

# Are Principles Ever Properly Ignored? A Reply to Beauchamp on Bioethical Paradigms

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Tom Beauchamp's general conclusion seems undeniable: we may need a variety of strategies and approaches if we are to grapple intelligently with bioethical issues and dilemmas. His principal point about principles is also well taken: if we think we can do without any reliance on principles and yet engage in ethical reasoning and judgments, then we may misapprehend the requirements of our alternative practices (for example, some versions of casuistry), or we may neglect some important sectors of the moral field. (Broad questions of social policy, for example, issues about resource allocations, may not fall easily within the natural ken of virtue ethics, given its primary focus on individual character and development.) I agree, then, with much of what Beauchamp says about the joint employment of a number of the current paradigms in bioethics. Principles may indeed help us sort cases, alert us to their salient moral features. Principles may fruitfully organize our political discussion, control and ameliorate public planning. Principles, as much as rules, may guide conduct.

But are principles never displaced by alternative approaches? Beauchamp welcomes the assertion of additional paradigms because he sees these developments, once properly understood and delimited, as not only compatible with but supportive of a paradigm of principles. Is this sense of accord well taken? I have some worries about Beauchamp's analyses of the limitations of the "[re-]emerging paradigms" and some doubts about the ultimate footing for his apparently conciliatory stance. In his search for common ground and an appropriate division of labor, Beauchamp may underestimate the competing paradigms' distinctive claims and their interest in, and resources for, staking those claims on ground not already surveyed and staked by principles.

Consider first Beauchamp's characterization of and worries about casuistry. He complains that "[c]asuists often write as if cases lead to moral . . . judgments by their facts alone. But . . . this premise is dubious."<sup>1</sup> Beauchamp then speaks of the need to interpret and evaluate cases in light of our "prior commitments to central values."<sup>2</sup> Beauchamp's sense that the casuists have "overstated the promise and output power"<sup>3</sup> of their account may in part arise from his clear but questionable assumption that there is a sharp distinction between facts and values. Cases are understood as describable in terms of

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1. Tom L. Beauchamp, *Principles and Other Emerging Paradigms in Bioethics*, 69 *IND. L.J.* 955, 964 (1994).

2. *Id.* at 965.

3. *Id.* at 964.

“their facts alone,” and it is then suggested that we must bring to bear on those facts something from the separate realm of values: our antecedently established moral principles or norms. But if, for example, we describe a patient’s condition as “degraded,” doesn’t the description blend fact and value judgment? It is not as if there must be, first, an assertion of a neutral “fact,” which then gets colored positively or negatively, depending on what it triggers as it passes the independent grid of pure values. The very term that Beauchamp here substitutes for “rule” or “principle,” viz., “norm,” should particularly resonate as suggestive of the way in which what might be (factually) described as the *typical* can be at the same time understood as a standard (an *evaluative* standard).

Contemporary discussion of the question of whether there is a gap between facts and values, between “is” and “ought,” has focussed attention on so-called “thick” concepts—on such ideas as *courage*, *cowardice*, *treachery*, *gratitude*, on the *lie* and the *promise*, on the great variety of more specific ethical notions employed in everyday life—as opposed to the thin, general workhorses of ethical theory—the good, the obligatory. Thick concepts seem to mark the intersection of fact and value, for they clearly involve evaluation, and yet their correct application is also controlled by the way the world is, by the facts. Those who, like Beauchamp, want to urge the existence of an “is/ought” gap may insist that a thick concept should be understood as a complex notion comprised of a descriptive element, which refers to the specific facts in the world, and an attached but theoretically separable prescriptive component, the all-purpose “ought,” the valuation derived from our prior personal or social commitments. Perhaps such an analysis can be sustained, but we should note that we now need a reason to accept it, an argument for its plausibility, some justification of *it* as the correct account of thick concepts. For on the face of it, if I *promised* to do *X*, if that is the fact of the matter, then it seems, just in virtue of that fact, that I now have a moral reason for doing *X*. It does not seem I need an additional value premise—for example, “People ought to keep their promises,”—in order to alchemize a full description of my “promising behavior” from the inert to the morally forceful.

