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Review of Thieves of Virtue: When Bioethics Stole Medicine by Tom Koch

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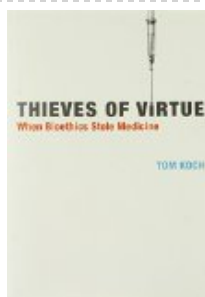
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ETHICS



Review - Thieves of Virtue
 When Bioethics Stole Medicine
 by Tom Koch
 MIT Press, 2012
 Review by William Simkulet
 Dec 25th 2012 (Volume 16, Issue 52)

I. Introduction

In this book, Tom Koch contends that contemporary bioethics has been an "abysmal failure." (6) He sees the purpose of this work as finding where it all went wrong, so as to wipe the slate clean and do it right. Early on, he argues contemporary bioethics has failed us and should be swept away because it has not fulfilled its promise of an undisputed account of human good in the past half century. This makes about as much sense as abandoning modern medical science because it hasn't found a way to make us live forever yet... or cured the common cold.

II. Contents

This book is divided into ten chapters. Early chapters offer an abbreviated history of medical ethics, from Hippocrates to contemporary bioethics, with a focus on *prima facie* morally questionable outcomes. Beginning in the third chapter, Koch begins to identify bioethics with a focus on what he believes is an artificial scarcity of resources. In the following four chapters he characterizes bioethics largely as consequentialist ethics, culminating in chapter seven, after which he identifies contemporary bioethics with Peter Singer's utilitarianism. Chapter eight, on genetic engineering, largely concerns disagreement and error in contemporary scientific theories of evolution and the role our genetics plays in determining who we are. In chapter nine, Koch argues that bioethics' focus on personal autonomy and informed consent is in error. The final chapter summarizes Koch's argument; he contends that bioethics has failed primarily because it hasn't kept its promise of a universally accepted theory of human flourishing, but he fails to offer any substantive alternatives. (250)

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III. Review

Although Koch frames his project as a scathing review of contemporary bioethics, the primary argument can be seen as a criticism of bioethics done in the analytic philosophical traditional. He contends most bioethicists are consequentialists, which he equates sporadically with Peter Singer's utilitarianism. (197) The central argument in this book is not an attack on bioethics as a whole, but on what is popularly known as "lifeboat ethics", the elements of bioethics concerned with ethical distribution of scarce resources. The scarcity of medical resources, such as organs for transplant, he contends, is an unnatural state. When taken as a straightforward empirical claim, it is ludicrous; but when understood as an indictment of bioethics for failing to emphasize a moral imperative to expand the availability of these resources, the work has merit.

Underscoring this criticism, Koch criticizes the way in which contemporary bioethics decide how to best distribute limited resources. In chapter three, he explains that bioethics have historically made decisions off of judgments of fallible medical experts, but that this has sometimes failed them. As transplant medicine grew in popularity, doctors – seeking to procure more and better organs – adopted the term "brain death" to justify the harvesting of the organs of patients without detectable mental activity. When similar patients awoke from their long comas, Koch argues that it demonstrated that contemporary bioethicists violated the central tenant of the Hippocratic oath by doing harm. (63) But this criticism is absurd; surely Koch does not mean that bioethicists ought to advocate that medical professionals ignore the judgment of experts and the best available science in situations of life and death!

This criticism by Koch foreshadows a deficiency in his analysis of contemporary bioethics that undermines many of the criticisms of consequentialist bioethics in the later chapters of the book. He never explicitly articulates a distinction between killing and letting die, but his critique of bioethics consistently implies the distinction exists; that killing is *far worse* than letting die. Many bioethicists, most notably James Rachels, have argued that such a distinction is illusory, that while in most cases killing is worse than letting die, when all else is equal they are morally equivalent. This equivalence leads Rachels to conclude that we have strong moral obligations to help the poor and sick. Consequentialists in general, and utilitarians in particular similarly draw no such distinction and factor this into their theory of just resource distribution. The debate over whether killing and letting die are morally equivalent is at the center of many debates in bioethics, including both euthanasia and abortion. Many of Koch's criticisms of bioethics in general stand or fall with this principle, making his overall silence on the issue a substantial oversight.

