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Principles and Duties: A Critique of Common Morality Theory

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Abstract

Tom Beauchamp and James Childress's revolutionary textbook, Principles of Biomedical Ethics, shaped the field of bioethics in America and around the world. Midway through the Principle's eight editions, however, the authors jettisoned their attempt to justify the four principles of bioethics —autonomy, beneficence, nonmaleficence, justice—in terms of ethical theory, replacing it with the idea that these principles are part of a common morality shared by all rational persons committed to morality, at all times, and in all places. Other commentators contend that their theory has never been empirically confirmed and is unfalsifiable, since counterexamples can be deemed irrational, or as held by those living lives not committed to morality. The thesis of this paper is that common morality theory is the artifact of a category mistake—conflating common areas regulated by moral norms with common norms regulating moral conduct—that accords mid-twentieth century American liberal morality the status of transcultural, transtemporal, eternal moral truths. Such a conception offers bioethicists no tools for analyzing moral change—moral progress, regress, reform, evolution, devolution, or revolution—no theoretical basis for deconstructing structural classicism, racism, and sexism, or for facilitating international cooperation on ethical issues in the context of culturally based moral differences.

> Whatever common morality exists in contemporary American society is an achieved morality, one built and articulated over time through public education; civic strife; the gradual elaboration of policies, codes, and laws; and processes of acculturation for those unfamiliar with its lineaments. Rather than being found in the moral beacon of a transhistorical, transcultural "common moral sense ….not everyone, everywhere holds it in common."
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> Leigh Turner, 2003[1]

Principles: A Revolutionary Manifesto in the Guise of a Textbook

As pioneering bioethicist Jonathan Moreno aptly observes, through eight editions of their now classic work, *Principles of Biomedical Ethics*, Tom Beauchamp and James Childress "shaped a field…and helped to institutionalize that field around the world. It is hard to imagine what bioethics would be like without *Principles of Biomedical Ethics*" (hereafter referred to as *Principles*).[2] The impact of *Principles* is due in no small measure because it was a revolutionary manifesto in the guise of a textbook. Like other revolutionary manifestos, *Principles* opens by challenging the then common practice of treating ethical issues in biomedicine as a "series of problems, such as abortion, euthanasia…research involving human subjects." *Principles* replaced this episodic treatment using just four principles to "apply to a wide range of biomedical problems."[3] Three of these principles reinterpreted statements of physicians' duties found

in earlier canonical works of Western medical ethics: the duty of not harming patients became the principle of nonmaleficence; the duty of helping the sick became the principle of beneficence; and the duty of acting justly toward the sick became the principle of justice. Supplementing this traditional trio was a fourth principle new to canonical works in Western biomedical ethics, the duty to respect patients and research subjects as autonomous agents.[4]

Deploying these principles Beauchamp and Childress challenged the scientistic paternalism then dominant in American medicine.[5] As the eminent sociologist Talcott Parsons observed, medical practitioners of that period believed that "Non- and irrational mechanisms were…prominent in the reactions of sick people to their situation." Accordingly, since "the physician is trying his best to help the patient… [the physician–patient relationship] has to be one involving an element of authority… of 'doctor's orders' … [which it is] the patient's obligation faithfully to accept." Thus, since the physician is "a technically competent person whose competence and specific judgments and measures cannot be competently judged by the layman. The latter must therefore take these judgments and measures 'on authority.'"[6] So conceived, the medical ethics of scientistic paternalism presupposed the decisional incapacity of patients and families who were deemed so nonrational in the face of illness, or so ignorant of their own self-interest, that they were incompetent to make medical decisions. Biomedical practitioners, in contrast, as benign scientific agents could make rational medical decisions on patients' behalf. Thus, the physician's role was to direct care of the patient and the role of sick patients, and their families, was to dutifully follow doctors' orders.

Beauchamp and Childress's principle of autonomy challenged the scientistic paternalist conception of the patient–practitioner relationship by requiring physicians to inform patients and families about the nature of proposed treatments and by empowering patients (or research subjects) to refuse treatment (or to decline participation in experiments). Just as importantly, Beauchamp and Childress expanded the scope of the then-dominant physiological conception of beneficence and nonmaleficence (i.e., not harming) to include patients' or subjects' "important and legitimate interests," in relation to the family, their religion, or other concerns.[7] The effect was to issue a revolutionary manifesto in the seemingly innocuous guise of a biomedical ethics textbook.

As is typical of revolutionary manifestos, *Principles* was responding to a sense of malaise and discontent arising as the public began to question and reject the subservient sick role assigned to them by the scientistic paternalist conception of the physician–patient relationship. As founding bioethicist Robert Veatch observed, this malaise and discontent became more intense the more laypeople learned about American healthcare practices in the 1970s.

> They were often appalled [as]…they discovered that physicians…were making controversial moral moves, choices that…some laypeople considered morally indefensible. Physicians intentionally withheld grave diagnoses from patients; they did research on them without informing them; they sterilized some patients who they thought were not worthy of being parents; they routinely held critically and terminally ill patients alive against the wishes of those patients or their families; they refused to perform sterilizations, abortions, and provide contraceptives if they thought that patients shouldn't have them… The more laypeople learned about the ethic that had become embedded in the medical profession, the more they protested.[8]