The American pragmatists, especially William James and, most prominently, John Dewey, were among the earliest and the greatest critics of the Enlightenment orthodoxy that fact and value are utterly disjoint; and one of Dewey’s favorite illustrative examples is drawn from the area of medical practice. Citing our common distinctions between gross quackery and good medicine, Dewey reminds us that “[a]ppraisals of courses of action as better and worse, more and less serviceable, are as experimentally justified as are nonevaluative propositions about impersonal subject matter.”<sup>4</sup> To address the objection that this view of valuation applies only to *means*, not to *ends*, the intrinsic or inherent goods in terms of which we appraise various means, Dewey offers a sustained argument that means and ends must be understood as a continuum,

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4. John Dewey, *Theory of Valuation*, in 13 THE LATER WORKS 191, 210-11 (Jo Ann Boydston ed., 1988).

and that the distinction between them is not metaphysical but only functional. Whatever we may prize, whatever we take to be ends, whatever our "prior commitments to central values,"

ends are appraised is the same evaluations in which things as means are weighed. For example, an end suggests itself. But, when things are weighed as means toward that end, it is found that it will take too much time or too great an expenditure of energy to achieve it, or that, if it were attained, it would bring with it certain accompanying inconveniences and the promise of future troubles. It is then appraised and rejected as a "bad" end.<sup>5</sup>

If we think of some of the ends toward which the practice of medicine is directed—the curing of illness, the survival of patients, etc.—we see that even these ends, even defining aims, *are*, in the course of real life and concrete cases, constantly appraised and reassessed in terms of the means required to pursue them and the consequences that might flow from their attainment. And is not that appraisal, an appraisal that seems to blend fact and value, both action-guiding and the heart of our justificatory enterprise? Think again, in contrast, of Beauchamp's illustration of how the casuist must bridge fact and value.<sup>6</sup> If we discover that "Person *M* cannot survive without person *S*'s bone marrow," must we, to secure moral guidance, discover or adopt the (almost certainly false) premise "Everyone ought to help others survive through bone marrow transplant donations"? Is it not more plausible, more to the point, to adduce more "facts"—about *M*'s condition, *S*'s condition, their ages, other maladies and opportunities, their relation to each other, etc.—and will not those "facts"—without a false major premise ("Everyone ought to donate . . .) but already tinged by valuation (what counts as a malady? an opportunity? a normal life span?)—supply all the justification we can reasonably expect for the conclusion we then draw about what *S* should do?

The covert assumption that there is a sharp fact/value distinction may subtly beg part of the question raised by alternative paradigms, but Beauchamp does offer another route to acceptance of his idea that casuistry always requires the use of separate, antecedently given moral principles. He buttresses the claim that casuistry must rely on prior principles by developing a comparison between moral reasoning and the dialectical process of the law courts. But the analogy, too, simply presupposes one of the crucial points at issue. Is there always something akin to the law that grounds moral reasoning? If all legal judgments must be, in the end, founded on and answerable to the law, is it clear that all moral judgments must be, in the end, founded on and answerable to, moral principles?

When Beauchamp tries to convey casuistry's own sense of its methods, he says that it focusses on case interpretation and exhibits "a strong preference for analogical reasoning over theory."<sup>7</sup> But theory is not, of course, an alternative mode of reasoning. What, then, is the contrast being drawn here?

5. *Id.* at 212.

6. Beauchamp, *supra* note 1, at 964-65.

7. *Id.* at 962.

