Essay summary of *Uncertain Bioethics: Moral Risk and Human Dignity*

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Rebecca Brown (2019), begins a recent article of hers by explaining the Overton window of political possibilities. Joseph Overton proposed the idea that think tanks should be designed to question the received opinion in both academia and the public regarding certain public policy issues. Think tanks could shift the window of possibilities, making the unthinkable thinkable. Brown’s point is that philosophers should take a page out of Overton’s strategy. Philosophers are particularly situated to diagnose “unjustified assertions” and point out “circularities.” (Brown, 2019).

That there are received opinions in contemporary bioethics on issues such as abortion, euthanasia, and human embryo destructive research, is somewhat clear; arguments that conclude non-permissive judgments on these issues are underrepresented.¹ Furthermore,

¹ To put numbers behind this assessment, I reviewed articles for arguably the no. 1 ranked journal in practical ethics, *Philosophy and Public Affairs* (PAPA). I searched for articles with the term “abortion” in the title (I included
attitude or belief inconsistent views are subjected to greater scrutiny (Lord, Lepper, and Ross, 1979) particularly on issues of practical importance. Again, Brown observes correctly that unorthodox “positions on contentious [practical/ethical] topics attract far more scrutiny than abstract philosophical contributions to niche subjects. This means that, in effect, the former are required to be more rigorous than the latter, and to foresee and head off more potential misappropriations, misinterpretations and misunderstandings…(Brown, 2019).

This is the context in which I’ve written my book; a context in which certain established orthodoxies on practical issues are held with a high degree of confidence. My book aims to erode this confidence. In order to have my interlocutor share my skepticism about judgments of permissible killing, however, there is need to clarify first how our moral cognition works and pair those lessons with a plausible position on both peer disagreement and the epistemic effects of moral risk.

A very important point to understand is that my project argues for a skepticism on our judgments of permissible killing or harming; it is not to argue that pro-choice views, for example, are false. One should think of my project as motivating a dialectically contingent skepticism. By this I mean that there are skeptical effects on our judgments that stem not from grand skeptical hypotheses like an evil demon, but from sources specific to a dialectical exchange on a specific issue. The three sources of skepticism I spend the most time arguing that apply are: (i) the ease with which our moral cognition prevaricates and we would not know otherwise, (ii) the skeptical effects of peer disagreement, and (iii) the moral risk in being wrong about the judgment in question.2 For each issue, abortion euthanasia etc., I argue that such skeptical sources are present. I do not argue that certain positions are false; so, for example, I argue that certain arguments in favor of abortion rights are weak, or invalid. But charitably interpreted, I do so to motivate that pro-life philosophers are peer disputants. Again, understood as such, my dialectical bar is comparatively lower than other projects. If such skeptical sources are present in the setting of an undischarged moral risk in being wrong, one should not act on judgments of permissible killing or harming. This conclusion follows, I argue, without having to argue that the pro-choice position, for example, is false.

The book begins with a discussion of how moral cognition typically works. Does it work in such a way that would justify skepticism? Jonathan Haidt has two phrases that put the point succinctly. Morality binds and blinds, and intuitions come first and reasoning second. Explaining the latter phrase, he adds that in many cases we reason like lawyers trying to defend the client (our intuitions) instead of judges diligently seeking the truth of the matter. Concerning the former phrase he explains that moral commitments, especially ones that are widely coherent, become impervious to critique. To illustrate, at the end of Chapter 2 I exploit an example from Michael Depaul (1993) of a young man named Jay who by applying the

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1979) (Becker’s “Human Being” article) between 1970-2010, totaling 20 articles. The results are as follows: 2 were defenses of a pro-life position of some strength (Hare and Hursthouse). 2 were replies to pro-choice defenses (Finnis and Brody). 2 evaded categorization on moral grounds (Quinn and Wertheimer), but Wertheimer clearly endorsed legal permissibility. The remaining 14 defended in some way and to some extent, a pro-choice view (either as replies to Hare, et. al. or as stand-alone pieces).

2 I highlight additional sources of skepticism in my chapter addressing patients with suppressed consciousness. Additional sources might be our biases about someone else’s quality of life who is suffering cognitive deficits and the empirical uncertainty about how cognitively capable such patients really are.
method of reflective equilibrium constructs a widely coherent but decidedly wrong romantic view of warfare. The problem is not that Jay has a logically coherent view, the problem is with Jay.

