

BEYOND THE PRINCIPLES OF BIOETHICS: FACING THE CONSEQUENCES OF FUNDAMENTAL MORAL DISAGREEMENT

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ABSTRACT

Given intractable secular moral pluralism, the force and significance of the four principles (autonomy, beneficence, non-maleficence, and justice) of Tom Beauchamp and James Childress must be critically re-considered. This essay examines the history of the articulation of these four principles of bioethics, showing why initially there was an illusion of a common morality that led many to hold that the principles could give guidance across cultures. But there is no one sense of the content or the theoretical justification of these principles. In addition, a wide range of secular moral and bioethical choices has been demoralized into lifestyle choices; the force of the secular moral point of view has also been deflated, thus compounding moral pluralism. It is the political generation of the principles that provides a common morality in the sense of an established morality. The principles are best understood as embedded not in a common morality, *sensu stricto*, but in that morality that is established at law and public policy in a particular polity. Although moral pluralism is substantive and intractable at the level of moral content, in a particular polity a particular morality and a particular bioethics can be established, regarding which health care ethics consultants can be experts. Public morality and bioethics are at their roots a political reality.

Keywords: Bioethics. Pluralism. Moral disagreement. Ethical particularism.

RESUMO

Dado o pluralismo moral secular intratável, a força e o significado dos quatro princípios (autonomia, beneficência, não maleficência e justiça) de Tom Beauchamp e James Childress precisam ser reconsiderados criticamente. Esse ensaio examina a história da articulação desses quatro princípios da bioética, mostrando por que inicialmente havia a ilusão de uma moralidade comum que levou muitos a sustentar que os princípios forneceriam um padrão de orientação transcultural. Mas não há apenas um sentido do conteúdo ou da justificação teórica desses princípios. Além disso, uma ampla gama de escolhas morais e bioéticas seculares tem sido desmoralizada em escolhas de estilos de vida: a força do ponto de vista moral secular também tem sido esvaziada, portanto, compondo o pluralismo moral. É a geração política dos princípios que fornece uma moralidade comum no sentido de uma moralidade estabelecida. Os princípios são mais bem entendidos como incorporando não uma moralidade comum *sensu stricto*, mas aquela moralidade que é estabelecida na lei e nas políticas públicas em uma comunidade política particular. Embora o pluralismo moral seja substantivo e intratável ao nível do conteúdo moral, em uma comunidade política particular uma moralidade particular e uma bioética particular podem ser estabelecidas, considerando quais consultores de ética da saúde possam ser especialistas. A moralidade pública e a bioética são, em suas raízes, uma realidade política.

Palavras-chave: Bioética. Pluralismo. Desacordo moral. Particularismo ético.

I. Faith in Reason and the Embrace of the Principles: An Introduction

There has been no more influential book in bioethics than *The Principles of Biomedical Ethics* (Beauchamp & Childress 1979). *The Principles* has enjoyed such a success not just because Beauchamp and Childress in 1979 gave what appeared to many to be an uncontroversial

identification of a common morality and a common bioethics, but also because *The Principles* helped politically to empower a new would-be class of moral experts: health care ethics consultants (Engelhardt 2011). The principles seemed to allow persons with different moral commitments to collaborate in the project of establishing a global clinical ethics as well as an ideology that claimed the moral authority to reshape medical law and health care policy. In particular, the fact that Beauchamp, a utilitarian, and Childress, a deontologist, could together articulate their four principles was taken as a proof of the claim that *The Principles of Biomedical Ethics* provided principles that reflected the existence of a common morality. Given the supposed existence of a common morality, of which moral philosophers/bioethicists in the area of health care claimed to be expert exegetes, bioethicists could then claim the moral authority to have this bioethics established at law and in public policy. The cardinal issue is whether, to what extent, and in what sense these claims are justified.

The four principles endorsed by Beauchamp and Childress had grown out of the success of the National Commission's three principles of respect for persons, beneficence, and justice in guiding the articulation of regulations for research involving human subjects (National Commission 1978, pp. 4-10). The three principles of the *Belmont Report* themselves had developed in part out of principles articulated in a background paper.

- A. One should respect human subjects as free agents out of a duty to such subjects to acknowledge their right to respect as free agents.
- B. One should foster the best interests of individual human subjects.
- C. One should have concern to maximize the benefits accruable to society from research involving human subjects, taking into particular regard interest in values such as (1) the amelioration of the human condition through advances in the biomedical and behavioral sciences and technologies; (2) preservation of human autonomy as a general value; (3) increase in knowledge apart from any consideration of its application to the amelioration of human condition; (4) the personal satisfaction of human subjects derived from their feeling of having contributed to the common good or to the advancement of human knowledge by participation in research (Engelhardt 1978, pp. 8-5, 8-6).

