

# Emerging Paradigms in Bioethics: Introduction<sup>†</sup>

ROGER B. DWORKIN\*

Academic year 1992-93 was a year of celebration at Indiana University. The year was both the one hundred fiftieth anniversary of the Indiana University School of Law in Bloomington and the twentieth anniversary of the University's Poynter Center for the Study of Ethics and American Institutions.

While intellectual anniversaries are harder to verify than institutional ones, one could argue that 1992-93 was also the twenty-fifth anniversary of bioethics. Surely, it was the twenty-fifth anniversary of a seminal symposium in the *U.C.L.A. Law Review*,<sup>1</sup> which introduced many of us to the field.

This happy coincidence of birthdays led naturally to a conference and symposium about bioethics sponsored jointly by the law school and the Poynter Center. The two institutions have a long and happy history of collaboration in many areas, and the opportunity to celebrate major anniversaries together was too attractive to resist. Because both institutions devote substantial attention to bioethics, that subject seemed a natural for this joint venture.

Not surprisingly, the twenty-five year-old field of bioethics is in ferment. The problems of bioethics—issues about abortion, assisted reproduction, allowing patients to die, the human implications of genetic advances, control of research, and others—guarantee that the field will always involve controversy. Today, however, another kind of ferment is also evident, as the field itself questions its assumptions and methods. Thus, a logical set of inquiries for the conference and symposium involved the future direction of bioethics scholarship itself: How should bioethics be done? What are the paradigms that have guided us to date, and how satisfactory are they for ongoing analysis?

To explore those questions we brought together a remarkable group of scholars from a variety of disciplines—from outside Bloomington, two philosophers and two law professors, and from our own university, two law professors, a philosopher, two religious medical ethicists, a biologist, a psychologist, and a sociologist. The results, which are presented in the pages that follow, were truly outstanding.

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\* Professor of Law and John S. Hastings Faculty Fellow, Indiana University School of Law—Bloomington; Nelson Poynter Scholar and Director of Medical Studies, The Poynter Center for the Study of Ethics and American Institutions, Indiana University.

1. Symposium, *Reflections on the New Biology*, 15 *UCLA L. REV.* 267 (1968).

## PRINCIPLES AND CASES

If any work in bioethics may be said to be truly paradigmatic, it is Tom L. Beauchamp's and James Childress' seminal *Principles of Biomedical Ethics*.<sup>2</sup> The first paper in this symposium is by Tom L. Beauchamp of Georgetown University, one of the authors of that classic work.

In his *Principles and Other Emerging Paradigms in Bioethics*, Professor Beauchamp defends the role of principle-based decision-making in bioethics. He asserts that principles are stronger than rules of thumb, but weaker than absolute requirements. They are firm obligations that can be set aside only when they conflict with and do not override another obligation. Beauchamp briefly describes the four principles that he and Childress see as the bases of bioethical decision-making: autonomy, nonmaleficence, beneficence, and justice, principles which Beauchamp argues are drawn from "the common morality" based on social conventions and historical traditions.

Professor Beauchamp specifically recognizes that principles must be filled out and refined if they are to solve real problems. Judgment and decision-making are essential, and they should be accomplished by balancing principles against other moral considerations in a manner similar to John Rawls' "reflective equilibrium." No canonical content exists for bioethics.

In the second half of his paper, Professor Beauchamp discusses three approaches that are often seen as alternatives to a bioethics based on principles—casuistry, virtue theory, and "Dartmouth Descriptivism." He finds much to praise in each approach but, ultimately, he finds each lacking as a basis for biomedical ethics. Nonetheless, he concludes that the alternative theories are not alternatives after all but, instead, can coexist with the principled approach.

Casuistry, or case-by-case decision-making, is perhaps the most serious challenger to principlism. Ultimately, casuistry fails as a system, Professor Beauchamp argues, because it needs some values, that is, principles, to permit it to resolve cases. Virtue theory, which emphasizes character rather than actions, cannot tell us what course of conduct to adopt in a difficult situation, although a truly ethical person will engage in right action because he wants to, given his virtuous character. "Dartmouth Descriptivism" emphasizes the creation of specific rules of right conduct rather than more general principles. Professor Beauchamp admits that principles must be made specific and turned into rules to actually govern conduct, but he rejects the possibility of creating a universal canon of rules of conduct or a "single unified ethical theory." Professor Beauchamp notes in conclusion that assigning priority to one bioethical theory is a "suspicious project" and states that bioethics based on principles is consistent with many types of ethical theory.

