FUNDAMENTAL PRINCIPLES, POST-POSTMODERNISM AND THE OBLIGATION TO BE EDUCATED.

Martin Bibby
University of New South Wales

1. Introduction

Linking moral training in schools to more general aims of education of the development of rationality and autonomy leads naturally to the view that a proper function of schools is the teaching of good moral reasoning. Recent debates in Australia over government policy on refugees and over the proper limitations of response to terrorism illustrate both the need for such teaching and the abject failure of schools and of the teachers of teachers in this country in achieving this.

However, to convince students that the moral reasoning that they have been adopting is fallacious will at the same time be teaching them that the views of their parents and their sub-culture is at fault, and that some issues that have been controversial ought not to be controversial at all. Our entitlement to do any such thing has been strongly challenged, for many years. One form of challenge has been based on cultural relativism, which has been taken to imply that it is morally wrong to argue with the children of any culture or subculture that their views are mistaken, since that is to impose one's own views. This first view is plainly inconsistent, and deserves the response of Bernard Williams that it is 'the most stupid view in ethics'.

A second, stronger objection has been that there is too much in and about moral reasoning that is disputed, and that any proposed way of resolving those disputes is itself subject to dispute. Not only do people have different values and attach different priorities to the same values, the same person will prioritise different values when thinking about different issues. People interpret the same values differently. They differ over whether there are any fundamental principles that all genuinely moral people accept—and whether they must accept them as fundamental. They differ further over moral theories. There is as yet no one moral theory that all rational people must accept, and accordingly people differ. We differ over whether issues at that level can possibly be settled, over whether any moral theory conceivably could do all that is required of it. Beauchamp and Childress (2001, p. 377) note that 'every general theory clashes at some point with our considered moral convictions [though] each also articulates convictions that we should be reluctant to relinquish'. Further those who agree about what moral theory we should hold disagree about what it implies for specific issues. And we differ at the metaethical level, about the status of moral judgements, and about what constitutes a decisive argument at that level.

David Bridges (1986), from whom I have drawn some of the above list of problems, draws the conclusion that teachers ought not to teach their classes how they draw conclusions over controversial moral matters, nor even present a range of arguments for student judgement. Instead, teachers should require students to research and present the arguments themselves, and draw conclusions under their own and their fellows' criticisms. If we accept, as I think we must (but he clearly does not), that empirical, mathematical and logical assertions are all value-laden, his position implies that teachers should use this procedure for all controversial issues. Since controversies lie at the foundation of every discipline, it would be impossible to teach

anything. We should welcome therefore efforts to improve our understanding of moral argument, and of the differences between good and bad argument.

The response of many writers in ethics in the past was to try to discover what the true moral theory is. If we could get that right, most of the above problems could be solved. A good deal of effort has gone into attempts by adherents of various theories to prove others' theories mistaken and to defending their own against criticism. The steady revelation of weaknesses and the apparently arbitrary nature of the defences have led writers to despair of any moral theory providing a decision procedure for moral issues.

I believe that this position is unjustified. Most moral theories reflect features of morality that are important to it. We have not yet been able to give a satisfactory account of how those features should be related and integrated. Yet the debate between theorists has brought with it sensitivity to the inadequacy of much common argument about moral issues. I have in mind beliefs such as 'the end never justifies the means', that any counter-example to a moral principle proves that it is mistaken, that a rule or a law cannot allow of exceptions, that it is wrong to use people, that one's responsibilities are limited to one's role, that moral obligations are limited to not causing harm or that the immediate consequences of our actions are all we should look at. Thus the way has been opened to carefully reasoned discussion of difficult moral issues such as those concerned with death and dying, experimentation with human subjects, relations between professionals and employers and complex obligations of teachers to students, parents, principals, their profession, governments employers and society.

Moral theories, too, have been improving under criticism. Although some theorists give themselves little room to move by reason of their belief that their theories are guaranteed by God, there has been continuing acceptance of the need for change in theories. John Rawls's contractarianism learnt from the weaknesses of that of Hobbes, Locke and Rousseau. It has continued to be refined and improved. Deontological theories have changed a good deal since Kant. Rights have been prioritised, to allow of exceptions, motivation other than the demands of duty has regained its place, animals are seen as having their own moral significance. Utilitarians have long ceased to believe that the whole point of life is to have pleasant sensations and mental thrills. They have accepted that long term consequences must be taken into account as well as the immediate ones if injustice is not to be supported, and they are engaged in debate about how to avoid the alternative absurdities of advocating the progressive killing of the world's least happy (or desire satisfied) people or supporting unlimited increases in population. The newish theory of care ethics learnt from the failure of agapeism, and has been modified under criticism to take account of obligations to people we have no personal acquaintance with. There are many other examples.

What has become apparent in this process of revision is that moral theories are indeed theoretical, being subject to revision according to how well they fit in with everyday judgements of morality. In each case the basis of criticism has been the failure of the theory in question to imply what we know perfectly well is right or wrong.   Further, the features of morality on which each focuses are indeed important, and the theories and the processes of their modification have a good deal collectively to teach us about moral reasoning and the moral life.

2. Principlism and Baker's postmodern attacks
Nevertheless, the resolution of the issues of war and peace, of terror and response, of oppression and refuge, cannot wait for the triumph of a moral theory. If persons of goodwill

are to make up their minds on the basis of good moral argument on such issues, their argument cannot yet start from relatively secure ground which that triumph would provide. True, moral theories often agree on what we should do, and when they do, we are fairly confident about what decision must be made. What we need, though, is an account of moral argument that will serve us when we do not know what we ought to do, and where moral theories are not univocal in their implications.

