

LIBERTARIAN BIOETHICS AND RELIGION: THE CASE OF H. TRISTRAM ENGELHARDT, JR.

MICHAEL S. MERRY

ABSTRACT

*This paper is a critique of certain moral perspectives that are found in the second edition of Engelhardt's *Foundation of Bioethics*. These views are spelled out in explicit detail in his second edition, and follow on the heels of a profound religious conversion. Engelhardt is an eminent bioethicist with strong religious convictions that overlay much of his writing. The author wishes to question some of the conclusions that Engelhardt reaches as they touch upon moral frameworks, pluralism, and a 'secular' bioethics.*

We will need to learn to be tolerant, even about issues less important than the salvation of immortal souls.¹

Tristram Engelhardt has been a redoubtable bioethicist for three decades, and little has been said to challenge or question the able scholarship that he has brought to this volatile field of study. Then, following a religious conversion, he reanimated his celebrated *Foundations of Bioethics*.² The second edition to this important work is peppered with patristic references and theological interludes that were manifestly absent from his first edition, a mere ten years older. Both editions, however, show appreciation for what makes human beings different from one other – *viz.*, 'important moral contrasts' – rather than focusing on the inherent strengths of those worthwhile beliefs and aims that

¹ T. Engelhardt. 1986. *The Foundations of Bioethics*. New York, NY. Oxford University Press: 14.

² T. Engelhardt. 1996. *The Foundations of Bioethics*. Second edition. New York, NY. Oxford University Press. Unless specified, all subsequent references will be from the second edition.

typically unite people who might otherwise remain at implacable odds.

This essay will concern itself with certain questionable assumptions to be found, principally, in the second edition of Engelhardt's *Foundations*.³ In the first part, I will critique the manner in which Engelhardt assumes a 'content-full' morality in order to speak to bioethical matters, a morality that does not take sufficient account of interpretive strategies within communities. In the second part, I will address three problematic beliefs that sit at the heart of Engelhardt's work: his notions of assumed moral perspectives, his ideas of postmodernity, and his libertarianism. In particular, I will examine what appears to be an untenable relationship between his libertarianism and his Eastern Orthodox Christianity. Finally, in the third part I will challenge his views on universal healthcare.

I

Though absent in his first edition, in his second edition Engelhardt reveals his abiding suspicion toward the 'cacophonous plurality of bioethics' borne out of a 'secular moral vision', a phrase he uses interchangeably with 'postmodernity.' He repeatedly denigrates postmodernity and its adherents (whom he labels 'cosmopolitans')⁴ for providing no cohesive structure within which one might hope to negotiate moral choices. Engelhardt desires to offer up a 'secular means for coming to terms with the chaos and diversity of postmodernity.' He laments that the means are meagre and offer no transcendent fulfilment. But, he continues, 'They are all that [are] available in general secular terms.'⁵ (I will say more about postmodernity later.)

Engelhardt cannot conceive of an honest, integrative and salutary 'secular ethic', seeing as he argues that, without a unified

³ I will limit my critique to this one text for two reasons: 1) it is a standard work in bioethics that stands well enough by itself; 2) Engelhardt's recent articles, which are many, merely extend the outlook set forth in this – comparably seminal – work; and 3) his subsequent, and more idiosyncratic, *Foundations of Christian Bioethics* (2000. Lisse, Swets and Zeitlinger) – in which Engelhardt fleshes out his Orthodox views in considerable detail – will fail to resonate with audiences in a way that his more inclusive *Foundations* won't.

⁴ He defines 'cosmopolitans' this way: 'those individuals who regard themselves as possessing the canonical, content-full, secular morality (and bioethics) and see it as being justifiable outside of a particular moral history and tradition.' *Ibid.* p. 27, note 17. Cf. T. Engelhardt. 1991. *Bioethics and Secular Humanism: The Search for a Common Morality*. Philadelphia, PA. SCM Press.

⁵ *Ibid.* p. 10.

moral vision, 'ultimate questions cannot be answered.'⁶ Now I confess to not knowing exactly what he means by 'ultimate questions', though I would hazard a guess that he means questions having to do with God, *telos*, and life after death. If these are his – albeit narrowly conceived – ideas *vis-à-vis* 'ultimate questions', he may have a very valid point.

But appealing to a lack of a 'unified moral vision' seems a paper tiger, for there has never existed a total uniformity in *any* culture, religion, or politics. Engelhardt obliquely acknowledges this when he writes, 'there appears to be no greater uniformity among philosophers or theories of morality and justice than among religious leaders and the various religions.'⁷ Even so, Engelhardt's suggestion that certain religious communities like the Hasidim, the Amish and Eastern Orthodox Christians possess a 'single, unified vision', or are perhaps members of an 'ideologically unified commune' appears to be seriously lacking in historical consciousness and socio-political scrutiny. To appeal to religious groups – as Engelhardt is wont to do – such as Southern Baptists, Texan deists, or Roman Catholics, as though each were a homogenous collection of assenting souls to an undifferentiated dogma, strains credulity. His appeal has this incredulous effect because 'content-full' moralities are not univocally interpreted even *within* particular communities, much less between and among communities. There is a need for substantive strategies of adjudication and interpretation in *both* contexts; this hermeneutical difficulty must not be ignored.

In addition to this, one is puzzled to find Engelhardt so dismissive of 'secular' ethics on the claim that they 'know *the* content-full secular moral vision, which is canonical for all persons.' Apart from the hyperbole of this assertion is the irony of Engelhardt transposing one 'content-full vision' for another, *viz.*, his own version of Eastern Orthodoxy. Yet within the Orthodox tradition itself there are many different 'stories' (whether of the non-Chalcedonian or Chalcedonian variety), many different versions, pointing to an underlying multiplicity of 'tradition' that impugns any absolute claim to a monolithic narrative.

⁶ *Ibid.* p. 11. Alarming, Engelhardt refers to the 'tolerance' required by secular pluralist societies as 'empty, insipid, and effete in comparison to the consuming commitment that can be felt as a member of the Baader-Meinhof gang, of Communist movements such as the Shining Path, of the National Socialist Party, of the Inquisition, or of any ideological or religious group that requires aggressive consecration of self and all to the truth, even to the coercive conversion of the unbelieving' [!] *Ibid.* p. 101, note 97.

