Teaching and Learning Constructive Critical Evaluation

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[Abstract: The AQF requires Master's level students to have the skill of critical evaluation. The article considers what that means for Bioethics graduate students and argues a case for critical evaluation being constructive for the likely contexts in which Bioethics graduates would be likely to find themselves applying the skills learned. The article reflects on mistakes made in teaching in this respect and explores ways in which the skill of constructive critical evaluation might be taught in the classroom including problem solving and a well-constructed group activity]

Applying the AQF

The graduate courses in Bioethics that I teach are designed for those who are professionally engaged in the medical, nursing or biological sciences, law, social sciences or education who wish to further their understanding of moral decision-making and ethical policy in those disciplines, or take leadership in ensuring that the new technologies serve humanity. Some of those who take the courses are also already members of ethics committees and take a graduate course to better equip them for that task.

It is also to be expected that graduates may be prepared to become members of ethics committees or they may occupy leadership positions within their own institutions or discipline. Some may teach. Some may go on to become academics.

The Australian Qualifications Framework[1] requires that Masters graduates are able to

- provide appropriate evidence of advanced knowledge about a specialist body of theoretical and applied topics;
- demonstrate a high order of skill in analysis, critical evaluation and/or professional application through the planning and execution of project work or a piece of scholarship or research; and
- demonstrate creativity and flexibility in the application of knowledge and skills to new situations, to solve complex problems and to think rigorously and independently.

[1] Australian Qualification Framework accessed 21/8/08 at http://www.aqf.edu.au/pdf/han51_72.pdf

The skills of *analysis* and *critical evaluation* differ from one discipline to another. How they are done in Mathematics differs from how they are done in history, for example. The question that I have been seeking to answer for my own students is basically how can they learn those skills and, more to the point, how can I assist them to learn those skills in the area of Bioethics. Learning the *ability to demonstrate creativity and flexibility in the application of knowledge and skills to new situations* raises similar questions.

Thinking about the skill set has made me reflect critically on my own teaching and on the assessment tasks that the students complete and whether in fact the assessment assesses their ability to apply that skill set constructively in the environments in which they are likely to be engaged. On reflection I discovered a gap between what I was teaching and the skills that I apply in the context of being involved in ethics committees and at the level of assisting to form Government policy[2].

Critical analysis and evaluation as I was taught it at as a Philosophy post-graduate were processes that one learned by which the worth of a philosophical work could be judged by the number of distinctions made and defended. This approach has had its detractors. The philosopher Alasdair MacIntyre argues that contemporary philosophy has condemned itself to engaging in irresolvable or more precisely stagnating disputes by making a virtue out of difference and of splintering positions[3]. He claims:

> Modern academic philosophy turns out by and large to provide means for a more accurate and informed definition of disagreement rather than for progress toward its resolution. Professors of philosophy who concern themselves with questions of justice and of practical rationality turn out to disagree with each other as sharply, as variously and, so it seems, as irremediably upon how such questions are to be answered as anyone else.

In my own experience on ethics committees and shaping policy, the much more important matter is not the fine points of disagreement and difference, but the development of agreement and consensus, for it is upon the latter that policy actually develops. An important skill for Bioethics graduates to learn is how to be able to analyse and evaluate toward a resolution, not to achieve more difference.

An aspect I have noted about good student essays is that they had picked up the need to consider a range of views, and to work with the different concepts within those differences, but their method often seems to be little more than to work to a favoured conclusion by dismissing other views on the basis of identifying some or multiple errors in those positions. Bad student essays did not even get that far and tended to resemble sermons rather than analysis.

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[2] The author is a member of the Australian health Ethics Committee, a Principal Committee of the NHMRC and of several other NHMRC committees (chairing two) and of the Ethics Panel of the Victorian Infertility Treatment Authority.

