

Public Bioethics & the Reality of Religious Pluralism:
Coping with Moral Diversity in Bioethical Methodology

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Abstract

This dissertation examines the problems that religious and moral diversity raise in public bioethics, both in the historical development of the field and in our contemporary situation, and is an attempt to develop the foundations of a bioethical methodology that is able to adequately address the issues of pluralism without losing sight of the fact that bioethics emerged out of the need for shared moral guidelines and rigorous ethical analysis of novel medical technologies. It has been my intention to contribute new insights into the processes of bioethical inquiry, deliberation and policy formation through the development of a dialogical method of public ethics that is able to quest for consensus while simultaneously maintaining a respect for, and making possible the accommodation of, incommensurable moral and ontological differences amongst religious traditions and philosophical systems. The aim is to implement modes of deliberation that can adequately cope with the reality of pluralism and to help produce bioethical policies suited for our multicultural and religiously diverse society.

Résumé

Cette thèse examine les problèmes que la diversité religieuse et morale soulèvent dans la bioéthique publique, à la fois dans le développement historique de la discipline et dans la situation contemporaine; de plus, elle constitue une tentative pour développer les fondements d'une méthodologie bioéthique qui est en mesure d'aborder les enjeux du pluralisme sans perdre de vue le fait que la bioéthique a émergé du besoin de lignes directrices morales partagées et d'une analyse éthique rigoureuse des nouvelles technologies médicales. Il a été mon intention de jeter un nouveau regard sur les processus d'enquête et de délibération bioéthiques et d'élaboration de politiques bioéthiques par le développement d'une méthode dialogique d'éthique publique qui puisse permettre simultanément la recherche du consensus ainsi que le respect et l'accommodement des différences morales et ontologiques incommensurables entre traditions religieuses et systèmes philosophiques différents. L'objectif est d'implémenter des modes de délibération qui puissent faire face à la réalité du pluralisme et d'aider à développer des politiques bioéthiques adaptées à notre société multiculturelle et multiconfessionnelle.

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Preface

At the Crossroad of Inquiry: Reflections on Religion, Culture & Bioethics

From social science to political science multiculturalism and religious pluralism have been important and hotly debated issues for quite some time now. Numerous authors have commented on the difficulties of coping with difference and many have developed theories and methods for managing diversity while simultaneously maintaining a degree of social cohesion. While at first glance issues such as toleration, consensus, secularism and freedom of religious belief would appear to fall outside the purview of biomedical ethics, as medical technology advances and societies around the globe continue to become increasingly diversified the ethical principles, codes and regulations we once relied on to maneuver through the moral terrain of medicine are becoming increasingly problematized as we witness the clash of distinct religio-cultural worldviews, moral traditions and perspectives on medicine and technology.

It has become quite evident from the numerous publications and conferences addressing the interface of religion, culture and bioethics that religio-cultural diversity has become a crucial issue in bioethics as well as in political science, sociology and anthropology. Far from being resolved, the problems that emerge when distinct traditions - be they ideological, cultural or religious - collide and become locked in disagreement require further

attention from the bioethics community. When ethicists fail to seriously take cultural and religious diversity into consideration they run the risk of falling into a myopia that blinds them from the conflicts of culture and religion that have become part and parcel of bioethics on a very practical level. Now, this is not to say that the uniquely medical ethical issues that drew many of us to the field in the first place are no longer valid concerns; indeed they are. However, if we overlook the ways in which religio-cultural pluralism bears upon biomedical ethical concerns we will fail to address a number of salient issues that are integral to the applied nature of our field.

For the past few years now my research has dealt with these issues and has sought to develop methods of maintaining sound bioethical inquiry in lieu of religio-cultural and moral diversity. Attempting to forge a middle ground between universalism and particularism I have developed a method I am calling “Pragmatic Perspectivism.”

Acknowledging the need for shared guidelines and common codes and norms, this is a method that seeks consensus without overlooking the importance of respecting difference. While consensus does indeed entail agreement we must always be cognizant of the fact that there are levels of agreement to be achieved. Despite having dubbed our field “biomedical *ethics*” many issues we discuss as bioethicists entail onto-metaphysical, socio-political, epistemic and legal components in addition to purely moral considerations. A viable method of achieving consensus must not neglect any of these realms of inquiry yet it must not attempt to be too robust and expect that an overarching consensus on deep moral commitments is actually plausible in our diverse world. Rather than limit consensus to a

single area of inquiry however, a process of consensus building which explores the different planes of inquiry as a means of discovering where various similarities and commonalities lay - be they on an ontological, moral or even political level - might enable the amelioration, if not the resolution, of seemingly irreconcilable disagreements over values, beliefs and behavior.

At times, two parties may never be able to arrive at an onto-metaphysical or epistemic agreement however, this does not necessarily preclude the possibility of socio-political consensus or agreement on issues of public policy, for instance. We must always be mindful of the relevancy of the types of agreements we seek to the issue at hand. For example, issues revolving around the determination of death might always be riddled with disagreements over the nature of personhood and the role that rationality and sensory perception play in defining human nature. Yet, this does not mean that we cannot come to terms with such a stalemate and instead search for means of securing agreement on policies and codes which allow for different definitions of personhood and death to play a role in people's decision-making processes. Ultimately, our various value systems need not be utterly unified by a common morality in order for members of distinct religious, cultural and moral traditions to adopt shared guidelines. We need not view our circumstances as being so bleak that ethical stratification becomes our only option yet, our task does not need to be one which aims for a grand moral unification of all traditions for bioethics to succeed at regulating potential harms and enacting shared standards and guidelines.

The type of unity we do need however, is a unified effort from bioethicists and other members of society to attempt to resolve the problems that multiculturalism and religious

pluralism have presented to us. This might be difficult yet it is not an impossible task.

Many of the world's religious traditions, for instance, possess indigenous means of respecting, or at a minimum tolerating, ideological, cultural and religious difference to some extent. For instance, the idea of toleration has played a major role in traditional Islamic political theory; Judaism has long recognized the multiplicity of hermeneutic and religio-cultural communities; and Christianity has a history of allowing for hermeneutic diversity on certain issues. A dialogical method of ethical inquiry which promotes an in-depth understanding of diverse perspectives and which avoids onto-metaphysical debates while simultaneously recognizing the ways in which such beliefs come to bear upon ethical positions appears to be the key to creating a viable solution to our dilemmas of diversity and the cornerstone of a pluralistic bioethics.

Introduction

Imagine for a moment that you are an observer in a room of the pediatric critical care unit of a hospital – a fly on the wall, so to speak. On the bed lays a boy who appears to be breathing with the aide of a machine yet is otherwise motionless. His mother strokes his hand, and his father closes a prayer book that he has just been reciting from. Soon after, a physician walks in, holding a chart which bears upon it a number of test results. As he converses with the parents, you learn that the doctor has performed a number of apnea tests which have confirmed that the boy will be unable to breath spontaneously if he is removed from the ventilator, electroencephalographic testing measuring the boy's brain activity which has resulted in a flat-line reading, and tests confirming the absence of any cerebral blood circulation. Regretfully, the doctor informs the parents that, due to their son's profound coma, apnea, and the absence of his brainstem reflexes, his diagnosis, in accordance with the State's laws, is 'brain death.' The parents, rather offended, are quick to reply, protesting the doctor's diagnosis on the grounds that they, as pious Orthodox Jews, do not believe in 'brain death,' nor do they believe that such a diagnosis should be equated with the death of a human person.

The doctor and most of the hospital staff believe that the boy is dead based on the Uniform Determination of Death Act of 1980¹, the criteria of which are: irreversible cessation of all brain function or irreversible cessation of blood circulation. Given their State's employment of the above stated criteria, often referred to as the "Harvard Criteria," the hospital staff wish to follow procedure, consider the boy dead, and follow typical hospital protocols for dealing with a dead patient. Uncertain of what to do, the physician requests that a clinical ethicist be sent in to ameliorate the situation.

Armed with his knowledge of the widely accepted bioethical principles of autonomy, beneficence, non-maleficence, and justice; medical policy, including a variety of standards for determining 'brain death', all of which would have been satisfied through the usage of the more conservative Harvard criteria² (Pence 2004, 45); and his arsenal of philosophical logic, moral reasoning, and previously set precedents, the ethicist enters the situation. After talking with the boy's parents, he realizes that he will never be able to convince them of the acceptability of any brain death criteria and that if the hospital proceeds to treat the boy as dead his parents will be in a state of moral outrage. What should be done? Who, if any one, is ultimately correct: the doctor, the State, the parents? And how should the ethicist

¹ For more information regarding the Uniform Determination of Death Act see Kerridge et al, "Death, Dying, and Organ Donation," 89-94.

² The three standard sets of criteria for determining brain death are, in order from most to least conservative: Harvard Criteria, Irreversibility Standard, and the Cognitive Criteria. For more information regarding the criteria of brain death see Pence, *Classic Cases in Medical Ethics*, 44-46.

handle the situation? What factors should come to play a role in his ethical decision-making: the secular ethical reasoning he was taught or the religious beliefs of the patient's family?

Moreover, what are you to do if you are a patient whose religious beliefs reject the 'brain death' standard of death in the face of its widespread acceptance amongst ethicists and clinicians? Further, in lieu of your religious convictions, what choices do you really have when confronted with laws that, at first glance, seem not only to oppose your beliefs but to force a label of 'death' upon your loved ones when you believe them to be alive? Unless you live in New Jersey -- where a 'consciousness clause'³ allowing people to object to brain death standards on religious grounds has been accepted by the State -- the state, the hospital, or the individual doctor has the power to determine the death of those whom your religion may view as still 'alive'.

While the preceding case is itself fictional, it is based on a number of real-life cases documented by Joseph J. Fins⁴ and Neil M. Lazar⁵ and raises problematic issues which patients, clinicians, policy-makers and ethicists are faced with on a daily basis. In addition to the case-based problems of dealing with brain-death, conceptually nebulous and ethically difficult problems

³ New Jersey is the only state to hold an exemption to brain death on moral or religious grounds in a statutory law. As quoted by Michael Grodin, the New Jersey statute of 1991 states, "The death of an individual shall not be declared upon the basis of neurological criteria...when such a declaration should violate the personal religious beliefs or moral convictions of that individual...." "Religious Exemptions," (*Journal of Church and State*, 1994), 36:2, 7. These statutes are often referred to as "conscience clauses." For more information pertaining to the "conscience clause" of New Jersey see Kerridge et al, "Death, Dying, and Donation," 89-94; Veatch, "Impending Collapse Whole-Brain Death," 18-24; or Chiong, "Brain Death without Definitions," 20-30.

⁴ In "Clinical Pragmatism" (70-71), Joseph J. Fins presents a case in which a Hassidic Jewish child is being diagnosed with brain death and discusses the problems which ensue due to the moral and religious differences between the family and the clinicians.

⁵ Lazar et al, "Brain Death," 833-836.

arise in relation to a number of other medical issues, including psychiatric diagnosis⁶, treatment plans⁷, and others -- all of which call into question the beliefs, values, and morals of individuals, which may in many instances be in conflict with one another. Furthermore, particular instances of ethical uncertainty, conceptual ambiguity, and moral disagreement associated with religious differences, such as the case presented above, illuminate a greater overarching problem regarding the methodological foundations of bioethical inquiry: the fact that this is a secular yet religiously pluralistic society whose laws, health policies, and ethical principles are to remain free of religious convictions while adequately representing the pluralistic populous. In other words, how are we to confront the problem of religious pluralism, on both the theoretical and practical levels, in biomedical ethics? Ultimately, the questions raised by the aforementioned example are: "Is there room for religious convictions in bioethical discourse?" And if so, "How are they to be incorporated?"

As a response to the potential dangers and abuses of scientific and medical advancements, bioethics has become a field of particular importance for contemporary society. The rapid progress of modern medicine has provided both hope and despair for many; along with the benefits of medical advancements come new ethical and moral dilemmas. Emerging from a

⁶ In "Neuroethics or Neuro-values" (297-313), Bill Fulford discusses the case of Simon, a secular lawyer in the South from a Baptist family, who began to have revelations. Analyzing the case, Fulford proceeds to question the status and criterion of delusions.

⁷ In "Cross-Cultural Settings" (6-14), Nancy Jecker and Joseph Carrese present cases illustrating the difficulties of diagnosis and treatment planning when confronted with the cultural and religious differences presented to a western clinician when dealing with a Navajo patient.

plethora of backgrounds, numerous bioethicists have attempted to resolve these moral conflicts, clarify ethical ambiguities, and propose universal solutions to the medico-ethical dilemmas that have arisen from technological advancements in medicine. However, while medical technology has created new ethical concerns, it has also opened up a new arena of moral conflict and diversity as distinct groups respectively respond to such issues. Despite the variety of work that has been done thus far, many religiously oriented bioethicists fail to seriously take into consideration the beliefs of those coming from other religious traditions, while secular theorists fail to take into consideration the pertinence of the religious pluralism which pervades our society. While progress has been made in promoting interfaith and religio-secular dialogue and there have been measures taken to address religious pluralism on the clinical, policy and pedagogical levels, the principles and theories that have traditionally guided policy and doctor-patient relations are largely a product of quasi-legalistic and rationalistic secular thinking. The problem is that, while ethical standards are necessary, the individuals who will be affected by such policies and standards are often guided by their religious beliefs in their own ethical decision-making processes. In recent years there seems to have been a renewed concern regarding methodological issues in bioethics, which suggests that the time may be ripe for a re-evaluation of the role of bioethics in a pluralistic society and the role of religious perspectives in the bioethical arena.

Seeking to lay the foundations of a more pluralistic method of public

bioethical deliberation, the aim of this study is to explore the viability of such an endeavor and is an attempt to pursue such a task. We will begin with a brief historical overview of the relationship between religion and bioethics and of the socio-political context in which bioethics emerged as a field, is currently situated and will continue to develop into the future. Subsequently, a critical analysis of leading methods of addressing pluralism in bioethics will be provided. In the second section, the philosophical foundations of a new conceptual framework for bioethical methodology will be examined and a new method of public bioethics deliberation and policy formation for a secular, yet religiously diverse, society will be proposed.

It is my intention to lay the foundations of a conceptual framework for a discursive method that is able to work toward consensus while simultaneously maintaining a respect for and making possible the accommodation of incommensurable moral and ontological differences amongst religious traditions and philosophical systems. This method adopts the view that divergent perspectives are an inevitable part of the constitution of socio-cultural reality. It recognizes that interlocutors will inevitably hold distinct, and possibly inconsistent, beliefs and put forth incompatible truth claims without necessarily passing an epistemological judgment on the contents of such beliefs and correlative moral propositions. This approach requests that everyone in the dialogue comes to realize that others might be justified in holding their views regardless of the actual truthfulness of those positions and to search for similar values and beliefs inherent in each other's

paradigms. Rather than seeking agreement on universal moral truths, or endorsing contractual agreements that will potentially require interlocutors to compromise core beliefs, or appealing to a shared mode of moral reasoning, this method aims to discover moral propositions that are justified by distinct modes of moral reasoning and enact ethical norms that do not necessarily require the adoption of deeper onto-metaphysical commitments.

Moreover, it does not strive for any single objective point of view from which a common morality capable of transcending difference can be achieved. Rather, it seeks to promote discourse that is capable of discovering conceptual links already present amongst various perspectives and which can assist in the creation of bioethical guidelines suitable for a pluralistic society. Such conceptual links are not restricted to agreements on ethical norms but also on modes of tolerating a range of ethical positions so that mutually acceptable parameters of permissibility can be established. Begotten from a multi-perspectival source, the conclusions of this method of deliberation have the potential to be more adequately representative of our multicultural and religiously diverse society and hence, can help produce bioethical policies that protect persons from potential harms without overriding their fundamental liberties.

Chapter 1

The Quest for Bioethical Truths & the Problem of Pluralism

In this chapter I will discuss the relationship between bioethics and religion, paying special attention to the problems that arise when confronting the phenomenon of religious and moral diversity from within a bioethical context. Before doing so, however, I would like briefly to summarize the role of religious thought in bioethics from its formative years in the late 1960s until today as means of further grasping the severity of the issue at hand, acquiring some historical insight, and better comprehending the nature of the methodologies being employed in contemporary bioethics¹.

Religion's Relationship with Bioethics

The Nuremberg Tribunal of 1947, in which the practices of Nazi doctors were placed under intense ethical and legal scrutiny, raised awareness of the need for sustained ethical analysis and moral deliberations regarding a variety of medical practices and new biotechnological

¹ The sources I drew upon for this historical account of the emergence of the field of bioethics are: Khushf, G (Ed.). 2004. *Handbook of Bioethics*, Kluwer Academic Publishers, the Netherlands; Pence, G. 2004. *Classic Cases in Medical Ethics*, 4th Edition, McGraw Hill, New York; Engelhardt, T. 2000. *The Foundation of Christian Bioethics*, Swets & Zeitlinger publishers. Exton, PA; and Fox, R. & Swazey, J. 2008. *Observing Bioethics*. Oxford University Press, New York.

developments. It served as a catalyst for the development of a universal set of medical ethical norms and principles, codified in the Nuremberg code of 1948, which included among others norms emphasizing the ethical importance of consent, the principle of non-maleficence, and the need for risk-benefit analysis; interestingly enough, this was the same year that the Universal Declaration of Human Rights was being drafted. At this time we witness attempts to establish sets of ethical norms that were intended to have universal applicability and which persons from various nations, faiths, cultures, and fields could agree to and find compatible with their own traditions of thought and worldviews. By the 1950's and 1960's much philosophical and theological reflection on a variety of issues was underway, including: the role of new medical technologies; the role of science in society; the nature of medicine and the life sciences; and the ethicality of various medical developments and the panoply of novel medical situations they made possible. In 1970 the term "Bioethics" was coined by Van Rensselaer Potter, who envisioned bioethics as a new discipline that would combine morality and biology and who had hoped that it would lead to a new global way of life characterized by respect for the environment and the fusion of moral thinking with the life sciences. This however, is not the path bioethics took. Rather, the term "Bioethics" finds its contemporary meaning as: an applied academic discipline focusing on ethical issues in the medical and natural sciences, in the work Andre Hellegers whose usage of the term was almost simultaneous with, yet unaware of, Potter's own usage. With the

founding of the Hastings Center in New York in 1969, by Dr. Daniel Callahan and the opening of the Kennedy Institute in Washington, D.C. in 1971, bioethics emerges as a fledgling field in the late 1960's and early 1970's.

From the start, bioethics acquired a public character. From their pre-bioethical roots in the Nuremberg code, public commissions were, and continue to be, established to cope with controversial ethical dilemmas in the context of biomedicine. Many of the early cases, given their controversial nature, attracted a high degree of public interest. Aside from issues pertaining to research on human subjects, which had been the primary topic of debate in the cases of Nuremberg, the early cases varied greatly despite their shared penchant for controversy. These included, among others: what is now referred to as the "God Squad," which was a Seattle hospital admissions and policy committee in the 1960's that had been deciding which patients in renal kidney failure would receive dialysis and therefore, ultimately deciding who lives and who dies (Pence 2004, 333-334); the advent in the 1960's of accurate prenatal genetic testing for hereditary diseases, which called into question the ethicality of the treatment of persons on such bases (Pence 2004, 397); and the case of Karen Quinlan in 1975, a twenty-one year woman who had fallen into one of the deepest comatose states called, PVS (a permanently vegetative state, in which there is no evidence that the patient has: self-awareness, awareness of the environment,

the ability to behave voluntarily, sensory perception, or linguistic capacities)² that raised a myriad of questions regarding the personhood of PVS patients, the legality and morality of withdrawing medical treatment, and whether or not the practice of withdrawal ought to be considered a form of euthanasia.

Moreover, in addition to the long-standing concern with discovering universal norms and principles that was born in the late 1940's and early 1950's, the socio-political climate of the 1960's and 1970's would come to impact the field of bioethics greatly. The social unrest and political change that produced the civil rights movement, anti-paternalistic attitudes, a deep mistrust of authority and society-wide calls for secularization all had an influence on the new field of bioethics, which took the form of the patient rights movement, and which was accompanied by a mistrust of physicians and clinical institutional bodies. Consequently, concepts such as autonomy, informed consent, equality, and democratic consensus became the focus of much bioethical analysis, and came to define the public face of the bioethical enterprise. As preeminent sociologists of bioethics, Renee Fox and Judith Swazey, have observed,

The particular historical period in which the field of bioethics developed in the United States was 'a time of social ferment and protest in American society, spearheaded by the civil rights and anti-war movements[...] with their emphasis on individual rights and choice as fundamental bases of freedom, equality, and justice...' what was then the nascent field of bioethics attracted a sizeable number of persons who had been

² A more in-depth discussion of PVS and related comas will be provided in later chapters. This is merely a brief description of the case intended to demonstrate the controversial nature of many of the early bioethical cases.

intensively engaged in these movements... (Fox & Swazey 2008, 154)

Furthermore, insofar as civil rights liberalism in the United States had a tendency to emphasize *rights to undifferentiated citizenship* in its attempt to combat forms of discrimination and insofar as its calls for equality were often coupled with the quest for commonalities, this movement not only promoted individualism, but also the hope of transcending ethnic, racial and religious differences. Hence, the ideals of individual autonomy and the transcendence of difference found their way into bioethical thinking and the primary task of bioethics quickly became the search for a common morality and creation of shared ethical precepts.

It must be noted however, that in addition to its public face and in addition to the questions traditionally raised in medical ethics – such as the appropriate relationship of physicians and patients – the new field of bioethics raised deep questions concerning human nature, such as: the relationship of humans to technology, the meaning of life, the meaning of suffering, the definition of death, and the nature of illness, thereby attracting a number of religious philosophers, theologians and scholars of religion to the field, who would join the interdisciplinary cohort of thinkers that also included secular philosophers, physicians, and lawyers. This early contribution of religious thought in bioethics came primarily from Jewish and Christian philosophers, such as Paul Ramsey and Hans Jonas, and such figures have always been in dialogue with secular philosophers, medical

practitioners and persons whose training was in law and or politics.³ With a strong presence of persons trained in the Judeo-Christian tradition in its formative years, bioethics has always had a relationship with religion yet, the influence of religious thinking, per se, would always be constrained by larger social concerns and a general inclination toward matters of public policy. As the bioethicist Albert Jonsen has noted,

Bioethics began with many persons of faith coming to the discussion of the questions. This does not mean that bioethics began in religion. Individuals from quite different denominational backgrounds and with very different training addressed the issues. Almost all these participants employed ethical methods that allowed them to analyze the moral problems in terms and with concepts that were not explicitly theological or denominational. Almost all of them did so because of the audiences they addressed. (Jonsen 2006, 33)

Despite the fact that many of the religious and secular ethicists alike shared the common goal of seeking universal moral truths, the languages employed to express such universals were distinct and often hard to translate. Since the vocabularies of many theologians, or ‘religionists,’ could be highly saturated with religious terminology that could only be appreciated by members of their respective faiths, many of the religiously-trained bioethicists, such as Leon Kass, Edmund Pellegrino and Paul Ramsey, spoke a secular language at the round-table of bioethics. In what appears to have been an attempt to prevent miscommunication and misunderstanding, bioethical lingo took on a secular tone, leaving those who represented both

³ For more information regarding the history of bioethics and the relationship of bioethics and religion/theology see Messikomer et al, “Religion in American Bioethics,” 484-508, and Callahan, “Universalism & Particularism,” 37-44.

religious and secular strains of thought in a position in which they could postulate arguments and defend their positions in a common vernacular (Messikomer et. al 2001). As Dan Callahan has reminisced, “once the field became of public interest...there was great pressure (even if more latent than manifest) to frame the issues, and to speak, in a common secular mode” (Callahan 1990, 2). Arguably, the 1971 publication of John Rawls’ highly popular *Theory of Justice* also came to influence the ways in which the members of this fledgling field decided to conduct themselves in their public deliberations and modes of decision-making. The cluster of Rawlsian concepts, such as: “public reason,” “reasonability,” “reflective equilibrium” and “overlapping consensus,” were an excellent resource for attempts to formulate arguments and express normative claims in such a way that theologian and atheist alike could potentially accept⁴. With the secularization of bioethical discourse and a growing concern with public issues that spawned a turn towards law and public policy, we witness the roots of the marginalization of religious voices in the bioethical arena. While this might not have been the initial intention of those enacting such measures in bioethical discourse, as we will see in the chapters to come, it has had negative affects not only on the role of religious involvement in mainstream bioethical thought but also on the ability of religious persons and communities to abide by their own moral traditions in clinical contexts and

⁴ A more in depth discussion of Rawls’ political philosophy will be provided in subsequent chapters. However, suffice it to say that the influence of Rawlsian contract theory has had a great impact on bioethics and still continues to enjoy widespread popularity amongst publicly oriented bioethicists.

to have a voice in the formation of public-policies that bear upon their ability to act according to their religious beliefs.

As bioethics developed further, the universalistic ethical aims that arose in the beginning continued to dominate the field. This eventually led to the rise of a variety of critics who wished to focus on the particulars of situations, contexts, and cases as comprising distinct ethical concerns and hence warranting unique moral conclusions (i.e. situationalism, contextualism, relativism, and casuistry)⁵. This also included calling attention to the fact that persons coming from distinct religious and cultural backgrounds often held differing ethical perspectives and employed tradition-specific modes of moral reasoning to the cases at hand. As the bioethicist Margaret Olivia Little succinctly describes, “no one (sensibly) rejects principles that tell us to ‘respect autonomy’ or to ‘be just.’ But the particularist denies that we can unpack those very abstract principles into generalizations that are both accurate and contentful enough to guide action” (Little 2001, 164). Rather than take the view that these unique forms of religious and cultural moral reasoning, many of which often purported universal moral precepts themselves, could be compatible with the

⁵ None of the schools of thought, which Callahan has dubbed “Particularist,” accept universal moral claims, however, there are distinctions to be had amongst these various schools of thought. Situationalists maintain that in order for a sound moral judgment to occur the particulars of each situation must be accounted for; they do believe that a correct moral judgment can be made in regards to specific situations. Contextualists claim that historico-cultural factors must be taken into consideration prior to a moral judgment. Relativists claim that moral truths depend upon either a specific culture or are contingent upon the beliefs of individuals. This is usually referred to as subjectivism. Casuists claim that moral decisions should be based upon the outcomes and antecedent judgments of prior similar cases. They maintain that cases should serve as precedents for moral decision-making and only when cases are unique should new moral judgments come into play. Callahan, “Universalism & Particularism,” (Hastings Center Report, 2000), 30:1, 37-44.

universalistic aims of discovering shared truths and forging a common morality held in mainstream bioethical thought, they were often pitted against one another with the attitude that paying attention to tradition-specific modes of moral reasoning would undermine the universality of the normative project at hand. As Fox and Swazey duly note,

The contrasting tendency of American bioethical thought has been to dichotomize and polarize the notions of universalism and particularism, and even to view them as antagonistic antitheses...Within this overall framework, the overall skew of the field is tipped in the direction of an intellectual and moral preference for universalism, in the form of transcendent principles that 'rise above' the particularities of historical circumstances and tradition, and of social and cultural context and locale. (Fox & Swazey 2008, 158)

Ultimately, it was the alleged failure of these particularist schools to provide adequate normative principles that could serve as a guide to action in any context imaginable and set common standards, which were deemed necessary in a field involved with policy-making, that led to their marginalization. A universalistic ethical agenda and the secularization of moral concepts pervaded the field, eventually culminating in the popularity of Tom Beauchamp's and James Childress's universalistic *Principles of Biomedical Ethics*. Their extremely well-known and widely accepted version of principlism became the foundation of western bioethical inquiry and set forth four 'universal' principles: 1) Autonomy 2) Nonmaleficence 3) Beneficence 4) Justice (Beauchamp & Childress 1979). Commenting on the principles that he helped create and champion, Beauchamp has recently written, "In truth, these principles do not deviate from what every morally

serious person already knows as a matter of general knowledge” (Beauchamp & De Grazia 2004, 58). With the tone of this statement, the message being conveyed is that anyone who does not agree with these principles must not be “morally serious” and hence, must be implementing a deficient form of moral reasoning.