Such an account has been developed over a number of years by Tom Beauchamp and James Childress in five successive editions of **Principles of Biomedical Ethics**. Variously described as moral fundamentalism or principlism, the view is a modified coherentism which gives a special status to what they call 'the common morality', and within that, to four basic clusters of principles, of benevolence, nonmalevolence, justice and respect for autonomy. The common morality in their view is a set of norms that all morally serious persons share. 'They know not to lie, not to steal property, to keep promises, to respect the rights of others, not to kill or cause harm to innocent persons and the like.' There is no debate about such matters 'because such a debate would be a waste of time'. (2001) P. 3. (As I note below, this does not commit them to saying that there are no exceptions to these norms.)

The common morality establishes obligatory moral standards for everyone. 'To fail to abide by these standards is to engage in improper conduct'. (2001) p.4. While there are many immoral or selectively moral persons who do not care about it, 'all persons in all cultures *who are serious about moral conduct* do accept the demands of the common morality.' (Their emphasis.)

It is an *institutional* fact, they declare, that morality contains fundamental precepts. These are fundamental not in the sense that one can simply deduce from any of them singly what should be done in any situation, nor that they are a set with a fixed priority that jointly entail obligations and permissions. They are the joint starting points for a complex process of argument.

Each of these principles has exceptions. To be (properly) applied, to a specific situation, declare Beauchamp and Childress, they need to be *specified* and *to be balanced against each other*. Specification involves applying a general principle to a specific situation or group of such situations. The principle that one ought not to allow an innocent person to die, for example, is specified in the context of a modern technologically equipped hospital to produce this: one ought not to allow innocent persons to die when there is still some prospect that life will be better than death. In effect, the scope of a moral principle is refined in order to prevent it implying an unacceptable conclusion; in this case that pointless agony should be prolonged.

If specification is to be a plausible form of moral argument, it must not be arbitrary. In the hands of Henry S. Richardson, for instance (2000) the process appears to be circular, in that he knows what actions he want to be able to declare justifiable, and shapes his specifications to fit. Such arbitrary specification does not provide us with a means of discovering what we ought to do.

Beauchamp and Childress deny themselves the possibility of determining these restrictions on their four basic principles by appeal to proofs of their truth, by declaring their four principles fundamental. Since they reject also a fixed hierarchy of principles according to which the superior principle must always override the inferior, that leaves them to deal with the

apparently arbitrary choice between competing specifications by appeal to 'the coherence of the overall set of beliefs that are accepted on reflection' (2001) p. 404. Here they adopt well-recognised procedures of working towards consistency between general moral beliefs at various levels and specific judgements, seeking a reflective equilibrium.

Balancing is their way of dealing with case where principles conflict, and one must be judged more important than the other *in that situation*. A set of restrictions on actions, reminiscent of just war theory, applies. Thus there have to be good reasons for preferring the overriding norm, there must be a realistic prospect of achievement of the objectives that justify infringement of the infringed norm, no morally preferable action can be substituted, the infringement is the minimum necessary to achieve the end, the agent must minimise the negative effects of the infringement. In addition, the agent must be impartial between persons.

In their application to culturally specific situations there are different specifications of these precepts. Nevertheless the fundamental precepts 'make it possible for persons to make cross-cultural and cross-temporal judgements, and to assert firmly that not all practices in all cultural groups are morally acceptable.'

The view is not meant to be conservative, and in the hands of Beauchamp and Childress, it produces a good many recommendations for change in biomedical practice. According to them, 'we do not need a theory in order to introduce moral reform. Innovation in ethics almost always occurs by extending and interpreting norms that are within rather than beyond the common morality.'

Motivating them have been pressures in bioethics for solutions to problems raised by new technologies, and older problems about informed consent and other restrictions on experimentation on human and animal subjects. A central consideration has been the desire to justify the adoption of codes of ethical practice that may be applied transnationally, cross-culturally and cross-temporally (that is, retrospectively) to support intervention against immoral practices and claims from research victims for compensation. The issues here, needless to say, apply also to the application of human rights to countries which reject them, and so to justifications for the application of sanctions or armed intervention. Beauchamp in particular has been a supporter of fundamental human rights, as that notion is used in United Nations documents.

The account Beauchamp and Childress give has had its critics. Apart from attacks by adherents to specific moral theorists, debate has been joined by impartial rule theorists, casuists and different varieties of coherence theorists (or reflective equilibrium supporters). Most of the debate has been conducted in bioethics journals and in books about bioethical issues. Accordingly, tests applied to theories of moral reasoning have been whether they justify the condemnation of the Nazi doctors by the Nuremberg Tribunal, and recently, whether they justify demands for compensation from experimenters who took part in radiological experiments in the United States and from the Government agencies who organised those experiments.

The Advisory Committee on Human Radiation Experiments, whose members included Beauchamp and Ruth Chadwick (another principlist), reported to President Clinton that the government agencies that authorised the experiments owed the victims compensation. The experimenters claimed that they did not at the time consider the issue of informed consent;

that the expectation that consent be obtained was not part of the expectations of their profession at the time, and that they should not be condemned by standards that were subsequently accepted. The Tribunal raised the possibility that they were afflicted with "cultural blindness", and declined to condemn them unheard. Robert Baker notes the contrast between this decision and those of the Nuremberg Tribunal, which condemned the Nazi doctors to death, and declares this to demonstrate the failure of principlism. And indeed, if it were true that principlism could not condemn the actions of the Nazis, it would have failed to achieve that which gives it its raison d'être.