[3] Alasdair MacIntyre *Whose Justice, Which Rationality* London: Duckworth 1988 p. 3

My thought on the good student essays is that they have learned a skill, if it can be called that, which will not be particularly useful in policy-making. Instead of seeking resolution, they have learned to identify difference and then to adopt a view, like supporting a football team, and to support that view by decrying other views through seeking to identify error. This is not an approach that is likely to be effective on an ethics committee and would seem in fact to work against the idea of an ethics committee and against policy-making understood as a process by which advice can be developed that is persuasive and broadly acceptable. The skill that they acquired was more suited to tyrants and dictators rather than to a rational democracy.

Gatekeepers in Biomedicine

Sixteen years ago, Renee Fox and Judith Swazey, two counsellers who had worked in the field of organ replacement for many years, including with the Jarvik 7 artificial heart experiments and through the period of the development of successful organ transplantation described the role of ethical "gatekeepers" in Biomedicine[4]. They described three levels of gatekeeping.

The *primary gatekeepers* included those involved in initiating and carrying out a procedure: clinicians and medical researchers, and patients and their families.

The *secondary gatekeepers* included those not directly making the decision but able to influence the decision or whose authority or permission may be required such as:

- Senior hospital and university administrators
- Human Research Ethics Committees
- Clinical Practice Committees
- Medical Colleges and professional peers
- Legislators, courts, government and statutory review authorities (e.g. in Australia the National Health and Medical Research Council, Office of the Gene Technology Regulator, Therapeutic Goods Administration, State Reproductive Technology Councils)

Tertiary gatekeepers included those not *directly* involved in making or influencing decisions but who shape opinions, such as: professional journals, expert analysts and commentators in health law, medical ethics, social science and health policy, and the print and electronic media.

As the technology continued to develop, the discipline of Bioethics developed as a response to the need for there to be people who are professionally trained in understanding the complex ethical issues that have been spawned by the technology. Training in Bioethics became an area of interest for those in the health professions and is now a normal part of training in a health profession, and some health professionals and health administrators choose to take study in the area further.

[4] Renee C Fox and Judith P Swazey *Spare Parts: Organ Replacement in American Society OUP 1992, pp 178-189*

Constructivism is a Natural Outcome

One of the most enjoyable aspects of teaching at graduate level is the level of professional resources and life experience of the students. In a class of doctors and other health professionals and others from a wider range of professional experience, there is no shortage of case examples for Bioethics problems from their own experience. The challenge for a teacher is to evoke those experiences because the learning experience can be expected to be far more successful not only for that student, but also for others taking part in the dialogue over that student's experiences in which they are actively engaged[5]. Such discussion is also likely to be aimed at problem solving rather than highlighting difference.

Part of the process of analysis is undoubtedly teaching the student to identify difference and in Bioethics that boils down to teaching them about metaethics and philosophical anthropology, the impact of the latter on the nature of moral theory, and then the different types of normative theory, and then applying those theories in practice to show the different outcomes at an applied level. Thus the analysis of a case discussion at the applied level can go back to differences at each of the other levels[6]. The much more difficult skill that I think is not well taught is how to use that understanding of difference to work towards consensus. The reality of ethical discussion between people who have different beliefs at those higher levels is that they develop neuralgia points at which their basic higher order beliefs or assumptions are challenged. The skill of seeking resolution is to find formulations of words that either avoid or are at least acceptable to the variety of higher order beliefs or assumptions. In that way one can indeed reach a consensus that can be supported from a variety of points of view. Thus there is an active process of analysis that can yield a constructive outcome through the knowledge that that analysis brings. The problem that I referred to in the student essays is that they more or less stopped at identifying difference and error, rather than moving on to seek solutions that were constructive, as they would in classroom discussion.

