

# THE CONJOINED TWINS AND THE LIMITS OF RATIONALITY IN APPLIED ETHICS

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## ABSTRACT

*In this article I consider the case of the surgical separation of conjoined twins resulting in the immediate and predictable death of the weaker one. The case was submitted to English law by the hospital, and the operation permitted against the parents' wishes. I consider the relationship between the legal decision and the moral reasons adduced in its support, reasons gaining their force against the framework of much mainstream normative ethical theory. I argue that in a few morally dilemmatic situations, such a legalistic-theoretical approach cannot plausibly accommodate certain irreducible and ineliminable features of the ethical experience of any concrete individual implicated in the situation, and that this failure partly undermines its self-appointed role of guiding such an individual's conduct. For example, the problem as experienced by the judge and by the parents might not be the same problem at all, and some of their respective reasons may be mutually unintelligible or impotent. I certainly do not argue for a rejection of law or of moral theory; I merely challenge their implicit claim to comprehensiveness and their fixation with an idealised and putatively universal rationality modelled on converging scientific enquiry. Finally, I claim that at least in the twins' case there may be insufficient normative robustness to the conclusions reached, or indeed reachable, by the court in a situation where intuitions and moral reasons pull in fundamentally incommensurable directions; as such, there may be room for an acknowledgement of the spiritual, through a humble abstention from making a decision – which is not to be confused with deciding to do nothing.*

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## INTRODUCTION

In this paper I will argue that many current applied-ethics debates are sometimes unable to take full account of two crucial elements of common moral experience: the personal and the spiritual. Indeed, I will suggest that the very framework and presuppositions of these debates is such as to sometimes preclude or at least attenuate consideration of these elements *a priori*. For some philosophers it may actually be a cherished virtue of hard-nosed contemporary analytic philosophy that it has been able to sweep away the distortions of what they conceive as the superficial, the dogmatic and the *merely* personal. Yet, I believe that there are two important gaps between what moral philosophers declare about the right and the good, and what ordinary people experience as moral reality. Firstly, there is a gap between theory and first-personal experience, whereby the former tries to ‘pull up’ the latter to its own level of abstraction (usually by invoking causal explanations based on perception). Secondly, there is a gap between secular moral theory and the spiritual, where the former tries to ‘pull down’ the latter to the human level of a clearly defined good such as well-being or dignity. And yet in our attempts to seek a comprehensive account, both the personal and the spiritual will sometimes resist such partly-reductive and partly-eliminative pulling. My discussion of these gaps will probably not prove sufficient to ground a difficult decision that might have to be made anyway, but at least it will go some way to expose, for certain cases, the limits of rationality in applied ethics.<sup>1</sup> Last year’s surgical separation of the Manchester conjoined twins was one such case, but there are many others in biomedical ethics discussions.

A pair of conjoined (‘Siamese’) twins was born in St. Mary’s hospital in Manchester on 8 August 2000.<sup>2</sup> Jodie was the larger one and Mary the smaller (these names were given by the courts to protect their identity). Certain of Mary’s internal organs were deemed sufficiently underdeveloped to have resulted in her

<sup>1</sup> It should be obvious throughout this paper how influential Bernard Williams’s now classic book has been: Bernard Williams. 1985. *Ethics and the Limits of Philosophy*. London. Fontana.

<sup>2</sup> The judgement was written by Ward L.J in the case of *Re A (Children)* [2000], published on 22 September 2000. The entire 100-page judgement is available at the following URL: <http://www.courtservice.gov.uk/>. All references will be to the sections of this document, since consistent pagination is difficult. Obviously, specific quotations can be found by running a search on the document page.

death had she naturally separated from Mary in the uterus. Her continued life was thus supported by the flow of oxygenated blood and nutrients from Jodie. However, it was believed that the combined set of internal organs would not be enough to support the two bodies and that without surgery both twins would die within six months. Doctors at the Manchester hospital felt that with separation and subsequent surgery, Jodie would have a reasonable chance at a healthy and normal life, while Mary would certainly die. Their inclination was to press ahead with the operation. The parents, however, refused to permit the separation for primarily religious reasons – as devout Catholics, they could not consent to life being deliberately taken, even to save another life. The hospital therefore submitted the matter to the courts.<sup>3</sup>

### THE MORAL DILEMMA

This paper will focus on the moral dilemma facing Ward, the hospital and the parents just before the publication of his judgement. As has become traditional in contemporary analytic moral philosophy, the reality of the case is to be reduced to the single question of whether the babies *ought* to be separated, whether it would be the right, best, or the least worst thing to do (and given the absence of possible ‘compromises’). One common response to this question, by the so-called ‘realist’, would be to declare the dilemma to be merely apparent, that there actually *is* a best, right or least worst thing to do, and indeed there must be, but that it is not immediately evident: we cannot intuit it directly, and so we have to work it out.