In 1973 a well-publicized manifestation of this discontent embarrassed the American Hospital Association (AHA) into placating the Boston Women's Health Book Collective (BWHBC), the National Welfare Rights Organization, and various African American civil rights groups into signing A Patient's Bill of Rights. The focal point of this joint protest was the "condescending, paternalistic, judgmental and noninformative" treatment of women and minorities in American clinics and hospitals.[9] Among the many practices that protestors found objectionable was that of routing the indigent elderly, unwed mothers, and various poor folks into separate hospital and clinic entranceways—and, in the American South, into entrances reserved for Colored or Negro patients. Although the civil rights, Medicaid, and Medicare laws enacted in the1960s had prohibited such discriminatory practices, when these newly entitled patients showed up at clinics and hospitals, they still found themselves directed to the same old

entranceways, where they received the same inequitable access and condescending, paternalistic, judgmental, sexist, racist, and noninformative treatment that had been accorded them previously. It was commonplace, for example, to refuse patients treated in former charity, Colored/Negro, and/or welfare clinics the courtesy of advance appointments. Literally and symbolically, American healthcare facilities frittered away their time as if their time—or they themselves—were of little value. Not surprisingly, therefore, when these groups consolidated their demands in A Patient's Bill of Rights, Article 10 stipulated that every patient "has a right to know in advance what appointment times and physicians are available."[10]

Among the other rights that the AHA pledged to respect were the right to have diagnoses, prognoses, and treatment options explained in language patients could understand; the right to be told whether a treatment was experimental; the right to refuse treatment; and the right to be informed of physicians' conflicts of interest. Yet, even as the AHA publicly endorsed these rights, it appended the following statement indicating that its pledge of reform was merely pro forma since "No catalog of rights can guarantee for the patient the kind of treatment he has a right to expect." Why not? Because, as the AHA explained condescendingly, "A hospital has many functions to perform, including the prevention and treatment of disease, the education of both health professionals and patients, and the conduct of clinical research."[11] Ultimately the AHA's inactions spoke louder than is words: it made no attempt to enforce the rights that it had been embarrassed into endorsing. Thus, 6 years later, when Beauchamp and Childress published *Principles*, American hospitals were still cloaking their ongoing ageist, classist, racist, and sexist practices under the mantle of benign scientistic paternalism.

Rejecting the Hobgoblin of Foolish Consistency

In the first edition of *Principles*, Beauchamp and Childress quote Ralph Waldo Emerson's remark that "A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines."[12] Emerson's maxim is often cited by revolutionaries because, as Thomas Kuhn observes of scientific revolutions, "The success of a [new] paradigm is at the start largely the promise of success."[13] By any measure, Beauchamp and Childress's approach to biomedical ethics was a promising new paradigm that would prove extraordinarily successful. One factor favoring its success was our intellect's abhorrence of vacuums: irrespective of whether an insurrection is moral, political, or scientific, it seldom disestablishes an entrenched system of authority, theory, or morality without substituting an alternative conception that holds the promise of resolving issues apparently unresolvable by established conception. Thus, as the failure of the Patient's Bill of Rights protest illustrates, the benign paternalistic conception of the practitioner–patient relationship could not be displaced without some alternative. *Principles* laid out that alternative.

Revolutionary new conceptions, like the one laid out in *Principles*, are typically promissory pronouncements whose proponents can tolerate seeming inconsistencies by putting them aside as matters to be resolved in at some future time.[14] One famous example of revolutionaries' tolerance for inconsistencies in revolutionary manifestos occurred in 1776 when the second Continental Congress tasked Thomas Jefferson with transforming its list of complaints about the British government's "abuses and usurpations" into a declaration of independence. Recognizing the insufficiency of simply confronting the British government with a list of grievances, Jefferson prefaced congress's list of complaints with 55 words inspired by English philosopher John Locke: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."[15] Using just 55 (of Locke's) words Jefferson inverts the monarchical presumption that subjects' role is to serve their superiors, that is, royals and the aristocracy, asserting that all men are equal at the point of their creation. Thus, the proper role of governments is protection of citizens' creator-conferred unalienable rights to life, liberty and the pursuit of happiness. Consequently, Jefferson concludes, "whenever any form of government becomes

destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." Jefferson then lists congress's complaints about British actions so destructive to governance that they warrant a revolution.[16]

Jefferson, a slave-owner who nonetheless advocated the abolition of slavery, also recognized the inherent inconsistency of a nation of slave-owners proclaiming liberty rights.[17] Hence, in his original draft, he assuaged the hobgoblin of consistency by blaming the British king for "violating [people's] most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere or to incur miserable death in their transportation thither."[18] However, congressional delegations from slaveholding states objected to including a condemnation of the slavery in the Declaration. So, consistency yielded to pragmatism and the passage on slavery was deleted. Revolutionary change was not to be held hostage to the hobgoblin of consistency.

Neither were Beauchamp and Childress. In the first three editions of *Principles,* they had justified their principle-based account of biomedical ethics by citing a convergence of ethical theories.[19] In the fourth edition, however, they recognized some "very probing and often penetrating" criticisms from common morality theorists.[20] On reflection they decided that justifying principles by citing abstruse ethical theories had made them "invariably more contestable than the norms in the common morality…. For more social consensus exists about principles and rules drawn from the common morality (e.g., our four principles) than about theories."[21] Capitulating to their common morality critics they jettisoned their original convergence of ethical theories foundation in favor of "unit[ing] principle based common-morality ethics, with [a] coherence model of justification…[to] *construct* principles and rules from considered judgments in common morality."[22] And, indeed, their version of common morality theory gained influential adherents, like Ruth Macklin, who envisioned it as foundational for global bioethics and who used it to critique sexist practices in non-Western countries.[23]

By its eighth edition *Principles* was characterizing common morality as offering the

> …core tenets found in every acceptable particular morality [and thus] not relative to cultures, groups, or individuals. All *persons living a moral life* know [these] rules [which are] not relative to cultures, groups, or individuals. All persons *living a moral life* know and accept rules such not to lie, not to steal others' property, not to punish innocent persons, not to kill or cause harm to others, to keep promises, to respect the rights of others. All *persons committed to morality* do not doubt the relevance of and importance of these universally valid rules. Violation of these rules in unethical and will generate feelings of remorse…. This morality is not merely *a* morality in contrast to other moralities. It is applicable to all persons in all places, and we appropriately judge all human conduct by its standards.[24]