While a number of concerns, such as respecting distinct religious-cultural practices; conceptions of self and personhood; and moral systems, remained prevalent amongst ethicists contemplating such issues in “private,” universalistic principlism tended to be seen as the most effective means of dealing with tumultuous biomedical ethical issues in both the medical community and the public arena. The allure of principlism is that it offers a simple and ready-made moral code that can be easily taught and that provides a standardized framework in which the non-ethicist can begin to deliberate about the moral conundrums and ethical dilemmas that arise in a clinical setting. Despite its simplistic approach to ethics, the proponents of principlism continued to argue for its merits both in terms of applicability and “moral seriousness.” As Fox and Swazey state,

[This] penchant for universalism is rooted in the overarching conceptual framework within which American bioethics has developed. Its regnant paradigm was brought into the field and made prominent within it by philosophers...[most of whom] were trained in the Anglo-American tradition of analytic philosophy...with its emphasis on ...utilitarian, neo-Kantian, and contractarian outlooks. (Fox & Swazey 2008, 158)

The widespread popularity of the principlistic approach to bioethics, with its hostile attitude toward non-analytic modes of reasoning, has led not

only to the exclusion of those employing religious language, though not always those with a religious agenda, but also of those whose religious belief systems and correlative systems of morality do not conform to the widely accepted modes of reasoning present within today's secularized and rationalized ethical discussions from the mainstream currents in the field.

Despite the fact that in recent years there has been a growing dissatisfaction with universalistic and principlistic methods, an exclusionary attitude towards religious modes of reasoning continues to be held, expressed, and perpetuated by a number of leading figures in bioethics. For instance, the preeminent British ethicist and bioethicist, Mary Warnock has claimed,

Though religious beliefs may be the foundation for private morality and therefore supply such morality with inviolable principles, it has no such role in the case of public policy-making, even where the policy is concerned with matters agreed to be matters of morality. It could have such a role only if the certainty of the principles supplied by religion were generally shared, or were held themselves to be enforceable by law (i.e. in a theocratic state)....This is not to suggest that church people, whether lay or clerical, should not speak on public policy issues....But moral arguments if they are to be listened to in a democracy must be just that: moral arguments. They should be weighed up, assessed and acted on because they have persuaded on moral grounds not because of any connection they may have with particular theological doctrines.... (Warnock 2005, 33-41)

This statement explicitly expresses the position in bioethics that there is a single mode of moral reasoning, or at least a single correct mode of moral reasoning, to which all must conform if they are to be heard at all. Such an attitude effectively endorses a belief in the universal and neutral nature of a

particular mode of reasoning. Moreover, it seems to imply that 'true' moral reasoning is without context and disconnected from a given paradigm of thought, which as we shall see is a debatable claim.

For many religious individuals religion and morality are seen as inseparable; hence, even if those persons hold a universal moral theory it might not be compatible with either the secular principles Beauchamp and Childress have proposed or the common morality that they are supposedly representative of. Although principlists of this sort address the idea of value conflict in that there is to be no hierarchy among the principles, they overlook the fact that it is not merely a question concerning conflicting principles, or the values they embody, but a question concerning a conflict between different sets of principles, modes of moral reasoning, and worldviews. However, one concession must be made in that it is easy to overlook the distinctiveness of diverse moral systems when its existence is essentially denied. Beauchamp and DeGrazia write, "The common morality should not be regarded as merely one morality that differs from moralities embraced by other individuals or communities. The common morality contains universally valid precepts that bind all persons in all places." (Beauchamp & DeGrazia 2004, 58). Principlists of this variety do not view themselves as being in the business of trying to cordially convince others of the correctness of their position or demonstrate precisely how their perspective can be shared by others, but rather maintain that theirs is the

sole position possessing morally validity, which often leads them to intolerance of dissent and distinct moral perspectives.

Even in a time when efforts to embrace pluralism have been made, an exclusionary attitude toward religion in bioethics is still present. Illustrating this point, Messikomer et al discuss and quote James Childress's, the original co-author of the principles approach:

While religious viewpoints are important for "stimulating the public imagination," Childress said, he believes that a rationally based philosophical mode of reflection is the appropriate set of premises to use for his "model of public reasoning and justification" or "justification to others," if one is thinking about "how to help a ...secularly-based public institution...[in a] liberal, democratic, pluralistic society." (Childress 1999; Messikomer et al 2001, 502)

To further illustrate the overarching problems of the under-representation of diverse religious voices in the bioethical arena and the necessity of current trends to incorporate these voices into the biomedical ethical discourse, Lisa Sowle Cahill has raised an argument that will be explored in greater detail in the chapters to come, stating,

the role of theology in public matters has been governed by what might be termed a 'liberal consensus.' This consensus...has two parts. First, the preeminent criteria of law and public policy are individual liberties and rights. Second, the only appropriate 'public' language in which to justify, qualify, and reconcile liberties and rights is neutral, secular and rational...[However,] the 'secular' sphere is not neutral, since all participants inevitably come from communities of identity, and continually participate in such communities. Therefore, it is appropriate to use religious narratives and language, or those of any moral tradition...as long as they are not propounded dogmatically or in a way that undermines democratic process... (Cahill 2006, 37-38)

As will become more evident as we proceed, Cahill's description of the 'liberal consensus' is quite accurate. Even liberal thinkers who defend freedom of conscience in liberal democracy often neglect the nuances and complexity of communal identities in their advocacy of individual freedoms (i.e. Martha Nussbaum) and those who defend multicultural minority rights often advocate individual autonomy at the expense of collective religious concerns despite their interest in respecting diverse cultural groups (i.e. Will Kymlicka). Additionally, many liberal thinkers tend to view the use of religious language and the expression of religiously-based claims in the public sphere as inappropriate, if not unwarranted and something which ought to be prohibited (i.e. John Rawls, Richard Rorty, James Childress, Mary Ann Warnock). In agreement with Cahill, no moral perspective ought to be propounded dogmatically in that doing so undermines mutually respectful processes of democratic deliberation. We risk dogmatism, not by allowing religious voices to be expressed in the public arena but rather, by structuring the discourse as a debate rather than as a conversation; a strong foundation of consensus is built from mutual learning and mutual deliberation not from tirades and argumentation.

Moreover, in accord with Cahill's claims regarding neutrality and secularity, the political philosopher Charles Taylor has claimed that we can understand secularism in one of three ways. The first entails conceptualizing secularism as the effectively emptying the public sphere of all religiosity and or references to religious conceptions of reality. The second is one in which

secularism is thought to refer to the phenomenon that religious beliefs no longer influence people's behavior or guide their ways of life. And the third entails the prevailing presumption of disbelief in public society so that it is presumed that most people no longer hold religious beliefs that would come to bear upon their ethico-political deliberations (Taylor 2008, 2-3). Since the secularization thesis of the 1970's, which predicted the international decline of religion, has proved to be false as we enter the new millennium (Casanova 1994), we would be mistaken to either presume disbelief or to assume that religion no longer guides people's ways of life. Hence, when contemplating what it means to uphold State neutrality we might wish to conceive of neutrality not in terms of maintaining some unachievable degree of value-free objectivity in our public deliberations but rather in terms of maintaining State-based and public non-preferentiality towards different religious and moral perspectives when enacting laws and policies (Taylor 2008). In this way a variety of diverse religious and non-religious modes of reasoning may be granted access to the public forum and can gain entry into our public-oriented bioethical discussions without violating the tenants of liberal secularism.

Whose Moral Truth is it Anyway?

Bioethics emerged in part as a response to society's need and demand for the existence of ethical restraints upon scientific and medical innovations

and practices. In addition, bioethics deals with a plethora of ethically questionable and conceptually nebulous issues raised by such advances in medical technology. Today, bioethics is left in a bit of a quagmire. Bioethicists find themselves in the difficult position of simultaneously regulating 'ethically harmful' practices while attempting to respect the diversity of the population that it is attempting to protect and represent in the first place.

The problem has been nicely stated by Daniel Callahan:

How are we as a community, dedicated to pluralism, to find room for the different values and moral perspectives of different people and different groups? How are we to respect particularism? [and]...how as a community made up of diverse individuals and groups to find a way to transcend differences in order to reach a consensus on some matters of common human welfare? How, that is are we to respect universalism?...[For] There can be no culturally and psychologically perceptive ethics without taking into account the diversity of moral lives, but there can be no ethics at all without universals.... (Callahan 2000, 37-38)

Given this commonly held attitude regarding the relationship between ethics and universals and secularism's dominance in bioethical theory, the most widely accepted approach to bioethical thinking has been universalism of the principlist variety – that is, of the sort which claims to have discovered universally applicable ethical principles, which retain their truth value regardless of socio-cultural, religious, or historical context.

Inspired by the synthesis of rule-based utilitarian and deontological thought, Tom Beauchamp and James Childress, as noted above, have constructed a widely accepted set of 'universal' principles, namely autonomy,

beneficence, non-maleficence, and justice⁶. Despite their dominance, these principles and the theories employed for their creation have received an onslaught of critiques coming from other universal-oriented schools of thought, such as Kantians, Virtues Theorists, Christian Ethicists and other religiously-oriented ethicists, and from a variety of what Callahan has deemed the "particularist" camps and movements, mentioned previously.

Having been the least represented group in the bioethical arena, ethnographers working in the social scientific study of medicine have begun to turn their attention toward ethically problematic areas of biomedicine, morally challenging clinical contexts and the field of bio-medical ethics itself. As a result ethnographic bioethics has witnessed a surge since the turn of the millennium and, as a sub-field of bioethics, has proved to be one of universalistic principlism's staunchest critics. Bringing socio-cultural, ethno-religious, and religio-moral factors to the forefront, a number of social scientists have launched critiques of the current state of bioethical theorizing, often focusing on the inadequacies of traditional common morality approaches to coping with ethical dilemmas in religiously pluralistic, multicultural and morally diverse societies. This type of bioethical inquiry consists of individuals such as Renee Fox, mentioned previously; anthropologist Barry Hoffmaster; Leigh Turner, a scholar of religion and

⁶ Despite the fact that Beauchamp now claims that these 'universal' principles are based upon a universally valid common repertoire of beliefs begotten from a pre-theoretical foundation of common moral experience, his utilitarian and deontological leanings are still rather evident. (Beauchamp, T. Keynote Address, Annual Meeting of the American Society for Bioethics & Humanities, Cleveland, Ohio, 24 October, 2008).

bioethics, previously at McGill University and now at the University of Minnesota; Andrew Fagan of the Humans Rights Centre at the University of Essex; Adam Hedgecoe, a sociologist at the University of Sussex; and Patricia Marshall, an anthropologist in medical humanities at Loyola University. Voicing their concern over the failure of mainstream bioethics to adequately recognize the panoply of moral claims coming from distinct religious traditions, some of these critics have been rather antagonistic toward mainline analytic bioethical theory while others have merely attempted to provide correctives and to suggest a cooperative situation in which rationality and empirical social scientific evidence are seen as complementary.

Nonetheless they are all united in their call for the further involvement of religious voices in the bioethical arena, their desire to prevent the ethno-centrism which ensues from the current principlistic and universalistic bioethical models, and their promotion of raising awareness and understanding of the various belief systems and modes of moral reasoning which pervade a pluralistic society like our own. Hedgecoe states:

The social science critique claims that traditional philosophical bioethics gives a dominant role to idealized, rational thought, and tends to exclude social and cultural factors, relegating them to the status of irrelevancies. Another problem is the way in which bioethics assumes social reality divides down the same lines/categories as philosophical theories. (Hedgecoe 2004, 120)

Also voicing his concern with the dominance of philosophical theory in bioethics, yet going one step further to demonstrate the problems with universalism and principlism, in particular, Leigh Turner has stated,

Although Beauchamp and Childress situate their principlist moral framework in relation to the work of Kantians, utilitarians, virtue theorists, communitarians, and casuists, *Principles of Biomedical Ethics* does not explore varieties of moral life as human experience unfolds in particular social settings....Instead, the principlist model of practical reasoning promotes a dualistic account of morality, whereby reasonable, sensible “common morality”, is distinguished from unreasonable, provincial “customary morality.” (Turner 2003, 11.2: 110)

Though speaking with distinctive voices, a common claim of the social science-oriented bioethicists is that mainstream bioethics, for the most part, has failed to seriously address the need for coming to terms with religious and cultural pluralism. Many of the social scientists maintain that little attention has been paid to non-secularized religious claims due to their incompatibility with secular rationality, and that many of the more philosophically inclined bioethicists become wary of properly embracing pluralism due to their fear of moral relativism, which it may be perceived to entail. In order for the variety of religio-cultural voices to be heard in this field, they have called for an ‘anthropological turn’ in bioethics.

One of the greatest problems facing the incorporation of non-secularized religious voices into the bioethical dialogue is that “in many traditions...moral norms cannot be discerned merely through sustained rational inquiry” (Turner 2003, 11.3: 187). Turner claims that in religiously

pluralistic societies we are faced with “multiple interpretive traditions within which moral reasoning can proceed” (Turner 2003 11.3: 195). Part of the problem is that, as Tristram Engelhardt has stated, “The field of bioethics proceeds as if there were a common background morality accepted by all. In an age that celebrates cultural diversity, there is little recognition of substantive moral diversity” (Engelhardt 2000, 28).

From my own observations and analysis, it appears that thus far the only modes of reasoning which contemporary mainstream bioethics has seriously considered and attempted to synthesize are the various analytic modes of thought, presented by science, philosophy, and law; essentially relegating religious claims to the realm of the ‘unreasonable’, ‘irrational’, or ‘unjustified’, or requiring a secularization of their terminology as to make theological arguments more palatable for a general audience.⁷ As Fox and Swazey have argued,

American bioethics has shown a tendency toward what French sociologist Pierre Bourdieu has termed ‘the imperialism of the universal’...There are elements of paradox and irony in the way that particularistic Western cultural assumptions have contributed to the importance that bioethics attaches to universalism. (Fox & Swazey 2008, 166)

As a means of combating this “intellectual imperialism” bioethics must come to the realization that “in postmodern, pluralistic societies, different webs of

⁷ However, while requiring that religious thinkers secularize their language prior to engaging in bioethical discourse might appear to be a means of respecting diverse religious points of view by maintaining a neutral platform upon which all may enter the dialogue, such a method is potentially problematic on a number of levels. First, a number of religious claims may only make sense within the context of their respective belief systems, which when expressed in secular terminology may be unable to convey the full meanings of such concepts and may hinder an interlocutor’s ability to adequately comprehend the ideas being expressed by those speaking from a religious perspective.

moral reasoning exist” (Turner 2003 11.3: 195) and do its best to accommodate this phenomenon rather than sweeping it away with an allegedly universalized rationalistic mode of inquiry and set of principles. Prima facie, it is not impossible for bioethics to incorporate, not only ethnographic data but also, a variety of voices coming from distinct moral traditions into bioethical inquiry in order to promote a better understanding of diverse paradigms of thought, nor is it necessarily impossible for bioethics to accommodate diverse modes of reasoning while still maintaining an appropriate degree of normative rigor.

The traditional neglect of the social sciences by mainstream bioethics may in part be due to the fact that it has been ethnographic data, which often highlights salient differences, that has given rise to relativism amongst some anthropologists and members of the general public. Despite having launched sound criticisms, defenders of particularism often take a backseat due to the perceived potential of their claims to create a slippery slope towards relativism and raise the threat of moral chaos that ensues from relativistic thinking⁸. Often philosophers view relativism as a self-negating philosophical theory, for if all truth claims are relative then there is nothing left to support the truth of the claim they are making. Relativistic positions are usually

⁸ The practical concern is that if morality is indeed culturally relative, or relative to the individual as some postmodernists would claim, then how is bioethics to perform its regulatory function of curbing potentially ‘harmful’ effects of scientific progress, safeguarding the rights of patients, and discovering the morally right actions and ethical behaviors which spawned the field in the first place? The entire agenda of bioethics would be undermined and the project of doing bioethics would fall by the wayside. On the other hand, the theoretical concern held by the more philosophically inclined bioethicists is that relativism as a theory is self-negating, and hence an unsound and absurd position.

construed as philosophical slippery slopes toward moral chaos, hence making them unlikely candidates for any field of applied ethics. However, the findings of the social sciences need not necessarily be taken as endorsements of relativism, but rather as data which point to real-life problems, modes of thinking, and values held by actual persons in our society.

The problem lies within the conflation of empirical evidence and philosophical theory. What the social scientists are stating is not necessarily a philosophical argument but is rather a presentation of data acquired from evidence-based methodologies and is representative of an empirical reality. Whereas relativism is a doctrine, moral pluralism is a real social phenomenon supported by empirical evidence. While relativism might be easily discarded in the ivory tower of academic philosophy the fact that there exists an array of moral beliefs stemming from different modes of moral thinking is the socio-cultural reality that an applied ethics must confront. Simply writing off a variety of moral beliefs as wrong or false does not change the fact that the very people that bioethics is to be guiding and protecting actually do hold distinct and often conflicting moral commitments. Indeed, in clinical settings and in bioethical policy-making, conclusive decisions need to be made, however, in doing so, the moral diversity of our social reality must not be overlooked or marginalized when engaging in these deliberative processes.

What is needed, and I believe is becoming more prevalent amongst bioethicists, is “a recognition that for many individuals and communities, it is

these religious traditions, as opposed to particular philosophical theories, that are salient when they address moral issues related to medicine, illness, and health care” (Turner 2003 11.3: 184). *Recognizing* such phenomena need not entail an endorsement of nihilistic relativism nor does it necessarily require an epistemological judgment of the variety of claims being purported. Rather bioethicists must search for ways in which diverse perspectives can be respected while still maintaining a normative structure of inquiry that will be able to produce guidelines for action.

The ability of the social sciences to provide ethnographic data to those involved in bioethical decision-making and policy formation can provide a platform upon which a synoptic understanding of difference and a fruitful discussion, rather than a myopic dismissal of alterity, may be had. This is where the social sciences can offer their greatest contribution to the interdisciplinary field of biomedical ethics – namely, by providing detailed descriptive accounts of religio-cultural contexts and the modes of moral reasoning that such patients and groups employ. The “traditional orientation of anthropology toward moral questions complements analytical approaches currently being developed in bioethics by placing values and ethics squarely with the domain of culture” (Marshall 1992, 56). As our society becomes increasingly more pluralistic, the social sciences can benefit bioethics greatly by assisting in, and promoting, a deeper understanding of religio-cultural difference. On its own however, the promotion of mutual understanding is

unable to resolve the tensions and conflicts that the enterprise of bioethics faces.

So far we have established that religious voices have been excluded from mainstream bioethical discourse and that religious perspectives are often considered inapplicable in bioethical deliberations concerning public policy and thereby marginalized, if not expunged, in the general trends of public bioethics. However, why is this important and what is at stake when this occurs? Does the influence of liberal individualism and the desire to adopt a common secular vernacular when sitting at the roundtable of bioethics really threaten the freedoms of religious individuals or stifle our bioethical inquiry? In order to fully understand the importance of affording religious perspectives ample space in the public bioethics arena we must first understand the importance that both recognition and religious liberty play in the social and ethico-political frameworks in which bioethics operates.

Recognizing Religion in Public Bioethical Deliberation

As we have seen, one of the persistent problems in bioethics is discovering, or creating, a shared normative framework in which the particularities of distinct moral perspectives can be respected. In short, one of the most difficult and most daunting tasks of public bioethics has been to resolve the tensions in what Daniel Callahan has called the fight between

universalism and particularism⁹. Although he does not employ the same language or terminology, the Canadian philosopher Charles Taylor has taken up a similar cause in his attempts to forge a middle ground between, what is often referred to in political philosophy as, the fighting camps of individualism and communitarianism¹⁰. Furthermore, with his deep concern for maintaining respect for diversity in the ethico-political frameworks we establish and the public policies we enact, Taylor's work indirectly addresses the issue of religio-cultural marginalization in public-oriented ethical deliberations. Without attempting to provide an overview of the entire corpus of Taylor's work – which is far too extensive to make such a task viable in a book let alone a single chapter – we will turn our attention to a discussion of Taylor's ideas insofar as they speak to the issue at hand and will provide some insight into the nature of some of the problems that bioethicists have been attempting to resolve.

To begin, Charles Taylor has described "civil society" as "a web of autonomous associations, independent of the state, which bound citizens together in matters of common concern..." (Taylor 1995, 204). Arguably, many such "associations" are the variety of religious communities and moral

⁹ Or, in other words, the task of finding a middle ground between the search for universally valid and universally binding moral precepts that can be enacted as the common morality and the desire to be sensitive toward and respectful of the unique, and at times divergent, beliefs that are held by different religio-cultural tradition and distinct moral systems.

¹⁰ By "individualism," Taylor is referring to atomistic and self-interested strands of ethico-political thought that place individual liberty, personal autonomy and self-benefit over and above the concerns of the broader society or the concerns of specific collective associations that make up our civil society. By "communitarianism," Taylor is referring to those schools of thought that place the concerns of either the global 'human community' or a particular national political community over and above the concerns of individual persons.

traditions that are to be found in a pluralistic society and which often assert the desire to retain their ability, or “autonomy,” to act in accordance with religio-moral traditions and to implement their modes of moral reasoning when confronted with ethical dilemmas in clinical settings and when contemplating and deliberating about public policies concerning a range of bioethical issues. Discussing the lack of ethico-political unity in contemporary democratic societies, Taylor claims that people, “may indeed feel linked in common projects with some others, but these come more to be partial groupings rather than the whole society: for instance, a local community, an ethnic minority the adherents of some religion or ideology, the promoters of some special interest” (Taylor 1991, 113).

This sentiment of being bounded solely with a particular moral community and the desire to find ways to ethically unify the various moral communities has come to characterize the public bioethical enterprise and is extremely important for bioethics as a publicly oriented and socially applicable field. When bioethicists attempt, however, to enact common moral principles or ethical codes intended to govern the behavior of all members of society without taking into consideration the importance that each community’s distinct moral tradition plays in the lives of its members they effectively deny the members of those diverse traditions respect as morally serious members of society and close themselves off to the genuine ethical concerns of those persons. As we have already seen, this is essentially what has occurred as a result of principlist thinking and universalistic approaches

to creating a common morality. To this end, bioethics can benefit greatly from Taylor's *politics of recognition*, insofar as it can provide bioethicists with insights into the importance of recognizing the salient role that religion plays in the moral lives of persons and the extent to which one's moral tradition informs her sense of self, conception of society and vision of reality.

Taylor claims that as a result of our excessive individualism, which as we saw previously has had a great influence on public bioethics, we tend to neglect, or even discount, the importance of being in relation with others in a community and hence, it may be argued that as result we overlook the importance that being a member of a religio-cultural community with its own distinctive moral tradition plays in the life of the individual. Further, Taylor claims that as a result of our overly communitarian and cosmopolitan ways of conceptualizing our ethico-political context we have been neglectful of diversity to the point where we seek the homogenization of difference in our attempts to proclaim a single shared tradition as the sole possessor of truth. In regards to bioethics, we can see both of these factors at play in historical attempts to enact a common morality that is simultaneously purported to be universal yet largely indebted to individualistic thinking and the suppression of moral differences arising out of our distinct religious, cultural and ideological commitments and communities.

In order to overcome these shortcomings Taylor calls for a "new outlook," and proposes that the "moral ideal of authenticity," serve as the foundation to an alternative approach to ethico-political thinking (Taylor

1991, 20). Drawing on George Herbert Mead's concept of "significant others," Taylor views identity as emerging from our inter-relations with others and defined in dialogue and communication – be it in agreement or struggle – with others (Taylor 1991, 33). Hence, in an attempt to avoid a reduction to individualism, Taylor's notion of authenticity views selves as unique individuals that are dialogical in nature and dependent upon others¹¹. To this end, the philosopher and scholar of religion, Jeffrey Stout raises the relevant and related point that when it comes to moral reasoning each one of us begins from within the confines of a particular tradition of thought claiming,

We begin already immersed in the assumptions and precedents of tradition, whether religious or secular....Our starting point is not so much arbitrary as inescapable: who we are, the heirs of this tradition as opposed to that one, born into one epoch rather than another, our intuitions shaped by the grammar of our native tongue. (Stout 2001, 120)

Taylor would refer to this contextual immersion in a particular set of both social and epistemic circumstances as the "social imaginary," which, although it is often influenced by social and moral theories, differs from a purely theoretical account insofar as it refers to the ways in which entire communities of ordinary people "imagine" their social surroundings. Taylor explains that "the social imaginary is that common understanding which

¹¹ I am intentionally avoiding an in-depth discussion of Taylor's philosophical theory of the self insofar as I wish to avoid postulating the necessity of any robust theory of selfhood or detailed ontology as necessary for adoption of bioethical methodology I will develop in later chapters. The current discussion of Taylor's conception of self and notion of authenticity is necessary as a means of introducing and explaining his conception of recognition. While acknowledgement that rootedness in moral communities is a salient feature of many individuals' conception of self and mode of self-identification is being presupposed and is a reason why it is being argued that recognition is necessary in bioethics, it does not deny either the importance of granting recognition to persons with differing conceptions of self or inclusion in the bioethical discourse to those with individualistic conceptions of self nor does it make any particular ontology as prerequisite for entry into bioethical deliberation.

makes possible common practices, and a widely shared sense of legitimacy” arguing that this “understanding is both factual and ‘normative’” (Taylor 2007, 172). Ultimately, the social imaginary is a “‘map’ of social space” whose normative elements are buttressed by “some notion of a moral or metaphysical order, in the context of which the norms and ideals make sense” (Taylor 2007, 172-173).