David H. Smith, Professor of Religious Studies and Director of the Poynter Center at Indiana University, and Karen Hanson, Professor of Philosophy at the University, commented on Professor Beauchamp's paper. While generally

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2. TOM L. BEAUCHAMP & JAMES CHILDRESS, *PRINCIPLES OF BIOMEDICAL ETHICS* (3d ed. 1989).

quite sympathetic to Professor Beauchamp's approach, Professor Smith raises three important criticisms. First, he questions Professor Beauchamp's rejection of an overriding "super principle." Adoption of a super principle (such as Utilitarianism or Kantianism) is not inconsistent with flexibility, and it would offer Beauchamp some defense against critics who see his approach, grounded in the common morality, as necessarily conservative or a captive of trends, intuition, or cultural blindness.

Second, Professor Smith asks why the four principles Professor Beauchamp adopts are the right four principles. He notes the need for attention to the method of reasoning used in identifying the dominant principles.

Finally, Professor Smith notes that the heavy emphasis on principles makes it hard to pay attention to the role of perspective or vision in the moral life and in the formation of character. Principles tend to push questions of accurate description to the background.

Professor Hanson emphasizes even more heavily the importance of perspective and accurate description. She suggests that Professor Beauchamp underestimates the distinctive claims of the non principle-based paradigms, especially casuistry. She says that Professor Beauchamp overstates the distinction between fact and value, between is and ought. Casuists recognize that thick concepts like "courage" or "lie" mark the intersection of fact and value and that filling in facts and descriptions leads to conclusions. The same is true of the distinction between means and ends. Both means and ends and facts and values exist along a continuum. Constantly reassessing our views of ends by observing them in real life situations requires us to reappraise the means used to achieve those ends and the consequences of pursuing them. That appraisal, which blends fact and value, is, Professor Hanson suggests, "both action-guiding and the heart of our justificatory enterprise." She notes that Professor Beauchamp offers no competing methodology for reaching ethical conclusions based on principles.

Professor Hanson also notes a problem with Professor Beauchamp's treatment of virtue theory. Beauchamp seems to imply that we cannot evaluate character without principles for evaluation. Yet this seems overstated because it is not true either that good motives lead always to good actions (even the actions that Beauchamp's principles would require) or that good actions always reflect good motives or good character.

Most importantly, however, principles rooted in the common morality can often lead to actions that seem clearly inappropriate when subjected to judgment. Professor Smith's gentle reference to claims that Professor Beauchamp's approach may be criticized for conservatism or cultural blindness, is given poignancy and force by Professor Hanson, who reminds us that norms based on social conventions and historical traditions have given us the Tuskegee syphilis studies and a research system that has virtually ignored the health needs of women. The point is that we need good judgments about questions of bioethics. Whether these judgments must be principled, Professor Hanson suggests, remains an open question.

As Professor Beauchamp's paper and the comments to it make plain, casuistry represents perhaps the major competitor to a bioethics based on principle. Professor John Arras has long been one of the leading exponents of casuistry. His paper, *Emerging Paradigms in Bioethics*, deftly explores the limitations of principlism and traces the emergence of casuistical and narrative-based alternatives.

Cases have always been an important part of bioethical analysis. In the early days of principlism, however, many writers saw the relation between principles and cases as one directional. Principles were applied down to the facts of cases to reach "right" results. The cases were defined by professionals (doctors, nurses, etc.), and were usually "thin," that is, lacking in rich description and detail. Professor Arras argues that this approach to solving biomedical problems cannot work. It is both insufficiently theoretical and too mechanistic. What is needed instead is a dialectical or reciprocal relationship between principles and cases that allows one to reach reflective equilibrium.

Professor Arras doubts that principlism can lead to determinate answers to real problems. First, principles must be interpreted; not only is their meaning not self-evident, but culture necessarily influences the interpretation of principles. Principles mean different things in different cultures. Second, principles conflict, and their conflict requires interpretation. Third, in order to apply principles to cases, types of cases must be interpreted. "Cases and issues must be described, individuated, and labelled well before any principles can be imposed on them." Finally, the particular case one is exploring must be interpreted. For example, in order to deal with a patient whose words request that treatment be withdrawn, we must interpret the words in context to understand whether they are really a request for action or an inquiry about the concern care givers have for the patient. Interpretation at each of these four levels involves conflict. Professor Arras argues that to talk of applying principles masks the need to do the hard work that ethical analysis truly requires. Doing that hard work requires that we abandon the idea that moral justification represents a correspondence between individual judgments and theoretically validated moral principles. Instead we should adopt a conception based on the coherence of case-based judgments, mid-level principles, and theoretical and cultural commitments. We should ask "how a particular action or policy comports with considered judgments, principles, and values already embedded in the web of our collective moral life." This more "particularist" approach is best represented by casuistry.