It was also claimed that "No evidence known suggests that societies have handled moral problems by either rejecting or altering basic norms in the common morality." It was noted, however, that the scope, interpretation and specification of the norms of common morality may vary in particular moralities.[25]

Four Challenges to Common Morality Theories

As formulated in the eighth edition of *Principles,* common morality theory faces at least four significant challenges. (1) It is *unfalsifiable*: The claim that common morality is, as a matter of empirical fact, commonly shared by all rational persons committed to morality at all times and all places is unfalsifiable because counterexamples are dismissed as either irrational deviations or failures to live lives committed to morality. If, however, it is claimed to be true by definitional fiat, it is still insusceptible to empirical falsification since definitional truths cannot be falsified. Thus, common morality theorists appear to be propounding an unfalsifiable claim as if it were an empirical observation. (2) It is *unempirical*: Not surprisingly therefore, no anthropological or historical data has been adduced supporting the claim that

"the common morality" is common to all moralities. (3) It is the artifact of a *category mistake*: the conflation of *common areas regulated* by moral norms with *common norms regulating* moral conduct. This conflation enables proponents to reify and elevate late twentieth century American liberal morality to the status of atemporal transcultural universal moral truths that are used to critique alternative conceptions of morality past and present. (4) However, the theories atemporality and claims of transculturality render it *useless for analyzing moral change—moral progress, regress, reform, evolution, devolution, or revolution—or for deconstructing the forms of structural discrimination* that proponents of *A Patient's Bill of Rights* sought to remedy, *or for developing global solutions* to ethical issues in the context of cultural differences in conceptions of morality. Since criticisms 1 and 2 have been effectively explored by others[26]; this paper focuses on criticisms 3 and 4.

Common Morality: Reifying a Category Mistake into a Universal Morality

Common morality theorists claim to have discovered a universal morality valid in all cultures, at all times, and in all places, rests on a category mistake: the conflation of *areas* of conduct *commonly regulated* by moralities (e.g., killing people) with *common regulations* embraced by all societies at all times and places (e.g., killing murderers is morally permissible). It is true that virtually all societies regulate killing fellow humans; however, they do not have the same substantive rules regulating killing fellow humans. Some societies hold that is morally permissible for men to kill other men in duels defending their honor, or for men to kill women to redeem a family's honor.[27] Then again, some societies believe it is morally permissible for individuals to exact retribution taking life for life (as in *Leviticus* 24:19–21); others believe that retributive justice is the sole prerogative of governments; still others hold human life so precious that not even governments have a right to kill murderers. And some societies believe that human life should be respected from the moment of conception, whereas others permit aborting the life of a zygote, embryo, or fetus, if it endangers maternal life or health, or, if it was conceived through rape or incest, or if it is likely to be disabled, or simply because it is unwanted.

It is true that societies commonly regulate killing; however, to reiterate, they do not share some one common moral standard with respect to when or which humans may or may not kill fellow humans. To restate this point on a more prosaic level: societies commonly regulate the flow of traffic in their cities, but they have different traffic regulations (e.g., on which side of a street to drive on). To confound the common practice of regulating traffic with substantively common regulations governing traffic flow would be what philosophers refer to as a "category mistake." And when common morality theorists claim to have discovered "universal norms shared by all persons committed to morality, *the common morality*….applicable to all persons in all places, and we appropriately judge all human conduct by its standards,"[28] they are reifying a category mistake into a universal moral standard. Compounding this error, some claim that since the universal moral norms of common morality are "open to all rational persons in all societies at all times they are unchanged and unchanging, discovered rather than invented…. general moral rules [that] apply to all rationality persons at all times, obviously they cannot be invented, or changed."[29] Beauchamp and Childress concur, albeit on the quasi-empirical grounds that, "No evidence known to us suggests that societies have handled moral problems by either rejecting or altering basic norms in the common morality."[30]

Common morality theorists admit that some moral norms have changed over time, acknowledging that the moral permissibility of enslaving people has changed. However, Beauchamp and Childress claim that since "slave owning clearly violate[s] respect for autonomy and nonmaleficence introduction of a rule allowing this practice would leave the common morality in a state of moral incoherence, whether or not slave-owning societies recognize this fact."[31] This is an odd statement coming from common morality theorists insofar as they are asserting the *empirical* claim that common morality consists of universal norms shared by all persons committed to morality. This would seem to imply that, given the near-universal acceptance of slavery prior to the nineteenth century, either people living in earlier times did not live lives committed to morality, or that it is empirically false that people at all times accepted the

so-called "common" morality. In point of historical fact, moral condemnation of slavery was so controversial that it took two revolutions and a civil war—a political revolution in France (1789), a moral revolution in Britain (1833), and a civil war in the United States (1861–1865)—to establish the immorality and illegality of slavery in the Western world. Global condemnation of slavery was not achieved until the twentieth century.[32] It would appear that, whatever common morality theorists mean by "common morality," they are not referring to some substantive morality commonly accepted by all persons committed to morality throughout recorded history. It seems more likely that they are projecting a view of morality "common" among American liberals in the late twentieth century onto other periods and cultures. In effect, this reifies late twentieth century American liberals' sense of morality from a term of persuasion or an (historically inaccurate) empirical-appearing observation into a metaethical standard for ascertaining the validity of all other conceptions of morality, that is, it converts it into a form of moral imperialism.