The first two principles were recast under the rubrics of a principle supporting respect for persons and a principle of beneficence (Jonsen 1998, p. 103).¹ The third principle was substantively recast as a principle of justice. By the time the four principles of Beauchamp and Childress were articulated, many policy-makers saw them as a canonical guide to morality and bioethics.

That there would be one bioethics with four principles that could be grounded in a common morality seemed very plausible in the early years of bioethics. This was the case

because the term “bioethics”, albeit coined nearly five decades previously (Jahr 1927), was first re-applied in its current meaning at the Kennedy Institute of Ethics, Georgetown University. Georgetown University is a Roman Catholic university at which natural law and human rights, justifiable through sound rational argument, were on the part of many taken for granted. Such a supposed coincidence of morality and rationality, which had become core to Western Christianity, supported the early formation of bioethics. This was especially the case in that a large proportion of the early founders of bioethics had studied theology, and many had even been Christian ministers. In some instances where they had lost their faith in faith, these early founders of bioethics had largely maintained their faith in philosophical moral rationality. It seemed to many that health care policy could be grounded in a bioethics that could be justified by sound rational argument.

This faith in philosophical moral rationality was only to be expected. The early 13th-century Western synthesis of Christianity with Aristotelian philosophy, along with some stoic commitments to natural law, succeeded in supporting the view that moral philosophy could ground a canonical morality and a canonical bioethics. Through this synthesis, an understanding of moral philosophy had been forged that undergirded the emergence of Western Christianity as a separate denomination.² This faith in moral philosophy also shaped the character of subsequent Western secular moral philosophy. As a result, a preponderance of the founders of bioethics presumed that through careful analysis, and through sound rational argument, philosophers could identify a canonical secular morality and bioethics that could provide a *lingua franca* able to unite and direct the emerging secular societies of the West in a global moral view of the proper use of medicine and the biomedical sciences. They also presumed that this moral *lingua franca* would enjoy a foundation in sound rational argument that could establish the authority of social-democratically-based law and public polity, a political program to which a majority of the early founders was ideologically inclined. The roots of this hope for a rationally justified morality and public policy structure had developed in the Western Christian Middle Ages. The hope continued in the Enlightenment of Immanuel Kant. *The Principles of Biomedical Ethics* was taken to lay out the basic principles of this universal rationality grounded in morality and therefore of a global bioethics.

II. The Ambiguity of the Principles

Initially, few attended to the cardinal, and what one would have thought obvious, ambiguities in each of the four principles. There is no common understanding of the canonical content or meaning of the principles of autonomy, beneficence, non-maleficence, or justice. This should have been clear to all who at the founding of bioethics sought to articulate its guiding framework. However, the full force of a post-modern morality³ and bioethics had not yet been recognized because the recognition of its implications ran against the synthesis of natural law, the Enlightenment, and social-democratic ideological aspirations that framed the bioethics of the time. That is, there was an ideologically-determined ground for remaining blind to the truth of the matter, because the promise of bioethics was initially also grounded in its supposedly offering canonical moral guidance that could philosophically anoint the political aspirations of many of the founders of bioethics.

There was not, and there has never been, *one* secular morality. Nor was there ever *one* canonical vision of secular bioethics. Nor, for instance, has there been one understanding of autonomy. Consider, for example, three among the multitude of understandings of autonomy, each possessing a distinctly different meaning.

1. Autonomy can be understood as the source of authority for collaboration when persons meet who do not agree regarding God's commands, regarding what moral rationality requires, or regarding what their common customs dictate (should they have such common customs). Even in such circumstances, persons can draw authority from the consent of those who decide to collaborate peaceably. Autonomy in the sense of the conveyance of permission for common collaboration is at the root of the authority of contracts, the market, and the minimal, but not of the more-than-minimal state. In this circumstance, no value, no right-making condition, as well as no virtue is imputed to this practice of gaining common authority for peaceable collaboration. It is simply the case that if one enters into this practice, then one shares, together with those who also enter in, an authority that the participants supply through their consent.

2. Autonomy as a form of self-determination can also be valued as a good. Various philosophies and ideologies in various ways have valued persons choosing on their own, rather than submitting to the choices of others. When persons freely submit to the choices of others, they do not violate the principle of autonomy as permission, but they do not give an over-riding

value to self-determination. Thus, when one sells oneself into slavery, as by joining the armed forces, one gives to others the right to compel one's services, in that one cannot quit the obligations assumed through paying damages for the services not rendered.⁴ In so selling oneself, one values other goods more highly than the goods associated with autonomy. Autonomy as self-determination was given cardinal value or ranking during the Enlightenment and especially following the French Revolution. Autonomy as a state to be valued is salient in many contemporary accounts of bioethics.

