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The problem of priority of principles in bioethics. Can the Kantian classification in perfect and imperfect duties help us?¹

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Abstract: Principlism has dominated contemporary Anglophone practical ethics often regarded as the most important methodological conception. Young biomedical scientists grow up learning to apply the “four principles”, an approach originally introduced in the USA by Beauchamp & Childress² but soon accepted also in the UK with the support of Professor Raanan Gillon. The central idea of the method involves, first identifying the relevant among the four moral principle(s), (beneficence, non maleficence, respect for autonomy and justice) that is (are) connected with a specific moral dilemma. Then, one follows procedures of balancing, specification and deductive application, as a bridge between the moral dilemma and the four principles. Some attention is paid while balancing, to consequentialist considerations, and to other ethically significant concepts as the virtues and the emotions, but only incidentally. What is central in Beauchamp & Childress’s principlism is the adoption of normative insights of common morality, holding the position of a theoretical justification for the methodological reasoning which will determine the solution of a specific moral problem.

The main ambition of the four principles approach and its main virtue is the clarity of the method and consequently the ability to become comprehensive and easily applied. There are certain problems though in applying the method. Here, we are going to investigate the problem of relative priority of principles, i.e. which principle overrides the other when two or more of them are in conflict, seeking help by the Kantian division, in perfect and imperfect duties. But we must first answer the question: Is the four principles approach, a method of moral objectivism as Beauchamp & Childress claim, or is it a method of moral relativism, as it is often argued by some of their critics? Only if our answer to the objectivity question is positive, can the main issue of priority be addressed, because an attempt at a determinate ordering wouldn’t mean anything in a relativist frame.

Keywords: principlism; four principles; Kantian ethics; autonomy; dignity; perfect duty; imperfect duty

I. The four principles of Beauchamp & Childress between moral “imperialism” and moral relativism³

Beauchamp says that to solve the difficult or ‘hard’ cases we must use the four principles method plus some specification⁴. He defines specification as ‘a process of reducing the indeterminateness of moral norms to give them action guiding capacity, while retaining the moral commitments in the original norm’. Specification implies a mixture of general moral norms, which are abstract universal and thin in content, with the local or partial moralities which are robust non universal and thick in content. What Beauchamp & Childress aim at is a *reflective equilibrium* between the universal and the local, the general and the partial, the prescriptive norms of ‘common morality’ as they call it and the descriptive norms which are part of innumerable traditions, prejudices, religions that coexist in multicultural, liberal societies committed to tolerance, where their method is supposed to apply.

Gillon claims that the four principles occupy the middle ground between moral relativism and what he dubs as moral ‘imperialism’. ‘Moral imperialism’ is supposed to refer to objectivism or realism or cognitivism or all together⁵.

Beauchamp & Childress and Gillon define the four principles as basic *prima facie* moral commitments, a term introduced by the English philosopher W. D. Ross, which means that the principle is binding unless it conflicts with another moral principle- if it does we must choose between them⁶. Beauchamp defines the four principles as follows: *respect of autonomy*- the obligation to respect the decision making capacities of autonomous persons, *non maleficence* – the obligation to avoid causing harm, *beneficence*- the obligation to provide benefits and to balance benefits against risks, and *justice* - obligation of fairness in the distribution of benefits and risks⁷.

A first comment is that this particular account of autonomy is an individualistically shrunken version, which weakens the concept’s weight. It could be claimed also, that it undermines the universality ambition of the four principles. Autonomy interpreted as a simple free choice and decision according to individual reasons, can give precedence to individual beliefs, religious prejudices, racist and sexist discriminations that exist in certain cultures and to other criteria that can easily undermine the ‘common morality’ which is the basis of the four principles. Is there such a thing as Gillon’s middle ground? Or is the midway between moral imperialism and relativism, an impossible mixture of objectivism and a relativistic interpretation of cultural difference?⁸

