



SYMBIOTIC EMPIRICAL ETHICS: A PRACTICAL METHODOLOGY

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ABSTRACT

Like any discipline, bioethics is a developing field of academic inquiry; and recent trends in scholarship have been towards more engagement with empirical research. This 'empirical turn' has provoked extensive debate over how such 'descriptive' research carried out in the social sciences contributes to the distinctively normative aspect of bioethics. This paper will address this issue by developing a practical research methodology for the inclusion of data from social science studies into ethical deliberation. This methodology will be based on a naturalistic conception of ethical theory that sees practice as informing theory just as theory informs practice – the two are symbiotically related. From this engagement with practice, the ways that such theories need to be extended and developed can be determined. This is a practical methodology for integrating theory and practice that can be used in empirical studies, one that uses ethical theory both to explore the data and to draw normative conclusions.

INTRODUCTION

Like any discipline, bioethics is a developing field of academic inquiry; and recent trends in scholarship have been towards more engagement with empirical research.¹ There are increasing numbers of empirical studies conducted in bioethics and a growing focus on the role of empirical research in moral deliberation.² This 'empirical turn'³ has provoked extensive debate over how such 'descriptive' research carried out in the social sciences contributes to the distinctively normative aspect of

bioethics?⁴ This paper will address this issue by developing a practical research methodology for the inclusion of data from social science studies into ethical deliberation.

This methodology will be based on a naturalistic conception of ethical theory that sees practice⁵ as informing theory just as theory informs practice; the two are symbiotically related. From this engagement with practice, the ways that such theories need to be extended and

¹ R. Chadwick, H. Kuhse, W. Landman & P. Singer. 2007. *Bioethics: The Reader*. Oxford: Wiley Blackwell; B. Molewijk & L. Frith. Empirical Ethics: Who is the Don Quixote? *Bioethics* 2009; 23(4): ii–iv. It is beyond the remit of this paper to consider why bioethics is changing, this is more a topic for a sociology of ethics, see E. Haimes. What Can the Social Sciences Contribute to the Study of Ethics? Theoretical, Empirical and Substantive Considerations. *Bioethics* 2002; 16(2): 89–113.

² P. Borry, P. Schotsmans & K. Dierickx. Empirical Research in Bioethical Journals: a Quantitative Analysis. *J Med Ethics* 2006; 32: 240–254; A. Kon. The Role of Empirical Research in Bioethics. *Am J Bioeth* 2009; 9(6–7): 59–65.

³ P. Borry, P. Schotsmans & K. Dierickx. The Birth of the Empirical Turn in Bioethics. *Bioethics* 2005; 19(1): 49–71.

⁴ E. Pellegrino. The Limitation of Empirical Research in Ethics. *J Clin Ethics* 1995; 6(2): 161–162; J. Harris. 2001. Introduction: The Scope and Importance of Bioethics. In *Bioethics*. J. Harris, ed. Oxford: Oxford University Press: 1–22; C. Herrera. Is It Time For Bioethics To Go Empirical? *Bioethics* 2008; 22(3): 137–146; R. De Vries & B. Gordijn. Empirical Ethics and its Alleged Meta-ethical Fallacies. *Bioethics* 2009; 23(4): 193–201.

⁵ I will use the terms 'context' and 'practice' interchangeably to mean wider features of the world, the 'empirical contingencies of life'. These features are anything that could be said to have an impact on or relevance to the situations in which ethical decisions are made, including data from empirical studies. Further, this practice does not have to be seen as an objective sphere; as many authors have pointed out, empirical data is theory laden and not a 'pure' reflection of reality. See S. Carter. Beware Dichotomies and Grand Abstractions. *Am J Bioeth* 2009; 9(6–7): 76–77; R. Bennett & A. Cribb. 2003. The Relevance of Empirical Research to Bioethics: Reviewing the Debate. In *Scratching the Surface of Bioethics* M. Hayry & T. Takala, eds. Amsterdam: Rodopi: 9–18.

developed can be determined. My approach seeks to adopt a middle ground between ‘traditional’ applied ethics⁶ that builds on abstract, *a priori* ethical theory, and contextualist, relativist accounts that reject any form of ethical theory. My formulation of a more naturalized ethic sees the importance of both ethical theory and practice. Ethical theory is important for ethics to have a normative dimension; conceptions of ethical life that give no role to this run the risk of adopting a position where anything goes.⁷ If we abandon ethical theory we could be left with no way of making moral judgements.⁸ Theory in my approach, however, has a different provenance from foundationalist accounts: it is based in experience. Therefore, practice is important to help formulate and reformulate our ethical theories and to ensure that they are nuanced and appropriate for the problems they are supposed to address.