3. Autonomy as the cardinal focus of Kantian moral obligation requires one not to choose as one wants, but as one rationally ought to choose. For Kant, in order to choose autonomously, it is not enough to choose freely either through giving permission or through valuing one's freedom or self-determination. In addition, the choice made must be the choice that would be universally affirmed by persons as such. According to Kant, one must choose rationally in conformity with what the moral law requires as choices by rational agents as such.⁵

These three senses of autonomy are in various ways mutually incompatible in content and in their implications for the character of morally appropriate behavior. They are different principles of autonomy.

The first sense, autonomy as permission, allows one to proceed in the face of skepticism regarding Kant's claim as to what rational agents should choose. Moreover, autonomy as permission, in contrast with the account of autonomy as a value or autonomy in a Kantian sense, is simply the basis for a common authority among moral strangers. Again, autonomy as a source of authority gained through permission does not constitute an independent right-making condition, nor need it be valued in its own right. No claim in this case is made about the value of freedom. Indeed, no claim is made about the moral importance of this practice of gaining authority. It is simply the case that it constitutes a practice into which one can enter if one wishes. Also, the second sense of autonomy as it is usually articulated is not sufficiently embedded in rational moral agency so as to be compatible with the third or strict Kantian sense. The meaning of autonomy, the first and cardinal principle of the four principles, is as a consequence deeply ambiguous. This ambiguity regarding the nature of autonomy has even brought Tom Beauchamp candidly to recognize the many ways in which one can understand autonomy.

What it is about autonomy that we are to respect remains unclear, and it remains obscure what "respect" means. Most obscure of all is how practice is affected by a theory of

autonomy. The contemporary literature in bioethics contains no theory of autonomy that spells out its nature, its moral implications, its limits, how respect for autonomy differs from respect for persons (if it does), and the like (Beauchamp 2004, p. 214).

This is exactly the state of affairs one would expect, given profound and intractable moral pluralism. It is, however, not the state of affairs that most of the founders of bioethics had anticipated.

A similar ambiguity besets the other three of the four principles of Beauchamp and Childress. One cannot define beneficence without first knowing the cardinal ranking into which one should place the various basic human goods in order to know concretely what is involved in achieving the good. If one ranks liberty first, equality second, and prosperity third, one will affirm a social-democratic vision of the good, as well as of social justice. However, if one affirms a Confucian-Singaporean moral vision in pursuing the good and social justice, one will rank security first, then prosperity, then liberty, insofar as liberty is compatible with security and prosperity, all the while at best giving short shrift to equality. To know which ranking is correct, one would need to know the ranking affirmed as correct from a God's-eye perspective. The same is also the case with respect to the principle of non-maleficence. To have a content-full principle of not harming others, one must be able canonically to compare benefits and harms. Otherwise, one man's beneficence will be another man's maleficence. To give a content-full identification of appropriate moral actions, one must know how to balance particular benefits and particular harms so as to know when an act is beneficent or maleficent.

Last but not least, one will need to know which account of justice is canonical in order to make sense of the principle of justice. As a result, the principle of justice that will be affirmed by a social democrat will be quite different from that affirmed by a libertarian, a classical market liberal, or a Singaporean Confucian capitalist. In the absence of a canonical understanding of justice, appeals to the principle of justice, as with appeal to the principles of autonomy, beneficence and non-maleficence will divide, not lead toward common decisions. In the face of moral pluralism, the appeal to the four principles will underscore moral disagreement, not disclose a common morality or facilitate common agreement. In the face of moral pluralism, referring to the four principles of Beauchamp and Childress will help define points of controversy, disagreement, and conflict, unless one already has a common moral vision or ideology.

III. The Creation of an Illusion: The Mirage of a Common, Canonical Morality and Bioethics

At the beginning of the bioethics movement in the 1970s, few bothered to notice that one could explain the agreement between Beauchamp the utilitarian and Childress the deontologist in their common use of the four principles on the basis of their common background ideological and political views, not on the basis of a supposed common morality. Both Beauchamp and Childress were advocates of a particular social-democratic moral view, along with the political structure it supported. Their morality provided a rhetorical basis for their political commitments. They could use analytic moral reflections to articulate a bioethical framework that could serve as an exposition of their background moral and political commitments. If one did not notice the source of their common vision, it would appear plausible that there was a common morality. Indeed, Beauchamp and Childress shared a morality in common, as well as a political vision that they commonly embraced and hoped politically to have established. Beauchamp and Childress enjoyed an overlapping consensus regarding a wide range of issues that made it possible for them and for those with similar moral views to support coalitions that could advance the establishment of particular laws and public policy. The inclination to collaborate in public policy matters suggested that a common morality existed. These common goals allowed Beauchamp and Childress to discount differences in understandings of the nature of morality. Although Beauchamp is a utilitarian and Childress a deontologist, because of their interest in collaboration they could discount or ignore differences due to their disparate theoretical frameworks. With respect to many very important issues, Beauchamp and Childress were not moral, or at least not political strangers.

