

## BIOETHICS AFTER FOUR DECADES: LOOKING TO THE FUTURE

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It is already over forty years since, at Georgetown University in Washington, D.C., the term “bioethics” was re-deployed to identify a new field that was to address moral issues in health care and the biomedical sciences (Shriver 2001, Reich 1994). The term had previously been coined by Fritz Jahr in 1927 to identify an ethos to direct man’s relationship with other animals and the environment (Jahr 1927). In 1970, Van Rensselaer Potter re-deployed the term for a similar purpose: he wanted to articulate and advance a morality that could guide man’s appropriate relationship with his environment (Potter 1970, 1971). Neither of these attempts created a field such as bioethics is now a field of scholarship and practice. Within the first years, this new field, bioethics as the new biomedical ethics, compassed both a theoretical academic dimension and a practical field directed to giving advice in the clinic and with respect to the proper conduct of research involving human subjects. This complex new field, which amalgamated the theoretical and the practical, gained substance nearly overnight. By 1978, it could boast an encyclopedia (Reich 1978). Within a decade, bioethics had begun to have a substantive presence in Western Europe and the Pacific Rim. The rapidity with which the field grew and the astonishing way in which it quickly became salient are striking. The startling development of bioethics shows that the field of bioethics has filled an important cultural vacuum.

Bioethics drew its original focus and energy from the perceived need for moral direction just as a significant moral vacuum was engendered, first in America, then in Western Europe, and then elsewhere. In America, there was an intersection of three cultural developments that made a field such as bioethics pluralist. First, in the United States the medical profession was transformed from a quasi-guild to a trade through a number of Supreme Court decisions (*USA vs. AMA* 1943; *AMA vs. FTC* 1980). Among other things, this change brought the medical ethics of the medical profession into question, suggesting that medical ethics should be guided by general moral norms, not professional norms. Second, driven and shaped by an increased individualism and distrust of tradition, American court rulings eroded the traditional professional standard for free and informed consent to medical treatment, replacing it with a reasonable-and-prudent-person standard, which standard required the disclosure of all information material to an individual’s decision whether to accept or refuse treatment

(*Canterbury vs. Spence* 1972). Because medical decision-making was severed from the traditional guidance of the medical profession, an individually-oriented understanding of the ethics of medical decision-making was necessary. Last and surely not least, the established culture of America went through a process of profound secularization. A country that once had characterized itself as Christian sought to re-define itself in terms of general secular norms.<sup>1</sup> It was far from clear what those norms should be. These profound cultural changes created a moral vacuum just as medicine was becoming more effective, more expensive, and productive of seemingly new moral puzzles. In addition, moral pluralism was becoming ever more salient.

Bioethics came into existence in response to this moral vacuum. It promised to be able to give substantive moral direction, to provide a *lingua franca* in the face of substantive moral diversity. In particular, bioethics arose as a part of the moral-philosophical project initially framed in ancient Greece, and then embraced again in Western Europe in the early 13<sup>th</sup> century. After the translation of Aristotle into Latin in Paris in 1210, it had seemed ever more plausible that one could through moral-philosophical reflection establish the lineaments of a rational morality, in particular a natural law that could bind all men. In the centuries that followed, this rationalist faith in moral philosophy did not wane, but in fact it grew. After the Thirty Years' War (1618-1648) and the British Civil War (1642-1651), the Enlightenment embraced the medieval faith in reason without its faith in faith. In great measure, the academic bioethics that came into existence at Georgetown University's Kennedy Institute was a continuation of the Enlightenment hope most prominent in Immanuel Kant's (1724-1804) work that sought to establish the canonical ethics through sound rational argument.

That this faith in moral philosophy was embraced anew at the Kennedy Institute should not be at all unexpected, for Georgetown is a Jesuit university, and many of the first founders of bioethics had had theological ties. Academic bioethics flourished despite the fact that it came into existence just as post-modernity recognized that philosophical rationality could not substitute for God, in that there was no one moral rationality (Engelhardt 2010b, 2010c). In 1802, in "Glauben und Wissen" Hegel had recognized this state of affairs when he declared God dead in the vanguard culture of his time.<sup>2</sup> It took until the latter part of the 20<sup>th</sup> century before the force of Hegel's insight was acknowledged by thinkers such as Richard Rorty<sup>3</sup> (1931-2007) and Gianni Vattimo<sup>4</sup> (1936-). This recognition of the character of secular morality is also being subtly incorporated into the character of academic bioethics, which now

without public acknowledgement proceeds *de facto* as if it appreciated that its moral positions are freestanding clusters of intuitions sustained by diverse moral narratives all floating within the horizon of the finite and the immanent. I take this insight to be the ground for Tom Beauchamp predicting that “this [moral] theory part of the landscape of bioethics I expect to vanish soon, because it is serving no useful purpose” (Beauchamp 2004, p. 210).

