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Tom L. Beauchamp
Standing on Principles

Collected Essays

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COLLECTED ESSAYS

TOM L. BEAUCHAMP

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To

Ruth R. Faden

Partner for life and a magnificent human being in every way of being human.

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Essay 1, “The Origins and Evolution of the *Belmont Report*,” and Essay 2, “Codes, Declarations, and Other Ethical Guidance for Human Subjects Research: The *Belmont Report*,” are centered on the years I worked for the National Commission for the Protection of Human Subjects (1975–1978), some of the most rewarding years of my life. I owe thanks to the many people who supported me in writing for the Commission, especially the writing of *Belmont*. I owe special acknowledgments to Patricia King, Michael Yesley, Donald Seldin, Albert Jonsen, Stephen Toulmin, Robert Levine, Barbara Mishkin, and Kenneth Ryan—and, for later criticisms, Ernest Marshall. They all caused me to rethink my ideas many times over. I am also grateful to Jay Katz, Samuel Gorovitz, LeRoy Walters, Tris Engelhardt, Charles McCarthy, and John Robertson for conversations and help in research during these years. For

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Essay 3, “The Four-Principles Approach to Health Care Ethics,” and Essay 9, “Principles and Other Emerging Paradigms in Bioethics,” are centered on principlism. The first of the two essays was written because Raanan Gillon persuaded me to compose it and then helped me make it as good as it could be. Raanan has been supportive throughout my career, and I thank him for contributions that reach far beyond this essay. I also owe Ed Pellegrino an acknowledgment for his many critiques of the four-principles approach, including a critique when I wrote this essay. My thinking on these issues has been pushed forward by some stimulating criticisms, published and unpublished, by Bernard Gert, Danner Clouser, Charles Culver, John Arras, David Smith, Alasdair Campbell, John Harris, and Dan Callahan. On the constructive side, I have enormously benefited from the work of my colleague Henry Richardson on the subject of specification. Henry has also been a supportive critic.

Essay 4, on “Informed Consent: Its History and Meaning,” appeared because Bob Veatch persuaded me to write it and offered sound editorial advice during its drafting. Ruth Faden stimulated me to my best ideas on informed consent, and much of what I say here derives from our 1986 book, *A History and Theory of Informed Consent*. When writing that book we received wonderful support and criticism from Bettina Schöne-Seifert and Nancy King; and we were inspired at the time by the published work of, and personal consultation with, Jay Katz, Allen Buchanan, Robert Levine, Alan Meisel, and Sissela Bok.

Essay 5, “Who Deserves Autonomy and Whose Autonomy Deserves Respect?,” came into being because I was persuaded by James Stacey Taylor to rethink and deepen my previous publications on autonomy. On the matters of autonomy treated in this essay, many people have contributed to my thinking. Almost certainly, the deepest influences have come from work with Ruth Faden and through discussions with Joel Feinberg, who was working on his theory of autonomy as I was first developing mine. I still today regard Feinberg as the soundest writer on many of the subjects I address. In what seems a lifetime ago, I had several discussions with Gerald Dworkin that helped me get my thoughts straight on various issues about autonomy.

Essay 6, “The Concept of Paternalism in Biomedical Ethics,” is the final phase, I hope, in my long history of probing the subject of paternalism. Jim Childress and I have struggled together through the muddy conceptual issues in this area. Although we have never come to complete agreement, Jim has convinced me to moderate my skeptical views about soft paternalism. Jim and Ruth Faden have been instrumental in helping me get my thoughts straight. In the early years of my

thinking about the key problems (dating to 1975), I was influenced by Joel Feinberg, with whom I had stimulating conversations on the subject. My work stands in the shadow of Feinberg's seminal writing on the subject.

Essay 7, "When Hastened Death Is neither Killing nor Letting Die, brings together much of my thinking about physician-hastened dying. Tim Quill and Peg Battin were my editors and advisors when I wrote this essay. The compactness and directness of the argument in this essay owe much to them. I've learned a great deal about what to say and not say about these issues from conversations with, and the publications of, Dan Brock and James Rachels. I have had several public debates with Ed Pellegrino on the topic. Ed has many times helped me understand views that I don't hold; he has a wonderful ability to make them clear and plausible. In the early years in which my views on these subjects were developing, I acknowledge how much I enjoyed examining ideas through conversations with Arnold Davidson. Every philosopher should have as much fun as Arnold and I had in those years.

Essay 8, "The Exploitation of the Economically Disadvantaged in Pharmaceutical Research," was originally written for a conference. I thank the organizer of the conference, Denis Arnold. At the conference, I received useful criticism from Dan Callahan, Norman Daniels, and Dan Wikler. My work on pharmaceutical research in all its dimensions has been greatly facilitated by many years of discussing these issues with Robert Levine. In working on the subject of global justice and the economically disadvantaged, I have had stimulating interactions with Ruth Faden, Madison Powers, and Thomas Pogge.

