

## The hedgehog and the Borg: Common morality in bioethics

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**Abstract** In this commentary, I critically discuss the respective views of Gert and Beauchamp–Childress on the nature of so-called common morality and its promise for enriching ethical reflection within the field of bioethics. Although I endorse Beauchamp and Childress’ shift from an emphasis on ethical theory as the source of moral norms to an emphasis on common morality, I question whether rousing up common morality to make it look like some sort of ultimate and universal foundation for morality, untouched by the dialectics of time and reflective equilibrium, was an equally good move. As for Gert’s magisterial conception of common morality, I conclude that certain elements of his system are controversial at best and woefully inadequate at worst. He has a tendency to find in common morality what he himself put there, and his highly restricted conception of duties of assistance strikes this reader as ad hoc, inadequately defended, and unworthy of a project whose goal is to lessen the amount of misery in the world.

**Keywords** Common morality · Reflective equilibrium · Moral justification · Duties to others · Moral change · Gert · Beauchamp · Childress

Two highly influential approaches to bioethics have stressed the importance of “common morality” for the justification of our moral judgments, yet they differ profoundly in their respective accounts of the content and functions of common morality in practical ethics. For Bernard Gert, an account of common morality has always occupied center stage both in his descriptions of and theorizing about the

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moral life. Borrowing Isaiah Berlin's famous taxonomy [1], we can say that Gert is definitely the hedgehog of contemporary bioethical reflection on method. Unlike the fox, who thinks many thoughts, Gert has had one big thought—which is one more than most of us have had—and his entire career might be faithfully construed as a prolonged meditation on and defense of his conception of common morality as the keystone of ethics [2–7].

For Tom Beauchamp and James Childress, on the other hand, appeals to a common morality appeared well into the historical development of their celebrated joint project, *The Principles of Biomedical Ethics (PBE)*, a text now in its sixth edition [8].<sup>1</sup> Whereas Gert views the norms and methodological resources of common morality as constituting the very warp and woof of all moral reflection, Beauchamp and Childress have adopted a narrower conception of common morality as providing ultimate justification for the account they give of the so-called principles of bioethics, which earlier editions of *PBE* had located in philosophical theory. Eager to avoid early accusations of deductivism and top-down thinking, Beauchamp and Childress embraced a conception of common morality, embedded in ordinary pre-theoretical experience, as the source of the very principles whose implications they had so deftly explored in previous editions. For them common morality now provides the warp, but not the woof, of bioethical reflection.

Gert and Beauchamp–Childress also differ in their respective responses to rival points of view. Massive, powerful, systematic, and thorough, Gert's common morality apparatus lumbers across the bioethical landscape like some great tank, turret whirling in every direction, guns blazing from every exposed angle, ready to fight for each square inch of territory. Nicked and battered from many skirmishes with opposing forces, this machine remains unbowed, reinforced and fortified over the years with multiple layers of thick steel plating. Its driver has fretted over its appearance and performance down to the minutest rivet, including a new paint job just about every other year. Notwithstanding its many dents and patches, the tank still looms as a formidable presence over the bioethical horizon.

Beauchamp and Childress's *Principles of Biomedical Ethics*, by contrast, bears more resemblance to the Borg in the science fiction series *Star Trek, The Next Generation*. The Borg, a hive of cybernetically-enhanced humanoid drones, explore the universe in search of interesting new cultures and technologies, which they promptly conquer and incorporate into their neural network en route to their goal of ultimate perfection.<sup>2</sup> On encountering an alien culture, the Borg ominously announce, "Resistance is futile, you will be assimilated." Many of Beauchamp and Childress's critics know the feeling. No sooner do they launch a seemingly crippling broadside against the juggernaut of *PBE* from a casuist, narrativist, feminist, or pragmatist perspective than their critique is promptly welcomed with open arms, trimmed of its perceived excesses, and incorporated into the ever-expanding synthesis of the next edition.

In this commentary, I shall critically discuss the respective views of Gert and Beauchamp–Childress on the nature of so-called common morality and its promise

<sup>1</sup> Unless explicitly noted, all subsequent references to this text will be to this current (sixth) edition.

<sup>2</sup> See [http://en.wikipedia.org/wiki/Borg\\_Queen#Borg\\_Queen](http://en.wikipedia.org/wiki/Borg_Queen#Borg_Queen).

for enriching ethical reflection within the field of bioethics. To cover this ground thoroughly would, however, require more than one medium-sized paper, so I will be restricting my scope to a few central problems and leaving it to my fellow authors to canvass a wider swath of other important issues regarding common morality as portrayed by the hedgehog and the Borg. In delimiting my subject in this way, I will also have to bracket several other worthy contemporary conceptions of common morality, including those of W.D. Ross, Alan Donagan, Amartya Sen and Martha Nussbaum, and those deployed by the human rights movement. Let us begin, then, with two thumbnail sketches of common morality as conceived by our protagonists.

### **Beauchamp and Childress on common morality**

Beginning with the third edition of *PBE*, published in 1989, Beauchamp and Childress relocated the source of their bioethical principles from philosophical theory to what they have termed “the common morality.” By insisting on the definite article here, Beauchamp and Childress mean to distinguish the wide variety of particular moralities found in different eras, cultures, and professions from their source in a morality that is common, as they put it, to all persons in all times and places who are committed to living a moral life. This morality encompasses both *rules of obligation* (e.g., do not kill or cause suffering for others, tell the truth, keep promises, do not steal, prevent evil or harm from occurring, rescue persons in danger, do not punish the innocent, obey the law, treat all persons with equal moral consideration, etc.) and *standards of moral character*, such as nonmalevolence, honesty, integrity, truthfulness, fidelity, lovingness, and kindness.

Beauchamp and Childress assert that the content of the common morality is dictated by the primary objectives of morality, which include the amelioration of human misery, the avoidance of premature death, and the predictable consequences of indifference, conflict, hostility, scarce resources, limited information, and so on. Adhering to the norms of the common morality is necessary, Beauchamp claims, “to counteract the tendency for the quality of people’s lives to worsen or for social relationships to disintegrate” [9, p. 261].