The illusion of a common morality and bioethics was also supported by the success of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. Here, as with Beauchamp and Childress' *Principles of Biomedical Ethics*, there was a synergy of background political commitments and a general commonality of moral commitments. Even though the members of the National Commission nominally affirmed different religious positions, they were appointed by the same government for a particular political goal (i.e., to frame regulations for research involving human subjects) and therefore they generally reflected

the dominant political consensus of the time. In this case, the consensus they possessed was tantamount to the effective political coalition that had led to their appointment. Because they shared a common background ideology, they were able to work together and to affirm, among other things, the bioethical principles of *The Belmont Report* (National Commission 1978). Such collaboration would not have been possible, had the appointees embraced substantively different moral, religious, and/or political visions. One might imagine, for example, what the debates of the National Commission would have been like, had one of the appointees been a utilitarian with the commitments of Peter Singer, another a libertarian with the commitments of Robert Nozick, another a communist with the commitments of Che Guevara, etc. (Singer 1990, Nozick 1974). The National Commission was able to produce content-full reports and recommendations because the commissioners began by sharing much in common and by not being divided by deeply incompatible moral, religious, and/or political commitments. Moreover, they shared a common political or policy agenda.

Perhaps one could say that, from all that one knew or should have known in 1971, as bioethics was taking shape, a common or canonical secular morality and bioethics should have been seen to be an illusory goal. However, given the embeddedness of most of the participants in world-views that promised common agreement regarding human rights, social justice, and/or natural law, and given common political commitments, the recognition of this state of affairs was *de facto* highly unlikely. Humans in general, and moralists and bioethicists in particular, tend to live and experience reality within particular moral paradigms and thought-styles, not to mention thought-collectives of like-minded persons in terms of which they attempt to distinguish noise from information. The result is that it is very difficult for someone to step out of the established political correctness and ideological assumptions of his own moral community. Nevertheless, even in the 1970s, there were grounds for recognizing that there was no possibility to establish through sound rational argument a canonical secular morality or a canonical secular bioethics. In addition, there was, and is, no basis to hold that there is a common morality. People disagree substantively regarding the major passages and concerns of life, including when it is licit, forbidden, or obligatory to have sex, reproduce, transfer property, and take human life. Indeed, these disagreements constitute the heart of the struggles to define the dominant culture of many societies, thus generating culture wars (Hunter 1991). However, there were important social forces that led to discounting and denying moral difference.

As bioethics emerged in the 1970s, this hope for a common secular morality and bioethics was driven by powerful socio-cultural changes. Bioethics had initially been embraced with a fervent expectation that it could give secular guidance in a post-Christian secular world. Many simply took for granted that the secular morality they hoped to articulate would be the secular common morality affirmed by rational agents as such. Few attended to the limits of this hope. Also, few appreciated, as bioethics was exported abroad, that bioethics is as American as McDonald's and Coca-Cola. Bioethics came into existence as the result of a number of particular intersecting changes in America's dominant culture. The United States until the mid-20th century had been a Christian nation in which both *de facto* and *de jure* Christianity had been established.⁶ It was only in the late 1940s and in particular in the 1950s, 1960s, and 1970s that this establishment of Christianity in the United States had been set aside by various decisions of the U.S. Supreme Court.⁷ After all, the First Amendment to the compact styled "the Constitution of the United States" had only forbidden a federal establishment of a particular religion. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." The dis-establishment of Christianity led to the marginalization not only of Christianity, but of Judaism from providing guidance for biomedical moral decision-making. With the marginalization of priests, ministers, and rabbis, a moral vacuum appeared that called out for the creation of a new cadre of moral experts (Engelhardt 2002). During this period, medicine was also disestablished as a guild⁸, and an individualism became pronounced in the dominant culture.⁹ A desire arose for secular moral and cultural guidance in shaping law and public policy for modern medicine and the quickly-developing biomedical sciences that were becoming ever more expensive, intrusive into ordinary life, and provocative of new moral puzzles. The hope was for a common and even canonical morality and bioethics.