Within the emerging discipline of empirical ethics there has been a variety of different approaches to this subject that all, implicitly, contain some notion of the relationship between empirical findings and ethical theory. Suggested approaches have been: critical bioethics;⁹ integrated empirical ethics;¹⁰ pragmatic hermeneutics;¹¹ reflective equilibrium;¹² critical applied ethics;¹³ and dialogical approaches.¹⁴ There is not space to review and appraise all these varied approaches, but my approach fits within this taxonomy as a way of developing the integrated empirical ethics (IEE) approach outlined by Molewijk et al. ‘IEE refers to studies in which ethicists and descriptive scientist cooperate together intensively. In the course of this cooperation, ethicists and descriptive

scientists try to integrate moral theory and empirical data in order to reach a normative conclusion with respect to a specific social practice.’¹⁵ As Molewijk et al. note, in this new field ‘methodological experience must be accumulated to consolidate its identity’.¹⁶ My approach is an attempt to do this by formulating a practical methodology for integrating theory and practice that can be used in empirical studies, one that uses ethical theory both to explore the data and to draw normative conclusions.

A NATURALIST ACCOUNT OF ETHICAL THEORY

Interest in ‘naturalizing bioethics’ has grown in recent years and has been seen as a way of avoiding the problems of a bioethics that does not attend to the context in which moral deliberation takes place and is of limited use in the solution of moral problems.¹⁷ I will develop an account that has ‘a more inclusive conception of what moral philosophy is’.¹⁸ The importance of the particular circumstances in which the ethical decision takes place are more fully recognized and the empirical contingencies of life are not seen as separate from the ethical enterprise. However, ethical theory still has a role to play and this is what distinguishes it from some other accounts that seek to theorize a place for the empirical, such as Hoffmaster¹⁹ and social science orientated accounts.²⁰

In this naturalistic account of ethical theory, the foundationalist roots of ethical theory are rejected and theory is seen as arising out of human experience. Malcolm Parker, in his outline of a naturalistic position in ethics, discusses how ethical theory is based in experience. He argues that ‘the role of foundations in ethics is played not by *a priori* ethical principles but by empirical primary evaluations.’²¹ For Parker, ethical theory has a pre-given empirical content that is based on experience and ‘accrued across human history and distilled from it.’²² Seeing ethical theory as based in experience does not commit the naturalistic fallacy, as this position is not taking ethical theory to *mean* any natural property and it does not prevent, ‘taking natural features or properties as reasons or criteria for considering something to be good,

⁶ See Caplan who elucidates this approach, which he calls the ‘engineering model’. A. Caplan. 1982. Mechanics on Duty: The Limitations of a Technical Definition of Moral Expertise for Work in Applied Ethics. *Can J Philos* 1982; VIII: 1–18.

⁷ See R. Macklin. 1999. *Against Relativism*. New York: Oxford University Press; also, for a discussion of some of the limitations and limits of contextualism, see C. Kukathas. Contextualism Reconsidered: Some Skeptical Reflections. *Ethical Theory Moral Pract* 2004; 7: 215–225.

⁸ J. Rachels. 1986. *The Elements of Moral Philosophy*. New York: Random House.

⁹ A. Hedgecoe. Critical Bioethics: Beyond the Social Science Critique of Applied Ethics. *Bioethics* 2004; 18(2): 120–143.

¹⁰ B. Molewijk, A.M. Stiggelbout, W. Otten, H.M. Dupuis, & J. Kievit. Empirical Data and Moral Theory: a Plea for Integrated Empirical Ethics. *Med Health Care Philos* 2004; 7: 55–69.

¹¹ L.van der Scheer, G. Van Thiel & G. Widdershoven. 2004. Theory and Methodology of Empirical-ethical Research. In *Engaging the World*. S. Holm, & M. Jonas, eds. Amsterdam: IOS Press: 89–96.

¹² J. van Delden & G. Van Thiel. 1998. Reflective Equilibrium as a Normative-Empirical Model in Bioethics. In *Reflective Equilibrium: Essays in Honour of Robert Heeger*. W. van der Burg & T. van Willigenburg, eds. Dordrecht: Kluwer: 251–259.

¹³ C. Leget, P. Borry & R. DeVries. Nobody Tosses a Dwarf! The Relationship between the Empirical and the Normative Re-examined. *Bioethics* 2009; 24(4): 226–235.

¹⁴ G. Widdershoven, T. Abma & B. Molewijk. Empirical Ethics as Dialogical Practice. *Bioethics* 2009; 23(4): 236–248.

¹⁵ Molewijk et al, *op.cit.* note 10, p. 57.

¹⁶ *Ibid*: 64.

¹⁷ H. Lindemann, M. Verkerk & M. Walker, eds. 2009. *Naturalized Bioethics*. Cambridge: Cambridge University Press.

¹⁸ M. Nussbaum. Reply to Wolheim, Gardiner and Putnam. *New Literary History* 1983; 15(1): 201–208, p. 204.

¹⁹ B. Hoffmaster, ed. 2001. *Bioethics in Social Context*. Philadelphia, PA: Temple University Press.

²⁰ L. DeVries Turner, K. Orfali, & C. Bosk. *Sociol Health Illn* 2006; 28(6); Hedgecoe, *op.cit.* note 9.

