

ARTICLE

Bioethics Without Theory?

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Abstract

The question that this paper tries to answer is Q: “Can good academic bioethics be done without commitment to moral theory?” It is argued that the answer to Q is an unequivocal “Yes” for most of what we could call “critical bioethics,” that is, the kind of bioethics work that primarily criticizes positions or arguments already in the literature or put forward by policymakers. The answer is also “Yes” for much of empirical bioethics. The second part of the paper then provides an analysis of Q in relation to “constructive bioethics,” that is, bioethics work aimed at providing an argument for a particular position. In this part, it is argued that a number of the approaches or methods used that initially look like they involve no commitment to moral theory, nevertheless, involve such a commitment. This is shown to be the case for reflective equilibrium, mid-level theory, the use of theory fragments, and argument by analogy.

Keywords: Argument by analogy; bioethics; mid-level theory; moral theory; reflective equilibrium; theory fragments

Introduction

The question that this paper tries to answer is Q: “Can good academic bioethics be done without commitment to moral theory?” This is a question that is almost as old as the field itself, and it may to the academic moral philosopher initially look like an odd question with an obvious answer. If bioethics is a subset of applied ethics, then the answer must be “No,” since what is applied is precisely moral theory. The analyses in this paper, however, will suggest that the situation is far more complicated. The question actually has a negative answer for a large segment of academic bioethics work and a positive answer for other kinds of bioethics activity that initially looks like it is “theory free.”

A similar question was raised by Tom Beauchamp in 2004 and answered mainly in the negative. He concluded that:

Philosophical theories today hold a diminished stature in bioethics by comparison to their standing of 10 or 20 years ago. The reasons for the demotion of ethical theory are the lack of distinctive authority behind any one framework or methodology, the unappealing and formidable character of many theories, the indeterminate nature of general norms of all sorts, the turn in bioethics to more practical issues, and—most importantly—the stumbling and confusing manner in which philosophers have attempted to link theory to practice.¹

And even earlier Arthur Caplan had convincingly argued that the “engineering model”—where moral theory was applied to the facts of a case and a moral answer directly derived from such an application—was fundamentally flawed.²

The question posed contains three terms that need initial explication, that is, “good” in relation to academic bioethics, “academic bioethics” itself, and “moral theory.” In the following, “academic bioethics” will be understood as an activity aimed at providing published (or otherwise publicly disseminated)

analysis of and, in some cases, conclusions about bioethical questions.³ This excludes clinical ethics consultancy and other activities aimed at giving advice to decision makers about specific cases, and it excludes whatever ethical reflection each of us engages in before acting ourselves. It also excludes what we could call “official bioethics,” for example, the work of national or international ethics councils or committees or organizations issuing official ethics codes. Such official bodies provide analysis of ethical issues, but their conclusions are often, at least partly, determined by pragmatic and/or political considerations and not by the best argument. “Good” academic bioethics will be used to designate analysis that develops valid and sound arguments, and if conclusions or recommendations are provided, these conclusions are based on such valid and sound arguments. Finally, “moral theory” will be understood as a systematic framework that provides criteria for how ethical questions should be evaluated across a wide range of such questions. A moral theory tells us what the ethically important features of an action, person, situation, or state of affairs are, and how they should be evaluated. Most moral theories also provide a justification for why these features are the ones that are important and why they should be valued or disvalued. The analysis will focus on the use of and commitment to philosophical moral theories.

The paper is divided into three main parts. The first part considers the range of academic bioethics activities where the obvious answer to the question is “Yes, it is perfectly possible to do good academic bioethics without commitment to moral theory.” The second and longest part then provides a refinement of the question and proceeds to analyze whether a number of prominent, putatively theory-independent approaches to bioethical work involve an implicit commitment to theory, or at the very least an implicit use of theory. The final part before the conclusion looks at whether the question is ill-posed in the sense that “good academic bioethics” should not be characterized as an activity developing valid and sound arguments but as an activity developing (rhetorically) persuasive and effective arguments.

One particular way of answering the question falls outside the scope of the paper, that is, the affirmative answer that follows from adopting a theoretical anti-theory position. If there can be no moral theory at the level of generality described above, for example, if particularism, nihilism, or intuitionism are true, then you can only do good academic bioethics by *not* explicitly or implicitly using moral theory. Any use of moral theory that involves a commitment to moral theory would be a mistake, since there are no such theories. This is a possible answer to the question, but it fundamentally undermines much of current bioethics work since the standard anti-theory arguments undermine not only moral theory but also lower-level general moral propositions.