Professor Arras then describes casuists as persons who contend that whatever right a principle may have in relation to competing principles must be determined not in the abstract, but in response to the particularities of individual cases. Casuistry is like the common law in that it reasons from the bottom (facts) up, not from the top (principles) down. For the casuist moral certainty rests in the response to cases. While "hard-core" casuists reject principles altogether, most casuists see their task as fitting abstract principles to the facts of particular cases; thus, casuistry and principlism need not be as antithetical as is often claimed.

Because of the importance of facts, the most useful cases are narratives, fully developed stories that offer a richness of detail. Using cases, especially well-developed narratives, as the basic tool of moral analysis not only provides the considered judgments from which principles evolve, but also provides the judgments that can test the principles. Cases are a way to learn how to perceive, comprehend, and judge ethically. Their use develops skills in moral diagnosis, discernment of particularities, analogical reasoning, judicious weighing and balancing, and practical strategies for coping with risk and uncertainty.<sup>3</sup>

Professor Arras then concludes his very thoughtful paper by presenting an example of a narrative that provides a basis for ethical analysis and by noting one additional feature and two problems of particularism. He observes that particularist paradigms point to the social group as the foundation of moral truth, and he recognizes that this poses two problems for particularism: What are we to do about challenges to received wisdom; and what is the relevance in ethical analysis of the existence of different communities and cultures?

Professors Richard Miller of Indiana University's Religious Studies Department and Susan Williams of its School of Law responded to Professor Arras' paper. Professor Miller, while generally sympathetic to Arras' approach, raises three questions about it. First, he questions whether narrative is as useful for developing casuistry as Professor Arras suggests. Casuistry exists to respond to doubt and perplexity, while narrative is offered as an antidote to doubt and perplexity. That is, casuistry functions when one is separated or alienated from knowledge of how to act. Narrative provides unity throughout life that prevents this alienation from arising. Thus narrative is an antidote to practical reasoning, not a tool for doing it.

Secondly, Professor Miller suggests that paradigm cases and analogical reasoning are the essence of casuistry. Narrative, by relying on thick description, makes the creation of paradigm cases from which one can reason analogically an interminable process. Narratives hinder, rather than promote, the casuistic enterprise.

Finally, Professor Miller suggests a criticism of casuistry that is similar to a criticism of principlism that we have already seen and that Professor Arras anticipated at the end of his paper. By basing its analysis on paradigm cases upon which the parties to the discourse agree, casuistry runs the risk of conservatism, limited perspective, and bias, by failing to inquire who may be included as a party to the discourse.

Professor Williams suggests that a narrative-based ethics raises a still larger challenge to common understanding. It suggests a new epistemology that in turn affects our view of ethics. Williams observes that conventional western

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3. Whether wittingly or not, Professor Arras has, in a very few pages, presented a persuasive rationale for both the common law and the law schools' use of the case method of instruction. When both are increasingly under attack by proponents of political solutions to everything and the replacement of traditional law school methods with those of countless other disciplines, it is interesting to note that some of the newest and most persuasive thought in ethical analysis advocates the adoption of the common law method.

Cartesian epistemology proceeds from five basic assumptions: (1) reality is objective; (2) it is accessible to human knowledge; (3) people seek knowledge individually, rather than as members of social groups; (4) reason is the primary faculty for gaining knowledge; and (5) knowledge is universal. Theory-based systems of ethics, like those discussed by Professor Arras, are rooted in Cartesian epistemology.

Narrative-based ethics, on the other hand, do not rest on a Cartesian foundation. The alternative epistemology, embraced by narrative, rejects each assumption of the Cartesians: knowledge is contextual and cultural, not objective; reason is an insufficient tool for acquiring knowledge because values must be used to choose between competing interpretations; individuals gain knowledge as members of a cultural group; knowledge need not be universal—there may be many truths. The fully developed narratives of which Professor Arras speaks reflect this alternative epistemology.

Professor Williams notes that the non-Cartesian epistemology is especially important for an ethics that is applied to science. Modern western science is Cartesian. Therefore, applying narrative ethics to it involves using a method “that undermines the understanding of practitioners about the knowledge claims of their own disciplines.” That is, ethics challenges epistemology. As the relationship between epistemology and ethics is reciprocal, the opposite can also be true: a shift in epistemology may have ethical implications.