The moral authority of the common morality is thus established, according to Beauchamp and Childress, neither by means of ethical theory nor by means of a priori reasoning or reflection on the meaning of moral terms; rather, moral normativity is established historically or pragmatically through the success of these norms in all times and places in advancing the cause of human flourishing. Their account is thus historicist, but unlike most historicisms it does not embrace moral relativism. The norms of the common morality, they insist, are universally binding.

There are, however, two additional sources of moral justification in the later editions of *PBE*. In addition to the common morality, which provides us with universally binding but highly abstract norms, a complex process of specification and constrained balancing of principles provides some degree of justification for all subsequent moral reasoning in practical ethics. Responding to Gert and others’ prior criticism that their principles of biomedical ethics were too abstract to function as

anything more than mere “chapter headings” or reminders of issues that need to be considered—i.e., that they were insufficiently specific to serve as real action guides in highly nuanced moral contexts—Beauchamp and Childress explained that the principles of common morality had to be specified more concretely and balanced against competing principles in specific situations. Normativity in practical ethics would thus be found in these specified norms that make more explicit the conditions under which our basic principles should hold sway—i.e., the when, where, why, how, by what means, to whom, or by whom the action is to be done or avoided [8, p. 17]. For example, the principle of autonomy will have to be further specified in order to deal with the problem of presently incompetent patients who have signed an advance directive; and it will have to be balanced against other concerns, such as respect for life or slippery slope worries about bad consequences, in the case of physician-assisted suicide.

Finally, Beauchamp and Childress seek further moral justification for the results of all this specifying and balancing in a process of reflective equilibrium, in which we seek coherence among all of our specifications and moral commitments at all levels [8, p. 381 ff.]. Some lines of specification will survive this process, but others will not. When a line of specified moral reasoning contradicts other strongly held moral beliefs, we should adjust one or more of these action guides to bring them all into harmony and coherence with one another.

Two features of this account deserve further elaboration. First, this elaborate procedure concedes that different, even contradictory, lines of specified moral reasoning can proceed from the same set of abstract moral principles in the common morality. This phenomenon explains the emergence of many different particular moralities that crop up in different times, places, and professional practices. Contrary to Gert’s endlessly repeated (but false) complaint that Beauchamp and Childress fail to account for the fact that some highly contested moral problems lack a uniquely justified solution, an explanation is readily available among the raw materials of *PBE*.

Second, it should be emphasized that Beauchamp and Childress offer a hybrid approach to moral justification that differs in important ways from more standard accounts of reflective equilibrium in political theory and practical ethics [10]. According to Norman Daniels, for example, moral justification is achieved by bringing all the various levels of our moral reflection—including our considered moral judgments, principles, moral theories, and background social theories—into “wide reflective equilibrium” with one another [11]. We thus zip back and forth between these different elements, none of which is accorded foundational status, and all of which are liable to emendation in light of competing considerations at other levels of reflection. In contrast to this standard account, Beauchamp and Childress accord common morality a special place shielded from the jostling involved in the quest for coherence through wide reflective equilibrium. The norms of the common morality are justified pragmatically by meshing with the goals of morality, while the rest of the moral system envisioned in *PBE* proceeds by specification, balancing, and wide reflective equilibrium. Particular moral conclusions achieved through these procedures gain justification through both coherence and by being tethered ultimately to principles in the common morality.

## Gert's conception of common morality

Providing a mere thumbnail sketch of Gert's approach to common morality will prove to be a much more daunting task because, in contrast to Beauchamp and Childress, Gert's primary contribution to ethics and practical ethics *just is* his account of common morality. More specifically, Gert begins with a conception of the point and purpose of morality, which then yields the descriptive core of common morality, including lists of the various moral rules and moral ideals, and a decision procedure for determining when it is justified to violate any of the moral rules. This descriptive core is then shored up by Gert's *theory* of common morality, which attempts to provide a justification for the entire edifice. Although Gert concedes that his particular *theory* of common morality might well be problematic in various ways, although he doubts it, he insists that his account of the descriptive content of common morality is both true and universally embraced by all rational persons. For Gert, then, the point of "doing ethics" is not to come up with some nifty new theory of morality, but rather to provide a faithful descriptive and interpretive rendering of the moral rules, ideals, and decision procedures that we all share. Borrowing a page from Wittgenstein, Gert declares that his account changes nothing in common morality, which does not change over time, leaving its central precepts and decision procedures in place and intact [3, p. 4].

Gert begins his account with the claim that the whole point and purpose of morality is to lessen the amount of evil or harm suffered in the world [3, p. 26], a goal similar to that posited by Beauchamp and Childress. He then dips into an account of human nature, arguing that beings like us—i.e., vulnerable, mortal, rational, and fallible [3, p. 8]—would favor adopting common morality as a public system that impartially applied to everyone. The content of common morality consists of moral rules and moral ideals. Given the point of morality, all ten of the rules (a Decalogue!) proscribe actions that either directly cause harm, (e.g., killing, lying, causing pain, disabling, depriving of freedom or pleasure) or tend to produce harmful results (e.g., do not deceive, break promises, cheat, disobey the law, or fail to do your duty). Whereas the moral rules categorically prohibit violations (unless sufficient reasons can be provided), the moral ideals merely encourage people to prevent or relieve the sorts of harms covered by the rules.<sup>3</sup> Gert thus asserts that it is more important for all people to obey the moral rules than to follow moral ideals. Citing Mill approvingly, he notes that "a person may possibly not need the benefits of others, but he always needs that they not do him hurt" [3, p. 23]. Accordingly, liability to punishment is always appropriate in cases of unjustified violations of moral rules, whereas failure to act in the spirit of the moral ideals on any given occasion usually need not be justified at all and is not a fit subject of punishment [3, p. 53].

With the rules and ideals of common morality in place, Gert next addresses the important question of when violations of the moral rules might be justified. To this end, he purports to discover a methodological procedure in common morality

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<sup>3</sup> Note that Gert's inclusion of ideals and virtues here justifies his consternation at Beauchamp and Childress continuing to label his approach an "impartial rule theory" [8, p. 371].

consisting of the following two steps. First, a person contemplating the violation of a moral rule must ascertain all the morally relevant facts or features of the case. What rule is in play? What kinds of good or bad effects might be anticipated? What are the desires and beliefs of the person who will be affected? Might the agent in question have a moral duty to violate the rule because of a particular relationship to the person affected (e.g., parent and child)? Are there any alternative actions that could achieve similar ends without violating the rule [3, pp. 59–74]?

