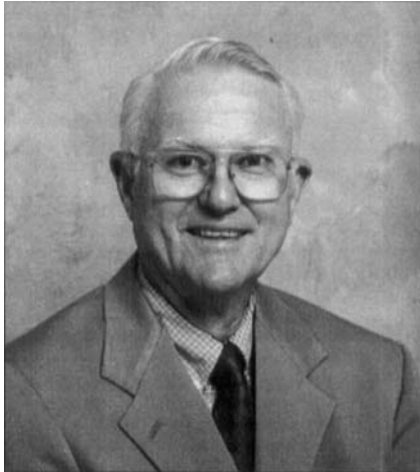


IN MEMORIAM

JOHN C. FLETCHER

(1931-2004)



*John C. Fletcher died on
May 27, 2004, at the age of 72.*

I FIRST MET JOHN FLETCHER IN 1982 at a symposium where he spoke on "Moral Problems and Ethical Issues in Prospective Human Gene Therapy."¹ None of those present could have known at the time how prescient that paper would be, bounding through topics that fill the headlines today: gene therapy, in vitro fertilization, research on the embryo, and the role of Institutional Review Boards in evaluating related research. A full twenty years before the Human Genome was completely sequenced, Fletcher was sketching the agenda for the ethical and legal debates that would fill the rest of his life.²

John was then in the middle of his tenure as the first bioethicist at the National Institutes of Health (NIH). By his recollection, arrival at NIH was anything but auspicious. Fletcher often told the story of how he encountered a senior researcher in the hallway during his early years at the NIH Clinical Center. The scientist glanced into the office with something of a smirk, saying, "where's your prayer rug?" Though John had earned his PhD in Christian Ethics at the Union Theological Seminar, those who worked with him at the NIH would soon learn that biblical injunctions notwithstanding, the Fletcher personality was anything but meek.

It is most appropriate to remember the career of John Fletcher in this journal. Though John was most noteworthy for his contribution to the field of biomedical ethics, he spent untold hours in the anterooms of the law arguing how it should be applied to the very real cases in which he found himself entangled. John served on several Institutional Review Boards and his intimate knowledge of the background and details of federal regulations designed to protect the human subjects of scientific research made him more than a match for the lawyers (including this one) with whom he sat on those committees. He published in law reviews and critiqued the newest legal treatises.³ Though he always gave the law its due as a reflection of how "communities choose to order moral and ethical priorities,"⁴ he was not shy in pointing out that bioethics could not be reduced to legal opinions and code citations.⁵

John was often compared to (and for those who did not know him, confused with) Joseph Fletcher, another ethicist who taught at Virginia and is sometimes credited with creating bioethics with his book *Morals and Medicine* (1954). Joe Fletcher's most successful book, *Situation Ethics* (1966), staked out a middle ground between the rigidity and formalism of legal systems and the anarchic nihilism the results from an absence of law. John Fletcher also

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found a middle ground. He respected the law as a regulatory force in civil society, but was impatient with it, and worked tirelessly to change it when he could.

John had a hand in crafting legislation giving patients more power to make medical decisions, and worked on laws protecting physician prerogatives when care was deemed futile. Several times he was an expert witness in high profile trials, testifying in cases as a "moral advocate." He believed that "bioethicists need to contribute to the evolution of law."⁶

When John launched a project training opinion leaders on the Ethical, Legal and Social Implications of the Human Genome Project, he chose appellate judges as the first students. By the time the University of the South decided to award him an honorary doctorate in 1993, John had renounced his ordination as an Episcopal Priest. Accepting an honor as a theologian would have been out of place, he said; he chose instead to accept a degree in Civil Laws from his undergraduate alma mater.