Gillon says that the actual use made of the four principles approach can legitimately vary from person to person, from culture to culture⁹. Here it seems that we have an unjustifiable collapsing of the distinction between descriptive and prescriptive senses of common morality, prescriptive being the morality that prescribes what we should do and descriptive the morality commonly practiced by people. Is it possible that such a place as Gillon’s middle ground exists? For it to exist there must be a compromise between the two conflicting conceptions of objectivism and relativism and we are confronted by the following dilemma:

Either principlism works properly only with western liberal and individualist

common moral intuitions because they represent universal and absolute moral standards that all other cultures should adopt. Or no usage of the four principles is unacceptable and moral judgments are internal to every particular group or culture or tradition. So you can use the four principles as you like, abandoning any claim of universality¹⁰.

It seems that Beauchamp & Childress and Gillon in trying to avoid the double trap of moral relativism and moral 'imperialism' finally construct an incoherent model thick in status (since it deals with practical moral issues) and thin in content (because it uses moral norms in a minimalistic sense)¹¹. They claim that different societies may diverge in their understanding of the principles but they are not supposed to diverge interminably. But without a theoretical ground that eliminates the individualistic use of four principles in different ways convergence cannot be obtained.

The universality of the four principles approach could nevertheless be saved by granting autonomy its Kantian origin and enriching the American model of autonomy, as Dragona Monahou defines it (*Unesco, Principles of Bioethics*), with the European model of dignity. By accepting that "*autonomy is therefore the ground of the dignity of human nature and of every rational nature*" (GMM 4:436) and the second formulation of the categorical imperative "*so act that you use humanity, whether in your own person or in the person of any other, always at the same time as end and never merely as means*" (GMM 4:429) the relativist cultural components of moral deliberation subside, because this account of autonomy pervades all cultures with unreduced intensity. O' Neill argues for the Kantian construal of autonomy in bioethics: for *Kant autonomy is not relational, not graduated, not a form of self expression; it is a matter of acting on certain sorts of principles, and specifically on principles of obligation.... autonomy in thinking is no more -but also no less- than the attempt to conduct thinking on principles on which all others whom we address could also conduct their thinking*¹².... *autonomy in action is no more -but also no less- than the attempt to act on principles on which all others could act*¹³.

Even if we grant the force of objections to the Kantian model of autonomy recommended by O' Neill, we have to acknowledge the need that the four principles obtain a thicker content that will not allow individualized and diverging interpretations.

II. The four principles and the Kantian account of duties

If we believe that the universality of the four principles model could be saved by the Kantian account of autonomy, then we can go on to our second question: are the four principles equal in importance? And if they are equal, how do we decide about their relative priority, when they conflict? We must answer this question in the context of the Kantian autonomy solution, because no answer will have any meaning, if the universality claim of the four principles fails. If the reflective equilibrium that Beauchamp & Childress suggest is obtained by reflecting on morally thick community or religious or even personal beliefs, in a relativist context, any principle may take priority over the other, and consequently this procedure does not have any special moral weight. By remaining in the Kantian context, we shall attempt to illuminate

first the problem of equality of the four principles and then examine the priority issue by comparing it to the Kantian division of *necessary duty to oneself*.. [and] *to others or duty owed to them* (GMM 4:429) and contingent (*meritorious*) *duty to oneself*... [and] *to others* (GMM 4:430). We are going to adopt respectively the commonly used terms “perfect” and “imperfect” duties.