The second required step in ascertaining the justifiability of any moral rule involves a hypothetical test estimating the consequences of everyone knowing either that a kind of violation would be allowed or not allowed. Contrary to consequentialist theories that might approve of certain actions (e.g., lying) just so long as no one finds out about the deception, Gert insists that all justifications of rule violations must meet this test of publicity. Unsurprisingly, Gert acknowledges that often, especially when individual acts rather than public policies are at issue, the results of this second step will be somewhat indeterminate. He thus speaks of “estimating” rather than “determining” the outcome of this thought experiment, and concedes that in many cases there will be a spectrum of more or less acceptable estimates, each of which might suggest a different policy. Some cases, however, will be clear enough. For example, lying to potential research subjects in order to secure their consent could never be publicly endorsed, Gert plausibly suggests, because of predictable effects on the trustworthiness of the medical profession and the entire research endeavor.

In sum, Gert’s moral system presents readers with a curious blend of intellectual humility and chutzpah. On the one hand, he claims that his moral system would be, and in fact is approved by all rational beings not using any beliefs not universally shared, and that the moral rules are both universally applicable and unchanging. Sounding like a so-called strict constructionist in constitutional theory, Gert argues that the moral rules do not change over time or “evolve” with changing social circumstances. Whereas Beauchamp and Childress insist upon the unending specification and ramifying of moral norms outside the domain of common morality, Gert claims that such perpetual tinkering with the norms of morality would make it impossible for rational agents to know exactly what moral rules are binding with regard to any given case.

On the other hand, Gert modestly insists that his public system governing the conduct of all rational agents does not and cannot yield a single unique moral solution to every problem in practical ethics. In contrast to theories like utilitarianism, which posit the existence, if only in theory, of a single correct solution to every problem, Gert argues that practical ethics is littered with *aporiai* for which there is no unique solution to which all rational agents must assent. Instead of viewing people who differ with us on an issue like abortion as being irrational or mean-spirited, Gert proposes that we instead view them as having different notions of the class of beings deserving of impartial protection under the moral rules, as people who accord different weights to various harms or interpret the moral rules differently, as people who have different estimates of consequences of publicly allowing a disputed action, or who simply disagree on the facts at hand—i.e., differences that are ubiquitous yet often not amenable to rational resolution.

Gert helpfully suggests that such a change in attitude could help us find mutually acceptable compromises and reconciliation within the sphere of politics.

Before moving on, I should mention two items whose absence from Gert's conception of common morality might make that conception somewhat controversial. First, notice that, according to Gert, morality exclusively concerns our behavior towards others. Unlike Kant [12] and contemporary Kantians [13, 14], he does not acknowledge the existence of moral duties to oneself. Thus, whether one is a servile housewife or slave—i.e., a person who is reconciled to her inferior social status and does not believe herself worthy of the human dignity accorded to her master—is a matter of moral indifference to Gert.

Second, and in my view much more problematically, Gert denies (with one notable proviso) the very notion of universal (i.e., non-role based) moral *duties* to aid others or to prevent harm from befalling them. According to Gert, duties in the strict sense are always negative injunctions to avoid violating any of the moral rules (without sufficient justification); we are only encouraged, not required, to follow any given moral ideal [3, p. 22]. This omission from common morality puts Gert at odds with Beauchamp and Childress, who claim to find in “the common morality” duties to prevent evil or harm from occurring and to rescue persons in danger [14, p. 260]. With some vigorous prodding from Dan Brock and others [15], Gert has come to accept one highly circumscribed moral duty to come to the assistance of others when (1) one is in a unique or close to unique position vis-à-vis the vulnerable party, (2) providing assistance would almost be “cost free,” and (3) the evils or harms prevented would be very serious [16, p. 468]. All other so-called moral duties to assist vulnerable parties are more properly construed, contends Gert, as duties stemming from one's role, such as that of a physician, parent, or public health worker, not as genuine moral duties *tout court* ascribable to all rational moral agents.

An important corollary of Gert's position here bears on the status of positive rights, such as those we find in many contemporary political theories and in the roster of human rights articulated in various declarations and covenants. According to Gert, all such rights are *political*, not moral; that is, they are correlated exclusively with the duties of governments, not of ordinary moral agents [3, p. 145].<sup>4</sup>

Gert offers three reasons for drawing the important line between moral requirements and moral encouragements at precisely this point. He begins by drawing two conceptual connections, the first of which links the requirement of impartiality and our notion of moral duty. Moral duties must be observed impartially, without any favoritism towards one's family, clan, ethnic group, profession, social class, or nation. But since duties to aid would require positive actions requiring our time and resources, Gert observes that such “duties” could not

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<sup>4</sup> The curious reader might well wonder how it is that such duties can be ascribed exclusively to state governments if they are not also shared in some fashion by the citizens they represent. In addition, Gert's position here would rule out the very possibility that, should a given government fail to uphold its responsibilities to its citizens, those responsibilities might well shift not only to other states, but also to other bodies, such as NGOs, international corporations, or, ultimately, to citizens of other countries. Although I believe that Gert is mistaken on this point, I will not pursue this issue further here.



be followed impartially, since we always have to decide whom to benefit or rescue, and we cannot benefit or rescue everyone in need all the time. Furthermore, Gert holds that rules must be obeyed all the time, unless one has an adequate justification; but he regards time per se as irrelevant to one's obligation to obey the moral rules. Hence, he concludes, there cannot be a general duty to aid.

Second, Gert relies upon a conceptual connection between our notion of moral duty and punishment. Taking issue with philosophers and religious traditions that posit a moral requirement to help the needy, Gert insists that such talk of "requirements" is merely rhetorical because it fudges the important distinction between doing something morally wrong and not doing something that is morally good. This distinction, Gert believes, is properly demarcated by liability to punishment. Rational persons limited to rationally required beliefs, he claims, would not approve punishment for people who failed to live up to the moral ideal of assisting those in need, except in the one very restricted scenario mentioned above, but they would most definitely call for liability to punishment regarding a violation of a moral rule.

