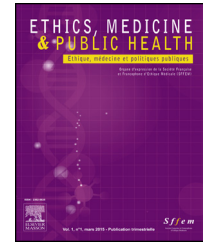




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THOUGHTS

Principles, rules, and the deflation of the good in bioethics

Principes, règles et amoindrissement du bien en bioéthique

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Summary Prior to the Nuremberg Code, German Law had prohibited research on subjects without their consent. Yet, German Law could not restrain the Nazi research machine. Likewise, the United States Public Health Service continued research on poor black men in the southern US for 25 years after the promulgation of the Nuremberg Code. Once the Tuskegee Experiments were exposed, it prompted philosophers to articulate the more general and philosophically robust norms and principles that should ground and guide all future research and practice. Yet, this move to more general principles results in the deflation of metaphysical concepts traditionally thought necessary for ethics, namely the concept of the good and the concept of persons. Put differently, modern principles of biomedical ethics that seek to avoid pluralism and relativism grounds its ideas in the philosophy of right action at the expense of the philosophy of good. This essay argues that, because medicine is aimed at health, and the goods possible for persons in health, any ethics of medicine must be grounded in a philosophy of the goods for persons and goods of persons.

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MOTS CLÉS

Codes éthiques ;
Métaphysique de la
personne

Résumé Avant le Code Nuremberg, la loi allemande interdisait la recherche sur les personnes sans leur consentement. Pourtant, cette loi allemande n'a pas pu freiner la machine de recherche nazie. De la même façon, le service de santé public américain a continué à faire des recherches sur de pauvres hommes noirs dans les états du sud pendant 25 ans après la

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Imagination morale ;
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Principes

promulgation du Code de Nuremberg. Lorsque les expériences de Tuskegee ont été rendues publiques, cela a poussé les philosophes à édifier des principes et des normes plus robustes pour encadrer et guider les futures recherches et pratiques. Pourtant ce mouvement vers des principes plus généraux a contribué à réduire les concepts métaphysiques traditionnellement nécessaires pour la réflexion éthique, le concept du bien et le concept de personne. En d'autres termes, les principes modernes de la bioéthique médicale qui cherchent à éviter le pluralisme et le relativisme trouvent leurs justifications dans la philosophie du juste au détriment de la philosophie du bien. Cet essai explique que comme la médecine vise la santé et ce qui est bon pour la personne en termes de santé, l'éthique médicale doit se fonder sur une philosophie de ce qui est bénéfique pour les personnes et des biens pour les personnes.

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I have always found it odd to think that, if the Nazi's had gotten permission or informed consent for their research, then the research would have been acceptable. That is the sense that one gets from reading the Nuremberg Code, that if the code had just been in place, the Nazi's would not have done their evil research [1]. Yet, oddly enough, German law in 1931 prohibited research without informed consent, and even before the German legislation, the Prussian Minister of Culture had given an executive order forbidding research without consent as early as 1900 in response to the Case Neisser, as it is called [2,3]. Yet, the legal procedures of consent that were in place and were never rescinded in Germany could not prevent the evils of Nazi science.

Moreover, the Nuremberg Code, which was articulated in 1947 by the American judges presiding at the Nazi doctors trial, did nothing to interrupt the Tuskegee Experiments conducted by the Public Health Service of the United States. In fact, these clinical studies of untreated syphilis, which began in 1932, continued well beyond 1947 until 1972. Thus, procedures and policies aimed at consent seem insufficient to halt questionable research.

When the Tuskegee Experiments were finally exposed in 1972, a special commission was created in the United States, the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research [4]. The work of the Commission was established by members of Congress to try to find more effective ways of preventing the atrocious research like the Tuskegee Experiments. The Commission's report — the Belmont Report — articulated, under the guidance of Tom L. Beauchamp, more general philosophical principles that it hoped would give a fuller philosophical grounding for the bureaucratic procedures and rules that would govern medical research. Thereby, the Commission hoped to give more heft to procedures and policies that would protect research subjects and patients alike [4]. Undergirding the Belmont Report were three principles — respect for persons, beneficence, justice — that the authors thought sufficient to give philosophical ground upon which more robust future procedures and rules would be built. I will contend in this essay, that even these more

general procedures fail because they are aimed at the wrong dimension of moral action.

As noted, philosopher Tom L. Beauchamp was a special consultant to the Commission, and shortly after the publication of the Belmont Report, he would publish a coauthored book with James F. Childress called *Principles of Biomedical Ethics*, which is now in its 7th Edition [5]. This book claims to articulate principles that would give philosophical grounding to norms that are supposedly universally valid and could thereby govern both the medical research enterprise and the clinical practice of medicine. Beauchamp and Childress would articulate four principles — respect for autonomy, non-maleficence, beneficence, justice — which roughly corresponded to the three principles of the Belmont Report. In this essay, I shall argue that the bureaucratic procedures such as informed consent, grounded in Beauchamp and Childress's philosophical principlism, for the same reason that the German law and the Nuremberg codes fail: the principles do not plumb the heart and soul of ethics, which is not about right and wrong, but about good and evil.

In this brief essay, I will first describe the moral imaginary of the late modern West, within which Beauchamp and Childress's principles cohere. I will then show that Beauchamp and Childress are pluralists in terms of theoretical ethics, while they still claim to be moral universalists noting that their principles emerge from a common morality applicable in all times and places. Third, I will show that Beauchamp and Childress appeal to a moral philosophy of right, rather than by appeal to a philosophy of the good. They never articulate a theory of value out of which their theory of moral norms and principles emerge. Thus, I will claim that Beauchamp and Childress suffer the same problem as the German law of 1900 and 1931, and the Nuremberg Code of 1947. They fail to articulate the metaphysics of the good and the metaphysics of persons. For the principles to do the work that Beauchamp and Childress think they do, they must once again turn to metaphysics and get down to the nitty gritty philosophical work grounded in notions of the good for and of persons.

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