Beauchamp & Childress have been accused of incoherence in their principlism, because although they claim that the four principles are equal, there is a tacit priority of autonomy, which Gillon defines as the ‘first among equals’ principle¹⁴. Gillon’s definition has its origin in the Roman ‘*primus inter pares*’¹⁵ conception and has been thoroughly criticized as incoherent by Dawson and Garrard¹⁶ arguing that in a general theory of *prima facie* duties, you cannot consider any principle to be coming first among equals. Gillon in a recent evaluation of the criticism mounted against the four principles theory since its first appearance, forty years ago, when *Principles of Biomedical Ethics* was first published, and trying to highlight the importance of beneficence says: *this obligation [beneficence] in my own view the core moral commitment of doctors –their core ‘Hippocratic’ objective or ‘Hippocratic’ moral commitment. ... To the degree this commitment itself requires, in the case of autonomous patients, that their autonomy is respected, simply because people’s assessment of harms and benefits is in part subjective and idiosyncratic- so for doctors to be able to decide what course of action actually does provide net benefit with minimal harm, they need to consult their autonomous patients.* And he adds: *even if [autonomy] is accepted to be the ‘first among equals’ it remains ‘among equals’ and may in particular cases and types of case have to give way to one or more of the other three principles*¹⁷.

In the famous ‘four scenarios’ also (‘standard’ case of a Jehovah’s Witness, the ‘child of a Jehovah’s Witness’, human organs trade, and genetic enhancement) Beauchamp’s solution¹⁸ in each case does not deserve the accusation of promoting the principle of autonomy. In Jehovah’s Witness case for example the principle of autonomy prevails. In the ‘child of a Jehovah’s Witness’ (where a Jehovah’s Witness is refusing blood transfusion to his offspring that could save her life, and where the principles of the father’s autonomy and that of beneficence expressed through benevolent medical intervention to save the child’s life, are in conflict), the principle of beneficence comes first. In the human organs trade the principle of distributive justice, and finally in genetic manipulation the principle of non maleficence (harm of the next generations) is to be taken in account more seriously than the others.

Let’s examine now what happens in the field of Kantian ethics. It seems that the problems of the division of duties into perfect and imperfect in Kantian literature, has ‘contaminated’ bioethics and the discussion about the priority of the principles in question, is parallel to that about the priority between perfect and imperfect duties when they conflict. In bioethics’ literature the terms ‘perfect’ and ‘imperfect’ are often used in relation with the principles, especially regarding the conflict of autonomy with beneficence.

The dispute about Kantian perfect and imperfect duties is long. The most influential interpretation of the distinction is that perfect and imperfect duties have

a different status (*duties of justice and duties of virtue, according to the classification proposed in his Metaphysics of Morals*) and when they conflict the perfect precede as imperative and so the imperfect subside as weaker and optional. This classification is based on the schematic division in the *Groundwork of the Metaphysic of Morals: in accordance with their usual division into duties to ourselves and to other human beings, and into perfect and imperfect duties* (GMM 4:421). Kant after exposing four examples of duties concludes: *that the first is opposed to strict or narrower (unremitting) duty, the second only to wide (meritorious) duty* (GMM 4:424).

The Kantian division has been interpreted in different ways. An interpretation is that of positive versus negative duties, negative being the ones that are defined by absolute prohibitions of actions, while positive are the ones that contain final ends and can be satisfied by many and different plans of action that can attain them. Kant maintains that a perfect duty does not accept an exception in favor of a predisposition while an imperfect duty accepts a certain field of free choice following the law.

Another construal is that of an opposition between narrow and binding duties and *wide* and not *binding*. This construal is rooted in Kant's claim that the *ethical* [imperfect] *duties are of wide obligation, whereas duties of right* perfect] *are of narrow obligation* (GM 6:390). For example the imperfect duty of beneficence demands charity but it does not specify the kind or the time of charity that must be enacted. On the other hand perfect duties demand execution or omission of an action. They can also allow for latitude in the performance of an action (e.g. I can pay a ten dollar debt by two dollars coins or five etc.), but the action must always be performed¹⁹.