Baker then denies that the fundamental principles of beneficence, nonmalevolence, justice and respect for autonomy are universally held at all. (1998a) Both Beauchamp and Macklin respond that, unlike the Nuremberg Tribunal, they are not claiming that the principles *are* universally held, but that they should be. (1998) Why then, Baker asks, should people be found guilty of transgressing principles that neither they nor their culture accept — or in the case of the Nazi doctors, that their sub-culture forthrightly rejects? 1998a p. 9.

Baker tells us that not only were the Nazis ignorant of Beachamp's basic and fundamental principles, but that those principles were *incomprehensible* in their culture. They were, using the advisory committee's own expression, culturally blind. This presupposes a version of the cultural relativist position, which he indeed enthusiastically supports. Baker appeals to Foucault, writing variously of gazes, interpretative attitudes, discourses and narratives. He treats these as being immune from external criticism; a position which I think requires that there no substantial common ground between them. Different gazes, different culturally determined moral systems and different subcultures' beliefs compete for hegemony, not rationally for that (I think) is supposed to be impossible, but by the use of power. For an interpretive structure so shapes one's perceptions and beliefs that one cannot contemplate alternatives seriously. The differences in moral principles and values are declared to be fundamental.

Even if fundamental principles were agreed upon, he contends, 'they would necessarily be read through different conceptual-interpretive-perceptual gazes or narrative frameworks'. The German Health Ministry banned experimentation without consent on humans in 1931. The Prussian parliament "passed a law" banning vivisection of animals — an action Goering was later to boast about. Yet they did not interpret "Untermenschen" as fitting under either category. At their trials, the Nazi doctors rejected indignantly every claim that they had done anything wrong. According to Baker, there were no cross-cultural frameworks between the Allies and the Nazis which could guarantee universal agreement in moral judgement.

Accordingly, principlism fails. Attempting to deal with the problem by postulating some more basic common, universal principles is question begging. International ethics 'must rest on a theoretical framework that can bridge perspectives even as it justifies genuine transcultural and transtemporal moral judgements'.

Can Baker avoid the trap noted by Williams? He might, I think, hold that there are values within his own culture's morality which have implications for the proper treatment of people with different morals. It will be appropriate for anyone who reads him to consider whether in their culture's morality, the proper response to finding a culture with moral differences is to respect its members or to kill them. In my own sub-culture, as a University of New South Wales philosopher of education it might be right to limit my attempts to change people's views to peaceful argument, engaging them on their own ground. I cannot assume that that is

a position that they will accept.

Baker has an even more serious problem to answer. How is it that Foucault, and he are enabled to transcend the limitations of their own interpretative structures to make the point? Miracles, to misquote Foucault, appear to be easy for philosopher-sociologists. Baker tells us that he gradually came to lose the prejudices of his upbringing in the Bronx as a result of the persistent criticism of his colleagues and acquaintances. In his new, more enlightened state he can look back on his old life and see just how culturally blind he was. He could not at first accept that he was prejudiced. Now, however, he sees. He can still understand the Bronx. (1998c) p.436 There must be a certain commonality, a certain interpenetration of ideas for that to be possible. The gazes of the Bronx and of Union College are not distinct but overlapping structures.

I do not think that he wants to claim that they are entirely separate. Rather, I suspect, it is because they are partially so that we can see the possibility of fully separate interpretative structures. However to recognise that as a possibility is not to demonstrate that there are any such entirely separate structures. His case depends heavily on the Nazi example.

I don't think that it will work. It is distinctly implausible that the Tribunal's views were incomprehensible to the Nazi doctors, or that the views of the Committee on radiation experiments would have been, either. They recognised clearly enough what they were being charged with. The Germany of the 1940's was only 15 years from the Germany that believed in humane treatment of both humans and animals. It was the Germany that itself had introduced a requirement of consent to experimentation on human subjects. (Baker, 1998,2 p.248) If there was Nazi blindness, it lay in the belief that there the subjects of experiment were "Untermenschen", of less significance than both humans and animals, that these lesser creatures were a danger to the "Herrenvolk". (One might compare the belief reported of a Taliban soldier that there were no innocent people in the Trade Centre in New York on August 10, 2001.)

One does not have to *postulate* common moral principles between any two cultures. Cultural relativism is clearly false. Were it true, people within a culture could not even recognise challenges from those of different cultures on grounds other than a demand that they be consistent with what their culture holds to be good and right. For on the relativist view, an

assertion made in Australia, for example, that so-called female circumcision is morally acceptable could only mean that Australian values accept it. Since that is manifestly false, the assertion would be self-contradictory. Australians however have no difficulty in recognising this as a meaningful moral assertion, and looking with interest (if some skepticism) on how it might be supported. Nor are dissident moral views from within a culture treated as logically absurd. When Locke published his **Second Treatise of Government** no culture whose members might read it rejected slavery. Yet his views were understood well enough and debate was joined on their truth once the book was finally published. Were cultural relativism true, this debate would have been impossible.

Further, the judgement that the subsequent rejection of slavery was a good thing, a moral improvement, makes no sense on the relativist view. The cultural relativist is unable to distinguish between moral change and moral progress.

If, as the relativist asserts, we can only determine whether a moral claim is true or false by seeing if it is held so in the culture of the proponent, then we must be able to determine the culture to which she/he belongs. How do we identify the culture within which a moral view must be interpreted? In a multicultural society, with ethnic, language, class and religious differences and value differences accordingly complexly related, there is no clearly distinct culture to have a distinct morality. In any society there are some differences between people. Between any two people there may well be differences. If we allow any moral difference at all to distinguish two cultures, cultural relativism collapses into individual relativism. But how else are we to distinguish gazes?