The next move would be to ask, given that a solution exists, how we ought to discover it: and the debate thus shifts from the meta-ethical to the normative-ethical plane, and the lumbering dragons of deontology and consequentialism are wheeled on. The dilemma could be couched in entirely consequentialist terms (even if we cannot be sure about the future, we can still speak of reasonable expectations and objective probabilities, based on our present inductive sum of scientific knowledge): on

<sup>3</sup> On 25 August 2000, Justice Johnson ruled in favour of the hospital to operate. The parents appealed the decision, and on 22 September 2000, amid intense media attention, Lord Justice Ward of the Court of Appeal upheld the ruling. The parents decided not to appeal further, and the operation was carried out on 6 November 2000. Mary died as expected, and for Jodie the operation was considered successful, even though she awaits a number of further reconstructive operations.

the one horn, the plausibly greater good of simply having one twin alive in six months' time rather than none; on the other, the longer-term disutility of encouraging the 'sacrifice' of one human being for another. Or, in deontological terms: on the one horn, the hospital's duty to save life when the costs are not prohibitive (and I am assuming they are not); on the other, the inviolability of the individual human being.<sup>4</sup>

Now I don't want to pursue either the meta-ethical debate (e.g. by considering non-cognitivist interpretations) or the normative-ethical one (e.g. by considering theories such as indirect act-consequentialism or Rossian *prima facie* duties).<sup>5</sup> Both move in by now predictable lines, with each theoretical conclusion further refined to accommodate a further counter-example. And I am not denying the sophistication of many of these solutions, nor am I denying their ability to come up with what I, and many others, would indeed consider the right thing to do in some situations. In other situations, such as that of the conjoined twins, I find that I cannot be so confident about solutions deduced in this way.

To see why, it will be worth pausing for a moment and considering a rationalist-epistemological paradigm upon which the above moral theorising could be based.<sup>6</sup> Imagine I have a

<sup>4</sup> To confirm the intuitive force of this deontological principle, a standard example is to ask whether we could kill a single innocent individual in order to remove and distribute her healthy organs to five other people, each of whom needed a different organ to survive. The crude utilitarian calculation would support the killing, it is argued, although we would of course intuitively recoil at the idea.

<sup>5</sup> One of the anonymous reviewers for *Bioethics* complained that I had not considered these two specific normative theories. While the former is certainly more sophisticated than act-utilitarianism, it is still a *theory*, and therefore it could turn out to be impotent or idle in a specific way, which I will be discussing below. Rossian *prima facie* duties seem to me unsatisfactory for the moral theorist, because they do not allow a non-ad-hoc ranking or similar organisation among the duties (e.g. 'honesty always trumps kindness'). Ross says only that honesty is always right-making, but does not state how, in advance of investigating the details of any particular situation, we can know how honesty functions with respect to kindness. Given this theoretical drawback, might they be useful for my purposes? Not really, since Ross's interest is still on the (objective) rightness or wrongness of a specific type of act in a specific type of situation, *regardless* of the contingent identity of the agent; whereas I will be arguing that such contingent identity can make all the difference.

<sup>6</sup> The paradigm I will be considering is that of determining what it is in my interests to do based on the consultation with a recognised expert on one aspect of human needs or interests. I have taken this to be sufficiently representative of most non-moral paradigms of knowledge, including, for example, perceptual knowledge, knowledge of facts about the observable world

toothache. I seek out what I am not, a dentist – i.e. a recognised authority on teeth, someone with privileged access (i.e. more than I have) to some of the truth about teeth and their possible ailments – and she peremptorily informs me that my tooth cannot be saved and will have to be removed. Now let's say that I cannot question her judgement on grounds not related to her certified professional training: she is not drunk, her tools are not rusty etc. It could now be said that I *ought to* allow the tooth to be removed: in fact, I would be *irrational* not to have it removed, given the likelihood of continued pain and the risk of infection and damage of neighbouring teeth, and you would be entitled to *blame* me for my continued refusal. The 'ought' in question is prudential, not moral, and given our shared physiology and common experience of toothaches (or of pain more generally), the 'ought' will be intelligible *to* any rationally competent adult *as applying* to any rationally competent adult who finds herself in the same situation as I.<sup>7</sup> Thus the 'ought' is objective, universal, and rationally binding (again, *ceteris paribus*). There is only one description of the situation (the pain, the inspection, the treatment), and there is a clear criterion of relevance and sufficiency: my dislike of the colour

that I have not yet observed myself, facts about conventions, facts about the discoveries of science in the non-observable worlds of the very small and very large etc. One interesting example of the paradigm in action relates to the experience of colours by partially and fully colour-blind people. The colour-blind accept their condition as abnormal or pathological; they do not try to *argue* with normal-sighted people about what the colour of the table 'actually' is. This is in marked contrast to morality and moral disagreement.