A third interpretation is of consequentialist origin. Jeffrie Murphy and J. S. Mill argue that the Kantian distinction is based on the correlative rights issue. Perfect duties correlate with assignable rights that are violated if the duties are not honored; imperfect duties involve actions which one ought to do, but where no assignable rights are violated if one fails to act. Contracts constitute perfect rights in the sense that they generate correlative rights which render the duty narrow, while imperfect duties as beneficence do not generate correlative rights and has certain latitude in their execution²⁰. For Mill, perfect duties coincide with principles of justice and he maintains that a right is something the possession of which ought to be defended by society.

Another interpretation that we will attempt here is based on Robert Louden's *Kant's Impure Ethics*, providing an original reading and interpretation of Kant's ethics. According to this interpretation we could characterize the perfect duties as 'pure' duties. Pure here means that they derive from free will and can be performed immediately and without any action plan (that is why they are usually negative). The imperfect ones are 'pure' concerning their free will origin, but in their execution they demand, 'impure', empirical means, which are necessary, because *who wills the end, also wills (necessarily in conformity with reason) the sole means to it that are within his control* (GMM 4:417). Both duties as ends are objects of free will, and they contain *a moral (objective) doctrine of ends* (MM 6:385). But the imperfect underlie *a technical subjective doctrine of ends containing the rules of prudence in the choice of one's ends* (MM 6:385) and so they have an element of individual empirical (impure) planning.

But whichever of the interpretations mentioned above we choose, it may prove inadequate because duties can anyway come into conflict in certain cases. There are plenty of examples and thought experiments in bioethics' literature. One well known example is that of Thomas Nagel and goes like that: you have a car accident in the middle of nowhere, the two other passengers in your car are seriously injured, and the only way they can be saved is by being transported as soon as possible to a hospital. There is a house nearby with a car in the garage, where an old lady lives that takes care of her grandchild. When you go there and ask her for the keys of the car, she panics and locks herself up in the bathroom. Then you have the idea that the only way to make her give the keys is to strain her grandchild's arm. Should you do something like that?²¹ Whatever our intuition may be for this case, it is very difficult here to apply the perfect imperfect distinction, because there is a conflict of a perfect positive with a perfect negative duty. Nagel will claim here in the context of his inquiry into the special nature of deontological constraints: *it seems that that you shouldn't twist the arm of a small child to get its grandmother to do something, even something important enough, so that you would not be required to forgo a comparable benefit in order to prevent someone else from twisting a child's arm*²².

There are cases where the duty of beneficence is narrow, like when people are drowning in front of you and you have the means to save some of them. You can't leave all of them to drown claiming that the duty of beneficence is imperfect and you will save other people another time. That would be a violation of this duty which in these particular circumstances is narrow and imperative.

Kant himself has ignited the debate with the famous example of the wannabe killer, who searches his victim in your house, and you must answer sincerely to his questions and not deceive him to save your friend, because you cannot violate your perfect duty not to lie. There are also thought experiments, such as that of the trolley that will kill three or four or five persons and to avoid it you must push a button and choose to kill only one, or a child or a priest or whatever a consequentialist calculus of good and bad demands. For all these experiments Nagel says that *our deontological intuitions fail after a point of complexity*²³.

Kant in MM claims that the general duty of virtue could be regarded as an imperfect duty, a duty to struggle for the purity of your motives which always will be greater than what you have already achieved, and that is so because we are free rational beings but also embodied. Somewhere else in the MM he will say that the *duty to oneself is a narrow and perfect one in terms of its quality; but it is wide and imperfect in terms of its degree, because of the frailty of human nature* (MM 6:446 §22). So finally we have a) the duties of right which are ways of preserving and promoting the freedom which can be imposed externally and they are perfect and b) the duties of virtue which are ways of preserving and promoting the freedom which is self imposed (internally) (MM 379) and are 1) perfect according to their quality 2) imperfect according to their degree. So, in conclusion, all duties are perfect according to their quality (duties of right and virtue). The imperfection that is detected in the duties of virtue is not one of their perscriptivity (both duties are positive) but of their operative ability,

taking into account the empirical limitations of Kantian moral anthropology²⁴.