Is it between analogical reasoning and deduction? The deductive model would presumably start from some moral axioms—principles, perhaps?—as major premises. Situation descriptions would then be the minor premises. The latter would sketch the facts, the former contain the values, and the deduced result would be a valid moral judgment. This model, together with the sharp fact/value distinction it might easily incorporate, seems to be endorsed by Beauchamp in his discussion of the bone marrow case, but, when he gives explicit attention to this question of method, Beauchamp himself denies that deductive logic supplies the central structure of moral reasoning.<sup>8</sup>

What about that other route to theory—induction? Is this the logic that the casuist, distinctively, does not prefer? The casuist may not avow much interest in the generalizations that would be the products of inductive reasoning, but, as Beauchamp notes, casuistry regards its maxims and norms as *a posteriori* summaries of case experience, induced principles, and subject to modification in the light of new experience. It is not, then, the casuist, but rather Beauchamp, who would reject the understanding of moral principles as the conclusions of inductive arguments. It is not the casuist, but Beauchamp, in his repeated characterizations of principles as grounded in “preexistent cultural understandings,”<sup>9</sup> as “prior” to the interpretation of cases,<sup>10</sup> who seems to reject the power of induction to serve theory—and practice.

Still, there is something obviously right about Beauchamp’s suggestion that casuistry exhibits some sort of antipathy to theory. And if it is true that some casuists think they can dispense not only with the traditional theories of philosophical ethics, but also with “theory” altogether, if they really want to insist that their practice can do without any theory, then there is available from contemporary epistemology and philosophy of science a criticism of their self-understanding that I would think Beauchamp should want to employ. If, as many epistemologists today affirm, all observation, and *a fortiori* all description, is theory-laden—if there is no innocent eye or if all such an eye would see would be, in William James’s memorable phrase, a “blooming buzzing confusion,” if there is no context-independent notion of a neutral complete description—then the practice of even the most case-bound casuist cannot free itself from theory.<sup>11</sup> Not just the terms of our descriptions, but even the experiential character of our observation of cases—what we notice, what we ignore, the very “feel” of our experience—will be, in part, a product of our theoretical framework. Beauchamp indeed often hints at this sort of

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8. See, for example, his remark that “particular moral rules and judgments are supported by, though not deduced from, the principles.” *Id.* at 956.

9. *Id.* at 958.

10. See, e.g., *id.* at 958-59.

11. Norwood Russell Hanson first used the terminology of “theory-laden” observation. NORWOOD R. HANSON, PATTERNS OF DISCOVERY: AN INQUIRY INTO THE CONCEPTUAL FOUNDATION OF SCIENCE (1958). An acknowledgment that there is no fixed and general distinction between theory and observation need not commit one to either metaphysical idealism or subjectivism. This point is argued by Israel Scheffler in his *Science and Subjectivity*. ISRAEL SCHEFFLER, SCIENCE AND SUBJECTIVITY (1967). For an overview of some of the relevant discussion of the claim that observation is theory-laden, see THE STRUCTURE OF SCIENTIFIC THEORIES (Frederick Suppe ed., 2d ed. 1977).

problem with casuistry's self-understanding, but his own assertion of a sharp fact/value distinction might block any robust embrace of this epistemological point as a criticism of casuistry. For the idea that all observation is theory-laden may be structurally allied with the blurring of a sharp fact/value distinction, and it is Beauchamp, and perhaps not the casuist, who seems to take facts to be simply, objectively "given."

What about Beauchamp's response to the resurgence of interest in virtue ethics? He finds salutary the virtue theorist's attention to the motives and character of agents, but he sees this attention as enriching and, again, not displacing a bioethical paradigm of principles. Besides, he says, virtue theory has its limits. Maintaining that "some areas of the moral life are not readily frameable or interpretable in the language of virtue theory,"<sup>12</sup> he mentions, as examples, judgments derived from group decision-making and action undertaken in impersonal contexts. I agree with this worry about the limitations of virtue theory and can imagine pressing it further. The professional and the public official who take all their decisions to revolve around the cultivation of their individual virtue, who see all their activities and judgments as exercises in personal "soul-building," are just as worrisome, if not quite as fearsome and unpredictable, as the amoralist. Power and resources are vested by society in the professional and in the public official on the understanding that those individuals will use those resources and that power in the discharge of their role responsibilities. Role responsibilities, though, are inherently impersonal. A doctor, lawyer, judge, or politician who does not face this fact, who measures all action by its contribution to his or her personal character development, may well often fail to do what society expects, what society has a right to expect, to have done.

