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At the Foundations of Bioethics and Biopolitics: Critical Essays on the Thought of H. Tristram Engelhardt, Jr.

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*Mine is to chew on the appropriate texts and
make them delectable.*

– St. Gregory of Nyssa (335–394 or 395)

*To our mentor,
Professor Doctor H. Tristram Engelhardt, Jr.,
Ph.D., M.D., for training in the chewing of
texts and ideas*

Dr. H. Tristram Engelhardt, Jr. paying tribute to the Republic of Texas near a plaque commemorating its former embassy building in London, England. Photo courtesy of Jeremy Garrett.

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Introduction

Introduction

Alternative moralities compete without an apparent principled basis for definitively choosing one as canonical. If truth cannot break through to us and personally direct us, will we not always be lost in a plurality of diverse moral and religious views in the sense of not knowing which norms should govern? Will morality then be more a matter of taste, cultural inclination, and communal preference? ... Who but a true post-modern could without regret live in such a context? (Engelhardt 2000, xi).

Professor H. Tristram Engelhardt, Jr., is a philosopher of difference. The impressive range and depth of his work in philosophy, medicine, bioethics, and theology illustrate his profound appreciation that careful and critical analytical work is central to reigning in the untutored desire to claim established canons of political correctness as truth. Professor Engelhardt's work in the philosophy of medicine, for example, demonstrates the ways in which we see the world through taken-for-granted background social, scientific, and value expectations. What is often thought of as the common scientific world view is set within a web of complex, etiologic forces. Which goals will be pursued, which eschewed? Whose standards of evidence and inference will be adopted? Which will ground knowledge claims? Whose account of the normal versus the abnormal will guide research? And, which group of scientists will function as exemplar knowers? This does not mean that investigators do not attempt to understand reality as it is in itself, unconstrained by cultural, social, and historical forces. Indeed, as Engelhardt points out, the goal of undistorted knowledge functions as a heuristic to direct one towards the truth (1996, 191). However, "[o]ur world," as Engelhardt argues, "is structured by a special set of assumptions about the rule-governed character of our experience. These scientific and metaphysical presuppositions fashion for us our everyday expectations. They give shape to our lifeworld" (1996, 190). As a result, even those who seek to see truly must be initiated into a particular way of relating to and experiencing reality. One must already have an idea of what truth is and how to find it, as well as how to interpret what one has found. Medical students, for example, have to be taught how

to “read” the slides they examine under microscopes; researchers must be initiated into the assumptions and practices that guide the experimental methodology of their particular fields. As Engelhardt concludes, the world is simply not furnished with uninterpreted facts.

The circumstance that all knowledge claims are culturally and historically conditioned similarly influences our understandings of morality and bioethics. In his best-known work, *The Foundations of Bioethics* (1986, followed by a second edition in 1996), Engelhardt laid bare the empirical reality of the deep and intractable moral pluralism of the modern world. In his later theological counterpart, *The Foundations of Christian Bioethics* (2000), he provided readers with the flip side of this coin: Engelhardt’s detailed and serious account of Orthodox Christian bioethics. In each case, Engelhardt concluded that general secular reason is unable to secure a uniquely true account of the right, the good, the virtuous, or the just. It cannot even establish a definitive account of the reasonable or the reliable. As a result, general secular reason is powerless to provide definitive foundations for a content-full secular bioethics, much less settle the deep moral controversies of medicine and health care policy. “In attempts to settle differences by sound rational argument, each side presupposes different fundamental moral premises as well as rules of evidence and inference. Each speaks past the other without a final, rational principled resolution. The result is that bioethical controversies fuel engaging but insoluble debates” (Engelhardt 2000, xi). Consider the seriousness of the challenges at stake: Which account of human nature, and whose explanation of human flourishing and basic goods, should be appreciated as normative? There are even significantly diverse theories for rationally debating the merits of such divergent understandings of human nature. Which consequences should be avoided, which virtues taught, and values embraced, and at what costs to self or others? Whose deep moral intuitions should guide public policy? All attempts to engage particular moral content to guide biomedical decision-making assume what must be proven, argue in a circle, engage in an infinite regress, or otherwise beg the question.¹ All protestations to the contrary, and in the face of numerous (incommensurable) fashionable claims to bioethical truth, a significant diversity of moral visions, accounts of human flourishing, and accounts of social justice compete to guide moral choice in medicine. Bioethics is, as Engelhardt rightly argues, a plural noun (1996, 3).

