Symposium Articles

6 Introduction: Defining the Beginning and the End of Human Life: Implications for Ethics, Policy, and Law
Robert M. Sade

8 “Life Begins When they Steal your Bicycle”: Cross-Cultural Practices of Personhood at the Beginnings and Ends of Life
Lynn M. Morgan
This paper examines two reasons anthropological expertise has recently come to be considered relevant to American debates about the beginnings and ends of life. First, bioethicists and clinicians working to accommodate diverse perspectives into clinical decision-making have come to appreciate the importance of culture. Second, anthropologists are the recognized authorities on the cultural logic and behaviors of the “Other.” Yet the definitions of culture with which bioethicists and clinicians operate may differ from those used by contemporary anthropologists, who view culture as a contingent, contested set of social practices that are continually formulated and re-negotiated in daily interactions. Using ethnographic examples, the author argues that the qualities that constitute “personhood” should be sought in social practices rather than in cognitive capacities or moral attributes.

16 Abortion and the Beginning and End of Human Life
Don Marquis
The doctrine that it is wrong to end the existence of something because it is a human life (unless special circumstances obtain) I call “the standard view.” I argue that attempts by proponents of abortion choice to avoid the implications of the standard view by first, by suggesting that fetuses are only potential lives fail. Nevertheless, opponents of abortion choice should not base their arguments on the standard view, for the standard view is false. I propose a substitute for the standard view that avoids the difficulties with it, that explains why most people believe that the standard view is true and that also underwrites opposition to abortion choice.

26 The Morality of Killing Human Embryos
Bonnie Steinbock
The morality of embryonic stem cell research (ESCR) depends on the moral status of human embryos. I defend the interest view against some of Don Marquis’s objections, and show that on his own Valuable Futures account, ESCR is morally permissible.

35 The Whole-Brain Concept of Death Remains Optimum Public Policy
James L. Bernat
“Brain death,” the determination of human death by showing the irreversible loss of all clinical functions of the brain, has become a worldwide practice. A biophilosophical account of brain death requires four sequential tasks: (1) agreeing on the paradigm of death, a set of preconditions that frame the discussion; (2) determining the definition of death by making explicit the consensual concept of death; (3) determining the criterion of death that proves the definition has been fulfilled by being both necessary and sufficient for death; and (4) determining the tests of death for physicians to employ at the patient’s bedside to demonstrate that the criterion of death has been fulfilled. The best definition of death is “the cessation of functioning of the organism as a whole.” The whole-brain criterion is the only criterion that is both necessary and sufficient for death. Brain death tests are used only in the unusual case in which a patient’s ventilation is being supported. Brain death critics have identified weaknesses in its formulation. But despite its shortcomings, the whole-brain death formulation comprises a concept and public policy that make intuitive and practical sense and that has been well accepted by many societies.

44 An Alternative to Brain Death
Jeff McMahan
This article criticizes a range of assumptions that proponents of brain death usually share. It argues that one of the main contentions made in defense of brain death – that the brain is necessary for integrated functioning in a human organism – is mistaken. It then sketches an alternative account of human death that distinguishes between the biological death of a human organism and the death or ceasing to exist of a person.
Moral Status, Human Identity, and Early Embryos: A Critique of the President’s Approach
David DeGrazia
Underlying President Bush’s view regarding stem-cell research and cloning are two assumptions: we originate at conception, and we have full moral status as soon as we originate. I will challenge both assumptions, argue that at least the second is mistaken, and conclude that the President’s approach is unsustainable.