### AUTONOMY

Autonomy, one of Professor Beauchamp's four principles, has enjoyed special prominence in bioethical analysis and in American medical law. Professors John Robertson of the University of Texas School of Law and Carl Schneider of the University of Michigan Law School presented papers that in quite different ways challenge the apparent hegemony of the autonomy principle.

John Robertson has, for many years, been one of the leading legal scholars devoting attention to the role of law in dealing with biomedical advances. His paper, *Posthumous Reproduction*, continues his valuable contribution to the field. In *Posthumous Reproduction*, Professor Robertson explores the role of autonomy in resolving dilemmas posed by the possibility of intentional reproduction after one or both genetic parents are dead—for example, through artificial insemination, surrogate motherhood, or the maintenance of brain dead women for the purpose of carrying fetuses to term. He argues that in these cases autonomy should not be given automatic or determinative priority. Unless we are simply to say that every exercise of procreational autonomy is to be protected,<sup>4</sup> we must make normative judgments about the importance of the interests at stake in the choice. Autonomy can provide no guidance for making that choice.

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4. Even this view could not solve real problems because one person's autonomy interest could conflict with another's.

Professor Robertson argues that the right to control posthumous reproduction follows from the principle of procreational autonomy only if posthumous reproduction implicates the same interests, values, and concerns that reproduction normally entails. The value of posthumous reproduction to an individual rests in the importance to that individual, when alive, of giving directions about the fate of his or her reproductive products. Autonomy cannot answer the question of how important that ability is.

Robertson argues that the interest in controlling reproduction after one's death is highly attenuated. It is much weaker, for example, than the interests in passing property through wills or controlling features of one's death through a living will. Professor Robertson then demonstrates this point and the limited usefulness of autonomy by working through detailed sets of scenarios about the posthumous use of sperm, frozen embryos, and brain dead or comatose women. He concludes that directions for or against posthumous reproduction deserve much less respect than decisions about reproduction when one is alive and that a claim of autonomy marks the beginning, not the end, of the inquiry.

Professor Fred Cate of the Indiana University School of Law—Bloomington responded to Professor Robertson. Professor Cate agrees with Professor Robertson that the experience of bearing and raising children means more to the living than to the dead and that a focus on autonomy cannot resolve questions about the importance of reproductive experiences. However, he argues that it is not clear that normative judgments about the experience of child rearing and the legal right to bear or to avoid bearing children tell us much about the importance of autonomy in the analysis of posthumous reproduction.

Cate argues that Professor Robertson overstates the social importance of wills and advance directives to withhold or withdraw health care from dying persons and that he is incorrect in believing that constitutional protection for property and end-of-life decision-making is based on social utility. Wills and advance directives, Cate says, enhance the rights of individuals to do nonsocial things in the service of their autonomy. So too, he argues, autonomy supports the right to make decisions about posthumous reproduction.

Professor Cate then uses organ transplantation policy as evidence that the autonomy to make bad decisions or to avoid decision-making altogether is valued more than sound decisions. He argues that we must recognize the breadth and power of autonomy and consider alternate values before we conclude that autonomy is a value we can no longer afford.

Professor Carl Schneider of the University of Michigan Law School, who has long been a persuasive critic of the excesses of rights thinking, then presents an insightful critique of the dominance of autonomy in the modern approach to bioethics in his paper, *Bioethics with a Human Face*. Professor Schneider is careful to note that he does not reject the importance of autonomy or suggest that autonomy has no place in bioethical analysis. He simply questions the hegemony that autonomy has been accorded and the militancy with which some of its proponents insist upon its dominance.

Professor Schneider begins by noting the extreme abstraction of most bioethics literature. That literature reflects what Schneider calls "hyper rationalism." Schneider defines hyper rationalism as an approach that substitutes reason for information and analysis and that proceeds on the assumption that people behave in highly rational ways—that they deliberate rationally about their situations in order to autonomously serve clearly worked-out agendas. Schneider notes that a hyper rational approach to bioethical issues has led to the triumph of the autonomy paradigm. He suggests that empirical evidence may well lead in a different direction.

Professor Schneider then reviews some of the existing empirical evidence. He concludes that that evidence suggests that while patients want to be informed about their medical situations, at least a substantial number do not want to make their own medical decisions or, perhaps, even to participate in them in any significant way. Those persons' views and attitudes are important even if the persons who hold them are only a minority of patients and potential patients. Schneider rightly decries the tendency to treat majority preference as if it were everybody's preference and reminds us of the importance of avoiding the tyranny of the majority.