Suppose Jay meets someone with whom he should think is equally gifted intellectually, equally informed about Just war theory, and equally committed to finding the truth of the matter, and yet this person comes to a different judgment on the issue. Jay should moderate the confidence he has in his view – the other disputant should as well. Now suppose that Jay’s views, however, are the ones that if acted upon incur serious moral risk, whereas his disputant’s views are less risky in being wrong. A moral risk in being wrong can raise the bar of justification required to justify acting on that judgment. Risk can, in a sense, render one’s justification as under-determining, and one should moderate one’s confidence in those views. I argue that the typical justification for permissive judgments (on the issues I discuss) is under-determined, i.e., the strength of justification falls below a threshold which renders acting on those judgments morally unjustifiable.

We can appreciate better why this conclusion follows when viewed from the agent’s own point of view. If I find that someone I intellectually respect comes to a different opinion than me on an issue for which there is a serious cost in being wrong for acting on my position, conversely not so much for my disputant’s, I would be more cautious in my belief. A general of an army had better be certain that the invasion he is about to undertake counts as a just war. Encountering colleagues who think differently should moderate his confidence in such views below the threshold of which is required to morally justify acting on that belief.

But this conclusion also follows from an objective standpoint. Suppose you see one clock that indicates that it is 7 o’clock. Just minutes later you encounter a different clock and it reads 7:30. Upon encountering the second clock, you should hold with diffidence precisely what time it is. Knowing just that smart person A believes p and smart person B believes not-p should give one diffidence in believing p (or not p).

But why think that there is a cost in being wrong about a judgment that abortion, euthanasia, or human embryo destructive research, etc. is permissible? To motivate that there is a cost, the book departs from purely epistemic issues and considers contemporary views on personhood and dignity.

I argue roughly as follows. One way to justify that, for example, abortion is permissible is to argue that what is killed is not a person. Therefore, no one is harmed. Such a view of what counts as a person would hold that you and I come into existence sometime after conception. There are any number of views that have this implication, they emphasize different capacities, such as consciousness, sentience, or self-consciousness, but all require having exercisable psychological capacities. Importantly, the motivation for such views is typically by way of thought experiments, chief of which are brain transplant and dicephalus twin cases. I argue that a view of human nature (a largely Aristotelian one) understands that you and I come into existence sometime very close to conception and it can accommodate the intuitions we have in relation to the brain transplant and dicephalus twin cases. Since there is an alternative view of when you and I come into being, and this view is compatible with the principle motivations for the psychological views, the justification for these views is underdetermined.
Notice that my dialectical horizon is comparatively low. I do not argue that the psychological view is false. I argue in Chapter 4 that psychological views are underdetermined. The moral implications of that premise await elucidation in the chapters on abortion and human embryo destructive research etc.

Suppose that you and I do exist from conception onwards. Are we valuable at all points at which we exist? Do we possess intrinsic dignity? Do we possess a value that would render it impermissible for one to intentionally eliminate us? In Chapter 5 I argue that you and I do have intrinsic dignity and that this notion of intrinsic dignity is not a competitor to alternative accounts of our value, such as the value of autonomy, or interests. Taking into account the orb of human value justifies thinking that my understanding of human dignity is much more ecumenical than critics of that notion have typically understood it to be. Chapters 4 and 5 argue that there is a moral risk in being wrong that it is permissible to kill one of us.

The general trend in the chapters that follow is to take a snapshot or picture of the dialectical standoff on the issues in question. I consider the arguments for and against permissible killing or harming in each case as it may be. In reading these arguments over again, one might criticize them for being tedious and toilsome. This is intended as I have in mind Brown’s observations noted above, namely, “…the former [unorthodox positions] are required to be more rigorous than the latter…” This is also why I privilege reviewing criticisms of permissible judgments.

What follows here is a more expansive explanation for why I focus on moral risk is project.