Beauchamp has responded to Baker (1998) , asserting again that all cultures share a common morality, a communal consensus, on human rights, standards of obligation and virtue. By appeal to this shard moral substance persons are enabled to make justifiable transtemporal and transcultural judgements. Persons who do not share these standards are declared immoral.

There is in this reply a blending of factual claim and moral judgement that makes the position problematical, as Baker is quick to point out. Beauchamp appeals to what he declares is an institutional fact about a common morality, that it contains fundamental and shared precepts. Enslavement, genocide and sexual discrimination have been present in many societies; but according to Beauchamp, these are to be rejected as immoral. Their existence is not supposed to challenge the assertion that the common morality exists.

Now either he is claiming that then common morality does not condemn genocide, or he is declaring that believers in genocide do not have a morality. To claim that the common morality can accept genocide would leave his position empty. Yet how can he declare a position not a moral position at all, or declare it an immoral position, without arguing in a circle? I wish, however, to defend something like his view.

First, I note that very general principles of morality come to be accepted as a result of moral reflection and debate. Such reflection and debate is stimulated by conflicts of lower-order principles and practices, and also by cross-cultural contact. The flowering of ancient Greek philosophy for example was partly the result of trade and other contact between Greece and Persia.

In a very stable and simple society there might be no need of such general principles. The morality that was learned in childhood would be very specified, not requiring thought about

balancing, ordering of priorities or fresh specification to deal with new problems. Such a morality would not be very useful in other societies. In most actual societies, and all Western ones however, the pace of social change and the complexity of the moral issues that arise force a good deal of moral thought in support of fresh decision-making. This in turn encourages the development of a structure of principles, with specific ones seen as applications of more generalised and abstract one; with new cases being dealt with by analogy with older ones. There has been in such societies a drive towards moral theories also.

Between a complex and a simple society there need be no moral principles that are precisely the same. But that does not mean that their moralities have nothing in common. Indeed, there would have to be a great deal of overlap if each society were to recognise that the other had a morality at all. A society may not have principles of benevolence and nonmalevolence already articulated in non-specified form. But unless its members' behaviour was recognizably influenced by a concern for the good of others, however this was conceptualised and spelt out, we could not recognise any set of their claims as being moral assertions. The point was made by Donald Davidson almost thirty years ago. Those who would interpret the language of a culture must adopt the principle of charity, or be totally unable to choose rationally between alternative translations. We have to prefer translations and accounts of people's beliefs, desires and values that maximise the numbers of beliefs that turn out to be true, that minimise self-contradictions in particular, and that maximise the proportion of desires that are for recognisable goods. A society that could not recognise Beauchamp and Childress's principles as capturing a good deal of the thrust of its morality would not have anything that we could recognise as a morality at all.
Hence a destructive dilemma is constructible for Baker — what we might call the catch 22 of postmodernism. If one can understand the morality of another culture, it is not distinct from one's own. If one cannot understand it, it can't be recognised as a morality at all.

Two societies may hold no actual fundamental principle in common in the sense that there is no moral sentence that each has both already accepted and treats as fundamental, and yet have a good deal of their morality in common. Now fundamental principles in my view do not provide the starting point of a morality in the sense that one might teach them to a child ahead of other moral precepts. Neither do moral theories. A child in Western societies is more likely to be asked 'How would you feel if that were done to you?' before he or she is told, or can be told 'You should always act so as to cause the minimum amount of harm'. Likewise, 'Look after your brother', 'be gentle with your sister' come ahead of a general injunction to be kind to others.

We search for fundamental principles when we reflect on our morality or when we are introduced to the reflection of others. We may very well respond to them as we do to a piece of new wisdom, with pleasure in their power to unify and make sense of our thought. This provides no guarantee that the principles are in the best possible form. Baker is right to note that the universal acceptance of slavery was no guarantee of the rightness of the institution. (1998c) Even universal acceptance of principles as basic in Beauchamp's sense, as starting points for specification, would not guarantee that they were beyond revision.

So it may well be a mistake to say that every society (other than an immoral one) must have certain fundamental principles in common. But it is not thereby shown to be a mistake to say that every society that has a morality at all must have a general drift of principles that make the acceptance of a version of certain fundamental principles likely if it is put forward. We will have enough in common with every other such society for fruitful discussion using the

fundamental principles to take place.

What Beauchamp needs is not that every society in fact accepts his four principles as certain. He needs instead an argument that his principles can be generated and would be seen as fundamental in any society that considered them carefully. This might be done a priori or by systematically considering every society on earth. If either can be done, he can defend the bioethics he puts forward as a set of transnational, transcultural and transtemporal principles. And then his style of moral argument, if that can be defended and improved in reaction to criticism, might be taught to students and used to protect them and the world against the zealous implementation of morally mistaken views.

There is, naturally, the question of whether the principles he adopts are those that must emerge. An a priori argument can be mounted. Here, I can do no more than to sketch it. Even Baker however does accept that there are some views that a culture could not possibly adopt without losing the claim to be moral at all. (1998a p. 211) It is inconceivable that there should be any morality in which there were no concerns about doing good and avoiding evil. It is impossible that pain should be seen as a good in itself, whatever beneficial effects it might be thought to have. Some version of at least two of Beaumont and Childress's two principles must be acceptable. The a priori case is so strong, there is scarcely need for empirical study.

Principles of justice and autonomy are another matter. It might be necessary to work harder to persuade a consequentialist society that justice is a requirement of morality. (It is extraordinarily hard to persuade some economists.) Societies with religious authoritarian structures lay no great stress on autonomy. Nevertheless there is an empirical case. After all, concerns about social justice go back to the nineteenth century BC, to the Code of Hammu-Rabbi. They appear in ancient Israel, Greece and Rome, and accordingly in societies influenced by Islam as well. Something of the kind is required to make sense of the morality already accepted in all the societies influenced by these.