²¹ M. Parker. Two Concepts of Empirical Ethics. *Bioethics* 2009. 23(4): 202–213, p. 207.

²² *Ibid*: 206.

or right, or morally required.²³ This form of naturalism is akin to what Racine calls 'moderate pragmatic naturalism' that, 'acknowledges that empirical knowledge is useful to shed light on meta-ethical issues.'²⁴

The classical roots of naturalism can be found in Aristotle. Aristotle's conception of this relationship between theory and practice or between the universal (generalities) and the particular²⁵ distinguishes his ethics from those of Plato, who saw the Form of the Good as a purely abstract entity.²⁶ Jonsen and Toulmin interpret Aristotle as holding that ethical generalities were important, but these generalities differed from the Platonic Ideal: first, 'the relevance of such generalities [ethical theory] must always be criticized in the light of detailed facts of the particular situation'.²⁷ And, second, these generalities are based on the wisdom and experience of human beings.

Martha Nussbaum has paid particular attention to the relationship between theory and practice in Aristotle's thought and argues that, for Aristotle, 'universal statements are posterior in ethical value to concrete descriptions, universal rules to particular judgments'.²⁸ Rules can be used as a form of a rule of thumb, as summaries rather than 'the ultimate authorities against which the correctness of particular choices are assessed'.²⁹ For Aristotle it is not possible for any universal formulation to cover all the particulars that might arise – any law is the summary of wise decisions – and laws should be corrected when they are not in accord with good judgment. 'General principles are authoritative only insofar as they are correct; but they are correct only insofar as they do not err with respect to particulars.'³⁰ In this way, 'that is why it remains important for [ethical] theories to consult good practice'.³¹

²³ Ibid: 208.

²⁴ E. Racine. Which Naturalism for Bioethics? *Bioethics* 2008; 22(2): 92–100, p. 100. For a further elucidation of naturalism in bioethics, see J. Moreno. 1995. *Deciding Together: bioethics and moral consensus*. Oxford: Oxford University Press.

²⁵ Defined as: a universal is a type or kind of thing (doctors); whereas a particular is one of such a type (Dr Smith).

²⁶ Aristotle argued that this abstract 'ideal of the good' is not something that man can, in practice, achieve (1096a11-97a14, EN). See also D. Devereux. Particular and Universal in Aristotle's Conception of Practical Knowledge. *Rev Metaphys* 1986; 39(3): 483–504 for a discussion of the difference between Plato and Aristotle's views on the universal and the particular.

²⁷ A. Jonsen & S. Toulmin. 1998. *The Abuse of Casuistry*. Cambridge: Cambridge University Press: 71.

²⁸ M. Nussbaum. 2001. *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy*. Cambridge: Cambridge University Press: 301.

²⁹ M. Nussbaum. 1990. *Love's Knowledge: Essays on Philosophy and Literature*. New York: Oxford University Press: 68.

³⁰ M. Nussbaum. 1994. *The Therapy of Desire: Theory and practice in Hellenistic Ethics*. Princeton, NJ: Princeton University Press: 66.

³¹ M. Nussbaum. 2000. Why Practice Needs Ethical Theory: Particularism, Principle, and Bad Behaviour. In B. Hooker & M. Little, eds. *Moral Particularism*, Oxford: Clarendon Press: 227–255, p. 246.

This attention to the particularity of a situation, as Crisp notes, can be accepted by, 'ethical theorists of any stripe'.³² Any ethical theory faces the problem of generalizations running out when confronted with particular situations; moral rules are indeterminate. However, it is the formulation of the moral rules, and how they can be revised and interpreted in the light of experience and situations, that is important for my account and where it differs from the 'traditional' models of bioethics based on foundationalism. The contention is that the moral rules arise out of experience, as Nussbaum puts it, 'the discernment rests with perception':

The particular case would be absurd and unintelligible without the guiding and sorting power of the universal. . . . Nor does particular judgment have the kind of rootedness and focus required for goodness of character without a core of commitment to a general conception – albeit one that is continually evolving. . . . There is in effect a two-way illumination between particular and universal.³³

The naturalistic position that I am adopting can be seen as a form of 'philosophy from the inside out' as opposed to philosophy outside in (which would correspond to the engineering model of bioethics). Dworkin argues:

We can begin with practical problems. . . and then ask which general philosophical or theoretical issues we must confront in order to resolve those problems . . . When we reason from the outside in, a practical issue must shop from among ready-made theories on the racks to see which theory asks and tries to answer questions that best fit its own dimensions. When we reason from the inside out, theories are bespoke, made for the occasion, Savile Row not Seventh Avenue.³⁴

Nussbaum has developed these ideas in her work on women in developing countries. The practical problems facing women in these situations³⁵ has led both to different perspectives on existing theories of justice and to the need to think in terms of constructing new theories as a way of approaching such practical issues. Although ethical theories such as justice should be able to have a theoretical power to reach beyond the specific case, 'they must also be responsive to the world and its most urgent problems.'³⁶ She argues that certain problems facing theories of social justice, such as doing justice to those

³² R. Crisp. 2000. Particularizing Particularism. In B. Hooker & M. Little, eds. *Moral Particularism*. Oxford: Clarendon Press: 23–47, p. 28.