As to clinical ethics, its salience in the face of moral pluralism has been world-wide. This phenomenal success has very likely occurred because the ethics about which clinical ethicists are expert is that ethics that happens in a particular state at a particular time to be established by law and in healthcare policy, which is now the ethics of a secular state (Engelhardt 2011, 2010a, 2010d). Against this background of a legally established ethics, healthcare ethics consultation and clinical ethics generally can proceed by providing quasi-legal advice and various other protections against malpractice and other juridical adversities, while in addition providing mediation among disputing parties. As such, clinical ethics can thrive not simply despite, but because of the salience of moral pluralism (Engelhardt 2000). In cultures marked by a moral pluralism in which there is fundamental disagreement as to when and under what circumstances it is licit, obligatory, or forbidden to have sex, reproduce, transfer resources, or take human life, clinical ethics can give guidance through offering a thoughtful exposition of that ethos that has gained *de facto* legal and public-policy force. Clinical ethics thus fills a major social and cultural niche.

We have only begun to understand the significance and force of bioethics, both academic and clinical. In bioethics we are joined in a significant cultural and moral journey. The project of secular bioethics concerns the very possibility of and meaning of a secular culture and polity, a project we have also just begun to explore and critically assess. This project we will need to shoulder together in Portugal, in the United States, and across the world. It has been very rewarding for me to have been joined with Portuguese in this project. It is for me a great honor to receive the National Bioethics Award of the Portuguese Association of Bioethics. For over two decades, my reflections have been tied to those of bioethicists working in Portuguese. From these contacts and conversations I have learned a great deal. From these common interchanges I have found new insights. It is an honor to be bound to those exchanges through this award. It is with profound gratitude that I thank you for giving me this honor.

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<sup>1</sup> Into the early 20<sup>th</sup> century, courts in the United States still recognized Christianity (i.e., generally Protestant Christianity) as constituting an essential element of common law [*United States v. Macintosh*, 283 US 605 (1931)]. This role for Christianity was accepted because the constitutional prohibition against the federal establishment of religion in the First Amendment originally in practice only meant that ministers of one particular church could not be federally supported to the exclusion of others. The prohibition against the establishment of a religion was not taken to require the separation of state from religion in the sense of separating law from a moral tradition rooted in religious, especially Christian, moral understandings (consider the legal prohibition of the marriage of adult sterile siblings). The American legal framework "self-evidently" incorporated Christian norms. In addition, Christianity was in different states in different ways *de facto* and generally *de jure* the established religion. It was only in the mid-20<sup>th</sup> century that the *de jure* and *de facto* establishment of Christianity was brought into question and then abolished, as the Supreme Court secularized American law and public policy. E.g., *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).

<sup>2</sup> Hegel in "Glauben und Wissen" (1802) was the first to speak of the death of God. He was referring to the circumstance that the vanguard culture of his time was marked by "the feeling that 'God Himself is dead'" (Hegel 1977, p. 190; 1968, p. 414).

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<sup>3</sup> Richard Rorty (1931-2007) and others have come to acknowledge what Hegel had already appreciated, namely, that one faces an unavoidable re-assessment of the meaning of secular morality. Richard Rorty observed that "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). As a consequence, Rorty quite correctly argued regarding secular morality: "We can keep the notion of 'morality' just insofar as we can cease to think of morality as the voice of the divine part of ourselves and instead think of it as the voice of ourselves as members of a community, speakers of a common language" (Rorty 1989, p. 59). Secular morality can no longer be advanced as the canonical normative framework.

<sup>4</sup> Vattimo affirms the contemporary secular moral culture's demoralization of traditional moral choices into life-style or aesthetic choices. Vattimo considers this to be part of an eschewal of violence and a pursuit of peace. It seems clear that the reconciliation of peace and liberty in the postmodern or late-modern world will be attained only on condition that esthetics prevails over objective truth. The variety of lifestyles and the diversity of ethical codes will be able to coexist without bloody clashes only if they are considered, like the artistic styles within an art collection... (Vattimo 2004, p. 58). Zabala puts the matter in a similar fashion: "Thought must abandon all objective, universal, and apodictic foundational claims in order to prevent Christianity, allied with metaphysics in the search for first principles, from making room for violence" (Zabala 2005, p. 13).