In terms of authenticity, this social imaginary is the common socio-ethical and onto-metaphysical paradigm that each individual inherits and which influences the unique constitution of an individual’s self-identity and modes of moral reasoning. Insofar as communities are the bearers of these social imaginaries, or epistemic contexts (to use Stout’s terminology), religious communities provide the epistemic contexts that are necessary for individuals to make sense of reality. Consequently, Taylor views community as contingent upon self-choice, recognition, and solidarity. This idea is extremely useful when contemplating the role of religion in the life of an individual in that, by self-choice, Taylor implies that at some point each individual has the dual ability to reassess her epistemic context and possibly choose which community she wishes to belong to (to a certain degree). Further, he minimally defines solidarity as common pursuits and aims.

Yet, to what extent does recognition play a role in defining what it means for a individual to be an authentic self with sincerely held beliefs? Taylor argues that which ought to be recognized is the importance of: relationality, or the idea that selves are dialogical and dependent upon others

for their identities and perspectives and are deeply rooted in communities; the fact that others have their own pre-established communities and that we may potentially be able to be in dialogue with them; and autonomy, or the ability to voluntarily choose our commitments and affiliations and our freedom to engage in questioning and modes of thinking that seek to discover commonalities among such affiliations. (Taylor 1991)

Isaiah Berlin, had claimed that insofar as human identity is “shaped by, and cannot be understood apart from, those of the group, defined in terms of common territory, customs, laws, memories, beliefs, languages, artistic and religious expressions, social institutions, and way of life...[all of which are] factors which shape human beings, their purposes and their values” (Berlin 1970, 341), “Recognition is demanded by individuals, by groups, by classes, by nations, by States, by vast conglomerations of mankind” (Berlin 1996, 256). Likewise, as a means of preserving their feelings of self-worth and moral importance Taylor argues that recognition is a shared and vital human need that all persons possess (Taylor 1994, 26).

Taylor explains,

The thesis is that our identity is partly shaped by recognition or its absence, often by the *misrecognition* of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being. (Taylor 1994, 25)

Elsewhere, directly addressing the issue of pluralism, Taylor writes,

“discussions of multiculturalism are undergirded by the premises that denied

recognition can be a form of oppression” (Taylor 1991, 50). Consequently, to deny recognition to religious perspectives by excluding them from public discourse can be construed as a denial of the importance of who they are, a dismissal of what they believe and a suppression of their ability to express those beliefs and live in accordance with their way of life; and hence, places us on the slippery slope toward the violation of religious liberty¹².

Furthermore, if the religious communities, and the correlative moral traditions they adhere to, are so constitutive of persons’ identities it necessarily follows that showing a genuine respect for persons entails recognizing the importance that their moral perspectives play in their lives by allowing them to voice their moral concerns and implement modes of moral reasoning that they believe are authentic expressions of their moral traditions and which genuinely represent their sincerely held moral beliefs. Taylor argues that “truly recognizing difference” “means recognizing the equal value of different ways of being” claiming that “It is this acknowledgment of equal value that a politics of identity-recognition requires” (Taylor 1991, 51). Discussing the different concepts of equality at play in: what we might call a politics of sameness, in which equality is construed in terms of “difference-blindness” and a society’s adherence to a single moral doctrine, and the politics of difference, Taylor writes,

Everyone should be recognized for his or her unique identity. But recognition here means something else. With the politics of equal dignity, what is established is meant to be universally the same, an identical basket of rights and immunities; with the

¹² A more in-depth discussion of religious liberty will be provided in the subsequent chapter.

politics of difference, what we are asked to recognize is the unique identity of this individual or group, their distinctiveness from everyone else. The idea is that it is precisely this distinctiveness that has been ignored, glossed over, assimilated to a dominant or majority identity. And this assimilation is the cardinal sin against the ideal of authenticity. (Taylor 1994, 38)

Taylor's statement, although not intended to do so, speaks directly to issues concerning the tension between universalism and particularism in bioethics. With any attempt to postulate a universal common morality grounded in a particular ethical tradition, such as the principlistic hybrid of deontological and utilitarian reasoning that is itself proclaimed to be universal, we witness the distinctiveness of different religious moral traditions being ignored. In our pursuit to forge a common set of bioethical guidelines we must not fail to recognize the uniqueness of the array of approaches to ethics found amongst society's diverse religious communities.

Often common morality approaches to bioethics demand assimilation to the principles, codes and norms they claim are "common" yet, which do not draw upon, or seek input from, the panoply of distinct moral traditions that actually guide people's modes of moral reasoning. This is, at least in part, the result of the failure to recognize different moral perspectives as possessing equally valid insights on bioethical matters and as being equally worthy of representation in the processes that will eventually lead to mutually binding norms, guidelines and policies. Taylor requests that "we all *recognize* the equal value of different cultures" and claims that we should "not only let them survive, but acknowledge their worth" (Taylor 1994, 64). This is not to say that each member of each moral tradition view all other

systems of morality as being equally true as her own, nor should this be seen as an endorsement of either ethical relativism or moral subjectivism. Rather, it is to say that if our goal is the establishment of a common bioethical framework we mustn't eschew moral perspectives that differ from our own and we mustn't assume that the achievement of such a task is even remotely possible if a number of distinct perspectives are not incorporated into processes of deliberation and policy-formation we implement to do so.

In any attempts to create a set of common moral norms and shared bioethical guidelines in a society as pluralistic as our own, if we are going to respect religious diversity we cannot be in the business of imposing a single moral system on all members of society, especially in regards to issues as novel and, at times, ethically ambiguous as those that arise in biomedical contexts. However, if we are going to retain some degree of normative rigor in developing our shared bioethical guidelines we cannot simply allow anyone and everyone to do as they wish with no regard for repercussions on the larger society or the ability to appeal to a common normative framework.

Confronting moral diversity and religious pluralism in bioethics raises the spectre that any principles which attempt to respect the claims of all religious groups will either not succeed in achieving their intended goal or they will be too vague to accomplish any substantive results, possessing no practical usefulness or applicable proposals. "The hard part is to devise a theory that can readily join universality and the moral complexity of everyday life" (Callahan 2000,41). Furthermore, Callahan has delineated

“three tasks for the bioethicist,” which are: “definition of issues, methodological strategies, and procedures for decision-making” (Callahan 2007, 19). He goes onto argue,

“The wrong methodology will be used if it is not a methodology which has been specifically developed for ethical problems in medicine and biology...My positive criterion for a good methodology is this: it must display the fact that bioethics is an interdisciplinary field in which the purely ‘ethical’ dimensions neither can nor should be factored out without remainder from the legal, political, psychological and social dimensions...The problem of decision-making, which I include as the third task of the bioethicist, cannot be divorced from the methodological question. (Callahan 2007, 20)

Since the turn of the millennium, there have been a number of attempts to devise a theory and a methodology that could provide solutions to the so-called “universalism vs. particularism” dilemma in bioethics. Hence, I ask, is there a way to embrace moral and religious diversity in biomedical ethics that can resolve some of the tensions that arise in a pluralistic society seeking ethical standards for biomedicine? If there is a way of resolving the problems that religious pluralism has presented to the bioethical enterprise, what would it entail? And if we are presented with multiple candidates, which is the best one? As we proceed we will examine the viability of these alleged solutions, exploring their ability to adequately resolve the problems presented to bioethics by a religiously pluralistic society. After a detailed and critical analysis, it will be demonstrated how some of the best attempts at resolving the problem of pluralism in bioethics ultimately fail, or fall short of their goal. Therefore, after such an examination, a new approach to the resolution of such problems will be proposed and defended in an attempt to

retain the insights of previous theories while avoiding their downfalls. Prior to our discussions of bioethical methodology however, in order to better understand the difficulties that arise when attempting to cope with both religious and cultural diversity in bioethics, it is important to recognize the influences of, and limitations set by, the social circumstances and political context in which bioethical deliberations occur. Having looked back upon the formative years of bioethics we notice that a staunchly secularist universalism, rooted in the rationalist tradition, and individualistic brand of liberalism have been a predominate influence upon public bioethics. As society continues to become increasingly pluralistic our traditional ways of conceptualizing the socio-political sphere are being questioned, which in turn has led to novel suggestions regarding the ethico-political dimensions of moral life in a highly diverse society. I now turn to an analysis of the contemporary socio-political context in which public bioethics finds itself, and which necessarily influences the ways in which the field of bioethics functions and restrains its ability to enact change in the public arena.

Chapter 2

Religiosity & Multicultural Politics: Exploring the Framework of Public Bioethics*

As we saw in the last chapter, the socio-political context in which the field of bioethics was born had a huge impact on the development of the field and the ways in which bioethical deliberations took place and that our current socio-political circumstances play no less of a role in influencing the ways in which bioethics currently functions. Hence, the ways in which we conceptualize our liberal democracy will undoubtedly affect any future developments in the field of bioethics. In *Bioethics in a Liberal Society: the Political Framework of Bioethics*, Thomas May has duly noted that,

[B]oth the cultural history and political institutions of the United States [and of Canada for that matter,] are decidedly focused on liberal individualism. The liberal political framework is vital and nonnegotiable, as a starting point in our discussion of bioethics decision making....This context governs our social relations....In short, the role that moral beliefs play in bioethics will be limited, in a social context, by the political rights of individuals. (May 2002, 4)

Thus, in order to adequately address issues concerning religious, cultural, and moral pluralism in bioethics we must first address the ethico-political framework in which public bioethical deliberations take place and controversial bioethical issues arise. In an attempt to better understand what is at stake in our discussions of pluralism in bioethics and while refraining from embarking upon the rather lengthy task of providing a comprehensive

philosophical and historical account of the Western tradition of political thought, I will engage in a critical discussion of a particular trend in liberal political thinking that specifically addresses and attempts to cope with the issues of pluralism and diversity; namely, multiculturalism. Furthermore, if we are to make the case for the inclusion of religious voices in the public forum of bioethics we must also examine the role that religious liberty plays in our ethico-political thinking, for what is at stake when religious perspectives are barred entry into our public bioethical deliberation and the processes that form public policy on such matters is the very freedom of those individuals to live in accordance with their conceptions of the good, visions of the moral life, and pursuit of living well. In the interests of brevity I have chosen to focus our attention on one of the leading proponents of multiculturalism in the Western world: Will Kymlicka.

Religious Liberty in a Multicultural Society: The Ethico-Political Context of Contemporary Bioethical Inquiry

Thomas May has argued that autonomy and the positive liberty of individuals plays a crucial role in bioethical decision-making insofar as personal autonomy and positive liberty are foundational ideas in the socio-political context in which bioethics emerged and continues to function. He cites the work of Rawls and Mill as emblematic of the type of political liberalism governing society and subsequently, which creates the political framework in which bioethical deliberations occur. As a consequence,

whatever the conclusions of our bioethical deliberations might be, they will always be constrained by the limits that this political framework places on social behavior. The ability to pursue a moral vision of the good and to act on one's moral convictions in bioethical contexts is largely dependant upon that which is deemed permissible in our socio-political circumstances. Hence, I wish to analyze a current trend in political thinking that is not only likely to influence our political framework in the future but one which I believe will also be both beneficial for society in general and which could have a positive influence in regards to ameliorating the current tensions that exist between universalism and particularism and the problems that arise when engaging with the issue of pluralism in bioethical inquiry.

As both a political philosophy and public policy, multiculturalism has become one of the leading approaches to securing the rights of cultural minorities in pluralistic societies and for coping with the problems that arise when attempting to accommodate the needs of ethnic, cultural, and religious communities in a liberal democracy and as such plays a major role in determining what is even possible in bioethics. The Canadian political scientist Will Kymlicka has been a staunch advocate of multicultural policies and has developed a political philosophy he refers to as "liberal multiculturalism." This chapter will provide a critical analysis of Will Kymlicka's theory of "liberal multiculturalism" in lieu of its ability to account for religious pluralism and ensure religious liberty in a liberal democratic society. While not directly addressing bioethical issues the proceeding

analysis and arguments will provide recommendations for how we ought to conceptualize our current ethico-political situation and hence, is suggestive of the type of socio-political framework in which issues concerning religious-cultural pluralism and its relation to public bioethics can best be addressed.

It will be argued that while multiculturalism is the appropriate approach for coping with society's diversity, Kymlicka's theory does not adequately address issues concerning religious groups and ultimately fails to secure a sufficient degree of freedom to members of religious traditions. Despite Kymlicka's advocacy of "group-differentiated" rights his brand of multiculturalism is not amenable to religious claims for recognition as bearers of distinct cultural and moral traditions. Rather than abandon the multicultural project however, it will be suggested that an alternate approach to multicultural theorizing is necessary if a sufficient degree of religious liberty is to be upheld in a religiously pluralistic society.

Multicultural Thinking in a Liberal Culture:

"Multiculturalism" is a term that has gained much popularity in recent years as societies continue to become more diverse and as States attempt to cope with novel forms of pluralism. As a term "multiculturalism" has both a descriptive and normative sense. In the first instance, it is often used to describe the cultural pluralism and diversity of contemporary societies; in this sense, "multiculturalism" refers to the contemporary phenomenon that a

variety of cultural traditions have come to occupy the same social spaces. In its normative sense, “multiculturalism” has been put forth as a socio-political ideal, tied to public policy, and an ethico-political theory, both of which entail some positive evaluation of the phenomenon of cultural pluralism and the promotion of a conception of society as not only arising from a diversity of cultural heritages, but also as being able to foster and cultivate this diversity; normatively, endorsements of “multiculturalism” often entail the promotion of pluralism as being in the general interest of society.

As a political philosophy multiculturalism can be regarded as a reaction against and alternative to the hegemonic enforcement of cultural homogeneity that is said to have resulted from prior universalistic and assimilationist policies in Western democracies (Joppke, 1996). To this extent, multicultural political theories seek ways in which the phenomenon of cultural pluralism can be incorporated into the political philosophy of the State and can be accounted for in the types of policies and legislation that are subsequently enacted. Hence, it may be argued that a “multicultural society” is one in which the State attempts to respect, accommodate and promote cultural pluralism and is a society in which a deep degree of lingua-cultural, ethno-cultural, and religio-cultural diversity is seen as being compatible with political unity. A multicultural society then is one in which pluralism is not conceptualized as a problem to be overcome but rather one in which pluralism is thought to be conducive with the ends and aims of that socio-political entity – namely, the stability of the State, social peaceability, and

political order. In sum, a multicultural society is heterogeneous and pluralistic and is a political community in which the State takes measures to ensure rather than stifle the pluralism of its social landscape. Consequently, a public bioethics suitable for such a society would be one which avoids espousing universal moral principles and which seeks input from a variety of distinct moral traditions and value systems.

Although there are a variety of ways in which a multicultural political philosophy can be construed, as Kymlicka has observed, there are at least three features common to most forms of multicultural political thinking. These three features of multicultural political philosophy are: 1) the rejection of the idea that the State belongs to a single ethno-cultural group; the State belongs to all citizen equally. 2) The rejection of assimilationist policies and exclusionary policies and practices that place undue pressure upon individuals coming from minority cultural groups to hide or overcome their cultural heritage in order to be afforded equal recognition by the State. 3) The acknowledgment of the historic injustice that has been perpetrated against ethno-cultural minorities as a result of assimilationist policies and hence, an attempt to prevent such injustices from occurring in the future. (Kymlicka 2007 B, 65-66 *Odysseys*). Further, Christian Joppke has described multiculturalism as a reaction against western universalism, which has in the past forced assimilation and promoted cultural homogeneity (Joppke 1996). Coercive acculturation and assimilation may therefore be regarded as hindering the liberal project that seeks to enable, not occlude, the pursuit of

diverse ways of life and life plans. Hence, multiculturalism becomes an extension of, rather than an alternative to, the tradition of political liberalism.

To this end the sort of multiculturalism Kymlicka has endorsed is what he calls “liberal multiculturalism,” which he contrasts with what he refers to as, “conservative multiculturalism,” which will be discussed shortly. The liberal multiculturalism that Kymlicka proposes is said to be aligned with the tradition of liberal thought found in Locke, J.S. Mill, and Rawls. Unlike Rawls, however, Kymlicka believes that in order to grant due recognition to cultural collectives in a manner that is also able to sufficiently preserve personal autonomy a more “comprehensive,” vision of liberalism must be enacted over and above the late Rawlsian call for a solely “political” version of liberalism. He writes, “To defend the individual rights model...liberals must appeal not only to the fact of social pluralism, but also to the value of individual autonomy. This may require abandoning Rawls’ belief that liberalism can and should be defended on purely ‘political,’ rather than ‘comprehensive’ grounds” (Kymlicka 1992, 33). By which he implies that liberalism be defended on deeper ethical and moral grounds rather than simply on a social and political basis; thereby advocating a shared ethico-cultural framework for society instead of a purely ethico-political one, which would refrain from imposing itself onto particular conceptions of the good, be they personal or communal. Thus, Kymlicka develops his theory of multiculturalism on the basis that it will promote a form of comprehensive liberalism, which is said to be founded upon the twin ideals of equality and

freedom, and which simultaneously attempts to unite recognition of cultural collectives with individual conceptions of autonomy. Although Kymlicka's attempt to unite the concepts of autonomy and community stems from a commendable intention (to find some sort of middle ground between staunch individualism and communitarianism¹), as will become evident, his insistence on endorsing a comprehensive, rather than purely political, form of liberalism ultimately hinders his theory's ability to fulfill the aims of the multicultural project itself.

With his adherence to a comprehensive doctrine of liberalism Kymlicka proposes a peculiar form of collective rights—a term he avoids in favor of 'group-differentiated rights' or 'group-specific' rights—for he envisions collective liberty as stemming from, and consequently secondary to, individual liberty. To this end Kymlicka's "liberal multiculturalism" values cultural collectives and their preservation only insofar as they are beneficial to individuals. Kymlicka maintains that the existence of multiple cultures within our political society actually enables greater autonomy and promotes free choice and individual liberty (Kymlicka 1996, 34-37). He claims, "that individual freedom is tied in some important way to membership in one's

¹ Here, "communitarianism" should be taken to imply the ethico-political ideal of promoting the public good and achieving social cohesion, unity and peaceability by envisioning the political community as a morally and culturally homogenous collective, the good of which must be valued above personal benefit or individual goods. It is important to note however, that there is a more limited notion of communitarianism that emphasizes the existence of particular ethico-political collectives and which would place the concerns of these particular groups and concern over and above those of their individual members. Despite envisioning society as a politically united community and calling for 'group-differentiated' rights, Kymlicka considers both forms of communitarianism too extreme in that he seeks to make personal autonomy the foundation of his ethico-political system.

national group; and that group-specific rights can promote equality between the minority and the majority” (Kymlicka 1996, 52). He calls for both equality amongst groups and the freedom of individuals within groups, claiming that what liberal multiculturalism seeks is “the freedom to move around within one’s societal culture, to distance oneself from particular cultural roles, to choose which features of the culture are most worth developing and which are without value...” (Kymlicka 1996, 90-91). Consequently, Kymlicka argues that his liberal vision of the multicultural project is fully compatible with liberalism’s cherished notion of personal autonomy.

Kymlicka goes onto appeal to the existence of a “liberal culture” inherent within liberal democratic societies and argues that regardless of one’s heritage all members of society belong in some way to this shared liberal “societal culture.” Describing his vision of what a comprehensive liberal doctrine of multiculturalism entails Kymlicka writes, “We can describe both liberal nationalism and liberal multiculturalism as forms of ‘liberal culturalism’” (Kymlicka 1998, 148). And goes onto claim:

Liberal culturalism is the view that liberal democratic states should not only uphold the familiar set of common civil and political rights of citizenship...they must also adopt various group-specific rights or policies which are intended to recognize and accommodate the distinctive identities and needs of ethnocultural groups. (Kymlicka 1998, 148)

Although he is concerned with the recognition and accommodation of cultural groups, Kymlicka has said that “societal cultures” “involve not just shared memories or values, but also common institutions and practices” (Kymlicka 1996, 76), and has gone onto argue that “while there are many

aspects of their heritage that immigrants will maintain and cherish, this will take the form not of re-creating a separate societal culture, but rather of contributing new options and perspectives to the larger Anglophone culture..." (Kymlicka 1996, 78). Here we witness Kymlicka's suspicion of robust forms of pluralism and his rejection of interpretations of liberalism that view the existence of a multiplicity of distinct cultural traditions as something that liberalism itself ought to protect and as something that is integral to the liberal political framework itself. It becomes evident that in addition to personal autonomy one of Kymlicka's primary concerns is fostering social cohesion through shared cultural norms and the society-wide adoption of a shared comprehensive doctrine. The danger in allowing this form of thinking to influence bioethics is that it could very well lead to the imposition of a single system of moral thought and comprehensive ethical doctrine upon a society, which by virtue of its liberal pluralism ought to accommodate a diversity of ethical systems and modes of moral reasoning. This view of liberalism as a comprehensive moral doctrine that attempts to address cosmopolitan and multicultural concerns is precisely the kind of liberal thinking that religious libertarians, such as the bioethicist Tristram Engelhardt, object to, and with good reason. Commenting upon comprehensive conceptions of liberalism, Engelhardt has claimed, "

The liberal ethos is cosmopolitan in seeking to provide for all a content-rich moral vision, which should bind individuals from across the world as they free themselves from the superstitions and illiberal constraints of the past. Liberal cosmopolitanism is not cosmopolitan in being open to all as they reach out in their own terms to collaborate with moral

strangers, while allowing all peaceably to pursue their own moral understanding in their own moral communities....
(Engelhardt 2000, 44)

Engelhardt claims that by proposing a comprehensive moral doctrine and by envisioning it as being universally applicable in a global community, liberals of this stripe leave no room for diversity in moral thinking; which is the result of their attempts to impose a single moral order upon society. In order to remedy this situation Engelhardt calls for a *modus Vivendi* approach to public bioethics in which different moral communities are granted the right to abide by their own distinct moral norms so long as they do not impose their own moralities on others (Engelhardt 2000, 42). However, as will become more evident as we proceed, although some of Engelhardt's criticisms are well-founded and some form of value pluralism seems to be in order when dealing with a society as diverse as our own, we need not adopt a robust form of *modus Vivendi* (libertarian or otherwise), in which mutual consensus and shared moral norms are eschewed as being impossible and repressive, in order to maintain a genuinely multicultural society².

To this end, we mustn't neglect the importance of associational freedom and collective autonomy in our musings over multiculturalism, being cautious not to enact overly repressive policies that would violate

² Further, while a *modus Vivendi* approach is possible in regards to some issues in bioethics, such as allowing different religiously-based healthcare institutions and religious communities to refrain from partaking in certain medical practices they consider to be immoral (for instance, allowing Catholic hospitals to refrain from offering abortion services or allowing competent adult Jehovah's witnesses to refuse blood transfusions and other forms of medical intervention) it is simply not viable when attempting to cope with issues such as: public funding of stem cell research, human cloning, or the legality of infanticide and late term and partial birth abortions; nor is it desirable if what we seek is to establish a form of ethical protection to which all can appeal.

these freedoms. When calling for “group-specific” rights that which Kymlicka seeks is “external protections” for ethno-cultural cultural communities that would enable members of a particular group to be full participants in the greater liberal culture. His motivation for endorsing multiculturalism however, is not to ensure the ability of minority traditions to retain their own internal fellowship and cultivate their way of life but is rather to open socio-political avenues by which members of minority communities can join the larger culture with greater ease. He wishes to reduce what he calls “internal restrictions,” or those normative structures held by religious and cultural communities that dissuade their members from adopting what he considers to be comprehensive liberal values. His opposition to “internal restrictions” is that they would result in the imposition of certain practices on some members of a group by other, more authoritative, members of that same group (Kymlicka 1996, 37).

On this view, liberal multiculturalism’s primary purpose is to afford special rights to members of particular collectives, as opposed to affording collective rights to groups per se, as a means of better enabling individual group members to become full-fledged members of society’s comprehensive liberal culture and restrict the power of religious and cultural authority figures as to combat what he considers “conservative multiculturalism.” Kymlicka describes this “conservative” multicultural mode of thinking as,

fundamentally about ancestral ‘traditions,’ so that ‘accommodating cultural diversity’ is essentially a matter of preserving ‘traditional ways of life’On this view, multicultural claims are interpreted through a set of ideas

relating to cultural authenticity and group identity. 'Culture' is typically interpreted in terms of (or reduced to) a set of discrete practices, preferably 'traditional' and 'authentic' practices. (Kymlicka 2007B, 98-99)

He opposes this "conservative multicultural" position on the grounds that it would enable groups to maintain illiberal practices, which the group itself has deemed necessary for the survival of their tradition yet, which are in Kymlicka's opinion, antithetical to liberalism itself (Kymlicka 2007B, 100). Kymlicka has cited the Ottoman Empire's millet system³ as an example of the sort of illiberal model of collective rights and religious tolerance that he has in mind writing, "it [the Ottoman civilization] was not a liberal society, for it did not tolerate individual dissent within its constituent communities" (Kymlicka 1992, 36).

Consequently, Kymlicka views the ability of *individual dissent against one's religio-cultural tradition as the defining feature of liberalism* and employs it as his gold standard of evaluation when judging various religio-cultural communities in North American society, including the Mennonites and the Amish (Kymlicka 1992, 38). He argues that the political danger in adopting a "conservative," variety of multiculturalism is that it will result in the State rewarding those who promote an 'authentic' vision of the tradition. His fear is that this will enable authority figures of particular traditions to

³ The millet system was a segregationist socio-political system employed in the Ottoman Empire. This was a system in which one's political identity was inescapably bound to one's religio-cultural and ethno-religious identity and in which State recognition was granted to collectives but not individuals. This system was hierarchical, with the Sunni Muslim millet as the ruling and most privileged collective. Other repressed second and third class millets included: the Greek-Orthodox Christian (or Rum) millet, the Armenian-Orthodox Christian millet, and the Shi'ite Muslim millet; with the system latter being expanded to include a number of other millets, such as the Jewish millet and Maronite Catholic millet.

oppress dissent, preclude change, and will eventually lead to the oppression of certain members of those traditions who openly disagree with the authority figures or whose views are not in accordance with the tradition's authoritative bodies (Kymlicka 2007B, 100).