³³ Nussbaum, *op.cit.* note 28, p. 306.

³⁴ R. Dworkin. 1993. *Life's Dominion: An Argument about Abortion and Euthanasia*. London: Harper Collins Publishers: 29.

³⁵ M. Nussbaum. 2000. *Woman and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press.

³⁶ M. Nussbaum. 2006. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: The Belknap Press: 1.

with physical or mental impairment, cannot be solved by ‘merely applying the old theoretical structure to the new case. . . . but a reshaping of the theoretical structures themselves’.³⁷

Thus, my account does not reduce ethical theory to a superfluous and meaningless enterprise, it has a key role to play in moral deliberation. Ethical theories are useful ordering principles, rules of thumb for conduct, and they can be criticized by practice and good judgment. Further, ethical theories arise out of the practical problems, context and dilemmas that face us in bioethics – practice can inform theory just as theory can inform practice – the two are symbiotically related. It is this explicit attempt at ethical theory development and modification that is important for my approach, aiming to use practice to construct theories that more closely match the circumstances and are responsive to the problems under consideration.

SYMBIOTIC EMPIRICAL ETHICS – A METHODOLOGY

Having outlined my position on how ethical theory is constructed and influenced by practice, I now want to take the discussion a step further. This way of seeing ethical theory can be developed into a practical research methodology for approaching ethical questions in practice. This methodology consists of the following five elements: setting out the circumstances; specifying theories and principles; using ethical theory as a tool of analysis; theory building; and, finally, making normative judgments. The elements of this approach are not necessarily applied sequentially to ethical issues but are used when relevant to the analysis being conducted. This is a research methodology, one that concentrates on how data will be analysed, develops ethical theory and generates normative conclusions. It could be applied to any area of research to address a wide range of issues and problems. This methodology can highlight new ethical problems and develop more nuanced moral norms and ethical theories to deal with the conflicts and issues that arise in practical settings. To illustrate this I shall use examples from a study that employed this methodology: a qualitative investigation into how infertility clinicians approached and made ethical decisions in their everyday practice. In this investigation, 22 clinicians were interviewed from infertility clinics round the UK.³⁸

³⁷ Ibid: 2–4.

³⁸ For more details of the study see: L. Frith, A. Jacoby & M. Gabbay. Ethical Boundary Work in the Infertility Clinic. *Sociology, Health and Illness*, in press. L. Frith. Process and Consensus – Ethical Decision-Making in the Infertility Clinic: A Qualitative Study. *Journal of Medical*

Setting out the circumstances

A starting point of this method is to follow ‘Aristotle’s insistence on the ethical importance of a vivid perception of concrete circumstances’³⁹ by setting out what Aristotle calls the *endoxa* – the phenomena. The phenomena are the aspects, views and opinions on the matter under consideration and also the world as it appears to us in the broadest sense. This strategy would be uncontroversial in most bioethical discussions, as most begin by setting out different views and arguments. Allmark argues that explaining the *endoxa* in bioethics ‘is perhaps beyond dispute’.⁴⁰ A common approach in bioethics papers is to focus on the views or a particular aspect of a philosopher’s work, subject that to criticism and possibly, out of that critique, develop one’s own stance.

Aristotle, however, arguably had a wider conception of the phenomena than this⁴¹ and simply summarizing the ‘views of the wise’ would not be enough. A full description of a problem, area, dilemma, and the circumstances in which it is located enables the particularities of a situation to be adequately described. This provides a detailed description of the area that is necessary (although sometimes lacking in some accounts) for a productive ethical discussion. This element closely resembles a sociology of bioethics,⁴² that is examining the social context of bioethical issues or problems.

In the study on infertility clinicians, the initial part of the project was to find out how the infertility clinicians thought about and approached ethical issues in their practice. What gets constituted as an ethical problem and the way dilemmas are constructed in medical practice all become forms of social interaction to be studied. The aim was to provide a more detailed description of the issues than is commonly found in (some) ethical discussions. In this study, what the clinicians themselves thought of as the ethically troubling aspects of their practice were objects of study. So, in the interviews an open question was asked: ‘What issues do you see as ethically challenging in your everyday practice?’ Exploring these areas of ethical concern enabled a detailed picture of the ethical functionings of the infertility clinic to be built up. This in turn enabled the circumstances and particularities of the situation to be adequately described, to give a picture of what ethical issues troubled the clinicians in everyday

Ethics, 2009; 35(11): 662–667. L. Frith. Use or Ornament? Clinical Ethics Committees in the Infertility Clinic: A Qualitative Study. *Clinical Ethics*, 2009; 4(2): 91–97.

³⁹ Nussbaum, *op.cit.* note 35, p. xv.

⁴⁰ P. Allmark. An Argument for the Use of Aristotelian Method in Bioethics. *Med Health Care Philos* 2006; 9(1): 69–79, p. 71.