They also claim that "slave owning clearly violate[s] respect for autonomy and nonmaleficence [and thus] is not coherent with [common morality's] principles and cannot be specified to be coherent with them."[33] This seems odd because, in point of historical fact, until the late eighteenth century major Western philosophers— Plato, Aristotle, and even Enlightenment philosophers, like Locke—believed that slavery was compatible with nonmaleficence. They reasoned that the custom of enslaving captured enemies was less harmful than the alternative practice of committing genocide on captive populations (or, at least, the male portion of that population).[34] Moreover, Aristotle, who was a Greek supremacist, "believed that non-Greeks (βάρβαροι [barbarians]) are natural slaves," because their outward appearance, that is, their skin color, differs from that of Greeks.[35] Plato also rejected the application of nonmaleficence to the treatment of slaves, holding that "just" treatment of slaves requires one to be harsh, that is, "One must punish slaves justly, not spoiling them by admonition as though they were freemen."[36]

It is even more puzzling to reject "slave owning" on the grounds that it "clearly violate[s] respect for autonomy,"[37] since neither Plato, nor Aristotle, nor Locke, nor any philosopher writing prior to Kant, could have understood this claim. They would have understood *autonomy* in the original Greek sense of *political* self-governance—a property that conquered peoples lose by virtue of having been conquered. Immanuel Kant first introduced the concept of *moral* autonomy to the Western philosophical lexicon in the late eighteenth century. Prior to Kant's epiphany, however, almost all European philosophers of the Enlightenment were white supremacist who accepted colonialism and slavery as a natural consequence of the white man's moral, cultural, military, and technological superiority. As late as 1782 Kant himself was writing that Native "Americans and Negroes cannot govern themselves [and could] serve only as slaves."

Yet conceptions of morality evolve and, as Kant explored the implications of his newly formed concept, *autonomy*, he "*abandoned* the thesis of racial hierarchy and white superiority" and "began to criticize colonialism and slavery, … simultaneously add[ing] a new …cosmopolitan right [which] grants full and equal juridical status to all humans—to all 'citizens of the earth.'"[38] To sum up (using a Sellarsian rendition of a Kantian dictum): insofar as percepts without concepts are blind,[39] prior to his reconceptualization of autonomy as moral self-rule, Kant himself was blind to the immorality of white supremacism, colonialism, racism, and slavery. Furthermore, since, as Kant once observed, "the action to which the 'ought' applies must indeed be possible under natural conditions,"[40] Kant could not blame himself— nor should we blame him—for his earlier white supremacist acceptance of slavery and colonialism in the 1880s. For neither Kant, nor any other Western philosopher writing previously, could conceive of racism or slavery as incompatible with a concept that had not yet been conceived. The limits of Kant's conceptions set the limits of his moral vision; as it does for everyone. Thus, insofar as what it means to live a life committed to morality is limited by the morality one can conceive, we cannot blame others for living lives that they believed were moral—even though we consider their actions immoral—if their understanding of morality differs from ours. We can and should, however, condemn their practices as immoral because our moral worldview has been expanded by concepts of human rights, and, for the philosophically well-versed, by Kant's conception of autonomy. To reiterate for clarity and emphasis,

although we should not blame slaveholders of earlier eras for failing to live a life committed to morality, insofar as we hold that all people have unalienable rights to life and liberty, we can and should condemn enslaving or owning slaves—past or present—as an immoral violation of the rights of those enslaved.

We can also critique other views of morality, past or present, as deficient in achieving the fundamental objectives for which societies create moralities: to facilitate cooperation and to minimize conflict within and between communities. This applies to enslaving others for, as Locke himself fully appreciated, "the perfect condition of slavery…is nothing else, but *state of war continued between a lawful conqueror and a captive.*" Thus, to enslave people is to perpetuate war-like conflict within the context of a civil society, thereby creating ongoing internal tension that can foil one of the most fundamental objectives of morality, establishing civil tranquility.[41]

Duties, Principles, and Common Morality Theory

Moralities change over time, sometimes by evolution, sometimes by drift, sometimes though moral reforms and sometimes through moral, political, or economic revolutions. These changes are usually marked by the introduction of new conceptions and terminology and, insofar as attempts at moral change are successful, they are typically accompanied by the obsolescence or reinterpretation of traditional moral concepts and terminology and by pressure to reform or abandon the practices they once justified. A case in point is *Principles'* introduction of *autonomy* into American medical ethical lexicon. This concept offered conceptual support and validation of protestors' claims in *A Patient's Bill of Rights* (which was appended in full to the first edition of *Principles*[42]). Some may bridle at the notion that so humble an object as a textbook can have a revolutionary impact on medical morality. Yet a moment's reflection should make it evident that textbooks serve as a means by which one generation—in this case, a revolutionary generation—is a vehicle for transmitting whatever that generation takes to be important to successor generations. To emphasize this point, and to underline the significance of conceptual innovation, it is instructive to compare *Principles* with a very different revolutionary manifesto published as a medical ethics textbook: Rudolf Ramm's 1943 *Physicians' Duties and the Rules of the Medical Profession* (*Ärztlizche Rechts-und Standeskunde Der Artz als Gesundheitserzieher*, hereafter referred to as "*Duties*").

