

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

---

## Bioethics, Medicine and the Criminal Law Volume 1

Who should define what constitutes ethical and lawful medical practice? Judges? Doctors? Scientists? Or someone else entirely? This volume analyses how effectively criminal law operates as a forum for resolving ethical conflict in the delivery of health care. It addresses key questions, such as: How does criminal law regulate controversial bioethical areas? What effect, positive or negative, does the use of criminal law have when regulating bioethical conflict? And can the law accommodate moral controversy? By exploring criminal law in theory and in practice and examining the broad field of bioethics as opposed to the narrower terrain of medical ethics, it offers balanced arguments that will help readers form reasoned views on the ethical legitimacy of the invocation and use of criminal law to regulate medical and scientific practice and bioethical issues.

AMEL ALGHRANI is a Lecturer in Family Law at the University of Manchester.

REBECCA BENNETT is a Senior Lecturer in Bioethics at the University of Manchester.

SUZANNE OST is Professor of Law at Lancaster University.

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

### *Cambridge Bioethics and Law*

This series of books was founded by Cambridge University Press with Alexander McCall Smith as its first editor in 2003. It focuses on the law's complex and troubled relationship with medicine across both the developed and the developing world. Since the early 1990s, we have seen in many countries increasing resort to the courts by dissatisfied patients and a growing use of the courts to attempt to resolve intractable ethical dilemmas. At the same time, legislatures across the world have struggled to address the questions posed by both the successes and the failures of modern medicine, while international organisations such as WHO and UNESCO now regularly address issues of medical law.

It follows that we would expect ethical and policy questions to be integral to the analysis of the legal issues discussed in this series. The series responds to the high profile of medical law in universities, in legal and medical practice, as well as in public and political affairs. We seek to reflect the evidence that many major health-related policy debates in the UK, Europe and the international community involve a strong medical law dimension. With that in mind, we seek to address how legal analysis might have a trans-jurisdictional and international relevance. Organ retention, embryonic stem cell research, physician-assisted suicide and the allocation of resources to fund health care are but a few examples among many. The emphasis of this series is thus on matters of public concern and/or practical significance. We look for books that could make a difference to the development of medical law and enhance the role of medico-legal debate in policy circles. That is not to say that we lack interest in the important theoretical dimensions of the subject, but we aim to ensure that theoretical debate is grounded in the realities of how the law does and should interact with medicine and health care.

#### Series Editors

Professor Margaret Brazier,  
*University of Manchester*

Professor Graeme Laurie,  
*University of Edinburgh*

Professor Richard Ashcroft,  
*Queen Mary, University of London*

Professor Eric M. Meslin,  
*Indiana University*

#### Books in the series

Marcus Radetzki, Marian Radetzki, Niklas Juth  
*Genes and Insurance: Ethical, Legal and Economic Issues*

Ruth Macklin  
*Double Standards in Medical Research in Developing Countries*

Donna Dickenson  
*Property in the Body: Feminist Perspectives*

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

Matti Häyry, Ruth Chadwick, Vilhjálmur Árnason, Gardar Árnason  
*The Ethics and Governance of Human Genetic Databases: European Perspectives*

Ken Mason  
*The Troubled Pregnancy: Legal Wrongs and Rights in Reproduction*

Daniel Sperling  
*Posthumous Interests: Legal and Ethical Perspectives*

Keith Syrett  
*Law, Legitimacy and the Rationing of Health Care*

Alastair Maclean  
*Autonomy, Informed Consent and the Law: A Relational Change*

Heather Widdows, Caroline Mullen  
*The Governance of Genetic Information: Who Decides?*

David Price  
*Human Tissue in Transplantation and Research*

Matti Häyry  
*Rationality and the Genetic Challenge: Making People Better?*

Mary Donnelly  
*Healthcare Decision-Making and the Law: Autonomy, Capacity and the Limits of Liberalism*

Anne-Maree Farrell, David Price and Muireann Quigley  
*Organ Shortage: Ethics, Law and Pragmatism*

Sara Fovargue  
*Xenotransplantation and Risk: Regulating a Developing Biotechnology*