This, then, is a reservation about the scope of virtue theory. Beauchamp's reservations about virtue theory extend deeper than this, however. It is not just that some stretches of the moral life—politics and institutional contexts, say—are better sustained within a moral framework that includes principles, rules, rights, interests, and utility. He suggests further that we may not be able to make judgments of character, may not be able to "evaluate a motive, a moral emotion" without some principles for evaluation, without "some basis for the judgment that actions are obligatory, prohibited, or permissible."<sup>13</sup> It is surely true that "people of good character" *can*, as Beauchamp says, perform "improper actions"—and for all the reasons he mentions: they have "incorrect information," they make "incorrect judgments," they become confounded,<sup>14</sup> or (for a reason Beauchamp does not mention) they suffer very occasionally from weakness of the will. Yet it surely does not follow that our judgments of action, especially our judgments of whether these actions are "obligatory, prohibited, or permissible," form the foundation for our judgments of motive or moral emotion. Absent some additional argument, we

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12. Beauchamp, *supra* note 1, at 969.

13. *Id.* at 968.

14. *Id.*

should see a perfect symmetry here, on the issue of conceptual priority. A good motive may be, as Beauchamp almost implies, a motive that leads to good action. But it may just as reasonably be claimed that what counts as a good action is what follows from the felicitous operation of a good motive.

Beauchamp's suggestion of a conceptual asymmetry here is one more hint that he takes ethical principles to be the foundation of the moral life, the unacknowledged cornerstone of each of the "[re-]emerging paradigms"; and that hint, in turn, provides a clue to something I take to be a puzzle of his paper. He acknowledges that, on his conception, principles do not provide "a system of guidelines" capable of anticipating and resolving moral conflicts; principles do not provide "mechanical solutions for moral problems."<sup>15</sup> He faults Clouser and Gert for their insistence on unified theory and universality, and he emphasizes the need for interpretation and judgment at a stage past the invocation of general principles. Yet he criticizes some of the other paradigms as if from a position where, by contrast with their inadequacies, mechanical guidelines and definitive procedures do exist. He says, for example, that "[c]asuists have no clear methodological resource to prevent a biased development of cases and a neglect of relevant features of cases."<sup>16</sup>

But compare, say, Beauchamp's principles of autonomy, nonmaleficence, beneficence, and justice, and his account of their sources in "the common morality" and "the traditions" of medical ethics.<sup>17</sup> We have here, as he says, "norms . . . based on social conventions and historical traditions"<sup>18</sup> and centuries-old professional codes and commitments "to shield patients from harm and provide medical care."<sup>19</sup> Now think of (1) physicians' roles in the government-sponsored Tuskegee syphilis studies,<sup>20</sup> or (2) the recently noted relative inattention of the medical research community to women's distinctive health problems or to women's distinctiveness in common problems.<sup>21</sup> In the first case we find legions and generations of doctors, over the course of forty years, misleading poor and sick black males about the nature of their illness and the proffered "treatment" and then, for more than two decades after the discovery that penicillin could cure syphilis, the deliberate withholding of that drug from those deceived "research subjects." In the second case we find significant disparities, along sex lines, in the allocation of public funds, with comparatively little money dedicated to research on the diseases and dysfunctions that tend to strike women more than men, and with much of the

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15. *Id.* at 970.

16. *Id.* at 965-66.

17. *Id.* at 957-59.

18. *Id.* at 957.

19. *Id.* at 958.