⁷ *Ibid.* p. 35. Engelhardt's claim may be an intra-religious one, but it does not escape difficulty.

There is also the worrying habit of Engelhardt's to employ the 'us and them' language endemic to other, albeit familiar, voices of triumphalist certitude. Witness the following sampling:

They [secular bioethicists] aspire to discover a content-full secular bioethics that can warrant a particular health care policy. *They* seek by secular reason to discover a content-full morality and the moral authority for government to impose it . . . *They* seek concrete instruction about the meaning of life, or at least a content-full account of justice, fairness, and morally acceptable health care policy. *They* hope to find content-full moral answers in reason. *They* seek from the state something like the community they may have once known as members of a church or synagogue. *They* yearn after a secularly normative consensus in a large-scale state and hope that a large-scale society can be the same as a concrete moral community. *They* seek a secular religion without belief. These hopes are vain.⁸

But contrary to these postulates, most non-theological bioethicists seek after a kind of Rortian liberal democratic consensus of the kind Engelhardt recognises will result – admittedly with mixed outcomes – from a Rawlsian exercise of reflective equilibrium.⁹ It

⁸ *Ibid.* p. 10. Emphasis added. And as if to caricature the 'secular' further, Engelhardt even uses emotive arguments based on historical references to the 'murderous endeavors' of Pol Pot and Joseph Stalin. But it is sad to note that Engelhardt fails to acknowledge that these demagogueries are equalled, and in some cases, surpassed, by malevolent repression borne out of comparably impressive 'moral' communities. The Heraclian and Justinian intolerances of Byzantium, for example – a Chalcedonian Orthodox 'utopian symphonia' – are well documented, as are contemporary Orthodox instances in Russia, Greece, and Eastern Europe. See, as a mere sampling: J. Ellis. 1996. *The Russian Orthodox Church: Triumphalism and Defensiveness*. New York, NY. Macmillan Press; A. Webster. 1995. *The Price of Prophecy: Orthodox Churches on Peace, Freedom and Security*. Grand Rapids, MI. Eerdmanns Press; J. Dunlop. The Russian Orthodox Church and Nationalism after 1988. *Religion in Communist Lands* 1990; 18: 294–298; M. Bourdeaux. Storm Clouds in the East. *The Tablet* 1997; June: 765; V. Makrides. Orthodoxy as a *Conditio Sine Qua Non*: Religion and State/Politics in Modern Greece from a Socio-Historical Perspective. *Ostkirchliche Studien* 1991; 40: 281–305; C. Haberman. Bulgaria Worried by Rising Hostility to Minority Turks. *New York Times* January 8, 1990: 1.

⁹ 'Reflective Equilibrium' is a Rawlsian principle that entails my taking into account different theories, various rules of differing degrees of specificity, and judgements about specific cases. It disposes one to be prepared to revise previously held positions owing to the knowledge gained from the passage of time and new discoveries. Engelhardt asserts that reflective equilibrium is a form of relativism, though it can and does appeal to conventional notions of morality. For a sound rejoinder to the relativist allegation (made by Hare, Singer, *inter alia*), see: N. Daniels. 1996. *Justice and Justification: Reflective Equilibrium in Theory and Practice*. Cambridge, UK. Cambridge University Press. Rawls himself insists

is simply not true to say, as Engelhardt emphatically does, that 'in a general secular moral context, the virtues are evacuated of moral content.'¹⁰ Nor is it true that, bereft of a rationally coherent outlook, all dialogue will 'collapse into contrary and competing ideologies.'¹¹ How could they? Is it possible that responsible informed consent, for instance, carried out between physician and patient irrespective of ideological adherence, could ever be empty of moral content? Is it likely for honest discussion of the rights of the mother or the rights of the unborn child to be devoid of content? Is it even thinkable that strenuous efforts to palliate when someone is dying a slow, agonising death could be absent of moral content?

Engelhardt appears to think so. His claim is that an 'appeal to ethics as ethos, etiquette, law, or ideology (including particular forms of moral conviction and religious beliefs) will not suffice.'¹² But what is his alternative? It would appear that he takes recourse in a 'content-full' vision of reality as is found in certain devout religious communities. But he himself inadvertently exposes the problem with such 'solutions' when he points out, 'all do not listen to the Deity, or listen in the same way.'¹³ If Engelhardt merely wished to take issue with, say, utilitarian/instrumentalist theories of ethics/justice, he is not without good reasons for doing so.¹⁴ But that is no reason *eo ipso* to dismiss the common practice of sought after, carefully scrutinised, tentative consensus whereby decisions concerning healthcare are carried out. Nevertheless, Engelhardt's rejoinder to the rhetoric of consensus is distrustful: 'An appeal to consensus without foundational arguments is an appeal to the orthodoxy of a governing elite in order to legitimate its dominance and to make criticism of its basic assumptions appear immoral and irrational.'¹⁵

So why won't a non-theological approach to bioethics work? Because, he writes, there is a need for a standard, and one cannot appeal to any moral content without begging the question

that 'justice as fairness' is not at the mercy of existing wants and interests, and he repudiates its being the morality of the 'ruling class', as Engelhardt alleges. See Engelhardt, *op. cit.* note 2, p. 64. Cf. J. Rawls. Justice as Fairness: Political not Metaphysical. *Philosophy and Public Affairs* 1985; Summer: 223–251.

¹⁰ Engelhardt, *op. cit.* note 2, p. 13.

¹¹ *Ibid.* p. 72.

¹² *Ibid.* p. 35.

¹³ *Ibid.* p. 36.

¹⁴ Though rule utilitarians like R.M. Hare, Peter Singer, and J.J.C. Smart might possibly take exception to Engelhardt's simplistic rendering of utilitarianism.