<sup>7</sup> In other words, the emphasis is on *classes* of people, rather than on individuals. Sometimes the class may potentially comprise all competent adults (e.g. whenever they have a toothache as with my dentist example). Sometimes it will apply only to a restricted group of people on the basis of a property they share, e.g. redheads ought to keep out of the sun. Moral philosophy follows this emphasis on class membership. There are certain things that you or I would think wrong if performed by any adult human, other things being equal. Other moral duties and rights pertain to a smaller class, e.g. the duty of a contracted, trained and fit lifeguard to attempt to save people drowning on her beach. In terms of this debate, it may be asked what *any* parent ought to do with conjoined twins in this generalisable predicament. What I will be suggesting is that I can sometimes take myself to have a particular duty in a particular situation *without* expecting any other member of the relevant class to have the same duty. When Luther said 'Here I stand, I can do no other', he was not suggesting what anybody else ought to do, nor was he saying '*one* can do no other.' This entails a denial of universalisability, which many mainstream philosophers consider to be essential to ethics. See the classic article: P. Winch. 1972. Universalisation of moral judgements. In *Ethics and Action*. London. Macmillan.

of the dentist's chair is not a sufficient reason for me to refuse her treatment.

So when *I* do not know what I ought to do I consult an expert. When *the expert* herself does not know what I ought to do (or what she ought to do to me), she has a number of established ways of finding out. She can consult more experienced colleagues or specialised journals or case histories. If my case is radically new, she can still make an educated guess as to the cause of the ailment and as to its possible treatment. She can also commission a clinical trial on me or an experiment on mammals, with the aim of discovering what she and I ought to do about my condition. Throughout, there is fixed assumption that the 'ought' already exists, and is already objective, universal and rationally binding – the only problem is our lack of experience and our epistemic limitations. In short, science does the best it can, with often-impressive results of prediction and control.

Now I argue that a lot of moral philosophy is conducted under this very same paradigm. And I repeat, for many situations a moral 'ought' can be plausibly discoverable by moral theory. For example, I *can* justify spending more public money on improving hospital facilities instead of on a fireworks display by describing the better consequences for the well-being of future patients. The only way I could conceivably justify the contrary would be to point to the reasonable expectation that the fireworks would promote a greater well-being in the same or another (larger) group of people. If there is a debate here, it is one with a clearly defined frame of reference, based on the fallible and lengthy search for and convergence upon the objective 'ought.'

The temptation is to apply this paradigm to *every* morally charged situation, and thereby to conceive of moral dilemmas as only apparent. After all, it will be argued, it could not be a dilemma (real or apparent) in the first place unless we are torn between incompatible moral requirements that individually seem objective, universal and rationally binding. The experience of being torn is the experience of yearning for knowledge of what one ought to do, and being utterly unsure of what it is and how to go about discovering it. We know that we ought to do X, and that we ought to do Y, but if X or Y are incompatible, what ought we to do *all things considered*?

In the twins' case, two sets of people have two different solutions. Ward LJ has argued at length for the separation of the twins. The parents have stated very simply that they cannot allow the twins to be separated. Which opinion is right? Which of them

has discovered the objective truth of what ought to be done? Could one of them be right but for the wrong, or irrelevant, or insufficiently good reasons?

### THE PROBLEMS WITH APPLYING THE PARADIGM TO ETHICS

Ward LJ took a lot of trouble to formulate and ground his judgement. I can assume he is ideally suited for making it, given his extensive experience and training in the law, since the practice of law requires and cultivates a sensitive attention to the nuance of rule, to the detail of particular circumstance, to discursive and explicit justification, and a firm sense of responsibility for the outcome. Ward LJ is surely a legal expert in the same sense as my dentist is in dentistry. And yet, while a fellow dentist may engage in a very arcane and jargonised debate with my dentist about the best course of action, it seems that many *non-lawyers* feel themselves competent to disagree with Ward; most notably, of course, the parents of the twins. We can imagine them reading the judgement, shaking their heads and saying: 'I'm sorry, we cannot argue against you, everything you say is very plausible and may be right, but we find that we simply cannot agree to it. We cannot consent to the deliberate killing of our daughter, even to save the other.'

Are we going to say they are being irrational or (culpably or excusably) ignorant or (culpably or excusably) self-interested for not seeing the objective 'ought', for not accepting the authority of an expert? Notice that the rejection is two-fold: the parents reject Ward's judgement of what ought to be done, and they reject his description of the situation. So, if I ask whom or what is Mary? Here is Ward:

Mary may have a right to life, but she has little right to be alive.<sup>8</sup> She is alive because and only because, to put it bluntly, but nonetheless accurately, she sucks the lifeblood of Jodie and she sucks the lifeblood out of Jodie. She will survive only so long as Jodie survives. Jodie will not survive long because constitutionally she will not be able to cope. Mary's parasitic living will be the cause of Jodie's ceasing to live. If Jodie could

<sup>8</sup> Just a passing remark: What on earth can this sentence mean? Even in terms of traditional moral philosophy, even in terms of semantic logic, what on earth can it mean? Philosophers are often suspicious of rights-talk, since it all too easily sinks to the level of bare assertion supported by dubious metaphysical claims. This sentence won't help to alleviate such suspicions.

she would surely protest, 'Stop it, Mary, you're killing me'. Mary would have no answer to that. (III, 10, iv)<sup>9</sup>

And here are the parents:

We cannot begin to accept or contemplate that one of our children should die to enable the other to survive. That is not God's will. Everyone has the right to life so why should we kill one of our daughters to enable the other to survive? (II, 13)