Essay 10, "A Defense of the Common Morality," and Essay 11, "From Morality to Common Morality," are devoted to the subject of common morality. As anyone can see by reading the second of the two essays, I owe an immense amount to Bernard Gert, not only for his criticisms of me, but for the constructive side of his moral theory. It is a pleasure to be able to acknowledge the influence of his bold criticisms and his constructive theories. My essay was written for and delivered at Dartmouth College on the occasion of Gert's retirement and 50th year of teaching at Dartmouth. I was helped in formulating my topic by Jim Moor, Bernie's colleague at Dartmouth. Dan Brock, Ron Green, and Don Marquis gave me stimulating criticisms during the visit to Dartmouth that helped me redraft. More generally on the subjects of common morality and principlism, much in my work has been either motivated by or improved by the work of other critics, especially David DeGrazia, Carson Strong, and Ronald Lindsay.

Essay 12, "On Eliminating the Distinction Between Applied Ethics and Ethical Theory," and Essay 13, "Does Ethical Theory Have a Future in Bioethics?," are two of my forays into the waters of ethical theory and its limitations. The first, Essay 12, was written long ago; it was invited by the two editors of the *Monist* in those years, Eugene Freeman and John Hospers. Not much had been published on this subject at the time, but I did greatly benefit by Gert's early work on the subject. I owe the

idea behind Essay 13, and criticism of it, to Jeff Kahn and Anna Mastroianni, the two editors of the journal issue in which this essay appeared.

Essay 14, "The Failure of Theories of Personhood," was first delivered as an address in Hong Kong, where I had the good fortune to receive excellent criticism from Gerhold Becker, John Harris, and Michael Quante. Later I received equally helpful criticisms from Robert Veatch and Henry Richardson when presenting the paper at Georgetown. Throughout the period of my writing this essay, I had many discussions about the issues with Raymond Frey.

Essay 15, "Looking Back and Judging Our Predecessors," was published in the form of an exchange between Allen Buchanan and me. Allen and I largely agreed on every major issue, but I was given a distinct advantage when writing my essay: Allen sent his draft first, and I was able to learn a good bit from him. I owe much in my presentation to the structure he laid out in his essay, and both of us owe much to the work of the Advisory Committee on Human Radiation Experiments (ACHRE), *Final Report of the Advisory Committee on Human Radiation Experiments* (New York: Oxford University Press, 1996), on whose conclusions Allen and I were commenting. In getting straight on the history surrounding the radiation experiments, I learned a great deal from Ruth Faden, Jonathan Moreno, and Susan Lederer.

In the Introduction to this volume, I have supplied the names of publishers and full bibliographical and copyright information pertaining to all original sources of these *Collected Essays*.

INTRODUCTION

This volume collects essays and treatises on several subjects that I have written over the course of 25 years. All are on philosophical and moral issues in the field of biomedical ethics. The topics range from the historical origins of modern research ethics to substantive issues in bioethics about moral principles and methodology. Despite the diversity of topics, a specific unity holds the three parts of this collection together. The unifying theme is the transparent connection of these essays to many of the topics and chapters in *Principles of Biomedical Ethics* (hereafter *Principles*), which I coauthored with James Childress. All readers familiar with the basic structure of that book will see that these *Collected Essays* augment, develop, and defend some of its central positions and arguments. A few essays take off in new directions, but all have a connection to themes in *Principles*. I have tried to select only essays that expand and deepen, while not duplicating, material in *Principles*.

This introduction explains the publishing history and content of these essays, as well as ways in which they augment and develop the so-called “principlist” theory that Childress and I developed together. The year, source, and place of publication and an abstract of each essay are supplied.

The book is divided into three parts. The first part is entitled “The *Belmont Report* and the Rise of Principles.” The two essays in this part explain the emerging importance of frameworks of principles in bioethics in the mid-1970s. The primary sources at the time of the rise of these frameworks were *Principles* and the *Belmont Report*. The latter is a government report that I drafted for the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The history of the writing of both of these works and their crossover influence are explained and analyzed in Part I.

The second part is entitled “Principlism and Practice.” This section treats several issues about moral principles and their practical use in bioethics as well as the nature of “principlism.” This word was coined by Danner Clouser and Bernard Gert principally to refer to the theory Childress and I developed. The first essay in this second section adopts the language of “The Four-Principles Approach,” an expression originally coined by Raanan Gillon to refer to the theory in *Principles*. The material in Part II develops some themes Childress and

I address in Chapters 4 through 7 of *Principles* (using 6th edition chapter numbers).

The third part concentrates on questions of theory and method in ethics—long my major teaching and publishing interest in bioethics. This part treats the idea that the four-principles approach provides a theoretical framework or paradigm for bioethics together with some ideas about theory and method that include discussion of the nature and role of the common morality. This part also probes whether ethical theory has a strong role to play in the future of bioethics and whether so-called “applied ethics” should be sharply distinguished from general ethical theory. Two other essays investigate whether the concept of person has a significant role to play in bioethics and how judgments can be made of the actions and character of persons who lived in past decades and centuries when they embraced significantly different moral standards. The material in the third part develops answers to various problems that Childress and I address in Chapters 1, 2, 3, 9, and 10 of *Principles*.

During the preparation of this volume I have lightly edited almost all of these essays for purposes of clarity and style. I have added content to three of the essays. This supplementary content has in every case been drawn from other parts of my published work. In no case have I altered the basic structure or argument found in the original publication. I have altered a title only in the case of the fourth essay: “Informed Consent: Its History and Meaning”; it was originally published under the less specific title “Informed Consent.”