John Coggon  
*What Makes Health Public?: A Critical Evaluation of Moral, Legal, and Political Claims in Public Health*

Mark Taylor  
*Genetic Data and the Law: A Critical Perspective on Privacy Protection*

Anne-Maree Farrell  
*The Politics of Blood: Ethics, Innovation and the Regulation of Risk*

Stephen Smith  
*End-of-Life Decisions in Medical Care: Principles and Policies for Regulating the Dying Process*

Michael Parker  
*Ethical Problems and Genetics Practice*

William W. Lowrance  
*Privacy, Confidentiality, and Health Research*

Amel Alghrani, Rebecca Bennett and Suzanne Ost  
*Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope*

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

# Bioethics, Medicine and the Criminal Law Volume I

*The Criminal Law and Bioethical Conflict:  
Walking the Tightrope*

---

*Edited by*

Amel Alghrani, Rebecca Bennett and Suzanne Ost



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS  
Cambridge, New York, Melbourne, Madrid, Cape Town,  
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press  
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by  
Cambridge University Press, New York

[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9781107025127](http://www.cambridge.org/9781107025127)

© Cambridge University Press 2012

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2012

Printed in the United Kingdom at the University Press, Cambridge

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloguing in Publication data*

Bioethics, medicine, and the criminal law : the criminal law and bioethical conflict : walking the tightrope / [edited by] Amel Alghrani, Rebecca Bennett, Suzanne Ost.

p. cm. – (Cambridge bioethics and law)

ISBN 978-1-107-02512-7 (Hardback)

1. Genetic engineering—Law and legislation—Criminal provisions.
  2. Medical genetics—Law and legislation—Criminal provisions.
  3. Biotechnology—Law and legislation—Criminal provisions. 4. Bioethics.
- I. Alghrani, Amel. II. Bennett, Rebecca. III. Ost, Suzanne.

K3611.G46B53 2012

344.03'21—dc23

2012017169

ISBN 978-1-107-02512-7 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

## Contents

---

<i>List of contributors</i>	<i>page</i> ix
<i>Foreword: Mark Hedley</i>	xiv
<i>Acknowledgements</i>	xvi
1. Introduction: When criminal law encounters bioethics: a case of tensions and incompatibilities or an apt forum for resolving ethical conflict?	1
AMEL ALGHRANI, REBECCA BENNETT AND SUZANNE OST	
<b>Part I Death, dying and the criminal law</b>	<b>13</b>
2. Euthanasia and assisted suicide should, when properly performed by a doctor in an appropriate case, be decriminalised	15
JOHN GRIFFITHS	
3. Five flawed arguments for decriminalising euthanasia	30
JOHN KEOWN	
4. Euthanasia excused: between prohibition and permission	49
RICHARD HUXTABLE	
<b>Part II Freedom and autonomy: when consent is not enough</b>	<b>69</b>
5. Body Integrity Identity Disorder: a problem of perception?	71
ROBERT C. SMITH	
6. Risky sex and ‘manly diversions’: contours of consent in HIV transmission and rough horseplay cases	88
DAVID GURNHAM	
7. ‘Consensual’ sexual activity between doctors and patients: a matter for the criminal law?	102
SUZANNE OST AND HAZEL BIGGS	
	vii

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

viii	Contents	
	<b>Part III Criminalising biomedical science</b>	<b>119</b>
8.	‘Scientists in the dock’: regulating science AMEL ALGHRANI AND SARAH CHAN	121
9.	Bioethical conflict and developing biotechnologies: is protecting individual and public health from the risks of xenotransplantation a matter for the (criminal) law? SARA FOVARGUE	140
10.	The criminal law and enhancement: none of the law’s business? NISHAT HYDER AND JOHN HARRIS	157
11.	Dignity as a socially constructed value STEPHEN W. SMITH	175
	<b>Part IV Bioethics and criminal law in the dock</b>	<b>189</b>
12.	Can English law accommodate moral controversy in medicine? Lessons from abortion MARGARET BRAZIER	191
13.	The case for decriminalising abortion in Northern Ireland MARIE FOX	203
14.	The impact of the loss of deference towards the medical profession JOSÉ MIOLA	220
15.	Criminalising medical negligence DAVID ARCHARD	236
16.	All to the good? Criminality, politics, and public health JOHN COGGON	251
17.	Moral controversy, human rights and the common law judge BRENDA HALE	265
	<i>Index</i>	279



Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

---

## Contributors

---

AMEL ALGHRANI is a Lecturer in Family Law in the School of Law, University of Manchester. She studied law as an undergraduate and went on to qualify as a barrister in 2003, having been awarded the Yarborough Anderson Benefactors and Scholarship Award. She previously worked in the General Medical Council, but left to pursue her interest in medical law and family law. She completed a Master's degree in Healthcare Ethics & Law (University of Manchester) and a PhD under the supervision of Professors Margaret Brazier and John Harris.

DAVID ARCHARD is Professor of Philosophy, Queen's University, Belfast. He is the author of several books, and numerous chapters and articles in political, legal and applied moral philosophy. A member of the Editorial Boards of the *Journal of Applied Philosophy*, *Res Publica* and *Contemporary Political Theory*, he has also been Honorary Chair of the Society for Applied Philosophy. Since November 2005 he has been a member of the Human Fertilisation and Embryology Authority, and Deputy Chair of its Ethics and Law Advisory Committee.

REBECCA BENNETT is a Senior Lecturer at the University of Manchester. She has taught bioethics for eighteen years and has published widely on diverse bioethical issues, including antenatal HIV testing, assisted reproductive technologies, responsibility in pregnancy, the role of public consultations in ethics and law and the possibility of ethical compromise.

HAZEL BIGGS is a Professor of Law in the School of Law at the University of Southampton. She received her first degree from the University of Kent after working for several years as a radiographer and ultrasonographer in the National Health Service. Her PhD thesis examined legal and ethical aspects of euthanasia, and formed the basis of her first book, *Euthanasia, Death with Dignity and the Law* (2001).

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

x List of contributors

Alongside her university activities she has been involved with NHS Research Ethics Committees since 1998. She was Chair of East Kent Local Research Ethics Committee and the Metropolitan Multi-Centre Research Ethics Committee. She is Editor-in-Chief of the *Medical Law Review*.

MARGARET BRAZIER has been a Professor of Law at the University of Manchester since 1990. She has written widely on medical law and ethics. She chaired a review of laws relating to surrogacy from 1996 to 1998 and chaired the Retained Organs Commission from 2001 to 2004. Between 2004 and June 2011, she was Editor-in-Chief of the *Medical Law Review*. She is co-author, with Suzanne Ost, of *Medicine and Bioethics in the 'Theatre' of the Criminal Process* (Cambridge University Press, 2013), and, with Emma Cave, of *Medicine, Patients and the Law* (2nd edn, 2011). She was the Principal Investigator for the AHRC-funded project, The Impact of the Criminal Process on Health Care Ethics and Practice.

SARAH CHAN is a Research Fellow in the Institute for Science, Ethics and Innovation at the University of Manchester. Her publications include (with John Harris) 'Cognitive regeneration or enhancement: the ethical issues', *Regenerative Medicine* 1 (2006), 361–6, 'Cord blood banking: what are the real issues?', *Journal of Medical Ethics* 32 (2006), 621–2, and (with John Harris) 'Evidence-based evolution: the ethics of gene therapy', *Current Opinion in Molecular Therapeutics* 8 (2006), 377–83.

JOHN COGGON is a Reader in Law at the University of Southampton. John studied for his LLB in Law at the University of Sussex, and for his PhD at Cardiff University. His research focuses on issues in legal, moral and political theory. His published research includes his book, *What Makes Health Public?* (Cambridge University Press, 2012).

SARA FOVARGUE is a Senior Lecturer in the Law School at Lancaster University. She obtained her PhD, on 'Regulating Developing Technologies: Xenotransplantation and the Law', at the University of Manchester. Her current research interests in health care law and ethics include clinical research involving human and non-human animals, developing biotechnologies, reproductive technologies, and decision-making for the 'vulnerable'. She is an Editor of the Public Policy and Law section of *Clinical Ethics* and is Assistant Editor for the *Medical Law Review*. Her recent monograph, *Xenotransplantation and Risk: Regulating a Developing Biotechnology*, is published with Cambridge University Press (2011).