Without the ability to know the nature of reality undistorted by historical, cultural, and social context – reality as God would know it to be – the challenges for establishing a uniquely true bioethics to guide public policy are insurmountable. All one can know with any certainty is one’s own experiential phenomenological world; but this is split into numerous competing accounts of phenomenological reality,

¹As Engelhardt is well aware the problems that beset secular philosophical analysis have been known for millennia. Consider, for example, Sextus Empiricus (A.D. 160–210) on the *Outlines of Pyrronism*: “The more recent Skeptics hand down the following five modes of *epoché*: the first is the mode based on disagreement; the second is that based on infinite regress; the third, that based on relativity; the fourth, on hypothesis; and the fifth is the circularity mode” (Sextus Empiricus 1996, I.164).

each of which is itself socially, historically, and culturally conditioned. Given such abiding and significant moral pluralism, Engelhardt argues that secular moral authority must be created through and, therefore, is limited to, the actual agreements among actual persons. General secular morality, and thus secular bioethics, is libertarian by default – not because of any particular celebration of liberty as a value, nor due to any fantastic assumptions regarding the basic human rights of persons, but as a default moral and political reality. The norms that we ourselves create with free and consenting others, and strictly limited to the extent of such agreement, provide for the possibility of binding together moral strangers into morally authoritative common projects. General secular morality is created, rather than discovered.

In many circles, Engelhardt is perhaps best known for this unflinching libertarianism. Indeed, it is widely assumed that Engelhardt affirms not only the libertarian political framework of his conclusions, but also its frequently libertine personal consequences. As Ana Iltis and Mark Cherry remarked on another occasion: “Many (perhaps most) readers have not taken seriously Engelhardt’s own announcements found throughout the two editions of *The Foundations of Bioethics* that general secular morality permits and justifies many activities that he, himself, knows to be deeply sinful (e.g., abortion on demand, human embryonic stem cell research, euthanasia, same gender marriage, and so forth) as well as imprudent (utilizing a chiropractor or doctor of naturopathy for treatment of heart disease)” (Iltis and Cherry 2010, 2). The core challenge, as Engelhardt has argued in great depth, in numerous countries, on many continents, in a wide variety of formats, including lectures, commentaries, articles, book chapters, book-length monographs, and other publications too numerous accurately to count (over years too lengthy for it to be polite to mention), is that there simply does not exist secular moral authority permissibly to prohibit such actions among consenting persons.

At the Foundations of Bioethics and Biopolitics: Critical Essays on the Thought of H. Tristram Engelhardt, Jr. engages Engelhardt’s diagnosis of the limits of secular reason and moral political authority, as well as his search for ultimate foundations. This is a book by Engelhardt’s students. Over the courses of our various and diverse careers, Professor Engelhardt has nurtured each of us into scholars in our own right. None of the chapters is merely laudatory. Each carefully addresses, explores, and critically assesses key elements of Professor Engelhardt’s philosophical labors. Many, if not all, raise objections, make careful distinctions, or argue with core aspects of the Engelhardtian project. Some engage his arguments in the bioethics and philosophy of medicine, others in clinical ethics, still others in the history of ideas, social and political philosophy, or international bioethics. One finds essays across the moral and political spectrum. A few of his students have been willing to bite the bitter pill of post-modernity and accept as its consequence libertarianism by default; a few, indeed, have been willing to convert to Orthodox Christianity. But, such diversity is as it should be for a professor who has had such an immense and international impact on the fields of philosophy, medicine, bioethics, and theology. Our hope in presenting this volume to an international audience is to celebrate a singularly distinguished career marked by an extraordinary depth and breadth of scholarship, together with inspiring and engaging teaching, as well as exceptional generosity and love to his students.

Critical Essays

In “A Critical Appraisal of Engelhardt on the ‘Enlightenment Project,’” *Laurence B. McCullough* challenges the history Engelhardt customarily offers of a single enlightenment and argues that there were actually multiple “enlightenment” projects. In the English and Scottish versions of the project, McCullough argues, the aim was not a quest for certainty grounded in mere reason, but rather “a quest for reliability.” In their “moral science,” English and Scottish enlightenment thinkers focus variously on sympathy and intuition rather than certainty or the primacy of reason. As a result of his focus on one strand of Enlightenment thought, McCullough argues, Engelhardt ignores another option for bioethics’ search for moral foundations, that of a “reliable” morality that does not require certainty. It is just such a “reliable bioethics” that McCullough recommends.