20. For a brief account of some of the participants' attitudes and recollections, as well as the basic details about the study, see Jim Auchmuty, *Ghosts of Tuskegee*, ATLANTA J. & CONST., Sept. 6, 1992, M1. See also \$37,500 Is Awarded for Each Survivor of Syphilis Project, N.Y. TIMES, Feb. 6, 1975, at 35.

21. For some discussion of this issue, see Stephen Burd, *Key Legislation for NIH Approaches Enactment in Congress*, 39 CHRON. HIGHER ED., June 2, 1993, at A19; Vivian W. Pinn, *Women's Health Research: Prescribing Change and Addressing the Issues*, 268 JAMA 1921 (1992).

research on common disorders, heart disease for example, conducted exclusively on male subjects. Do we see in these cases respect for autonomy, beneficence, nonmaleficence, justice? We may now say, "no," but if these principles have whatever content they have as a function of "preexistent cultural understandings,"<sup>22</sup> then it should not be surprising if a racist, sexist culture found in those earlier practices no violation of its norms.<sup>23</sup> There may have been a "preexistent cultural understanding," but it is not clear how, or even that, *all*—and here, in particular, black men and all women were *parties* to that understanding. Beauchamp complains about casuistry that, "without a stable framework of norms," it leaves "too much room for judgment" and has "too few resources to prevent prejudiced or poorly formulated social conventions."<sup>24</sup> But if norms are directly rooted in social conventions, it is unclear how they can here serve as an ameliorative resource, and history certainly seems to show that medical traditions cannot, in fact, prevent the operation of prejudice.

There is, after all, no way of dispensing with judgment, and no ultimate control on judgment, in *any* paradigm, no way finally to "prevent prejudiced or poorly formulated social conventions." I do not want to dismiss the power of principles to guide and improve our thought; but we remain weak reeds, and the marsh from which our moral reasoning and responses grow may have no clear bottom, no fixed foundation. It sometimes seems as if Beauchamp thinks principles can provide a foundation, a starting point or required element for every other approach to morality. His desire to find this role for principles is disclosed, paradoxically, in what seems a concession to the opposition, the "alternative" or adjunct approaches. He says that "[o]ne function of principles is to keep judgments *principled* without removing agent *discretion*."<sup>25</sup>

But what makes it clear that we *must* keep judgments *principled*? Surely we want appropriate, sound, wise, *good* judgments. It remains an open question whether *these* sorts of judgments must be principled.<sup>26</sup>

22. Beauchamp, *supra* note 1, at 958.

23. In a discussion period at the conference where this paper was originally delivered, a member of the audience, a physician, assured me that women's exclusion from many major health studies had "nothing to do with ethics." The reason for women's exclusion was, he said, the simple fact that they might become pregnant and thus ruin the study. I take that observation to be the expression of a *continuing* problem with our "cultural understandings." None of us may doubt the need for controlled studies of health matters, and we all understand the requirement that such studies equalize or hold steady a variety of crucial variables, in order that judgments about factors that are allowed to vary can carry some scientific weight. But so long as post-menopausal women seem overlooked and so long as a natural capacity of most young women is regarded as a problem, so long as the physical changes—pregnancy and menopause—to which the human female is naturally susceptible are regarded as spoiling health studies, so long, that is, as the male is still seen as the human norm, "our" culture still has a problem applying the principles of autonomy and justice to women.

24. Beauchamp, *supra* note 1, at 966.

25. *Id.* at 957 (emphasis in original).

26. In Beauchamp's published revision of his conference paper, he seems explicitly to acknowledge this point. But the depth and force of his acknowledgment remain in question, as does the fruitfulness of a paradigm for bioethics left virtually unexplored here or elsewhere in the conference papers. Feminist philosophers and others have recently tried to develop an "ethics of care," an approach to ethics that aggressively challenges not only the traditional role of principles, but also some received ideas about the roles of universality, impartiality, and even reason in philosophical ethics. The plausibility, serviceability, and the intended scope of a bioethics of care remain questions for another day.