I also explain below precisely what I have done to alter the few essays in which material has been added in these *Collected Essays*.

PART I. THE *BELMONT REPORT* AND THE RISE OF PRINCIPLES

Essay 1. “The Origins and Evolution of the *Belmont Report*”

Publication Data. This essay was published in *Belmont Revisited: Ethical Principles for Research with Human Subjects*. Copyright © 2005 by Georgetown University Press. From *Belmont Revisited: Ethical Principles for Research with Human Subjects*, James Childress, Eric Meslin, and Harold Shapiro, Editors, pp. 12–25. Reprinted with permission. www.press.georgetown.edu. This essay, as here slightly revised, also draws on a small body of material in an essay I wrote in *The Story of Bioethics*, also published by Georgetown University Press. Reprinted with permission.

Abstract. This 2005 article recounts my work in delineating a framework of principles of research ethics when I was in the position of consultant philosopher at the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (U.S. Congress and NIH, 1974–78). The article starts with the historical context in which principles rose to prominence in biomedical ethics.

I concentrate here on research ethics. The project of creating a framework of basic principles for all federally funded research had been mandated by a public law enacted by the U.S. Congress. I was at work on the volume with Childress when I accepted an assignment with the National Commission to write its *Belmont Report*. I explain both the history of my drafting of this *Report*, how it was revised in the course of deliberations at the National Commission, and the connection of this drafting to my concurrent work with Childress. I discuss how the National Commission viewed these principles as embedded in preexisting public morality and how it regarded its set of principles as a universally valid resource for the formulation of public and institutional policies of research ethics. I outline how the views in *Belmont* express the basic structure for research ethics as it developed in the last quarter of the twentieth century and remains today.

Essay 2. “Codes, Declarations, and Other Ethical Guidance for Human Subjects Research: The *Belmont Report*”

Publication Data. This essay was published in *The Oxford Textbook of Clinical Research Ethics*, ed. Ezekiel Emanuel, Christine Grady, Robert Crouch, Reidar Lie, Franklin Miller, and David Wendler (New York: Oxford University Press, 2008), 149–155. By permission of Oxford University Press (New York).

Abstract. This essay was commissioned by a group of scholars in bioethics in the Department of Bioethics at the National Institutes of Health. It picks up the discussion of the *Belmont Report* roughly where I ended the discussion in the first essay. This second essay further examines the history of the *Report* together with an explanation of the National Commission’s larger body of publications, which comprised 17 volumes. It discusses the moral content of the principles that were adopted and the idea that the principles form a basic moral framework for research ethics.

The essay contains a critical evaluation of the philosophical roots of the principles and includes a section that examines philosophical questions about and weaknesses in the principles (as they are expressed in the *Belmont Report*), including some weaknesses that persist still today in research ethics. The essay concludes with a section on the influence and ongoing significance of the *Belmont Report*, which still stands as an internationally influential government-commission statement of moral requirements in research ethics. It is possibly more widely known than any document in research ethics other than the Declaration of Helsinki, which at present seems to be in a stage of declining influence. *Belmont* was eventually adopted by all relevant agencies of the U.S. government as a statement of the obligations scientific investigators must discharge in conducting human research. I explain how *Belmont* has been one of the few documents to have influenced almost every sphere of activity in

bioethics: moral theory and general standards of professional ethics, government regulatory activity, bioethics consultation, and even medical practice.

PART II. PRINCIPLISM AND PRACTICE

Essay 3. “The Four Principles Approach to Health Care Ethics”

Publication Data. This essay was published in *Principles of Health Care Ethics*, 2nd ed., Richard Ashcroft, Angus Dawson, Heather Draper, and John Macmillan, eds. (London: John Wylie, 2007), 3–10. By permission of Wiley-Blackwell, 9600 Garsington Road, Oxford OX4 2DQ.

Abstract. This essay was first published in the early 1990s with the goal of explaining and critically examining the four principles or “principlist” account of biomedical ethics to an international audience. The first edition of the *Principles of Health Care Ethics* was the creation of British physician and medical ethics scholar Raanan Gillon. This anthology was devoted primarily to critical appraisal of the *Principles* book that Childress and I published. My essay on “The Four-Principles Approach” was the opening essay in both the first and the second editions. (The essay is published here as it was revised and updated for the second edition.) The essay is a basic and reasonably comprehensive explanation of the four-principles approach, clarifying various of its claims and attempting to straighten out assorted misunderstandings of the *Principles* book. The following topics are discussed: the origins of principled frameworks in bioethics, the nature of the framework that Childress and I use, the centrality of the common morality in our work, the prima facie character of principles and rules, the specification of principles and rules, and the role of the method of coherence in moral justification.

Essay 4. “Informed Consent: Its History and Meaning”

Publication Data. This essay was published in *Medical Ethics*, ed. Robert M. Veatch (Boston and London: Jones and Bartlett Publishers, Inc., 1st edition 1989; 2nd edition, 1997), 186–205. Copyright © 1997 Jones and Bartlett Publishers, Sudbury, MA. www.jbpub.com. Reprinted with permission. Some supplementary historical material has been added that derives from the book I coauthored with Ruth Faden entitled *A History and Theory of Informed Consent* (New York: Oxford University Press, 1986). By permission of Oxford University Press.