Yes, You Can Do Excellent Academic Bioethics Without Moral Theory

There are many ways of doing excellent academic bioethics work without moral theory, and the literature is full of papers doing exactly that, although we should note that excellence does require that it is done well, which is not always the case.

You do not need moral theory to do most of what we could call “critical bioethics,” for example:

- 1) To point out that an argument put forward by someone else is invalid, or unsound, or both invalid and unsound
- 2) To point out that the argument commits them to further ethical conclusions that they or other people are likely to find awkward

You also do not need moral theory to point out inconsistencies between two positions held by the same person or between different pieces of legislation. And, if an author puts forward a theory-based argument, you do not need to commit to the particular moral theory to show that a conclusion does not follow from the theory that is supposed to be the basis for that conclusion. You just need to apply your knowledge of that theory without committing to it either explicitly or implicitly.

There are many pragmatic advantages to proceeding without theory. You avoid having to nail your flag to a particular theoretical mast and thereby potentially avoid losing part of your readership that does not share that theoretical commitment. You avoid the need to know and understand moral theory. And,

you can probably write shorter papers that are more likely to come in under the word count specified by your preferred journal.

It is also perfectly possible to do many kinds of empirical bioethics without theory, for example, studying whether a particular research ethics framework is followed by researchers, and the reasons for deviations from the framework, does not involve moral theory. The justification of the research ethics framework that is being studied may rely on moral theory, but studying its more or less successful implementation does not necessarily do so.

Academic Bioethics Methodologies and the Implicit Use of Theory

As we have seen above some critical and empirical bioethics work does not require any reference to moral theory, so we need to refine the question asked to Q*: “Can good constructive academic bioethics be done without moral theory?”

A quick look at the prominent bioethics journals seems to indicate that the answer to Q* must also be “Yes,” since there are many articles providing definite answers to controversial bioethical questions without any explicit reference to moral theory. The number of papers that specifically mention that the argument proceeds from a particular moral theory is limited, with the exception of papers that have the revision or refinement of theory as their main aim and where the particular bioethical question is primarily used instrumentally to illuminate a specific theoretical conundrum. In some other cases, famous theory builders are actually named, but only fragments of their theories are used (see the section on free-standing theory fragments, below).

So, what conjuring tricks make it possible to provide an analysis of, and definite answers to, ethical questions without referring to moral theory and without falling into pure intuitionism? There are at least four main approaches to “theory free” analysis and argument:

- 1) Reflective equilibrium
- 2) Mid-level and other free-standing principles
- 3) Free-standing theory fragments
- 4) Analogy and casuistry

In the following, we will see that each of these approaches depends more on theory than it initially appears.

Reflective Equilibrium—Narrow and Wide

It has been suggested that “... today ‘reflective equilibrium’ (RE) is considered the method of case-deliberation in bioethics in general and within its principlist paradigm in particular.”⁴ Norman Daniels defines reflective equilibrium in the following way in the *Stanford Encyclopedia of Philosophy*:

The method of reflective equilibrium consists in working back and forth among our considered judgments [...] about particular instances or cases, the principles or rules that we believe govern them, and the theoretical considerations that we believe bear on accepting these considered judgments, principles, or rules, revising any of these elements wherever necessary in order to achieve an acceptable coherence among them. The method succeeds and we achieve reflective equilibrium when we arrive at an acceptable coherence among these beliefs. An acceptable coherence requires that our beliefs not only be consistent with each other (a weak requirement), but that some of these beliefs provide support or provide a best explanation for others. Moreover, in the process we may not only modify prior beliefs but add new beliefs as well.⁵

He then moves on to defining narrow and wide reflective equilibrium. Narrow reflective equilibrium is sought when

[t]o the extent that we focus solely on particular cases and a group of principles that apply to them, and to the extent that we are not subjecting the views we encounter to extensive criticism from alternative moral perspectives, we are seeking only narrow reflective equilibrium.⁶

In contrast, wide reflective equilibrium is aimed at determining what principles or moral theory to adopt at a more general level. If we, for instance, are developing a theory of justice:

... we broaden the field of relevant moral and nonmoral beliefs (including general social theory) to include an account of the conditions under which it would be fair for reasonable people to choose among competing principles, as well as evidence that the resulting principles constitute a feasible or stable conception of justice, that is, that people could sustain their commitment to such principles.⁷

Given that the aim of wide reflective equilibrium is to achieve a justifiable moral theory or framework of principles at a high level of generality, it is a method that is employed prior to any bioethical analysis of an argument about specific questions. If wide reflective equilibrium is successfully attained, it provides the theory that can be the basis for constructive bioethics.