As regards autonomy, in any society in which a distinction is made between the moral status of humans and animals, an account can be sought of the basis of the distinction. I have not found it difficult to discuss that notion with Muslims, Hindus or people with Confucian backgrounds, all of whom regularly accept that the notion is present in their own traditions. Although Buddhists treat animals as having equal moral status with humans, it is part of their religion that reason should be exercised to the full in the search for enlightenment.

It is not surprising that notions of the significance of humans are widely shared. Europeans did not simply invent their morality arbitrarily in response to their won unique circumstances. They reasoned their way to a good deal of it. It is true that some of that reasoning was in response to Euro-specific circumstances — civil wars, prolonged religious strife, the rise of the bourgeois and so on. That might indeed make us cautious in thinking that we have found the ideal version of the fundamental principles. But that does not make the reasoning unsound, nor does the demand for humility imply that we should abandon our conclusions. It is true, as I noted above, that there is debate about how the application of principles is to be characterised —recently between Beauchamp, Strong, Richardson and Jensen. Yet as Beauchamp asserts, it is hard to see any difference in the actual reasoning engaged in by the parties in this debate.

Further, the world is a finite place, with a good deal of the inhabitable part a contiguous land

mass or within reach of that by a short boat trip. The influence of Islam on Christianity and vice-versa has been profound, especially during the time of the Omayyad empire. Both derive many of their ideas from Plato and Aristotle, so much so in the case of Islam that modern writers can refer to Aristotle as 'The Philosopher' without further explanation. These religions and the countries they have dominated do not have discrete, incommensurable systems of value. Beauchamp and Childress's four principles are visible there, as they are in Buddhist, Vedic and Confucian influenced culture. There is a strong empirical case against Baker's version of postmodernism. But that does not yet put me in a position to justify the condemnation of the Nazi doctors, nor the view that teachers have an obligation and hence a right to teach moral reasoning.

3. Post-postmodernism

Baker argues that on the principlist account of things together with what he believes is fact, namely that the Nazi doctors could not have seen that "Untermenschen" had rights, that the Nazi doctors should count as blinded by their culture. If moral blindness is a possible defence for the radiation experimenters, living after the Nuremberg trials in a country with codes of ethics supporting informed consent, how can it not be for young doctors in a police state, with no opportunity of hearing argument that their views might be mistaken? He proposes an alternative basis for international bioethicsa theory of negotiated morality he calls 'post-postmodernism'. He thinks it is immune from postmodernist critique.

It is not entirely clear how Baker's position is to be interpreted. At times, it reads as though he wants to base rights in an actual consensus, to be obtained by allowing all (including the Taliban) to declare what are non-negotiable goods and achieving a compromise accordingly, and on the other, to base rights on an ideal consensus, on the basis of which the acts of the Taliban can be condemned.

He takes the *assent* (in some sense) of those who would be bound by a moral law to be the sole source of its legitimacy. A norm that agents 'in principle could not, hypothetically would not or actually will not rationally assent to be bound by' has no legitimacy. 'The authority of such norms is bounded by the actual or hypothetical authority of those who promulgate them' (1998,2 p. 234).

He compares the situation he and the postmodernists think we are in with the world that Hobbes and Locke faced, where civil wars, massacres and international struggle had resulted from "irresoluble" religious and political differences. In such a situation, persisting with conflict carries costs that outweigh any benefits of winning. It is better to negotiate conflict-resolving norms. In an institution where the interests and gazes of the various players conflict but no one can afford to alienate any of the other parties to the extent that they withdraw, 'each party has an interest in fashioning cooperation-facilitating norms acceptable to all the other parties and in assuming that these norms are interpreted in essentially similar

ways by each conceptual-interpretive-perspectival "gaze" '. Thus differences in conceptual frameworks and values need not be determined by the exercise of power. 'In so far as hegemony cannot ensure cooperation, power is impotent.' (p. 237) Assent, I take it, is rational. This is the Faculty meeting writ large.

Further, a life of negotiated constraints is likely to be freer than one devoted to perpetual conflict, even if one could win and benefit from winning in particular cases. 'Conflict-quiescing norms promote human flourishing'. (p. 236)

Any agent is going to hold some goods to be primary; that is, to be non-negotiable. The agent will decline to continue negotiation if the cost is the abandonment of those goods. A rights violation may be said to have occurred if what a rational agent holds to be primary is violated. The *concept* of rights violation is not itself culture relative; according to Baker, but the actual rights are. Within any culture, violations of primary goods, that is, of what that culture considers non-negotiable, are impermissible. And it is the values of the victims that are decisive. 'What the Nazi doctors did is morally impermissible irrespective of *their* norms and values, because no gypsies, homosexuals of Jews would voluntarily accept either the role of *Untermenschen* or the role of Nazi experimental research subject.' (p. 242, his emphasis.) In the context, it is clear that Baker is not claiming that no one could ever so consent, only that people from those groups could not.

How is this related to his notion of assent being required for someone to be bound by a rule? Those declared to be "Untermenschen" will not consent to a rule that permits them to be used for experiments. That implies that they are not obliged to submit. But would the Nazis assent to a rule which prevented them from removing the threats they believed the "Untermenschen" posed? If their belief is lurid enough, no. And the more severe they believed the threat to be, the less likely they would be to accept death as an appropriate penalty for trying to rescue the "Herrenvolk" from that threat.

Baker asserts that what I (or my culture) hold to be primary, I must protect in other cultures, irrespective of whether the members of those cultures treat the good as primary. (Even if they think it is an evil and beg me to help them remove it?) At the same time, however, I ought not to impose restrictions on another culture in accordance with my primary goods unless its members also accept these goods a primary. There is a moral distinction, then, between causing harm and permitting others to harm themselves.