Owning Up to our Agendas: On the Role and Limits of Science in Debates about Embryos and Brain Death
George Khushf
The ethical issues integral to embryo research and brain death are intertwined with comprehensive views of life that are not explicitly discussed in most policy debate. I consider three representative views – a naturalist, romantic, and theist – and show how these might inform the way practical ethical issues are addressed. I then consider in detail one influential argument in embryo research that attempts to bypass deep values. I show that this twinning argument is deeply flawed. It presupposes naturalist commitments that are at issue in the embryo research debate, and exhibits a blindness to alternative philosophical viewpoints. By considering the work of Hans Driesch, the discoverer of the facts of embryology integral to the twinning argument, I show how the twinning facts are compatible with romantic and theistic accounts that affirm full moral status for the early embryo. While these alternative interpretations might have a tenuous status in current scientific debate, they should be respected in ethical and policy debate.

Transforming Public Health Law: The Turning Point Model State Public Health Act
James G. Hodge, Jr., Lawrence O. Gostin, Kristine Gebbie, and Deborah L. Erickson
Law is an essential tool for improving public health infrastructure and outcomes; however, existing state statutory public health laws may be insufficient. Built over decades in response to various diseases/conditions, public health laws are antiquated, divergent, and confusing. The Turning Point Public Health Statute Modernization National Collaborative addressed the need for public health law reform by producing a comprehensive model state act. The Act provides scientifically, ethically, and legally sound provisions on public health infrastructure, powers, duties, and practice. This article examines (1) how statutory law can be a tool for improving the public’s health, (2) existing needs for public health law reform, (3) themes and provisions of the Turning Point Act, and (4) how it is being used by public health practitioners.

The New International Health Regulations: An Historic Development for International Law and Public Health
David P. Fidler and Lawrence O. Gostin
The adoption of the new International Health Regulations (IHR) in May 2005 represents an historic development for international law and public health. This article describes the IHR revision process and analyzes why the new IHR constitute an advance in global health governance.

Physician Participation in Executions: Care Giver or Executioner?
Peter Clark
The “medicalization” of the death penalty has ignited a debate, by those within the medical profession and by others outside it, about the appropriateness of physicians participating in state-sponsored executions. Physicians participating as “agents” of the State in executions argue that their presence ensures a more humane execution. Opponents argue physician participation violates the Hippocratic Oath which states clearly that physicians should never do harm to anyone. How any physician, who is dedicated to “preserving life when there is hope,” can argue that taking the life of a healthy person because the state commands it is in the patient’s best interest, and does not conflict with the goals of medicine is beyond comprehension. Physician participation in executions is unethical because it violates the four basic principles that govern medical ethics: respect for persons, beneficence, nonmaleficence, and justice.

Conflict over Conflicts of Interest: An Analysis of the New NIH Rules
Jennifer Gold
Concern over research integrity at the NIH led to the adoption of strict conflict of interest rules in 2005. An outcry from NIH scientists followed. This paper analyzes the legal and ethical issues raised by the new rules, and suggests potential areas for modification.
Symposium articles are solicited by the guest editor for the purposes of creating a comprehensive and definitive collection of articles on a topic relevant to the study of law, medicine and ethics. Each article is peer reviewed.

Independent articles are essays unrelated to the symposium topic, and can cover a wide variety of subjects within the larger medical and legal ethics fields. These articles are peer reviewed.

Columns are written or edited by leaders in their fields and appear in each issue of JLME.

Next Issue:
DNA Fingerprinting & Civil Liberties
A symposium guest edited by Alice A. Noble and Benjamin W. Moulton

111
COMMENTARY
Face Transplant: Real and Imagined Ethical Challenges
Tia Powell
Ethical lapses associated with the first facial transplant included breaches of confidentiality, bending of research rules, and film deals. However, discussions of the risk-benefit ratio for face transplantation are often deficient in that they ignore the needs, experience, and decision-making capability of potential recipients.

Columns

116
Currents in Contemporary Ethics
Cheryl Erwin and Robert Philibert

121
The Ethical Health Lawyer
Joan H. Krause

126
Reviews in Medical Ethics
Pamela Bluh

131
Recent Case Developments in Heath Law
The Harvard Law and Health Care Society

139
Calendar of Events