In addition to the above conceptual points, Gert asserts that establishing a genuine moral duty of assistance to the needy would be "worse than pointless" [4, first ed., p. 365] insofar as it would bring the demands of morality into disrepute. Since we cannot impartially discharge such a duty, which would require all our time, effort, and resources in a futile quest to satisfy everyone's needs, rational impartial people would never agree to such a rule. In the manner of a libertarian political philosopher, Gert stresses what might be called the "supply side" of moral requirements in addition to the "demand side." Clearly, it would be a good thing if everyone in need could be assisted, but turning such assistance into a moral duty, enforced by a public system of punishments, would, Gert asserts, exact too high a price in terms of the freedom we prize to live our lives as we see fit.

### **Critique of Beauchamp and Childress on common morality and justification**

As we have seen, Beauchamp and Childress now endorse a hybrid account of moral justification. On the one hand, there is the common morality, which provides the source of our moral norms and is itself justified by its close fit with the goals of morality; and, on the other hand, there is the realm of moral specification, constrained balancing, and seeking coherence through wide reflective equilibrium. The project of *PBE* is thus foundationalist with regard to the common morality, and coherentist with regard to our actual reasoning in practical ethics. We reach our moral conclusions through specification, balancing, and adjusting norms for coherence, but these conclusions are ultimately justified through their long tether to the ultimate principles of the common morality [8, p. 385].

Since standard approaches to reflective equilibrium in contemporary moral theory are resolutely non-foundationalist and unbifurcated in this way, since they regard all levels or sources of moral reasoning to be fair game for revision in light of more firmly held moral beliefs [10], it is reasonable to ask just how plausible such a hybrid approach is and what it actually accomplishes for reasoners in practical



ethics. Another way of putting this question is to ask why Beauchamp and Childress find it necessary or helpful to sharply distinguish the norms of the common morality from what Rawls called our “considered moral judgments.” According to Rawls [17] and his most influential expositor on reflective equilibrium, Norman Daniels [11], moral reflection begins with those moral judgments about particular issues or cases in which we have the most confidence. These will include those judgments that are formed under conditions favorable to sound judgment in which our moral capacities are displayed without distortion—for example, those judgments that we come to unhesitatingly and make in the absence of strong emotions or conflicts of interest. According to Rawls, the project of justifying ethical beliefs ideally involves the attempt to bring these most confidently held ethical judgments into a state of harmony or equilibrium with our ethical principles and our background social, psychological, and philosophical theories. Our most confident moral judgments or intuitions (e.g., “slavery is wrong”) provide a touchstone for the adequacy of our principles; any moral principle that justified slavery would be either reformulated or rejected. Meanwhile, principles invested with a great deal of confidence could be used to reject some conflicting intuitions while extending our ability to judge confidently in less familiar moral settings. We thus go back and forth, nipping an intuitive judgment here, tucking a principle there, building up or reformulating a theory in the background, until all the disparate elements of our moral assessments are brought into a more or less steady state of harmonious equilibrium. According to this view, moral justification must be sought, not in secure, incorrigible foundations outside of our processes of reflection, but rather in the coherence of all the flotsam and jetsam of our moral life.<sup>5</sup> Even our considered moral judgments are deemed to be only *provisionally* fixed points.

In response, Beauchamp and Childress might suggest that an extra and independent layer of moral justification is needed due to the inability of coherence by itself to provide all the justification that we need. Citing the perfectly coherent “Pirates’ Creed” (circa 1640) [8, p. 384], which laid down norms for all well-behaved pirates—e.g., norms bearing on sharing the spoils of marauding, punishing prohibited acts (if any!), establishing ‘courts of honour,’ etc.—Beauchamp and Childress rightly conclude that more is required of a moral theory than coherence among all the disparate elements of one’s moral vision. Although coherence can help justify our moral judgments—we certainly do not want our judgments to be in flagrant contradiction with one another—it cannot by itself secure their truth. Presumably, Beauchamp and Childress look to a separate realm of common morality to provide this extra foundational element of justification by anchoring our long chains of practical reasoning in our ultimate abstract norms.

If this is Beauchamp and Childress’s primary rationale for excluding the common morality from the process of wide reflective equilibrium, then it is unclear how much additional justificatory advantage is actually gained by appealing to a hybrid account. True, coherence alone is not enough to guarantee moral truth, but we should recall that the process of reflective equilibrium is maximally inclusive. If you

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<sup>5</sup> This passage was borrowed from my essay, “The Way We Reason Now: Reflective Equilibrium in Bioethics” [9].

do not like the way the process of reflective equilibrium is going, if you think that it currently overlooks some crucial pieces of the moral picture—such as a different moral outlook or a background theory of social stability—then this method simply asks you to toss it into the mix alongside all our other beliefs. Although the initial moral data of reflective equilibrium, i.e., our considered moral judgments, could conceivably be overturned—think, for example, of recent attitudes towards homosexuality—it is hard to imagine that most of them would or could be overturned in our lifetime; and if they are overturned, then it would no doubt be for the sort of good reasons that would lead Beauchamp and Childress to expand the scope of the norm of equal treatment within the common morality.<sup>6</sup>

Another reason to suspect that we would be getting less justificatory bang for the buck than Beauchamp and Childress might expect from their hybrid method comes into focus when we take a closer look at that tether that anchors our practical judgments to ultimate norms in common morality. As Beauchamp and Childress themselves admit, many different and conflicting lines of specification and balancing can originate in the same ultimate moral norms. Although some of these conflicts might be smoothed over through the process of seeking coherence, not all of them can be finessed in this way. We will, then, be stuck from time to time with two or more conflicting lines of moral specification, each of which will be traceable back to common sources in the common morality. Since, *pace* Gert's claims to the contrary, Beauchamp and Childress do not claim that there is a univocally correct way to specify and balance norms in particular moral contexts, their hybrid account will not necessarily allow us to choose between competing lines of specification and balancing that share the same ultimate anchor in the common morality.