But worse. Baker argues (1998c p. 442) that clitorectomy and genital infibulation are not contrary to rights in the countries in which they are practised. Feminists are entitled, he says, to try to change the views of those who practise them, so that they come to regard the integrity female sexual organs as non-negotiable. Unless this happens, there is no right to international imposition of a ban. He maintains this view in virtue of the fact that it is older women who force girls to be "circumcised", and in face of the fact that the young girls whose bodies are violated in these fashions clearly do not consent to the operation. In other words, where the members of a culture generally assent to a practice, there is no right of a minority to protection from outside that culture. There is to be a moral distinction between causing harm and permitting others to harm members of their own culture or subculture. There is not much protection for German homosexuals here. Homosexuals did not form a culture, nor yet a subculture, in Nazi Germany. Nor did children born with handicaps.

According to Baker, people are bound by those principles they do assent to, or would assent

to, but cannot be bound by principles they could not or would not assent to. One might endeavour to make his position consistent using the hypothetical versions. He, indeed, notes that the people who force girls to be infibulated are themselves women who were infibulated themselves in their youth. So perhaps he could interpret 'could not accept infibulation' to mean 'will not accept it under any circumstances'. Since women do accept infibulation in the relevant cultures once they have grown used to their own mutilation, he might hold that the integrity of sexual organs is not a primary good for them.

But that will not do. For if one's life is threatened, what will one not give up? The lives of others, perhaps. One's religious principles. Very little else. Even life-threatening experimens would be accepted if the alternative was loss of life. This reduces human rights to a reduced right to life and the practise of religion, and very little else. There is no right to informed consent.

Perhaps 'could not accept' is to be interpreted as 'would not accept if the only suasion involved is that of subjection to argument'. That includes too much, and yet still gives too little protection. For it makes rights dependent on what people can in fact be persuaded to. It is too inclusive, for any stubborn person, refusing to accept the conclusions of sound arguments, would have rights to carry out such evil as others in fact assented to. On the other hand, people can be persuaded to accept actions that gravely invade their rights in the hope of some benefit. A boy might assent to castration in the hope of becoming a castrato singer. These days there is no cultural support for such a practice. But successful castrati were highly regarded for a long time in Europe, and the last of them died after the invention of the phonograph. Many more boys were castrated than could realistically hope to make a living from singing. They had no understanding of what opportunities they were giving up in the hopes of fame and fortune, nor of the limited chances they had for success. Are there to be no cultures whose practices justify intervention, unless they themselves have been brought to condemn them?

Indeed, people have been persuaded to accept their status in an unequal society. Nineteenth century rural labourers used to speak of the aristocracy as 'their betters'. Medieval serfs did not think that their role in life was to challenge their lords. God can be bought into the picture to support the status quo, as He was in Czarist Russia.

A further problem comes of the matter of quantity. He recognises that one may have had enough of the good of life, and be content to give it up in order to avoid intolerable, incurable pain. One may however instead desperately hang on to life in the vain hope that am cure may be discovered in time, and want to keep using a machine that can be used to "save" — that is, *substantially* prolong — the life of another. Similarly one may hoard food against a possible disaster and at the cost of poor people who have not enough for a reasonable life. In such matters, what hope would there be of a negotiated outcome? Is there any sense in which we could argue that people would, or could give up some of a primary good so that others could have a fair share of it, other than by arguing that they would if they were persuaded by motives of love or justice?

The only way I can see for these problems to be dealt with is if we take 'could not consent' as meaning 'would not assent to if they understood all the circumstances, were fully rational when considering the issues, and agreed that their desire that others respect their primary goods requires them to respect the primary goods of others'. Thus only with the inclusion of a universal moral principle and something like a Rawlsian contractarian original position can

Baker's position be sustained. But on this account, post-postmodernism would become a version of the principlism that Baker attacks.

When it comes to international bioethical principles, these are to be negotiated, according to Baker. So far as I can tell, he means that *ethical principles* are to be negotiated, by actual people, not merely that statements of principles or international covenants are to be negotiated, or that hypothesising about what people would or could negotiate will tell us what the true ethical principles are. This makes sense on his version of postmodernism. Moral principles are whatever a culture or subculture takes them to be. There are two kinds: those that may be the subject of negotiation in the interest of securing an end to conflict, and those that are held to be non-negotiable. International negotiation will determine which those are, so the outcome of international negotiation will be a list of moral principles which justify intervention in other countries' business. In effect, there is a universal moral principle that says 'We ought not to act in any way that reduces what a person takes to be primary goods.'

Now who is to do the negotiation? In the absence of a clear principle for the individuation of subcultures, there is no answer. To avoid the problems we have seen, any group which has common interests will have to be taken to be a sub-culture.

Modified principlism and moral mistakes

When a culture encounters a situation calling for a fresh moral choice, an honest, blameless mistake can be made. Two societies, both encountering the novel problem may come to different conclusions about what ought to be done. That does not prevent them from communicating, nor from one realising that the other has responded better, anymore than two individuals are so prevented. For these differences do not arise from our adoption of different incommensurable gazes. So can the Nazi doctors in particular be excused, or partially excused, as having made an honest moral mistake? Not on my view. The morality that they absorbed, apart from the nonsense about "Untermenschen" being exceptions, contained all the principles and values necessary to generate general principles about persons. The society had a habit of such discussion, a tradition of moral argument, including, as noted above, a statement requiring informed consent to medical experiment and another, a "law", prohibiting cruel experiments on animals. Baker asks how Nazi doctors are supposed to have transcended their own conceptual frameworks. So far as moral beliefs are concerned, no such transcendence was necessary. It was all there.