¹⁵ Engelhardt, *op. cit.* note 2, p. 63.

concerning the standards by which the content is selected.¹⁶ As he delineates the various non-theological constructs one might employ to approach biomedical situations,¹⁷ he sets out to 'disprove' each and every one as though each were meant to be an over-arching, comprehensive attempt to solve problems. In their place, Engelhardt predictably inserts Orthodox Christian *metanoia*, which he says will fundamentally 'change one's mind.' Likening conversion of this sort to a gestalt shift, Engelhardt purports that the Christian will see things anew.¹⁸

Yet here is our central concern: just how does a 'content-full' vision of morality work? To put a finer point on it, what criteria determine whether a particular morality is suitable for directing individual choices, and just when is a particular morality to be deemed 'content-full?' On the one hand, one finds Engelhardt saying that conflicts will inevitably occur when adherents to different ideologies meet.¹⁹ But a few paragraphs later, he acknowledges the validity²⁰ of various traditions by saying the following:

Outside of any particular tradition of discernment, prudence, or prudence, how will one be able to determine who is discerning and who is imprudent?²¹

Prima facie this sounds fine; but upon closer inspection one finds that, alas, Engelhardt is not willing to acknowledge any 'secular' moral vision among those traditions, though no such thing exists in any simplified form. This needs some clarification.

Engelhardt insists that the 'secular' ethic merely requires *permission, consent, and agreement*, as if these were merely non-theological methodologies. But it is still necessary to puzzle over Engelhardt's stubborn *personal* appeal to – especially religious – traditions in order to resolve moral quandaries in the biomedical

¹⁶ Ibid. p. 41.

¹⁷ They are: intuitionist, casuistic, consequentialist (utilitarian), hypothetical choice, rational choice, game-theoretical, natural law, and middle-level principle accounts. None of these, if one follows Rawls' principle of reflective equilibrium, is meant to be an exhaustive explanation of any particular situation or dilemma. Rather, they are mere *tools* that are helpful in enabling one to negotiate often-ambiguous choices where 'right' and 'wrong' are concerned. They are, quite openly, 'expository devices' as Engelhardt himself calls them.

¹⁸ Engelhardt, *op. cit.* note 2, p. 44.

¹⁹ Ibid. p. 44.

²⁰ 'Valid', of course, does not necessarily mean 'true.' Engelhardt may simply be speaking to the general whereabouts of standards. His circumscription is admittedly vague.

²¹ Engelhardt, *op. cit.* note 2, p. 45.

sphere, particularly when he readily acknowledges that 'the appeal to a transcendent God and His grace cannot resolve controversies in a secular society.'²²

This religious appeal is a subtle transition. In his first edition, Engelhardt lucidly sets forth the objective of rational bioethics, *viz.*, 'the peaceable context of a neutral secular understanding [that] proves the circumstances within which religious views and special secular traditions can be embraced and pursued in security.'²³ And while he personally laments the 'failure' of secular bioethics to support a particular view of the 'good life',²⁴ he convincingly sets forth the strengths of 'secular' bioethics, again, in his first edition:

With all its defects . . . a secular bioethics has numerous virtues. It promises the possibility of providing a context for health care that can encompass in toleration health care givers and receivers with diverse moral perspectives . . . A secular bioethics is also a check against the temptation to flee to false prophets of private intuition for answers that are best achieved through careful analyses sustained by communities of inquiring individuals.²⁵

Engelhardt hastens to add that 'believers' only stand to gain from such a 'peaceable neutral framework' by witnessing to their faith through example. This much may well be true.

But where religious faith is concerned Engelhardt is remiss to acknowledge the challenge and fruit of ecumenism, *i.e.*, a seeking out of those beliefs and principles shared in common with one another – be they interfaith or intra-faith – with a view to fostering mutual trust, co-operation, and understanding.²⁶ Sadly, our pluralist cultural milieu appears to be too unsettling to

²² Engelhardt, *op. cit.* note 2, p. 68. It is strange, then, that he suggests the implausibility of 'authority' arrived at via 'permission' (though he is reluctant to say, but I prefer, *consensus*). See p. 72.

²³ Engelhardt, *op. cit.* note 1, p. 11.

²⁴ *Ibid.* p. viii.

²⁵ *Ibid.* p. 13.

²⁶ It would appear that Engelhardt believes ecumenism to be some sort of rank heresy, naturally one whose blame, he thinks, can be placed squarely on the Western tradition. He enlists Justin Popovich in service to this idea: 'Ecumenism is the common name for the pseudo-Christianity of the pseudo-Churches of Western Europe.' Engelhardt, *op. cit.* note 3, p. 211, note 2. This is echoed in the comments of a Georgian Patriarch quoted thusly, 'Ecumenism is a heresy! Better still: Ecumenism is the Heresy of Heresies!' quoted in German in: Die Georgische Orthodoxe Kirche und die Ökumene. *Der Christliche Osten* 1998; 23. (Translation mine.)

Engelhardt. And rather than engage the philosophical challenges of postmodernists,²⁷ one finds him digressing into a less than relevant explanation of the 'rational' and 'legalistic' tendencies of the West and the collapse of the Enlightenment project.²⁸ (Not surprisingly, nothing is said of the inordinate *gnostic* and *dualistic* tendencies of the East).²⁹

At a time in history when more and more people are giving serious thought to, say, physician-assisted death, advance directives, stem cell research, federal or state operated health services, or the practice of xenotransplants in medical procedures, there can be precious little more disheartening than to find able minds criticising, among other things, post-Vatican II Catholicism³⁰ and the ways in which politicians seek to govern.³¹ Biomedical matters in particular must be treated with great nuance and sensitivity. This is because, human circumstances being what they are, one cannot take divine prerogatives to be self-evident, especially when facing a life-threatening disease. If nothing else, there are myriad

²⁷ Of the few that he actually discusses, Richard Rorty is one that meets with harsh criticism. Where Rorty wishes to point to our linguistic, political, and ethical *contingency*, Engelhardt will insist on a kind of 'transcendental signified' (Derrida), a gauge that surpasses the contingencies that Rorty honestly faces so that one may be able to say, in the final analysis, 'who is right.' Engelhardt, *op. cit.* note 2, pp. 64–65. But, similar to John Rawls, Rorty is not interested (or, certainly is *less* interested) in questions having to do with metaphysics and theology, but prefers, with a Deweyian flourish, to discuss the practical necessities of our society without lapsing into a kind of jaded *Realpolitik*, as Engelhardt alleges. See: R. Rorty. 1989. *Contingency, Irony, and Solidarity*. Cambridge, MA. Cambridge University Press; R. Rorty. 1991. *Objectivism, Relativism and Truth*. Cambridge, MA. Cambridge University Press.

²⁸ See, for example, Engelhardt, *op. cit.* note 2, pp. 30–31; 129–131 *et passim*.