Such a canonical bioethics does not exist. Many had appreciated for nearly 200 years that morality is plural. After Immanuel Kant (1724-1804) and surely beginning with G.W.F. Hegel (1770-1831), it became increasingly clear in Western moral-philosophical reflection that there is no canonical moral perspective, no non-socio-historically-conditioned moral perspective, from which one can identify a particular secular morality as *the* canonical, secular morality (Engelhardt 1986, 1996, 1998, 2010a, 2010b). The contemporary insight regarding the impossibility of a canonical secular morality and secular bioethics simply restored what had been known by Protagoras¹⁰ and then summarized by Agrippa in the early 3rd century A.D.¹¹ Because

there is foundational disagreement regarding basic premises and rules of evidence, all attempts to establish a particular, secular morality and/or bioethics beg the question, argue in a circle, or engage an infinite regress.¹²

IV. Morality and Bioethics after God: The Salience of Profound Moral Pluralism

Bioethics must now be re-assessed in the light of a defining moral pluralism and the character of the contemporary culture wars (Hunter 1991). The dominant secular morality has brought into question the content and force of traditional Western Christian morality. As a consequence, the foundationless character of the dominant secular morality, which has brought traditional Western morality into question, also brings secular morality itself into question, along with its cluster of claims regarding human rights and human dignity. It does so in a complex fashion that is yet fully to be recognized, much less appreciated by the secular culture that this morality sustains. Among other things, claim rights to the positive and affirmative respect of others or to the provision of particular goods and services cannot be justified as canonical moral claims, if one means by such a moral claim an obligation, the violation of which would render the violator blameworthy in the eyes of any disinterested rational judge. Such canonical universal moral judgments are impossible in the absence of a canonical normative perspective from which such judgments can be shown to be canonical. Instead, moral claims after God and after foundations gain their greatest generality by becoming elements of a public policy that a particular political party or political faction has succeeded in establishing at law within a particular jurisdiction. The result is a fundamental transformation of the significance of morality and bioethics. The general force of secular morality and secular bioethics under this circumstance becomes legal, not moral, at least as moral force had once been traditionally understood.

Four cardinal intertwining factors in this wide-ranging cultural development define the moral pluralism that marks the human condition.

(1) There is first-order secular moral pluralism, in that there is a plurality of norms bearing on all elements of life, including views as to when it is licit, forbidden, or obligatory to have sex, reproduce, transfer property, or take human life. This normative pluralism is real and intractable, because there is no one canonical, background, normative perspective to set this first-level normative pluralism aside. Again, this is the case because there are many understandings of

a disinterested rational judge, disinterested rational decision-maker, disinterested rational contractor, moral sense, thin theory of the good, rational discourse ethics, moral rationality, or sense of rational decision-making. For any such construct to give definitive guidance, it must have a particular content and be established as canonical. The identification of canonical content on the basis of sound rational argument requires that one already affirm a particular ranking of human goods (e.g., liberty, equality, prosperity, and security) and of right-making conditions (e.g., respect for the autonomous decisions of individuals, respect for the autonomous decisions of families, etc.). To emphasize once more: one has to be able to establish the canonical character of a particular secular moral sense, moral rationality, thin theory of the good, etc., in order through moral philosophical reflection to resolve the *de facto* moral pluralism that confronts us. But, to establish any particular ranking of values or right-making conditions as canonical, one must already have a background canonical standard. This does not exist, because there is no agreement regarding basic premises and rules of evidence. As a consequence, the attempt to establish a particular secular morality and bioethics as canonical engenders an infinite regress, a circular argument, or the invocation of a self-evident truth, thus begging the question of how to establish a particular morality or bioethics as canonical.

(2) This first-order moral pluralism is further deepened by a pluralism of justifications for the various first-order moral visions. Theory recasts the significance of first-order moral positions, in that theory reshapes the meaning of first-order moral positions as, for example, in attempting to justify whether the killing of an innocent person violates a right-making condition, or whether it is wrong because it undermines the greatest good for the greatest number. Kant embraced the general range of traditional Western Christian norms, including the Western Christian prohibition of lying, which had originated with Augustine of Hippo (354-430).¹³ Kant's account embeds all moral concerns in a rationalist moral framework that prohibits those actions that supposedly cannot be universalized. Kant attempted to establish prohibitions that were without exception and forwarded these claims in a fashion that was tantamount to establishing them as deontological obligations.¹⁴ In contrast, act-utilitarian or even rule-utilitarian accounts can admit of exceptions and do not enjoy a justification that is deontological. When one places a norm such as "Do not tell a falsehood with an intention to deceive" within an explanatory framework (e.g., Kantian or utilitarian), the meaning of the norm is recast in its intension and extension, just as space and time are recast within a Newtonian versus an Einsteinian explanatory

framework. Normative moral pluralism is deepened further through explanatory pluralism, giving a further dimension to normative moral pluralism.