In “Diversity in Clinical Ethics,” *George J. Agich* argues for the centrality of diversity (understood multi-dimensionally, including value and practice diversity) to the field, not just in terms of having helped drive its creation, but also as an internal feature that must be incorporated into the practice. This diversity exists in conceptual and theoretical considerations of the practice as well as in the very structures and processes of the practice. Agich expresses a worry that diversity is sometimes taken to be a mark of a field’s immaturity, and, in clinical ethics consultation in particular, this worry contributes significantly to the drive to professionalize the field. Instead, Agich argues, diversity is valuable to the field as a basic characteristic of the practice and as a resource for improvement in the practice. Moreover, and crucially, the deep value pluralism within which clinical ethics consultation is practiced (and which is a deep well of Engelhardt’s thought) is too casually treated as a marginal problem “rather than as an essential feature of the field that needs to be understood” (Chap. 2, this volume, p. 15). The field seems engaged in a blind and undefended search for consistency, Agich points out, when instead it should understand, embrace, and incorporate diversity in various ways.

John C. Moskop, in his chapter, “Recognizing the Difference that Faith Makes: H. Tristram Engelhardt, Jr., on Life-Ending Medical Interventions,” examines some of Engelhardt’s contributions to discussions of end of life care, especially debates concerning the permissibility of employing life-ending medical interventions. Moskop notes that in the secular literature, Engelhardt has defended the right of physicians and patients to employ life-ending medical interventions. Yet Engelhardt rejects the permissibility of life-ending medical interventions in his work in Christian bioethics. Moskop examines Engelhardt’s scholarship on life-ending medical interventions from a secular and Christian perspective, comparing the two positions and considering the extent to which they are consistent. He argues that there are ways in which Engelhardt’s positions may be understood as consistent with one another. Nevertheless, “the shift in emphasis in his writing from endorsement of individual rights to employ these interventions, to religiously inspired condemnation of any form of medical killing, is a remarkable development in his thought.”

Stephen Wear, in “The Foundations of Secular Bioethics,” assesses Engelhardt’s arguments regarding the failure of the Enlightenment and the implications of this failure. The Enlightenment failed to rationally secure a content-filled, lexically ordered secular morality. As a result, Engelhardt argues that we are left with a minimalist account of ethics focused on the ethics of permission between moral strangers. Wear challenges Engelhardt’s view that secular bioethics can give us nothing more than the ethics of permission. With a focus on clinical ethics, Wear argues that “a substantial, secular ethic can be (and has been) legitimately fashioned that provides respectable, coherent guidance for moral strangers.” Wear argues that there is room between Engelhardt’s libertarian ethics of permission and its opposite, the liberal cosmopolitan view (which both Wear and Engelhardt reject), for a more satisfying account of ethics. This account, Wear demonstrates, is substantive and has been developed through “decades of substantial argument, debate, and experience.” It is not impoverished, he says, in the ways Engelhardt would have us believe.

Mary Ann Gardell Cutter reviews Engelhardt’s significant contributions to the philosophy of medicine in “Disease, Bioethics, and Philosophy of Medicine: The Contributions of H. Tristram Engelhardt, Jr.,” arguing that one of the most notable features of his work in this area is the demonstration of the interreliance of bioethics and philosophy of medicine. In demonstrating, via Engelhardt’s work, that the bioethical implications of concepts like “disease” are framed in terms of particular epistemological and ontological commitments articulated in the philosophy of medicine, Gardell Cutter shows that philosophy of medicine is, and should be, always present in the study of bioethics.

Much of Engelhardt’s work has addressed the differences between Christian and secular bioethics as well as differences among religious approaches to bioethics. The contribution from *Kevin Wildes, SJ*, “Sanctity of Life: A Study in Ambiguity and Confusion” (reprinted from an earlier volume), demonstrates the significance of such differences with respect to the term “sanctity of life.” The term, frequently deployed by secular bioethicists, was first used in religious contexts and, Wildes argues, cannot so easily be repurposed as these secular uses suggest. Using the term “sanctity of life” as a heuristic, Wildes demonstrates this failure by comparing just two religious interpretations of it, from Christian and Buddhist traditions. He shows that not only do these religions conceive of the term differently from each other, there are also diverse possible interpretations within each tradition. Each can lead to different conclusions about what kinds of lives have this “sanctity,” and with what other values this sanctity can be balanced. And so, he argues, “when such terms are taken from their basic role they yield very little” (Wildes, Chap. 6, this volume, 84).