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

List of contributors

xi

MARIE FOX is a Professor of Socio-Legal Studies at Birmingham University. Her main research and teaching interests are in Health Care Law, Animal and Veterinary Law, Feminist Legal Theory, and Criminal Law. Her current research projects focus on body modification and embodiment, the legal construction of human and animal bodies and regulation of the veterinary profession. She is a coordinating editor of *Social and Legal Studies*, a member of the Advisory Board of the *Journal of Law & Society*, and a founding editor (law) of *Somatechnics*.

JOHN GRIFFITHS is a Professor of Sociology of Law (Emeritus) at the University of Groningen, the Netherlands. He studied Philosophy (University of California) and Law (Yale University) and taught Law in the United States and Ghana before joining the Faculty of Law in Groningen in 1977. His theoretical writings have been concerned with the (empirical) concept of law, legal pluralism, disputing, and the effectiveness of legal rules. In recent years, his legal and empirical research has been devoted largely to problems of the regulation of euthanasia and other socially problematic behaviour.

DAVID GURNHAM is a Reader in Law, School of Law, University of Southampton. He obtained his PhD from the University of Warwick and was previously a lecturer at the University of Manchester and the University of Reading. He teaches and researches in the areas of legal theory, health care law and ethics, and law and literature. His publications include *Memory, Imagination, Justice: Intersections of Law and Literature* (2009). He is Assistant Editor of *Contemporary Issues in Law*, and is guest editor for the *Medical Law International* (2013) twentieth anniversary special issue, 'Best Interests in an Age of Human Rights', and the *International Journal of Law in Context* (2013) issue, 'Infection in Law and Legal Discourse'.

LADY HALE was educated at Cambridge. She went on to teach at the University of Manchester, where she was appointed Professor in 1986. She also practised as a barrister for a while at the Manchester Bar. From 1984 she was a Law Commissioner, leading the Commission's work in family and mental capacity law. She was appointed a High Court judge in the Family Division in 1994, elevated to the Court of Appeal in 1999, and to the House of Lords in 2004, where she became the first ever woman to sit in the UK's highest court. She is now the first woman Justice of the Supreme Court.

JOHN HARRIS is the Lord Alliance Professor of Bioethics, and Research Director of the Institute for Science, Ethics and Innovation at the

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

xii List of contributors

School of Law, University of Manchester. He is the author or editor of nineteen books and over two hundred and fifty papers. He is the founder and a General Editor of a major series of books entitled *Issues in Biomedical Ethics*, and a new series of books, which he co-edits with John Sulston, entitled *Science, Ethics and Innovation*. He has published in most of the leading philosophical journals in his field and in many of the leading science journals. He is the Editor-in-Chief of the *Journal of Medical Ethics*. He frequently appears on radio and television, both in the United Kingdom and overseas, to discuss issues in biomedical ethics and medical jurisprudence.

RICHARD HUXTABLE is a Reader in Medical Ethics and Law, and Deputy Director of the Centre for Ethics in Medicine at the University of Bristol. He primarily researches in the areas of end-of-life decision-making and surgical ethics, and has published widely in medical, legal and bioethical journals, in addition to authoring the books *Euthanasia, Ethics and the Law: From Conflict to Compromise* (2007) and (with Donna Dickenson and Michael Parker) *The Cambridge Medical Ethics Workbook* (Cambridge University Press, 2nd edn, 2010). A long-standing participant in clinical ethics consultation, he is also a Trustee of the National Council for Palliative Care.