Certainly no association ought to have the unbridled power to oppress its members and hence, it is reasonable to require all communities (religious, cultural or otherwise) existing within a liberal, democratic and diverse society to both disallow and combat certain violent and heinous practices, such as murder, rape and torture. Further, I fully concur with Kymlicka's stance against the establishment of a millet system in a Western democratic society. However, we must be cautious not to allow our anxieties over oppression to foster a sense of resentment toward all traditional ways of life or become an excuse to impose excessive limitations upon the associational freedoms of either religious or cultural groups that might be characterized as "conservative." For instance, it would seem absurd to expect any religious group to actively endorse conversion away from the faith it adheres to or urge its members to doubt the core truth claims of its tradition.

The ability to openly disagree with one's religious leaders is a liberty that all citizens ought to possess. However, this does not necessarily imply that religious traditions ought to alter their value systems, beliefs or practices as a result of such dissent nor does it imply that either the State or society at large ought to intervene when no basic laws—such as those prohibiting murder, theft and abuse—have been breached. In addition to

individual autonomy, tolerance of an array of diverse ways of life is a defining feature of our liberal political tradition and we must be cautious not to become intolerant of certain groups simply because we disagree with their worldviews.

Multicultural Conceptions of Religious Freedom:

Although he is an advocate for the rights of ethno-cultural minorities and endorses multiculturalism, like his notion of cultural rights, Kymlicka's conception of religious freedom is highly individualistic. He places such an emphasis upon personal autonomy that he not only overlooks many of the collective dimensions of religiosity but, goes so far as to view collective liberty as diametrically opposed to liberalism itself. He writes, "if liberalism can indeed be seen as an extension of the principle of religious tolerance, it is important to recognize that religious tolerance in the West has taken a very specific form—namely, the idea of individual freedom of conscience" and goes onto claim that "what distinguishes liberal tolerance is precisely its commitment to autonomy – that is, the idea that individuals should be free to assess and potentially revise their existing ends" (Kymlicka 1996, 158).

He claims that "[t]he defining feature of liberalism is that it ascribes certain fundamental freedoms to each individual...[and that] It allows people to choose a conception of the good life, and then allows the to reconsider that decision, and adopt a new and hopefully better plan of life" (Kymlicka 1996,

80). Kymlicka has made it clear that he considers the individual freedom to alter one's beliefs as being more valuable and as being of greater importance than the freedom to preserve one's beliefs and correlative practices. To this end he has stated, "Exercising our capacity to form and revise a conception of the good is a 'highest-order interest,'People's interest in advancing their existing conception of the good, on the other hand, is simply a 'higher-order interest'" (Kymlicka 1992, 41).

Against a more communitarian conception of collective rights, which would enable cultural communities to preserve practices and traditions that the community itself deems necessary for the continuance of the tradition; to work toward the survival of the community's culture as something that is considered valuable in and of itself; and to partake in practices that are believed to be necessary for the attainment of that community's vision of the good life; Kymlicka's primary concern, despite his advocacy of "group-specific rights," is with the ability of persons to revise their beliefs and to adopt a more comprehensive liberal interpretation of their traditions.

Kymlicka argues that a model of religious freedom based on the collective right of religious communities to maintain a quasi-autonomous standing is itself illiberal and hence, incompatible with liberalism. Consequently, he is highly suspicious and extremely critical of religious communities that wish to maintain more traditional ways of life and that seek to preserve or acquire religious freedom in terms of collective rights and communal liberties. His hostility toward more conservative or

traditional religio-cultural communities that have expressed any desire to have their communality given political recognition is evident when he writes,

Those groups do not want the state to protect each individual's right to freely express, question and revise her religious beliefs. On the contrary, this is precisely what they object to. What they want is the power to restrict the religious freedom of their own members, and they want the exercise of this power to be exempted from the usual requirements to respect individual rights. (Kymlicka 1992, 39).

While this certainly might be true in rare cases it must be noted that Kymlicka makes such a bold and hostile statement without providing sufficient evidence that this is indeed the position of the “conservative” religious communities that currently exist in North American society. Having drawn a parallel between the Ottoman system of religious tolerance and the religious freedom of quasi-autonomous groups in North America—such as the Hutterites, Mennonites, and the Amish (Kymlicka 1992, 38)—it appears as though his fear and hostility toward traditional religious communities stems more from his critical reflections upon the historical Ottoman millet system—a system that most religious groups do not appeal to when advancing their own interests in religious liberty—than from a critical engagement with the freely adopted beliefs of any of the members of the religious communities that have been given the freedom to exist in our society.

In the context of bioethics, such forms of thinking could be used to support restrictions of religious groups that would limit the ability of religious communities to uphold their moral standards in their own institutions. For example, adopting a society-wide comprehensive ethico-

political doctrine could be used to justify coercive State measures that would force religiously run hospitals and clinics to offer abortions or assisted-suicide (depending on which U.S. state one is in). For instance, in February of 2010 there was much controversy over a directive issued by the United States council of Catholic bishops. Directive 58 sought to prevent competent patients from refusing artificial nutrition and hydration in ordinary circumstances insofar as ANH is thought to be a part of ordinary care in Catholic moral reasoning, which thereby makes its delivery to patients an ethical imperative for Catholic healthcare providers. (Appel 2010)

Opponents argued that the State reserves the right of mentally competent patients to refuse medical treatment and hence, any measure taken by Catholic hospitals to uphold directive 58 were in direct violation of United States law and the political ethics. Catholic moral philosophy however, does not consider ANH to be “medical treatment” and maintains an ethical duty to preserve life. The problem here is, regardless of one’s stance of the right to refuse medical treatment or whether or not ANH should qualify as such, one regarding the ability of religious communities to uphold their core moral tenants and the ability of the State to impose a set of cultural norms upon such a community. We must bear in mind that even if an action is deemed legal there is no requirement that either an individual or a community agree that such an act be considered morally acceptable.

Further, given his highly individualistic conception of religion, Kymlicka is guilty of conflating freedom of conscience and freedom of

religion. In doing so this conception of religion overlooks the idea that religious liberty—as opposed to mere freedom of belief—entails not only the freedom to hold a belief in the cognitive sense, but also expressive liberties, associative liberties, and certain negative liberties concerning membership criteria, internal organization, and doctrinal matters. Just as “freedom of belief” is an empty ideal without the freedom to express and act upon such beliefs, “freedom of religion” becomes an empty ideal when it is dissociated from the freedom to congregate with co-religionists and form communities with fellow members of a faith tradition as to collectively embody that way of life. In addition to beliefs and values, religion entails collectively performing certain practices constitutive of a tradition. What needs to be recognized is that particular communities, not merely individuals, are required to uphold, maintain, and practice certain traditions and that the right to do so is part and parcel of religious liberty.

In his zeal to prove that multiculturalism can be comprehensively liberal, Kymlicka tends to overemphasize the idea of revising life plans at the expense of giving adequate recognition to the value that people often place on the preservation of their traditions and maintaining the integrity of their pre-formulated life plans. He writes, “what is distinctive to a liberal state concerns the forming and revising of people’s conceptions of the good, rather than the pursuit of those conceptions once chosen” (Kymlicka 1996, 82). On this point, Kymlicka is mistaken; while the freedom to change must certainly

be upheld the freedom to retain a previously chosen life plan and correlative conception of the good must be equally protected in a liberal political order.

Furthermore, despite maintaining that “A liberal society does not compel such questioning and revision” (Kymlicka 1996, 82) and although he is reluctant to suggest State-based imposition of liberal values on minority communities (Kymlicka 1996, 167) Kymlicka does view the liberal project as one that actively seeks to alter others traditions when those changes are perceived to be in accordance with the purported values of his comprehensive liberal doctrine. He states that, “Finding a way to liberalize a cultural community without destroying it is a task that liberals face in every country...” (Kymlicka 1996, 170). In actively seeking to alter the beliefs, values and practices of ethno-cultural and religio-cultural groups as to make them more conducive with a particular comprehensive doctrine, this task closely resembles the task taken up by assimilationists, and if taken too far might even be construed as a form of liberal imperialism. Such a task however, seems to undermine the very anti-assimilationist agenda upon which multiculturalism itself is founded.

The notion of religious liberty must include both individual and communal components, a firm stance against coercion, and the freedom to either change or retain one’s faith if one so chooses. It is crucial to reiterate the idea that any freedom to change must also entail the freedom not to change; the ability to retain one’s faith and preserve one’s tradition is as imperative to religious freedom as is the ability to convert or practice no

religion at all. Furthermore, if religious liberty entails a right to public engagement in the greater society, logically this liberty must also entail the freedom to disengage from the broader society as well. In order for one to truly have the choice of social engagement she must also have the ability and freedom to choose to isolate oneself from the broader society insofar as in doing so a respect for the basic laws is maintained and such withdrawal is done in a peaceable manner. Consequently, the dual ability not to change and to disengage from the broader society implies that there is an inherent aspect of religious liberty that, while requiring any individual to abide by the basic laws and public regulations of society, enables religious persons to refrain from adopting what Kymlicka refers to as a “liberal societal culture,” or any comprehensive doctrine, moral outlook, ethical norm, or proscribed practice that violates core tenants of one’s faith or compromises one’s ability to live in accord with her vision of the good life.

If changing one’s faith must always be the result of consensual choice and not coercion, multiculturalists must be careful that their efforts to *liberalize* religious traditions are not simply another form of coercion. If imposed as a comprehensive doctrine, rather than as a political framework, we risk transforming liberalism itself into a potentially repressive regime. Consequently, when conceived of as a culture bearing its own doctrines and authority to assert itself, liberalism can function in a coercive manner by placing pressure upon traditional religious and cultural communities to change, which would be tantamount to impeding the autonomy of such

groups and the personal freedoms of their members. This would be to overturn the very impetus for enacting liberalism as our political ideology in the first place.

Although a society must not be expected to tolerate any practice and give carte blanche to behaviors simply because they bear the labels “cultural” or “religious,” the reformation or revision of a particular tradition ought not be the task of the government or the larger society. This however, is not Kymlicka’s position, for he explicitly endorses the reformation of cultural traditions and argues that it is the responsibility of members of a liberal society to do so, even going so far as suggesting that special incentives ought to be offered to groups that are willing to reform their traditions making them more consistent with the comprehensive liberal culture he endorses. Speaking of members of diverse cultural groups, he writes, “liberal reformers inside the culture should seek to promote their liberal principles, through reason or example, and liberals outside should lend their support to any efforts the group makes to liberalize their culture...there is an important distinction between coercively imposing liberalism and offering various incentives for liberal reforms” (Kymlicka 1996, 168).

By wedding multiculturalism to a comprehensive doctrine Kymlicka proposes an oxymoronic conception of *multi-culturalism* in which all are united in a single culture. First, one of the foundational ideas of liberalism itself is that citizens ought to be able to hold diverse visions of the good, pursue ways of life structured by that vision, and to partake in practices that

will enable them to attain their correlative ends. As the political theorist William Galston has noted, “Properly understood, liberalism is about the protection of legitimate diversity” (Galston 2002, 23), which is especially true when that which is being advocated is not simply liberalism per se, but a multicultural theory of liberalism. Second, if liberalism is about protecting diversity, as we saw previously, multiculturalism is about the promotion of cultural pluralism and the providing protection against undue and coercive assimilation. Ultimately, despite bearing the name “multiculturalism” and purporting “group-specific rights” Kymlicka’s theory is simply a theory of polyethnic neo-liberalism, in that it does not afford religious or cultural communities the types of self-determination and collective agency that would enable them to create, preserve, and retain a variety of traditional practices, norms, and modes of associational organization that the members of such communities often consider imperative to the survival of their way of life. Commenting on Kymlicka’s model of “multicultural co-existence,” Chandran Kukathas – an Australian-born and British-educated political theorist, friend and critic of Kymlicka – has noted its failure to live up to its aspirations of equality claiming, “Even though he wants to regard groups as equals...in the end his theory does not permit it (Kukathas 1997, 418). Despite claiming that his theory requires both freedom within groups and equality amongst groups, Kymlicka’s model not only tends to emphasize the former but also fails to recognize many traditional ways of life as being equally valuable to the “liberal culture” he endorses.

The aim of our multicultural project should not be to “liberalize” or “conservatize”, for that matter. Rather than intentionally seeking to alter one another’s perspectives so that they more closely resemble our own, we ought to find those *parameters of permissibility* on which we agree and to find our shared limits of mutual tolerance and acceptance. Although limits to that which is permissible and to what is accommodated in civil society must be set, proselytism (of any sort, including proselytizing comprehensive liberal values) should not be the task of our political ideology or the function of our governing institutions. In a liberal democracy all must be free to voice their concerns, opinions and beliefs, however, to endorse liberalism as a creed should not be the primary task of a political philosophy and public policy whose initial aim was to cope with pluralism and promote the peaceable co-existence of socio-cultural diversity.

Multiculturalism is meant to protect the ability of ethno-cultural, religio-cultural and lingua-cultural traditions to preserve and perpetuate themselves. A liberal multicultural society in which both liberty and pluralism are duly respected is one in which a mosaic of distinct ways of life exist and whose peaceable co-existence would be grounded upon tolerance and mutually beneficial cooperation rather than a utopian ideal of social cohesion through a common culture and common creed.

Furthermore, the reason Kymlicka suggests that multiculturalism involves a society-wide duty to liberalize all religio-cultural traditions is not only because he views liberalism as a comprehensive doctrine but also

because, views cultural traditionalism and religious orthodoxy as being diametrically opposed to liberalism and the liberal multicultural project. His insistence on endorsing a share liberal culture leads him to a position in which dissent against the comprehensive liberal doctrine informing that culture becomes intolerable. Raising an important question Kymlicka has asked, “Both religious freedom and equality are foundational values in the Canadian Charter of Rights and Freedoms...but how should we resolve conflicts between them?” (Kymlicka 2007A, 140). Elsewhere he has raised a similar question, asking, “If there is a growing conflict between religious orthodoxy and the culture of rights, is multiculturalism an ally of the former or the latter?” (Kymlicka 1996, 144). He answers by proclaiming multiculturalism an ally of liberal culture, thereby effectively deepening any divide instead of attempting to ameliorate the perceived conflict.

Instead of viewing the liberal multicultural project as something that can enable groups holding a variety of worldviews – from the most progressive to the most orthodox – to peaceably co-exist by ensuring that they are all free to pursue distinct ways of life, and ought to do so in the spirit of tolerance and accommodation, Kymlicka pits liberal multiculturalism and religious orthodoxy against one another. Having claimed that, “the multiculturalism policy is part and parcel of the very culture of rights that religious orthodoxy opposes” (Kymlicka 2007A, 146) Kymlicka has argued,

Orthodox groups resist having to teach their children multiculturalism...[because] they don’t want their children exposed to materials that portray alternative ways of life in a

sympathetic light, and thereby potentially undermine their adherence to orthodoxy.” (Kymlicka 2007A, 146)

Given Kymlicka’s suspicion of and hostility toward more traditional religio-cultural communities, it may be argued that his brand of multiculturalism is just as fearful of alternative ways of life as those he criticizes. For each conservative religio-cultural community to be treated with the same degree of suspicion and contempt is indeed to treat them all equally however, it is not the type of equality that ought to be promoted in a free and democratic society, nor is it sufficient for an adequate model of multiculturalism in which freedom of religion is sufficiently upheld. In advocating a model multiculturalism that is able to ensure religious liberty we must be concerned with opening social spaces in which distinct traditions containing distinct moral codes, rituals, forms of worship and modes of expression can operate freely and have the ability to preserve and perpetuate their ways of life in addition to the capacity to merely hold beliefs.

Re-thinking Liberal Multiculturalism:

It is important to note that we can agree with Kymlicka that as a guiding socio-political theory and as a set of public policies multiculturalism ought to be consistent with both the civil liberties and human rights movements. However, this does not necessarily imply that either of these movements or multiculturalism itself be conceptualized as constitutive of a

particular cultural tradition that ought to be enforced on every level of society nor is it to imply that cultural traditionalism and religious orthodoxy are in all instances incompatible with political liberalism. To do so is to run the risk of transforming multiculturalism from a theory of pluralism for a free and diverse society into a doctrine of homogeneity that will potentially give rise to the re-establishment of potentially repressive assimilationist policies, albeit of a new variety. As William Galston has duly noted, we must bear in mind that:

A free society...will defend the liberty of individuals to lead many different ways of life. It will protect a zone within which individuals will freely associate to pursue shared purposes and express distinctive identities...the burden of proof lies on those who seek to restrict associational liberty, not those who defend it. (Galston 1999, 874)

If we are going to take the ideas of collective rights and religious liberty seriously we must agree with Galston that those persons who wish to restrict the freedom of religio-cultural communities to adhere to their moral codes and retain their unique forms of social organization are the one's who must bear the burden of proof, demonstrating precisely how such restrictions are in the general interests of liberty. Instead of arguing that a group's entire way of life is somehow antithetical to the cultural norms and values of the majority we must seek means of mutual tolerance as to promote peaceable pluralism. Kymlicka's model of multiculturalism, with its presuppositions of a shared value system and its endorsement of a "culture of liberalism" places the burden of proof on religio-cultural communities and attempts to modify their ways of life to such an extent that what we will

eventually be left with will be merely variation of a single “liberal culture” rather than a society comprised of a multiplicity of distinct cultures.

The danger of Kymlicka’s line of thinking is that it undermines the very notion of a multi-cultural society by attempting to unite society’s various cultures into a single cultural system with a shared moral doctrine. Rather, we ought to seek unity in a shared socio-political arrangement that is meant to foster both pluralism and peaceability. As the religious studies scholar Diana Eck has stated,

Pluralism takes the reality of difference as its starting point. The challenge of pluralism is not to smooth out differences under a universalizing canopy, but rather to discover ways of living, connecting, relating, arguing, and disagreeing in a society of differences. (Eck 2007, 745)

Endorsing a single “culture of liberalism” will ultimately negate the very need for a theory of “multi-culturalism,” which by definition ought to promote religious and cultural pluralism and enable distinct ways of life to be pursued both individually and communally. As Galston claims,

if we insist that each civil association mirror the principles of the overarching political community, meaningful differences among the associations all but disappear; constitutional uniformity crushes social pluralism.” (Galston 1999, 875)

Kymlicka’s endorsement of equality amongst groups is arguably undermined by his own conception of liberalism as a comprehensive doctrine insofar as it effectively privileges the group that holds this comprehensive doctrine. When our guiding political philosophy actively supports the values of particular groups over and above others and encourages groups to alter the internal organization of other groups—as Kymlicka has suggested in reference

to “orthodox” religious communities—both the State and the broader society set themselves over and above particular religio-cultural communities, thereby marginalizing such communities and fostering a sense of otherness and exclusion from society at large. Such measures are at odds with the very aims of multiculturalism, which, if we will recall, seeks accommodation not assimilation; repudiates the idea of a single cultural group being the sole owners of the State; and which attempts to prevent the injustices that occurred as a result of exclusionary and assimilationist policies and models of political organization.

In developing a liberal theory of multiculturalism that is able to sufficiently uphold religious liberty and respect a plurality of cultural communities we must not make it mandatory for every religious or cultural group to adopt or implement the values that govern the broader society within their own community associations. A liberal theory of multiculturalism must recognize that the freedoms of association and expression are crucial features of religious liberty and that communality is an integral aspect of what it means for persons to partake in religio-cultural traditions. The collective dimension of religion must be acknowledged not simply as a means of constructing an adequate definition of religion—be it academic or legal—but to ensure and properly secure a people’s right to religious liberty. Their right to form religious congregations, to be recognized as united communities that define themselves in ways that differ in some respects from the broader political community must be a part of this

conception of religious liberty if it is to do justice to the ways in which religious persons wish to be free to pursue their religious faith.

As William Galston has argued,

Diversity-respecting state action distinguishes between the practices internal to ways of life and the movement among ways of life. The personal liberty the liberal state must defend is the liberty not to be coerced into, or trapped within, ways of life. Accordingly, the state must safeguard the ability of individuals to shift allegiances and cross boundaries. But it should not seek to reconstruct practices within subcommunities in light of principles governing movement among subcommunities. (Galston 1995, 522)

With his individualistic orientation, his deep concern for liberalization and his desire to cultivate an overarching liberal culture, Kymlicka becomes overly focused on what ought to be different about traditional ways of life rather than acknowledging the inherent value of such traditions. As Charles Taylor has claimed, we must acknowledge the worth of different cultures and begin our political analysis from the outlook that each traditional culture has an inherent value and that all cultures potentially have something important to say about our human fulfillment (Taylor 1994, 64 -68).

To regard another's way of life as equally valuable—despite disagreement with the precepts, practices, and doctrines of the other's tradition—is to be open to learning about that tradition and to allow that tradition to develop, evolve and or undergo reform on its own accord. Contrary to Kymlicka's claims, it is not the responsibility of persons who are not members of a particular tradition to enact changes within that tradition nor is it their place to dictate the direction in which that tradition will

develop, per se. We can agree that tradition always entails transmission and change yet, the ways in which that particular tradition will be transmitted in, applied to and re-applied to novel circumstances is the task and responsibility of the inheritors of that particular tradition.

Certainly, those who co-exist with, yet who stand outside, a tradition in shared circumstances will place demands upon that tradition in regards to their shared spaces and modes of interaction. However, the ways in which a particular tradition responds to the claims and demands of others is the responsibility, and primary task, of those who wish to preserve the tradition not those who have nothing invested in its survival. Thus, the renewal of tradition is not the mutual responsibility of all members of a pluralistic society nor does such a task fall under the purview of liberal democratic citizenship. Change must be the product of indigenous renewal if traditions are to retain their authenticity and uniqueness and if members of those traditions are to feel that such changes are genuine features of their tradition and sincere expressions of their community's values and beliefs.

Kymlicka rightly fears any form of multiculturalism that would enforce the preservation of particular cultures and which would grant religious or cultural authorities the power to oppress members of a given community. For this reason he is leery about the notion of "authenticity" insofar as he associates it with the authority of oppressive regimes writing,

The traditionalist concept assumes that there is a neutral or objective way of determining which practices are 'authentic' to a group....To interpret multiculturalism as protecting traditional or authentic practices has the effect of rewarding

such conservative elites: it gives power to those who can claim to be the guardians of ancient tradition, while implying that those people who wish to challenge these traditions are not 'true' or 'proper' members of the group... (Kymlicka 2007B, 101).

The notion of authenticity however, need not be cast in such a negative light, nor must we view coercion as an inherent feature of either traditionalism or religious orthodoxy. I venture to argue that it is continuity not conformity that is most characteristic of religious orthodoxy. Certainly, an orthodox faith entails a mode of understanding and unique onto-metaphysical and epistemic perspectives on reality that are valued as being "true beliefs." Yet, it also entails the ability of such a perspective to continue to develop and the ability to respond to novelty while retaining a particular trajectory of understanding. Remaining "orthodox" entails an ability to continually re-invoke a particular mode of understanding and mode of interacting with the world and re-apply these modes of interacting and understanding to novel circumstances so that a particular state of being, which had been achieved in the past, is able to be achieved by persons in the present; and this entails ortho-praxis, or partaking in particular practices that are informed by a particular set of values and beliefs. When understood in this manner, religious orthodoxy ceases to be inherently oppressive or opposed to change. Rather, then deny that novelty and change are constant features of our social reality conceptualizing orthodoxy in this manner enables a view of religious orthodoxy as commensurable with both liberalism and the multicultural project.

If traditions are to undergo change, any alterations must be perceived by its members as being congruent with the epistemic context and value paradigm characteristic of that tradition. The members of the tradition must be able to regard new developments as being consistent with and following from previous developments of the tradition and any changes enacted must be in accord with the conceptual momentum already underway within the tradition itself. Looking toward the history of ideas we will discover that each tradition has its own particular developmental trajectory. In order for any changes to a tradition to be considered authentic representations of its unique history and conceptual trajectory, the power to direct its course of development must remain in the hands of those who have most at stake in the tradition itself – the members.

Renewal, revision, and change must occur indigenously if they are going to be fully accepted by the members of a tradition as being authentic expression of the values, beliefs and practices inherent within and characteristic of their way of life. This is not to deny the role that external influences play in helping to shape and alter traditions. Rather, in the interest of civil liberty, it is to caution against intentionally and coercively altering another's tradition. Only the uncoerced internalization of external influences will render any changes an authentic part of the constitution of a given tradition. With a laudable goal, Kymlicka set out to unite personal autonomy with respect for diversity but as I have argued ultimately fails in his attempt to do so.

William Galston has also created a political philosophy that attempts to reconcile autonomy and diversity based conceptions of liberalism yet, his is more amenable to the promotion of pluralism and more respectful of religious liberty than Kymlicka's. Galston delineates five primary features of, what he refers to as, the "diversity state," which are: *cultural disestablishment, tolerance, civic education, prohibitions against coercion, and shared citizenship*. Contrary to Kymlicka's belief that social unity can only be had through the acknowledgment or adoption of a shared culture, Galston argues that social unity is possible despite the absence of a shared culture. Galston calls for "cultural disestablishment," which is "parallel to religious disestablishment; that is, comprehensive opposition to all forms of informal establishment..." (Galston 1995, 528).

Just as the State in a liberal democracy cannot enforce or give preference to any particular religious system, Galston suggests that the State should not be granted the power and authority to enforce, preserve or give preference to any particular cultural tradition either. In the interests of promoting equality and liberty amongst various ways of life and as a safeguard against assimilationism, a liberal multicultural society ought to take heed of Galston's suggestion and implement a policy of cultural disestablishment. In doing so we would be able to avoid the numerous problems that befall us when attempting to align multiculturalism with a single liberal culture. This however does not mean that those who perceive themselves as belonging to the "liberal culture" that Kymlicka has argued for

cannot attempt to persuade others of the merits of joining their cultural community, it merely de-establishes such a culture in the interests of non-assimilation.

Galston's second pillar of the diversity state is tolerance, which he claims entails, "the principled refusal to use coercive state instruments to impose one's own views on others, the commitment to competition through recruitment and persuasion alone" (Galston 1995, 528). A robust form of tolerance is necessary if a multicultural society is to flourish and genuine cultural and religious pluralism is to be maintained in a peaceable manner. The theologian George Carey has aptly described the dynamics of genuine religious toleration as that moment when someone holds her own beliefs so strongly that to part with them would be corrosive to one's entire conception of self yet, simultaneously recognizes that another's beliefs, practices, community, and values are just as important to that person's identity and way of life that she becomes empathetic toward the other, tolerating what she perceives to be false beliefs out of such empathy and respect for the other's mode of being.