Duties, like *Principles*, explains and justifies a revolutionary new conception of biomedical ethics: that of the National Socialist German Workers Party (*Nationalsozialistische Deutsche Arbeiterpartei*, hereafter, NSDA).[43] The NSDSA condemned traditional entrepreneurial and professional conceptions of medical practice because, they claimed, these conceptions had left German physicians financially and morally bankrupt and had contributed to the declining physical and genetic health of the German *Volk* (i.e., a people connected to each other genetically and culturally).[44] Consequently, "Even though the ultimate responsibility goes to the healing of patients and the perpetuation of life," the NSDA proposed "an essential expansion" in physicians' duties "through coming to grips with biological thinking in the National Socialist state."[45]

This expansion was predicated on the concept of *Rassenhygiene* (Racial Hygiene). This concept was not new to the German medical lexicon. Alfred Ploetz had introduced it in 1895.[46] What was new was the NSDA's adoption of *Rassenhygiene* as official government policy.[47] Thus, *Duties* informs medical students, after they become physicians they will be responsible for promoting healthy eating (of whole grain breads, for example), and for discouraging the use of tobacco (as carcinogenic).[48] They must also obey "law[s] for the reestablishment of German blood…for Prevention of Genetically Ill Offspring… for the Defense of the Genetic Health of the German *Volk*… which prohibits for all time a further mixing of pure-blooded German people with the Jewish and lower races. *The Sterilization Law* [also] preclude[s]…genetically ill and morally inferior people from transmitting their genes."[49] Thus they would also be required to report children and adults with disabilities to hereditary courts (that would refer them to specialized institutions, such as Hadamar psychiatric hospital, where they would be covertly killed).[50] And indeed, during this period famous physicians, like Johann Asperger, discoverer

of the eponymous "Asperger's syndrome," did in fact report children with disabilities to the authorities.[51]

Duties, it should be clear, was the official textbook of NSDA, or "Nazi," medical ethics. It was used in a required course for upper-level German medical students from 1942 to 1945.[52] Some might find the expression "Nazi medical ethics" objectionable on the grounds that no text propounding the ableist, anti-Semitic, homophobic, and racist views that culminated in the Holocaust can properly be given the title "ethics." Yet if we are to understand and analyze the nature of morality, we cannot treat the concept, "ethics," as an honorific applicable only to justifications of our own moral beliefs, or those consistent with them. We need to recognize that the concept and term "ethics" applies to any attempt to justify whatever some person, movement, community, or society believes to be moral or immoral. In this sense, *Duties* was the medical ethics textbook of Nazi Germany in the same way that *Principles* was the ethics textbook of late twentieth century American bioethics, that is, to use a criterion employed in *Principles,* both books address the questions "Which general moral norms should we use to guide and evaluate conduct and why?"[53]

In answering these questions *Duties* presents a coherent account of the conception of biomedical ethics that led German physicians to become complicit in the Holocaust. For example, when, reporters pressed, Dr. Karl Brandt, director of the *Aktion T4* program for killing children with disabilities, he justified his actions with a statement that could have been taken directly from the pages of *Duties.* "We German physicians look upon the state as an individual to whom we owe prime obedience. We therefore do not hesitate to destroy an aggregate of, for instance, a trillion cells in the form of a number of individual human beings if we believe they are harmful to the total organism—the state."[54] Brandt's explanation was not idiosyncratic. When psychiatrist Robert J. Lifton interviewed physicians who had staffed concentration camps (like Auschwitz), he too found that they expressed no signs of remorse because they accepted "the principle of 'racial hygiene' [*Rassenhygiene*, and were] working toward a noble vision of the organic renewal of a vast 'German biotic community'…with a positive mission involving the principle of "the necessity to 'sweep the clean the world'.…in the words of their leader," Adolf Hitler, '*to see to it that the blood is preserved pure and by preserving the best of humanity, to create the possibility of a nobler development.*'"[55]

Moral innovation often hinges on pivotal concepts, like *autonomy*, or in this case, *Rassenhygiene*, that allow a reinterpretation of established moral norms. As imparted in *Duties*, for example, many of a physician's duties are similar to those cited in more conventional Western medical ethics statements of the 1940s. Thus, physicians are said to have a duty to respond to the medical needs of the poor and rich equally, to preserve medical confidentiality, and to perform abortions "only if there is a danger to the life of the pregnant woman."[56] What transforms these otherwise commonplace statements into Nazi medical ethics is the impact of *Rassenhygiene*, a concept that expands the scope of physicians' responsibilities to include future generations. Thus, "*Whoever weakens the Volk community through abortion of a fetus is to be placed on the same plane as a traitor to the country and Volk.*"[57] A similar line of reasoning leads to an absolute prohibition against practicing euthanasia on any member of the *Volk.*[58] Yet everything is different with respect to the treatment of non-*Volk.* As Brandt and Ramm underscore, *Rassenhygiene* also justifies eugenic prohibitions for the prevention of genetically ill offspring, and for the defense of the genetic health and purity of the German germline as viewed through the ableist, anti-Semitic, and more generally racist lens that culminated in the Holocaust.[59]

In striking contrast, by its fourth edition *Principles* had extended its interpretation of "autonomy" and its redefinition of "beneficence/nonmaleficence" to embrace all humanity. One might even be tempted to suggest that the universalist and humanistic conception of medical morality evident in all eight editions of *Principles* (and in the work of other common morality theorists like Gert, and Macklin) was a reaction to the narrowing of the scope of medical morality evident in the ethics of *Rassenhygiene.* An unfortunate consequence of any such reaction is that, having fettered their principles to an atemporal transcultural universal ethics, they were forced into making empirically false claims, such as, "Violation of these norms [of common morality] is unethical and will generate feelings of remorse." [60] In point of historical fact

adherents of *Rassenhygiene*, like Karl Brandt, never exhibited remorse for implementing programs like *Aktion T4.*

Perhaps more to the point, throughout his life Brandt sought to live a life committed to morality. As a young physician he applied to work with Albert Schweitzer's medical mission but was prevented from traveling to Africa by bureaucratic obstacles.[61] Brandt also studied with liberal psychiatrist Alfred Hoche, co-author of an influential treatise published in 1920, *The Release and Destruction of Lives Unworthy of Being Lived (Die Freigabe der Vernichtung lebensunwerten Leben)*.[62] Brandt's biographer, Ulf Schmidt, writes that "Hoche—and later Brandt— applied British sociologist Herbert Spencer 's concept of the social organism to the mentally ill." They "saw the state as an organic entity in which the mentally ill were parts of the 'body politic' (*Volkskörper*) that had been damaged, useless, or harmful and needed to be removed….[and this]…provided the intellectual and moral basis from which Brandt would later argue his case after Hitler had asked him to implement [*Aktion T4*] and also during the Nazi Doctor's Trial [at Nuremberg]."[63]