(3) There is yet a further depth to the moral pluralism separating traditional norms (e.g., Orthodox Christian and Orthodox Jewish norms) from the bioethical norms of the dominant secular morality. This further dimension is due to a demoralization of a range of traditionally moral choices, including choices that Kant held to be moral.¹⁵ This demoralization occurs when one cannot in secular universal terms be held to be either blameworthy or praiseworthy for choices in areas that had previously been recognized as moral choices. Insofar as morality involves the normative claim that, if a choice is not made in a particular fashion, one ought by all disinterested rational judges to be held blameworthy or to have acted wrongly, demoralization involves the counter-claim that such choices are to be considered only life-style or death-style choices that are in themselves innocent. In sum, the result of this demoralization is that what had been moral choices become life-style or death-style choices, and not of themselves moral choices. Further, given the dominant secular culture's establishment of this demoralization as a form of political correctness, and given the shift from morality to politics with the embrace of the secular fundamentalist state (Engelhardt 2010c, 2010d), one may be prohibited, or at least strongly discouraged, in the dominant secular culture from making moral judgments about choices that within this culture are held to be demoralized choices (e.g., making moral judgments regarding the morality of choices whether to have a sexual partner outside of marriage, the sex of one's sexual partner(s), the use of abortion, and the use of physician-assisted suicide and euthanasia, etc.).

Few have noted that this demoralization is powerful enough to render into macro-life-style choices, the choice as to whether or not to endorse a social-democratic political vision affirming individual dignity and autonomy, or instead to endorse a Confucian soft-capitalistic dictatorship that sets centrally the role of elites and of families as decision-makers.¹⁶ Without a non-socio-historically-conditioned perspective that can establish a canonical account, all moral-political understandings become particular clusters of intuitions sustained by a particular narrative floating as free-standing positions within the horizon of the finite and the immanent. The status of liberal democratic commitments, along with claims regarding human rights and human dignity, are thus also demoralized. They become macro-life-style choices. Because there is intractable normative pluralism, there is no final normative standpoint to establish a particular

moral perspective as canonical. In these circumstances, a moral perspective can only achieve a general authority by being adopted at law, a point that both Hegel and Richard Rorty affirm.¹⁷

(4) It cannot be shown to be rational always to act according to the moral point of view (i.e., acting considering the interests of, the good of, and the rights claims of persons generally) in preference to acting guided by concerns regarding private interests that conflict with what is considered proper action from the moral point of view (i.e., one's own good, the good of one's family, and the good of one's particular community) cannot rationally be shown to be necessary. The moral point of view is itself brought into question. The privileging of moral claims over claims of private interests requires justifying a particular normative point of view, the so-called moral point of view.¹⁸ But this privileging is not possible after God and after metaphysics. After God and after metaphysics, there is no ultimate meaning for anything. There is not just an absence of a final, non-socio-historically-conditioned perspective to justify a particular set of normative judgments as canonical, but there is no such perspective that can warrant the priority of the moral point of view over a view that supports the advantage of one's kith and kin. Absent an invocation of something like Kant's practical moral postulates of God and immortality, that is, absent (a) a God's-eye perspective to establish a particular moral understanding as canonical and (b) a God reliably to impose sanctions for immoral choices and actions so that happiness is in proportion to worthiness of happiness, then (c) the only general standing available for moral claims is through their being established at law and public policy. As a consequence, there is a deflation of the force of secular moral norms into legal sanctions.

Among the many consequences of this state of affairs is that the general secular sanctions for immoral behavior, and behavior against bioethical norms, become materially equivalent to possible legal sanctions, which can be appreciated by bearing in mind their severity and the possibility of their being imposed. The decision whether to act immorally becomes analogous to the decision whether or not to drive in violation of the legal speed limit (e.g., one must consider the likelihood of being arrested and how much one would then need to pay). Advocates of any secular moral or secular bioethical understanding can at best be understood by others, who do not themselves affirm that morality or bioethics, as seeking through political means to impose their views by means of state power. After God and after metaphysics, the general force of moral claims is their political, social, or legal force. In this context, secular democracy, the support of social-democratic constitutions, and the standing of a social-democratic bioethics in general

secular terms are best understood as forceful social and/or political myths, which are advanced by means of public democratic rituals and moral-philosophical rhetoric through which citizens are inducted into an ideology and brought to support the views that authorize a particular secular morality and a particular constitutional vision. All of this relocates secular bioethics within a radically recast normative content.