Part of the process of being constructive is not to set out to dismiss any view, but to recognise goodness wherever it is and to seek that out rather than to seek out difference and to dismiss error. In a classroom situation when confronted by a particular case, students will mostly attempt to find points of agreement rather than wanting to pursue disagreement. In written work however the outcome tends to be very different. They tend to *slash and burn* alternative views. To be fair the assessment process that I experienced as a student and which I had been applying to my students did not evaluate

[5] John Biggs and Catherine Tang *Teaching for Quality Learning at University* 3rd Edition 2007, p.10

[6] "*Metaethics* investigates where our ethical principles come from, and what they mean. Are they merely social inventions? Do they involve more than expressions of our individual emotions? Metaethical answers to these questions focus on the issues of universal truths, the will of God, the role of reason in ethical judgments, and the meaning of ethical terms themselves. *Normative ethics* takes on a more practical task, which is to arrive at moral standards that regulate right and wrong conduct. This may involve articulating the good habits that we should acquire, the duties that we should follow, or the consequences of our behavior on others. Finally, *applied ethics* involves examining specific controversial issues, such as abortion, infanticide, animal rights, environmental concerns, homosexuality, capital punishment, or nuclear war." (*Encyclopedia of Philosophy 2008)*

the ability to use understanding of difference constructively, only destructively in a kind of winner takes all approach to analysis. The teaching of essay writing tended to produce combativeness rather than constructiveness. In other words, it seems that constructivism is the natural approach for face to face discussion and divisive analysis is learned to fulfil the requirements for written assessment. The challenge is to assist students to undertake analysis constructively.

Experimenting with Active Learning

In trying to engage students to participate actively in the classroom, one of the approaches I had adopted was a classroom debate which was done for assessment. To reduce the disadvantage of students who were not good at oral presentation, they were asked to submit there own presentation to the debate at the start of the session and their assessment took the written component into account. The teams were allocated randomly by simply taking every second person seated in the classroom one day to be a team (well almost random - one year there were two husband and wife teams that it seemed important to separate), and the affirmative and negative teams chosen by coin toss. The debates were held on major public issues and were a public performance with faculty members attending in academic dress and the formality of a professional adjudicator (leading barrister usually) and chaired by the Director of the institute. A disproportionate amount of work usually went into the debates, as far as I could see, with much team work on display, and they were colourful occasions. The individual assessments were not made known publicly, just the team results.

Thus for instance, a debate held in a class on a course called “End of Life Ethics” was on the topic “That euthanasia should be legalised”.

For that debate the affirmative side were given a number of sub propositions and asked to choose which they would use, allocating a speaker to each chosen topic, and notifying the negative team immediately of which propositions were to be used. The sub propositions were:

1. If society recognises the autonomy of individuals by granting them the right to pursue their views about the good life and create their own lives then the logical consequence is to allow people to decide their own death.

2. Since one of the main aims of medicine is to relieve suffering, it is a medical duty to relieve the intractable suffering of a patient by assisting her to die.

3. The sacredness of human life is a religious belief. The law should not enforce religious beliefs. When there is a division in society between the right to die with dignity and religious claims about the sanctity of human life, legislation that prohibits assistance to die for a person who is so ill that she can no longer enjoy life and wants to die is undemocratic and unjust.

4. There is a difference between the physical or biological life and the biographical life – that which gives it meaning, for example dreams, aspirations, achievements etc. If that is lost, then there is no person because they have lost their distinctive value. The sanctity of life no longer applies to a human that has lost all the characteristics that make it a person.

5. Human life is sacred. The value of human life should not be degraded by reducing the quality of life for the sake of extending the quantity of life. When a person has no quality of life, then she should be able to choose to die.

6. Withdrawal of life-saving treatment is permissible under the law. The effect of such a decision is the same as administering a fatal treatment. The two acts are morally indistinguishable. In fact, administering a fatal treatment would often be more humane than starving someone to death, letting them die of dehydration or letting them drown in their sputum through not treating pneumonia. The law should be consistent.

7. The arguments against euthanasia are mainly slippery-slope arguments. Euthanasia legislation can be drafted so that the practice is safe.

