

## Engelhardt's Foundations

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### Foundations without Foundations

Professor Engelhardt has written *The Foundations of Bioethics*, which he often refers to as the *Foundations*. The title and the short title are stunning, for the argument of the book is that there are no foundations of bioethics. Not only are there no foundations of bioethics, there is no bioethics either. Now to be sure, Engelhardt's language in expressing this point is a bit different than mine. He says there is no *content-full* morality that is secular in character, and hence no *secular* bioethics. I think our separate formulations come to the same, since the bioethics about which most of us are concerned is secular. Engelhardt's deepest thesis is that there are no substantive foundations of a secular bioethics, and, lacking such foundations, there are no foundations of any sort of bioethics other than historical roots in nonsecular communities.

This second edition is an expanded, improved, and more readable version of the first edition. Those who loved the first edition will probably love the second even more, but they will want to take note that Engelhardt acknowledges in the second edition that he sinned in the first. Engelhardt's exact words in confessing his sins are as follows: "Many of the conclusions to which I had found myself drawn [in the first edition] were (and still are) abhorrent" (p. viii). Moreover, many of the positions he wound up justifying in the first edition (direct abortion, commercial surrogacy, and the like), he now says are "great moral evils." It would give one pause to think about supporting a theory that lacks all moral foundations and that supports great moral evils; yet such seems to be the paradoxical thesis of this book.

Engelhardt's gloss on this problem is droll: Although he allegedly provides a secular perspective in this book, the only theory that can stop short of supporting great moral evils is a nonsecular perspective that grasps the evil character of these actions. This is one of many paradoxes in Engelhardt: His theory supports "great moral evils" (p. xi), but only the theory he did not write - and I think cannot and will not write - is capable of grasping their evil.

### A Political Rather than Moral Theory

Engelhardt provides little or nothing in the way of moral theory because the book is primarily an exercise in political theory. Justice is a political, not a moral notion. Forms of beneficence have a role only in the traditions of communities; beneficence has no independent normative force. Although Engelhardt denies that his account is "simply a political theory" (p. 11), it is hard to understand why he thinks there is anything of moral substance in his theory. After all, he flatly denies that he presents any substantive moral point of view (i.e. any content-full morality, another underanalyzed notion in the theory).

While Engelhardt's libertarian commitments will come as no surprise to anyone, since they dominated the first edition, themes of the triumph of post-modernism break

forth in the second edition with zeal and fanfare. It is not too much to say that this book is a libertarian, post-modernist tract: It presents the libertarian philosophy through unargued assumptions of the correctness of post-modernism. Since I accept neither libertarianism nor post-modernism, I find it difficult to accept the argument of the book. But it may be too much to say that there is an argument in this book. There is a libertarian vision, but it is hard to find argument in defense of the critical features in the vision. I now turn to some of those features.

### **The Principles of Bioethics**

Engelhardt devotes a substantial part of his second chapter to the views that Jim Childress and I defend about the principles of biomedical ethics. A problem often advanced against our account of principles is recast in Engelhardt, viz. that a scheme of multiple, *prima facie* principles fails to provide a general moral theory that systematically unifies the principles and situates them in a tidy and integrated package that can handle conflict among the principles. Engelhardt maintains that such a theory can never resolve controversies, because it promotes controversy by allowing for irresolvable conflicts among principles (p.57). Engelhardt's own theory allegedly surmounts this problem. There is only one principle, or at least in the ordering of principles only one principle is at the top. However, we need to ask at what price one embraces a theory centered almost solely on a single principle?

The first problem is Engelhardt's ambivalence about the principle of beneficence. On the one hand, he seems to hold that there is no valid principle of beneficence in secular morality. On the other hand, he seems to hold that there is a valid principle of beneficence, but it is not a content-full principle in secular morality, and it always takes second place to the principle of autonomy, which he rebaptizes in this edition (p. xi) as the principle of permission. This is one of the more confusing parts of the book, since he extracts more than a requirement of permission from this principle. For example, he later turns this principle into a correlative and fundamental right to be let alone (see p.288). Yet the right to be let alone is not correlative to the obligation to receive permission. I think the principle of permission is really a principle of respecting the autonomy rights of persons; and in this regard the first edition is more correct than the second.

I am not sure which of the two interpretations of the place of the principle of beneficence is correct, but I am sure that Engelhardt cannot coherently defend both positions, though he seems attracted to both. Suppose that he holds that no obligations of beneficence whatsoever span different communities. What is the argument for this claim? I cannot find one. Similarly, what is the argument against nonmaleficence as a principle? What is the argument that justice reduces to beneficence (pp.121f, 375ff)? Etc.

Even if Engelhardt had arguments for these claims, his position would so truncate morality that it would be but a deformed figure of itself. Consider a counterexample to Engelhardt's apparent thesis that there are no universal obligations of beneficence: A young toddler has wandered onto a busy street, having become separated from his mother. I can save his life simply by picking him up. It would be nice of me to do so, but I am not obligated to do so, in Engelhardt's theory. After all, there are no obligations, ever, in

secular society to prevent harm, apart from roles that we willingly accept and that fix obligations for us. A policeman would be obligated to lift the child from the street, but I would not, in Engelhardt's theory. By contrast, I believe that such moral obligations should be included in any system whose goal is to capture the demands of morality. If Engelhardt believes that we are not obligated by as much beneficence as my counterexample suggests, then we do indeed deeply disagree about the content of morality. I think we do.