Brandt was not the only unapologetic German physician of that era: lack of remorse was so widespread among German healthcare professionals in the immediate postwar era that when the World Medical Association (WMA) made legitimization of the German medical profession contingent on a statement of apology and contrition, the organization representing (West) German physicians (the *Arbeitsgemeinschaft Westdeutscher Artzekammern* [AWA]) refused to apologize or to act contrite. The WMA was "astonish[ed] … that no sign whatever had come from Germany (the AWA) that the doctors were ashamed of their share of the crimes, or even that they were fully aware of the enormity of their conduct."[64] Eventually AWA apologized, but it did so unwillingly.[65] Thus, contrary to the claim laid out in *Principles*, German physicians like Brandt were committed to living a moral life, they believed their role in the Holocaust was ethical and they did not have "feelings of remorse" about it. As Schmidt put this point, "In the worldview of Brandt and other Nazi physicians…they genuinely believed that their actions could be justified on the basis of what they perceived as their noble motivation. …. As [Brandt] later defended his actions at Nuremberg [he] never felt that it was not ethical or was not moral."[66]

In contrast, when a Turkish physician was asked whether by participating in the genocide of Armenians (1914–1923, 1.5 million killed) he had violated his medical calling he replied, "My Turkish-ness prevailed over my medical calling."[67] The physician then analogized his genocidal acts to preventing the spread of pathogens. "Armenian traitors had found a niche for themselves in the bosom of the fatherland: they were dangerous microbes. Isn't it the duty of a doctor to destroy these microbes? …I shut my eyes and surged forth without reservation."[68] The Turkish physician's remarks about pathogens were metaphorical. The point to appreciate is that one innovative concept, *Rassenhygiene*, transubstantiated the Turkish doctor's metaphor into a literal "truth" that reconciled German physicians' medical ethics with their complicity in genocide.

Concluding Observations: The Limitations of Common Morality Theory

Differences in morality are a fact of life. Our medical ethics contains no commitment to *Rassenhygiene*; to the contrary, thanks in large measure to *Principles*, our medical ethics is predicated on a concept of *autonomy.* There is a world of difference between contemporary bioethics and Nazi medical ethics. Yet taking refuge in a purportedly universal atemporal morality forfeits the very conceptual tools required to analyze the types of conceptual change that culminate in moral change, including the racially infused eugenicist moral revolution implemented by the National Socialists in German medicine during the first half of the twentieth century. Nor, for that matter, does common morality theory offer philosophers, bioethicists, or other healthcare professionals, the conceptual tools for deconstructing or grappling with the very aspects of the American healthcare that motivated A Patient's Bill of Rights: systemic ageism, classism, racism, and sexism—or the enduring issues of ableism, anti-Semitism (anti-Muslimism), ethnocentric discrimination (e.g., white supremacism), and gender discrimination (e.g., against LGBTQ+ patients and people). Mainstream American bioethics' inability to grapple with these issues

may explain the formation of subgroups within bioethics organizations that focus on disability rights and genocides, as well as Jewish, feminist, and LGBTQ+ ethics—all areas by and large untouched in *Principles.*

As philosophers and bioethicists, we need to study diverse moralities, especially those of societies, present and past, whose moralities and ethics are incompatible with our own—even those repugnant for us to contemplate. Fettering our analyses of morality to a single set of paradigms, concepts, norms, or laws, limits our ability to analyze the processes of moral experimentation, moral reform, and moral revolution that enables societies to alter their moral paradigms, concepts, and norms. At a deeper level, analyzing the success of some moral changes and the failure of others gives us some purchase on what makes some moralities more effective at achieving the minimal objectives of any morality, that is, facilitating social cooperation within and between communities and preventing or minimizing social conflict. Blinding ourselves to the history and diversity of moralities inhibits our ability to analyze and to respond effectively to the morally disruptive innovations and epidemiological, climatological and socioeconomic challenges that unavoidably await us.

Notes

1. Turner L. Zones of consensus and zones of conflict: Questioning the "common morality" presumption in bioethics. *Kennedy Institute of Ethics Journal* 2003;**13**(3):193–218.
2. Moreno J. "*Principles of Biomedical Ethics,*" On, Beauchamp TL, Childress JF. Principles of Biomedical Ethics. 8th ed. New York: Oxford University Press; 2019: *blurb on the back cover.*
3. *Principles.* 1st ed.; 1979:vii. See note 2 for complete citation.
4. No American code of medical ethics issued by a professional medical society used the word "autonomy" prior to the 1979 publication of *Principles.* See, for example, Baker R, Caplan AL, Emanuel LL, Latham SR. *The American Medical Ethics Revolution: How the AMA's Code of Ethics Has Transformed Physicians' Relationships to Patients, Professionals and the Public.* Baltimore, MD: The Johns Hopkins University Press; 1999:315–88.
5. "Scientistic" is an adjective characterizing an exaggerated faith in the virtues of science or scientific methodology.
6. Parsons T. *The Social System,* Glencoe, IL: Free Press of Glencoe; 1951:464–5, at 450.
7. *Principles*, 1st ed.; 1979, at 136, see note 2 for complete citation.
8. Veatch RM. *Disrupted Dialogue: Medical Ethics and the Collapse of Physician-Humanist Communication (1770–1980).* New York: Oxford University Press; 2005:208.
9. Boston Women's Health Book Collective. "Preface," *Our Bodies, Our Selves*; 1973; available at https://www.google.com/search?client=safari&rls=en&q=Our+Body,+Ourselves,+Preface,+ tps://wgs+10016.commons.gc.cuny.edu/preface-from-the-1973-edition-of-our-bodies-ourselves/ &spell=1&sa=X&ved=2ahUKEwjLpd2b9t_wAhVMHs0KHefeAQkQBSgAegQIAhAw&biw= 1440&bih=766 (last accessed 23 May 2021).
10. Board of Trustees, American Hospital Association, Statement on A Patient's Bill of Rights, November 17, 1972, Approved 1973, available at http://ethics.iit.edu/codes/AHA%201972.pdf (last accessed 19 May 2021, see also *Principles*, 1st ed.; 1979:136, see note 2 for complete citation.
11. *Principles,* 1st ed.; 1979:287, see note 2 for complete citation.
12. Emerson RW. Self-reliance. In: *Essays: First Series: The Complete Works of Ralph Waldo Emerson.* Boston, MA: Houghton Mifflin; 1903:57, at 2. Cited at *Principles.* 1st ed.; 1979:13. See note 2 for complete citation.