I have described this assessment item in detail because even though it was popular and successful in terms of displaying and evaluating student skills, I have more recently questioned whether it is actually testing skills that are advantageous given the likely circumstances in which the students will find themselves. It is developing and testing their ability to hold and defend a position in peer discussion, and that is one of the expected learning objectives. Also the process of working together in a team and the coaching that goes on between team members is an intensely active learning experience. However it is a process that is based on magnifying difference rather than on constructive evaluation. In that respect perhaps it teaches at least some to have a better understanding of a view other than there own and that may be constructive. But overall it does not take them to the next step, which is to use their ability to understand differences between moral positions constructively in order to work towards a consensus. The debate showed the skills of demolition, not necessarily the skills of building a rapport between people of different views. The skills that they showed are not necessarily the skills that I would want on display at a committee that I was chairing or in a head of department or in a clinician dealing with complex decisions with a patient or patient's family.

Developing a Learning Outcome for Constructive Critical Evaluation

That observation raises a question about how one ought to evaluate the Bioethics needs of the health sector and thus the desired qualities and skills that may be required of graduates in Bioethics who will serve that sector. I am simply estimating from my own experience that someone who can take critical analysis from exploring and evaluating difference towards constructive solutions to the issues raised will better serve the health sector than someone who stops at the level of simply arguing over differences. There is a need for something more than polemics.

If this was to be expressed as a desirable learning outcome, it would be something like:

- demonstrate the ability to undertake analysis and critical evaluation constructively and creatively to achieve maximum contribution of others in the development of broadly acceptable solutions.

In approaching critical analysis with students, this goal has led me to seek to have them identify not the weaknesses in a moral position that they are studying, but its strengths - to put it simply, to identify goodness and virtue rather than to identify error and vice.

The desirable learning outcome in itself would seem to be motivating first because the outcome is obviously desirable from the point of view of needs of the workplace. Second, because such a skill would be valued by others. It would be motivating also because it would be a personal achievement, and finally because trying to achieve it ought to be fun. Thus it would seem to fulfil the four levels of motivation that Biggs and Tang describe: extrinsic, social, achievement and intrinsic[7].

Excellent teaching of ethics on this account would therefore assist the graduate to be a useful contributor to policy formation in a way that respects the differences of participants and assists each to express ideal solutions to problems from their own culture and professional experience.

Challenges to Constructive Critical Evaluation

That there can be inclusive solutions in Bioethics is challengeable. In discussion about Bioethics and issues in Bioethics, there are some common moral discussion stoppers. Often a discussion is stymied by claims such as:

a) People disagree on solutions to moral issues.
b) Who am I to judge others?
c) Morality is a private matter.
d) Morality is simply a matter for individual cultures to decide.

Claims such as these foster the view that no policy on moral questions is achievable because no consensus is achievable.

People usually initially disagree on solutions to moral issues, but the point of moral discussion is to explore the differences, rather than to see difference as either necessary or unresolvable. There is something very adolescent about seeing difference of view as an end of discussion rather than the beginning of a discussion. The fact is that experts in many areas disagree on key issues in their fields, but that is why they publish scientific findings and hold scientific conferences. The differences do not stop the progress of science and nor should they stop the progress of moral discussion.

Despite differences of perspectives, and different belief structure and different starting points, we are all dealing with the same human reality. The international human rights

[7] John Biggs and Catherine Tang *Teaching for Quality Learning at University* 3rd Edition 2007 p. 34

movement attests to the fact that there are many moral issues on which people agree, and there are values that transcend or are common across cultures and religions. I found participation in the development of UNESCO's *Universal Declaration on the Human Genome and Human Rights*[8] an engaging experience precisely because it showed that on such a difficult topic diverse peoples and cultures could transcend their differences.

It is also the case that disagreements may not be about substantial moral beliefs, but about non-moral facts of a matter or simply about disagreement to participate in the common project that we call a community.

The question, "Who am I to judge others?" is important but misdirected. Tolerance of others and their moral decisions is important. In health care a patient may refuse a treatment and no wish to discuss the matter further. That privacy is their right. However most often patients seek to discuss their decisions looking for assistance both with obtaining the necessary information and seeking the health professional's opinion not just on the medical facts of the matter but also with what are often complex moral choices. Sometimes there of disagreement over values and sometimes the disagreement is such that as a matter of conscience the health professional respectfully withdraws from care because what is being asked conflicts with his or her own convictions. But the health professional or the patient deciding whether something is the right course of action is not the same thing as judging a person. There is a distinction between judging as condemning and judging as evaluating. Disagreement over a decision about the right course of action is distinct from a judgement about either of the persons involved.