George Khushf takes on a significant portion of Engelhardt’s corpus in order to articulate the many and complex lines of argument woven throughout. In “A Transcendental Argument for Agreement as the Sole Sufficient Basis of a Philosophical Ethic,” Khushf explores one of the most central and famous arguments in Engelhardt’s work, the “Principle of Permission,” which Engelhardt argues provides both a minimal and sufficient condition for the possibility of secular morality. Khushf’s tour de force necessarily explores what he calls “argumentative strands”

in Engelhardt's work in order to reconstruct the transcendental argument presented in the *Foundations of Bioethics* (2nd ed.). Along the way, he also investigates the meaning of terms such as "agreement," "conflict," "basis," etc., which factor centrally in the transcendental argument. This demanding essay pays rich dividends for those who want to understand or challenge Engelhardt's work, for it is the only work the editors know of which attempts to bring so many of Engelhardt's claims and argumentative pathways together in order better to understand the whole.

Ruiping Fan focuses on Engelhardt's arguments regarding the requirement for a fair equality of opportunity in "Equality Is Problematic: Engelhardt on Fair Equality of Opportunity, Health Care, and the Family." These arguments, Fan notes, demonstrate that contestable values underlie every conception of fairness or equality upon which a social democracy might base a health care system. As a result, the moral legitimacy of a single-payer health care system is in question. Worse, Fan argues, the reliance on the Rawlsian principle of fair equality of opportunity may undermine the integrity of the traditional family. Because the family is a fundamental source of "nonegalitarian intergenerational obligations," it may come under siege from egalitarian movements. With Engelhardt, Fan argues that the establishment of the modern social welfare state has already contributed to an erosion of the family.

In "Bioethics After the Death of God – Reflections on an Engelhardtian Theme," *Mark J. Cherry* explores ontological issues in bioethics that result from the lack of canonical moral foundations Engelhardt articulates. Epistemically, Cherry argues, canonicity requires a God's-eye perspective, but modern secular morality cannot achieve such a perspective. Lacking that perspective, he argues, any claims to moral values without God or a God's-eye perspective will simply reveal prevailing tastes rather than timeless truth. So, to the extent that bioethicists claim authority to guide public policymaking and clinical decisions, what they in fact provide is "their own idiosyncratic criteria for veracity, rationality, and reliability, as well as rationalizations for ideologically driven political advocacy" (Cherry, Chap. 9, this volume, 159–175).

In her chapter, "The Ethical Conduct of Research: The Legacy of the Three Principles," *Ana Smith Iltis* explores Engelhardt's early contributions to discussions regarding the ethical conduct of research. Engelhardt was among the scholars who wrote background papers for the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. In his contribution, Engelhardt argued that human research must respect three principles. The National Commission ultimately adopted three principles, the first two of which bear a resemblance to Engelhardt's first two principles. In articulating three principles, Engelhardt addressed the relationship among them. He argued that the first principle, which required respect for "human subjects as free agents," was prior to the other two principles. His second and third principles involved obligations to "foster the best interest of the individual human subjects" and to "maximize the benefits accruable to society from research" (Engelhardt 1978, pp. 5–6). Engelhardt argued that the principles were not all equal and unranked but rather that the first took precedence over the other two. The National Commission was not as explicit as Engelhardt was in addressing the relationship among the principles it articulated. The subject of

whether the three principles stipulated in the Belmont Report, respect for persons, beneficence, and justice, are unranked, equally important principles or whether there is some other relationship among them continues to be debated. Itlis explores this debate and the significance it has for contemporary discussions in research ethics.

Lisa M. Rasmussen focuses on Engelhardt's critiques of clinical ethics consultation in "Non-Certain Foundations: A Clinical Ethics Consultation for the Rest of Us." She summarizes arguments found in a number of Engelhardt's works, particularly the history he offers to explain the rise of the field. Even accepting that history, Rasmussen shows, does not require drawing the same conclusions Engelhardt does regarding the legitimacy of the field. But further, she argues, the conclusions he draws are themselves reliant upon metaethical premises which can be countered with other possible premises. In particular, she focuses on Engelhardt's assumption that certainty provides the only possible justification for moral claims. Similar to McCullough's observations (Chaps. 1 and 14, this volume), she articulates what "non-certain" justification might look like in clinical ethics consultation, but also acknowledges that many of Engelhardt's recommendations for changes in the practice of clinical ethics consultation are correct and must be addressed.