Take, for example, our differing responses to the problem of active euthanasia. The operative moral principle here is “Do not kill,” which can be plausibly further specified in both permissive and restrictive directions. Proponents can argue that one should not kill, except when an explicit request is made by a competent dying patient suffering from great pain, etc. Opponents can argue that the prohibition against killing should be maintained when the bad consequences of a permissive social policy would predictably outweigh the good consequences, even if the proponents' autonomy-based argument works in theory. The fact that each of these opposing positions can be traced back to a common principle discoverable in the common morality provides little, if any, justificatory advantage to either side.

In sum, then, the root problem underlying this critique is Beauchamp and Childress's decision to conceive of the common morality as a separate moral sphere immune to the perpetual dialectic of reflective equilibrium. I would suggest that this sort of bifurcation is neither necessary nor desirable. Our attempts at moral justification can most likely get along just fine without an appeal to ultimate, unrevisable foundations.

I hasten to add, however, that such problems in striving for the elusive goal of ultimate moral justification seem peripheral to the central project of *PBE*, which

<sup>6</sup> Although Beauchamp and Childress seriously doubt that the principles and virtues of the common morality will ever change, they readily admit that the principles' scope of application has expanded to include coverage for women, minorities, etc.

continues to be the skilled and artful deployment of mid-level norms (whatever their source) in the context of practical ethical problems. Because their account of common morality remains an afterthought within the overall system of *PBE*, albeit an important one, Beauchamp and Childress can acknowledge these problems and then get on with the business of debating cases and policies.

### Critique of Gert's conception of common morality

What common morality?

Gert asserts that, in contrast to most other philosophers before him, he is merely attempting to describe common morality as we all find it, not to modify or improve upon it, and then provide a justification for its strictures.<sup>7</sup> The purely descriptive part includes the moral rules and ideals, and the two-step procedure for justifying overriding a moral rule, which in turn includes a catalog of morally relevant reasons and a hypothetical decision procedure emphasizing impartiality, rationality, and publicity. Is there such a common morality? Does Gert present any evidence to the effect that such a thing or practice really exists? And how credible is Gert's claim that he is merely leaving everything as he finds it, and not merely stipulating or imagining what he would like common morality to be?

Although Gert is often pretty rough on most other philosophers, treating the likes of Kant and Mill as so many errant schoolboys, his claims for his conception of common morality often betray a typically philosophical insouciance with regard to empirical fact. If he were merely attempting, in large measure, to describe common morality as he finds it, then would not some anthropological evidence of this common morality be helpful, if not required? Instead, we are treated to typically "philosophical" refrains: "No rational person could think otherwise," "Everyone agrees that," "No one talks about", etc., as though the horizon of Gert's moral imagination constituted the boundaries of morality itself in all times and places. If there is indeed "overwhelming agreement" on the nature of common morality, as Gert alleges, then why have so many incredibly smart and morally sensitive people (Kant, Mill, Donagan, Beauchamp, and Childress, et al.) missed, misunderstood and mangled its true nature? For all I know, there could be a perfect fit between these two horizons, though I doubt it, but Gert at least owes us some empirical evidence for his descriptive conclusions.

So, is Gert merely describing or stipulating the nature and contours of common morality? I shall discuss just three problematic claims here, although many more could be flagged in a more complete account. First, there is his banishment of what we might call all self-regarding behavior from the ambit of common morality. According to Gert, morality only concerns behavior towards others [3, p. 21], which leads him to conclude, *inter alia*, that contraception is not, strictly speaking, a moral issue [3, p. 74]. Although this sounds plausible—most people would say that

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<sup>7</sup> Although Gert implies otherwise, this was precisely the mission that both Kant and Mill set for themselves.

contraception is at the very least not a morally *serious* or *difficult* issue—other examples point towards what we might want to call moral duties to oneself, or to what Kant called duties to respect rational nature both in others and in ourselves. Consider the case of the servile housewife or servile slave, both of whom fully embrace their inferior position vis-à-vis their husband or master. Believing themselves totally unworthy of moral respect on account of their gender or lowly social status, such persons have forfeited their status as autonomous agents by finding pleasure in subordination and servitude. Contemporary Kantians might plausibly claim that this housewife and slave have a moral duty to respect their own moral agency, their own rights to be self-determining beings [13, 14]. These Kantians might be wrong, but Gert owes them an argument rather than dismissive stipulation.

Next, consider Gert's claim that common morality encompasses all of the elements listed above. While Gert's observations regarding the content of the moral rules and ideals, and his catalog of morally relevant factors, are more or less plausible candidates for any conception of a common morality, the second stage of his two-step procedure for determining justifiable rule violations—i.e., his hypothetical test—initially struck this reader as a classic case of sheer stipulation. Is this how rational people in all times and places would actually determine the rightness of their actions when called upon to do so? On second thought, however, it occurred to me that this test has all the earmarks of a standard move within a philosophical *theory* of right action. Indeed, it bears a striking resemblance to Kant's categorical imperative shorn of its implausible metaphysical trappings.

Third, there is the important issue of duties to assist others in need, which Gert, again with one highly restricted exception, relegates to the status of a mere moral ideal that we should be encouraged but not required to follow. Although Gert is, of course, correct to insist upon drawing a line between behavior that is genuinely morally required and that which is merely encouraged, the question is whether he draws that line in the right place within the ambit of common morality. Here Gert is not merely stipulating; he gives plenty of colorable supporting arguments for his position. The question is whether those arguments fully support his denial of (almost all) moral requirements to assist. As we shall see in the next section, I have some serious doubts on this score.

### Duties to assist

Let us revisit Gert's arguments step by step, beginning with his two conceptual claims linking our notion of genuine moral duty with the requirements of impartiality and liability to punishment. Although it is true that we can indeed impartially follow the negative injunctions of the moral rules all the time and with regard to all persons, and although it is also true that, given the scarcity of time and resources, we always have to show some partiality or selectivity in rendering positive benefits to others, it is not at all clear that a complete and total failure to render any assistance to others over the course of a lifetime—again, except for Gert's single exception—would not violate what both Kant and Mill called “imperfect duties” to assist [18, 19].