Hence, toleration is not necessarily contingent upon an acceptance of the validity of another's beliefs but rather has as its basis an empathetic stance towards the importance and value the other places on such beliefs in the overall framework of his life and conception of self (Carey 1999, 55). Therefore, toleration can be tantamount to respecting the other as he is rather than as he should be. Consequently, toleration entails a mutual

respect that is unhindered by assimilation or the homogenization of paradigms. Hence, those who see themselves as part of a liberal culture need not necessarily accept the epistemic validity of more conservative religious beliefs nor agree with the practices of religious orthodoxy yet, can still come to view such persons and groups as equal members of their political society.

As a means of promoting tolerant attitudes by all members of a pluralistic society, Galston calls for “civic education...that teaches tolerance...and helps equip individuals with the virtues and competences they will need to perform as members of a liberal economy, society, and polity” (Galston 1995, 528). Without entering larger debates regarding civic education, suffice it to say that such education could be very beneficial in promoting the aims of multicultural thinking however, it must be careful that it does not privilege one tradition over another or promote exit from certain ways of life. It is possible for each religious and cultural community to implement its own form of civic education, the common feature of which would be the teaching of tolerance.

As has been argued by numerous liberal theorists, including Kymlicka, Galston argues for “prohibitions against coercion,” which would entail the freedom not to enter certain groups and the right of exit from groups. This point will receive further attention below however, such prohibitory measures against coercion should suffice in protecting individuals from the harms associated with non-consensual involvement in particular practices. Lastly, Galston wishes to protect groups as well as individuals by calling for

shared citizenship in a society committed to diversity yet united by minimal standards required to protect such diversity. Yet, what ought to be the minimal standards in a multicultural society? In a society committed to pluralism what should the limits to accommodation be?

The Limits to Accommodation

Everyone in a liberal democracy – including religious groups and cultural communities – are required to liberalize to the extent that liberalization entails accepting the democratic institutions and legal apparatuses of the society and finding ways to make their own traditions compatible with liberalism, broadly construed as the foundational political ideology of both the society and the State. However, this in no way implies that all groups or individuals for that matter accept a more comprehensive liberal doctrine as their primary source of moral authority or ethical guidance.

Despite his call to embrace a comprehensive form of liberalism and his hostility toward more traditional forms of religiosity, the limits to accommodation Kymlicka proposes are more modest and in fact quite reasonable. He describes these limits writing,

We can specify a number of constraints that must be respected on a distinctly liberal conception of multiculturalism: membership of these groups must not be imposed by the state, but rather is a matter of self-identity; individual members must

be free to question and reject any inherited or previously adopted identity, if they so choose, and have an effective right of exit from any identity group, these groups must not violate the basic civil or political rights of their members; and multicultural accommodations must seek to reduce inequalities in power between groups, rather than allowing one group to exercise dominance over other groups. (Kymlicka 1998, 147).

The only aspect of this proposal that is slightly ambiguous is his conception of “basic civil or political rights,” which needs further specification as to the nature and extent of such rights. I agree that all members of a liberal society must respect some of the basic principles of liberalism and abide by its basic civil codes and regulations: such as prohibitions against violence, coercion, and intentionally causing harm. However, how we conceptualize violations of such principles and precepts and how we conceive of what counts as adequate expressions of respect for liberal values is not a clear-cut or easily resolvable matter. If we conceive of illiberal practices as involving murder, torture or human sacrifice, I am inclined to say that most members of society—regardless of their religious tradition or cultural heritage—will readily agree that such practices can never be tolerated.

However, if in addition to the extremely rare instances in which religious or cultural groups actually attempt to engage in such violent and heinous practices that obviously violate the civil liberties of certain individuals, we also include non-violent practices such as: the segregation of men and women in places of worship, gender-exclusive positions in religious institutions and moral prohibitions against behaviors that are generally considered to be acceptable in the broader society (such as the consumption

of alcohol, abortion and immodest clothing) we will run the risk of transforming “liberal” prohibitions of particular “illiberal” practices into illiberal practices themselves. As the classic liberal thinker, John Locke has written,

[T]he magistrate has no power to enforce by law, either in his own church, or much less another, the use of any rites or ceremonies whatsoever in the worship of God. And this, not only because these churches are free societies, but because whatsoever is practiced in the worship of God is only so far justifiable as it is believed by those that practise it to be acceptable unto him...To impose such things, therefore, upon any people, contrary to their own judgment, is in effect to command them to offend God, which, considering that the end of all religion is to please him, and that liberty is essentially necessary to that end, appears to be absurd beyond expression. (Locke 2002, 132- 133)

Insofar as the prohibition of more conservative religious practices will limit the ability of religious individuals to uphold their moral codes and pursue their visions of the good life, any prohibitions that do not target immediate threats and harms to the life and physical well-being of persons, and which may limit individuals from engaging in consensual practices that they believe contributes to human flourishing, ought to be seen as violations of liberalism itself.

As a political doctrine, liberalism ought to be concerned with preventing and prohibiting those behaviors and practices that coercively occlude an individual from pursuing her life plans and hinder her ability to live in accord with her vision of human fulfillment. Hence, it must not only grant individuals a right to exit their communities but also ensure that religious and cultural communities and other voluntary associations enable,

though not necessarily encourage, free exit to their members. As the Canadian political scientist Jacob Levy has argued,

A general, liberal legal code accessible to all, and accessible on a case-by-case, issue-by-issue basis, helps make exit or partial exit possible for members of customary communities. If there is not a liberal civil code, or if members of some communities do not have access to it because the state considers them bound by customary law...then the possibility of exit...does not exist. (Levy 2002, 191).

In agreement with Levy's claim that a common civil code is necessary to ensure exit rights I propose that the best means of forging this minimal code of obligations, norms and guidelines be established through inter-cultural and inter-religious dialogue. Such a discursive means of creating the common civil code appears to be both a fair and viable means of securing individual and collective liberties while simultaneously reducing the coercive powers of any single group. Regardless of the nature of diverse moral precepts, religious and cultural communities must at minimum recognize the right of any individual to exit a community. Such a minimal liberal civil code ensuring a right to exit and the political mechanisms necessary for its implementation must be accepted by all religious and cultural communities within the broader liberal society even if this means that a revision of some of their own internal norms will be required to do so.

In cases involving religious beliefs or principles preventing exit a suggestion might be for the community itself to consider that person a member of their community, albeit one who disassociates with them and no longer participates in their way of life. In this way religious precepts

forbidding exit can still be upheld in a modified fashion so that state guaranteed exit rights can be respected by religious communities. This is simply a suggestion. To ensure both maximal personal freedoms as well as maximal religious liberty the ways in which the members of a religious tradition (re)interpret their tradition as to enable exit on behalf of its members must not be prescribed by either the state or the broader civil society.

Another suggestion might be to prohibit publicly funded or State-run institutions from taking measures to either enable or assist in a member's exit, for this could be construed as a form of discriminatory treatment toward the community being left and hence, could plausibly be seen as a violation of cultural de-establishment. Alternatively, insofar as persons exiting a community might very well be in need of assistance during their transitional period, we might suggest that this role of aiding such persons be played by private associations and organization, who unlike the State are permitted to express their preferences for a particular way of life. In this way, we would be able to avoid any violations of cultural de-establishment while still ensuring freedom of movement amongst communities. As argued previously, exit must be guaranteed and each tradition must seek indigenous means of coping with this facet of existing within a liberal democratic society and of responding to the socio-political circumstances in which it now exists.

In sum, behaviors that cause physical harm and that prevent one from fulfilling life plans; systematic forms of oppression that prevent human

flourishing in accordance with freely chosen conceptions of the good; acts that preclude one's ability to either retain or alter one's beliefs and way of life and thereby exit a community, and all actions that entail enacting revenge for having done so, are not to be accommodated in any form in a liberal society, be it multicultural or not. Nevertheless, a multicultural society must be able to accommodate a variety of non-liberal traditions if it is to be truly pluralistic.

To this end, Galston calls our attention to a very important and relevant distinction between the permission and support. The State can permit particular traditions to maintain their "illiberal" practices, such as reserving certain religious offices for members of a specific gender—as does the Catholic Church—without having to actively support such practices themselves. When coupled with tolerance, permission enables both the State and broader society to actively support liberal values without having to impose its values on the various religio-cultural communities and associations that are partly constitutive of the larger society. Furthermore, if religious and cultural communities acknowledge the distinction between permission and support they too can come to recognize that finding ways of permitting certain practices that violate their own moral codes to occur in the larger society is not tantamount to actively supporting such practices and might very well be integral part of establishing mutual tolerance⁴.

⁴ As will be argued in the forthcoming chapter on bioethical methodology, this distinction can be very useful for establishing shared limits to that which is found to be mutually intolerable in regards to a variety of contentious ethical issues in biomedical contexts.

A Liberal Multicultural Background for Public Bioethics

Thus far, we have argued that a foundational concept of liberalism is the freedom to hold and pursue diverse visions of the good life. Hence, a characteristic feature of a liberal society is one in which the State ensures the ability of citizens to pursue varied visions of the good and to freely associate with others in their pursuit of such visions and carry out correlative practices and ways of living. Further, we have argued that multiculturalism is normatively defined primarily in terms of its opposition to State-endorsed assimilationism and ethical universalism; its promotion of pluralism; and its recognition of the worth of distinct ways of life. Therefore, liberal multiculturalism as a political philosophy and societal ideal endorses the existence of a heterogeneous society in which citizens, as both individuals and communities, are afforded the freedom to pursue distinct ways of life and abide by distinct moral doctrines.

Liberal multiculturalism entails the existence of a diversity State in which there is cultural, as well as religious, de-establishment and in which assimilationist policies have no place. The governing bodies of a liberal multicultural society may indeed demand political allegiance from its citizens yet, will do so without granting preferential treatment to any particular ethno-cultural or religio-cultural community. Furthermore, liberal

multiculturalism views both liberalism and pluralism as strictly political, rather than explicitly and comprehensively moral, ideologies and hence, refrains from the enactment of, or the expectation of society-wide adherence to, a single comprehensive moral doctrine. A liberal multicultural society is a political collective comprised of a plurality of religious, cultural and moral traditions, whose ethical unity is begotten from consensus and whose foundational socio-political values are liberty, non-maleficence and peaceable co-existence.

In its attempts to overcome cultural imperialism, assimilationism and re-conceptualization of rights and liberties as applying to collectives as well as individuals, a liberal theory of multiculturalism is the best means of coping with religious and cultural pluralism in a liberal democracy. When engaging in public bioethical deliberations, the political framework we see ourselves working in ought to be one which views the promotion of pluralism and religious liberty as consistent with the aims of biomedical legislation and bioethical public policy formation in a liberal democratic society.

An approach to multiculturalism that is not grounded in any single comprehensive doctrine and which seeks to enact multicultural policies that not only enable multiple ways of life to flourish but which also views religious pluralism as playing a central role in contemporary society will be the best means of promoting both peace and freedom in our highly diverse society. In accord with liberal democratic political theory, it is my hope that these suggestions will help foster a more tolerant, pluralistic and free society

that can proudly be called multicultural and which will influence all forms of public deliberation, especially those that call into question our conceptions of self, life and death – as is often the case in bioethics commissions and policy-making.

In an interview by Fox and Swazey Daniel Callahan has claimed that the ideology of ‘liberal individualism’ has prevailed in bioethics providing the field with “a vital background constellation of values,” that has been, “clearly present and pervasive as a litmus test of the acceptability of certain ideas and ways of framing issues”(Fox & Swazey 2008, 167). It is my hope that as bioethics continues to progress into the this new millennium that the type of liberal multicultural thinking I have been advocating will at least come to influence our modes of bioethical inquiry, if not provide the new “litmus test” for the next generation of bioethicists trying to cope with difficulties that arise when attempting to respecting our society’s religio-cultural pluralism and moral diversity.

* A number of the ideas expressed in this chapter have recently appeared in: Chris Durante, “Religious Liberty in a Multicultural Society,” *Journal of Church and State*, online pub. (2012)

Chapter 3

Contracting Consensus*

Confronting moral diversity and religious pluralism in bioethics raises the spectre of the difficulties associated with constructing adequate methods of incorporating a plurality of religious perspectives into the bioethical arena without necessarily having to forsake our pursuit of discovering shared ethical standards and guidelines in the process. To restate where we left off in chapter one, since the turn of the millennium, there have been a number of attempts to devise a theory and a methodology that could provide solutions to the dilemma of retaining normative rigor while simultaneously respecting pluralism in bioethics. Since we have been presented with multiple candidates, we must ask ‘which, if any, is the best one?’ In this chapter we will examine the effectiveness of contract theory at providing a solution for our problem of pluralism in bioethics.

A Reasonably Pluralistic Political Liberalism

Pluralism is often seen as a problem for ethics in general and indeed there have been a number of theoretical and methodological attempts to solve this problem outside of the purview of bioethics. One of the most

influential of these attempts has been that of John Rawls, whose contractualism has been widely endorsed by those seeking to preserve common ethical standards while simultaneously respecting diversity of belief. John Rawls attempted to cope with the phenomena of moral and religious diversity by endorsing a purely political form of liberalism and by advocating a form of political discourse in which all persons, regardless of their worldviews, are able to participate yet in which all are able to share in a common mode of reasoning, dialogue, and argumentation.

Unlike Kymlicka's view of liberal democracy, which as we saw entails enacting liberalism as comprehensive moral doctrine and fostering a shared cultural, Rawls maintains "Political liberalism is not comprehensive liberalism," (Rawls 2005, xxvii) arguing that a "democratic society...is not a community...if we mean by a community a society governed by a shared comprehensive religious, philosophical, or moral doctrine" (Rawls 2005, 42) and claims that any attempt to make a democratic regime a community of this sort "mistakes the kind of unity a constitutional regime is capable of without violating the most basic democratic principles" (Rawls 2005, 42). Describing what the basis of social unity in a liberal democracy ought to be Rawls believes that "the basic structure of society" ought to be regulated by "a family of reasonable liberal conceptions of justice" and goes onto to argue all members of society, holding different moral doctrines, ought to be able to endorse such conceptions so that "Public political discussion" can occur on the basis of this family of concepts. (Rawls 2005, xlvii-xlviii)

Emphasizing the fact that his theory of political liberalism is non-comprehensive Rawls claims,

the state is to ensure for all citizens equal opportunity to advance any conception of the good they freely affirm...; the state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another, or to give greater assistance to those who pursue it...; [and] the state is not to do anything that makes it more likely that individuals accept any particular conception rather than another... (Rawls 2005, 192-193)

As is evident from the last chapter, Kymlicka's brand of liberal multiculturalism clearly violates Rawls' prohibition against enacting, promoting, or persuading citizens to adopt a particular comprehensive doctrine. Furthermore, contrary to Kymlicka's comprehensive liberal agenda, Rawls makes it clear that, "the point is that not all reasonable comprehensive doctrines are liberal comprehensive doctrines; so the question is whether they can still be compatible for the right reasons with a liberal political conception" (Rawls 2005, xxxvii). While there are a number of problems with the Rawlsian model of political liberalism (as will be demonstrated), especially as it relates to bioethics (which prevents me from adopting or endorsing such a view), it is far more accommodating of pluralism than Kymlicka's theory. With its non-comprehensive political position and call for a discursive ethics, Rawls places us on the right track toward resolving some of the problems associated with pluralism yet, as we will see does not go quite far enough.

Rawls' Reasonable Contract:

Rawls develops his political philosophy in the tradition of contract theory and maintains that the foundational idea upon which society ought to be founded is justice. He argues that we ought to conceptualize justice as fairness, which will serve as the organizing idea behind, and the basis of, all public agreements (Rawls 2005, 9). He conceptualizes society as “a fair system of social cooperation between free and equal persons” (Rawls 2005, 9) and claims that the aim of his conception of “justice as fairness” is practical in that it provides a publicly recognized point of view from which all citizens can examine political and social institutions. Unlike, the aforementioned principles proposed by Beauchamp and Childress, Rawls does not argue for the universality of this concept however, his proposal is based on the speculation that all members of society will readily accept his notion of justice, which is to be freestanding¹. This conception of “justice as fairness” is to be the result of an “overlapping consensus,”² or “reflective equilibrium,”³ of perspectives begotten through discourse that is said to begin behind an imagined “veil of ignorance;” in which all interlocutors put aside their prejudices, biases, pre-conceptions, and various epistemic and metaphysical

¹ Whereas Beauchamp and Childress based their principles on deontological and utilitarian bases and endorsed them as being rooted in most moral traditions, Rawls' notion of justice, as set forth in “Political Liberalism,” and all subsequent political principles enacting on this basis are to be thought of as freestanding so that they beget their authority from consensus rather than from their rootedness in, or adherence to, any particular comprehensive doctrine.

² Which is to be discussed at length below.

³ “reflective equilibrium” entails accepting a political conception of justice “at all levels of generality, on due reflection” (Rawls 2005, 9) so that it is congenial with our deeply held convictions yet broad enough to be a shared public concept.

beliefs and affiliations as to forge a social contract that will facilitate social cooperation despite conflicting beliefs and which will provide a common basis for political discourse in a highly pluralistic and morally diverse society.

In an initial attempt to “narrow the range of disagreement,” Rawls suggest that we collect settled convictions regarding matters upon which we all agree, such as the rejection of slavery etc... and “try to organize the basic ideas and principles implicit in these convictions into a coherent political conception of justice,” that he hopes will be “congenial to our most firmly held convictions...at all levels of generality” (Rawls 2005, 9). This process is what Rawls calls “reflective equilibrium,” which is supposed to represent a shared point of view (Rawls 2005, 28). Once we have narrowed our disagreements by engaging in due reflection and coming to accept the foundational conception upon which our liberal political regime will rest, the basis of social unity will be established through a consensus on a family of political conceptions, that all can endorse from their own respective points of view. Hence, Rawls argues that “another basic idea of political liberalism to go with the idea of a political conception of justice...[is] the ideas of an overlapping consensus of reasonable comprehensive doctrines” (Rawls 2005, 134).

Although the process of “reflective equilibrium” is said to entail certain adjustments and revisions to our perspectives so that a shared point of view on a foundational political concept may be articulated (Rawls 2005,

28), Rawls maintains that *“overlapping consensus” is not a compromise*⁴

(Rawls 2005, 169). He writes,

[P]olitical liberalism looks for a political conception of justice that we hope can gain support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines in a society regulated by it. (Rawls 2005, 10)⁵

And argues that “the main point” is that:

[I]n the overlapping consensus consisting in the views just described, the acceptance of the political conception is not a compromise between those holding different views, but rests on the totality of reasons specified within the comprehensive doctrine affirmed by each citizen...[So that] No one accepts the political conception driven by political compromise. (Rawls 2005, 170-171)

Despite his staunch denial that the idea of “overlapping consensus” requires anything like a compromise or some negotiated agreement, he does admit that due reflection will warrant certain adjustments to one’s position, arguing that “a doctrine’s adjusting...is not political compromise...” (Rawls 2005, 170). Now this might raise the skeptic’s eyebrow as he ponders the difference between adjustment and compromise. To respond to the skeptic’s worries that adjustment is simply compromise in disguise, we might argue that whereas compromise entails accepting variations of one’s original position, adjusting entails balancing one’s needs and aims and adapting to the circumstances one finds oneself in. In terms of pursuing one’s vision of

⁴ As will become evident, this insistence that there is to be no compromising is one of the features of Rawls’ method of overlapping consensus that distinguishes it from those of the Contractarians, such as Gauthier.

⁵ This idea of “overlapping consensus” will subsequently be discussed in greater detail once we have established his conceptions of reason and reasonability.

the good, compromise may demand abandoning certain practices, refusing to act on certain beliefs (if not give them up entirely), or agreeing not to pursue certain ends. On the contrary, adjustment would request that one alter one's practices, where possible, refrain from acting upon certain beliefs in particular contexts and alter the ways in which one expresses her beliefs⁶.

Further, while his purely political conception of liberalism aims to be as inclusive of pluralism as possible, Rawls does not want us to confuse his call for embracing reasonable pluralism with a *modus Vivendi* approach to political theory. He argues that whereas “*modus Vivendi*” is often used “to characterize a treaty between two states whose national aims and interests put them at odds...an overlapping consensus is quite different...[insofar as it] is not merely a consensus on accepting certain authorities, or on complying with certain institutional arrangements, founded on a convergence of self- or group interests” (Rawls 2005, 147). That which Rawls seeks is an actual ethical consensus begotten from the convergence of diverse moral perspectives during a process of discourse and social cooperation.

Rawls delineates three elements of “social cooperation,” claiming it involves acceptance of certain publicly recognized and agreed upon rules of conduct; establishing fair terms of cooperation, which entails an idea of reciprocity; and an idea that each participant in the discourse will benefit in some way. Claiming that, “the idea of reciprocity lies between the idea of impartiality...and the idea of mutual advantage” (Rawls 2005, 16) Rawls

⁶ The issues of compromise and adjusting one's mode of expression will be re-addressed below.

defines “reciprocity” as a relationship amongst citizens that is characterized by equality and justice. Rawls is keen to note that, “the idea of reciprocity is not the idea of mutual advantage” despite the fact that social cooperation entails mutual benefit and equal division (Rawls 2005, 17). Subsequently, it seems that Rawlsian reciprocity is simply just another manifestation of fairness and equality.

Reciprocity is a very important notion when developing a discursive public ethics in that our interlocutors will be involved in a process of mutual exchange yet, if equality and fairness are already an integral part of this discursive process, arguably, the idea of reciprocity ought to offer something unique to the discussion. Hence, if justice is fairness, and fairness entails giving each what she is owed, or in other words, giving each interlocutor what she is due, in line with our earlier discussion of Charles Taylor (Taylor 1991; 1994) we might wish to suggest that each is due equal recognition. In this way we can begin to conceptualize reciprocity in terms of mutual recognition, which can supplement any Rawlsian notions of fair and equal treatment by going beyond impartiality to offer an acknowledgment of each interlocutor’s unique point of view⁷. In this way reciprocity would still lie in between impartiality and mutual advantage yet offer something novel to our notion of social cooperation.

⁷ The idea of reciprocity will be discussed in further depth and greater detail in our subsequent chapter on methodology in public bioethics. As we will see, the political philosopher Amy Gutmann employs the idea of reciprocity as a foundational concept in her own method of discursive public bioethics, which while being influenced by Rawls’ notion plays a distinct role in her overall discursive schema.

From the Rawlsian point of view, reasonability becomes the recognition of the need for a social contract and the ability to reason from premises that proceed from such an arrangement and hence, which are accessible and potentially acceptable by all parties involved; ultimately, for Rawls, a willingness to be fair is a crucial aspect of what it means to be reasonable. He believes that what we need is “a concept of justice that may be shared by citizens as a basis of a reasoned, informed, and willing political agreement” that expresses their “shared and public political reason” (Rawls 2005, 9). In the interest of fairness and as an expression of shared reason, such a conception of justice must be independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm; this is why Rawls uses “freestanding” to describe his conception of justice.

Consequently, Rawls goes on to develop the idea of “public reason” as a means of creating shared modes of reasoning and discourse that can facilitate the quest for the common good in lieu of our society’s religious and moral pluralism. Rawls states,

Public reason, then, is public in three ways: as the reason of citizens as such, it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is public, being given by the ideals and principles expressed by society’s conception of political justice, and conducted open to view on that basis. (Rawls 2005, 213)

For Rawls, such cooperative endeavors based upon “public reason” will occur amongst reasonable persons, espousing reasonable positions, and who hold reasonable belief systems, or comprehensive doctrines. He claims that

“reasonable persons” “are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly...Those norms they view as reasonable for everyone to accept and therefore as justifiable to them” (Rawls 2005, 49).

Rawls argues that being reasonable entails judging and assessing the strengths of purported claims against our own positions, the positions of others and against our common practices (Rawls 2005, 56). Moreover, Rawls claims that our shared reason is our ability to draw inferences, weigh evidence, and balance competing considerations (Rawls 2005, 55) and goes onto argue that it is these abilities that are employed in our judgment of whether or not doctrines and propositions are to be considered reasonable. Accordingly to Rawls, in order for a comprehensive doctrine to be considered reasonable it must possess three main features, which are: theoretical reason, practical reason, and tradition. An exercise of theoretical reason entails being able to contemplate religious, philosophical and or moral aspects of human life in a coherent and consistent manner. It provides an intelligible view of the world in which the various views, values and beliefs it contains are compatible with one another. Second, the exercise of practical reason entails the ability to devise a method of determining which values are most important and how to balance these significant values when they come into conflict with one another. And, lastly, most comprehensive doctrines that Rawls would consider reasonable will usually be rooted in a tradition of

thought and doctrine; they often adhere to modes of reasoning and beliefs that are historically grounded⁸. (Rawls 2005, 55-62)

Rawls recognizes that in order to promote fairness in a society as diverse as ours, no single comprehensive doctrine ought to be allowed to serve as the basis for our shared political order, stating, “We try, so far as we can, neither to assert nor to deny any particular comprehensive religious, philosophical, or moral view, or its associated theory of truth and the status of values” (Rawls 2005, 150). Hence, he argues that we all must accept that a reasonable degree of pluralism will be part and parcel of a well-ordered political society and that endorsing reasonable pluralism does not preclude the discovery of shared values upon which our social unity can be based. In order to discover these shared values and norms reasonable persons holding a variety of conflicting reasonable comprehensive doctrines, each with its own unique conception of the good, will come together in mutual deliberation and debate to arrive at an “overlapping consensus,” in which each person and or group can endorse the same set of political concepts while doing so from their own point of view. He claims,

An overlapping consensus, therefore, is not merely a consensus on accepting certain authorities, or on complying with certain institutional arrangements, founded on a convergence of self- or group interests. All those who affirm the political conception start from within their own comprehensive view and draw on religious, philosophical, and moral grounds it provides. The

⁸ Furthermore, in addition to being historically grounded we might argue that traditions entail hermeneutic lineage or a well-established method of interpreting texts in lieu of novel circumstances. For a comprehensive religious doctrine to be part of a tradition often implies that there are certain ways of interpreting said doctrine that have been historically approved or that there are certain groups of interpreters who are believed to hold expertise in matters of interpretation regarding said doctrine.

fact that people affirm the same political conception on those grounds does not make their affirming it any less religious, philosophical, or moral.... (Rawls 2005, 147-148)

Rawls hopes that each comprehensive doctrine is able to endorse a certain set of values and principles in its own way, thereby accepting the consensus positions as true from their distinct points of view. The ultimate aim of this consensus is the establishment of a shared public morality that is grounded in the moralities of the diverse reasonable doctrines that constitute our political community. In this way the social contract will embody our shared morality.