I. The Moral Relevance of Risk

Suppose a medical researcher wishes to test whether an experimental therapy works and the test requires inoculating himself with the very disease the putative therapy is designed to address (an actual case of this sort might be Barry Marshal who gave himself ulcers to see if an antibiotic would work to cure it.) Now imagine that the disease with which one must inoculate himself is lethal and the effectiveness of the therapy is uncertain. Intuitively, the researcher would be a really bad person if he were to outsource the research risks to someone else. True, fully informed and consenting adults may take on such risks. But even here, the permissibility of the researcher exposing those subjects to uncertain harms is questionable. And this intuition gets exponentially stronger if one takes away the condition of fully informed consent, such as risky research on children or infants. The point here is to illustrate the intuition that exposing someone else to uncertain risks is more morally questionable than exposing ourselves to uncertain risks. The difference maker is not just the presence of consent; it is also the very act of distributing risks to others. Suppose the United States military procured consent from whole communities to perform their radiation experiments – suppose, per improbable but not impossible, that each individual member of such communities scored very high on risk-taking. It would still be wrong for the researchers to expose such communities to dangerous levels of radiation just to see what would happen. More mundane and everyday examples are at hand. I am out hiking with my daughter and we happen upon what looks like a deep creek. I want to dive in for a swim, but I am uncertain of its depth. To ask my daughter to jump in first is risible.
For many practical issues (the possible exception being environmental issues), the interlocutors who argue that $P$ (an act of potential harming or killing) is permissible rarely bear the risks in being wrong about $P$. This distance works in favor of taking risks in being wrong on these issues more seriously.

II. The Epistemic Relevance of Risk

Hereafter I will understand risk as the risk in being wrong that a course of action is permissible or impermissible. For now, I consider the risk in being wrong as symmetrical between permissibility and impermissibility.

It is important to understand that a risk in being wrong about $P$ is not in itself evidence for or against $P$. Of course, probabilistic judgments are admissible evidence in adjudicating the permissibility of an action. For example, the probability of expected harms and benefits for a medical research protocol are constitutive evidence for whether that protocol is permissible. To appreciate the contrast I’m suggesting, consider arguments for God’s existence. Typical arguments for God’s existence might be some form of the cosmological argument, or ontological argument etc. Pascal’s Wager, however, is not itself an argument for or against God’s existence. Pascal’s Wager is an argument for how one should handle the evidence one has.

The idea of “handling evidence” is difficult to get a handle on, but the intuitive idea can be appreciated by considering whether a person’s belief in God would count as being justified if it were based purely on a Pascal type Wager. Plausibly, the answer is no. And if it were based on the traditional arguments for God’s existence suitably understood and defended against detractors, that belief might be justified. The contrast here suggests that arguments based on risk do not add separate pieces of evidence to my evidence set for $P$. The epistemic relevance of risk is found elsewhere.

With these reflections in mind, there are the following positions on the epistemic relevance of risk highlighted in chapter 3.

1. Risk might be considered relevant in adjudicating who in a dialectical exchange bears the burden of proof. The basic idea is that if risks are not symmetrical, the proponent of the riskier position - the position that if one is wrong involves greater harms - bears the initial burden of proof. Suppose the position bearing the greater risk of harm in being wrong is a judgment of permissibility. The proponent of impermissibility enjoys a presumption in favor of her position and does not need to argue for it. Defendants in the court of law, for example, enjoy a presumption in favor of not guilty; the plaintiffs must prove guilt. Call this the burden of proof role.

2. A risk in being wrong about $P$ might make $P$ more sensitive to defeaters. Quite independent of whether or not the proponent of $P$ bears the burden of proof, one could say that a higher risk in being wrong about $P$ renders $P$ more easily undermined by counter considerations. Suppose you are a radiologist looking at a chest graph and you see localized tumescence in the lower lung lobe. You diagnose the patient with pneumonia. You have reviewed chest graphs like this before and your past record in diagnosis has been accurate. To your surprise you discover that your colleague, also an expert radiologist, reviewed the same chest graph and diagnosed the patient with pulmonary fibrosis. The latter interpreted the
tumescence as interstitial tissue. Suppose that the drugs involved in treating fibrosis versus pneumonia are significantly different and involve widely divergent risk profiles. In this case, the risks are symmetrical and yet the evidence for P (or not P) is epistemically destabilized simply by the say-so of another epistemic peer. Call this the sensitive to defeater role - or simply the defeater role.

3. A risk in being wrong about P renders one’s action on the basis of P immoral (or insufficiently justified). On this understanding, the relevance of risk has less to do with the epistemic standing of my belief that P, and more to do with my moral responsibility to consider the potential harms to others in being wrong about P. But this understanding can be split into two separate positions. On the one hand, cases where we have the intuition that it would be irresponsible to act on P are used to justify the claim that risks in being wrong about P can render one’s action based on P as wrong (Reed, 2012) whether the agent knows P or not. On the other hand, cases where we have the intuition that it would be wrong/unjustified to act on the basis of P justifies thinking that the agent does not know P to begin with (Fantl and McGrath, 2009). The latter position holds that knowledge is subject to pragmatic encroachment, the former holds that knowledge is immune to pragmatic considerations, but our moral responsibility is not. For both positions, a risk in being wrong about P can render acting on P morally unjustified. Call this the bar of justification role - or simply the justification role.