V. Bioethics and the Principles Reconsidered

These reflections allow one to understand why clinical bioethics or health care ethics consultation has succeeded despite intractable moral pluralism. They also provide a basis for better understanding why the four principles have succeeded so well under these circumstances. First, clinical ethicists function primarily as exegetes and stewards of that ethics which is established at law and in public policy. Clinical ethicists function on analogy with lawyers in giving legal advice in the sense of expounding the bioethical norms established within a particular polity. In addition, like lawyers, they mediate disputes and facilitate medical decision-making within the constraints set by the bioethical norms established at law and within public policy. They are not *sensu stricto* moral experts, or rather, they are experts regarding the character and implications of the morality and bioethics established at law and in public policy for health care and the biomedical sciences (Engelhardt 2011). The four principles as a consequence do not function directly to provide general moral or bioethical guidance. They cannot by themselves give general moral guidance, save insofar as they are established at law and/or public policy. Otherwise, at best they can identify areas of moral concern that can at best share a family resemblance in the face of robust moral and bioethical pluralism. As Rorty and even the later Rawls,¹⁹ following Hegel, realized, public morality and bioethics are politics.

Notes

¹ Albert Jonsen in his history of the emergence of bioethics gives an account of the emergence of the focus on principles of bioethics. He states that, in the development of the Belmont principles, his fellow commissioner, Joseph V. Brady,

professed that he was attracted to three principles only: beneficence, freedom, and justice. I seconded Brady's point because these three principles seemed to do what ethical principles should do—namely, serve as rational justification for decisions and policies. We also had in our dossier of philosophical essays H. Tristram Engelhardt's paper which had suggested three basic principles: "respect for persons as free moral agents, concern to support the best interests of human subjects in research, intent in assuring that the use of human subjects of experimentation will on the sum redound to the benefit of society." Tom Beauchamp had also contributed a paper entitled "Distributive justice and morally relevant differences." After much discussion, the commissioners took Engelhardt's first two principles and Beauchamp's principle of distributive justice and crafted "crisp" principles: respect for persons, beneficence, and justice. Stephen Toulmin was directed to redraft the report for presentation at the March meeting. ...[These] principles found their way into the general literature of the field, and, in the process, grew from the principles underlying the conduct of research into the basic principles of bioethics (Jonsen 1998, pp. 103, 104).

The final outcome was a salience of the appeal to principles.

² Roman Catholicism first separated from the Church of the first seven Ecumenical Councils when St. Photios the Great excommunicated Pope Nicholas I in 867. Despite a reconciliation at the 8th Ecumenical Council (879), the pope of Rome was removed from the diptychs in 1009. The separation was final after the 9th Ecumenical Council (1341, 1347, 1351) and was sealed after the Roman Catholic Council of Florence (1442). Roman Catholicism distinguished itself from the original Church not only through the creation of such new dogmas as the universal jurisdiction of the pope, papal infallibility, purgatory, indulgences, the immaculate conception, the impossibility of marriage after divorce, and the impossibility of turning to God on one's own, but most centrally in terms of its theology that sought to be grounded in philosophical reflection rather than in empirical, noetic experience (Engelhardt 2006).

³ The term "post-modernity" is used to identify the cultural recognition that there is not one moral rationality, but intractably many. The result is the acceptance of a plurality of incompatible moral perspectives.

⁴ The difference between a slave and an employee is that one may compel the services of a slave.

⁵ Regarding autonomy, Kant states that "Autonomy of the will is that property of it by which it is a law to itself independently of any property of objects of volition" (Kant 1959, p. 59, AK IV 441).

⁶ Into the 20th century, U.S. courts recognized Christianity (for the most part Protestant Christianity) as integral to the character of American common law [United States v. Macintosh, 283 US 605 (1931)]. American constitutional prohibition against the federal establishment of religion in the First Amendment to the United States Constitution in practice meant that ministers of one particular church could not be federally supported. The prohibition was not understood to require a separation of the state from religion, in the sense of separating law from a moral tradition rooted in Christian understandings. The result was that Christianity was *de facto* and generally *de jure* the established religion of the United States.

⁷ In the 20th century, medicine's standing as a virtual guild was undermined by a series of court decisions, beginning with *The United States of America, Appellants, vs. The American Medical Association, A Corporation; The Medical Society of the District of Columbia, A Corporation, et al.* (317 U.S. 519 [1943]).