It is hard to imagine that both parties are describing the *same* moral dilemma, or even the same circumstances. And of course it is no longer a dilemma to either the parents or the judge, since both parties know what ought to be done *given the way each party sees it*; perception therefore partly guides deliberation. But what guides perception? My dentist will tell me: 'you ought to let me remove your tooth. I cannot give you a full explanation of your ailment and of why this is the best solution since you lack the proper training to understand it. You will have to trust me.' Why can Ward not say this? What can Ward say, when faced with the two parents who are not persuaded by his lengthy justification? Perhaps all he can say is no more than 'but don't you see?' Imagine that I, a vegetarian, take my non-vegetarian friend to a slaughterhouse or a factory farm. My friend will see, in a very real sense, what is wrong with eating meat, and if she does not see that she will at least grasp why I find I cannot eat meat. Before the visit, however, there might not have been any way of explaining, let alone converting my friend to my views.

There is something about moral discourse that ties it up intimately with an individual's perspective on the world, so that unless enough elements of this perspective are shared with

<sup>9</sup> It is surely remarkable that Ward felt it necessary to adopt this emotive piece of theatre to get his point across. Paul Valley, writing in the *Independent* ('Thomas's smile and the sad Siamese twins', Saturday 11 November, p. 7), noted the glaring double-standard involved in wilfully describing Mary as a parasite, and then:

'At the opposite end of the scale, but just as pernicious in its own way, were the weasel words from the spokesperson at the Manchester hospital where the operation was finally carried out to separate the twins. 'Despite all the efforts of the medical team, Mary sadly died', said the official communiqué, as if describing an intervention which had gone unfortunately wrong rather than one in which the intention from the outset had been to kill Mary in order to save her sister.'

Another example of weasel words might be this chestnut: 'Finally, the doctrine of the sanctity of life respects the integrity of the human body. The proposed operation would give these children's bodies the integrity which nature denied them' (IV 'The Criminal Law', 26).



another individual, there will always be certain moral questions about which they disagree fundamentally. It is usually hard to say from where a person gets their perspective. As such it is sometimes hard to say what a person ought to do; rather, we can only say what a person *did*, or characteristically would do. Indeed, given the exceptional nature of this and other dilemmas, it is hard for the person herself or anybody else to predict what she will do, let alone what she ought to do. More often than not, the person discovers that she simply *has to* take one course of action, and the attempted rationalisations and justifications are then produced afterward.

As it happens, in a given community most people do agree about a whole host of moral and non-moral issues (including the consistent application of moral and non-moral concepts): both how to describe a situation and how to act within it. Otherwise the community would probably not have survived in the first place. Most of us would say that operating on a child without a readily-available anaesthetic would be wrong, and those who would support it will rarely voice their opinion in public because they will not only be thought of as irrational, ignorant or cruel, they will also *be* such within the community. But there are certain questions, especially relating to birth, death and sexuality, that still manage to divide people deeply, people who would otherwise be considered equally rational.

In another article on the conjoined twins,<sup>10</sup> Raanan Gillon argues that the decision about surgical separation should have been left to the parents in the same way that our society leaves many other questions (e.g. most of the religious and moral education of the child) to the parents. The interests (or welfare) of the child will be allowed to override the wishes of the parents in at least two special cases: (i) child abuse, which has a very clear definition in law; and (ii) cases like that of the Jehovah's Witness parents attempting to deny their child a life-saving blood transfusion.<sup>11</sup> However, Gillon followed Walker LJ,<sup>12</sup> one of the

<sup>10</sup> R. Gillon. Imposed separation of conjoined twins – moral hubris by the English courts. *Journal of Medical Ethics Online* February 2001; 27: 3. I thank one of the *Bioethics* reviewers for pointing this article out, which appeared after my submission of the first draft of this paper.

<sup>11</sup> See: *Re R (A Minor)(Blood Transfusion)*. 1993; 2 FLR 757. In other cases, the criminal courts were even willing to convict parents of an offence, including gross negligence and manslaughter, for example: *R v Harris and Another*. 1994. 23 BMLR 122.

<sup>12</sup> '[The parents'] views might be described as controversial but (unlike the objections to blood transfusion held by Jehovah's witnesses) they are not

co-authors of the Twins judgement, in highlighting the difference between ‘an eccentric religious position held only by a small group or sect’ and

a standard line of moral reasoning common not only to Roman Catholicism but to many, probably most, societies, both secular and religious. In its most obviously relevant form it forbids (under English law, for example) the killing of one innocent infant, even if already dying, to save another.<sup>13</sup>

Walker and Gillon have a strong argument, but I have not mentioned it as support for any substantive practical conclusions. Indeed I will suggest grounds, in the next section, for over-ruling the parents if *they* had been the ones in favour of the operation. My point is that there *already* exists a state-sanctioned respect for at least one area of the personal, and that is parenthood. Within the limits defined by special cases and by other obligations incumbent on the parents (such as school attendance, vaccinations etc.), parents are free to do pretty much whatever they like with their children – much to the frequent disapproval of other parents. Of course there are many manuals and experts on what makes a good parent, but there is rarely the belief in a single set of principles such as those that moral philosophers claim to be seeking.