4. Risk can also be understood objectively as with certain approaches to decisions made under uncertainty. On such approaches, risk includes two concepts: probability and harm, and harms differ in terms of their magnitude, for example a headache versus a tumor.

There are two approaches to adjudicating the respective effects of probability and harm. The first approach looks strictly at the magnitude of harms involved in acting on P. If being wrong about P involves a serious and irrevocable harm, e.g., death, and being wrong about not P involves a less serious or revocable harm, one should act as if not P. On this first approach the probability of the harms does not play a significant factor. On the second approach both probability and magnitude of harm are considered and one chooses the overall favorable option. On either approach, risk is understood as a feature in adjudicating the moral permissibility of one’s action. This feature is ensconced in a broader utilitarian moral theory that specifies the maximization of preference satisfaction and minimization of harm as paramount. Knowing what to do requires, simply, risk management.

5. Finally some might think that risk exercises no epistemic or moral effects. I do not know of anyone who takes such a position but David Boonin (2002, pp. 314 ff.) comes close. One approach to assessing risk vis-à-vis justified practical action is that one should avoid significant harms at all cost. The slightest uncertainty, an error of which would have catastrophic results – think of nuclear testing when it first started – renders acting in spite of that uncertainty as immoral. Boonin supposes that such a principle delivers counterintuitive results if one is even slightly uncertain that all plants and animals do not have a right to life. For if they did it would be a massive harm at the widest distribution to engage in the typical practices that we do, namely, farming, mowing one’s long, trimming one’s trees, calling the pest control agency etc. Clearly, significant harm avoidance in the setting of uncertainty is too strong.

But Boonin appears to think that the “overall favorable” approach discussed in 4 is also too strong. Though Boonin avers his agreement with this principle (2002, 313), he goes on to
offer counterexamples. Suppose you are quite certain that blades of grass do not have a right to life. But if you act on that belief you end up cutting numerous blades of grass such that if they did each have a right to life you would be committing mass murder. On the overall approach, the seriousness of the harms offsets the low epistemic probability of them having a right to life; and delivers the result that you should not mow your lawn. “There is no good reason... to think that an expected utility calculation would not produce the same unacceptable results as do the other versions of the [risk] argument” (Boonin, 2002, 315).

Boonin’s procedure is simple: take the uncertainty principle and apply it to beliefs whose propositional content will yield the counterintuitive results Boonin desires. All he needs his readers to grant is that one cannot be entirely certain about the belief in question - which does not seem impossible as the objective probability that a blade of grass has a right to life is still greater than zero. Boonin is correct to critique utility maximizing principles in so far as they are formulated without any reference to the actual justification for one’s beliefs. When applied to entirely objective probabilities and logically possible harms, counterintuitive results are easy to generate. But the first three positions regarding the epistemic relevance of risk avoid such counterintuitive results. For all three positions, whether risk exerts epistemic effects and to what extent is a function of specific dialectical situations.

III. The Epistemic Relevance of Circularity

Suppose I do not think there is a risk in being wrong about P. Suppose, that is, that I have a widely coherent network of beliefs in which P is justified. Why should I be remotely epistemically moved when I entertain a risk in being wrong? The problem is this: in order to have a defeater for a belief, one has to believe that defeater. If one has coherent justification for P and P has a risk in being wrong, there is no reason yet to think that this risk functions as a defeater. Boonin’s riposte to utility maximizing principles illustrates the point nicely. Confronted by an extreme vitalist, I would shrug my shoulders and continue to mow my lawn. What are the reasons for thinking that a person harboring pro-choice beliefs cannot shrug her shoulders and continue to believe and/or act on those judgments when confronted by pro-life arguments?

There are two reasons neither of which are sufficient on their own. The first is the problem of circularity - which also justifies taking seriously disagreement with an epistemic peer - and the local dialectical exchange on the issue in question. By the phrase “local dialectical exchange,” I mean the specific claims and arguments in support of the respective views. Again, Boonin is right, one cannot simply calculate the objective probabilities of logically possible harms (however magnanimous they might be) for acting on P and conclude that one should not act on it. One must descend to the dialectical details pertaining to P.