Having Kant's classification in mind, we can now examine the four principles in bioethics:

The *non maleficence* duty is perfect as negative. In the case of balancing benefits against risks though, it becomes broader as we have sometimes to engage in consequentialist calculations. But the scientific empirical instructions of medical practice, which are of consequentialist origin, can lead us. A moral dilemma could arise also when the patient's evaluation is unreasonably different from that of the doctors, but there the principle of autonomy has to prevail.

Justice (in distributing benefits and risks) has a priority among norms that regulate biomedical research and the delivery of its products. This principle though, together with the non maleficence principle, guide the discussions and law making of committees that decide about the obligations of scientific protocols and the application of new technologies such as genetic enhancement, organ transplantation, and new reproductive techniques. Regarding these issues, its priority must be balanced in each case.

The beneficence principle seems to have a special status in bioethics, and so its prescriptivity differs in this context. In Kantian ethics as a whole, Barbara Herman claims that, respect of the integrity of the person of the other is obligatory, while failing to give help is not incompatible with respect of human action²⁵. However, according to Rhodes, who criticizes principlism, according to Beauchamp & Childress's common morality beneficence is an imperfect duty, for medicine beneficence is a defining duty, and doctors are committed to their patients' benefit²⁶. Beneficence is the objective of the biomedical sciences and so it constitutes a narrow duty of the scientists. It is the content of a contract signed between society and the scientific community and so it is an absolute duty because it is a duty of right. It is also negative, because it forbids the avoidance of its fulfillment (the doctor cannot choose to treat the patient or not), and narrow, because its execution is defined by scientific protocols.

Finally, for the respect of autonomy principle, we can say that it is absolute and narrow and in the cases where it can be violated, like in decisions concerning minors, demented and other incompetent persons, the law orders that even then, possible autonomy must be acknowledged or otherwise respected in the face of surrogates.

In bioethics, all four principles can be regarded as perfect duties and they must be balanced not in prescriptivity, but in accordance to their relation to the specific problem we are confronted with.

III. Conclusion

Beauchamp & Childress and Gillon's four principles prove to resist the accusation of inconsistency and prioritization of autonomy, but we have concluded that they need to acquire a thicker content in order to secure the universality of the model. We think that the Kantian account of autonomy as "*the ground of the dignity of human nature and of every rational nature*" (GMM 4:436) could achieve that. The Kantian

perfect- imperfect duties distinction enlightened us on the nature of the principles as duties, but there are no direct analogies between the four principles and the four kinds of duties that Kant describes in GMM. All duties according to Kant are perfect in quality because of their free will origin, and the imperfection that he recognizes in the operative capacity of some duties, cannot be extended to bioethics because their operation in this area is widely predetermined by scientific and medical ethics protocols, and little space is left for deliberation. We could say that the perfect character of a duty in its operation –because in quality all principles are perfect–, depends on the context within which it appears, and the special deontological constraints imposed by this context.

The four principles with the addition of Kantian autonomy aim at securing the moral status of biomedical interaction and not only the legal shield of scientists, thus avoiding a limitation often criticized in the principlism of Beauchamp & Childress. With the Kantian enrichment of the method, the communicative element of informed consent could be provided, and consent would be an agreement of two free sides cooperating towards a common end, which is produced by a common will, *by a united will of both* (GMM 6:272), and not just ‘ticking boxes’. Because “*signing and ticking boxes can have legal weight but are deprived of moral weight*” (Onora O’Neill)²⁷.

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11. *Ibid.*, 527.
12. Onora O’Neill, *Autonomy and Trust in Bioethics*, Cambridge University Press, Cambridge, 2002, pg. 84.
13. *Ibid.*, pg. 94.
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15. Emperor Constantine the Great had the title “primus inter pares”. The roman expression has a lot to do with the genealogy of the term dignity (see Kondylis Panagiotis Würde); although equal with the others the dignified emperor ought to be respected for his position.
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