Abstract. This essay is a comprehensive treatment of the history, nature, and moral importance of informed consent. It begins by treating the near absence of requirements of informed consent in the history of medicine. I trace how

informed consent obligations and requirements gradually emerged from legal cases, regulatory interventions, government-appointed commissions, and intra-professional events in the last half of the twentieth century. Following this history, I present an analysis of the concept of informed consent, including an analytical treatment of its basic elements and conceptual conditions. This analysis might seem to provide a solid foundation for a definition of “informed consent,” but I argue that this term needs a deeper analysis. It must be understood in terms of two common, entrenched, and irreducibly different meanings of “informed consent.” I establish the two senses as (1) autonomous choice and (2) institutional consent. I note that assessment of the quality of the consent is important for understanding both senses of “informed consent” and for understanding requirements of obtaining consent. I argue that the quality of consent should be judged by several different considerations, including the level of understanding of disclosed information and whether undue influence is present in making a request for consent. Finally, I examine various justifications for waiving or at least not requiring informed consent. Some are found to be valid reasons for not obtaining consent, and others are found to be unjustified.

Essay 5. “Who Deserves Autonomy and Whose Autonomy Deserves Respect?”

Publication Data. This essay was published in *Personal Autonomy: New Essays in Personal Autonomy and Its Role in Contemporary Moral Philosophy*, ed. James Taylor (Cambridge: Cambridge University Press, 2005), 310–329. Copyright © 2005 Cambridge University Press. Reprinted with the permission of Cambridge University Press. A few paragraphs of supplementary material have been added from my “Consent and Autonomy,” in Frank Miller and Roger Wertheimer, eds., *The Ethics of Consent* (New York: Oxford University Press, 2010). By permission of Oxford University Press (New York).

Abstract. I distinguish between “autonomy,” “respect for autonomy,” and “rights of autonomy.” Whereas “respect for autonomy” and “rights of autonomy” are moral notions, “autonomy” and “autonomous person” are not obviously moral notions. To some philosophers they seem metaphysical rather than moral. However, this distinction between the metaphysical and the moral has fostered precarious claims in moral philosophy such as these: (1) analysis of autonomy is a conceptual and metaphysical project, not a moral one; (2) a theory of autonomy should not be built on moral notions, but rather on a theory of mind, self, or person; (3) the concept of autonomy is intimately connected to the concept of person, which alone anchors the concept of moral status. I assess each of these claims with the objective of determining who qualifies as autonomous and which level (or degree) of autonomy deserves respect.

I argue that moral notions—in particular, respect for autonomy—should affect how we construct theories of autonomous action and the autonomous person on grounds that a theory of autonomy should be kept consistent with the substantive assumptions about autonomy implicit in the principle of respect for autonomy. However, theories of autonomy should only be *constrained* by the principle of respect for autonomy, not wholly *determined* by it. I offer an abbreviated theory of conceptually necessary conditions of autonomy. My conditions differ substantially from prominent accounts in the literature, such as Harry Frankfurt's theory, which I criticize in section 4 of this paper. My discussion of the claim that the concept of autonomy is intimately connected to the concept of person leads directly to the content of essay 14 in these *Collected Essays*.

Essay 6. "The Concept of Paternalism in Biomedical Ethics"

Publication Data. This essay was published in the *Jahrbuch für Wissenschaft und Ethik* (2009). Berlin: Walter de Gruyter GmbH & Co. KG; Mies-van-der-Rohe-Str. 1; 80807 München, Germany. Permission by Rights & Licenses Department.

Abstract. This essay pulls together in one place the several strands of my thought over 35 years on the problem of paternalism (principally medical paternalism). In the literature of biomedical ethics, paternalism has been both defended and attacked in several areas of clinical medicine, public health, health policy, and government agency policies (e.g., the policies of the Food and Drug Administration). I argue that it is unclear in much of this literature what paternalism is and which types of paternalism, if any, are justified. The position closest to a consensus position in the literature is that so-called strong (or hard) paternalism is not justified, but I argue that strong paternalism can be justified and that it is the only interesting and controversial form of paternalism. I try to show that questions of the justification and the definition of paternalism are closely connected, and that there is a definition that is grounded in fidelity to the principle of respect for autonomy. I then discuss several of the most prominent practical problems about paternalism in biomedical ethics. In each case I focus on how obligations of respect for autonomy and beneficence need to be balanced when making a judgment about whether a paternalistic intervention is justified.

Essay 7. "When Hastened Death Is Neither Killing nor Letting Die"

Publication Data. This essay was published in Timothy E. Quill and Margaret P. Battin, eds., *Physician-Assisted Dying: The Case for Palliative Care and Patient*

Choice, pp. 118–129. Copyright © 2004. The Johns Hopkins University Press. Reprinted with the permission of the Johns Hopkins University Press.

Abstract. This essay covers a broad range of issues in what is today commonly categorized as “physician-assisted suicide.” I start with a brief discussion of the recent history of the issues, from the Quinlan case to the present. I then discuss issues about rights of autonomous choice, including whether the capacity for autonomy is likely to be reduced in circumstances of making a choice to hasten death and whether so-called “coercive situations” sometimes deprive a person of autonomous choice. I consider the justification of physician involvement in hastening death and whether the physician’s intention makes a morally relevant difference. I also analyze conceptual features of the language generally used to discuss these subjects, including “suicide,” “hastened death,” “killing,” and “letting die.” These concepts can make a critical moral difference to how we think about whether an intentionally hastened death constitutes either a suicide, a killing, or a letting die.

