, Leonard H., George J. Annas, Michael A. Grodin, and Wendy K. Mariner. 1998. Research in developing countries: Taking "benefit" seriously. *Hastings Center Report* 28, no. 6: 38–42.

Harris, John. 1998. *Clones, Genes, and Immortality: Ethics and the Genetic Revolution.* Oxford University Press.

Jones, James H. 1993. *Bad Blood: The Tuskegee Syphilis Experiment.* Free Press.

Joyce, Ted. 2004. Did legalized abortion lower crime? *Journal of Human Resources* 39: 1–28.

Kass, Leon R. 1997. The wisdom of repugnance. *New Republic*, June 2.

May, William E. 2003. Begetting vs. making babies. In *Human Dignity and Reproductive Technology*, ed. N. Lund-Molfese and M. Kelly. University Press of America.

Moreno, Jonathan, Sam Berger, and Alix Rogers. 2007. Divided we fail: The need for national stem cell funding. Center for American Progress, April 12.

Nussbaum, Martha C. 2004. Danger to human dignity: The revival of disgust and shame in the law. *Chronicle of Higher Education* 50, no. 48: B6.

Regan, Donald H. 1979. Rewriting *Roe v. Wade. Michigan Law Review* 50: 1569–1646.

Thomson, Judith J. 1971. A defense of abortion. *Philosophy and Public Affairs* 1: 47–66.

Toulmin, Stephen. 1950. *An Examination of the Place of Reason in Ethics.* Cambridge University Press.

Weiss, Rick. 2007. Scientists use skin to create stem cells. *Washington Post*, June 6.