Fabrice Jotterand explores a question that has consumed much of Engelhardt's scholarly work: in the ruins of the Enlightenment and in the face of irreducible moral pluralism, how may one "rebuild and provide moral guidance to social practices such as medicine, science, and technology despite moral pluralism and the incommensurability of current bioethical debates." As Jotterand notes, Engelhardt diagnosed a fatal problem with modernity and deconstructed its philosophical agenda. The chapter reflects on the implications of this diagnosis as Engelhardt characterizes them, raising critical points concerning the notion of moral strangers and procedural ethics Engelhardt describes.

Jeremy R. Garrett explores the tension between the critical and constructive elements of Engelhardt's work on the foundations of secular bioethics in "Cracks in the Foundations of Engelhardt's Bioethics." He argues that the nature, scope, and depth of Engelhardt's critiques of the "prevailing methods and values of (secular) bioethical discourse" threaten to undermine even his own positive project of anchoring bioethics to the (purportedly) value-free, content-less, default-justified principle of permission. This tension, Garrett argues, reveals a number of significant "cracks" in the foundations of Engelhardt's bioethics, "each tracing back to fundamental underlying assumptions embedded in his view." These cracks already surface when Engelhardt's framework treats paradigm cases in bioethics (i.e., interactions between fully mature, independent, and autonomous individuals), but expand dramatically when this same framework is applied to non-paradigm cases, including standard cases in pediatric bioethics. Garrett concludes that Engelhardt's framework cannot withstand the internal tension between its critical and constructive elements, but instead is pushed either toward a nihilistic rejection of all (secular) morality or toward a thick content-full bioethics.

Finally, the volume concludes with a special section of personal essays. In our experience, there seems to be a reflected branding involved in being one of

Engelhardt's students. Having misunderstood the man himself, people can sometimes misunderstand what it was like to be one of his students, or what it continues to mean to have been one of his students. It is a pleasure, with this final set of essays, to offer a fuller picture of studying with our mentor, Professor Dr. H. Tristram Engelhardt, Jr.

Conclusion: The Plantation

Because of our inability rationally to defend a canonical correct, concrete moral order or in general secular terms to establish the moral authority coercively to impose a particular concrete moral vision, and because of the ever-available moral standpoint of consensual association based on permission, we have a morality that allows many moralities to be and have their place. In the ruins, even with moral strangers, we can meet and collaborate with moral authority (Engelhardt 1996, 422).

Over the decades, Professor Engelhardt developed a peculiar and very Texian language for describing the relationship among himself and his students: The Plantation. Even though his earliest students will insist that in their time he had not yet fully developed such a robust description, it remains a plausibly descriptive term for all of us who have so labored. There has been much work to be done: two international academic journals: *The Journal of Medicine and Philosophy* (Oxford University Press) and *Christian Bioethics* (Oxford University Press); two major book series: *Philosophy and Medicine* (Springer) and *Philosophical Studies in Contemporary Culture* (Springer); classes to teach on philosophy, health care policy, medical ethics, and ICU ethics rounds; articles to review; books to write; lectures to present; national and international conferences to organize; travel to manage throughout the United States and to many cities abroad; research to engage; good scotch, fine wine, and the occasional James Bond martini to be drunk; and even sometimes a dog that needed to be fed. Excellence would be insisted upon. No excuses. Sleep, a luxury to be frowned upon. In exchange, Professor Engelhardt's obligation was to work tirelessly for his students, not simply through the drafting of a dissertation and successful defense of their PhDs, but until each had obtained the rank of Full Professor with tenure, and even thereafter to continue to support their careers.

Many of Professor Engelhardt's students were and are moral strangers to him and with each other:

Moral strangers are persons who do not share sufficient moral premises or rules of evidence and inference to resolve moral controversies by sound rational argument, or who do not have a common commitment to individuals or institutions in authority to resolve moral controversies. A content-full morality provides substantive guidance regarding what is right or wrong, good or bad, beyond the very sparse requirement that one may not use persons without their authorization (1996, 7).

This fact has never meant that they could not be affective friends. It has never implied that they could not meet and collaborate with moral authority. As Professor Engelhardt's students, we share a bond that is deep and significant, but impossible adequately to convey to others. We have shared friendships, common experiences,

and, perhaps, a bit of post-traumatic stress disorder. Not once in the many years that we have known him, however, has Professor Engelhardt ever strayed from or ceased aggressively to pursue his duties to his students. The depth of his professional energies has always been the greatest when he has sought to help his students and their projects. Here one might recall G.W.F. Hegel's argument that philosophy justifies itself within a circle of thought: the more encompassing the circle, the more powerful and commanding the explanation (Hegel 1975 [1830], sec 17). The Plantation is a powerful circle of thought, indeed.

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