In later chapters, Koch's criticism of bioethicists shifts to consequentialist bioethics, which he equates with Peter Singer's preference-satisfaction utilitarianism. The majority of his arguments are nothing that wouldn't come up naturally in an introductory ethics course when discussing utilitarianism, and can hardly be said to apply to contemporary bioethics as a whole. Koch's assault of Singer's famous, but scarcely adopted, version utilitarianism is strange and somewhat opportunistic – especially given his earlier criticism that bioethics has failed to provide us with a universally accepted theory of the good. His critiques are largely reminiscent of Philippa Foot's famous transplant case, where the utilitarian is asked whether it is acceptable to kill one to save five; our intuition is supposed to be "no", offering credence to the theory there is a big difference between killing and letting die; however were the same utilitarian faced with five patients in need of a transplant, and one patient she has every reason to believe is brain dead, she would undoubtedly harvest the organs from that patient to save the other five; but this result is far more consistent with our intuitions and in opposition of Koch's.

Koch criticizes bioethics for being too concerned with lifeboat ethics, and for practicing lifeboat ethics poorly. Although it's not clear either of these criticisms is applicable to contemporary bioethics as a whole, and there is understandable bias in medical professionals tasked to save lives every day, outside of these circles our overwhelming obligation to procure more resources admittedly gets little attention. However, this is far from proving Koch's conclusion that bioethics is an abysmal failure.

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William Simkulet, Applied and Professional Ethics at University of Kansas

Tom Koch sent the following response to the above review. Received December 26, 2012. Published January 17, 2013.

I rarely comment on reviews of my work. Authors should be free to state their case as well as they can and then let it be judged by others. But William Simkulet's review of my recent book, *Thieves of Virtue*, demands a response.

Reviewers need to respond to the work itself and not to the reviewer's peculiar interests or prejudice. In the main, this reviewer's critique doesn't adhere to that guideline.

Bill Simkulet is correct in saying I describe bioethics as an abysmal failure. He is wrong when he states my judgment is based on the failure of bioethics to enunciate a "human good" that should dominate our thinking in medicine. It hasn't, but that's not my argument.

My thesis is simply that bioethics promised to provide a "single and canonical moral vision" that would, as H. Tristram Englehardt Jr.'s put it, "fill the moral vacuum engendered by the marginalization of traditional medical ethics..." (H. Tristram Englehardt, Jr. 2011, "Confronting Moral Pluralism in Posttraditional Western Societies: Bioethics Critically Reassessed," *The Journal of Medicine and Philosophy* 36:3, 243-260.) What we have instead is an ethic mired in moral pluralism that promotes an economic perspective rather than a philosophically grounded, moral vision.

It was not, I also argue *contra* Englehardt that the traditional medical ethic was inadequate but rather that it opposed an economic agenda whose actualization required the older ethic's rejection.

Alas, Mr. Simkulet ignores the details of this thesis. It is not, as he suggests in a bizarre analogy, absurd, senseless, or inappropriate to suggest we must accept bioethics failure to fulfill its original goals if we are to think clearly about an ethic that might fulfill them.

I do argue bioethics is an outgrowth of a kind of moral philosophy, analytic, that has propelled it from the start. This is not open to question, however. It was the presumed analytic expertise of moral philosophers to address complex issues of allocation that from the start has been the demi-discipline's *raison d'etre*. This is made very clear in Daniel Callahan's recent autobiography. (Daniel Callahan, 2012, *In Search of the Good: A Life in Bioethics* (Cambridge, MA: MIT Press).) It is why students in every bioethics program in North America are required to read moral philosophy. Simply, it is why we have those trained in philosophy, as apparently Mr. Simkulet is, commenting as experts on medical ethics and ethical theories.

Mr. Simkulet likes the word "absurd". Thus he takes a long discussion of the idea of "brain death"--clinical and social--and dismisses it as absurd because he assumes a consequence that is unacceptable. Clearly, he doesn't understand the argument.