Nor is it clear why a suitably hedged but expanded conception of a duty to aid would actually run afoul of the requirement of impartiality. Without conceding Peter Singer's extravagant claim that we should basically put our lives in hock in order to help bring about the best possible consequences overall, we can imagine a moral order in which we have some well-delimited moral duties to help others in need beyond Gert's exceptional case. For example, we can imagine altering just one of Gert's three conditions for justifying a duty to assist—i.e., his requirement that the proposed intervention be “virtually costless”—and conclude that we have a duty to alleviate great suffering or prevent great evils if (a) we are in the best position to do so, and (b) the cost will not be terribly or unfairly burdensome to us.

To me, such an alternative account is more plausible than Gert's treatment of this issue. Even assuming for the sake of argument that Gert, following Mill, may have been correct in asserting that we do not always need the help of others but we always need them not to harm us, I think that most rational agents (Mill included) would agree that if a great harm is pointed directly at one's head, and if another person is in a position to prevent that harm *without excessive or unfair cost to herself*, then it makes sense for morality to posit a duty to prevent such harm in such circumstances. Otherwise, the social practice of morality is in the incongruous position of existing to alleviate or prevent suffering but then just ignoring a major and (often) avoidable source of such suffering.

If we construe the duty of assistance in this broader but still suitably hedged fashion, moreover, we can see how it too, along with negative duties, could be deployed consistently with the norm of impartiality. Such a norm would apply to anyone who found himself or herself in the appropriate circumstances, including the prospect of great harm, being (nearly) uniquely situated to prevent it,<sup>8</sup> and being able to do so without incurring excessive or unfair risks or burdens to oneself. I do not see why rational and impartial people could not universally endorse such a principle.

As for the alleged conceptual link between violation of moral duty and liability to punishment, here too Gert is far too restrictive, presenting us with a view of common morality that many of us do not recognize. First, as Brock noted, some legal jurisdictions have passed so-called Good Samaritan laws that call for legal punishments for failure to assist in some circumstances [15]. So here is an instance where punishment is in fact deployed in response to a “mere” failure to render assistance. Conversely, there are many instances of clear-cut violations of moral rules that we do not believe warrant punishment. If I make a lying promise to someone that I will return the favor if he will undertake a particularly unpleasant job for me, it is not at all clear that common morality would have me *punished* for it. Ditto for causing someone pain by embarrassing her in public just for fun. We would clearly say that such a person is a jerk, has a bad character, did something wrong, and even violated a moral duty, but we would not necessarily say that he should be liable to punishment.

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<sup>8</sup> Perhaps a more helpful gloss on this element would stress one's being in a position to prevent the harm while also incurring the least amount of risk or burden to oneself.

In place of punishment, I think it enough to insist upon the appropriateness of serious *moral criticism*, levied either by our peers or by our own consciences, to demonstrate the existence of a moral duty. Such usage would be entirely compatible with J.S. Mill's assertion of a connection between moral duty and the penal sanction, from which Gert obviously draws inspiration (and some, but not all, exact wording) here. True, Mill held that we do not label anything as morally wrong unless the responsible person should be punished for it, but he immediately qualifies this with the important proviso, "in some way or other...If not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience" [18, p. V, para 14]. If this is what we are to mean by "punishment," a term that Gert never adequately defines,<sup>9</sup> then a much wider class of failures to prevent harm can be envisioned that rightly elicit the bad opinion of our fellow creatures and, hence, can rightly be viewed as violations of a moral duty.

It is interesting to note in passing that Gert concedes the appropriateness of criticizing some failures to provide assistance, but he resists the conclusion that such failures (usually) should be liable to punishment as violations of moral duty [3, pp. 52–54]. Notwithstanding Mill's eminently plausible assertion of a conceptual connection between violation of a moral duty and *some sort of sanction*, either through actual punishment or suffering the bad opinion of humankind, Gert nowhere provides a justification for completely ignoring the second half of Mill's formula. Moreover, it is unclear how Gert, who has already gone on record denying that a failure to follow a moral ideal *needs any kind of justification or excuse at all* [2, p. 43], can now say that failures to assist can be criticized but should not be punished. If such failures require no justification or excuse, on what ground could such criticism be warranted?

I conclude, then, that both of Gert's structural or conceptual reasons for rejecting positive duties of assistance are inadequate and excessively restrictive.

Gert has one remaining (non-conceptual) argument at his disposal on behalf of his rejection of (most) positive duties, which I shall call "the burdens of morality" argument. As we have seen, Gert emphasizes the supply side of the moral equation, insisting that the burdens imposed by common morality not be viewed as excessive by impartial, rational agents. In this connection, Gert concedes that such agents would indeed approve of the imposition of a strict duty to assist, backed up by socially sanctioned punishments, but only in the narrowest of cases sketched above involving unique ability to help, virtually no cost, and a great evil to be averted. If someone fails to aid a vulnerable person in such a scenario, Gert opines that rational people would assent to punishment in such an extreme case, but only in such a case. (Interestingly, however, Gert does not call for carefully crafted Good Samaritan laws in such cases. Why not?) Piling on any additional duties to assist over and above this narrowest set of circumstances would, Gert suggests, strike such agents as an undue restriction upon their freedom to live their lives and deploy their resources as they see fit [3, p. 124]. Here Gert's account of common morality appears to mesh perfectly with one prominent example of libertarian political philosophy, which also argues against a general duty of assistance except in this one

<sup>9</sup> The closest he comes is in his (inadequate) response to Dan Brock in [16].

sort of case [20]. I would argue that such a concession, while certainly correct for this very narrow range of cases, is entirely ad hoc if limited exclusively to such cases.