The cultural blindness defense of the Nazis thus requires us to say that they had no obligation to think thoroughly about their moral position and to subject their views to others including opponents before acting on them, or that their factual beliefs were the problem. Could they have been expected to suspect that their views about the differences between "Untermenschen" and "Uebermenschen" were false? People are as responsible for their false factual beliefs as they are for mistaken moral ones. Then as now arguments supporting racism were very poor, based on absurdly bad science. And we are talking about scientifically trained doctors.

Could we not reintroduce the notion of interpretative frameworks here, and suppose that the Nazis were so blinkered that they *could* not recognise they were wrong? But no, the notion that two interpretative frameworks for discerning and querying facts could be mutually incomprehensible is subject to the same difficulty as the moral equivalent is. The principle of charity applies equally. Further, there must be some route by which people get trapped into a gaze in the first place. That route starts from the same childhood knowledge that those who

do not get trapped in the same fraework start from. There is no *impossibility* here.

Might we not then say that although the Nazis might have come to acceptable views, they were unlikely to in all the circumstances? They would then have reduced blame for their horrific deeds. This supposes however that we have no obligation. or only limited obligations to peruse our beliefs carefully and to subject them to others for criticism. Not only is there such an obligation, the obligation has been a constant theme of philosophy from Plato on. From the time of Descartes, it was a central feature of European thought, driving the Enlightenment, nineteenth century liberalism and socialism.

The more serious the harm one contemplates doing, the more pressing is the moral obligation to reconsider one's views. Before the Nazi doctors subjected people to extreme cold or low air pressure, they could have been expected to pull themselves up and to examine their arguments very closely indeed. In the same way, we should expect a consequentialist, before adopting a dirty hands solution even to so difficult a problem as how to end the Second World War, to examine their reasoning very closely indeed. And we should expect a natural law theorist, before they condemned patients dying in agony to pointless resuscitation or denied active euthanasia to a patient with a settled and justified desire for it to question very closely the reasons that they had for adopting their moral theory. Indeed, we expect people to modify their moral theories if the theories have such unacceptable consequences.

Now a bomb was dropped upon Nagasaki. In some parts of the world, doctors have been forbidden to stop efforts to keep a patient alive. We expect people to think very carefully about arguments that characterise any group of people as inferior to others, yet the pre-Vatican II Catholic Church, arguing that error has no rights, denied the right of free speech to people it disagreed with. Are the faults of the Nazis, or for that matter the terrorist hijackers, no worse than that? Are they guilty only of a failure in moral argument?

No. The obligations to take care over one's beliefs are less or greater according to the gravity of the situation and the consequences of what is done. Since the Nazis and the hijackers are responsible for their beliefs, they are just as guilty as if they did not have those beliefs. There is no lessening of the terrorists' responsibility by the fact that the USA has itself acted badly in various parts of the world: no lessening at all. Even if the USA had been at war with some country, and that country set up the attacks, they would still count as a war crime, a crime against humanity. A defense of diminished responsibility can be taken by a sane person to a charge of murder on the grounds of provocation, but only if the provocation is immediately before the action. Manslaughter is distinguished from murder on such grounds. There is no defense of that kind if one spends years planning horrific actions.

Is the obligation to examine one's views carefully part of the common morality? In my view, the obligation follows from the four fundamental principles. One cannot avoid or minimise harm without careful thought on what harm is likely to occur as a result of one's actions. Further, the obligation is part of the ordinary upbringing of children. Children who defend themselves for hurting their siblings with the excuse 'I didn't think' are blamed for not thinking. Only where they couldn't know that harm would follow is there an excuse. The

Nazi defense would have to show that they were not taught to think like this, and could not have been expected to work it out for themselves.

Is the obligation to examine one's views carefully part of the common morality, in the sense in which I rather than Beauchamp and Childress use it? Could we recognise something as a morality at all, if it did not have a general drift of principles in this direction? We would be talking about a morality of unexamined rules and mindless applications, where reasons could not be given other than 'that is what the rules say'. We would need a simple society indeed where there is no unexpected occurrence, no unfortunate consequence of inattention or lack of forethought. Perhaps there could be such a society. I do not know of one.

Postscript on Education

So finally I reach the question of educational consequences. United Nations statements on the rights of Man, of persons and of children declare the existence of a right to education –a right that is to be mandatory. That right is not basic in the sense that it is *directly* implied by principlist principles, at least as they are so far envisaged. It has not been argued in that fashion, but usually on a deontological appeal to the significance of persons or in an appeal to interests, with various ways of determining a selection of morally relevant interests. That is, the arguments have started from moral theories and where different theories imply different views of the right to education, those differences are often ignored. Doing without them leaves a quandary. But some things can be said. At the end of the Second World War, there was a move to try and ensure that events like the holocaust could never happen again by harnessing schools. Students should be taught a morality, it was argued. That would prevent them from adopting Nazi views. That move was rejected on the grounds that it would involve indoctrination.

In these days, when the zealous application of mistaken moral views are again causing great harm, the aims of the post-war years need to be revisited. A good deal of emphasis needs to be placed not just on teaching students to reason well, but in teaching them that they ought to take a good deal of care in reasoning well. Some of this, of course, is done. Most schools on Australia make an effort to counter existing prejudices, and have had some slow success. But it is apparent from the ease with which fresh prejudice has been created (and the ease with which it was created during Nazi rule) that students should be taught to be on their guard against new prejudice.