²⁹ The examples are myriad and are more often than not drawn from monastic writings. A popular devotional work, compiled by a Catholic, is: B. Ward. 1987. *Harlots of the Desert*. Kalamazoo, MI. Cistercian Publications; B. Ward. 1975. *The Sayings of the Desert Fathers*. London. Cistercian Press. For other, typical selections see: K. Ware, P. Sherrard & G.E.H. Palmer, eds. 1978–1985. *The Philokalia*. Four volumes. London. Faber & Faber.

³⁰ See, for example, Engelhardt, *op. cit.* note 2, p. 24, note 10. Cf. Engelhardt, *op. cit.* note 3, p. 54, note 38; p. 59, note 76, where he needlessly dredges up ignominious memories from as far back as the Fourth Lateran Council (1215). Elsewhere he transposes a faulty reading of Aquinas (Thomas *did* believe that grace was necessary to fully appreciate moral law) for the so-called wisdom of Athos. See *ibid.* p. 231, note 35. Cf. J. Wawrykow. 1992. Merit in the Theology of Thomas Aquinas. In *Medieval Philosophy and Theology*. Volume 2. Norman Kretzmann, series ed. Notre Dame, IN. University of Notre Dame Press: 97–116; and B. Lonergan. 1971. *Grace and Freedom: Operative Grace in the Thought of St. Thomas Aquinas*. New York, NY. Herder and Herder.

³¹ Engelhardt, *op. cit.* note 2, p. 62.

pastoral reasons for demonstrating empathic understanding and compassion. One cannot simply refer to such practices as 'grave moral evils.'³²

So a question must be posed to Engelhardt: does he believe that non-theologically minded persons, i.e., those he calls 'secular' persons, are capable of living coherent, moral lives and pursuing virtue? If I read him correctly, he would say in his epistemological vein, 'not outside of any particular tradition', what Hegel called a concrete ethical life (*Sittlichkeit*).³³ On this score, I completely agree with him. The only question remaining is whether he will accord, not a *particular* tradition, but openness to *many traditions* as one possibility for maintaining a viable approach to bioethics, and indeed to life.

Engelhardt's absolutely valid concern is that the 'privatisation' of moral commitments – viz., 'incommensurable narratives' – will necessarily make consensus in the sphere of 'secular' bioethical decision making exceedingly difficult, if not impossible. Many have agreed with this central premise.³⁴ Yet Engelhardt wants to argue

³² Engelhardt is not alone, but at least he believes in the possibility of bioethical discourse. Among the few Orthodox thinkers that have published ideas concerning bioethics, the following, unfortunately, is more typical: 'The major problem with bioethics today is that it tries to give answers to questions of the present, for a man who will die, enclosed within the human dimension and within the limits of worldly material reality. Biotechnology, and accordingly bioethics, to a greater degree serve the material, and therefore the corrupt, needs of man.' C. Scouteris. *Bioethics and the Ethos of Orthodoxy*. Available at: http://www.balamand.edulb/theology/Scouteris_BioethicsSummary.htm. Such attitudes bring to mind a mournful rumination of Christos Yannaras: 'Orthodox views ring out beautifully as poetical notes, deeply moving but completely utopian, having no actual reality within our churches today.' C. Yannaras. 1973. *Orthodoxy and the West*. In *Orthodoxy: Life and Freedom*. A.J. Phillipou, ed. Oxford. Oxford University Press: 145.

³³ G.W.F. Hegel. 1965. *Hegel's Philosophy of Right*. Translated by T.M. Knox. Oxford, UK. Clarendon Press: 107, sec. 150. Cf. Engelhardt's ruminations on Hegel in: 1994. *Sittlichkeit and Post-Modernity: an Hegelian Reconsideration of the State*. In *Hegel Reconsidered: Beyond Metaphysics and the Authoritarian State*. H.T. Engelhardt & T. Pinkard, eds. Boston. Kluwer Academic Publishers: 211–224.

³⁴ Concurring with Ronald Dworkin in his dismissal of religious rationales for the legal prohibition of physician-assisted death, John Arras nevertheless disagrees with him about the present availability of convincing secular justifications, i.e., whether philosophical 'coherence' *an sich* is sufficient warrant for policy implementation. See: J. Arras. 1998. *Physician-Assisted Suicide: A Tragic View*. In *Physician-Assisted Suicide: Expanding the Debate*. New York. Routledge: 296, note 14. Cf. N. Daniels. 1985. *Just Health Care: Studies in Philosophy and Health Policy*. Cambridge, NY. Cambridge University Press: 4. Daniels writes, 'without agreement on such a framework [for public-policy *vis-à-vis* health care institutions], policy decisions are especially difficult to make because there is no

that, short of conversion, one cannot make ethical claims that are binding on others outside of a mutual point of reference. Herein, if I understand his reasoning correctly, lies the fundamental weakness of 'secular' bioethics. In other words, there is no way to bridge the yawning space between 'the morality of particular communities and the secular morality that can bind the larger society.'³⁵ It is a crucial necessity, however, that one recognises *why* it is important – indeed highly ethical – to promote an openness to many traditions. In doing so one is more likely to foster humility, honesty and a sincere effort to find what is best in others whose views may nor may not coincide with one's own. Furthermore, one is better inclined to weigh her considerations and perspectives in light of others, and if one is serious about this deliberative process, she will – it is hoped – be willing to revise her views as necessary, not clinging to false certainties and intransigent dispositions.

II

Moral claims

Enter now three problematic beliefs that Engelhardt espouses. The first concerns assumed moral perspectives. Engelhardt insists that one must have, as he does, an articulated moral-ethical system (and by extension that most policy makers – e.g., ethicists, politicians, healthcare professionals, attorneys, educators, etc. – are *de facto* fully cognisant of a specific ethical outlook).³⁶ Yet this is hopelessly misguided because probably the vast majority of people give no conscious thought as to *why* they believe certain thoughts or actions are moral or immoral. Indeed, most people seem to operate *intuitively* about morality given the peculiar

principled way to resolve the conflicting claims advanced by different groups.' While Daniel's book has some failings, its principle merit rests on the fact that *Just Health Care* is an ambitious and compelling attempt to extend the work of Rawls into basic healthcare. Daniels stresses that everyone, echoing Rawls, should have, bare minimum, equal *opportunity* as a moral foundation for a right to healthcare. This view is susceptible to the sorts of criticisms that Amartya Sen has brought to the discussion with his 'capabilities' approach. For a critique of Rawls' 'primary goods' see: A. Sen. 1992. *Inequality Reexamined*. Cambridge, MA. Harvard University Press: *passim*. Attempts to expand Sen's approach have been advanced by M. Qizilbash, M. Nussbaum, S. Alkire, and D. Gaspar.