## THE SPECTRE OF RELATIVISM

Ward states quite plainly that ‘parental right is, however, subordinate to welfare [of the children]’,<sup>14</sup> and continues a little later:

the role of the court is to exercise an independent and objective judgement. If that judgement is in accord with that of the devoted and responsible parent, well and good. If it is not, then it is the duty of the court, after giving due weight to the view of the devoted and responsible parent, to give effect to its own judgement. That is what it is there for. *Its judgement may of course be wrong. So may that of the parent.* But once the jurisdiction of the court is invoked its clear duty is to reach

obviously contrary to any view generally accepted by our society. Still less are their views contrary to those generally accepted in the remote community from which they have come to this country.’ (iv, 28)

<sup>13</sup> Gillon, *op. cit.* note 11.

<sup>14</sup> In this regard Ward mentions in: *Re K.D. (A Minor) (Ward: Termination of Access)*, 1988. 1 A.C. 806, 824–5.

and give the best judgement that it can. (IV 'The Family Law', 9.1, italics mine)<sup>15</sup>

Of course Ward is not seriously in doubt about his judgement, despite the diplomatic concession of possible fallibility above. At one point, he even suggests that the parents are blind to their duty to Jodie.<sup>16</sup> This is one place where Ward declares a common ethical presupposition: that a given course of action must be right or wrong, and that my belief that it is right or wrong must be correct or incorrect. The presupposition is of a unitary realm of moral facts, to which our beliefs may or may not correspond. This approach was clear in our dentist's example above, where a given treatment would either be the best or it would not, and if the professional community is not yet sure, then at least it knows what to look for in the course of future experimentation: the speed, success, reliability etc. of recovery from the toothache, based on an accepted norm of healthy teeth. However, in the case of the conjoined twins, it is not clear what it means to say

<sup>15</sup> This acknowledgement of the court's fallibility contrasts with an earlier statement: 'They are always anxious decisions to make but they are invariably eventually made with the conviction that there is only one right answer and that the court has given it.' (I, Introduction)

<sup>16</sup> 'In their natural repugnance at the idea of killing Mary they fail to recognise their conflicting duty to save Jodie and they seem to exculpate themselves from, or at least fail fully to face up to the consequence of the failure to separate the twins, namely death for Jodie. In my judgement, parents who are placed on the horns of such a terrible dilemma simply have to choose the lesser of their inevitable loss. If a family at the gates of a concentration camp were told they might free one of their children but if no choice were made both would die, compassionate parents with equal love for their twins would elect to save the stronger and see the weak one destined for death pass through the gates.' (IV, 9.3, iv)

The last analogy is a common one in the literature on moral dilemmas. The source is often William Styron's *Sophie's Choice*, where the title character has to make just such a choice. Elsewhere, we find more of the same, this time dressed in the gung-ho terms of the 'tough job, but somebody's gotta do it':

'I seem to be the lone voice raising the unpalatable possibility that the doctors and even – though given the horror of their predicament it is anathema to contemplate it – the parents might kill Jodie if they fail to save her life by carrying out the operation to separate her from Mary. Although I recoil at the very notion that these good people could ever be guilty of murder, I am bound to ask why the law will not hold that the doctors and the parents have come under a duty to Jodie. If the operation is in her interests the parents must consent for their duty is to act consistent with her best interests. [...] To omit to act when under a duty to do so may be a culpable omission. Death to Jodie is virtually certain to follow (barring some unforeseen intervention). Why is this not killing Jodie?' (IV, 'Family Law', 6)

that Ward's judgement is right or wrong, since it is not clear what any of us (the legal community, the twins' parents, any rationally-competent adult) would have to look for to corroborate the truth or falsity of the judgement, and therefore the rightness or wrongness of the surgical separation. In an important way, therefore, the question of moral truth will sometimes and somehow depend on the different perspectives of the situation and on the contingent interaction between the owners of such perspectives. My judgement about what you do will partly depend (however little I may be aware of it at the time or later) on something about who I am.

'Ah', says the mainstream ethical theorist, 'we have heard all this before, this is relativism, the view that X is not right but merely right-for-Jones, while Y is right-for Smith.' But it's not relativism, since the relativistic judgement that X is right-for-Jones adopts the *same* point of view – what Thomas Nagel has called the View from Nowhere – as that of the dentist and the mainstream moral realists above, a view from which it can be determined what ought to be done in a given situation. But there is no view from nowhere in ethics; there are only particular perspectives on a single situation, such that my perspective of the situation will also determine what I see the situation as calling for. In a sense then, it is true that from the View from Nowhere I am suggesting that it does not matter whether the operation is to be performed or not; *but it matters to the parents.*