In the present context of analyzing the possibility of doing good constructive academic bioethics without moral theory, we will therefore focus on narrow reflective equilibrium. The narrow reflective equilibrium methodology specifically includes “the theoretical considerations that we believe bear on accepting these considered judgments” as one of the elements that go into the process leading to a coherent reflective equilibrium justifying a particular ethical conclusion. It may therefore seem odd to ask about the role of theory within this methodology. However, narrow reflective equilibrium is often used as a methodology in order to avoid commitment to a particular moral theory. The “theoretical considerations” that enter the mix alongside considered judgments, principles, and rules can come from any number of theories. And, these theories can be mutually incompatible at the foundational theoretical level. In a case involving a question of whether or not a particular (kind of) autonomous choice should be respected, theoretical considerations relating to respect for autonomy could, for instance, include relevant considerations from both Kantian deontology and preference consequentialism. If these considerations are not revised in the narrow reflective equilibrium process, we could claim that the outcome of the process is supported by both theories. But, what if acceptable coherence can only be achieved in a particular instance by revising or discarding one or more of the theoretical considerations? If we revise the specific theoretical consideration without ensuring that it is still compatible with the theory from which it is derived, we may gain in coherence among the elements of the reflective equilibrium, but we lose the justificatory support of the theory. On the other hand, if we let the theory constrain the revision, we introduce theory reliance and thereby a commitment to theory into the methodology.

Perhaps more importantly in the current context, to the extent that we allow a particular theoretical consideration to determine the need for and content of the revision of other elements in the reflective equilibrium, we are implicitly relying on and thereby using moral theory.

Mid-Level and Other Free-Standing Principles

Another common way to avoid theoretical commitments in bioethics is to have recourse to a set of free-standing principles that are claimed to be theory independent. The most common principle-based framework is the four principles of biomedical ethics put forward and defended by Tom Beauchamp and James Childress,⁸ but this class of approaches to bioethical analysis and arguments also include Darryl Macer’s four types of love,⁹ Peter Kemp and Jacob Rendtorff’s four European principles of medical ethics,¹⁰ and Bernard Gert’s 10 rules.¹¹

When analyzing a particular bioethical issue, we are told to apply and refer to the principles and not to moral theory.

Each set of principles has a justification. Some authors justify their principles as a philosophically guided systematization of common morality, whereas others justify them as principles that are supported

by any reasonable moral theory, that is, mid-level principles occupying a space between irreconcilable theories and controversial specific judgments. If, for example, we take a principle of “respect for autonomy,” we can see that it is both supported and justified by common morality, and receives support from plausible moral theories, for example, consequentialism (as a rule of thumb, as part of rule utilitarianism), deontology (as a true ethical principle), virtue ethics (as a precondition for virtuous behavior), and so forth. In some cases, both modes of justification are used and the principles are arrived at by a process much like “wideish” reflective equilibrium.

Do such principle-based frameworks allow us to perform constructive bioethics without recourse to moral theory? There are at least two reasons to be skeptical about the claim that we can dispense with theory. The first is related to the fact that there are many situations where the analysis of a particular ethical issue requires us to determine who falls under the scope of a particular principle. We may know that a non-harm principle is potentially relevant to an analysis of whether to buy, cook, and eat factory-farmed meat on sale in the local supermarket, but unless we know which animals, in addition to humans, fall within the scope of the principle and should therefore *prima facie* not be harmed, accepting the principle as valid will not be of much help. Similarly, some bioethical questions seem to hinge on the exact scope of respect for autonomy. But, at least some ways of deciding on the scope of a principle rely very heavily on moral theory. If we, for instance, introduce arguments relating to what kind of entities can be right holders in our exploration of scope, we have *de facto* introduced reliance on one or more theories of rights. If we then go on to endorse the conclusion of this exploration of scope, we have also committed ourselves to the particular theory of rights that supports that conclusion. Because this commitment is implicit, we may not notice it, but it is nevertheless a commitment to moral theory.