13. Kuhn TS. *The Structure of Scientific Revolutions*. 4th ed. Chicago: University of Chicago Press; 2012:24.

14. Baker R. The Structure of Moral Revolutions: *Studies of Changes in the Morality of Abortion, Death, and the Bioethics Revolution*. Cambridge, MA: The MIT Press; 2019:153–94.

15. Second Continental Congress. Declaration of Independence; 1776 July 4; available at http://www.digitalhistory.uh.edu/active_learning/explorations/revolution/declaration_of_independence.cfm (last accessed 9 Apr 2021).

16. Jefferson's language is taken from Locke J. *Second Treatise of Government*. Indianapolis, IN: Hackett (1689); 1980:46, at chap. VII, sec. 87. Jefferson substituted "pursuit of happiness" for Locke's original wording "health and property." The substitute language was from a passage in Locke's 1690 *Essay Concerning Human Understanding*. "The necessity of pursuing happiness [is] the foundation of liberty. As therefore the highest perfection of intellectual nature lies in a careful and constant pursuit of true and solid happiness; so, the care of ourselves, that we mistake not imaginary for real happiness, is the necessary foundation of our liberty." Locke J. *An Essay Concerning Human Understanding*. Fraser AC, ed. Oxford: Clarendon Press; 1894:348, at 1.

17. Although a slave-owner, Jefferson believed that the slave trade was immoral, and argued for its abolition and for slaves eventual emancipation. He held these beliefs before and after writing the Declaration of Independence—yet he still believed that the Negro race was inferior to the white race. His two collaborators on the Declaration, Benjamin Franklin and James Madison held similar views. Both owned, or had owned, slaves, both rejected the slave trade, but both were unclear about how to emancipate those enslaved. Franklin, however, co-founded the first American anti-slavery society which, in 1789, petitioned congress to free all Negro slaves. See: Cohen W. Thomas Jefferson and the problem of slavery. *The Journal of American History* 1969;**56**(3):503–26; Helo A, Onuf P. Jefferson, morality, and the problem of slavery. *The William and Mary Quarterly* 2003;**60**(3):583–614; Broadwater J. James Madison and the dilemma of American slavery. In Leibiger S, ed. *A Companion to James Madison and James Monroe*. Malden, MA: Wiley-Blackwell; 2013:306–23. Franklin B. *An Address to the Public from the Pennsylvania Society for Promoting the Abolition of Slavery, and the Relief of Free Negroes Unlawfully Held in Bondage*; 1789; available at https://en.wikisource.org/wiki/An_Address_to_the_Public (last accessed 18 May 2021).

18. Boyd JP, Butterfield, LH, Bryan, MR, eds. *The Papers of Thomas Jefferson*. Princeton: Princeton University Press; 1950:426, at I; available at https://www.monticello.org/thomas-jefferson/jefferson-s-three-greatest-achievements/the-declaration/transcript-of-the-rough-of-the-declaration/ (last accessed 3 Apr 2021).

19. Baker R. A paradigm emerges: Principled anti-paternalism. In: *Structure of Moral Revolutions*; 2019:173–82. See note 14 for complete citation.

20. *Principles*. 4th ed.; 1994:viii. See note 2 for full citation.

21. *Principles*. 4th ed.; 1994:102. See note 2 for full citation.

22. *Principles*. 4th ed.; 1994:101. See note 2 for full citation.

23. Macklin R. *Against Relativism: Cultural Diversity and The Search for Ethical Universals in Medicine*. New York: Oxford University Press; 1999; Macklin R. *Ethics in Global Health: Research, Policy, and Practice*. New York: Oxford University Press; 2012.

24. *Principles*. 8th ed.; 2019:3, italics added, except for the last. See note 2 for full citation.

25. *Principles*. 8th ed.; 2019:446. See note 2 for full citation.

26. Bautz B. What is the common morality, really? *Kennedy Institute of Ethics Journal* 2016;**26**(1):29–45; Trotter G. The authority of the common morality. *Journal of Medicine and Philosophy* 2020;**45**:427–40.

27. Appiah KA. *The Honor Code: How Moral Revolutions Happen*. New York: W.W. Norton; 2010:1–52, 137–72.

28. *Principles*. 8th ed.; 2019:3. See note 2 for full citation.

29. Gert B. Cited at *Principles*. 7th ed.; 2013:413. 8th ed.; 2019:446.

30. *Principles*. 8th ed.; 2019:446. See note 2 for full citation.