The claim that morality is a private matter is often intended to stop discussion. Privacy is an important right, and people are entitled to keep their own counsel about their relationships and intimacies. There is no obligation to participate in moral discussion and privacy in health care is particularly important. However at the level of policy formation for an institution or for a professional group sharing common purposes and thus a common morality is what establishes and to an extent defines an institution or a professional group as a community. Some aspects of morality are thus essentially public. Even a social or sporting club needs commonly accepted rules of conduct. In relating to one another we need conventions about behaviour and social expectations. Further, being able to discuss and to reason about morality is important and allows us to recognize the harm that our choices may cause. Moral choices are often not isolated personal preferences, but are to do with interpersonal relationships and living in community.

The relativist claim that morality is simply a matter for individual cultures to decide is a confusion between describing a morality and adopting a morality. There are moral principles that transcend culture because they are based on shared human reality. We need to be able to discern whether a cultural practice should be changed, such as the cultural practice of female genital mutilation. Policy reform would be impossible if we were to take the view that culture is beyond criticism.

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[8] *Universal Declaration on the Human Genome and Human Rights* (1997) http://portal.unesco.org/shs/en/ev.php-URL_ID=1881&URL_DO=DO_TOPIC&URL_SECTION=201.html

The education of the so-called Y-generation by baby boomers seems to have given them a strong sense of positivism, that is, the belief that meaningful statements are either empirically verifiable (e.g., HIV causes AIDS) or analytic truths (e.g., one cannot make a round square). The new generation appears to be positivist in that it tends to assert that value judgements are neither empirically verifiable nor analytic truths. They are merely expressions of feeling or emotions. In that they tend to make a distinction between prescriptive and descriptive meaning. Values, they would claim, must not be confused with facts.

The conviction that there are no moral truths does not exclude the development of some moral convictions. If you begin with the belief that all moral beliefs are entirely subjective, just feelings, then you will crave some kind of rule for resolving all those differences of opinion. One such rule is a basic notion of consistency. This generation believes strongly in the injustice of discrimination. They want moral and policy decisions to apply equally to like situations. This is the principle of universalisability: if I hold that something is wrong in one situation, I must hold that it is also wrong in all relevantly similar situations.

This leads to what might be called universalised prescriptivism: the right moral judgement or policy is that which treats everyone's preferences as equally important and then seeks simply to do the best to satisfy as many preferences as possible giving weight to the relative strength of preferences. This is preference utilitarianism[9] and varies only slightly from classical utilitarianism which taught that one should maximize happiness by maximizing pleasure and minimizing pain. A major problem with applying a principle of universalizability in this way is that it ignores what is often called the separateness of persons[10] or the difference principle[11]. Utilitarianism aggregates happiness or preferences without regard to the relative inequalities that may occur in maximixing total or average preference satisfaction or total or average happiness. Universilizabilty could also be used to justify doing the best by the worst off which is an outcome of what Rawls refers to as the separateness persons.[12]

In responding constructively to a person who seeks to direct a committee along utilitarian lines, one can make the usual attacks on the position, such as that utilitarianism is an aggregative theory and fails to acknowledge the "separateness of persons"[13]. It focuses on overall consequences and not on the individual. A person's moral identity is constituted by his or her commitments and moral integrity in relationship with others for which utilitarianism has no explanation. In utilitarianism my identity is subsumed into a kind of single personhood. There is also no accounting for how my preferences are formed. The

[9] For formal account of this basis for preference utilitarianism see R.M. Hare, *Moral Thinking: Its Levels, Method and Point Method* (Oxford: Oxford University Press, 1981).
[10] John Rawls in *A Theory of Justice*, rev. ed. (Cambridge, MA: Belknap Press of Harvard University Press, 1999
[11] John Rawls "The Independence of Moral Theory", *Proceedings and Addresses of the American Philosophical Association*, 47: 5-22, in *Collected Papers*, 1999, 286-302
[12] Ibid.
[13] Ibid.

preferences of Mother Theresa and Saddam Hussein rank the same in the calculation. This approach, by focussing on consequences, ignores the virtues of agents and the fact that choices to act shape the identity of who I am. If I steal I make myself a thief, if I kill I make myself a murderer, in giving to another I make myself a lover.