Students are taught to think critically — or at least, that is what we call it. In effect, however, this largely means learning to criticise other people's views in order to defend one's own. The much tougher matter of turning rigorous criticism on one's own arguments especially when they are supported by strong emotions should be taught as a high moral duty. We should be encouraging students to be thinking about the general drift of morality; to engage in the sort of thought that leads people to formulate for themselves very general principles; to specify and to balance consciously. They should discuss the restrictions on justified balancing. Contrary to the implications of Bridges' arguments, there is much here that is hard-won insight.

We should also teach students that that they have an obligation to submit their ideas to others for criticism, and the obligation to be thorough in examining their ideas (while being kindly in their criticism of others). The exercise of debating ideas, of 'solving the problems of the world' should not be seen merely as a pleasant but time-wasting activity, but as an essential part of a moral society.

Students should also learn about the ways in which moral theories have been modified, to lessen the dogmatic adherence that is cultivated to some of them. However the standard textbook approach of taking readers through each theory in turn and pointing out its weaknesses serves mainly to discredit moral theorising entirely. We need to teach students about theory improvement instead.

The problem of indoctrination could then be re-visited. We need not only to avoid indoctrinating, and to teach teachers to beware of it, we need to teach students about the need to avoid being indoctrinated. Students should be taught of the need to counter the risk of moral blindness, of becoming prejudiced.

There may also be some implications of what I have had to say about attitudes to moral theory on the one hand and teacher relativism and moral skepticism on the other. Students should learn to question their own half-digested pieces of moral theory, their own "common-sense" ideas. Teachers should learn about the possibilities of moral argument, about how moral theories and fundamental principles fit into it. They should learn about the debates about how good reasoning is carried on. They should learn to recognise the difference between arbitrary specifications and reasoned ones. They should, in short, be taught how to teach moral reasoning at every level, and why it matters that students should learn, not only how, but also why they should continue to engage with it.

Bibliography

Alexandra, Andrew and Miller, Seamus (1996). Ethical Theory and Practice Wagga Wagga: Keon.

Baker, Robert (1998a). 'A Theory of International Bioethics: Multiculturalism, Postmodernism an d the Bankruptcy of Fundamentalism' Kennedy Institute of Ethics Journal 8(3) 201-231.

Baker, Robert (1998b). 'A Theory of International Bioethics: The Negotiable and the Non-Negotiable' Kennedy Institute of Ethics Journal 8(3) 233-273.

Baker, Robert B. (1998c). 'Negotiating International Bioethics: A Response to Tom Beauchamp and Ruth Macklin, Kennedy Institute of Ethics Journal 8(4)   pp. 423-453.

Beauchamp, Tom L. (1998). The Mettle of Moral Fundamentalism: A Reply to Robert Baker' Kennedy Institute of Ethics Journal 8(4) pp. 389-401.

Beauchamp, Tom (2000). 'Reply to Strong on Principism and Casuistry' Journal of Medicine and Philosophy 25(3) pp. 342-347.

Beauchamp, Tom L. and Childress, James F. (2001 and 1979, 1983 1989, 1994). Principles of Biomedical Ethics Oxford: Oxford University Press.

Bell, Daniel A. (1999). 'Which Rights are Universal?' Political Theory 27(6)   pp. 849-856.

Bibby Martin (ed) (1997a). Ethics and Education Research: Review of Australian Research in Education 4, Coldstream, (Vic) Australian Association for Research in Education.
Bibby, Martin (1997b). 'Introduction' and 'The Medical Model and Informed Consent in Bibby (1997a).

Bibby, Martin (1998). 'Professional Ethics and Teacher Practice' in Graham Dawson (ed). The Professional Ethics of Teaching Sydney: New South Wales Department of Education and Training pp. 31-46.

Bridges, David (1986). 'Dealing with Controversy in the Curriculum: A Philosophical Perspective' in J. Wellington (ed). Controversial Issues in the Curriculum Oxford: Blackwell pp. 21-38.

Charney, Evan (1999). 'Cultural Interpretation and Universal Human Rights: A response to Daniel A. Bell' Political Theory 27(6) pp. 840-848.

Davidson, Donald (1974). 'Belief and the Basis of Meaning' Synthese 27   pp. 309-323.

Gert, Bernard, Culver, Charles M., and Clouser, K. Danner, (2000). Common Morality versus Specified Principlism' Journal of Medicine and Philosophy 25(3) pp. 308-322.

Jonsen, Albert R. (2000). 'Strong on Specification' Journal of Medicine and Philosophy 25(3) pp. 348-360.

Lawson, Eleanor (1997). 'Deception in Research: After Thirty Years of Controversy' in Bibby (1997) pp. 15-48.

Macklin, Ruth (1999). 'A Defense of Fundamental Principles and Human Rights: A Reply to Robert Baker' Kennedy Institute of Ethics Journal 8(4) pp. 403-422.

Rawls, John (1998). 'Justice as Fairness' Philosophical Review 67(2).

Rawls, John (1972). A Theory of Justice Cambridge (Mass) Belknap Press of Harvard University Press.

Rawls, John (1993). Political Liberalism New York, Columbia University Press.

Rawls, John (1999). A theory of justice, Revised Edition Oxford: Oxford University Press.

Richardson, Henry S. (2000). 'Specifying, Balancing and Interpreting Bioethical Principles' Journal of Medicine and Philosophy 25(3) pp. 285-307.

Strong, Carson (2000). 'Specified Principism: What is it, and Does it Really Resolve Cases Better than Casuistry?' (sic). Journal of Medicine and Philosophy 25(3)   pp. 323-341.

Young, Robert (1997). 'The Ethical-Practical Situation of Australian Educational Research: A Critical-Pragmatist Account' in Bibby (1997).