It is crucial to note however, that in the Rawlsian framework only public reason may be employed in the public forum when attempting to achieve consensus in regards to the contents of our social contract and the public morality it represents. To this end, all reasoning in the public forum must appeal to ideals, principles, and values that no reasonable person can be expected to reject at the outset. Rawls claims that all have a duty to adopt a form of public discourse and a mode of reasoning accessible to all (Rawls 2005, 242) and hence, all positions and arguments must be stated in terms that everyone can understand and at least potentially accept. Now, this does not imply that all interlocutors must agree on every point nor does it imply that every argument position must be acceptable to all parties involved. However, it does mean that any arguments, positions or claims that explicitly refer to doctrinally-specific concepts or which can only be understood in the context of a particular comprehensive doctrine, will not be considered

conducive with public reason and hence, are disallowed entry into the public discourse.

Thus, according to Rawlsian contractualism, ontological, metaphysical and cosmological language and beliefs have no place in the public forum. Rawls claims, “by avoiding comprehensive doctrines we try to bypass religion and philosophy’s profoundest controversies so as to have some hope of uncovering a basis of a stable overlapping consensus” (Rawls 2005, 152). He is quick to note however, that, “to deny that religious beliefs can be publicly and fully established by reason is not to say that they are not true...” (Rawls 2005, 153). Rawls does acknowledge that religious views may be expressed, albeit in a restrained fashion claiming, “we may eventually have to assert at least certain aspects of our own comprehensive religious or philosophical doctrine... Still, we do not put forward more of our comprehensive view than we think needed or useful for the political aim of consensus” (Rawls 2005, 152-153). Rawls’ concession here implies that if one wishes to express oneself in explicitly religious language she must also be able to justify her claims in publically accessible language – the language of our shared political values and concepts – as well; therefore maintaining the requirement for public reason.

This brings us to the ideas of justification and legitimacy. Insofar as the public values, norms and policies that will be enacted as a result of our discourse must acquire political legitimacy in order to be enforced, we must ask: from where does this legitimacy derive? According to Rawls, the

legitimacy of the political conceptions we have agreed to derive their legitimacy from public justification, or in other words, from the process of overlapping consensus itself. Rawls claims that, “public justification happens when all reasonable members of political society carry out a justification of the shared political conception by embedding it in their several reasonable comprehensive views” (Rawls 2005, 387).

Public justification however, must be distinguished from other forms of justification. First there is what Rawls refers to as “*pro tanto* justification,” which only takes into account our shared political values “so that those values alone give a reasonable answer by public reason to all or nearly all questions concerning constitutional essentials and basic justice” (Rawls 2005, 386). Next, Rawls argues that “full justification is carried out by an individual citizen...[who] accepts a political conception and fills out its justification by embedding it in some way into the citizen’s comprehensive doctrine...” (Rawls 2005, 386). Now, although public justification will require that each interlocutor find a particular policy, principle or norm justifiable, the ways in which she comes to justify that shared idea is a purely personal affair. Rawls notes,

A crucial point here is that while the public justification of the political conception for political society depends on reasonable comprehensive doctrines, this justification does so only in an indirect way...these doctrines have no normative role in public justification; citizens do not look into the content of others’ doctrines.... (Rawls 2005, 387)

Arguably, a crucial question raised by this point (when seen in tandem with the requirements of public reason) and which ought to be addressed – especially as we turn to issues regarding the inclusion of religious voices in the discourse of public bioethics – is one raised by the philosopher and religious studies scholar Jeffrey Stout who asks,

Is it always wrong for citizens in the public forum to reason solely on the basis of religious premises, at least when considering matters of basic justice and constitutional essentials? (Stout 2004, 68)

In other words, if one justifies a policy recommendation solely on the basis of religious reasons, thereby falling short of the requirements of public reason, should this play any lesser of a role in establishing the legitimacy of a mutually agreed upon policy? And, if not, wouldn't it be in the interest of others to understand his religious reasons for finding a particular policy justifiable, regardless of whether or not they will share those reasons? If it is always wrong for interlocutors to reason solely from religious premises and wrong for them to look into the contents of one another's doctrines would this not preclude our ability to understand both our mutual acceptance of the legitimacy of enforcing a certain policy and one another's perspectives when the legitimacy a particular policy is being questioned or refuted⁹?

⁹ Issues concerning justification will continually be readdressed throughout the subsequent chapters.

Rawlsian Reasoning in Bioethical Decision-making:

Insofar as it involves creating public-policy and joint decision-making in a democratic forum, public bioethics is highly indebted to Rawlsian contract theory. As the renowned bioethicist, and current member of the Presidential Commission for the Study of Bioethical Issues, John Arras has written,

Although Rawls limited the deployment of RE [reflective equilibrium] to the theoretical construction of his social contract theory, applied ethicists in many fields have more recently taken up his method as a vehicle for solving practical moral problems.... (Arras 2009, 48)

To illustrate Arras' point, I would like to turn our attention to the work of the bioethicist Donald Ainslie, who has argued that adopting Rawlsian contractualism will ultimately ameliorate the tensions between universalism and particularism that have pervaded bioethics, almost from the start, and can resolve the discursive stalemates that often occur as a result of the differing religious perspectives and the deep moral disagreements that have come to haunt bioethics.

Like Rawls' conception of "justice," Ainslie argues that bioethics ought to be freestanding, in that there should be no single underlying moral theory guiding our public bioethical deliberations. In regards to coping with religious pluralism in bioethics, Ainslie claims that, "What Rawls helps us to see is that the task of bioethics is not to resolve these disagreements, but to see what policy can be justified to people despite their disagreements" (Ainslie 2002, 14). While I agree with Rawls' task and appreciate Ainslie's

attempt to implement a method of discovering policy that are mutually justifiable despite disagreements, the Rawlsian method falls short of many of its own aims.

Adopting Rawls' concepts of reasonability, public reason, overlapping consensus, and reasonable pluralism most contract theorists in bioethics are highly critical of the traditional principlistic approach to forging a common morality. For example, in his critique of the deontological and utilitarian foundations of Beauchamp and Childress' principlism Ainslie asks, "Why must others, in their struggles with reproduction, disease, suffering, and death, conform to principles over which some philosophical theories happen to coincide?" (Ainslie 2002, 4). Furthermore, expressing a common contractualist view, Ainslie claims, "bioethicists should not be in the business of forcing their own private moral views on others" (Ainslie 2002, 27). Rather, in the Rawlsian spirit, he argues that it is about discovering points of public agreement without having to accept any deeper moral commitments or adhere to any comprehensive moral doctrine. Yet, how does a good contractualist categorize a doctrine as 'unreasonable'? Ainslie's reply is that:

An unreasonable comprehensive doctrine leads its subscribers to reject the idea of cooperation with those whose comprehensive doctrines differ from theirs. It is people who are intolerant in this sense – in their unwillingness to live peacefully, on terms of acceptable to all, among those with whom they have moral disagreements...Accordingly,...the state [or in this case the bioethical community] can legitimately take steps to prevent those with unreasonable comprehensive doctrines from interfering with the lives of others. (Ainslie 2002, 15)

While I agree that there is indeed a need for some sort of restrictions regarding which views ought to be taken seriously in public bioethical deliberation, we must be careful as to how we interpret or define the term “cooperation.” For instance, it could be argued that the Amish are uncooperative insofar as they wish to live in isolation from the greater society however, given the peaceable nature of their lifestyle and acceptance of the fact that others pursue different ways of life outside of their community, it would seem rash to consider the Amish an unreasonable group.

Further, insofar as the Amish adhere to an accepted arrangement with the larger society it may be argued that as a group they are in fact cooperative. The point here is that cooperation should not necessarily be taken to imply any sort of regular direct involvement in mutual endeavors with others whose comprehensive doctrines differ, for this could exclude otherwise peaceful groups who have no desire to interfere with the lives of others. Simply because a group wishes to live a semi-isolated communal existence is not a sufficient reason to consider them uncooperative or unreasonable.

Moreover, although the idea of public reason has been a highly influential concept in contemporary political theory and has gained much popularity in bioethics, when we begin to seriously take religion into consideration there are numerous problems associated with Rawls’ notion of public reason, especially as it applies to bioethical deliberation. In its

endorsement of implementing a common mode of reasoning and shared mode of expressing concerns, public reason has the potential to lead to the exclusion of a number of religious perspectives by limiting the use of their own moral language.

According to Rawlsian political liberalism, public reason is contingent upon a free-standing conception of “justice as fairness” and requires all interlocutors to express their arguments and positions in propositions which all are reasonably expected to accept. Rawls explains that,

The point of the ideal of public reason is that citizens are to conduct their fundamental discussions within the framework of what each regards as a political conception of justice based on values that others can reasonably be expected to endorse and each is, in good faith, prepared to defend that conception so understood. This means that each of us must be ready to explain, a criterion of what principles and guidelines we think other citizens...may reasonably be expected to endorse along with us. (Rawls 2005, 226)

He argues that we have a duty, the “duty of civility,” to only express ourselves in this manner when engaging one another in the public forum or on issues of a public nature. Despite being a well-intentioned means of promoting the common good and of facilitating constructive dialogue amongst interlocutors coming from distinct and separate moral paradigms and religio-cultural traditions, Rawlsian public reason undermines religious liberty insofar as it makes it mandatory for interlocutors to adopt a form of speech and consequently, a mode of reasoning, that is foreign to their moral and epistemic contexts. Such a shared mode of reasoning might be incompatible with or unable to capture the logic inherent within their indigenous modes of

moral reasoning and hence, might unintentionally mask their genuine ethical concerns.

In an area of ethical inquiry in which questions of an ontological and or metaphysical nature often arise, public reason as a requirement of participation in bioethical deliberation occludes religious reasoning from entering the public bioethics forum, thereby silencing the expression of an interlocutor's authentic reasons for endorsing a public policy and or asserting moral claims. As Jeffery Stout duly notes, to restrict the inclusion of reasons for endorsing policies to those reasons that can be expressed in a secular, or neutral, manner violates both one's freedom of religion and freedom of speech. Stout writes, "Any citizen who chooses to express religious reasons for a political conclusion would seem, then, to enjoy the protection of two rights in doing so: freedom of religion and freedom of expression" (Stout 2004, 64). In a liberal democracy those involved in public bioethics deliberations ought to be able to express their ethical concerns and moral arguments in a manner that they believe will effectively convey their authentic positions and genuine perspectives.

Despite Rawls' own insistence that public reason is not to be equated with secular reason, *per se* (Rawls 2005, 452), as the philosopher of religion and public theologian Nicholas Wolterstorff has argued, it is far easier for persons adhering to secular philosophies, such as a form of consequentialism, utilitarianism, or deontology, to express themselves in ways that are "publically accessible" than it is for a person who adheres to a

religious doctrine in which “controversial beliefs,” such as belief in the sanctity of human life for instance, inform her moral reasoning and serve as the basis of the ethical positions being espoused (Wolterstorff 1997). Moreover, insofar as each interlocutor in the discourse views herself as being obliged to explain how one’s proposals and propositions are consistent with certain shared political values, as Rawls’ duty of civility requires, there is no *prima facie* reason as to why such explanations could not accompany the expression of religious reasons for endorsing a given position. If one is, by Rawlsian standards, allowed to consent to public norms for religious reasons and her personal position is coherent and consistent, it might very well be the case that she can explain how her arguments are conducive with the requirements of fairness even if she provides religious reasons as to why it is so; and this can happen in an unrestricted manner and without requiring limitations on how much of one’s comprehensive doctrine one is allowed to show. If interlocutors cannot be candid about their beliefs, then how can we expect them to enjoin in a mutually respectful pursuit of shared ethical standards to which they can all agree are adequately representative of their perspectives?

Furthermore, Rawls claims that part of our shared reason is our ability to draw inferences, weigh evidence, and balance competing considerations and argues that it is these abilities that are employed in our judgment of whether or not doctrines and propositions are to be considered reasonable (Rawls 2005, 55). However, adopting this view would result in

the exclusion of numerous religious perspectives that do not conform to Rawls' standards of reasonability. We must bear in mind the fact that many religious comprehensive doctrines either do not appeal to 'reason,' as defined strictly in Rawlsian terms or do not appeal solely to this mode of reason, as a means of securing the validity of their beliefs. Rather, they often draw upon the authority of sacred texts, the interpretive traditions associated with the study and analysis of such texts, and concepts that a contractualist might not consider reasonable yet, which have a place in the logic inherent within traditional modes of inquiry.

Many religious belief systems are often not formed on what Rawlsians would consider a reasonable basis; people do not hold religious beliefs as true as a result of weighing empirical evidence, drawing inferences from such evidence, nor through the balancing of competing claims. Rather, religious beliefs are often based upon revelations, experiences, and the narratives and sayings of holy figures. Hence, "shared human reason," despite the fact that it may indeed be a universal feature of the human mind, often does not serve as the basis for religious beliefs and is often not the foundation upon which religio-moral claims are validated or justified.

Given Rawls' own concern with fairness we must not neglect the question as to whether it is fair for such religious claims to be subjected to a mode of scrutiny they themselves do not inherently appeal to; especially when this mode of scrutiny is being endorsed on the grounds that are shared and hence, that it may be appealed to when judging claims regardless of the

epistemic system from which they come. Although comparisons amongst distinct perspectives arising out of different comprehensive worldviews can be useful as a means of understanding the similarities that can lend themselves to viable cooperation and peaceful co-existence and as a means of recognizing which beliefs and practices are themselves incompatible, in order to fairly evaluate a claim it must be assessed against the epistemic context from which it emerged and in lieu of the onto-metaphysical framework and value system from which it is being offered.

Further, Rawls has argued that when we are “Faced with the fact of reasonable pluralism, a liberal view removes from the political agenda the most divisive issues, serious contention about which must undermine the bases of social cooperation” (Rawls 2005, 157). First, in the context of bioethics, such a requirement would be absurd in that as a field bioethics has sought to resolve problems that arise when some of the most divisive issues are what is at stake. Simply refraining from engaging in discussions of abortion, brain death, stem cell research or cloning will not ameliorate the tensions that exist over these issues nor will it provide any hope for the resolution of our disagreements. Discussing the problems associated with the application of Rawls’ method to bioethical deliberation, the well-known bioethicist John Arras has claimed,

although we might be able to ‘derive’ or ‘deduce’ correct practical conclusions from principles [such as those agreed upon as a result of overlapping consensus] in clear-cut cases...we cannot do so in hard cases involving conflicting principles or difficult problems or interpretation – that is, in

precisely those cases that provide the grist for most bioethical reasoning. (Arras 2009, 51)

As will become more evident as we proceed, the interpretive differences and disagreements and conflicts amongst values and principles, that Arras calls to our attention are indeed highly troublesome issues in bioethics and it is crucial that we not only address such issues but attempt to find ways of resolving them; a task that Rawls' method can't quite accomplish because it was not developed with such bioethical issues in mind, fails to address issues of interpretation, and does not give sufficient attention to issues of incompatibility and incommensurability¹⁰.

Additionally, as the philosopher of religion Philip Quinn has argued, Rawls' requirement of public reason is overly exclusivist, not only insofar as it bars a number of religious beliefs from entering the discussion but also, to the extent that it prohibits a number of secular reasons as well (Quinn 1997). For instance, if one cannot express her conception of human personhood in debates regarding the ethicality of removing life support from a patient in a permanently vegetative state or her views regarding the relation between mind, body and soul in debates over appropriate ethical and legal determinations of death, on the grounds that such concepts are ontological or metaphysical and thereby too deeply rooted in a particular comprehensive doctrine to be expressed, we will be unable to have robust discussions of a

¹⁰ A more detailed analysis of all of these issues will be provided in our subsequent chapters concerning the foundations of a new bioethical methodology and its application, where an attempt to resolve such problems and ameliorate such tensions will be offered.

myriad of bioethical issues. And hence, we will never be able to enact any legislation or develop any ethical standards whatsoever in regard to most bioethical issues. The very nature of many issues in bioethics raise ontological and or metaphysical questions, which is precisely what makes them so controversial. To prohibit discussions of this sort would be deleterious for the entire enterprise of bioethical inquiry.

Let us look briefly at abortion for example. In addition to their defense of a woman's right to choose what happens to her own body, many pro-choice proponents also hold the belief that the human embryo is not yet a human person. It is the ontological belief in an embryo's lack of human personhood that serves as the meta-ethical basis of the position that it is ethically permissible to terminate the existence of the embryo. Likewise, most pro-life advocates base their position on the onto-metaphysical belief that human personhood begins at conception and hence, that regardless of one's rights pertaining to one's own body, no individual has the right to terminate the life of another human person. We find salient ontological reasons for the ethical and public policy positions asserted on both sides of the debate, which stem from deep differences within the comprehensive philosophical and religious doctrines of the respective parties yet, which often cannot be expressed in terms that all can be expected to accept. However, such ontological meta-ethical beliefs are imperative for understanding the positions taken in the abortion debate. Hence, to preclude their inclusion in the discourse prevents interlocutors from acquiring a

comprehensive understanding of the issue at hand and the actual reasons for why people assert the claims that they do. In this case, enacting a requirement of public reason is arguably tantamount to enforcing mutual ignorance rather than promoting mutual understanding, which ought to be one of the aims of our ethical inquiry into such matters.

Despite the numerous problems with the idea of public reason, as defined by Rawls, and the application of Rawls' method to bioethics, where we can agree with Rawls is that: our conception of liberalism must be purely political, not comprehensive; the best means of securing mutually binding policies will be through an inclusive discourse guided by the reciprocal exchange of reasons and perspectives; we must make room for a plurality of comprehensive doctrines in our discursive process; and the best outcome will be to secure an ethical consensus that represents a convergence of diverse points of view.

***Gauthier's Rational Contract:
Morality By Agreement***

Aside from Rawls, other contract theorists have made their mark on a number of academic and applied fields. Branded with a different name, and differing significantly in certain respects from Rawlsian contractualism, David Gauthier's contractarianism has also been a major player in attempting to resolve the moral conflicts that occur as a result of pluralism. Gauthier's

moral contractarian theory has been praised by some bioethicists – such as Robert Baker for instance – as a means of combating the ever-present threat of relativism while simultaneously paying homage to the moral diversity that pervades our society. Although I laud Gauthier's effort to cope with the problems that moral diversity raises in society, I am rather leery about implementing a method such as Gauthier's with its strong rationalist and utilitarian leanings, relativistic tendencies and egoistic ontology. My apprehension about importing Gauthier's contract theory into bioethical methodology will become more evident when we deal with Robert Baker's contractarian approach to bioethics. First however, I would like to provide a more in-depth analysis of Gauthier's approach before evaluating its effectiveness as a method of discourse in bioethics.

Gauthier's moral theory is intended to solve, what he dubs, the modern moral dilemma: namely, that we have entered an age where there is a loss of the objectivity of our common moral truths, and which do not coincide with the behaviors observed nor the desire and beliefs of the individuals whom they are supposedly accepted by and applicable to. Gauthier begins with the assumption that each of us is essentially a psychological egoist in the natural state. Although this view is apparent in his initial premises he proceeds to conclude that rational agents will adhere to the moral code of cooperation with others in and of itself insofar as it is rational to do so. Hence, contractarianism is to be distinguished from any form of egoist or subjectivist view of morality insofar as it is founded upon,

what Gauthier calls the, “cooperative agreement,” which is an agreement begotten through *rational deliberation*, and which Gauthier suggests will serve as an *objective* system of morality.

Before directly introducing Gauthier's contractarianism, it must be realized that what we are dealing with here is a brand of moral contract theory¹¹ that maintains that epistemic realism in regards to particular moral truth claims should have no place within our contractual moral thinking; in other words, Gauthier wants to avoid adopting a correspondence theory of moral truth in which it is believed that moral propositions beget their truth-value by corresponding to some aspect of reality, such as a absolute or universal moral law for instance. Rather, the moral codes we arrive at through rational deliberation have to do with the principles for cooperation that rational agents do, or would, agree to under certain conditions.

Therefore, Gauthier is not proposing a set of values, or moral norms, but rather has developed a method for discerning those terms of cooperation that rational self-interested agents would agree are morally advantageous to all parties participating in the cooperative endeavor and implementing such agreed upon terms in an mutually agreed upon moral system that begets its objectivity from our shared agreement itself. This is a method by which groups of individuals may construct a set of rules based upon those values

¹¹ Whereas Rawls' contract theory has to do with issues of public policy and endorses a social contract on the purely ethico-political level, thereby avoiding moral concerns of a non-political nature, Gauthier's moral contract theory explicitly engages and denies moral truth claims of a universalist or absolutist variety yet attempts to retain some degree of moral objectivity for a shared ethical code and common morality.

that they mutually perceive as being of primary importance, and hence will be those that they can all mutually endorse in the face of an abundance of eclectic values. Through a process of rational deliberation each individual will arrive at the conclusion that the structure of the contractual cooperative agreement is best suited to accomplish such a task.

Meta-ethically, Gauthier asserts that all agents have a deep sense of self, which is comprised of a variety of conflicting preferences. Such a matrix of preferences leads one to a decision-making process, which is based upon what Gauthier refers to as “deliberative justification,” as a means of extracting those preferences that the individual deems to be of lesser value when conflict occurs. “Deliberative justification” states that an agent will consider choices justified if they maximize the agent’s expected utility. This, he claims, does not depend upon any moral considerations. For Gauthier, it is only in a community setting that “morality,” per se, arises because morality refers to the terms and conditions of social interaction. On this view, when placed within a community setting, that which each rational agent’s process of deliberative justification shall inevitably conclude is the principle of “constrained maximization,” by which each agent will curtail her own pursuit of utility maximization in order to cooperate with others in that doing so yields a more valuable benefit to the agent in the long term. Gauthier argues that due to its ability for maximizing one’s own utility by means of cooperation such a principle is accepted by the rational agent.

Gauthier claims that rational agents will analyze their situation, realizing that it could be otherwise. Consequently, they begin at a point in which they examine the “existing rules” and the corresponding social circumstances, to imagining rules that could be agreed upon given the current social circumstances. Gauthier argues that insofar as they realize the arbitrariness of the existing circumstances and hence, of the corresponding moral norms they will contemplate those principles that would be agreed upon in a pre-moral condition; one in which no moral norms have yet been established¹². Subsequently, all the rational agents involved come together to form a cooperative bargain that will benefit them each individually and collectively. Gauthier claims that his theory is concerned with the structure of a moral system, allowing for the divergence of moral content amongst the various interlocutors. He writes,

This rationale for agreed constraint makes no reference to the content of anyone’s preferences. The argument depends simply on the *structure* of interaction, on the way in which each person’s endeavor to fulfill her own preferences affects the fulfillment of everyone else. Thus, each person’s reason to accept a mutually constraining practice is independent of her particular desires, aims and interests, although not, of course, of the fact that she has such concerns.” (Gauthier 1991, 23)

During such a negotiation each individual brings her primary preferences to the table. In such a process individuals will be able to discover where exactly their set of values and preferences match, or hold

¹² Such an imagined situation resembles Rawls’ veil of ignorance, in which each agent imagines him or herself in a pre-moral state of affairs with others.

similarity to, those of others. Negotiating will enable them to formulate a set of values that they can all agree hold primacy over others (in much the same way that the individual had done previously when assessing her own preferences). That which is discovered is the link unifying the various subjective views from which they may establish a set of terms that all will find agreeable.

Engaged in such an activity, Gauthier believes that all persons involved, by virtue of their rationality, would accept, what he refers to as, the *Lockean proviso*: that when one goes to the bargaining table one cannot bargain with benefits received by the worsening of a situation of another, insofar as others will refuse to cooperate with such an individual if they suspect that he/she will take advantage of them. Therefore it is rational for these essentially self-interest egoistic individuals to refrain from harming others for each individual requires the cooperative state as a means to most effectively maximize his/her own utility in the long-term. So far, those with nothing to offer (i.e. those who possess no talents, skills, or resources from which another could potentially benefit) and those with nothing to gain (i.e. those whose resources and or skills are equivalent to or exceed those of the entire group) – even though it is said that it is highly unlikely that any such individuals actually exist – are left out of the scope of morality. However, it must be noted that individuals who could potentially fit this category (i.e. the irrational, disabled, and or talent-less) may indeed be granted an indirect

value, and hence, included into the scope of morality if they are of value to others who qualify as rational constrained maximizers.

Moreover, Gauthier maintains that rational agents will appeal to the principle of “minimal relative concession,” which states that when bargaining with other rational agents it is rational to minimize the maximum concession one makes where one’s concession is measured as a proportion of one’s stake in the issue at hand. In other words, one will attempt to minimize how much one gives up while trying to maximize how much he/she will receive. When in a group, compromises must be made however, each party involved will aim to get as close as possible to the rules of morality which appear to be most optimal for that individual. Nevertheless, the cooperative agreement, which is to serve as the basis of our mutually accepted moral system, will often require compromise and negotiation.

Gauthier then proceeds to warn us of egoists, or straightforward maximizers, and urges all rational agents who have through the employment of deliberative justification have arrived at the state of being disposed to constrained self-maximization, not only to cultivate the disposition to cooperate, but to cultivate the ability to detect the presence of egoists who wear the façade of constrained maximizers. Furthermore, Gauthier’s version of contractarianism excludes the possibility of anyone rationally choosing to breach his/her agreements for this would imply that if this were truly the rational decision then all cooperating rational members would ultimately do the same, and hence, would result in the re-emergence of a non-cooperative

state, which has already been deemed by these individuals to be of lesser benefit to all parties involved. Thus, no rational agent engaged in the cooperative effort would hold, as a rule of thumb, the breaching of agreements. This, however, only holds true insofar as such a breach could possibly become public knowledge for it would preclude the individual from being able to remain within the society. Therefore, a constrained maximizer will only choose to breach an agreement, or refuse to cooperate, if her own expected utility would be greater if he/she were to engage in a non-cooperation in a given situation and if such a non-cooperative action were guaranteed to hold no bearing on any other situation, thus, preventing the individual's exclusion from the cooperative society.