However in the spirit of the constructive treatment of the utilitarian committee member, it might be better to avoid the metaethical claims about universalizability and talk about the value of non-discrimination and avoiding arbitrariness. Afterall, if one had to choose between an allegedly 'logical' requirement on any ethical view, and this point about avoiding discrimination and arbitrary treatment of others, it may be the latter that had stronger claims on us. From that agreed basis one could then hope to move the other to seeing the importance of first trying to address the needs of the worst off rather than aggregating benefits.[14]

The above discussion attempts to show the difference between critical evaluation that is dismissive and constructive critical evaluation which uses knowledge of the positive attributes and the deficiencies so that acknowledgement of the positive provides a platform for moving to a better developed position.

Similarly for someone on committee who makes categorical statements about the rightness or wrongness of a particular ethical choice (what is sometimes called deontology or even fundamentalist) the solution is to seek out what it is that he or she wants to protect by making the claim, and to encourage that to be asserted as something good or valued. That then makes sense to others without losing altogether what he or she expressed, and it provides some substance for debate other than dismissal by either side.

There are some basic notions that we need to make better sense of ethics. First, ethics is prescriptive—that is what defines it. It is about deciding what is right and what is wrong in a given situation. Second, moral norms are universalisable—that is a logical requirement of making the same judgement in relevantly similar circumstances. The present generation is right in recognising that ethics should be consistent and not discriminatory or arbitrary. Third, ethics is about freely chosen actions. We are responsible for our own choices (taking into account positive responsibilities to act and to be informed and acknowledging the complications of involuntariness). Fourth, ethics is agent-centred—about the agent as well as about the outcome of the agent's actions. When we choose to act we create the person we are. When we act wrongly, we do so by acting contrary to the goodness of the human person. In that sense, a wrong act is essentially a contradictory act in that it is an act against or neglecting what is good. Fifth, ethics is descriptive—it describes the agent's commitments (whether sentimental, rational, autonomous, heteronomous [determined by others], or in a theological context heteronomously theonomous [determined by God], or participatively theonomous[15]

[14] This paragraph was suggested by a reviewer J O Quilter 12/12/09 and I am grateful for that and several other comments offered by him and by the second reviewer that improved the paper, especially its readability.

[15] Pope John Paul II *Veritatis Splendor*

[determined by our participation in God's love]). Otherwise from a philosophical perspective ethics has no content.

The paradox for ethical theory lies in being both descriptive and universalisable. The desire to resolve the paradox is what drives moral conversation. In ethical discussion we tend to seek a solution that is universalisable, prescriptive, descriptive, agent-centred, and free.

Problem-based Learning and Constructive Critical Evaluation

In my own teaching experience, constructivism was the natural outcome in a problem solving environment. What seemed to be needed to achieve the learning outcome of *constructive critical evaluation* was to learn to undertake critical evaluation within the context of being constructive. The good students learned to be critical and to evaluate, but they needed to learn to take those skills a step further towards using them as a basis for working with others towards a broadly acceptable outcome.

One of the richest experiences I have had is to have sat on a national committee that was required to undertake public consultation at each stage of the process of developing ethical guidelines. The NHMRC is required by its statute to undertake public consultation in the development of ethical guidelines[16]. The usual process is to develop and publish an Issues Paper that simply identifies the scope of the issue to be considered and to send that out for what is called a targeted consultation, usually targeted to those who have a professional interest in the area. The submissions are then used to develop a draft set of guidelines and the latter are sent out for public consultation. A second draft is then prepared and sent out for a final round of public consultation.