But one incident in John's career stands as a reminder that he always saw beyond the law and searched for other touchstones to guide human behavior. In 1994, a symposium was held at the University of Virginia to review the legacy of the infamous Tuskegee syphilis study. After scholars analyzed the history of the study, faculty members from Virginia provided commentary from the fields of law and anthropology. John spoke as the founding director of the Center for Biomedical Ethics. He described his own experience of the institutional culture in the Public Health Service that permitted the Tuskegee study to go on for forty years. He described the "pride and self-righteousness" of some Public Health Service officers he knew who had participated in the study. He drew ethical parallels between Tuskegee and the crimes of the Nazi doctors. Rejecting the use of an ethical "retrospectroscope" Fletcher asked how we might judge the Tuskegee doctors using the equivalent of a "moral Watergate" question: What (ethically) did they know and when did they know it? His conclusion: the architects of the Tuskegee study stood condemned using ethical principles well established at the time of the study's inception. Then, in an emotional moment, Fletcher set aside his prepared remarks and declared the legal settlement that followed the Tuskegee revelations to be morally inadequate; more was required, he said. "This institution [the Public Health Service] should have come to its knees and apologized. It is not too late to say we did something wrong."⁷

For most people this rhetorical gesture would have been the last word. But Fletcher was nothing if not persistent. At the dinner following the conference John paced the room, asking who among us would be willing to petition the government for an apology. He then organized the Tuskegee Legacy Committee, and worked through colleagues and contacts in government to bring the apolo-

gy petition to the President's desk.⁸ Finally, in the summer of 1997, the effort paid off when President Clinton invited Tuskegee survivors and the Legacy Committee to Washington to witness his personal apology for the Government's role in the notorious study. Ironically, John Fletcher was not among those present. He had declined the Presidential invitation as a protest to underline his conviction that the event would only carry the proper symbolic message to the African American community if it occurred in Tuskegee, as the study had.⁹

As this event showed, John Fletcher had more than enough conviction and confidence for one man. Over the years, many of his students and protégés would attest to how these strengths were shared to their benefit and marshaled on their behalf. But when he had made a decision, his personal sense of certainty could infuriate his adversaries. Not a few times, it exasperated his friends and colleagues as well. Yet he also had the ability to change his mind and reverse course, when he judged his earlier conclusions to have been reached imprudently. His energy was legendary and as one colleague noted, John was not merely a busy man, he was a force of nature—passionate as an advocate, and formidable as an opponent. His death leaves a gap in his chosen field of bioethics; his absence will be felt by lawyers and the law as well.

References

1. J.C. Fletcher, "Moral Problems and Ethical Issues in Prospective Gene Therapy," *Virginia Law Review* 69 (1983): 515-546.
2. Fletcher's final book, which he completed after the death of his long time colleague Dorothy Wertz, continued this line of inquiry on a global scale, see D. Wertz and J.C. Fletcher, *Genetics and Ethics in Global Perspective* (New York: Kluwer, 2004).
3. See e.g., J. C. Fletcher and D. Wertz, "Ethics, Law and Medical Genetics: After the Human Genome is Mapped," *Emory Law Journal* 39 (1990): 747-810; J. C. Fletcher, "The Bioethics Movement and Hospital Ethics Committees," *Maryland Law Review* 50 (1991): 859-891; J. C. Fletcher, Book Review Essay: "Conflicts of Interest in Clinical Practice and Research," R. G. Spece, Jr., D. S. Shimm, and A. E. Buchanan, eds., 18 *Journal of Legal Medicine* 387 (1997).
4. J.C. Fletcher, "Moral Problems and Ethical Issues in Prospective Gene Therapy," *Virginia Law Review* 69 (1983): 515-546, at 515, note 5.
5. J. C. Fletcher, Book Review, "Standard of Care: The Law of American Bioethics, by George Annas," *Journal of Contemporary Health Law and Policy* 10 (1994): 589-603.
6. J.C. Fletcher, "Bioethics in a Legal Forum: Confessions of an Expert Witness," *Journal of Medicine and Philosophy* 22 (1997): 297-324, at 316.
7. *Doing bad in the name of good? The Tuskegee Syphilis Study and its legacy* [videorecording], Claude Moore Health Sciences Library, University of Virginia (1994).
8. "The Troubling Legacy of the Tuskegee Syphilis Study" <<http://www.med.virginia.edu/hs-library/historical/apology/index.html>> (last visited June 24, 2004).
9. See J. C. Fletcher, "A Case Study in Historical Relativism" in *Tuskegee's Truths*, S. Reverby, ed., (Chapel Hill: University of North Carolina Press, 2000) 276-298.