I suppose it depends upon exactly who these “rational, impartial people” are and what part of the world they inhabit. Let us then picture in our mind’s eye the roughly billion people on earth who subsist on a dollar a day or less [21]. These are the people suffering from what Peter Singer calls “absolute poverty” [22], whose lives (and the lives of their children) are currently wrecked by chronic malnutrition, disease, premature death, lack of education, the most rudimentary economic opportunities, and so on. It is interesting to speculate upon how such people might respond to Gert’s question—i.e., what is more important to you as an impartial rational agent, being free from violations of your negative rights to person and property, or acquiring those positive goods such as food, medical care, and education that will allow you to forestall starvation and premature death? For these people, a duty to assist would most likely be construed as something much more important to their basic interests than a mere duty to assist others in “advancing their ends,” as Gert sometimes dismissively puts it.<sup>10</sup>

Suppose now that, notwithstanding the very real obstacles to international development and just for the sake of argument, the plight of the bottom billion could be substantially and permanently alleviated by the levy of a very modest tax on the most affluent members of the world’s most affluent countries. Here we would have a case where a great and ongoing calamity involving a billion human beings could be avoided, but those in need of assistance exist halfway around the globe, not at all in close proximity, and the burdens imposed on the proposed taxpayers would be modest or “not unreasonable” but certainly not “virtually costless.” So Gert would no doubt conclude that such a scenario failed his test for a true duty of assistance. It would be generous of us to assist, he would say, but no one has a genuine moral duty to help by paying such a tax.

This is not the place to join an important and lively debate currently raging at the cutting edge of contemporary political philosophy [23], so I shall merely note here that it is (or should be) at least an open and legitimate question whether the governments, citizens, corporations, and non-governmental organizations (NGOs) of the world’s wealthiest nations have genuine moral requirements to assist the bottom billion and, if so, how far they extend. This is not a question that should be decided by moral fiat based upon the manner in which relatively well-off people would hypothetically balance their competing needs for security, subsistence, and liberty. It could well be the case that the practice described by Gert as our “common morality” might be better described as a common morality that developed over the centuries for relatively well-off people in well-off places.

This possibility has been thoughtfully explored recently by Samuel Scheffler [24]. Our common-sense conception of morality, Scheffler writes, exhibits a

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<sup>10</sup> Gert or a libertarian might respond at this point that this judgment on the part of the bottom billion fails the test of impartiality. They are clearly just looking out for their own interests. But could not the same be said of well-off people in developed countries who refuse to assist? Our desire to maintain our current consumerist lifestyle might depend upon economic or political advantages that we may not deserve. To assume that we do deserve them may be to beg the question.



“restrictive” (i.e., narrow) notion of individual responsibility, one based upon some basic, seemingly commonsensical moral doctrines such as the following: (1) moral agents have a special responsibility for what they themselves do, not for what they merely fail to prevent (i.e., negative duties take priority over positive duties); (2) one has distinctive responsibilities or special obligations towards one’s family and others in certain sorts of special relationships; (3) human social relations consist primarily in small-scale interactions among independent individual agents.

According to Scheffler, elements such as these have coalesced into a complex phenomenology of human agency, according to which acts have priority over omissions, proximate effects have priority over distant effects, and individual effects have primacy over group effects (pp. 36–39). Scheffler shrewdly observes, however, that this seemingly commonsensical view of the moral landscape did not evolve in an historical vacuum, and that what we take for common sense (or common morality) could well undergo transformation in an emerging globalized environment. He notes that several salient features of the modern world—e.g., our burgeoning science and technology, the internet, the ease of global travel, increased economic and political interdependency among nations, etc.—are presently conspiring to effect just such a transformation, putting great moral and psychological pressure upon our present conception of limited moral agency. All of us are increasingly enmeshed in various large-scale causal processes and practices, each making tiny contributions to cumulative social consequences of enormous import for others around the globe. We may well be entering a world in which we are both causally and morally bound to the people who grow our coffee and stitch our clothing in distant lands, even though, as individuals, we cannot control and often cannot fully comprehend our respective places in this vast global network.

Unlike Peter Singer, Scheffler does not pretend that our commonsensical restrictive conception of human agency will soon easily be replaced by an alternative conception better attuned to a more robust sense of responsibility in a global age, but he does us a great service in highlighting how what we take to be common-sense morality is actually an historical artifact that could, and most likely will, change in the direction of a less narrow and more demanding conception of individual responsibility.

To sum up on the theme of duties of assistance, then, we have seen how neither of Gert’s attempts at conceptual gerrymandering succeed, and that serious moral duties to others are both compatible with impartiality and need not be screened for liability to punishment as defined by Gert. We have also seen that, given the goals that Gert has ascribed to morality and our vital needs for *both* liberty and subsistence, the “burdens of morality” argument also fails. Rational and impartial agents, realizing their own vulnerability in a complex and often indifferent world, would favor a moral system that included more demanding positive duties than Gert is willing to allow. Finally, we have seen with Scheffler’s help that Gert’s conception of common morality does not exist in an historical vacuum, and that current developments on the global scene are already undermining our confidence in such a restrictive conception of individual responsibility. Which brings us to my final subject in this essay: *viz.*, Gert’s claim that common morality does not change.

## Does common morality change?

Gert writes, “[M]orality does not change” [2, p. 104]. What can he possibly mean by this? Like Beauchamp and Childress, Gert recognizes the great diversity of specific moral codes in different places at different times; and, like them, he acknowledges that the particular moral culture of any given society can undergo profound changes over time, so what we view as morally acceptable behavior in the contemporary United States could easily have shocked the consciences of colonial Americans. These differences can, Gert would suggest, be fully explained by differences in assigning weights to different harms and goods, different interpretations of the moral rules, different conceptions of what’s morally relevant, and so on. But beneath all this diversity, Gert insists, lies the bedrock of common morality, which does not change, binding everyone at all times and places to the same set of norms.

While many, perhaps most, people must find it comforting to be told that morality does not change, we need to look a bit more closely at this claim to see just how much solace it really offers to those who recoil at the specter of contingency in moral matters. Towards this end, I would first draw the reader’s attention to passages where Gert appears to overestimate the degree of consensus among rational, impartial moral agents. Here is a typical example: “No one engages in a moral discussion of questions like ‘Is it morally acceptable to deceive patients in order to get them to participate in an experimental treatment that has no hope of benefiting them but that one happens to be curious about’ *because everyone knows that such deception is not justified*” [2, p. 23, italics added].

