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BIOETHICS
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*Second
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|| *Bioethics and the Law* ||

Second Edition

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**In honor of my mother, in memory of my father,
and in joyful gratitude for Aaron and our
daughters, Ahuva, Shoshana, and Nava**

JLD

**To my parents, in appreciation of their
steadfast support, and to Paul, Max,
Summer, and Charlie, for their exuberance**

LS

|| *Preface* ||

Many topics of concern to bioethicists have occasioned passionate debate and have resulted in widely divergent responses from both professional bioethicists and from the wider society. Bioethics brings scholars and practitioners into the center of a number of pervasive, often emotional, social and moral debates, debates about such issues as abortion, stem-cell research, and assisted suicide. Many such debates involve questions about the meaning of personhood and the ways in which persons should be respected or cared for, as they seek health for themselves and others and as they make decisions about reproduction and death. Such debates implicate people's deepest concerns about how to live and about how to understand and relate to other people.

In light of this, it should not be surprising that the study and practice of bioethics often require an interdisciplinary approach. For lawyers working in the field, bioethical questions are often located in a space between law and some other profession or discipline (e.g., medicine, nursing, public health, philosophy, economics, psychology). This book provides students with articles and references that will assist them in exploring the interdisciplinary context of bioethical debate. At the same time, the book, constructed primarily to teach bioethics to law students, frames each issue in light of judicial, legislative, and regulatory rules that may, as a practical matter, channel or limit options available to those attempting to resolve bioethical conundrums.

We have not shied away from the excitement, at times even volatility, that divergent viewpoints bring to the field. At the same time, we have aimed to provide a "balanced" presentation of bioethics. We have worked to achieve that balance by including a variety of controversial perspectives. We have not, in short, included many "neutral" readings in this book. Rather we have included provocative readings, and have aimed to achieve balance by challenging each reading with another, contrasting perspective, or with a series of questions placed after the reading. We hope this approach will stimulate classroom discussion and help students shape their own responses to the dilemmas that bioethicists ponder and to the disputes that lawyers involved with bioethical questions may be asked to help resolve.

For the most part, we have organized the materials around the development of the human "lifespan." After Part I, which presents concepts basic to

bioethical inquiry, much of the book follows issues as they develop from before birth, through childhood, adulthood, and old age, through dying and death. Bioethical questions specific to both children and older people are covered in separate chapters, reflecting the emphasis in contemporary Western society on the relevance of age in defining personhood. Responses to bioethical questions about a 30-year-old may not be deemed appropriate in responding to similar questions about an 8-year-old or about a 98-year-old. The chapters that reflect stages in the human lifespan include those in Part II (“Assisting and Monitoring Reproduction,” “Children,” and “Avoiding Reproduction”) and those in Part IV (“Aging,” “Dying,” and “Death”).

Part III is devoted to a set of topics not specific to one part of the lifespan or another. Some of the topics in this Part (e.g., human subject research) are generally covered in bioethics courses. Others, however, are not. We have, for instance, included chapters focused on financial and ideological conflicts of interest, access to health care, and public health because each of these topics encompasses basic questions about justice and health care.

In sum, the lifespan approach provides a useful organizing framework, and the inclusion of materials about conflicts of interest, access to health care, and public health will broaden students’ understanding of what constitutes a “bioethical” question. Finally, we believe that the result of the decision to include provocative viewpoints is a collection of fascinating, often colorful readings that together permit an in-depth, piercing, and critical look at the assumptions, traditions, and alternative approaches that constitute bioethical inquiry. Reading this book and studying the topics it presents are likely to be challenging. But the process will, we hope, never be boring.

We are grateful for the help of many in the creation and production of this book. We thank Richard Mixter, Eric Holt, and Troy Froebe of Aspen Publishers for their consistent help and encouragement in shaping this book, along with the several anonymous reviewers who offered many helpful and insightful comments on previous drafts and on the first edition. Fran Andersen and Taylor Kearns provided valuable assistance in the production of this second edition. Particularly significant research assistance was provided by Kathy Dieterich, Maggie Emma, Roshni Persaud, Amie Rice, and Rick Savage. We are grateful to Cindie Leigh and Toni Aiello, Reference Librarians, Hofstra University School of Law, for their generous and intelligent assistance, and the faculty and staff of the Florida State University College of Law Research Center. We are also appreciative of the secretarial assistance of Teri Caruso (Hofstra Law School), Nancy Grasser (Hofstra Law School), Megan Hensley (Florida State University College of Law), and Craig Hartman (Florida State University College of Law). We both also thank our respective schools for their continuing support of our scholarly and teaching endeavors.

Janet L. Dolgin
Lois L. Shepherd

January 2009

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