NISHAT HYDER is currently studying for a PhD in Bioethics and Medical Jurisprudence at the University of Manchester's Centre for Social Ethics and Policy. Her research concerns the legal and ethical challenges posed by artificial life technologies. Previously, she studied Law at the London School of Economics and Political Science, and went on to complete the Bar Professional Training Course at Brierley Price Prior Law School. She is particularly interested in jurisprudence, political theory, ethics and evolutionary theory, and how these disciplines relate to the emergence of new medical technologies

JOHN KEOWN holds the Rose F. Kennedy Chair in Christian Ethics at the Kennedy Institute of Ethics, Georgetown University. He graduated in Law from Cambridge and received his doctorate from Oxford. He later taught the law and ethics of medicine in the Faculty of Law at Cambridge, where he also held Fellowships at Queens' College and Churchill College. He has published widely and his work has been cited by the US Supreme Court, the English Court of Appeal and the House of Lords Select Committee on Medical Ethics. He has served on the Ethics Committee of the British Medical Association.

JOSÉ MIOLA is a Senior Lecturer in the School of Law at the University of Leicester. He joined the University of Leicester in 1998, whilst

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

List of contributors

xiii

completing his doctorate at the University of Manchester. His primary research interests are in medical law and ethics. He is Assistant Editor for the *Medical Law Review*, a member of the Editorial Board of *Clinical Ethics*, and has published in a wide range of journals. He is the author of *Medical Ethics and Medical Law: A Symbiotic Relationship* (2007).

SUZANNE OST is Professor of Law in the Law School at Lancaster University. Her main research interests are in health care law and bioethics, legal and societal responses to child pornography and child sexual grooming, related aspects of criminal law and theory and law and literature. She is Editor-in-Chief of the *Medical Law Review*. She is co-author, with Margaret Brazier, of *Medicine and Bioethics in the 'Theatre' of the Criminal Process* (Cambridge University Press, 2013), and author of *Child Pornography and Sexual Grooming: Legal and Societal Responses* (Cambridge University Press, 2009). She was the Co-Investigator for the AHRC-funded project, The Impact of the Criminal Process on Health Care Ethics and Practice.

ROBERT C. SMITH is a Scottish surgeon who came to prominence in 2000 when he applied for permission to perform an amputation on a patient whose limbs were apparently healthy. Falkirk Royal Infirmary and Abbey King's Park Hospital in Stirling both refused to allow him to carry out amputations on patients he claimed to be suffering from Body Integrity Identity Disorder (BIID), a controversial psychiatric condition where sufferers experience extreme mental discomfort due to the presence of a limb they see as unwanted. Prior to the Stirling controversy, he had carried out at least two elective amputations on otherwise healthy individuals. He went on to write, with Gregg Furth (the patient whose desire for the operation had caused the furore in the first place), the first and, to date, only book uniquely about BIID, *Amputee Identity Disorder: Information, Questions, Answers and Recommendations about Self-Demand Amputation* (2000).

STEPHEN W. SMITH is a Lecturer in the Birmingham Law School. He completed his PhD at the University of Manchester on the impact of autonomy and paternalism on physician-assisted suicide and euthanasia. He previously completed a Juris Doctorate degree at Washington University School of Law in Saint Louis, Missouri, USA. He specialises in medico-ethical issues at the end of life, and has published widely on this and related issues. He is the author of *End-of-Life Decisions in Medical Care: Principles and Policies for Regulating the Dying Process* (Cambridge University Press, 2012).

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

## Foreword

---

*Mark Hedley*

Justice of the High Court (Family Division)

Every democratic society depends for its integrity on some concept of the Rule of Law. Every democratic society learns (if only by experience) that, for the Rule of Law to be effective, two conditions must be fulfilled: first, that the substantive law must be broadly acceptable to its members; and second, that the law must be capable of enforcement. The second condition requires (at least as a last resort) the availability and implementation of criminal sanctions.

Since it is generally accepted in principle that the state has a regulatory role in the implementation and oversight of scientific (and specifically medical) research and practice, some engagement between medical ethics and the criminal law is inevitable. The real question today is not so much whether the criminal law has a role in medical research and practice or in bioethics, but rather what that role is, or should be.