Apparently, Dr. Chester Southam, the key protagonist in the famous Jewish Chronic Disease Hospital case, never got this news. As is well known, in the summer of 1963, Southam and colleagues injected 22 elderly, debilitated and mentally compromised residents of a Jewish nursing home with live, cultured cancer cells in order to confirm a hypothesis in the budding field of immunology [25]. What was truly remarkable, even shocking, at the time was not that Southam was a professor at a prestigious medical school, that he received NIH funding and the full-throated support of the medical profession of his day, or that leading journalists ridiculed his critics in the name of medical progress, but rather that Southam was actually successfully brought up on charges of unprofessional conduct by the New York State Board of Regents. Here is a clear-cut example of wrenching moral change in a profession and a culture that Gert would brush aside, fully assured that rational, impartial agents would always and everywhere find such conduct morally unjustified.

Now Gert would no doubt respond to this story by noting that the differences in medical morality then and now have to do, not with changes in the moral rules and ideals, the bedrock of his system, but rather, *inter alia*, with what people from different eras took to be morally relevant (e.g., the wishes and rights of patients), and how they weighed the goods of medical research versus the protection of human freedom. This would allow Gert to acknowledge moral change at the periphery, as it were, while still maintaining that at its core morality does not change.

Although I follow Gert’s reasoning here, I fail to see how it could provide moral comfort to those who want to be told that morality never changes. Dr. Southam, sitting in the dock before the New York Board of Regents, would most likely not

have found much solace in Gert's explanation. His whole career was threatened by a momentous change in medical morality, which suddenly elevated patient's rights above the prerogatives of distinguished physicians.

In large measure, I suppose, this debate comes down to the question of what Gert means by "morality" when he says that morality does not change. If he means, as suggested above, that "morality" encompasses solely the moral rules and ideals, so that changes in the interpretation of moral rules or of what is morally relevant to the resolution of cases do not count, then his position seems plausible, even if not comforting to those uncomfortable with the prospect of moral change. It is not clear, though, that this move is actually open to Gert, who clearly includes in his conception of common morality not only the moral rules and ideas, but also his two step decision procedure involving the morally relevant factors and his hypothetical thought experiment featuring rational, impartial judges contemplating rules for a public moral system. If we broaden his notion of morality to include all of these disparate elements, then it is hard to escape the conclusion that morality does indeed undergo significant change, even though the general rubrics through which we think about morality (e.g., "the morally relevant features") may not change.

The closer one reads Gert, the more his inventory of morally relevant factors looms as a decisive element in his moral system. Just as Beauchamp and Childress stress the need to specify moral norms stemming from the common morality in the presence of new factual contexts, so Gert stresses the need to get clear on all the factors that might be viewed as morally relevant to a particular case. Indeed, notwithstanding Gert's persistent (and in my view misguided) criticisms of specification in *PBE*, it appears that specification and attentiveness to morally relevant factors are roughly identical means of "keeping it real" in these rival systems—i.e., of making sure that the principles or rules of morality are properly deployed in concrete situations. But if our inventory of morally relevant factors can dramatically change over time, as it clearly did in the case of Dr. Southam and the medical establishment of his time, who obviously did not think that "his" research subjects' wishes and desires were at all morally relevant, then "morality" as even Gert defines it can indeed change in some very important and often disturbing ways. And if Scheffler's observations and speculations turn out to be harbingers of a significantly modified phenomenology of agency, if future generations in an entirely globalized world look back upon our current common-sense conception of individual responsibility as being unthinkably narrow and parochial, then Gert's claim that morality does not change is likely to strike them as just so much philosophical posturing of a bygone era.

In sum, then, some aspects of Gert's approach to common morality are deeply problematic. He claims to be merely describing common morality as it is, but he often seems to be merely stipulating what he thinks common morality should be. He does not even seriously consider the Kantian conception of common morality that would include duties to self in the common morality; and his claim that, with one exceedingly narrow exception, there simply are no general duties to assist others in need has been shown to be woefully underargued and misguided. Finally, his claim that morality does not change has been shown to be false on the basis of Gert's own premises.

## Conclusion

As we have seen, common morality figures prominently in the respective projects of Gert and Beauchamp–Childress, but their accounts differ so radically in motivation, content, and scope that one might well wonder whether they are talking about the same thing. For Beauchamp and Childress, an emphasis on common morality represents a repudiation of top-down, theory-laden, deductivist thinking and a basic starter kit of abstract moral norms meant to provide justificatory ballast to subsequent moral reflection. For Gert, by contrast, common morality is nothing less than a handy name for his entire system of ethics. So if we ask about the ultimate significance of common morality for bioethics, it should come as no great surprise that there is no univocal answer to this question. It all depends upon whose conception of common morality we have in mind.

Because Beauchamp and Childress have assigned a relatively restricted role to common morality in their approach to bioethics, at least as compared with Gert's system, it should be easier to assess their contribution to this debate. I believe that Beauchamp and Childress's shift from an emphasis on ethical theory as the source of moral norms to an emphasis on common morality was a salutary move. Ethical reflection, let alone theory, should grow out of our everyday, pre-theoretical moral experience. But it is another question whether rousing up common morality to make it look like some sort of ultimate and universal foundation for morality, untouched by the dialectics of time and reflective equilibrium, was an equally good move. The indisputable and lasting moral achievement of *PBE* lies in its masterful and wide-ranging reflection on vexing cases and complex issues that constitute the field of biomedical ethics. Their attempt to ground such reflection in a foundation exempt from reflective equilibrium is, however, deeply problematic.

By contrast, to ask about Gertian common morality's contribution to bioethics is to ask a much broader and more daunting question—*viz.*, what is Gert's overall contribution to the field? This is far too large and important a question to tackle here, especially since even my analysis of Gert's conception of common morality has not pretended to be remotely comprehensive. In order to reach an all-things-considered assessment of Gert's contributions to bioethics, apart from his interesting early work in the philosophy of medicine, one would have to delve much deeper into other corners of his far-flung system, including his challenging theories of rationality and impartiality, the adequacy of his two-step decision procedure, and his underdeveloped thoughts about justice.

For now, then, I can only conclude that certain elements of Gert's magisterial conception of common morality are controversial at best and woefully inadequate at worst. He has a tendency to find in common morality what he himself put there, and his highly restricted conception of duties of assistance strikes this reader as ad hoc, inadequately defended, and unworthy of a project whose goal is to lessen the amount of misery in the world. For all that, Gert obviously remains a giant in the field of biomedical ethics, whose far-reaching and impressively systematic approach to the subject has been an inspiration to us all.

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