Furthermore, insofar as it entails a negotiation process in regards to values and rules, contractarianism is in no way dictating that said values and rules (i.e. the content of moral systems) are by any means universal, it is only claiming that the method of arriving at moral principles is objective. Essentially, this necessarily leads to the abandonment of the position that there do indeed exist objective moral truths and produces a system based on the negotiation of primary values, which due to their very nature, may be amended at a later point in time, if a new bargaining processes has occurred. Gauthier writes,

Actual moral principles are not in general those to which we should have agreed in a fully rational bargain, but it is reasonable to adhere to them in so far as they offer a reasonable approximation to ideal principles. We may defend actual moral principles by reference to ideal cooperative arrangements, and the closer the principles fit, the stronger the

defence. We do not of course suppose that our actual moral principles derive historically from a bargain, but in so far as the constraints they impose are acceptable to a rational constrained maximizer, we may fit them into the framework of a morality rationalized by the idea of agreement. (Gauthier 1986, 168).

Hence, actual moral principles, values, norms, and rules may be derived from different individual, cultural, or religious sources, for it is not important from where they are derived, but rather that they may be agreed upon by those rational parties involved. It is argued that through their own independent rational processes of deliberation agents will arrive at the objective ideals of constrained maximization and cooperation on their own. The imperative here is that a group of constrained maximizers¹³ can fall into agreement in regards to a particular set of actual moral principles, despite the source each agent derived such a principle from, and hence fit them into the framework Gauthier has prescribed. The agreement, not the source of one's morality, is that which is crucial in Gauthier's contractarianism. Subsequently, Gauthier believes he has found the solution to the crisis of moral diversity by allowing for the relativity of various sources of actual moral principles while retaining an objective method of forging moral agreements.

¹³ In other words, a group of constrained maximizers is: a group of rational agents willing to accept certain self-imposed restrictions on their behavior if it has a chance of benefiting each of them more greatly in the long-run.

Bioethics by Agreement:

In bioethics, Robert Baker has employed contractarianism as a means of responding to pluralism and overcoming any relativistic tendencies that might emerge in a pluralist-friendly theory of biomedical morality. By seriously taking moral pluralism into consideration, contract theory attempts to avoid both moral absolutism (arguments for the infallibility and immutability of certain moral norms) and all forms of universalism in regards to the principles we agree to. Robert Baker has made this point explicit in his call for a contractarian renovation of bioethics as a means of properly dealing with postmodernity's pluralistic landscape:

If international [or a pluralistic] bioethics is to respond successfully to the challenges of multiculturalism and postmodernism, it must abandon moral fundamentalism. It also must take stock of the three lessons to be learned from the failure of fundamentalism: (1) the difference claim cannot be explained away; there are fundamental differences in moral principles and values both between and within cultures; (2) any attempt to obviate these cultural or interpretive differences by postulating an acceptance of common or universal principles at some more 'basic' or 'fundamental' level is ultimately question-begging; (3) international biomedical ethics must rest on a theoretical framework that can bridge perspectives even as it justifies genuine transcultural and transtemporal moral judgments. (Baker 1998a, 225)

While contract theorists do indeed seek to forge a normative morality, it must be understood that the moral codes of which contract theorists speak have to do with the principles for cooperation that rational agents do, or would, agree to under certain conditions. Whereas principlism maintains that a given set of principles, norms and rules should reign supremely due to

their universality and immutability; and hence, are able to resolve various moral disagreements through appeals to a universally applicable common moral frame of reference (i.e. Beauchamp and Childress); contractarians do not propose any such set of absolute or universal moral codes.

Rather than proposing a definitive set of universal principles, that which the contractarians have developed is a method for 1) discerning those terms of cooperation that rational self-interested agents would agree are morally advantageous to all parties participating in the cooperative endeavor, and 2) implementing such agreed upon terms in an objective structure for moral systems. This is a method by which groups of individuals may construct a set of rules based upon those values that they mutually perceive to hold primacy in the face of an abundance of eclectic values. Contractarians maintain that through a process of rational deliberation each individual will arrive at the conclusion that the structure of the contractual cooperative agreement is best suited to accomplishing the task of constructing a set of ethical rules and moral norms.

The driving forces behind Baker's theory are the notions of bargaining and negotiation; self-interest and rationality; and cooperation and agreement. "Contractarian moral and political theory concludes that cooperation between such agents is possible – despite fundamental conflicts of interests, principles, and values – provided that the conflicting parties appreciate their own rational self-interest in enjoying the advantages of cooperation" (Baker 1998b, 235). While a number of distinct voices are to be

present at the contractarian's bargaining table, the conversation is exclusive to the extent that those individuals or groups whose moral claims, and correlative doctrines, may be judged to be less than "rational" will be prevented from joining the negotiation process.

Meta-ethically speaking, having drawn upon the insights of Locke and Hobbes, contractarians paint a picture of human nature, albeit a rather pessimistic one, asserting that all agents have a deep sense of self which is comprised of a variety of conflicting preferences and a self-interested motivation for action. Baker illustrates just how crucial such a conception of human nature is to the contractarian paradigm stating that, "[I]ntegral to the metaphor of the social contract is the contractarian recognition that the interests of the parties who contract to form civil society are naturally in conflict (or, as Hobbes put it, at war with each other)..." (Baker 1998b, 234-235).

Each party's conflicting preferences are dealt with in what Gauthier refers to as "deliberative justification," which is a means of deciding which preferences the individual deems to be of lesser value when conflict occurs. To reiterate what was mentioned previously, "deliberative justification" states that an agent's choices are justified if they maximize the agent's expected utility. This, he claims, does not depend upon any moral considerations; for only in a community setting does morality arise. Gauthier believes that all rational agents will analyze their conflict-ridden situation, realizing that it could be otherwise and hence, when placed within a

community setting, that which each rational agent's process of deliberative justification shall conclude is the principle of constrained maximization. Due to its ability for maximizing one's own utility by means of cooperation, such a principle would be accepted by the rational agent.

Thus, all rational agents involved come together to form a cooperative bargain. During such a negotiation, each individual brings his/her primary preferences to the table. In such a process, individuals will be able to discover where exactly their sets of values and preferences match, or hold similarity to, those of others. Ultimately what we are presented with is a negotiated moral order, which is flexible enough to undergo change and be re-negotiated at a future time.

While the contractarians' attempt to forge a middle ground between universalism and particularism in ethics is laudable, there are a few problematic features of their proposed methodology. First, like the principlists, contractarianism relies on ethnocentric values and a westernized conception of rationality to do the work of forging cross-cultural norms and discovering inter-religious precepts. Not all religio-cultural traditions value the rationalistic, utilitarian and self-interested forms of deliberation or highly individualistic notions of self and the good in the way in which the contractarian paradigm requires.

Second, the entire contractarian method not only presupposes, but is grounded on, a conception of human nature which might be unacceptable to the potential parties involved yet, which is integral to the functioning of the

contractarian methodology. When one is attempting to resolve the moral conflicts that arise in a religiously pluralistic society, adhering to a theory which is contingent upon the acceptance of a particular conception of human nature does not appear to be the most inviting way to bring individuals to the bargaining table. A variety of both religious and non-religious conceptions of the human do not view human nature as self-interested, monadic, and combative. Thus once these allegedly innate traits are denied by certain parties involved, it seems that there is no good reason to accept the social contract, for rational self-interest and conflict are those factors which allegedly motivate us to enter into a cooperative contractual situation in the first place. If contractarians maintain that bioethicists ought not be in the business of imposing a particular and subjective mode of moral reasoning on all other members of society, how could it be fair and acceptable for them to impose their conceptions of the human self upon others? If contractarians wish to protect individuals against being forced to accept a foreign private morality, they too must be careful not to impose their own private ontological views upon others.

Third, contractarianism's legalistic edge requires bargaining and negotiation, which may work well in some areas of business, law, and politics; however, when applied to bioethics what contractarianism ultimately asks is for individuals to bargain not with their interests but rather, with their beliefs about the nature of reality. Insofar as advances in medical technologies have raised issues that have called into question beliefs

which are constitutive of our perspectives of ontological reality, it is not merely a question of negotiating the rightness of an act, but entails probing our conceptions of life, death, the meaning of illness and suffering, and human nature. What contractarian bioethicists fail to take into consideration is, as Lisa Rasmussen has duly noted, that “There are many metaphysical decisions that must be made in bioethics” (Rasmussen 2000, 375) and that metaphysical beliefs are hardly as negotiable as contract theory requires them to be. Accepting these theories necessarily entails either conflating interests/preferences with beliefs systems and worldviews, or assuming that metaphysical and ontological beliefs are arbitrary and negotiable, which is a question-begging claim to say the least.

Take a case of brain death, for instance. What a contractarian model of bioethics would entail for creating a policy in regards to brain death is that the parties involved would have to negotiate a definition of death; consequently, negotiating a conception of personhood as well. Definitions and determinations of death raise a myriad of questions regarding: the relation of the mind, brain, and soul; the nature of the human person; and the nature and meaning of life and death. Subsequently, it would ask the parties involved to bargain with their metaphysical and ontological beliefs, essentially asking people to treat such beliefs, which are constitutive of their

worldviews and conceptions of self, as if they were mere preferences and not staples of their conceptions of reality itself¹⁴.

Moreover, all metaphysics aside, without taking seriously enough that rational deliberation is not equally valued across cultures, contractarians endorse a single mode of reasoning – namely, deliberative rationality. Ultimately this mode of reasoning succeeds in occluding any individual who will not accept the contractarians' initial premises or values – namely that self-interested rational deliberation should be valued above all else. The contractarian method asks individuals to negotiate their values in order to arrive at a mutually shared set of values and norms yet presupposes that valuing rational deliberation is a trans-cultural and trans-religious phenomenon before entering into the process which is itself supposed to discover where such commonalities reside. It presupposes at the outset that which is to be an outcome.

Despite the inherent flaws of the contract theorists, and there inadequacies at resolving the dilemmas presented to bioethics by religious

¹⁴ One might object to my criticism, questioning why the conflation of preference and belief is even problematic in the first place. In reply I would argue that preferences, those desires, acts and ideas we have a taste for can and do change with time yet, I would speculate that most people would not feel as though they have undergone a drastic alteration of their identity when or revised their conceptions of reality when they develop a novel preference or interest. Indeed, our preferences and interests are informed by our convictions and opinions and influence the habits and practices we perform; thereby playing a role in the development of self-identity. However, change in preference does not drastically alter our self-identity. Beliefs, on the other hand, so deeply inform our worldviews and conceptions of self that to believe otherwise is often tantamount to altering self-identity and dramatically revising our vision of reality itself. Especially when the beliefs in question concern the nature of human personhood, life, death, and the relation between mind and body, to think that one can easily compromise such convictions or will even be willing to do so is not only unlikely but offensive in that it does not take into account the importance that persons place on these beliefs and the degree to which they influence their very modes of self-definition and ways of understanding the world.

pluralism, it nonetheless has its merits; namely, the fact that it takes empirical evidence of moral pluralism seriously, it avoids postulating universal moral claims, and it focuses on a democratic and discursive method for forging commonly accepted norms rather than asserting such norms. As we proceed, it is these merits that I believe an adequate methodological response to the dilemma of coping with religious and moral pluralism in bioethics ought to possess.

* A few of the ideas expressed in this chapter have appeared in: Chris Durante, "Bioethics in a Pluralistic Society: bioethical methodology in lieu of moral diversity," *Medicine, Healthcare & Philosophy* vol. 12 no. 1(2009): 35-47.

Chapter 4

The Pragmatic Point of View*

“Pragmatism” is a term often used to refer to a variety of theories put forth by classic American philosophers, all of whom developed distinct philosophical theories yet, who were in dialogue with one another and whose work shared common themes and modes of reasoning. Often included in the group of Classic American pragmatists are thinkers such as William James, Charles Pierce, George Herbert Mead, and John Dewey. Scholars drawing from the American pragmatist tradition represent a major movement within bioethics that views itself as distinct from deontological, utilitarian, principlistic, and contractualist schools of thought. Further, being aligned with both science and democracy pragmatism has been suggested as the most viable option for coping with moral diversity in bioethics.

Without going into great detail explaining each of their respective philosophies, I would like to introduce the ideas of the classic pragmatist tradition that have been most influential in contemporary bioethics so that we may be better equipped to examine their ability to potentially resolve the various problems we have witnessed when coping with religious and moral pluralism in bioethical inquiry. Further, insofar as Dewey is the inheritor of the pragmatic tradition started by James and Pierce and in that Dewey’s work has been especially influential in bioethical pragmatism, special attention will be given to Dewey’s brand of philosophical pragmatism.

Developed as a reaction against the logical positivist, empiricist and utilitarian schools of philosophy that gained widespread popularity in both England and the United States in the 19th and 20th centuries and which had become predominant in Anglophone philosophical circles at the time, pragmatism sought to reconcile the scientific trend that was occurring in these philosophical movements with more traditional philosophical concerns regarding moral values and virtues, self-identity (ontology), community formation, insights drawn from human experience and lived reality to create a socially applicable philosophy.

As William James described the aim of pragmatism, “People need a philosophy that is both empiricist in its adherence to facts yet finds room for religious belief...” (James, 1907, 15). Dewey, who looked less favorably upon religion than did James, later described pragmatism as being concerned with the “science of morals” (Dewey 1922). From its inception pragmatism was concerned with the relationship between science and morality, making it a natural candidate for the theoretical framework of bioethical inquiry, which by its very subject matter is necessarily concerned with the intersection of biomedical science and moral reflection.

Dewey's Vision of Ethics as Science & Democracy

Describing the birth of pragmatism, the historian Louis Menand has quoted William James as saying,

'Truth *happens* to an idea,' James said in the lectures he published in 1907 as *Pragmatism*. 'It *becomes* true, is *made* true by events. Its verity is in fact an event, a process: the process namely of its verifying itself.'... 'the true' is only the expedient in the way of our thinking, just as 'the right' is only the expedient in the way of our behaving.' (Menand 2001, 353)

According to pragmatism, the term 'truth' does not correspond to a pre-existent reality or refer to the ways thing really are independent of human engagement with the world. Rather, "truth" is defined as "warranted assertibility," or in other words, propositions about states of affairs are said to be 'true' if that assertion is warranted after a process of inquiry and verification have taken place that lead one to the conclusion that said proposition is most likely the case, or is highly probable. Like James, Dewey argued that what we call "true" are simply those sets of statements and propositions, whose assertion is justifiable in a particular context. Dewey explains,

My position is that something of the order of a theory or hypothesis, a meaning entertained as a *possible significance* in some actual case, is demanded, if there is to be *warranted assertability* in the case of a particular matter of fact. This position...states the *conditions* under which we reach warranted assertability about particular matters of fact...the presence of an *idea* – defined as a possible significance of an existent something – is required for any assertion entitled to rank as knowledge or as true... (Dewey 1941, 170)

For James and Dewey there are special conditions under which one may justifiably assert a claim as being 'true.' These necessary and sufficient conditions relate to the method of inquiry that has been employed to investigate a potential claim about a particular phenomenon or state of affairs. For the pragmatists that special method of inquiry is the mode of inquiry applied in scientific investigations, so that all truth-claims must be the result of, or be concluded from, a line of reasoning akin the scientific method of hypothetico-deductive reasoning. Dewey has claimed,

The position which I take, namely, that all knowledge, or warranted assertion, depends upon inquiry and that inquiry is, truistically, connected with what is questionable (and questioned) involves a skeptical element, or what Peirce called 'fallibilism,' But it also provides for *probability*, and for determination of degrees of probability in rejecting all intrinsically dogmatic statements, where 'dogmatic' applies to any statement asserted to possess inherent self-evident truth. (Dewey 1941, 172).

Pragmatists reject any and all claims whose truth is said to be self-evident and any truth-claims arrived at solely on the basis of logic. For the pragmatist, no claims, even scientific claims, are ever to be thought of as being absolutely and universally true, for the validity of labeling of proposition as 'true' comes from the fact that the contents of such a proposition refer to a state of affairs that is highly probable yet, might in fact be otherwise. On this view, all knowledge is to be regarded as fallible and hence, we must be humble in our assertions and always be modest in our truth-claims. Commenting on Charles Peirce, Menand writes, "If scientific laws are not absolutely precise, then scientific terminology has to be

understood in a new way...they have to be understood as naming points on a curve of possibilities, as guesses or predictions rather than conclusions” (Menand 2001, 222).

Dewey claims that “Deliberation is an experiment in finding out what the various lines of possible action are really like” (Dewey 1922, 190) so that all deliberation, including ethical deliberation, is experimental and imaginative insofar as it begins with an idea (of how things might be or which action might be best or most appropriate) that must then be tested against prior experience, prior conclusions, current experiential evidence, and the possible consequences and outcomes of accepting said idea as either ‘true’ or ‘false’ or ‘good’ or ‘bad.’ Once tested in this way, the propositional conclusion of our deliberation can be asserted as ‘true’ if it is found to be highly probable. However, even when a high degree of probability exists, given the fallibility of human logic, perception, comprehension, judgment and experimental methodology, every proposition asserted as “true” could possibly be wrong. Hence, for Dewey no “truth,” not even moral truth, corresponds to some deeper metaphysical reality or the way this reality actual is. In this way, Dewey’s conception of the functioning of moral deliberation is akin to the functioning of the hypothetico-deductive method of scientific inquiry.

This is not to suggest however, that science itself be placed on a pedestal or be thought of as holding some ultimate authority in regard to the truth of the matter. Rather, it is to suggest that like scientific deliberation,

moral deliberation is also fallible so that we can only know “moral truths” in their probability just as we can only know scientific facts in their probability. Illustrating the pragmatist’s deep commitment to fallibilism and refusal to view science as privileged point of view regarding truth, Louis Menand comments on William James opinions of Darwin’s work and critique of over-zealous Darwinians who thought scientific facts ought to be seen as absolute truths, writing:

James believed that scientific inquiry, like any other form of inquiry, is an activity inspired and informed by our tastes, values, and hopes. But this does not, on his view, confer any special authority on the conclusions it reaches. On the contrary: it obligates us to regard those conclusions as provisional and partial...The mistake is...ruling out the possibility of other ways of considering the case. That there is always more than one way of considering a case is what James meant by the term ‘pluralism.’ (Menand 2001, 143)¹

For Dewey, as for Peirce, James, and most other pragmatist, our world and hence, our socio-ethical reality, is marked by novelty and change so that we must constantly be engaged in the pursuit of knowledge. Therefore he argues that, “Morals must be a growing science if it is to be a science at all, not merely because truth has not yet been appropriated by the mind of man, but because life is a moving affair in which old moral truth ceases to apply”

¹It is important to note here that, despite the necessity of taking consequences in consideration in our ethical deliberations, Dewey’s theory is not a consequentialist theory by any means – that is if we take consequentialism to imply that the sole measure of an actions moral worth is based upon the consequences, or effects, it produces. As Dewey claimed, the problem of deliberation is not to calculate future happening but to appraise present proposed actions...The future situation involved in deliberation is of necessity marked by contingency...foresight which draws liberally upon the lessons of past experience reveals the tendency, the meaning, of present action; and once more, it is this present meaning rather than the future outcome which counts. (Dewey 1922, 206-208)

(Dewey 1922, 239). The influence of Peirce and James on Dewey's notion of "truth" as "warranted assertion" and the pragmatists' disdain for moral absolutism and ethical universalism is evident when Dewey writes, "in morals now, as in physical science then, the work of intelligence in reaching such relative certainty, or tested probability, as is open to man is retarded by the false notion of fixed antecedent truths" (Dewey 1922, 243). As is illustrated by this statement, pragmatists eschew moral theories that purport to know moral truth absolutely or which assert the universality of their own moral principles. Consequently, contemporary pragmatism becomes one of principlism's greatest opponents and rivals; especially when proposed principles are said to be fixed universals corresponding to commonly held moral truths. As Dewey argued,

principles treated as fixed rules instead of as helpful methods take men away from experience...Principles are methods of inquiry and forecast which require verification by the event; and the time honored effort to assimilate morals to mathematics [which he accuses deontology of doing] is only a way of bolstering up an old dogmatic authority, or putting a new one upon the throne of the old. (Dewey 1922, 238-239)

Although he despised absolutism and was a staunch critic of universalist versions of principlism, Dewey did not want to discard principles altogether. Rather, in accord with his conception of morality as a science Dewey suggested that any principle be conceptualized as hypothesis, which may prove to be either warranted or unwarranted in its assertion depending on the particular context. Dewey thought, "Principles exist as hypotheses with which to experiment...to disregard them is the height of foolishness. But

social situations alter; and it is also foolish not to observe how old principles actually work under new condition, and not to modify them so that they will be effectual instruments in judging new cases” (Dewey 1922, 239). To this end, Dewey conceptualizes principles as potentially useful generalizations that can guide moral reasoning but which should not be endowed with any special moral authority or given a privileged role in our moral deliberations. By instrumentalizing principles in this way, the pragmatist does not wish to do away with principles yet has much less invested in them than those adhering to other moral philosophies.

Regarding the aforementioned problems associated with the predominance of principlism in bioethics, in which principles are said to be universal, I ask, “what would taking Dewey’s suggestion into account look like?” Take for example, the ‘universal’ bioethical principle of “autonomy,” which Beauchamp and Childress endorse, in a context in which it seems to wield no moral authority. For instance, the Confucian bioethicist Ruiping Fan, has argued that the concept of “autonomy” has no special place in traditional Confucian ethical deliberations (Fan 2000). Consequently, a breach of “autonomy” might not be an especially important moral concern of a Confucian family and hence, this principle would either need to be abandoned or modified, at least in this situation. In their article entitled “Cultural Difference and End of Life Decisions,” Eugene Hern Jr., a physician from California, and his colleagues document a case in which such a tension regarding autonomy arises.

Hern et al. report that a 42-year-old woman, named Ms. Tai, had immigrated to the US. Ms. Tai had developed metastatic breast cancer and later was in need of a hip replacement due to a fracture caused by the metastasis. Hern et al. quote Ms. Tai stating, “At the beginning I did not want to have the surgery. My brother talked to me and wanted me to think about it further.’... her brother emphasized the pain and immobility she would have and the disruption it would cause the family. He highlighted how much care she would need from the family, the busyness of the family, and the age of their parents” (28 Hern et. al). Ultimately Ms. Tai did decide to go through with the surgery however, “It is significant that she describes her brother as a key decisionmaker. He wields great influence in her medical and non-medical decisionmaking” (28 Hern et al.). Quoting Ms. Tai’s brother and discussing the doctor’s response to the situation Hern et al. write,

“You know as a Chinese family, we care for each other whenever and whoever has any problem...After she [Ms. Tai] got sick, she could not make any decisions by herself; she needed the family to help her make those decisions.” Dr. Stevens, an oncologist who took over Ms. Tai’s care...took a principled stance to the issue of disclosure of diagnosis... Dr. Stevens described the family as “abnormal in the way they dealt with the situation” [and]...admitted being angry with the family, whom she experienced as “controlling” ...Dr. Stevens expressed frustration that the patient was seemingly not allowed to make her own decisions...The important point here is that allowing other family members to decide may not be “abnormal” Clinical bioethics practice (and theorizing) has for the most part ignored this complex cultural milieu. (29 Hern et al.)

This case clearly illustrates the inapplicability of employing anything that resembles a principle of autonomy in the framework this situation.

Subsequently, asserting a claim such as, “individual autonomy ought always to be respected” would not receive the verification it need in this circumstance to warrant assertion as being ‘true.’ Following Dewey’s suggestion that principles may at times be in need of modification, in such a case the concept of “autonomy” itself may be expanded to include families as singular autonomous entities in addition to applying solely to individuals. In this way a respect for the decision-making capacity of a family could be protected under a principle to respect patient autonomy. From the standpoint of the Tai family, insofar as Ms. Tai’s condition will ultimately affect each member of the family, and hence will have an impact on the family unit as a whole one must always make decisions from the perspective of the family as if it were a single entity. From the standpoint of pragmatism, understanding the unique and complex dynamics of each morally problematic situation might require either the imaginative re-conceptualization of a general principle if it is to be retained as a useful tool in solving ethical problems.

By likening moral deliberation to scientific inquiry Dewey argues that not only are both fallible modes of reasoning but that both are social practices. On this view, the knowledge produced by either is the result of social interaction and the product of community consensus. Dewey claims,

The stuff of belief and proposition is not originated by us. Our intelligence is bound up...with the community of life of which we are a part...Science is an affair of civilization not of individual intellect...We know *with* them...The community without become a forum and tribunal within, a judgment-seat

of charges, assessments and exculpations. (Dewey 1922, 314-315)

The pragmatists maintained that moral judgment is a social practice and a communal affair so that what we hold to be moral 'truths' are really those propositions about which we all agree; moral truth is found through consensus regarding which propositions warrant assertion as being highly probable. From this perspective ethics is itself a social practice and the authority of moral norms comes from the fact that evaluations and judgments previously expressed have withstood critical scrutiny within the community, continue to be verified in different scenarios, and have thus their assertion as propositions have come to be accepted as correct moral claims. Consequently, the authority of ethical norms is begotten from withstanding the test of critical scrutiny neither from the infallibility of the community itself nor from some imagined contract or collective agreement.

Given the pragmatists' belief in the deep sociality of morality and their conception of moral truth as the product of community consensus in a world marked by novelty and change, in pragmatism, morality and democracy become intimately intertwined. In addition to the implementation of scientific modes of inquiry to moral reasoning, the on-going process of consensus building becomes necessary for a community of ethical inquirers to appeal to moral truths and hold shared moral norms insofar as they must be continually verified, and potentially revise, by the entire community of inquirers. Dewey held that "the fundamental fact in social life" is that "the formation of habits of belief, desire and judgment is going on at every instant

under the influence of the conditions set by men's contact, intercourse and associations with one another" (Dewey 1922, 323). Dewey argues that insofar as both "moral judgment and moral responsibility are the work wrought in us by the social environment" "that all morality is social" (Dewey 1922, 316). Further Dewey held that "Since morals is concerned with conduct, it grows out of specific empirical facts" (Dewey 1922, 295) and since all judgments of action "are facts within society" (Dewey 1922, 318) "The question of ought...is a question of better or worse in social affairs" (Dewey 1922, 319).

Insofar as Dewey believed that "Morals is as much a matter of interaction of a person with his social environment as walking is an interaction with the physical environment" (Dewey 1922, 318) and given that Dewey saw the democratic project as a "social idea" in which everyone had a say in the norms that would guide society and which would best govern our social affairs, claiming "the idea [of democracy] remains barren save as it is incarnated in human relationships" (Dewey 1927, 143), Dewey's idea of democracy becomes intimately intertwined with his notions of morality. For Dewey, dialogue, communication and learning are crucial for the success of a democratic forum in that its purpose is to form a common judgment through the free circulation of ideas. Subsequently, dialogue, communication and learning become necessary for the discovery of shared conceptions of moral truth and the enactment of shared ethical norms in our shared democratic society. Dewey claims, "Liberty to think, inquire, discuss,

is central in the whole group of rights which are secured in theory to individuals in a democratic social organization” (Dewey 1932, 358). As the contemporary pragmatic thinker Jeffery has noted, Dewey’s pragmatism sought to explain...how one could reasonably aim to make explicit, and then criticize, the ethical life of one’s culture without claiming to rise above the perspective of a situated committed participant in that culture’s practices” (Stout 2004, 13).