The meaning of these terms also can determine whether “suicide,” as used both in medicine and beyond, entails disapproval and whether it is proper to use the language of “causing death,” which suggests liability, when characterizing the physician’s action of hastening death. Also assessed are whether “the right to die” is a meaningful notion and, if so, how it differs from the right to refuse treatment, the right to avoid suffering, and the right to death with dignity.

Essay 8. “The Exploitation of the Economically Disadvantaged in Pharmaceutical Research”

Publication Data. This essay was published in Denis Arnold, ed., *Ethics and the Business of Biomedicine* (Cambridge: Cambridge University Press, 2009). Copyright © 2009 Cambridge University Press. Reprinted with the permission of Cambridge University Press.

Abstract. I evaluate some searing criticisms of the power and influence of the pharmaceutical industry that have appeared in various published sources. The industry stands accused of a sea of injustices and corruptions, including aggressive and deceptive marketing schemes, exploitative uses of research subjects, a corrupting influence on universities, suppression of and amateurism in handling scientific data, and conflicts of interest that bias research investigators. Each charge of injustice derives from concern about some form of unfair *influence* exerted by pharmaceutical companies. The array of alleged forms of influence is vast, and I here telescope to one area: the recruitment and enrollment in clinical research of vulnerable human subjects, in particular the economically disadvantaged. I focus on the charge that subjects in clinical trials are unjustly exploited by manipulative and unfair payment schemes.

I treat three problems. The first is whether the economically disadvantaged constitute a vulnerable group. I argue that classification as a “group” is a misleading characterization that may cause paternalistic overprotection. The second problem is whether the vulnerable poor are exploited by payments that constitute either an undue influence or an undue industry profit. I argue that such assessments should be made situationally, not categorically. The third problem is whether the poor are likely to give compromised or nonvoluntary consents. I argue that this third problem, like the second, is subtle and complicated, but practically manageable, and I add that pharmaceutical research involving the poor and vulnerable can, with proper precaution, be carried out in an ethically responsible manner. Whether the research *is* so conducted is another matter, an empirical problem beyond the scope of my argument.

PART III. THEORY AND METHOD

Essay 9. “Principles and Other Emerging Paradigms in Bioethics”

Publication Data. Tom L. Beauchamp, as published in 69 *Indiana Law Journal*: 1–17 (1994). Copyright © 1994 by the Trustees of Indiana University. Reprinted with permission. For the present volume I have added a few paragraphs to this essay.

Abstract. This article is centered on several accounts of biomedical ethics that allegedly challenge the principles account that Childress and I defend. Leading critics of our principles (Bernard Gert, Danner Clouser, Albert Jonsen, Stephen Toulmin, Carson Strong, John Arras, Edmund Pellegrino, and others) have, since the late 1980s, defended some types of theory or method proposed as alternatives to or substitutes for principlism. These types include casuistry, virtue theory, and impartial rule theory. These accounts were first emerging to prominence in bioethics at the time this article was written. I welcome these developments in this essay, because they improve the range, precision, and quality of thought in the field. I also acknowledge the contribution those who embrace these paradigms have made to the improvement of my own thought. However, I argue that impartial rule theory, casuistry, and virtue ethics should not be presented as rivals to principlism, because they neither replace the principles in principlism nor are inconsistent with those principles. I argue that all leading “alternatives” are compatible with, and not alternatives to, an approach based on principles. Finally, I point to some limitations of the principle-based approach, in light of these paradigms, and reflect on how those limitations should be handled.

Essay 10. "A Defense of the Common Morality"

Publication Data. This essay was published in *Kennedy Institute of Ethics Journal* 13:3 (2003): 259–274. Copyright © 2003. The Johns Hopkins University Press. Reprinted with the permission of the Johns Hopkins University Press.

Abstract. Phenomena of moral conflict and disagreement have led writers in ethics to two antithetical conclusions: Either moral distinctions hold universally or they hold only relative to a particular and contingent moral framework. If the latter, they cannot claim universal validity. In this essay I defend a universalistic account of the most general norms of morality in the course of responding to some critics of the common morality theory that Childress and I defend in *Principles*. In particular, I respond to criticisms by David DeGrazia and Leigh Turner, both of whom take "common morality" to refer to a broader and quite different body of norms than I do.

I maintain that one can consistently deny universality to some justified moral norms while claiming universality for others. I argue that universality is located in the common morality and that nonuniversality is to be expected in other parts of the moral life, which I call "particular moralities." The existence of universal moral standards is defended in terms of (1) a theory of the objectives of morality, (2) an account of the norms that achieve those objectives, and (3) an account of normative justification (both pragmatic and coherentist). This defense in terms of (1) through (3) sets the stage for the next essay in the volume (#11, as abstracted immediately below).