⁴¹ Nussbaum, *op.cit.* note 28, p. 244.

⁴² Haimes, *op.cit.* note 1.

practice and what role ethical issues played. This detailed exploration formed the basis of subsequent ethical analysis and deliberation.

Specifying theories and principles

Empirical findings contribute more than just descriptive information to which the ethicist applies their theories. They contribute to our very understanding of the principles themselves. Formal principles take on their content through successive applications and interpretations.⁴³ This is the Aristotelian point that it is the particular situation that is the measure of an ethical principle and the principle needs to be adapted to both fit the situation and to be made meaningful.

One way that this can be done is by specification of principles.⁴⁴ This provides one account of the way in which they can be made less abstract and therefore can be applied meaningfully to particular cases. As Racine notes, this is part of the naturalist stance that opposes, 'the epistemological commitment that ethical predicates have no relationship to natural properties'.⁴⁵ Principles may be formulated abstractly, such as the principle that one should not harm others, but for them to have any meaningful content they need to be specified in a particular context. Formal moral principles take on their content through application and this is how they direct action.⁴⁶

A product of specification is to clarify and convert ethical theories and principles into practical guides for action. Birnbacher sums this up when he says: 'applied ethics deals with the "translation", as it were, of theoretical principles into workable practice rules, making them available for everyday judgements and decisions.'⁴⁷ If we see the meaning of principles specified in the context of application, then they can be useful for directing action. This is taking a more Aristotelian view of ethical theory, where the construction of a 'practice rule', in Birnbach-

er's sense, is given a more central role. It is in practice that such theories become meaningful.

In the infertility clinicians study, one of the central features of their ethical decision-making process was to ensure that, in their view, such decisions were made impartially. Impartiality is often seen as one of the features that characterizes moral theories and their dictates. Rachels sees moral impartiality in the following way: 'the requirement for impartiality, is at bottom nothing more than a proscription against arbitrariness in dealing with people differently from another *when there is no good reason to do so*'.⁴⁸ This is an abstract formulation of the principle. The concern in the study was to elucidate precisely how the clinicians used and defined impartiality in their particular social setting, what they saw as arbitrariness and 'good reason' for differential treatment. For the clinicians, impartiality consisted of:

- the non-imposition of their own views on their patients;
- detachment of the decision-maker from the situation;
- and a robust process of decision-making.

Once the way they defined impartiality and the way they used it in practice had been observed, the concept of impartiality could be given content, given a richness that a purely abstract formulation of impartiality lacked. Thus, the concept of impartiality was specified and a definition of impartiality could be formulated that was meaningful in this context.

Using ethical theory as a tool of analysis

Using this method, ethical theories and principles can also be used as tools to analyse the data (part of the *endoxa*): to discern areas of disagreement, clarify terms and reveal ambiguities. Callahan argues that ethical principles should be seen as 'ways of organizing our moral thought, giving it a shape and formal structure'.⁴⁹ Therefore, ethical theory is a body of knowledge that can be brought to bear on different issues and used as an analytic tool.

Caplan makes this point when he says that ethical theory and principles are, 'tools by which moral issues can be examined from a variety of perspectives'.⁵⁰ For Caplan, those trained in ethics have a set of traditions and theories that enable them to deliberate about and judge moral issues. 'A fully developed applied ethic would afford the moral philosopher an opportunity to examine the delicate interplay that occurs among fact, social roles and prescriptive principles in reaching moral

⁴³ B. Jennings. 1986. Applied Ethics and the Vocation of Social Science. In J. DeMarco & R.M. Fox, eds. *New Directions in Ethics: the Challenge of Applied Ethics*. New York: Routledge & Kegan Paul: 205–217.

⁴⁴ H. Richardson. Specifying Norms as a Way to Resolve Concrete Ethical Problems. *Philos Public Aff* 1990; 19(4): 279–310; M. Verweij. 1998. Moral Principles: Authoritative Norms or Flexible Guidelines? In *Reflective Equilibrium*. W. van der Burg & T. van Willigenburg, eds. Dordrecht: Kluwer Academic Press: 29–40; T. Beauchamp & J. Childress. 2001. *Principles of Biomedical Ethics*. Oxford: Oxford University Press.

⁴⁵ Racine, *op.cit.* note 24, p. 97.

⁴⁶ There are criticisms of this approach to specifying principles. See Beauchamp & Childress, *op.cit.* note 44, where they that argue moral conflict may never be completely avoided. See also J. DeMarco & P. Ford. Balancing in Ethical Deliberation: Superior to Specification and Casuistry. *J Med Philos* 2006; 31(5): 483–497. They advocate the use of balancing *instead* of specification, because, they argue, it more clearly displays the reasons behind the decision.

⁴⁷ D. Birnbacher. Ethics and Social Science: Which Kind of Co-operation? *Ethical Theory Moral Pract* 1999; 2(4): 319–336, p. 321.

⁴⁸ Rachels, *op.cit.* note 8, p. 10.