Similarly, principle-based frameworks contain multiple principles, and there will be situations where two or more principles are relevant but point to different, mutually incompatible conclusions. In those cases, we need to balance the principles against each other. We can do this by intuition, but most often we want to find an argument for why a particular way of balancing the principles should be preferred. This will, again, often entail implicit references to theory.

Free-Standing Theory Fragments

A fairly common mode of argument in academic bioethics is to employ what we could call a “theory fragment” as the basic normative premise in an argument. Such theory fragments include John Stuart Mill’s “harm principle,” Immanuel Kant’s second formulation of the categorical imperative, and Aristotle’s doctrine of the mean.¹² This use of theory fragments can be problematic in many ways; for example, sometimes the fragment is not even quoted correctly, but here we will focus on their relation to moral theory.

The theory fragments are all in themselves normative conclusions that follow from a particular moral theory, for example, when Kant states that the moral agent should:

[a]ct in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end.¹³

Or when Mill states that:

[t]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.¹⁴

Then these specific and definite ethical propositions are the conclusions of argument and follow from and are justified by a particular theoretical approach. They are not put forward by their originators as self-evident, and they are not self-evident or in any other way obviously true either. That entails that using a theory fragment as the most basic normative premise in an argument is either an enthymematic appeal to the authority of the famous originator or a hidden or explicit *ad populum* appeal to wide acceptance in the philosophical community; or it is a hidden commitment to a particular moral theory. Given that both appeals to authority and *ad populum* appeals are logical fallacies, this means that the use

of theory fragments as basic normative premises only leads to valid and sound arguments if we add enthymematic premises along the lines of “the moral theory that justifies this proposition is true / the best available theory.”

A further problem in using theory fragments is that when extracted and isolated from the underlying theory, key terms become undefined. The specific import of Mill’s harm principle, for instance, depends on the precise delineation of the concept of “harm.” That is, before knowing what the principle prohibits and allows, we need to know what counts as a harm. Do all setbacks to interests count as harms? Do all diminutions of welfare count as harms? Do infringements of rights count as harms? The answers to such questions are not self-evident, and given that the term “harm” is used in many different ways in ordinary language, they do not follow from simple linguistic analysis. This means that they require analysis and argument, and such analysis will inevitably involve theory. Mill has (some) answers to these questions in his underlying utilitarian theory, but other moral theories, including later developments in consequentialism, may provide very different answers.

Analogy and Casuistry

Argument by analogy is widespread in the bioethical literature, and since it only seems to involve the comparison between cases or policies, it does not seem to involve theory. We identify the base case, we compare it to a new case by identifying analogies and disanalogies, and on the basis of this comparison, we justify why the new case should be evaluated ethically in the same way as the base case or evaluated differently.

However, theory may creep into argument by analogy in two ways. The first is in relation to the base case. In order for the conclusion of the argument to be strongly supported, in order for the conclusion “New case should be evaluated as X” to be epistemically warranted, we need to have confidence in the evaluation of the base case. If the ethical evaluation of the base case is uncertain or controversial, we can only justify the conditional conclusion “if you evaluate the base case as X you should evaluate the new case as X.”

We can justify certainty concerning the evaluation of the base case in a number of ways. Some of these involve well-recognized logical fallacies, for example, “most bioethicists think that...,” which is an appeal of authority, or “everyone thinks that...,” which is an *ad populum* fallacy. We might also directly appeal to intuition. If the base case is a particular legal regulation, we may be certain of the legal position, but that does not necessarily translate to certainty about the ethical evaluation. There are many legal regulations that are ethically unjustifiable in the weak sense of having no coherent ethical justification (e.g., specific legal time limits for abortion on demand), and others that are ethically unjustifiable in the stronger sense that ethical analysis shows them to be wrong. So, in many cases, it will be the case that if we have a high degree of certainty about the base case, this is based on arguments that justify our evaluation of that case. That argument often involves moral theory. Either implicitly or explicitly.