Essay 11. "From Morality to Common Morality"

Publication Data. This essay is forthcoming in a volume to be entitled, roughly, *Bernard Gert and Applied Philosophy*. It is being edited at Dartmouth College as the present volume goes to press. Published by permission of Jim Moor and Bernard Gert. ©

Abstract. For some 19 years, Bernard Gert has criticized my views about moral philosophy and the principles of biomedical ethics. In this article I focus on the major issue addressed in his moral theory: the justification of morality—that is, the justification of the common morality. I concentrate on a body of claims that he and I both defend about the common morality, and I emphasize our similarities rather than our differences. I orient the discussion around his account and develop my own account in the process.

My objectives in this paper are threefold: first, to argue that the common morality is a reasonable basis for both moral theory and practical ethics;

second, to identify and defend three forms of justification of the common morality; and third, to show precisely where Gert and I agree and disagree. The main question I address is, “Which types of justification of the common morality are needed, and for which types of claims about the common morality are they suitable?” I present three distinct strategies of justification: (1) normative theoretical justification, resting on ethical theory; (2) normative conceptual justification, resting on conceptual analysis, and (3) empirical justification, resting on empirical research. Each of these three types justifies a different conclusion about the common morality. I do not produce a justification of any one of the three strategies, although I outline the form such justifications would take. That is, my limited aim is to identify three available types of justification and to identify the conclusions each type can be expected to reach. In particular, I distinguish justification of the norms of the common morality (Gert’s principal project) from the justification of claims that the common morality exists (which, as yet, is of little or no interest to Gert, though is of interest to me).

The first half of the paper is devoted to finding points of agreement in our theories. In the second half, I am critical of Gert’s lack of attendance to a few important issues, especially his neglect of empirical claims, including ones that he himself seems to rely on. On the whole, this essay presents my account of the methods of justification of common morality, and therefore is not limited to a criticism of Gert’s views.

Essay 12. “On Eliminating the Distinction Between Applied Ethics and Ethical Theory”

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Abstract. I motivate this 1984 paper by noting that so-called “applied ethics”—a recently coined term—has become a major growth area in the curricular offerings in North American philosophy, but that its actual standing in philosophy is insecure. Many philosophers regard the literature in applied ethics as lightweight and perhaps philosophically barren. However, I argue that understanding and teaching the best literature in applied ethics can be as difficult as mastering material in more abstract regions of ethical theory, but I also argue that no significant differences distinguish ethical theory and applied ethics as philosophical activities or methods. I do not maintain that there are no differences in content. I argue only that good applied philosophers do what philosophers have always done: They analyze concepts; submit to critical scrutiny various strategies that are used to

justify beliefs, policies, and actions; examine hidden presuppositions; and offer both moral criticism and constructive theories.

Early in the paper I argue for eliminating the distinction between applied ethics and ethical theory. I turn, in later sections, to methodological considerations, paying particular attention to the “case method” and the way analytical argument surrounds it in law, business, and medicine. I argue that philosophers can profit in both a scholarly and a pedagogical way from certain uses of the case method. At various points in the paper I examine some of the work and the claims of Norman Daniels, Bernard Gert, and Dan Clouser.

Essay 13. “Does Ethical Theory Have a Future in Bioethics?”

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Abstract. This article assesses whether ethical theory is likely to continue in upcoming years to play the prominent role it has in the previous 25 years of published literature and curriculum development in bioethics. What transpired during these years suggests that the field enjoys a successful and stable marriage to philosophical ethical theory. However, the marriage became shaky as bioethics became a more interdisciplinary and practical field. A practical price is paid for theoretical generality in philosophy, and it is not clear that contemporary bioethics is willing to pay that price. It is also often unclear whether and, if so, how theory is to be brought to bear on dilemmatic problems, public policy, moral controversies, and moral conflict. I envision that the next 25 years could be very different because of this now troubled marriage. The most philosophical parts of bioethics seem headed toward a retreat to philosophy departments and philosophy journals, while bioethics continues on its current course toward becoming a more interdisciplinary and practical field.

One piece of evidence of philosophy’s declining influence is that many individuals in law, theological ethics, political theory, the social and behavioral sciences, and the health professions now carefully address mainstream issues of bioethics without finding ethical theory essential or even particularly useful or insightful. Another is that philosophers have yet to offer detailed statements of a method for moving from philosophical theories to the practical commitments of the theories. Although many moral philosophers are at present actively involved in problems of biomedical ethics such as clinical and corporate consulting, policy formulation, and committee review, it is an open question what their role *as moral philosophers* should be and whether they can successfully bring ethical theories and methods to bear on problems of practice.

My concerns in this essay are with the types of theory and method that have been under discussion in bioethics in the last quarter-century. Three interconnected areas have been prominent: (1) normative moral theories (from utilitarian and Kantian theories to principlism, casuistry, virtue ethics, feminist ethics, particularism, etc.); (2) moral and conceptual analyses of basic moral notions (informed consent, the killing/letting-die distinction, etc.); and (3) methodology (how bioethics proceeds—e.g., by use of cases, narratives, specified principles, theory application, reflective equilibrium, legal methods, etc.). I leave it an open question whether (2) or (3) can be successfully addressed without addressing (1), an unresolved problem in philosophical ethics. However, I question philosophy's success in all three areas, laying emphasis on its weaknesses in connecting theory to practice.