⁴⁹ D. Callahan. The Social Sciences and the Task of Bioethics. *Daedalus* 1999; 128(4): 275–295, p. 291.

⁵⁰ Caplan, *op.cit.* note 6, p. 15.

decisions.⁵¹ An ethicist has an expertise in both normative theories and concepts and should be an expert in the descriptive ethics of their chosen area (the *endoxa*). Thus, theories and principles can be a tool for elucidating and analysing the data, just as sociologists use theories of social interaction to approach their data for example.⁵²

In the infertility study, as discussed above, the concept of impartiality was both used to analyse the data and was specified and developed by the data. Theories of consensus decision-making from the literature were also used to explore and understand how the clinicians made ethical decisions. It became apparent, when the data was analysed, that they made ethical decisions on the basis of some form of consensus. The debate in the literature over the construction of consensus decision-making as either a 'resting state of opinion' or a process was used to elucidate the data.⁵³ The informants were, arguably, concerned about the *process* rather than the *product*, the outcome of the deliberations. They did not argue that what they had decided was incontrovertibly 'right', but that they had followed an appropriate process of decision-making. Philosophical and ethical discussions of consensus were used to clarify meanings and terminology, and to advance important distinctions between different forms of consensus decision-making.

Theory building

This element of the methodology is closely related to the previous one and exemplifies the symbiotic nature of the relationship between theory and practice.

It could be questioned, in response to the suggestion that ethical theory can be used as a tool of analysis, that it appears that the ethical theory used to analyse the empirical data is preformed, a given in a foundationalist sense, and then used to analyse the data. Whereas previously it had been argued that the specificities of theory were developed in a particular context. Therefore, exactly *what* is being used to analyse the data? Where have these particular ethical theories come from and what gives them their warrant? I would argue that this is construing the relationship between theory and practice as a linear one, whereas it is better characterized as more akin to a symbiotic relationship. Theory can be used to approach the data and it can also arise from the data itself. Then the theory might be modified or extended – theory interprets data and data interprets theory – and the two processes can occur in the same study. As Alasuutari says when talking about studies in the social sciences, '[i]t is very difficult . . . to make a clear distinction between the

"empirical" and "theoretical" parts of a study. . . . Ideas that surface with empirical data cannot be separated from insights that are gained while reading theories and earlier research.⁵⁴ Further, as has been noted 'data' should not be seen as 'objective' entities: 'I would argue with many others that empirical work is deeply infused with theory: empirical researchers do not discover what "is", but rather – much like philosophers – they make an argument about the social world in dialectic relationship with existing theory.'⁵⁵ Thus, the use of theory in constructing data is not a novel suggestion, but the use of ethical theory in this way is – it can be used for its explanatory power as well giving normative direction.

In the infertility study, for example, a theory of consensus decision-making was formulated: one that was based on how the clinicians, implicitly, defined their notion of consensus decision-making, and that also drew on the ethical literature in this area. This is using the data to develop ethical theory – a close attention to actual practice can aid in refining and developing ethical theory and principles. The data can also elucidate philosophical distinctions, to see if they are meaningful in practice and point out other facets and aspects that may be lacking in the theory. Hence, this theory of consensus was developed by considering both the philosophical and ethical literature on the subject and by examining how the notion was used and formulated in practice.

Making normative judgments

A final element of my methodology is to make normative judgments about the practice under study. For bioethics to be a distinctive and useful discipline this normative element is important.

It is important to show how my conception of ethical theory can be used to make normative judgments. Ethical theories and principles are not held to be 'true' in any straightforward foundationalist way but, in my approach, they can still be used to reflect on and make judgments about ethical issues. The ethical theory used to make such judgments is not a pre-determined static entity that is 'applied' to cases; it is something that is developed by the interaction of reason and experience.⁵⁶ My method can be seen, not as a way of delivering the 'truth', as would be understood in the sense of the recognition of a Platonic form, but as a way of moving towards 'better accounts'.⁵⁷ The aim is to gather a finely grained

⁵¹ Ibid: 16.

⁵² J. Maxwell. 1996. *Qualitative Research Design: An Interactive Approach*. Thousand Oaks: Sage.

⁵³ See Frith 2009, *op.cit.* note 38.

⁵⁴ P. Alasuutari. 1995. *Researching Culture: Qualitative Method and Cultural Studies*. London: Sage: 175.

⁵⁵ Carter, *op.cit.* note 5, p. 76.

⁵⁶ Racine, *op.cit.* note 24.

