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## **Bioethics to the rescue! A response to Emmerich**

*Journal of Medical Ethics*

Doug Hardman, *Bournemouth University*

Phil Hutchinson, *Manchester Metropolitan University*

### **Abstract**

In our article, *Where the ethical action is*, we argue that that medical and ethical modes of thought are not different in kind but merely different aspects of a clinical situation. In response, Emmerich argues that in so doing we neglect several important features of healthcare and medical education. Although we applaud the spirit of Emmerich's response, we argue that his critique is an attempt at a general defence of the value of bioethical expertise in clinical practice, rather than a specific critique of our account.

In our article, *Where the ethical action is*, we argue that that medical and ethical modes of thought are not different in kind but merely different aspects of a clinical situation [1]. In response, Emmerich argues that in so doing we neglect several important features of healthcare and medical education [2]. Although we applaud the spirit of Emmerich's response, we argue that his critique is an attempt at a general defence of the value of bioethical expertise in clinical practice, rather than a specific critique of our account.

First, despite us stating that our account should not be interpreted as related to a general definition of ethics, Emmerich decides that we cannot have meant that and ascribes to us an underlying ethical theory based on the phenomenological notion of 'a horizon of understanding', which he claims to draw from another paper of ours. This allows Emmerich to make general critiques that are unrelated to our account.

Second, Emmerich argues that we do not appreciate that medicine and healthcare is its own (sub)culture and thus has its own moral order. Of course, any sensible person would not deny that medicine is its own culture in which certain habits, practices, and dispositions shape how people behave. There is nothing in our argument to suggest we ignore this. However, we are also committed to culture being endogenously co-produced and negotiated by its members in interaction [3]. As such, we are resistant to an analyst's formal account of culture and the consequences one could infer from such an account. For example, Emmerich argues that bioethics has played a central role in shifting the ethos of medicine from paternalism towards patient autonomy, and that this trajectory is tied to the principles of bioethics. But this misunderstands the role of principles. Bioethical principles gain their sense and power from the practices in which they emerge, not the other way around. As such, they cannot serve as useful guides for action but are better conceived as retrospective categories or ways of accounting for values that are produced, negotiated, maintained, and repaired in interaction.

Third, Emmerich argues for the worth of bioethics by equating it very broadly with the ‘analytic’, ‘critical’, or ‘reflective’. Again, any sensible person is not going to deny that clinicians should be all of these things, but it is disingenuous to equate bioethics with these broad notions. The most mundane forms of social interaction require and make witnessable the extent to which ordinary members of society use analytic, critical, and reflective skills. Emmerich takes everyday words for capacities, which are witnessable in mundane interactions, and claims them as the products of professional bioethics. Our point is simply this: the dominant framework of teaching and practising clinical ethics is grounded in the interpretation and application of various mid-level theories to clinical cases. It is thus this framework that we critique in our account.

Last, Emmerich argues that particular, everyday concerns cannot resolve many ethical issues in medicine and healthcare. He raises the example of a recent legal case in which a daughter claimed that her father’s clinicians were negligent for not telling her he had Huntington’s disease; the father having withheld the information because he knew his daughter was pregnant and wanted to pre-empt the possibility that she would seek a termination. Emmerich argues that it is naïve to suggest that such issues are merely everyday concerns that can be resolved in a shared and negotiated cultural background. However, if we read the case in more detail, this seems to be exactly what occurred [4]. In practice, clinicians do not weigh the value of various abstract principles such as autonomy and justice. They instead consider particular issues such as the severity of the risk of the condition for the particular people involved, family history of the disease, potential interventions available, etc. Resolving issues in a shared and negotiated cultural background does not, after all, mean that everyone has to agree. We could, *retrospectively*, describe such a process as one of balancing principles such as autonomy and justice, but they have so many qualifications and exceptions

that they cannot drive interaction. That is why, in professional practice as in law, one cannot proscribe a duty of confidentiality or suchlike without granting significant discretion.

Overall, Emmerich makes a spirited defence of the value of bioethical expertise in clinical practice. Although we agree with some of his points, we think that, with respect to our account, many are misdirected.

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