31. *Principles.* 8th ed.; 2019:448. See note 2 for full citation.
32. United Nations General Assembly, 23 October 1953, Protocol amending the Slavery Convention signed at Geneva on 25 September 1926; available at https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.14_protocolslavery.pdf (last accessed 11 May 2021).
33. *Principles.* 4th ed.; 2019:448, 449. See note 2 for full citation.
34. Van Wees H. Genocide in the ancient world. In Bloxham D, Moses AD, eds. *The Oxford Handbook of Genocide Studies.* Oxford: Oxford University Press. For a famous example of ancient genocide practices in warfare see *Joshua* 6:21 "And they utterly destroyed all that was in the city, both man and woman, young and old, and ox, and sheep, and ass, with the edge of the sword."
35. See Heath M. Aristotle on natural slavery. *Phronesis* 2008;**53**(3): 243–70.   Here is Aristotle's characterization of "slaves by nature:" "Those who are as different [from other men] as the soul from the body or man from beast—and they are in this state if their work is the use of the body, and if this is the best that can come from them—are slaves by nature. For them it is better to be ruled in accordance with this sort of rule, if such is the case for the other things mentioned. Aristotle *Politics, Politics*1.2, at 1252b5–9; 1.6 at 1254b16–21, 1255a28-b2; 3.14, at 1285al9–21.
36. Plato, *Laws* 773e. The classic analysis is Vlastos G. Slavery in Plato's thought. *Philosophical Review* 1941;**50**(3):289–304.
37. *Principles.* 8th ed.; 2019:448, 449.
38. Kleingeld P. On dealing with Kant's sexism and racism. *SGIR Review* 2019;**2**(2): 3–22, at 7, italics in the original.
39. Wilfrid Sellars version of passage B76 in Kant's 1787 *Critique of Pure Reason.*
40. Kant I. *Critique of Pure Reason,* 1781 (A548), 1786 (B576). Muller FM, trans. New York: The Macmillan Company; 1896.
41. Locke, *Second Treatise*, at chap. IV, sec. 24. See note 16 for complete citation. For further elaboration on this comment see Baker, *Structure*, 20–1. See note 14 for complete citation.
42. *Principles.* 1979:285–7. 1st ed., see note 2.
43. Ramm R. *Ärztlizche Rechts-und Standeskunde Der Artz als Gesundheitserzieher.* Berlin: De Gruyter; 1943; English edition, Ramm R. *Medical Jurisprudence and Rules of the Medical Profession.* Cooper MW, trans. New York: Springer International; 2019.
44. *Duties*: 86, see note 43 for complete citation.
45. *Duties*: 117, see note 43 for complete citation.
46. Ploetz A. *Grundlinien einer Rassen-Hygiene* (*Foundations of Racial-Hygiene*). Berlin: S. Fischer; 1895.
47. *Duties*: 128, 129, see note 43 for complete citation.
48. Proctor RN. Nazi science and Nazi medical ethics: Some myths and misconceptions. *Perspectives in Biology and Medicine* 2000;43(3):335–46.
49. *Duties*: 118–20, see note 43 for complete citation.
50. United States Holocaust Memorial Museum. Hadamar Trial, *Holocaust Encyclopedia*; available at https://encyclopedia.ushmm.org/content/en/article/the-hadamar-trial (last accessed 19 Apr 2021).
51. Czech H. Hans Asperger, national socialism, and "race hygiene" in Nazi-era Vienna. *Molecular Autism* 2018; 9:29; see also Baron-Cohen S, Klin A, Silberman S, Buxbaum JD. Did Hans Asperger actively assist the Nazi euthanasia program? *Molecular Autism* 2018;9:28.
52. Bruns F, Chelouche T. Lectures on inhumanity: Teaching medical ethics in German medical schools under Nazism. *Annals of Internal Medicine* 2017;**166**(8):591–5.
53. *Principles.* 8th ed.; 2019:1. See note 2.
54. Dr. Karl Brandt cited in Schmidt U. *Karl Brandt: The Nazi Doctor, Medicine and Power in the Third Reich.* London: Continuum; 2007:376.
55. Hitler A. *Mein Kampf.* Boston, MA: Houghtin Mifflin (1925–1926); 1943:402, cited at Lifton RJ. *The Nazi Doctors: Medical Killing and the Psychology of Genocide.* New York: Basic Books; 1986:430–31, italics in the original.
56. *Duties*: 89–92, see note 43 for complete citation.

57. *Duties*: 92, emphasis in the original, see note 43 for complete citation.
58. Duties: 95, see note 43 for complete citation.
59. *Duties*: 118–20, see note 43 for complete citation.
60. *Principles.* 8th ed.; 2019:3. See note 2 for complete citation.
61. Schmidt: 42–47. See note 54 for complete citation.
62. Binding K, Hoche A. *Die Freigabe der Vernichtung lebensunwerten Leben.* Leipzig: Felix Meiner; 1920. Sassone, R. trans. *The Release and Destruction of Life Devoid of Value.* Santa Ana, CA; 1975.
63. Schmidt: 36, 37. See note 54.
64. World Medical Association. Proceedings. *World Medical Association Bulletin* 1949; 1(1): 6–12, at 7.
65. Baker R. The Declaration of Helsinki and the foundations of global bioethics. In: Schmidt U, Frewer A, Sprumont D, eds. *Ethical Research: The Declaration of Helsinki and the Past, Present, and Future of Human Experimentation.* New York: Oxford University Press; 2020:47–69, at 51.
66. Schmidt: 43. See note 54 for complete citation.
67. Dadrian VN. The role of Turkish physicians in the world war i genocide of Ottoman Armenians. *Holocaust and Genocide Studies* 1986;1(2):169–92, at 176.
68. Dadrian VN: 176.