Professor Schneider freely concludes that existing empirical studies are incomplete, inconclusive, and, sometimes, flawed. Nonetheless, he believes they provide important evidence about people's attitudes, evidence which is supported by other information as well. All of this evidence is "highly suggestive but hardly unequivocal." It raises or leaves open questions about how much and what kinds of information patients want; of how much power patients wish to retain; and to whom they want to cede authority.

Schneider concludes by suggesting that the existing studies demonstrate ways in which empirical research can raise important questions about the autonomy paradigm. The paradigm needs to be refined. Professor Schneider sets out some of the questions that must be resolved in the process of refining the paradigm, and notes that his own research agenda is addressing the kinds of empirical evidence necessary to undertake that refinement.

Professors Peter Cherbas of Indiana University's Biology Department and Bernice Pescosolido from Indiana University's Sociology Department commented on Professor Schneider's paper. Although neither mentioned the word "epistemology," both of their comments shared a great deal with Professor Williams' response to Professor Arras' paper. Like Professor Williams, both Professor Cherbas and Professor Pescosolido challenged our entire way of thinking about bioethics.

Professor Cherbas considers what it means to talk about paradigms in bioethics and about autonomy as a paradigm. He is struck by the narrowness of bioethical inquiry, by its virtual limitation to medical ethics, and, even more narrowly, to the doctor-patient relationship.

Cherbas traces this strange narrowness of bioethical inquiry to the discipline's efforts to develop in the way that science develops—through the creation of paradigms of normal science that are occasionally shaken by



revolutions that replace old paradigms with new ones.<sup>5</sup> As Kuhn, who described this method of growth, recognized, the method is inappropriate for disciplines like law and ethics that are characterized by the effort to respond to great social need.

Disciplines like bioethics should be characterized by analysis. However, in its eagerness to provide answers to specific problems in the manner of a science, bioethics has developed what Professor Cherbas calls the "autonomy algorithm": "Analysis may allot full measures of respect to a variety of values and interests, but disputes will be resolved in favor of patient autonomy." On this view, Professor Schneider's paper may be seen as a search for a modified algorithm.

Professor Cherbas argues that there is something illegitimate about a paradigm-driven bioethics. The methods of science, he says, are ill-suited to the public needs of the healing professions. The paradigm-driven, scientific approach to bioethics has resulted in a lack of ethical guidance for individuals and families who are not professionals. The focus on autonomy has become a focus on procedures and a recognition of patients' rights but has failed to offer individuals and families guidance about how to exercise their rights. Professor Cherbas suggests that bioethics needs new perspectives more than new paradigms, and he concludes by reminding us that bioethicists are not scientists—they are philosophers.

Professor Pescosolido suggests broadening the inquiry even further. She notes that both biomedicine and bioethics are socially constructed phenomena, and she calls for extending Professor Schneider's synthesis of intellectual debate and empirical reality in three ways, each of which she explores succinctly.

Understanding bioethics requires first that we link consideration of biomedicine and bioethics to larger structures of power and cultural values to place them into their historical context and to understand them as part of a social contract that was struck early in the industrial age to allocate power in dealing with issues of health.

Second, we must understand that the problems with autonomy are caused not only by the differences between what people say they want and what bioethicists claim people want, which Schneider exposed, but also by a questionable underlying view of the way individuals make decisions. The rational calculus model, on which the autonomy paradigm rests, may well not represent the reality of human decision-making. Indeed, Professor Pescosolido suggests that the model of rational patient choice based on information may be naïve.

Finally, we should question the utility of autonomy because it may be ill-suited to deal with the problems or issues that confront us at the beginning of the twenty-first century. Professor Pescosolido suggests that autonomy may be yesterday's issue, and that striving toward more communitarian approaches to questions of values may be the wave of the future.

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5. THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1962).

### CONCLUSION

Of course, no single conference can hope to solve the methodological problems of bioethics. Nonetheless, a remarkable pattern emerged from our collection of very diverse scholars. A review of their collected papers and commentaries makes plain several features of a useful and rewarding bioethics for the twenty-first century. First, a sound approach to bioethics will require the consideration of principles *and* cases. Second, no one value can properly be allowed to dominate the field. Third, the value of autonomy has been greatly overemphasized. Autonomy does not solve the problems it promises to solve; it is unsupported by empirical reality; and it excludes other equally valuable considerations. Fourth, real progress in bioethics will require us to expand the scope of inquiry to include the insights of social science about a wide range of questions. Finally, we may need to rethink the very nature of the discipline of bioethics. The terms of bioethical inquiry may be too narrow and too captive to a possibly outmoded world view to permit them to contribute very much to solving the moral dilemmas medicine will continue to present.