Still, I am not convinced that this counterexample squarely confronts and refutes Engelhardt's actual views, because I am not sure what those views are. Engelhardt often seems to think there is some minimal beneficence in secular morality that will cover my counterexample. This seems to be the suppressed position running throughout chapter 3, where he formulates as "Principle II" in his system "The Principle of Beneficence" (see p.123). Engelhardt says this principle functions "to indicate the sources of particular areas of moral rights and obligations" - a statement that has a substantive, normative look to it. The problem, he indicates, is not with obligations of beneficence in general, but with how to generate specific obligations to rank and produce goods (p.108). From this perspective, beneficence is a valid normative principle; it is simply too general to be of practical significance. Only culturally developed mutual understandings of real bonds of beneficence can give its obligations any significance (p.112).

An interesting example of Engelhardt's ambivalence about beneficence emerges in his discussion of our obligations to animals. He argues that we must move beyond Kant's absurd views about animals as things: "One ought, in addition to recognizing duties to other persons regarding animals, recognize as well a duty directly to regard the pain and suffering of animals" (p.145). Engelhardt does not present this obligation as contingent upon the formulations of particular communities; he presents it as a general obligation of beneficence. But surely if we have this obligation to animals, we have it to each other. Engelhardt recognizes this fact only to insist that the specific ways in which animals and persons are morally protected will vary from community to community. I believe this is one of at least a dozen passages in the book in which Engelhardt wants it both ways: There is real content-full beneficence in secular morality, and there is no real content-full beneficence.

### **Weak Normative Content and the Formulation of Public Policy**

Another problem about principles - and in the end the one I think bothers Engelhardt the most - is that they are *weak* in normative content. They are so general that they can be specified in a variety of ways, even competing ways. For example, Engelhardt points to the relatively weak normative nature of principles of justice. Presumably he has devised a theory to minimize this problem by making all principles except the principle of permission exceedingly abstract and weak, while consigning to nonsecular domains what he calls content-full ethics.

Engelhardt's problem with weak normative content in principles is not a new problem. All of us who believe in principles in bioethics are aware that genuine principles lack specific, directive moral substance until they have been specified for particular purposes. Unspecified principles are necessarily general; as such, they are applicable to

(govern) a broad range of circumstances. As the territory governed by a principle is narrowed (the conditions becoming more specific - e.g. shifting from "all persons" to "all adult persons"), it becomes increasingly less likely that a norm can qualify as a principle. A principle, then, must by its very nature be highly abstract and of severely limited specificity. Any principle will leave a certain area of ambiguity about how it is applied, Engelhardt's principle of autonomy or permission not excluded.

Even the principle of respect for autonomy must be specified in public and private policies in order to be a living social reality. But how is this to be done in Engelhardt's theory? What will public policy be governing drug trafficking, medical confidentiality, the funding of health care for the indigent, the protection of subjects of biomedical research, etc.? I here use the term *public policy* to refer to a set of normative, enforceable guidelines that have been accepted by an official public body, such as an agency of government or a legislature, to govern a particular area of conduct. How is such public policy possible in Engelhardt's theory, especially for large communities, where it is most clearly needed?

I cannot see how public policy is to be fashioned in any complex pluralistic society in Engelhardt's framework. I can see how Engelhardt accounts for private policies; but his failure to give a plausible account of public policy makes his book seem out of touch with the modern world.

### **The Secular Pluralism/Postmodernism Theme**

For his part, Engelhardt believes that a "theoretically intractable secular moral pluralism" pervades the modern world, rendering it post-modern. Strongly present in the new Engelhardt edition, unlike the first, is the view that multiculturalism and secular pluralism have situated us in a post-modern world in which we must give up our robust past beliefs in the universality of moral precepts.

In contrast, I maintain that morality is universal in the sense that a body of ethical precepts constitutes morality wherever it is found. I call this morality in the *narrow* sense. There are no moralities in the narrow sense - just morality. However, there are moralities in a *broad* sense of "morality," because the norms of basic morality get specified in different ways in different communities. The problem is this: The basic precepts of morality in the narrow sense are so general and indeterminate that they can be implemented in many different ways that are consistent with the abstract content of the basic precepts. Valid exceptions to the rules can also be recognized in different cultures or groups. Across time, these basic precepts do get implemented in many different ways in cultures, groups, and often individual decisions, thereby creating morality in the broad sense. This is the most defensible interpretation of the notion of "secular pluralism."

Although cultural relativity and secular pluralism are incorrect as accounts of morality in the narrow sense, a relativity or pluralism of judgments and practices is an inevitable outcome of historical developments in cultures, moral disagreement and resolution, and the formulation of complex institutional and public policies - that is,

morality in the broad sense. Morality in the broad sense does recognize divergent moral positions, which may spring from cultural differences or from philosophical differences.

One would think that Engelhardt and I can agree on this account. However, there appears to be at least one major difference: Most of what I take to be universal in morality, Engelhardt takes either to be nonuniversal or to be nonnormative. Although Engelhardt accepts roughly my distinction between broad and narrow morality, his formulations set his views apart. He argues that his book does not present any concrete moral perspective; rather, it is a "purely procedural morality" (p.9) that stands as "an account of the common morality that can bind moral strangers" (p. x). By contrast, I believe he has written a book that does incorporate a concrete moral perspective and that his account of the common morality improperly confines morality to a purely procedural respect for autonomy and to an unduly truncated account of beneficence that twists real beneficence beyond recognition.

There is no argument in Engelhardt's book for the view that he has captured the common morality or for the view that his book does not carry a concrete moral perspective. His bottom line seems to be that moral authority derives only from the concurrence of individuals. What he fails to see is that this thesis itself involves a concrete moral perspective and that it is not the perspective of the common morality, in which many actions are either right or wrong whether or not they have the concurrence of the individuals living in society. A prime example is public taxation - a claim that is certain to make Engelhardt eager for his moment to rebut this paper.