³⁵ Engelhardt, *op. cit.* note 2, p. viii.

³⁶ In addition to the perplexity of this belief, Yi-Fu Tuan points out that many non-literate peoples (e.g., Pueblo, Semang, Mbuti and Eskimos) have no such system of ethics, and furthermore do not see the need for reflections on moral issues. Y.F. Tuan. 1989. *Morality and Imagination: Paradoxes of Progress*. Madison, WI. University of Wisconsin Press: 28ff.

way in which each has been socialised into various moral understandings.

Engelhardt claims that his book does not carry a 'concrete moral perspective', yet in many instances his characteristic views are actually only camouflaged by seemingly neutral instances of hypothetical moralising. For example, Engelhardt makes the following claim:

For those who believe truly, know morality rightly, and correctly experience what they should do, the choice of moral content will not be arbitrary . . . These believers will not endorse the discounting of the seriousness of moral differences. Morality will be a truth given.³⁷

Indeed, his book not so surreptitiously assumes 'special religious or metaphysical premises' that effectively deny non-theological ethics – touted as 'deaf to God' – their authenticity.³⁸ This grim outlook notwithstanding, one can only agree with Engelhardt when he writes in a MacIntyresque persona: 'there is no content-full bioethics outside of a particular moral perspective.'³⁹ But when he avers, 'there is more than one vision of the cosmopolis and of the cosmopolitan . . .' as if this alone could discredit the contributions of 'secular' ethics, it strikes one as either myopic or hypocritical to point to a diversity of perspectives as a fundamental problem rather than an opportunity. The 'chaos of voices' he disdainfully refers to in our postmodern culture, to my mind, is to be preferred over a total *lack* of discussion on matters of paramount importance. Sadly, the latter is too often the state of affairs among persons convinced of the theological irrelevance of such concerns.

Postmodernity

Engelhardt's second belief is that pluralism, borne out of our postmodern climate, is cause for alarm rather than conducive to opportunities for growth. Yet unlike Engelhardt, who purports

³⁷ Engelhardt, *op. cit.* note 2, p. 77.

³⁸ This despite his caveat in the preface to the second edition: '[This work] justifies a moral framework by which individuals who belong to diverse moral communities, who do not share a content-full moral vision, can still regard themselves bound by a common moral fabric and can appeal to a common bioethics. It offers a moral perspective that can reach across the diversity of moral visions and provide a moral lingua franca.' *Ibid.* p. ix.

³⁹ *Ibid.* p. 9. Cf. A. MacIntyre. 1988. *Whose Justice? Which Rationality?* Notre Dame, IN. University of Notre Dame Press.

that postmodernity is characterised by ‘moral fragmentation’ leading to nihilism and relativism,⁴⁰ I do not find postmodernity to be a social climate inimical to particularised communities. Indeed, in our day traditional – including religious – perspectives are given license to flourish at unprecedented levels. Wearied by suffocating hegemonies, postmodernity is a socio-political climate that allows other expressions to breathe, *even if* all expressions are not healthy ones.

Furthermore, our postmodern milieu fosters a greater appreciation for bilateral tolerance, differentiation and complexity, democratic eclecticism, and the empowerment of distinct – heretofore-repressed – languages, art forms, races and cultures. Whereas modernity might have given us definitive, all-encompassing explanations, postmodernity solicits a comparative study of texts; where modernity promulgated ‘facts’ and ‘truths’, one now knows these to be, like telescopes and wigs for gentlemen, an invention of seventeenth-century Europe (MacIntyre). Today’s Western culture is more predisposed than ever before to affirm the diversification of cultural matrices, philosophical presuppositions, and educational awareness. Postmodernity nuances as never before; it appreciates intricacies previously side-stepped; and very often it proffers humble agnosticism, replacing universalist pontifications and certainties. This, in turn, allows for dialogue, a positioning that strays from hegemony, and encourages freedom. But postmodernity’s stress on heterogeneity is not a pessimistic indeterminacy, as Engelhardt and others insist, but rather one of hermeneutical honesty, whose rigours demand of us an acknowledgement of the diversity of views and the peculiar set of criteria that attend each community, in keeping with their respective interests, beliefs, and practices.

Postmodernity is not without its problems.⁴¹ Yet it is with a more positive outlook in mind that Engelhardt’s vision of a tena-

⁴⁰ Ibid. p. 421.

⁴¹ Indeed, to many, postmodernity has either run its course or it simply lacks the content necessary to speak to social and political matters, including the possibility of invoking universal human rights. See: M. Nussbaum. 2000. *Women and Human Development: The Capabilities Approach*. Cambridge, MA. Cambridge University Press: Chapter I. Michael Apple also speaks for many when, in the context of educational theory, he writes, ‘postmodernism and poststructuralism have been appropriated in ways that make them in to simply the cultural capital of a new elite within the academy.’ Elsewhere he writes, ‘[the postmodern condition] mirrors our inability to see and to recognize what structures exist and how they actually work in relation to large-scale forms of domination and exploitation.’ M. Apple. 1993. *Official Knowledge: Democratic Education in a Conservative Age*. New York, NY. Routledge: 6, 196.

ble bioethics needs to be expanded. Particularly when bioethics is not, in and of itself, right or wrong, one cannot afford to malign efforts to make sense of ethical quandaries on the basis of a different way of viewing things. Certainly not when human lives are at stake. Certainly not when mutual understanding is a worthwhile goal. And certainly not when Engelhardt's belief in the imprint of the Logos⁴² impels one to act from her deepest impulses of compassion and goodness.