The process of developing guidelines is thus cautious, but more importantly, the double process of public consultation does encourage the committee to try to respond to the expectations expressed in the submissions and in that way to develop a document that is broadly acceptable. It is an experience that is enormously educative and thus privileged. From many disparate views the committee is expected to develop a single outcome and it is answerable for how it achieves that.

The task that I perceive as a teacher of Bioethics is to try to create a learning experience that in some way matches that experience. The submissions to public bodies such as the NHMRC are usually available. They provide a ready source of material. One such learning approach is to select some submissions from the many that are sent to a process such as that and to set a group of student the task of working from the submission to an outcome on a particular issue.

For instance, one of the major issues in reproductive technology is the issue of pre-implantation genetic diagnosis. In 2004, the National Health and Medical Research Council promulgated "Ethical guidelines on the use of assisted reproductive technology

[16] National Health and Medical Research Council Act 1992 section 12 accessed 22/5/08 at http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/23029FDD3FCC3FD7CA25719C008331D3/$file/NatHeaMedResCou1992WD02.pdf

in clinical practice and research"[17]. The guidelines were reissued in 2007 with changes to accommodate the cloning legislation. Compliance by Australian IVF teams with the guidelines is secured by the terms of the funding agreements with the Commonwealth and by the administration of standards by the Reproductive Technology Accreditation Committee.

The guidelines require that pre-implantation genetic diagnosis of embryos (PGD) must not be used for:

- Prevention of conditions that do not seriously harm the person to be born;
- Selection of the sex of an embryo except to reduce the risk of transmission of a serious genetic condition; or
- Selection in favour of a genetic defect or disability in the person to be born.

This restriction may challenge those who uphold the notions of *reproductive rights* and *reproductive freedom*, especially those who are of the view that it is their right to choose the sex or other genetic features of their child. There are also those who favour using PGD to choose a "saviour sibling" so that that child's tissue may be used to treat an older existing child. The NHMRC received submissions from those who held those views and submissions and from others who took a "rights of the child" view.

The issue of what counts as serious harm is also raised. There are those who argue that in a family who already have a child who is autistic, IVF and PGD for sex selection is permissible in order to have a girl rather than a boy because studies have shown that a boy would be four times more likely to be autistic.

IVF practitioners also raise questions about whether they can withhold IVF from a person who is, for instance, a convicted paedophile or from a patient who already has other children who have been taken into care.

The overall rationale adopted by the NHMRC for restricting choice in the use of reproductive technology is that "Clinical decisions must respect, primarily, the interests and welfare of the persons who may be born, as well as the long-term health and psychosocial welfare of all participants, including gamete donors."(NHMRC 2007, p.9)

The jurisprudential dialogue about reproductive rights occurs against the background of the legal tradition that the interests of the child are paramount. This principle found expression in the UN *Convention on the Rights of the Child*[18], which recognizes, amongst other matters, the rights of the child to an identity, nationality, family relations, and, to personal relations and direct contact with both parents. In this respect too, family law has been based on the notion that the interests of the child are paramount. Family law restricts parental choices and resolves conflicts in favour of the welfare of children.

The group of students may be provided with a set of submissions representing the range of views on an issue and asked to develop ethical guidelines. Each individual is then

[17] Available from http://www.nhmrc.gov.au/publications/synopses/e78syn.htm
[18] Available from: http://www2.ohchr.org/english/law/crc.htm

asked to write a rationale for each of the guidelines adopted by the group and how the submissions were taken into account and they are assessed on the rationale.

The task of developing the guidelines takes place in their own time and during that period, they are attending lectures. The group task makes the students much more active in discussion as they see the critical analysis of different approaches to ethics provided in the lectures as a resource for their assessment task.

The approach uses both group work and problem based learning and the assessment task is both a learning device and an adequate assessment tool. The assessment task engages them both in critical evaluation and using critical evaluation constructively.