First, I argue--as have many others--that the definition of brain death was in part a way to encourage organ donation. Then I demonstrate that the science underlying that definition has been severely compromised. I then argue, with a

number of citations to evidence the point, which decisions are made as if no compromise had occurred. The result is convenient but dishonest, I contend. Here again I argue the underling thesis that assumptions about scarcity underlie bioethics. But the whole is framed in a fairly exhaustive review of clinical evidence and data. I don't ignore the view of physicians and researchers. I actually read the work in a way that apparently Mr. Simkulet does not.

I am then tasked for not writing at length about the difference between "killing" and "letting die," a distinction Mr. Simkulet believes is central. The subject is of sufficient important I debated a chapter on it but decided it was not central to the book's theme. I included, however, a focus upon the difference between "worthy" and "worthless" lives within the ethical tradition traced in the book. Here, for example, is a chapter detailing the famous debate between Harriet McBryde Johnson and Princeton's Peter Singer.

Mr. Simkulet says--absolutely incorrectly--that their opposing views are reminiscent of "Philippa Foot's famous transplant case" framed by him as a utilitarian bargain. That *is* absurd. At the least, it bears no relation to my argument, my analysis or those of either Peter Singer--who Simkulet seems to dismiss--or McBryde Johnson.

I wrote *Thieves of Virtue* to encourage hard thinking about what bioethics is, what it has been, and about the necessity of its reformation. Certainly its arguments are open to criticism and debate. But those need to be respectful of what the book says, not the reviewer's own interests or prejudices irrespective of the book's.

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Prof. Tom Koch (<http://kochworks.com>), a bioethicist and gerontologist, is the author of 14 books and over 250 journal articles. He is based in Toronto, Canada.

William Simkulet sent the following response on January 28, 2103. Published on February 6, 2013.

Scarcity, the Lifeboat, and Bioethics: A Response to Tom Koch

In *Thieves of Virtue: When Bioethics Stole Medicine*, Tom Koch contends the field of bioethics fails to live up to a what he characterizes as a promise found in early bioethics literature to construct a universally accepted set of moral values.

Bioethics has, in fact, adopted a robust set of values characterized by a respect for patient autonomy and fair distribution of scarce medical resources. These values, and their execution, are a matter of debate in contemporary bioethics, but to declare bioethics a failure because there is not universal consensus is akin to declaring geography a failure because of the persistence of the Flat Earth Society.

Koch holds bioethics to an unreasonable standard: universal acceptance. The goal of early bioethics was to restore the public's faith in the medical community after infamous failures in medical paternalism and what Engelhardt describes as a "moral vacuum" that arose with moral pluralism. (H. Tristram Engelhardt, Jr., 2011, "Confronting Moral Pluralism in Post Traditional Western Societies: Bioethics Critically Reassessed," *The Journal of Medicine and Philosophy* 36:3, 243-260; also *Bioethics Critically Reconsidered: Having Second Thoughts*, 2011, H. Tristram Engelhardt, editor, Springer). A recent poll by Gallup suggests that contemporary bioethics has largely succeeded in this more modest goal, with the honesty and ethics of nurses and medical doctors both rated as very high by at least 70% of those polled. (*Honesty/Ethics in Professions*, 2012, <http://www.gallup.com/poll/1654/honesty-ethics-professions.aspx>) A more reasonable standard by which to judge bioethics is by how successful it has been at bringing about morally desirable outcomes and curtailing immoral actions by medical professionals.

Here I discuss three related topics in bioethics central to Koch's criticism of it: scarcity, lifeboat ethics, and whether there is a morally relevant distinction between killing and letting die. I argue the natural scarcity of medical resources requires bioethics concern itself with just distribution of scarce resources, or lifeboat ethics, and that physicians have a strong moral obligation not to let patients die when they can avoid it at little cost.