Libertarianism

Finally, there is Engelhardt's libertarianism. His political views are uncompromising in their commitment to ideals, *viz.*, individual freedoms and property rights that appear to be at loggerheads with the sort of *agape* ethic one associates with Christianity. On specific issues, Engelhardt unsurprisingly assails bioethical views that condone abortion, euthanasia, and infanticide, and refers to them as 'great moral evils.'⁴³ Given his theological presuppositions, one cannot – indeed should not – fault him for this. There are, after all, many ethicists on both sides of the divide on any number of biomedical issues as well as moderate variations of both.

But one is startled to find Engelhardt condemning welfare, a redistributive tax system, and universal health coverage on the purported strength of oblique Synoptic references to the Kingdom of Heaven.⁴⁴ What does he propose in its place? Almsgiving, sympathy, and comfort. He writes, 'The pains and sufferings of illness, disability, and disease, as well as the limitations of deformity, call on the sympathy of all to provide, aid and give comfort.'⁴⁵

Yet while there is much to be said for these things – indeed a great deal – there are also painfully obvious problems with such a view. Despite his noble intentions, Engelhardt should have reason to doubt whether enough people will be altruistically forth-

⁴² Gospel of St. John, Chapter 1, verse 9.

⁴³ Engelhardt, *op. cit.* note 2, p. xi.

⁴⁴ *Ibid.* p. 406, note 16. Engelhardt cites Matthew 19 : 21 as his proof text for why Christians need not worry about the financial woes of others. This seems very much the sort of 'brute luck' view discussed in the literature concerning a right to healthcare.

⁴⁵ *Ibid.* p. 382. It is unclear whether pain and suffering – which Engelhardt claims will elicit the sympathy of all – is a Humean claim about human hardwiring for compassion or whether it is a claim that applies only to Christians. Engelhardt does not explore the rich tradition of social justice in Catholic – and, more recently, Protestant – writing.

coming. There are solid grounds on which to doubt whether a libertarian *weltanschauung* will incline one to an appreciation of social justice. Moreover, it can also be questioned whether religious charities *ever* – now or then – contributed enough to the poor⁴⁶ to justify the kind of offhand attitude that Engelhardt manifests toward universal healthcare with a comment like the following:

Being committed to aiding the poor is not equivalent to being committed to using state force to compel nonbelievers to be charitable.⁴⁷

Furthermore, it is doubtful whether one can expect an audience to respond seriously to the suggestion that a) the imposition of an all-encompassing healthcare system is an act of secular immorality,⁴⁸ b) that Christians are more inclined than others to help the disadvantaged,⁴⁹ c) that ‘nonbelievers’ are unlikely to be charitable without their compliance to ‘state force’, or d) that the benefits of socialised medicine can be so easily dismissed by pointing to nearly similar levels of life expectancy in European countries.⁵⁰ An altruism that seeks to appeal to the sympathy of others, and that

⁴⁶ The Catholic inspired ‘base communities’ throughout Central and South America – and now, following their example, dynamic replications in other Third World countries – is an impressive exception to this general rule in the Industrialised Nations of the West. Many African American churches in the United States are also known to be exceptions to this rule. Many religious charities (e.g., Catholic Relief Service, World Relief, Church World Service), do, of course, effect tremendous relief efforts the world over, but much of their work is heavily subsidised by Federal dollars. See: Faith-Based U.S. Charity not really a New Thing. *Wisconsin State Journal* 2001; 22 July: A5.

⁴⁷ Engelhardt, *op. cit.* note 2, pp. 381–387. Elsewhere Engelhardt writes, ‘[a]ttempts to establish the state as the defender of a canonical moral vision, understanding of justice, or ideology fail in the face of the plurality of moral visions and the diversity of moral communities among which there is no canonical basis for content-full choice. As a consequence, large-scale pluralist states have limited moral authority to impose or establish all-encompassing content-full health care policy.’ *Ibid.* p. 173.

⁴⁸ *Ibid.* p. 375.

⁴⁹ The fact that Christians – and in this instance, Eastern Orthodox Christians – are no more, and oftentimes *less*, charitably forthcoming is evidenced by Pope John Paul II’s somewhat recent (2001) visits to Greece and Ukraine, mirroring similar disappointments in Jerusalem and Egypt during Lent, 2000. In both overtures, the Pope and his entourage were greeted with muted hostility. See: Pope Seeks Forgiveness from Orthodox ‘Brothers’. *Chicago Tribune* 5 May, 2001: 1, 6; and, Pope Attempts to Mend a Rift in Ukraine Trip. *New York Times* 24 June, 2001: 1, 8.

⁵⁰ Engelhardt, *op. cit.* note 2, p. 410, note 50.

endeavours to 'motivate choices regarding the use of commonly owned resources' is not likely to be effective unless one believes – against all manner of evidence – that Rousseau was right about 'natural' proclivities for goodness in humankind.

It may go without saying that Engelhardt's religious views seem strangely at odds with a philosophical commitment that would appear unapologetically indifferent to the freedoms that others may or may not have. Amartya Sen speaks to the heart of the matter:

[H]orrors of any degree of seriousness – all the way from gigantic famines to regular undernourishment and endemic but non-extreme hunger – can be shown to be consistent with a system in which no one's libertarian rights are violated. Similarly, deprivation of other types (for example, the lack of medical care for curable illnesses) can coexist with all libertarian rights (including rights of property ownership) being fully satisfied.⁵¹

Nevertheless, Engelhardt rejects any and all attempts to develop and apply a so-called 'content full' theory of justice or equality to society on the ground that all such theories necessarily beg certain key questions about the nature of good. He further claims that one therefore has to fall back on the ultimate fact that persons are the source of all moral legitimacy in the modern pluralistic state, and thus all social programmes have to be premised on the consent of each and every individual person.⁵²

Others, however, have argued that a person's success depends in no small measure on the collective assets of the community. Indeed, without the 'capital' of the community (i.e., wisdom, trust, common values, language, etc.) one cannot suppose that she has been able to amass a fortune without having at the same time incurred a debt. Francis Schrag conjectures that an inheritance tax may help to remedy social injustices. He writes,

Even within a libertarian system, then, an inheritance tax should be viewed as the legitimate demand for repayment of a debt rather than as the community's collective robbery of

⁵¹ A. Sen. 1999. *Development as Freedom*. New York, NY: Knopf: 66.