In assessing the contemporary literature and how it needs to change, I confine attention to three substantive areas of the intersection between bioethics and ethical theory: cultural relativity and moral universality, moral justification, and conceptual analysis. In each case I argue that philosophers need to develop theories and methods more closely attuned to practice. The work of several philosophers, including Ruth Macklin, Norman Daniels, and Gerald Dworkin, is examined. In their writings there is a methodological gap between philosophical theory (and method) and practical conclusions. The future of philosophical ethics in interdisciplinary bioethics may turn on whether such gaps can be closed. If not, bioethics may justifiably conclude that philosophy is of little practical value for the field.

Essay 14. "The Failure of Theories of Personhood"

Publication Data. This essay was published in *Kennedy Institute of Ethics Journal* 9:4 (1999): 309–324. Copyright © 1999. The Johns Hopkins University Press. Reprinted with the permission of the Johns Hopkins University Press.

Abstract. This article focuses on the pervasive belief in popular culture, philosophy, religion, law, and science (e.g., in research ethics) that some special property of persons, such as self-consciousness, rationality, language use, or dignity, confers a unique moral status. I discuss the distinction between moral persons and metaphysical persons and also the connection or lack of connection between the theory of autonomy and the theory of persons. I argue that no set of cognitive properties alone confers moral standing and that metaphysical personhood is not sufficient for either moral personhood or moral standing. Cognitive theories fail to capture the depth of commitments embedded in using the language of "person," and it is more assumed than demonstrated in cognitive theories that nonhuman animals lack a relevant form of self-consciousness or its functional equivalent. Although nonhuman animals are not plausible

candidates for moral persons, humans, too, fail to qualify as moral persons if they lack one or more of the conditions of moral personhood. If moral personhood were the sole basis of moral rights, then these humans would lack rights for the same reasons that nonhuman animals are often held to lack rights.

I also argue that the vagueness and the inherently contestable nature of the concept of person are not likely to be dissipated by philosophical theories of the nature of persons and that we would be better off if we eliminated the language of “person” from moral theory altogether and replaced it with more specific concepts.

Essay 15. “Looking Back and Judging Our Predecessors”

Publication Data. This essay was published in *Kennedy Institute of Ethics Journal* 6:3 (1996): 251–270. Copyright © 1996. The Johns Hopkins University Press. Reprinted with the permission of the Johns Hopkins University Press.

Abstract. This essay is on the problem of retrospective moral judgment. It considers how moral theory and related methods of assessment should be used to address the following question: “Can persons and institutions be held responsible for actions taken decades ago, when moral standards, practices, and policies were strikingly different, or even nonexistent?” The question is whether the principles and rules that we currently embrace are unfairly retrofitted when we use them to make judgments about the medical ethics of our predecessors. This seemingly straightforward question requires making several distinctions and using different forms of argument to untangle the issue(s). For example, issues of wrongdoing need to be disengaged from questions of culpability and exculpation. Also, even if institutions can be found guilty of wrongdoing, it does not follow that particular individuals in those institutions can be found to be either wrongdoers or culpable.

To illustrate the problems of theory and method present in these questions, I consider two morally and politically important examples of how these questions have arisen in biomedical ethics. Both come from research ethics, and the two are intimately connected. The first source is a set of moral problems addressed in the *Report of the Advisory Committee on Human Radiation Experiments* that was appointed by President William Clinton to investigate questionable experiments funded by the U.S. government after World War II. The second is the work of an Ad Hoc faculty committee at the University of California, San Francisco (“Report of the UCSF Ad Hoc Fact Finding Committee on World War II Human Radiation Experiments”) that investigated the ethics of the actions of its own administration and faculty in its involvement in the human radiation experiments.

The Advisory Committee identified six basic ethical principles as relevant to its work and then appropriately argued that persons and institutions can be held responsible for actions taken even if the standards, practices, and policies at the time on the use of research subjects were strikingly different than those we call upon today. I argue that in reaching its conclusions, the Advisory Committee did not altogether adhere to the language and commitments of its own ethical framework. In its *Final Report*, the Advisory Committee emphasizes judgments of *wrongdoing*, to the relative neglect of *culpability*; I argue that the Advisory Committee properly treats mitigating conditions that are exculpatory, but does not provide a thoroughgoing assessment of either culpability or exculpation. It also fails to judge the culpability of particular individuals, though it was positioned to do so.

I am thus critical of the Advisory Committee's findings, but I am especially critical of the more serious deficiencies in the Ad Hoc Committee's deliberations and conclusions. The latter group reaches no significant judgments of either wrongdoing or culpability, but almost certainly should have. A balanced investigation would have more critically assessed (1) physician wrongdoing, (2) the culpability of specific agents, and (3) institutional responsibility.

Part I

THE *BELMONT REPORT* AND THE RISE OF PRINCIPLES

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THE ORIGINS AND EVOLUTION OF THE *BELMONT REPORT*

When, on December 22, 1976, I agreed to join the staff of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, my first and only major assignment was to write the “Belmont Paper,” as it was then called. At the time, I had already drafted substantial parts of *Principles of Biomedical Ethics* with James Childress.¹ Subsequent to my appointment, the two manuscripts were drafted simultaneously, often side by side, the one inevitably influencing the other.

I here explain how the “Belmont Paper” evolved into the *Belmont Report*.² I will also correct some common but mistaken speculation about the emergence of frameworks of principles in research ethics and the connections between *Belmont* and *Principles*.