I. On Scarcity

One of the central themes of Koch's book is his criticism of bioethics for engaging in lifeboat ethics, and contends that the scarcity that demands lifeboat ethics is artificial. Scarcity is natural, he claims, when it occurs in nature and is outside of anyone's control, but artificial if it is the direct result of actions by persons. Koch asserts "scarcity is rarely natural", and that the scarcity of healthy organs for transplant is an artificial scarcity. (101) The primary problem with this claim is that it is false; it is an uncontroversial and easily verifiable fact that healthy human organs are naturally scarce; not every human body is born with a healthy heart, for example. Of course, people contribute to this scarcity through accident, negligence, and ignorance, but this additional scarcity doesn't make this shortage of organs any less natural, or any less demanding.

Furthermore, the term "artificial scarcity" is traditionally used to describe "the scarcity of items even though the technology and production capacity exists to create an abundance." (accessed 1-27-2013, http://en.wikipedia.org/wiki/Artificial_scarcity) It is uncontroversially true that healthy organs are not artificially scarce in this sense.

Fortunately, advances in organ transplant allow physicians to combat the natural scarcity of organs by redistributing them from the dead to the dying. Presumably, Koch means to say that healthy organs are "artificially scarce" because they are merely artificially valuable - that without human intervention in the form of organ transplant, organs would only be valuable to their original owners; but this distinction is inconsistent either of the definitions of artificial scarcity discussed above, and irrelevant to whether bioethics ought to be concerned with the just distribution of organs. It is uncontroversially true that there is a scarcity of healthy organs for transplant, and short of some miraculous medical breakthroughs, this natural scarcity will persist for the foreseeable future. Thus, bioethics must deal with the equitable distribution of resources; this is to say that bioethics needs to engage in lifeboat ethics.

II. On Lifeboat Ethics

Koch distinguishes between two kinds of lifeboat ethics, what he calls "ethics *in* the lifeboat" (LBE1 from now on) and "ethics *of* the lifeboat," (LBE2 from now on) where the former concerns how to distribute limited resources, and the latter concerns the question of why there is shortage. (78-79) He contends bioethics has focused on LBE1 to the detriment of LBE2. Koch is right that, metaphorically, bioethics has spent too little time constructing better lifeboats. Although scarcity of medical resources may be unavoidable, there are steps that could be taken to reduce this scarcity and bioethics has largely failed to pursue these steps.

Koch criticizes LBE1, contending that the metaphor "assumes the limits of the lifeboat are exigent and unavoidable." (78) However, as you read this there are more patients in need of healthy organs than extra healthy organs to transplant. Whether this situation was avoidable is a question for LBE2. As for its exigency, if medical professionals fail to allocate resources, they let people die.

I admit to being puzzled as to why Koch is skeptical about the urgency faced by physicians. Perhaps the explanation can be found in Koch's treatment of the case of the *William Brown*, a famous case concerning actual lifeboats. After this ship struck an iceberg, half of the passengers we brought aboard a lifeboat, threatening to capsize it. Rather than risk the lives of all those on the boat, the crew threw 16 passengers overboard, killing them. (77-78, 82-110) Koch believes, but does not argue, that there is a significant moral difference between killing and letting die, all else being equal. Rather than kill these passengers, then, Koch might believe the crew should never have brought them aboard the lifeboat in the first place. When we apply this reasoning to bioethics as a whole, we have a map for why he might believe LBE1 isn't morally demanding: If we have no moral obligation to save the lives of the dying, then allocation of resources is optional, not

obligatory. However, even if there is a substantial moral distinction between killing and letting die, certainly it does not follow that medical professionals have no moral obligation to save lives where there is little or no cost to do so. To do otherwise would be a moral monster. (James Rachels, 1979, "Killing and Starving to Death", *Philosophy*, 54:208, 159-171)