So, what happens when we do both things? Recall the radiology case adumbrated above. Clearly, the right response is to hold your judgment that the patient has pneumonia with suspicion. But that assumes that your colleague is an epistemic peer. Why not infer from what one’s interlocutor believes, to the conclusion that one’s interlocutor is not a peer? I argue in chapter 3 that this is a viciously circular reply. Furthermore, actually arguing for why an interlocutor is not a peer requires addressing the dialectical details. The arguments that I give in
chapters 4 and 5 aim to justify that those who hold to a largely pro-life position, their
metaphysical and moral commitments enjoy good argumentative standing. It is not necessary
for my argument that my interlocutor agree with my conclusions in chapters 4 and 5. It is
enough that those chapters are argumentatively strong enough to justify that those who hold
such positions can count as epistemic peers (hereafter I note peer, with epistemic understood).
And once that premise is justified, my argument from risk in being wrong paired with a peer
who disagrees with one generates a reason for caution just as it does in the radiology case.

When we turn to the actual arguments typically given in favor of P (i.e., permissible
killing), the epistemic standing of those who hold P is destabilized. It is subject to epistemic
diffidence and per my understanding of epistemic diffidence, judgments that suffer epistemic
diffidence should not be acted upon.

It is also certainly important to point out that the issue of circularity applies also to the
very formation of one’s moral judgments on an issue. The point of chapter 2 is to show that
even though our moral judgments may come with a particular phenomenology, a feeling of
being right, this is still tenuous epistemic comfort. Just as the widgets might look red even if
they are not (Pollock and Cruz, 1999), so too our moral beliefs make feel or seem right even if
they are not. There are any number of explanations for why we have the moral judgments we
do and all of them are compatible with those moral judgments having a “certain”
phenomenology - a feel of being right even if they really are false. More specifically, what I am
suggesting is that the proponent of P might be in the same epistemic situation that Jay is.
The problem with Jay, as noted at the end of chapter 2, was that Jay formed his beliefs from a
particular orientation. This orientation included several desires and epistemic motivations such
that if you changed those desires and motivations, one would alter the direction of one’s
inquiry and he would arguably form different beliefs. Since one cannot look back upon that by
which one looks, the presence of those motivations and desires are opaque to one while she is
engaged in inquiry. One has to self-reflect from a standpoint of epistemic humility about
oneself, and epistemic justice in relation to peers who disagree. The argument in chapter 2 does
not require judging that such motivations and desires are non-alethic. It only requires that one
grant that the typical way in which we form our moral judgments is a function of an overall
orientation such that if one changes the orientation one would change one’s judgments. I ask in
that chapter, implicitly, how certain we are that our desires and motivations are in fact alethic.
How can we be certain without assuming the very beliefs that those desires and motivations
bequeathed? It seems that we would be stuck in a circle.

So, what is the argument for diffidence? In the setting of peers who disagree about P for
which there is a high risk in being wrong; and the arguments that justify P suffer plausible
rebutting defeaters, leaves proponents of P in a state of epistemic diffidence.

IV. Final technical points

In total, there are three sources of diffidence. The first is (i) cognitive processing errors
canvassed in chapter 2, (ii) the epistemic effects of disagreement, and (iii) the moral risk in
getting one’s judgments of permissible killing/harming wrong. In suggesting that these are
sources I am not suggesting a general principle that links (i) – (iii) to epistemic diffidence. I am
suggesting instead that when one considers P (where P is a judgment that a certain action of killing or putative harming is permissible) with humility and justice, one should be diffident about it. The focus is on the individual claims in their current dialectical context – or one might say dialectical standoff.

To see this point in higher resolution consider the judgment ‘abortion is permissible’. When one considers this judgment given its current justification, the epistemically just and humble inquirer would consider that claim as subject to diffidence given the additional features of (i) – (iii). So, premise 1 of my argument is not defended by “applying” a principle of diffidence to specific claims. Rather it is enough that an epistemically just and humble agent would, for an individual claim C given its current dialectical context plus (i) – (iii), view C with diffidence.

Part of the reason why premise 1 of my argument should be understood as such is due to my methodological commitment to particularism. The 2nd reason is that the project of formulating principles and then applying them to cases has been an abject failure. Exhibit A is the Gettier fiasco of the past 40 years in epistemology. Knowledge, and conversely diffidence claims, should be considered in their dialectical context, and for moral judgments involving risk the relevance of cognitive processing error and peer disagreement become relevant. The 3rd reason is that one need not know any such principle that links (i)-(iii) to epistemic diffidence to have reasons for being epistemically diffident about a particular claim P. Consider an example in terms of knowledge. The classical foundationalist will tell us that a basic belief is justified only if it is self-evident, incorrigible, or evident to the senses. But no classical foundationalist will say that in order to know P, one must know that very principle of justification.