⁵⁷ See the following who advance this view of ethical theory not as advancing truth but as a way of solving practical problems that can be justified to those involved: T. Beauchamp. Reply to Strong on

description of the problem (using all our resources, empirical research and those of ethical theory) to produce a defensible (on the basis of reason and argument) solution or recommendation. This is taking an Aristotelian approach, one that is not, as Hughes argues, concerned with justification in ethics as modern moral philosophers are. There might not be any *proof* that the products of deliberation are 'right' but there can still be an explanation of the outcome; the person can, 'invite us to see the situation as they saw it, in the hope that we too will agree that they read the situation alright'.⁵⁸

It could be objected that this symbiotic relationship between theory and practice raises the problem that such mutual adjustment between theory and practice does not provide any means of adjudicating between the two claims in any *a priori* way. In response to this it is argued that while it is true that there is no way of ranking theory or practice so that one 'trumps' the other, this is accepted and any adjustment of either element needs explicit justification.⁵⁹ This type of decision cannot be made abstractly: which element (ethical theory or the practice or both) would have to be adjusted would depend on the context and the delicate interplay between theory and practice. Like Hughes' point above about the conclusions of deliberation, what is required is a careful justification of how the decision was reached. I would argue that in reality, this is the best that we can do.

In the infertility study the central normative question was: is the clinicians' form of consensus ethical decision-making ethically justifiable? In this study, great ethical store was set on the process of decision-making. The emphasis was not necessarily on achieving consensus over substantive ethical issues but on reaching a decision about what to do; and this decision was validated by the process itself. This process fulfilled an ethical function in ensuring (or aiding) the making of a 'good' decision. The clinicians' form of consensus decision-making focussed on the importance of the process of how decisions were made and this procedural aspect conferred the substantive ethical principle of impartiality.⁶⁰ This procedural aspect, an attention to how the decision is made, became an important part of the ethical assessment of that decision, a feature of ethical decision-making that is often overlooked. In this way, it was possible to make a judgment as to the ethical acceptability of their decision-making process by using these tailored principles of

impartiality and procedural justice and seeing if they had adequately met these requirements.

SYMBIOTIC EMPIRICAL ETHICS AND OTHER METHODOLOGIES

Having outlined my methodology for conducting empirical studies I now want to consider, briefly, how my methodology differs from other suggested ways of approaching the use of empirical data in bioethics research. By doing this I hope to demonstrate the distinctiveness of my methodology and further clarify its use in bioethics research. As noted earlier there have been a number of methodologies put forward but I shall concentrate on reflective equilibrium and pragmatic hermeneutics as these have been the most widely used in actual empirical studies.

Reflective equilibrium (RE)

This is an approach in empirical ethics that attempts to integrate theory and practice.⁶¹ It is based on the notion of reflective equilibrium that Rawls used to build and provide justification for moral theories and principles. Beauchamp and Childress in *The Principles of Biomedical Ethics* use this method, uniting it with their version of a common morality theory, they state that: 'Method in ethics properly begins with our "considered judgments", the moral convictions in which we have the highest confidence and believe to have the lowest level of bias.' These considered judgements are, as Rawls argues, subject to revision: 'The goal of reflective equilibrium is to match, prune, and adjust considered judgments in order to render them coherent with the premises of our most general moral commitments.'⁶²

When this is applied to empirical ethics, there are various ways of incorporating it into empirically answerable questions. The research would attempt to find out what peoples' considered judgments were. Once these judgments were mapped, as Musschenga notes,⁶³ ethicists would be concerned with finding the right answers to practical problems and this could be done in various ways. The ethicist could help the people whose views they had studied to formulate 'a well considered judgment' consistent with their views and beliefs on other issues, or 'Empirical ethicists [could] also use the method of

Principlism and Casuistry. *J Med Philos* 2000; 25(3): 342–347; C. Strong. Specified Principlism: What is it and Does it Really Solve Cases Better? *J Med Philos* 2000; 25(3): 323–341; Jonsen, *op.cit.* note 25; A. Smith Iltis. Bioethics a Methodological Case Resolution: Specification, Specified Principles and Casuistry. *J Med Philos* 2000; 25(3): 271–284, p. 273.

⁵⁸ G. Hughes. 2001. *Aristotle on Ethics*. London: Routledge: 115.

⁵⁹ Molewijk et al., *op.cit.* note 10.

⁶⁰ L. Frith, *op.cit.* note 38.

⁶¹ N. Daniels. 1996. *Justice and Justification: Reflective Equilibrium in Theory and Practice*. Cambridge: Cambridge University Press. For an overview of these methodologies see A. Musschenga. Empirical Ethics, Context-sensitivity, and Contextualism, *J Med Philos* 2005; 30: 467–490.

⁶² Beauchamp & Childress (2001) *op.cit.* note 44, p. 398.

⁶³ Musschenga, *op.cit.* note 61.

reflective equilibrium for determining whether a set of principles that forms the core of an ethical theory is in alignment with the well-considered judgments of a particular community.⁶⁴ An example of a research project in empirical ethics that used this methodology is that of Van Thiel & Van Delden,⁶⁵ who used the methods of RE to formulate guidelines on respecting autonomy in nursing homes.