THE BEGINNINGS OF *BELMONT*

The idea for the “Belmont Paper” originally grew from a vision of shared moral principles governing research that emerged during a break-out session at a four-day retreat held February 13–16, 1976, at the Smithsonian Institution’s Belmont Conference Center in Maryland.³ Albert Jonsen has reported on the contributions at this meeting of Stephen Toulmin, Karen Lebacqz, Joe Brady, and others.⁴ However, this meeting predates my work on the *Belmont Report*, and I leave it to Jonsen and the others in attendance to relate the story of the retreat.

A few months after this conference at Belmont, I received two phone calls: the first from Toulmin, who was the staff philosopher at the National Commission, and the second from Michael Yesley, staff director. They asked me to write a paper for the National Commission on the nature and scope of the notion of justice. Yesley told me that the commissioners sought help in understanding theories of justice and their applications to the moral problems of human subject research. I wrote this paper and assumed that my work for the National Commission was concluded.⁵

However, shortly after I completed the paper, Toulmin returned to full-time teaching at the University of Chicago, and Yesley inquired whether I was available to replace him on the staff. This appointment met some resistance. Two commissioners who later became my close friends—Brady and Donald Seldin—were initially skeptical of the appointment. Nonetheless, Yesley prevailed, likely with the help of Chairperson Kenneth Ryan and my colleague Patricia King, and I joined the National Commission staff.

On my first morning in the office, Yesley told me that he was assigning me the task of writing the “Belmont Paper.”⁶ I asked Yesley what the task was. He pointed out that the National Commission had been charged by Congress to investigate the ethics of research and to explore basic ethical principles.⁷ Members of the staff were at work on various topics in research ethics, he reported, but no one was working on basic principles. He said that an opening round of discussions of the principles had been held at the Belmont retreat. The National Commission had delineated a rough schema of three basic ethical principles: respect for persons, beneficence, and justice. I asked Yesley what these moral notions meant to the commissioners, to which he responded that he had no well-formed idea and that it was my job to figure out what the commissioners meant—or, more likely, to figure out what they should have meant.

So, I found myself with the job of giving shape and substance to something called the “Belmont Paper,” though at that point I had never heard of Belmont or the paper. It struck me as an odd title for a publication. Moreover, this document had never been mentioned during my interview for the job or at any other time until Yesley gave me the assignment. My immediate sense was that I was the new kid on the block and had been given the dregs of National Commission work. I had thought, when I decided to join the National Commission staff, that I would be working on the ethics of psychosurgery and research involving children, which were heated and perplexing controversies at the time. I was chagrined to learn that I was to write something on which no one else was working and that had its origins in a retreat that I had not attended. Moreover, the mandate to do the work had its roots in a federal law that I had not seen until that morning.

Yesley proceeded to explain that no one had yet worked seriously on the sections of the report on principles because no one knew what to do with them. This moment of honesty was not heartening, but I was not discouraged either,

because Childress and I were at that time well into the writing of our book on the role of basic principles in biomedical ethics. It intrigued me that the two of us had worked relatively little on research ethics, which was the sole focus of the National Commission. I saw in my early conversations with Yesley that these two projects, *Principles* and *Belmont*, had many points of intersecting interest and could be mutually beneficial. And so it would be.

Yesley also gave me some hope by saying that a crude draft of the “Belmont Paper” already existed, though a twinkle in his eye warned me not to expect too much. That same morning I read the “Belmont draft.”⁸ Scarce could a new recruit have been more dismayed. So little was said about the principles that to call it a “draft” of principles would be like calling a dictionary entry a scholarly treatise. Some sections were useful, especially a few handsome pages that had been written largely by Robert Levine on the subject of “The Boundaries Between Biomedical and Behavioral Research and Accepted and Routine Practice” (later revised under the subtitle “Boundaries Between Practice and Research” and made the first section of the *Belmont Report*). Apart from Levine’s contribution, however, this draft of *Belmont* had almost nothing to say about the principles that were slated to be its heart.

In the next few weeks, virtually everything in this draft pertaining to principles would be thrown away either because it contained too little on principles or because it had too much on peripheral issues. At the time, these peripheral issues constituted almost the entire document, with the exception of the section written by Levine, which was neither peripheral nor on principles. The major topics addressed were the National Commission’s mandate, appropriate review mechanisms, compensation for injury, national and international regulations and codes, research design, and other items that did not belong in the *Belmont Report*. These topics, being peripheral, were therefore eliminated. Except for Levine’s section on boundaries, everything in this draft landed on the cutting-room floor.⁹

Once the “Belmont draft” was left with nothing in the section on principles, Yesley suggested that I might find the needed content from the massive compendium on research titled *Experimentation with Human Beings*, edited by Jay Katz with the assistance of Alexander Capron and Eleanor Swift Glass.¹⁰ Drawn from sociology, psychology, medicine, and law, this book was at the time the most thorough collection of materials on research ethics and law. Yesley informed me that I should endeavor to learn all the information presented in this book, but after days of poring over this wonderful resource, I found that it offered virtually nothing on *principles* suitable for an analytical discussion of research ethics. The various codes and statements by professional associations found in this book had occasional connections with my task and with the National Commission’s objectives, but only distant ones.¹¹