III. Killing and Letting Die

In my review of Koch's book, I contend his failure to defend the distinction between killing and letting die undermines his criticism of bioethics. This failure is perhaps easiest to see in his criticism of the adoption of the term "brain death." When faced with the natural scarcity of healthy organs, medical professionals adopted the term so that they could harvest the organs of donors in irreversible comas. (58-59) Koch argues the adoption of the term was in part an excuse to harvest healthy organs. The goal, he said, was both humanitarian and economic, as transplantation was lucrative for the professional. (60) While the exigent need for organs was certainly the catalyst for the adoption of the term, medical professionals certainly believed that such patients were already dead. Don Marquis distinguishes between three theories about what makes something morally valuable, and wrong to kill: (i) being biologically human, (ii) being psychologically a person, and (iii) having a possible future of value. (Don Marquis, 1989, "Why Abortion is Immoral," *The Journal of Philosophy*, 86:4, 183-202) "Brain dead" bodies apparently satisfy (i), but fail to satisfy either (ii) or (iii). Marquis argues that (i) is arbitrary and cites its unreasonable implications; for example human cancer cell cultures are biologically human, but certainly have no right to life.

Medical advancements have made it possible to keep bodies alive, sometimes indefinitely, despite substantial irreversible damage to the brain. Before this, the question of whether these bodies were persons was largely irrelevant as the complete cessation of bodily functions would soon follow. Following these advancements, although keeping bodies alive was expensive and wasteful, there wasn't sufficient impetus to change the definition until it became clear this misclassification threatened the life of potential organ recipients. Patrick Lee and Germain Grisez present a simple thought experiment to test our intuitions about brain death; they ask us to imagine it was possible to keep both the head and body alive after decapitation. Analytically both entities could not be the same person they were before decapitation. Because human beings are rational animals, they contend they body isn't even human. ("Patrick Lee, Germain Grisez, 2012, Total Brain Death: A Reply to Alana Shewmon," *Bioethics*, 26:5, 275-284)

Underscoring Koch's criticism of the adoption of "brain death", he contends that definition of "brain death" was insufficient, as it misdiagnosed some comas as irreversible even though these patients later regained consciousness. Koch asks how the adoption of "brain death" could be ethical if some patients died who would otherwise have lived. (63) "Certainly it violates the Hippocratic oath's promise to do no harm," Koch says. In my review, I call this criticism absurd. Here Koch contends that an unintentional and unforeseen harm violates the Hippocratic oath, and is concerned exclusively with the consequences, rather than intent, of the physician. Most surgeries carry with them risks to a patient's health and life, and many surgeries end in death; on Koch's view any physician who has lost a patient in during surgery has violated the Hippocratic oath, even if they intended the surgery to be a success, and had every reason to believe it would be. This is absurd.

Rather than risk their supply of organs, Koch contends, bioethicists rationalized their unintentional killing of innocent persons by adopting a form of utilitarianism where the killing of weak persons was justified for the benefit of others. (63-64) As consequentialists, (some) utilitarians don't draw a distinction between killing and letting die, so if a physician harvested the organs from one person, killing her, to save the lives of five others, she is *prima facie* justified. Of course this is *prima facie* morally objectionable. It is also not what occurred in the misdiagnoses cases Koch agonizes over. In misdiagnoses cases, physicians believed their patients were dead, and their bodies no longer persons - just like the headless body from Lee and Grisez's thought experiment. These physicians did not trade one person's life for the lives of others. In adopting "brain death" terminology, bioethicists are not taking a stance on whether killing is morally equivalent to letting die and judging certain people to be less worthy of care than others; rather they are diagnosis persons as dead despite the fact that parts of

their anatomy are still functioning. Fortunately, making such a distinction can lead to saving the lives of others by allowing doctors to better allocate scarce medical resources.

The bioethics literature on killing and letting die is not about trading one life for another, but about whether letting die is as bad as killing. James Rachels famously argues that if there are the same reasons for *a* as there are for *b*, then *a* and *b* are morally equivalent, neither is preferable to the other. (Rachels, 1979) Rachels contends that, all else being equal, killing and letting die are morally equivalent. (James Rachels, 1975, "Active and Passive Euthanasia," *The New England Journal of Medicine*, 292, 78-80; also James Rachels, 2001, "Killing and Letting Die," *Encyclopedia of Ethics, 2nd edition*, ed. Lawrence Becker and Charlotte Becker, New York Routledge, vol. 2, 947-50.) For example, Rachels argues that, all else being equal, active euthanasia is morally equivalent to passive euthanasia because there are the same reasons for and against killing someone as there are for and against letting them die, all else being equal. Abolishing this distinction is important because in most cases all else is not equal: passive euthanasia causes substantially more pain and suffering than active euthanasia. If passive euthanasia is morally acceptable, then active euthanasia ought to be as well. If active euthanasia is unacceptable, so too should passive euthanasia be.