The second way in which argument by analogy often involves theory is because identifying and highlighting analogies and disanalogies involve choice. There is a potentially infinite number of analogies and disanalogies between the base case and the new case, and argument by analogy therefore necessarily involves choosing which of these to make the focus of the comparison. Examples of such choices are the choice of what are the ethically important features of the cases, for example, the intentions of the agents involved, the action types or tokens performed, the consequences of the actions, the eventual state of the world, the moral status of the entity that is acted upon, or something else? Sometimes this issue of choice is obscured by the fact that bioethical arguments by analogy are often highly stylized and spare in the sense that the base case has already been stripped of many potentially morally important features, because it is not a real case but a thought experiment. This is, for instance, evident in the large literature on trolleyology, following on from Foot’s first use of the runaway trolley as a thought experiment (see for instance, Frances Kamm).¹⁵ Here it looks like it is self-evident what the possible analogies and disanalogies are between two versions of the trolley thought experiment, but that is only because all other possibilities have been removed in setting up the situation.

How do we choose what analogies and disanalogies to focus on? The choice is not self-evident, and we may get a different eventual outcome of the argument by analogy depending on the choices we make. A possible answer is that we choose according to our prior theoretical commitments. An Aristotelian virtue theorist will focus on the enactment of virtuous behavior in the two cases, the Kantian deontologist will focus on action types, the consequentialist on the eventual state of world, and so forth. Even if the choice of focus is not made explicitly on theoretical grounds, the choices made will inevitably drive the analysis in a particular theoretical direction and make particular theoretically grounded concepts and constructs relevant or irrelevant, for example, leading to questions about whether the entity acted upon is “a person” or not.

Bioethics as Persuasion

Perhaps the question that has been discussed so far is badly posed. Perhaps good academic bioethics is not about valid and sound justification, but about effective persuasion. The good argument is not the valid and sound argument fully justifying a conclusion, but the convincing argument that persuades someone to accept that conclusion. This, for instance, seems to be a (possible) natural corollary to perceiving bioethics as a form of social activism primarily aimed at improving the world.

This is a perfectly possible position to hold, but it makes it somewhat mysterious what role philosophers, and specifically philosophical argument, should play in bioethics. The main technical skill of philosophers is the analysis of argument in terms of logic, validity, and soundness. That skill may be useful in undermining and demolishing the bad arguments of others and therefore useful in negative rhetoric, but it is not obvious that it is particularly useful in the positive aspects of effective rhetorical performance.

Or to put it differently in terms of the classical identification of the role of *pathos*, *ethos*, and *logos* in effective rhetoric, philosophers may have something to contribute in relation to *logos*, they may also be accepted by those they are trying to convince as ethical experts and therefore be able to rely on expert status and authority¹⁶ (an aspect of *ethos*), but they have no particular contribution to make in relation to *pathos*. Being able to engage *pathos* is, however, often necessary in order to turn intellectual agreement into effective persuasion and subsequent action.

Conclusion

The analyses in this paper indicate that most good constructive bioethics relies on moral theory, because the arguments put forward can only be made valid by the inclusion of premises derived from moral theory. The analyses have not shown that there are no ways of doing good constructive bioethics without moral theory, for example, no argument has been presented ruling out good particularist, nihilist, or intuitionist constructivist bioethics, although such an activity would probably look very different from most current work in bioethics. But, it has been shown that explicit or implicit reliance on moral theory is a much more frequent feature of bioethical argument than it might initially appear from the literature. This discrepancy between appearance and reality is primarily due to the fact that the role of theory in the arguments presented is enthymematic. The theory-reliant premises are never made explicit. I will leave it to the reader to decide whether or not this is likely to be deliberate.

One interesting issue is worth noting at this point. Why only be skeptical of moral theory and develop arguments in which the influence of moral theory is (seemingly) absent or at least hidden? Why not be skeptical of all theory, including theories from the natural, biological, or social sciences? It might be claimed that these other theories have a different status, for example, that they are (more?) objective because they are evidence based. Whether that is true at the most basic level is a metaethical and metaphysical question. It is, however, worth remembering that all theories are underdetermined by the evidence and that a given evidence base can support a potentially infinite number of different theories, that is, the Quine–Duhem problem. A physical, biological, or sociological theory may thus be well grounded in evidence, but that does not necessarily mean that it is true, or even the best theory given

current evidence. This seems to indicate that just as we should be careful about our use of moral theory, we should also be careful about the use of nonmoral theories.

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Notes

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