⁸ The *de jure* and *de facto* establishment of Christianity in the United States was abolished in the mid-20th century through the Supreme Court holdings that secularized American law and public policy. See, for example, *School District of Abington Township v. Edward L. Schempp et al., William J. Murray et al., v. John N. Curlett et al.*, 374 US 203, 10 L ed 2d 844, 83 S Ct 1560 (1963).

⁹ The secular culture as it emerged in the United States during the 1960s and 1970s took on an increasingly individualistic character that recast the basis for informed consent, moving away from a professional standard for disclosure to a reasonable-and-prudent-person standard, which emphasized the individual and his autonomy. The law came generally to take the position that patients themselves, not physicians, should decide what treatment to have. *Canterbury v. Spence*, 464 F.2d 772, 797 (D.C. Cir. 1972).

¹⁰ Protagoras realized that without a canonical point of ultimate reference "Man is the measure of all things, of things that are that they are, and of things that are not that they are not" (Diogenes Laertius 2000, Protagoras IX.51, pp. 463, 465).

¹¹ That sound rational argument cannot establish a canonical, content-full morality (and that by implication it cannot establish a canonical, content-full bioethics) was from at least the beginning of the Christian era widely recognized. Clement of Alexandria (A.D. 155-220) notes, for example, that rational argument cannot establish rationally binding conclusions, unless one already grants basic underlying premises. "Should one say that Knowledge is founded on demonstration by a process of reasoning, let him hear that first principles are incapable of demonstration; for they are known neither by art nor sagacity" (Clement of Alexandria 1994, *The Stromata*, Book 2, chapter IV, vol. 2, p. 350). These limits of philosophy were also famously summarized by Agrippa, a third-century philosopher. Agrippa noted that philosophy cannot establish a canonical justification for any concrete philosophical position, because those arguing from disparate perspectives argue past each other, beg the question, argue in a circle, or engage in an infinite regress. Beyond that, despite some eight hundred years of philosophical reflection, it had failed to establish conclusions, thus undermining the hope that in the future philosophy will be more successful. Agrippa's *pente tropoi*, his five ways of indicating that controversies, such as those regarding the canonical content of morality, cannot be resolved by sound rational argument, were preserved in summary fashion by Diogenes Laertius, *Lives of Eminent Philosophers*, Pyrrho 9, 88-89, as well as by Sextus Empiricus, "Outlines of Pyrrhonism" I.15.164-169.

¹² The author must note that, although he is a secular moral-epistemological skeptic, he is not a metaphysical skeptic. After all, he is an Orthodox Christian. See Engelhardt 2000, 2003.

¹³ Augustine held that one is forbidden under all circumstances to lie, defining a lie as "an utterance of a person wishing to utter a false thing that he may deceive" (Augustine 1994, vol. 3, p. 459).

¹⁴ Deontological moral accounts, unlike teleological accounts of which utilitarian accounts are a sub-species, hold that the right is prior to the good, and that the right cannot be reduced to the good.

¹⁵ Kant, for example, held that masturbation is immoral.

The ground of proof surely lies in the fact that a man gives up his personality (throws it away) when he uses himself merely as a means for the gratification of an animal drive. But this does not make evident the high degree of violation of the humanity in one's own person by the unnaturalness of such a vice, which seems in its very form (disposition) to transcend even the vice of self-murder (Kant 1964, pp. 86-87, AK V.425).

Kant attempted to provide a general secular moral-philosophical defense of the substance of traditional Western Christian morality.

¹⁶ Richard Rorty (1931-2007) recognizes the general demoralization of traditional morality, in that no secular morality can be established as canonical. As Rorty puts it, "there is no way to step outside the various vocabularies we have employed and find a metavocabulary which somehow takes account of *all possible* vocabularies, all possible ways of judging and feeling" (Rorty 1989, p. xvi).

¹⁷ The state for Hegel plays a role analogous to the role God plays for Kant in establishing the point of view of moral objectivity, and by achieving as far as possible happiness insofar as one is worthy of happiness. It is for this reason that Hegel states that the state is "der Gang Gottes in der Welt" (*Grundlinien der Philosophie des Rechts*, §257 Zusatz). Similarly, Rorty sees philosophy in the service of politics, when he underscores the "shift from epistemology to politics" (Rorty 1989, p. 68).

¹⁸ Immanuel Kant, for instance, invites us to regard morality and the conditions of worthiness to be happy from the perspective of "a rational, impartial observer". *Grundlegung zur Metaphysik der Sitten*, AK IV 393.

¹⁹ By 1985, Rawls is quite clear that his view of justice is to be understood politically (Rawls 1985).

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