⁵² In an effort to escape the restraints of identity politics Shelby Steele places a similar emphasis on the individual in a recent essay: *The Age of White Guilt and the Disappearance of the Black Individual*. *Harpers* 2002; November: 33–42.

the deceased . . . [Redistribution] for purposes of equalizing opportunity can and should be acknowledged, even from a libertarian point of view.⁵³

Be that as it may, Engelhardt does not believe that transactions – in the form of gifts or bequests – can be compelled by the state. Redistribution of any kind must take the form of benevolence. Engelhardt is correct to point out,

The state is precisely that structure that encompasses numerous communities with diverse moralities and understandings of the good life. The state may enforce recorded contracts and provide certain welfare rights. But it does this in a transmoral fashion. Where moralities are diverse, the state draws its authority not from what it does, but from the permission of those who participate.⁵⁴

Here, Engelhardt has captured the essence of political legitimacy. Yet certain questions still need answering: why must one regard a person's consent as the source of all authority in just this way? Why does Engelhardt appear unperturbed about other paternalistic, 'coercive' actions of the State that interfere with individual liberties (e.g., compulsory schooling, scientific research, the building of libraries, roads, parks, defence, emergency relief aid)? Finally, why should the unwillingness of the rich to part with a portion of their income trump the project of providing the great mass of humanity with the means necessary to live a minimally decent life?⁵⁵ Engelhardt's libertarianism does not resolve these thorny matters, because any redistributive design is viewed as unjustifiable expropriation. There is no room in his view for the state, representing the community and its interests, to have any claim on an individual's holdings.

III

Universal healthcare

Engelhardt has a legitimate concern where state imposed health-care is concerned. And while I disagree with his pessimistic outlook, it is a judicious observation to claim:

⁵³ F. Schrag, *Justice and the Family. Inquiry* 1976; 19: 199.

⁵⁴ Engelhardt, *op. cit.* note 2, p. 177. Here, Engelhardt's reasoning is reminiscent of communitarian libertarians like Michael Sandel. See: M. Sandel. 1984. *Liberalism and Its Critics*. New York, NY. NYU Press.

⁵⁵ On this last point, I have thanks to offer an anonymous reviewer of an earlier draft.

[There] are moral environments into which the state may not intrude because it possesses neither the authority nor the canonical moral vision to legitimate or instruct such action. It is within these spaces, spaces left by the failure of secular rational thought to establish a canonical content, [which] diverse health care policies may develop or take shape.⁵⁶

Nevertheless, it is unfounded to suggest that government-operated healthcare would forbid some of its citizens the right to purchase private health insurance; neither is it accurate to imply that 'such requires a view that the goods and services of individuals are *totally* at the disposal or control of the community.'⁵⁷ Furthermore, it is a libertarian conceit to say that one should jettison attempts to find plausible moral reasoning for the implementation of a national healthcare policy on the grounds that such attempts are vain or morally bankrupt.

Engelhardt's principal reasons for rejecting a state imposed healthcare rest, in the main, on 'the problem of selecting the correct content-full account of justice in order canonically to distinguish between needs and desires and to translate needs into rights.'⁵⁸ Whenever and wherever there might be heteronomous values imposed on sovereign individuals, either through 'coercive taxation' or the provision of contested services, Engelhardt will unfailingly reject it out of hand. Concerning this brand of individualism, one is reminded of Robert Nozick's classic statement concerning 'side constraints':

[T]here is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more.⁵⁹

⁵⁶ Engelhardt, *op. cit.* note 2, p. 177.

⁵⁷ *Ibid.* p. 174. Emphasis added.

⁵⁸ *Ibid.* p. 384. There is a rich literature growing ever larger that tackles the challenges of health resource allocation. See, as a mere sampling: E. Nord. 1999. *Cost-Value Analysis in Health Care: Making Sense of QALYs*. New York, NY. Cambridge University Press; P. Ubel. 2000. *Pricing Life: Why it's Time for Health Care Rationing*. Cambridge, MA. MIT Press; T. Evans. 2001. *Challenging Inequities in Health: From Ethics to Action*. New York, NY. Oxford University Press.

⁵⁹ R. Nozick. 1974. *Anarchy, State and Utopia*. New York. Basic Books: 33. Or, consider Milton Friedman's often-quoted comment on political freedom: 'Political freedom means the absence of coercion of a man by his fellow men. The fundamental threat to freedom is power to coerce, be it in the hands of a monarch, a dictator, an oligarchy, or a momentary majority.' M. Friedman. 1962.

This reductionist view, even if qualified by exceptional exemptions – what Nozick calls ‘catastrophic moral horrors’ – does not seriously take account of communal rights, not to mention negative freedoms, i.e., the freedom not to be deprived of food, basic education, medical aid, or decent shelter. Neither does this view squarely face the fact that healthcare is a *basic human need*.

Engelhardt’s view of state-controlled healthcare is unfounded precisely because even in socialised northern Europe, healthcare does not *forbid* the purchase of private insurance. (The NHS of Britain, for instance, does not prevent 10% of its citizens from purchasing services not covered under its plan.) It is also widely known that most citizens in northern Europe use insurance companies, public and private. The difference is, of course, that medical coverage is heavily subsidised by the State. Consequently, virtually no one is left without medical coverage – unlike one-sixth of the American population who are presently without it – and very few are discouraged (as they are in the United States) from seeing a physician because of cost when ill. Positing that ‘[g]overnments are morally suspect’ is more of a libertarian smokescreen than a real attempt to grapple with the merits of socialised medicine. Yet Engelhardt is adamantly against socialised medicine. His view is in keeping with other libertarians who insist that such a system engages in ‘coercive taxation’ that helps to pay for the needs of others; also, it would necessarily incorporate contested views of the good by means of taking positions on such issues as stem cell research, clinical trials, *in-vitro* fertilisation funding, etc.