Although we have a strong commonsense moral intuition that in most cases killing is far worse than letting die, this is not inconsistent with their equivalence when all else is equal, nor does it commit us to a utilitarianism where it is morally acceptable to kill one patient to save others.

Koch contends that when physicians harvested the organs from a misdiagnosed patient they have violated their Hippocratic Oath by doing harm. But if killing and letting die are morally equivalent, then these physicians would be violating their oath by letting people die as well. By letting these organs go to waste, as Koch seems to advocate, then all else being equal, a physician would be as blameworthy for letting her patients die as if she had killed them herself.

Lastly, when discussing the Hippocratic Oath, Koch quotes "First, do no harm." (27, 58) However, this phrase appears nowhere in the oath itself. A similar phrase appears in Hippocratic Corpus, requiring that a physician must do good for her patient and do no harm. (accessed 1-27-2013, http://en.wikipedia.org/wiki/Primum_non_nocere) Translations of the Hippocratic Oath similarly require that physicians act for the good of their patients and to not harm them (both requirements are found within a single sentence), and does not seem to prioritize one over the other. (accessed 1-27-2013, http://en.wikipedia.org/wiki/Hippocratic_Oath, accessed 1-27-2013, http://www.nlm.nih.gov/hmd/greek/greek_oath.html)

IV. Conclusion

I've argued that many of the central claims found in *Thieves of Virtue: When Bioethics Stole Medicine* are false. Koch contends contemporary bioethics an "abysmal failure" because it fails to live up to a promise found in early writings in bioethics. (6) Set aside that this is a ridiculous standard by which to judge a branch of applied ethics, and that for Koch nothing short of universal acceptance of a normative ethical theory would satisfy this promise; I've argued that bioethics has largely succeeded in its goal of restoring the public's trust in medical professionals that had been lost by the beginning of the bioethics movement.

One of Koch's central criticisms of bioethics is that it is too concerned with LBE1, which assumes a scarcity of resources and a moral urgency with regard to their distribution. He claims this scarcity is artificial; here I've shown this scarcity is natural. Remarkably, Koch questions the urgency regarding distribution of scarce medical resources; here I've argued that even if one believes there is a substantial moral difference between killing and letting die, physicians have a strong moral obligation not to let innocent people die if they can easily avoid it without harming others.

Koch criticizes physicians for harvesting organs from patients misdiagnosed as brain dead, contending that to do so violates the Hippocratic Oath -- a set of bioethics values -- because it violates the rule "First, do no harm", a phrase not found in the oath but commonly misattributed to it. This standard is absurd; it would prevent any physician from acting in any way that could possibly harm a

patient, regardless of whether the physician believes it might. Any risky surgery would be forbidden, as would breathing the same air as your patient -- for fear you might unwittingly transfer a pathogen to them. Koch characterizes misdiagnoses of "brain death" as some kind of utilitarian bargain, where physicians are willing to sacrifice unworthy, weak patients to benefit others. This is far from accurate; there is always a risk of misdiagnosis, but the Hippocratic Oath requires physicians act for the good of their patients to the best of their ability. Certainly this involves acting on the best medical information one has available, despite the relatively low likelihood of misdiagnosis.

Despite the bluster, factual inaccuracies, and egregious criticisms of contemporary bioethics, Koch should be praised for drawing attention towards what he calls the "ethics of the lifeboat." Contemporary bioethics has not done enough to reduce the natural scarcity of medical resources by advocating for increased blood and organ donation, nor has it done enough to draw attention to the artificial scarcity of medical facilities, equipment, and personnel. To do so would not, as he suggests, eliminate the need for "ethics in the lifeboat", but it would, metaphorically, put us in a better lifeboat, and actually lead to less death.

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