There are two basic approaches to the enactment and use of the criminal law. On the one hand, legislators debate and decide on the moral criteria to be applied and in so doing define the limits of research, practice or bioethics and then enforce them by criminal penalties. Alternatively, legislators seek to permit maximum freedom within these areas (with or without a civil regulatory framework) and seek to enforce through the criminal law only evasion of that framework or the minimum standards acceptable to that society. This difference of approach may lie at the heart of many a modern controversy in this area. Whilst our society tends to follow the latter approach, it is not wholly consistent in doing so. Indeed there are many raised voices favouring the former approach, especially where debate focuses (as inevitably it must) on specific issues.

The criminal law must be recognised as something of a blunt instrument. Its substance is for Parliament, its implementation for the prosecuting authorities and its application for judges. Yet whilst appellate courts can review the law after conviction and trial judges can instruct juries in accordance with the law, the final decision in any contested case of weight lies with the jury who give no reasons for it and whose decision

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

to acquit is effectively beyond review. Clearly this can make for real uncertainty, which itself can be compounded by the uncertainties inherent in the scientific process then under consideration.

This volume of essays correctly captures the issue in its subtitle *Walking the Tightrope*. It is a particularly difficult tightrope since, on the one hand, our society has inherent sympathy and support for medical research and practice, but, on the other hand, is likely to have firm, if often diverse, views on where the line should be drawn on specific issues. Further difficulties can be introduced in the use of justificatory concepts like ‘public health’ or ‘human dignity’, whose definitions are uncertain (or at least unagreed) and whose very provenance may sometimes be controversial. If (as I think to be so) hard cases make bad law, these are areas in which hard cases abound and therefore bad laws are an ever-present danger.

I am particularly grateful, as a judge who is not infrequently required to engage with these issues, to have been invited to write the foreword to this book, which I would wish to commend to careful study. There is no common agenda in these essays beyond a real attempt to recognise that medical research and bioethics are uneasy but probably inevitable bedfellows with the criminal law. They seek to deepen an understanding of how these bedfellows should relate in our society, making clear that this is an essential (and multidisciplinary) task that is both problematic and controversial. I found particularly helpful discussion about the place and problems of compromise in these questions, since compromise, whilst uncomfortable to the purist, is a concept innately attractive to both legislators and practising lawyers. I venture to suggest that the authors’ responses to these pressing issues will put legislators, lawyers, regulators, professional leaders and all serious practitioners very much in their debt.

Cambridge University Press

978-1-107-02512-7 - Bioethics, Medicine and the Criminal Law Volume I: The Criminal Law and Bioethical Conflict: Walking the Tightrope

Edited by Amel Alghrani, Rebecca Bennett and Suzanne Ost

Frontmatter

[More information](#)

## Acknowledgements

---

This edited volume is one of the major outputs of the AHRC-funded project, The Impact of the Criminal Process on Health Care Ethics and Practice, and we are extremely grateful for the Council's support.

There are a number of people who we owe a debt of gratitude to. We would especially like to thank Margot Brazier for her expert leadership as Principal Investigator on the aforementioned project, for her support and assistance regarding this edited volume, and for being such a source of knowledge, strength and friendship to us all. We would also like to thank Charles Erin for the foundational work he contributed to the volume – together with Amel, it was he who conceived of the original idea and wrote the proposal for this book. Our families and friends deserve particular thanks for allowing us the time needed to work on this project. Amel is thankful first and foremost for her son, Abraham, who came along whilst this collection was in progress and allowed her to appreciate the finer things in life, and to her family and friends for their support. Becki would like to acknowledge the love and support given to her by Isabella, who makes everything worth it, and to thank LB for making her smile even when she thinks she can't. Suzanne is thankful for all Nick's support, and for Lily and Matthew's unwavering ability to remind her that there is much more to (and more important things in) life than her laptop. She would also like to express her gratitude to Sara Fovargue, who has been immensely supportive (both as a friend and colleague) during the duration of this project.

Finally, we are very grateful indeed to each of the contributors to this volume. It seems trite to say that without them this book would not exist. But it is true and we hope and anticipate that readers of their essays will find their contributions as engaging and thought-provoking as we have as editors.

This book is dedicated to the memory of Dr Mary Lobjoit and Professor David Price, who contributed so much to the development of medical ethics and law.

xvi