It is also important to distinguish between the personal (as I am developing it) and the *merely* personal, such as my preference for chocolate over vanilla ice cream, since they are often conflated in opposition to the robust objectivity claimed by realist moral theory. However, within my perspective I can accept that my ice cream preference is contingent; I can imagine myself with different preferences. But, at the moment of holding them, I cannot imagine myself *seriously* entertaining different moral principles, since I am committed to them in a way I am not to my preferences for ice cream. *Pace* Ward, I cannot *seriously* say, 'I think capital punishment is evil but I could be wrong.' The perspective-based objectivity of the principles I discover is a different kind of objectivity than the shared objectivity of dental principles, but it is objective in the sense that it is independent from and partly discoverable by me. Ward, in his perspective, sees a potentially healthy child being drained of life-blood by a parasite and it is only *then*, contemporaneously but logically subsequently, that he can see what ought to be done. The parents see two *children*, and the children are *theirs*, whom God in his

inscrutable mystery has condemned to die. If Smith, say, agrees with Ward, and the parents disagree, then Smith and the parents are each making their own moral judgements: perhaps Smith has been persuaded by Ward's reasoning, perhaps she shares many of his antecedent principles and priorities. From the View from Nowhere, however, these agreements and disagreements are accidental and none of them can claim privileged access to an independent realm of unitary moral truth. When and if Ward, or anybody else, comes to change his mind perhaps he will eventually come to see that he *had been* wrong in the twins' case – when and if Ward comes to see his past self as ignorant, or deluded, or self-deluded, or with the wrong priorities, this too will be another judgement and not greater privileged access.

Most importantly of all, however, Smith and Ward are not the parents of these children, and so they are not *implicated* in the dilemma in anything like the same way. The parents have to live with the decision they make in a way that Ward, and the gallery of moral philosophers looking on, do not. It is a decision the parents will have to fit into their understanding of the world, and they will have to make use of reasons that make antecedent sense to them within their unique perspective: a perspective partly constituted by their biographical self-understanding, their ideals, their identity-conferring memberships, their relationships etc., as well as by their emotional involvement with the case.<sup>17</sup> The court may *offer* them solid consequentialist (or indirect act-consequentialist) arguments about the benefits to the surviving twin, but these arguments need find no purchase in the parents' reasoning; they may be impotent or idle, *even if true* in the moral

<sup>17</sup> Philosophy and law are often seen as better able to come up with the right answer precisely because they are unclouded by emotional involvement, in the same way that a witness might be rejected if too tired or too drunk. But emotion is the form of one's perception of many instances of right and wrong. The parents' perception of Mary as a child and not a parasite reflects this emotional involvement, which, by altering the description of the problematic situation, becomes directly morally relevant.

Notice that I am *not* saying that the parents' views should necessarily have priority over Ward's, either in this case or in general. Nor am I sure of the balance between the personal and the impersonal (especially in questions of justice). But I am saying that because there could be more than one perspective involved there is more than one problem. So it is simply false for Ward to claim:

'I said when this appeal opened that we wished at the very beginning to emphasise to the parents how we sympathise with their predicament, with the agony of their decision - *for now it has become ours* - and how we admire the fortitude and dignity they have displayed throughout these difficult days. Whether or not we agree with their view does not diminish the respect in which we hold them.' (II, 13, italics added)

theorist's sense. The fallacy is to think there is a single concept of rationality that entails that a reason for you to do something will *necessarily* be a reason for me. They *may* well accept the reasons of the court; but they do not need to, for the court is not implicated in the decision and its aftermath.<sup>18</sup>

There are different views of the problem, there are different ways of describing it (different moral and non-moral characteristics will be morally salient in different ways), and there are different ways of deploying reasons in favour of the course of action proposed. Mainstream moral theorists and lawyers are most interested in the *content* of a reason, believing that if a reason is a good one (by their well-defined criteria), then it ought to and indeed will carry force with any rational individual, unless it is overridden by another reason of greater moral force. They do not recognise that the putatively same reason might in fact become a different reason for different people by virtue of acquiring a different *meaning* (or at least a different nuance) and a different *weight* against the context provided by their biographical presence in the situation and by their unique perspective. Here is Rush Rhees, a moral philosopher influenced by Wittgenstein:

What I would regard as a reason might not be a reason for you – might not function as a reason in your decisions. This is not trivial and you cannot brush it off by murmuring ‘relativism’. It

<sup>18</sup> One of the *Bioethics* reviewers said the following in response to the draft of this paper:

‘The author seems to think that objectivity in ethics must be a matter of reasoning, so that if we can’t provide reasons which convince those who disagree with us, then there can be no truth of the matter. [... But] some moral objectivists see moral truth as graspable by something more like perception than reasoning.’

I hope I have demonstrated that perception and reasoning are inter-twined within the individual's perspective on the situation. What may count as a reason, what its relative salience and content may be, and what my perception of the situation may be (under what description(s) I experience it prior to deliberation), may vary from person to person. Again, in many situations it can be reliably expected that I will agree with you about the description *and* the reasons (and their relative content and salience); but there are some limiting situations – moral dilemmas – where this cannot be expected. And yet it *still* makes sense to speak of objectivity *within* the perspective, i.e. through deliberation or perception I can discover a moral truth. Others do *not necessarily* share this objectivity, however, although in practice my fellow community members will agree about many things, thus generating an inter-subjective objectivity. Moral objectivity is thus fundamentally different from objectivity in matters of physical fact or objectivity of mathematics.