Engelhardt is right to point out that a ‘hierarchy of needs versus desires’ will need to be carefully delineated (e.g., the moral status of neonates under 500 grams, liver transplants for alcoholics, etc.). But most will agree that acne treatments, root canals, and breast implants take a back seat – and thus are of lesser importance – to cancer and AIDS treatments or kidney dialysis. Engelhardt also acknowledges the merits of the Oregon Health Plan, which does not forbid the purchasing of private insurance to pay for services that those with disposable income wish to seek out, *viz.* those services not covered under state rationing. Nevertheless, he distressingly glosses over the inherent failings of the

Capitalism and Freedom. Chicago. University of Chicago Press: 15. As for Nozick, he qualifies his view somewhat in his later work, *The Examined Life* (1989. New York. Simon and Schuster).

selfsame plan. Moreover, Engelhardt is blithely accepting of inequalities where healthcare is concerned (including those under the Oregon Plan) because ‘individuals are free and differ in the scope of their needs and resources.’⁶⁰

CONCLUSION

As I have argued in this essay, there is much to agree *and* disagree with in Engelhardt’s *Foundations*. For example, there is no denying that ‘canonical religious communities’ will often interpret questions having to do with the value of life – any life – differently from secular bioethicists.⁶¹ But that should not lead us to spurn their contributions to the biomedical quandaries that beset many people today. Concerning Engelhardt’s libertarianism, there is serious reason to doubt whether its central tenets and Eastern Orthodox Christianity can be held in tandem. At the heart of the libertarian view is the (nearly) inviolate axiom of individual liberty. This liberty, together with a few others (e.g., property rights), is held sacrosanct and takes almost complete political precedence over the pursuit of social goals. This includes what Sen calls the ‘removal of deprivation and destitution.’⁶² Yet at the heart of Orthodox Christianity – and indeed most religions – is the idea that communities *matter*, that human lives have intrinsic importance, and that one is not better served by only looking out for oneself or for those with whom there is complete agreement. Never mind what *de facto* one beholds in certain religious communities; never mind that the Eastern Orthodox tradition did not ever develop a rich social justice tradition. The core of the message in Christianity justifies a *social* ethic, and one cannot merely agree to procedural rules *irrespective* of outcomes. Finally, to the issue of overconfident assurance that often follows religious conversion, Olivier Clément incisively criticised this naïveté when he commented that the Orthodox Church in the West is particularly in danger of becoming the last refuge for those who find only decadence and corruption in technology and society.⁶³ Not infrequently, Engelhardt shows signs of falling prey to this temptation.

⁶⁰ Engelhardt, *op. cit.* note 2, p. 403.

⁶¹ On the question of abortion and infanticide, Engelhardt writes, ‘[s]ecular morality is blind to the intrinsic immorality of either.’ Engelhardt, *op. cit.* note 2, p. 253.

⁶² A. Sen, *op. cit.* note 51, pp. 62–63.

⁶³ O. Clément. 1989. Witnessing in a Secular Context. In *Your Will Be Done: Orthodoxy in Mission*. G. Limouris, ed. Geneva. WCC Press: 124.

But one must be willing to see better things in others; indeed, faced with the multitudinous possibilities for understanding, one must be willing to interpret anew.

Alas, Engelhardt too appears – however reluctantly – to recognise this on the very last page of his book when he writes,

Insofar as one's community does not include all [Marxists, Hindus, Mormons, Globalists, *inter alia*], one will need to reach to others within the constraints of a secular pluralist morality. If one's only contact with secular morality occurs when one walks to the property line of one's peaceably established moral enclave . . . one can be seen as acknowledging secular pluralist moral constraints insofar as one does not carry the imposition of one's viewpoint beyond that line and insofar as one expects reciprocal tolerance of one's own way of life.⁶⁴

This seems to me a very good start. It is a clean break with sectarianism⁶⁵ and a *bona fide* recognition of others. Now one has only to move beyond Engelhardt's obligation under duress as it were, and instead see this as our *raison d'être* inasmuch as one bears witness to Truth in its many shapes and forms. Inasmuch as this meets with success, Engelhardt will prove a remarkable asset

⁶⁴ Engelhardt, *op. cit.* note 2, p. 422.

⁶⁵ Sadly, however, Engelhardt seems to revel in the moniker, 'sectarian' in his more recent *Foundations of Christian Bioethics*, not auguring well for things to come. Concerning his partiality for 'sectarian' he adds, with his disarming eloquence, verve for embracing the 'fundamentalist' label when he says, 'traditional Christians will be fundamentalists in the invidious sense of persons whose basic commitments are disruptively at odds with the secular society within which they live.' Engelhardt, *op. cit.* note 3, 7. (Some of this 'oppositional thinking' is eloquently captured in: Victoria Clark. 2000. *Why Angels Fall*. New York, NY. St. Martin's Press.) Unhappily, however, Engelhardt appears to wage war against Western Christianity, and indeed the West as a whole. This is not surprising when one considers the sources he often quotes, e.g., Hiermonk Vlachos, John Maximovitch, *int. al.* Cf. Engelhardt, *op. cit.* note 3, p. 155, note 36; p. 161, 227ff, note 144 *et passim*. It is also worth mentioning that Engelhardt's claims of an 'Orthodox Catholicism' that is united 'in true worship and belief . . . and a single experience of faith' are not borne out in the social and political reality that is Eastern Orthodoxy. Aside from recent scholarly efforts to heal the chasm still separating the Oriental Orthodox from the Eastern Orthodox, valiant attempts to work towards a pan-Orthodox unity (notably the Ligonier, Pennsylvania SCOBA conference in 1994) have been thwarted by continuing jurisdictional chaos, festering acrimonies, and moves to either impose authority on another (e.g., the imbroglio between the Ecumenical Patriarchate and Moscow over Estonia), or, more recently, the pull away from a time-honoured loyalty (e.g., the very recent (2001) Antiochian North American push for autonomy from its Syrian Patriarchate).

to the Orthodox Church⁶⁶ and to the continuing study required of any serious bioethicist.

Michael S. Merry
4805 Agate Lane
Madison, Wisconsin 53714
USA
msmerry@wisc.edu

⁶⁶ Certainly there are also the notable contributions of Fr. John Breck. Breck's focus, however, is chiefly a *theological* one, and many issues that he discusses in his bioethical writings, *viz.*, marriage, sexuality, gender, and even cremation, do not touch directly on bioethical concerns. See: J. Breck. Human Cloning: Myths and Realities. *St. Vladimir's Theological Quarterly* 2001; 33: 285–299; J. Breck. 1998. *The Sacred Gift of Life: Orthodox Christianity and Bioethics*. Crestwood. St. Vladimir's Seminary Press. And: J. Breck. Bioethical Challenges in the New Millenium: An Orthodox Response. *SVTQ* 2002; 46: 315–329.

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