There are some similarities between my methodology and RE in that they both criticize a foundationalist conception of ethical theory and seek to construct theory in the light of experience. However, my methodology has a wider scope than RE, that is honed down to determining people's considered judgments and then seeing if they can be revised to form, eventually, a coherent moral view. There are some research questions and areas that would not be answered by a RE approach, such as the more general exploratory nature of empirical research and people's accounts of what they do and how they conceptualize their practice. There is a difficulty in how one adequately separates the 'considered judgments' on ethical matters from other perceptions and views. This could result in trying to fit peoples' views into predefined theoretical categories, which might not reflect their thinking. There are also limitations with the concept of reflective equilibrium itself: some criticisms have focused on the philosophical problems, with the claim that our considered moral judgments carry weight; problems with the vagueness of the concept of coherence; and concerns that reflective equilibrium idealizes human rationality – that in practice people will not modify their views in light of critical pressure.⁶⁶ These, to my mind, limit the purchase of such an approach, particularly the latter point of an idealistic conception of moral progress. Clearly, accepting RE as an empirical ethics methodology means that one has to accept the theoretical basis and if one does not, then the methodology is redundant. However, even if such a basis can be justified, I would argue that, as a practical research methodology, it lacks sufficient scope and breadth. My methodology could incorporate elements of RE (such as determining people's views and seeing how they relate to the existing ethical theory) and thus is more widely applicable to a variety of research questions and conceptions of what empirical ethics can do.

Pragmatic hermeneutics

The overriding aim of pragmatic hermeneutics is not simply to find out what the moral beliefs of people are but

to, 'reconstruct the practice's internal morality'.⁶⁷ Van der Scheer et al. give an overview of this methodology.⁶⁸ The significance of pragmatism is its theory of meaning that derives from the practical consequences of its usage, concepts and theories, 'their value is determined by their context'.⁶⁹ Hermeneutics is the attention to communication and especially dialogue as a form of interaction, knowledge is always a matter of interpretation rather than objective truth.⁷⁰ This approach aims to 'make explicit the normative orientation in daily life'.⁷¹ It is not merely descriptive but aims to see how specific practices can be improved. If theories are used they are directly related to the practices under consideration, so they are locally based and embedded in the specific practice under study. Any conception of the good life is 'primarily developed in concrete practice'.⁷²

Again there are similarities between pragmatic hermeneutics and my methodology: the focus on the practice under study and the concern to ensure the meanings of any principles or theories are influenced by practice are areas of common ground. However, an important difference between my methodology and pragmatic hermeneutics is the more prominent role that my approach gives to ethical theory. Pragmatic hermeneutics can be criticized on similar grounds to contextualism, that it gives a lesser normative role to ethical theory and this can reduce the critical force of ethical deliberation. An important aspect of the methodological approach that I have proposed is that theory construction and criticism are central aims of my approach. Ethical theory is useful for criticizing practices and guarding against any serious contraventions of particular principles, for example, liberty or equality. Thus, I would argue that in trying to integrate theory and practice in a more sustained way, for certain tasks, my approach has certain advantages. Ethical theory, in my approach, is also used to analyse the data from empirical studies and this uses the explanatory power of such theory as well as its normative dimensions.

CONCLUSION

This paper aimed to demonstrate how a particular way of doing bioethics could contribute to a greater understanding of ethics in practice. The example of the study on infertility practice showed how such an approach can highlight new ethical problems and develop more

⁶⁴ Ibid: 481.

⁶⁵ Van Thiel & Van Delden, *op.cit.* note 12.

⁶⁶ N. Daniels. 2003. Reflective Equilibrium. In *Stanford Encyclopedia of Philosophy*. E. Zalta, ed. Available at: <http://plato.stanford.edu/archives/fall2008/entries/reflective-equilibrium/> [Accessed 19 Jun 2010].

⁶⁷ Musschenga *op.cit.* note 61, p. 482.

⁶⁸ Van der Scheer et al., *op.cit.* note 11.

⁶⁹ Ibid: 93.

⁷⁰ G. Widdershoven. 2005. Interpretation and Dialogue in Hermeneutic Ethics. In *Case Analysis in Clinical Ethics*, R. Ashcroft et al., eds. Cambridge: Cambridge University Press: 57–75.

⁷¹ Ibid: note 68.

⁷² Ibid: 94.

nanced moral norms and ethical theories to deal with the conflicts and issues that arise in practical settings. This will enable bioethics to both retain its normative function and be attentive to the particular contexts in which moral decisions take place.

The methodology outlined in this paper could be used in any practical setting, as a way of organizing and conceptualizing research projects. It aims to delineate ways of approaching and analysing empirical data, and that seeks to both illuminate the specific practice under study and draw normative conclusions. It is based on particular philosophical understandings of ethical theory and practice and what this can contribute to the analysis and discussion of empirical data. In using this approach I am not arguing that it is the only way of 'doing' bioethics. As Daniels says: "Doing ethics" involves trying to solve

very different kinds of problems answering to rather different interests we may have, some quite practical, others more theoretical.⁷³ Morality and ethical problems are complex things that can benefit from many different approaches and theoretical schemas. The approach advanced here is not designed to replace others, but to simply add to the bioethicist's tool kit.

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⁷³ Daniels, *op.cit.* note 61, p. 339.