is bound up with the whole point that the decision has to come from the person involved. Even the *problem* is hardly ever the same from one person to another. And what makes it the problem it is for me are the reasons which weigh with me in one direction and in another. If in the face of these reasons I conclude that I ought to give up my job, another man considering the same reasons might conclude differently. Perhaps I shall think what he has decided is wrong. But I might *not* think this. It was his decision and – in an important sense – it was his problem.<sup>19</sup>

How are we to understand these mysterious reasons with their shifting significance? Consider the two attitudes evinced in the case of the Twins. One reason (among many) for separating the twins is that at least Jodie will survive. One reason for not separating them (among many) is that it would involve the sacrifice of an innocent human being (and who could be more innocent than a newborn infant?). How are we to compare these reasons, let alone weigh them to determine which is the greater? In many ethically-charged situations it might be straightforward to the point of having no doubt about what one ought to do and no hesitation about doing it; not so in limiting cases, where we simply cannot tell which is the greater reason, let alone rule on it with legal force. Again, here we may just have to agree to disagree. I don't think that you, or I, or Ward, or the Philosopher, or anyone, can determine with any accuracy (i.e. with any reliable correspondence to an objective realm of values) what the hospital ought to do. *Of course* Jodie should survive if possible, but what ought I to do? *Of course* we cannot sacrifice a newborn baby, but what ought we to do? These are reasons that are perfectly intelligible to all of us *as* reasons, but not necessarily *as decisive* reasons, because people simply do have extremely varied relationships to their children, and to society.

## THE SPIRITUAL IN ETHICS

So far I have been arguing that there may be more to moral reality than the conclusions generated by moral theory, however successful the latter may be in certain cases in grounding action. I hope I have shown that morality and moral philosophy need to be concerned with more than just action-guidance, and that it has to find some room for the personal. However, I do not have

<sup>19</sup> R. Rhees. 1969. *Without Answers*. London. Routledge and Kegan Paul: 95.

the space to develop a more detailed positive account of the role and the nature of the personal. Suffice to reveal the limits to the rationalistic paradigm in the case of the conjoined twins. Similarly, I cannot do much more than adumbrate the occasional limits of the rationalistic paradigm in terms of the need to allow for the spiritual in ethics. At the beginning, I used the metaphor of a theoretical judgement pulling 'up' the personal and pulling 'down' the spiritual, by which I wanted to suggest different directions. Everything I have said about the personal may or may not coincide with a greater sensitivity to the spiritual; in the case of the conjoined twins, the parents' moral views are infused with an appreciation of the spiritual dimension of reality. But this might not have been the case; the parents might have argued in favour of the operation and it might have been the duty of the law to *remind* them of the spiritual.

The legal system is founded on the premise that it *can* and *must* resolve every dispute. Interestingly, the modal verbs are mutually entailing: ought implies can, and can implies ought. Of course the legal system is a necessary part of any developed society; and while it is guided by a fairly intelligible ideal of perfect justice, it is of course necessarily imperfect, and well aware of its imperfections. But in the case of the conjoined twins, either there will be an operation or there will not, and the court considers itself under obligation to pronounce unambiguously on the issue.<sup>20</sup> Perhaps, however, it could also be the court's responsibility to determine those cases where neither the court nor any other human being is competent to decide the matter, those cases where sufficient information is hard to come by or where a clear enough resolution is simply not evident.

In this I am moving away from my discussion of the personal above, and back to my original discussion of the aim of mainstream moral theory. Certainly the courts can make a decision, and in the case of the conjoined twins, they have. Ward might seem confident about his decision at some times. At others, however, he acknowledges the possibility of widespread and radical disagreement:

Everyone seems to have a view of the proper outcome. I am very well aware of the inevitability that our answer will be

<sup>20</sup> 'After anxious thought I conclude that the court cannot abdicate responsibility and simply say it is too difficult to decide. We are here to make tough decisions. In my judgement the only solution is to balance the welfare of each child against the other to find the least detrimental alternative.' (Ward: conclusion)



applauded by some but that as many will be offended by it. Many will vociferously assert their own moral, ethical or religious values. (I, Introduction)

Surely, in acknowledging this, Ward is also acknowledging the lack of authority that his eventual judgement will be able to claim. *But why could it not be a possibility to 'abdicate responsibility' from a decision in certain cases?* Basically, I want to suggest that the twins' case does not even lean toward a clear decision to most people on *either* intuitive *or* rational grounds. In other words, the intuitions pull both ways *incommensurably*. I claim that the sets of reasons that can be adduced one way or the other cannot settle the issue without the sort of baseless ad hoc assertions of which Ward LJ is guilty.

This claim will of course be immediately rejected by many moral philosophers and lawyers: we *know* our intuitions clash, that our access to information is limited and that our supporting reasons do not seem to decide the matter; surely it is our duty to do the best we can. But again, this is a pragmatic consideration,<sup>21</sup> and as such I acknowledge our need for it. Any demands for Cartesian certainty would make a society unliveable. But this pragmatic need all too quickly dissolves into the Enlightenment hubris that humanity can, at least in theory, solve *every* problem that comes its way: that there is no *room* for God anymore, and that humanity has become responsible for doing and not doing what is in its increasing power. The only reference to spiritual concerns are as some sort of dubious placeholder to corroborate talk of rights, a placeholder that cannot please either the truly religious or the new high priests of secular philosophy.

Unlike the disagreement between the two dentists about the best course of treatment of my toothache, it is hard to imagine any empirical evidence coming to light in the conjoined twins' case that could settle the issue to the satisfaction of all competent decision-makers. All the facts are in, all the professionals involved have been spoken to and their statements made public; and yet Ward concedes that disagreement would still be 'vociferous.'

So, at least in this enormously complicated case, surely it is plausible to suggest that our reasons *and* our intuitions just *run out*, and we just don't know what to do? That all we can do, like Alice in

<sup>21</sup> The general thrust of this paper has been to *point at* distinctions, rather than to argue for a specific dividing line or distinguishing procedure. Here again, there will be problems in distinguishing between the moral and the pragmatic. I do not have space to discuss this in sufficient detail, but suffice to mention the discussions in the philosophy of law on the pragmatic limits to the search for perfect justice.

Wonderland, is sit down and cry? And without the necessary confidence, should we not just refrain from any sort of intervention at all? In other words, letting nature or God or destiny or what have you take its course? Notice again that this is more than agreeing with the parents' choice in this situation; it would also involve overruling the parents if they had supported separation, such that the court would effectively be saying: 'neither we nor anyone else shall allow any positive steps to be taken.' Despite the widespread consequentialist prejudice that we are equally responsible for the harm we fail to prevent as for the harm we cause, there *is* a moral difference between deciding not to do anything and refraining from any decision on the grounds of incompetence.

Clearly, the possibility of such abstention is already there in the hospital's discretion as to whether to submit the matter to court in the first place.<sup>22</sup> In other cases, of course, a hospital may recommend to parents that a possible intervention is not worth the risk, or the expense. Or they may say that they do not know what else they can do. Or they may say that not one of their surgeons is willing to perform the operation, and that the parents therefore ought to try another hospital (and so in a sense the case does not end with Ward's judgement, since each surgeon approached by the Manchester hospital will have to go through the same decision-making process all over again, and here too there will be room for first-personal experience at odds with the legal approval). The curious thing about discretion, however, is that it makes the whole business a matter of luck – what this particular hospital will think, and whether they will submit the

<sup>22</sup> 'Just as the parents hold firm views worthy of respect, so every instinct of the medical team has been to save life where it can be saved. Despite such a professional judgement it would, nevertheless, have been a perfectly acceptable response for the hospital to bow to the weight of the parental wish however fundamentally the medical team disagreed with it. Other medical teams may well have accepted the parents' decision. Had St. Mary's done so, there could not have been the slightest criticism of them for letting nature take its course in accordance with the parents' wishes. Nor should there be any criticism of the hospital for not bowing to the parents' choice. The hospital have care of the children and whilst I would not go so far as to endorse a faint suggestion made in the course of the hearing that in fulfilment of that duty of care, the hospital were under a further duty to refer this impasse to the court, there can be no doubt whatever that the hospital is entitled in its discretion to seek the court's ruling.' (II, 14)

The final sentence confuses things even further. Ward thinks that the hospital was *entitled* and *justified* in submitting the matter to court, but not *obliged*. I find it hard to imagine how he would corroborate such a nuanced understanding of the deontic logic behind this attitude.

matter to court – whereas proper moral questions and decisions are normally thought of as being immune to luck.<sup>23</sup>

However, this is not quite what I have in mind. In fully acknowledging the role of the spiritual, I am suggesting that the hospital could, if necessary, reject the parents' demands for medical intervention to take place (i.e. the reverse of the twins' case) on the grounds that the case is too morally complicated. If either the parents or the hospital then takes the matter to court, the latter could rule on the same grounds. The modern illusion is that a lengthy legal or philosophical training can better equip one to answer these sorts of questions by allowing an easier mustering of supporting reasons to counteract the alternatives that are all too often perceived as superstitious or whimsical. As if ethical experts could be trained in the same way as legal or medical experts, and we could turn to them when in a muddle. As medical technology progresses, so humanity seems to have more and more resources and with it, apparently stronger reasons for keeping individuals alive longer, whatever the cost, rather than seriously discussing how a death might be somehow in the order of things.

I conclude by citing Paul Vallely from his article on the twins in the *Independent*:

Such are the new verities behind which we hide from the eternal realities about life and death – realities with which our secular culture no longer equips us to deal. Chief among these untruths is the glib banality that Mary would soon have died anyway. It is something that in the greater scheme of things could be said about any of us. How long do we have left? Is it worthwhile?<sup>24</sup>

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<sup>23</sup> This question has spawned a separate discussion under the topic of 'moral luck', launched in two articles with this title, one by Bernard Williams (reprinted in his anthology: Bernard Williams. 1981. *Moral Luck*. Cambridge. Cambridge University Press.), and another by Thomas Nagel (reprinted in: T. Nagel. 1979. *Mortal Questions*. Cambridge. Cambridge University Press).

<sup>24</sup> Vallely, *op. cit.* note 9, p. 7.

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