Yet, how do these notions of deliberation, morality, and democracy come to bear upon questions concerning moral diversity and the resolution of moral disagreements that ensues from religious and cultural pluralism? After all, William James is one of the earliest thinkers to use “pluralism” in a philosophical sense (James 1897). In a non-political sense, James held that “nothing includes everything, or dominates everything” and believed that “The pluralistic world is...more like a federal republic than like an empire or a kingdom” (James 1909, 145). Despite his indebtedness to James’s thought, however, unity and commonality lay at the heart of Dewey’s own conception of what it meant for a democratic society to be pluralistic. Dewey saw democracy as a way of life and hence, viewed all of the members of a democratic society as partaking in a united community dedicated to cultivating consensus and a shared culture. Dewey argued,

The way to deal with hyphenism [being Italian-American, Irish-American or Jewish-American, for instance]...is to welcome it, but to welcome it in the sense of extracting from each people its special good, so that all shall surrender into a common fund of wisdom...The dangerous thing is for each factor to isolate itself, to try to live off its past, and thus attempt to impose itself

upon other elements, or, at least, to keep itself intact and thus refuse to accept what other cultures have to offer.... (Dewey 1916, 183-189)

Furthermore, with his optimism regarding democracy's ability to foster intercultural socio-ethical unity, Dewey was an advocate of religious pluralism yet, was suspicious of those form of religion which he saw as promoting the kind of isolationist attitude and or imposition of its own values on others that he worries about in his statement on hyphenism. To this end he looks unfavorably upon, "Religion...[which has] lost itself in cults, dogmas and myths...[and] which finds no way to universalize religion except by imposing its own dogmas and ceremonies upon others..." (Dewey 1922, 330-331). Highlighting the difference between James' and Dewey's visions of pluralism, and allying himself with the former, the pragmatist Horace Kallen, who coined the term "cultural pluralism," notes,

The paramount value in James' philosophic faith was that Freedom for which the word in other contexts is chance, contingency, plurality, novelty, with Reason derivative, operational, a working tool . . . The paramount value in Dewey's philosophic faith is Reason, whose right name is Intelligence and whose work is to liberate by unifying, organizing, controlling the kind of freedom to which James gives primacy (Kallen 1950, 38-39).

Whereas Kallen, following James, emphasized the freedom of religious and cultural communities to retain their unique ways of life, Dewey tended to emphasize unity in the democratic community with the hope that all could share in a single American culture, the norms of which would be established through mutual participation in the community. Ultimately, Dewey

envisioned America as a single community in which ethical consensus could be born of democratic deliberation, which taking its cues for scientific inquiry, could produce a common set of norms that would be open to revision and have input from all. As we will see Dewey's idea have greatly influenced a number of contemporary pragmatists working on issues in bio-medical ethics.

Pragmatism in Biomedical Ethics

While some commentators, such as John Arras, would argue that pragmatism is not entirely new to the field of bioethics, for it held an influential presence in bioethics' formative years (Arras 2001), there has been a recent resurgence in attempting to employ pragmatic thinking as a means of combating the universalism and principlism that came to dominate the field in the 1980s through the 1990s, and which still holds a formidable presence, and to resolve the persistent controversy over finding an adequate middle-ground between universalism and particularism.

Drawing heavily upon the classical American philosophers, these bioethicists have attempted to employ pragmatist style problem solving in the clinic and as a means of solving the problems pluralism presents to an applied field of moral inquiry. Although the contemporary pragmatists in the biomedical-ethical circles have put forth theories as diverse as their pragmatist forefathers, that which unites this camp of bioethicists is their

concern with usefulness, consensus, the employment of the scientific method for testing claims, their avoidance of universal truth-claims, and their promotion of democratic dialogue.

Now, there are those who may be labeled ‘neo-pragmatists’ who have also recently joined the bioethical discourse, and also those who have been referred to as “freestanding pragmatists,” whose influence has been felt more heavily in political theory as opposed to bioethics, *per se*. However, our concern at the present moment shall be with those more ‘classical’ pragmatists, so to speak, insofar as they have had a greater presence in bioethical discourse since the turn of the millennium. The two groups of this more ‘classical’ camp of pragmatists are those, such as Glen McGee – the founder of the *American Journal of Bioethics*, one of the most prestigious bioethics journals – and Jonathan Moreno – a Senior Fellow at the Center for American Progress and Professor of Medical Ethics, History and Sociology of Science at the University of Pennsylvania – whose concern is more theoretical, dealing with principles and analyzing the state of bioethics in general, and those such as Matthew Bacchetta and Joseph Fins, both of whom are practicing physicians, whose concerns are case-based, addressing ways of bringing about resolution to moral dilemmas in particular instances of moral conflict in clinical settings. The former have been referred to as pragmatic bioethicists, while the latter have referred to themselves as clinical pragmatists. Despite this distinction, they possess enough in common for us

to view them as representing a single movement within contemporary bioethics.

Like the contract theorists, the pragmatists recognize the importance of moral diversity, are concerned with the role of consensus and methods for achieving it and, as their name suggests, are concerned primarily with the usefulness of theories, methods, and principles as opposed to their ability to produce or discover absolute truthfulness. Joseph Fins remarks, "As Pragmatists, we are content to seek workable, satisfactory resolutions of pressing moral difficulties without any assurance or guarantee of getting it right" (Fins et al 1998, 40). Like the contract theorists, the pragmatists oppose the postulation of universal principles; however "pragmatists do not entirely eschew principles...principles are taken to have functional, not fundamental value in helping to shape inquiry as it progresses" (Hester 2003, 554). In addition, like the contract theorists, what they offer is a methodology for creating norms rather than positing either a set of norms or an absolute basis upon which moral norms should be grounded.

However, where the pragmatists differ most greatly from the contract theorists is that: 1) the conception of self they posit, if posited at all, is communal rather than monadic; 2) and they take the lived experience of those who will be affected by the bioethical enterprise as their starting point. Rather than beginning with theoretical abstractions they pay a degree of homage to the work of social scientists by attempting to understand the contexts and circumstances of those involved in and affected by the ethical

decision-making process. Whereas the contract theorists do not take the time to comprehend the doctrines and contexts of the other, promoting a contextual understanding of circumstances, as well as doctrines, is a driving force of the pragmatist agenda.

Though some, such as Micah Hester, propose a communal conception of human persons, they refrain from positing an onto-metaphysical account of human nature. Hence, it is dialogue rather than any deep onto-metaphysical conception of the self that is to serve as the basis of producing bioethical decisions; this allows the pragmatists to avoid metaphysics at all costs. In this sense, they present a functionalist camp of bioethical inquiry. “Pragmatists eschew metaphysical, extra-experiential “objects”, but they do not deny objectivity...objectivity is taken in an operative, not ontological, sense” (Hester 2003, 550). For the pragmatist meaning and truth are seen as objectively real yet contextually situated in that they are part of the experiential reality of those involved in unique situations, and operate to produce real effects upon individuals.

Moreover, being pragmatists, they hold a concern with habits, viewing them as norm producing features of selves, their contexts, and their communities. When conjoined with purpose and intelligent foresight, habits can help produce outcomes which are useful for addressing current concerns and can potentially create principles which can help guide future actions without dictating absolutely what ought to be done. Rather than beginning

with abstract theoretical assumptions the pragmatist beings with the lived experiences of the patient and clinician involved in the conflict.

Further, they do not employ means of achieving consensus that are grounded in self-interested deliberative rationality, as the contract theorists do. Rather, they recognize that entire worldviews are at stake in bioethical dilemmas, and hence they promote contextual understanding, attempting to avoid the legalistic bargaining and negotiation of the contract theories.

Elizabeth Cooke writes, “Moreno makes an important distinction between agreement achieved through compromise versus agreement achieved through consensus, where a transformation in understanding takes place for the members (Moreno, 1995, pp.45-53)” (Cooke 2003, 649).

Now, to fully understand Moreno’s distinction, one must realize that the pragmatist’s view of consensus looks very different from that of the contract theorist insofar as it is understood as an ongoing process. Together with an understanding of meaning and truth as contextual and a conception of the individual as communal, consensus itself requires a continued and revisable dialogue constantly in production of fallible results. “[C]onsensus understood pragmatically is not a *thing* to be achieved; it is, instead, a continuum of process-and-outcome known as intelligent inquiry itself” (Hester 2003, 551) and hence, “consensus is not something sought, it is something produced” (Hester 2003, 555). What the pragmatists ask of those involved in the dialogue is that they be open to a transformation in their own perspective as to produce an actual agreement with their interlocutor rather

than a bargained compromise. “[C]linical pragmatism operates through a shared process of investigation, planning, decision-making, and action in which all the stakeholders concerned with the moral problem collaborate to create an ethically appropriate consensus” (Fins 1998, 69). “These methods are thereby democratic and dialectical, and aim to secure agreements among all appropriate stake-holders, as ‘operative, but contingent, conclusions that must be validated through experience’ (Fins et al., 1999, p.32)” (Bellantoni 2003, 617).

Much like the scientific method, the method involved in pragmatic moral inquiry is reliant upon the notions of experiment, fallibility, and falsifiability, in addition to discursive and democratic means. First, there is an initial data collecting phase in which the facts of the situation are ascertained. These include understanding the medical and diagnostic facts; the contextual facts of the parties involved, including societal cultural and familial circumstances and dynamics; and the moral dilemma at hand, including the potential solutions proposed by the different parties. Second, there is a stage of inquiry and testing, in which moral solutions are tested against past outcomes and future aims of the parties involved. This involves discussion, in which one may indeed change one’s point of view, that will produce a mutually agreed upon conclusion which may be revised in that it holds no absolute authority or universalistic privilege.

The methodological suggestions proposed by the bioethical and clinical pragmatists appear to be approaching some sort of middle ground

between principlistic universalism and culturally-sensitive particularism, by retaining the use of principles while simultaneously recognizing, and supporting a comprehension of, context. In addition, this method engages the problematic issue of incorporating a variety of religious voices into bioethical discourse by attempting to place everyone on an equal ground, and encouraging dialogue over debate. Moreover, the proposal of flexible principles meant to serve as guiding norms for particular cases, as opposed to infallible universals, does appear to resolve some of the tensions between respecting religious pluralism while maintaining something that resembles a normative enterprise.

However, when one is addressing the issue of inter-faith and or religio-secular dialogue in bioethics, there appear to be a number of problems with this position. First, while the inclusiveness of this method is laudable, despite the pragmatists' avoidance of metaphysics and ontology, the fact that individuals are in fact faced with metaphysical and ontological dilemmas when presented with bioethical issues seems to be inescapable. Although metaphysical and ontological concerns may appear to be pragmatically useless, questioning such issues as the constituents of personhood, that which demarcates death and defining life will continue to be ultimate concerns of both the religious and secular members of society when faced with ethical dilemmas in medicine. The case of brain death discussed in the introduction, or any case of brain death for that matter, illustrates how metaphysical and ontological issues are evident in particular

cases of biomedical ethical dilemmas, and how such concerns come to bear upon policy and the overarching theoretical dimensions of bioethical inquiry more generally.

Second, despite the pragmatist's openness to context and situation, it appears as if the parties who would be involved are almost required to undergo an alteration in their moral paradigms, which would be a rather unrealistic criterion of any dialogical and multivocal methodology yet, which may easily find its way into the implementation of the pragmatic method. For example, interlocutors may find themselves being required to adopt the view that moral propositions be regarded as hypotheses, which might very well contradict with the accepted tenets of their moral belief systems, or they might find themselves being pressured to alter a given moral position – and accept the validity of another's – solely on the basis that doing so would better enable the establishment of a consensus position.

Although it is also unrealistic to think that every party involved can have their way without concession or compromise, it seems too idealistic and hopeful to build the notion of an alteration of moral paradigms into the very structure of the methodology itself, however congenial this might be to pluralism and to resolving the issues at hand. At first glance it appears that asking individuals to come to an understanding of the contexts of others is necessary. However, positing paradigmatic transformation begotten through dialogue does not necessarily need to be part of the fabric of a bioethical methodology for it to be respectful of pluralism. Also, alterations in

worldviews do not seem necessary for bioethical theory to be conducive to responding to the variety of beliefs arising from a religiously pluralistic society.

Third, it might be argued that the pragmatists' ethical and procedural proposals are overly reliant upon scientific methodology and consequently are laden with the values inherent in such a paradigm. At least some appear to neglect the insights of contemporary philosophers of science, such as Thomas Kuhn², who have exposed the value-laden and metaphysically driven nature of the so-called 'value free,' 'culturally neutral,' and 'objective' perspectives of scientific paradigms. Hence, to treat the ethical dilemmas which arise in the biomedical sciences with methodological prescriptions that stem from such sciences themselves may not be the best means of embracing the paradigmatic pluralism which is presented to us by a religiously, culturally, and morally diverse population.

To illustrate this point, take Fox's discussion of a case presented in works of writer Anne Fadiman and psychiatrist and medical anthropologist Arthur Kleinmann. A severely ill Hmong girl enters into a clinic. Her illness is believed by her parents to be the result of 'soul loss' caused by a malicious spirit, and they wish to treat her with traditional herbs and ceremonial rituals. Conversely, the doctors have diagnosed her with epilepsy and want to administer pharmacotherapy following standard procedure. Now, the issue at hand is not whether the girl is actually an epileptic or possessed by a

² For a more in depth analysis of these issues see Kuhn, *Scientific Revolutions*.

demonic spirit, or both. Rather the issue which Kleinmann raises, and which both Fox and Fadimann have duly noted, is that the physicians are oblivious to their own immersion in a culture, namely, the culture of their profession. Kleinmann observes that, “As powerful an influence as the culture of the Hmong patient and her family is on this case, the culture of biomedicine is equally powerful. If you can’t see that your own culture has its own set of interests, emotions, and biases, how can you expect to deal successfully with someone else’s culture?”³ (Fox 2005, 1316).

Just as the doctor in Kleinmann’s case overlooked his own biomedical culture, those implementing the pragmatic method in medical contexts may easily overlook the fact that this method draws upon and adopts concepts stemming from the scientific culture or context. This could lead to a situation in which the bioethicists who are attempting to respect pluralism by understanding the contexts of others fail to take their own contexts into consideration, which may hamper their ability to ameliorate the tensions that they are attempting to quell. The pragmatists’ confidence in employing scientific concepts in ethics may lead to the de-contextualization of such concepts in actual clinical situations and, hence, may result in a situation in which the mindset of the ethicist resembles that of the doctor in Kleinmann’s case study.

³ A concern that might be raised in regard to such a case is whether or not the physician is able to prescribe medications once she has come to recognize her own immersion in a biomedical culture. In response, a physician could plausibly allow the family of a Hmong patient to administer herbs and traditional remedies in conjunction with her own administration of pharmaceuticals so long as she has ensured that the herbs administered will not interact negatively with the medications she has prescribed. In this way a compromise situation could be possible.

If, as Kleinmann notes, we cannot expect such a clinician to successfully deal with another's culture, how can we expect such an ethicist to be able to adequately deal with the ethical problems associated with pluralism? Patients coming from a religious context may perceive the pragmatists' employment of scientific notions as an instance of science dominating ethics and may have their reservations about such a method due to a potential fear of the possibility of the marginalization of their own paradigm. If a patient's religious beliefs prevent that patient from accepting the terms of the dialogue, how can we expect that patient to take part in the dialogue and hence be a part of the process of ethical deliberation? Hence, given such potential problems, utilizing concepts which are a product of the scientific paradigm might not be the most effective means of facilitating a constructive dialogue between religious and scientific perspectives.

Furthermore, in the case just presented, not only do we discover that different paradigms of thought come to influence the perspectives of interlocutors coming into moral conflict with one another and that all such paradigms must be recognized as coming to bear upon the situations at hand, we also see that metaphysical and ontological concerns keep cropping up and are hardly as avoidable a feature of bioethical inquiry as the clinical and bioethical pragmatists would like them to be. We may not want to have metaphysical or ontological discussions per se, however, issues of this sort continue to emerge in medical contexts and continue to create ethical

problems that may not be adequately resolved unless we are willing to address the issues which themselves served as a catalyst to the problem.

In other words, rather than avoiding metaphysics all together, we must ask ourselves if we can engage metaphysical issues without falling into metaphysical discussions. By eschewing metaphysics pragmatists overlook issues that are at times integral elements of biomedical ethical problems. Thus, the pragmatists' partial reliance upon the conceptual framework of the scientific paradigm in ethical decision-making and their desire to refrain from raising metaphysical issues in the discussions they wish to hold may be a hindrance upon their methodology's ability to adequately come to terms with the unique problems and divergent paradigms that are present in bioethical dilemmas involving religious and moral diversity and disagreement.

As will become evident as we proceed, despite its flaws there are indeed merits to employing insights from pragmatism in our bioethical methodology. They include: the pragmatists' promotion of a discursive ethics whose aim is to arrive at a revisable consensus; the pragmatist's openness to pluralism on both philosophical and social levels; their recognition of the role that community and sociality play in shaping an individual's self-identity, beliefs and values; the pragmatist's belief that personal existential experience is relevant to ethical deliberation; and the pragmatic willingness to take the details of context and the particulars of circumstances into consideration when assessing the justifiability of truth-

claims. Additionally, when compared to contract theory, two of the greatest benefits of implementing pragmatist thinking in a pluralistic methodology are: the notion of consensus as an on-going process rather than a single event and the emphasis placed upon the contextual and inter-relational aspects of moral belief and ethical behavior.

* A few of the ideas expressed in this chapter have appeared in: Chris Durante, "Bioethics in a Pluralistic Society: bioethical methodology in lieu of moral diversity," *Medicine, Healthcare & Philosophy* vol. 12 no. 1(2009): 35-47.

Chapter 5
The Philosophical Foundations
of
Pragmatic Perspectivism*

Having explored a few attempts to reconcile the concerns of universalists with those of particularists and to come to terms with pluralism in public bioethics, we have discovered that tensions still exist and there are many problematic features of these prior attempts at forging a pluralistic bioethics. Although we pin-pointed a number of flaws with the methods of the bioethical and clinical pragmatists, the modest neo-pragmatism of Jeffrey Stout may speak to these problems and be of assistance in the creation of a pluralistic bioethics. Hence, while I will not be employing his theory as the ultimate solution to the problems associated with religio-cultural pluralism in bioethics, I would like to introduce some aspects of Stout's theorizing, demonstrate their ability to assist in our endeavor, and, subsequently, apply them to the task at hand.

What we have discovered in our discussion of religious pluralism in bioethics thus far is that it entails attempting to resolve and respect differences amongst a great deal of divergent moral, metaphysical, and ontological perspectives while simultaneously questing for some common ground and shared guidelines for ethical theorizing in the biomedical sciences. Thus, in addition to our adoption of some of Stout's modest

pragmatic conceptual innovations, I would also like to introduce, adopt, and adapt some of the theoretical insights of Jose Ortega y Gasset's perspectivism; the methodological suggestions of Thomas Lewis and Aaron Stalnaker, scholars of comparative religion; the value pluralism of John Gray; as well as a strategy for conflict resolution proposed by David Hollenbach, a human rights theorist. It will be demonstrated how a synthesis of the insights of these respective theorists, may be employed in the creation of a more pluralistic bioethics.

Moral Points of View & Perspectival Communities:

Jose Ortega y Gasset has proposed a quasi-existential notion of self and reality and a correlative epistemology grounded in the perceptions, point of view, and the socio-historical context of the individual. His most famous postulate is "Yo soy yo y mi circunstancias," or "I am I and my circumstances," which, by postulating a deep inter-relatedness between the self and its context, implies that the identity of an individual person is comprised of one's physicality and one's situated-ness in time, place, and ideas and that an individual life – be it the life of a single person or a particular group of people – is dependent upon its situated-ness in circumstance and the perspectives formed in relation to those circumstances for its character (Ortega 1941; 1957). According to Ortega, all one has as

one's individual reality is the socio-historical and epistemic circumstances in which one has found oneself (Ortega 1941). Hence one can only make sense of oneself and reality through epistemic perception and inquiry, which are constantly filtered through one's own situational and contextual circumstances. Insofar as each individual's perspective on reality is affected by the contextual and situational nature of the socio-historical world in which one exists and with which one interacts, one's perspective is constitutive of one's experiential reality and defines the life of that individual. Thus, if each person's reality is perspectival, for Ortega, reality itself is the conglomerate of all of these individual instances of the real.

Ortega's perspectivism claims that truth is "perspectival," by which Ortega means that truth is dependent upon situational perception and contextual understanding. Insofar as the truth of each person's lived reality is to be found within her perspective and the truth regarding the lived reality of collective of persons can only be discovered by analyzing those points of view the group shares, Ortega concludes that the truth of reality itself is to be found where there is a convergence of perspectives. However, despite its deep concern with individual perspectives we must not mistake this for a subjectivist epistemology. Ortega has argued that this is not a subjectivism insofar as he, like Stout (whose pragmatism will be addressed in greater detail in the next section), has postulated that an objective truth does indeed exist, albeit an absolute truth that is simultaneously inextricably bound to individuals yet which cannot be reduced to a single individual perspective, be

that perspective personal or collective. As will become more evident as we proceed, the discovery of truth is impossible without inquiry of a comparative nature.

As will become evident, the aims of Ortega's perspectivism are comparable to those of Stout's modest pragmatism insofar as Ortega attempts to overcome both a relativistic skepticism, which reduces truth to a subjective category or as the product of a circumstantial social-construct, and a rationalist universalism founded upon logic, which often fail to incorporate the subject herself and her contextual circumstances into proposed modes of understanding truth. Ortega argues that human life is always simultaneously personal yet highly dependent on the alterity of circumstances, claiming that life

consists in man's finding himself, without knowing how or why, obliged...always to be doing something in a particular circumstance – which we shall call the circumstantiality of life, or the fact that man's life is lived in view of circumstances (Ortega 1957, 58).

In accord with our aforementioned discussion of Taylor's notion of "social imaginaries" and Stout's idea of "epistemic contexts," previously discussed in our first chapter, Ortega claims, "that each life is submerged in a specific environment of a collective life...[which has its own] repertory of convictions, of which, whether he likes it or not, the individual must take account" (Ortega 1958, 39), going onto to argue that "the greater portion of my world, of my beliefs, arises out of that collective repertory, and coincides with its contents" (Ortega 1958, 40). For Ortega the role that a particular

group's (be that group a religious tradition, cultural community, generational group, or members of a given historical period) system of beliefs and values plays in determining that which one considers "true" is highly influential.

Quoting Husserl, Ortega writes, "'The meaning of the term 'man' implies a reciprocal existence of one to the other, hence *a community of men...*'" (Ortega 1957, 104) and goes on to argue that insofar as all "living is co-living, *living together*," which entail intimate relations, and the reciprocal exchange of perspectives, we establish communities, which being situated in their own unique historical, geographical, and epistemic locations, have a unique point of view and a perspective different from all other communities (Ortega 1957). The unique vantage point and collective perspective of each group is the mutually agreed upon beliefs, shared languages, and common visions of their shared world. In a rather Gadamerian fashion, Ortega argues that

[I]t is my sociality or social relation with other men that makes possible the appearance, between them and me, of something like a common and objective world....the part of my world that first appears to me is the group of men among whom I am born and begin to live...that is, a human world through which and influenced by which the rest of the world appears to me.
(Ortega 1957, 108-109)

Therefore, the individual is inescapably bound to her circumstances yet, insofar as each set of circumstances provides multiple possibilities for action and re-conceptualization Ortega's is not a deterministic philosophy. Ortega claims, "life is the fact that...man...finds himself having to be in circumstance or world. But our being as 'being in circumstance' is not still

and simply passive. To be, that is, to continue being, it has always to be doing something, but what it has to do is not imposed on it or predetermined for it.... circumstance is never one-sided, it always has several, often many sides” (Ortega 1957, 44-45). Such a view foreshadows the claims of Jeffrey Stout’s modest pragmatism (which we will subsequently explore in greater detail), who claims that we are all immersed in a certain set of “epistemic circumstances,” or reason within a particular “epistemic context,” writing:

We begin already immersed in the assumptions and precedents of a tradition, whether religious or secular, and we revise these assumptions and set new precedents as we learn more about ourselves and our world. Our starting point is not so much arbitrary as it is inescapable: we are who we are, the heirs of this tradition as opposed to that one, born into an epoch rather than another, our intuitions shaped by the grammar of our native tongue. (Stout 2001, 120)

Stout’s notion of “epistemic circumstances,” fits nicely with Ortega’s position regarding the circumstantiality of perspectives and provides us with a succinct way of referring to this notion. The point here, much like Charles Taylor’s aforementioned points about authenticity being contingent upon otherness and moral beliefs being influenced by a “social imaginary,” is that the community that provides one with her set of epistemic circumstances plays an integral role in the formation of her moral perspective and provide the foundations upon which the structure of her mode of moral reasoning is constructed.

Moreover, to a large extent Ortega’s view echoes that of the pragmatist George Herbert Mead, who described the social group as bearing

a common perspective as the “generalized other,” arguing that as an individual acquires language she develops the capacity to internalize the perspective of others claiming, “The organized community or social group...may be called ‘the generalized other.’ The attitude of the generalized other is the attitude of the whole community...” (Mead 1934, 154). Although Mead did not discuss “moral languages” per se, we could venture to argue that one acquires one’s moral language as one adopts and internalizes the perspective of the community, so that what emerges from this communal perspective is the existence of, what Tristram Engelhardt has called, a shared moral background and basic moral understanding that necessarily shapes and influences the individual’s mode of reasoning. As Mead argued, “The self-conscious human individual, then, takes or assumes the organized social attitudes of the given social group or community to which he belongs...[by which] he governs his own conduct accordingly” (Mead 1934, 156).

Further developing Mead’s ideas in such a way as to bring them into direct correlation with those of Ortega (though this is not her intention), the contemporary pragmatist Beth Singer, working in bioethics and political philosophy, has claimed “a community is any collection of persons who, usually because of some common condition or parallel experience, share a perspective, a point of view or attitude that condition the way they respond to things or situation of some kind” (Singer, 1999, 61), which she describes as a “perspectival community.” Singer’s notion of a community ties well with Ortega’s notion of the person and his perspectival epistemology. If we recall,

Ortega's is not a subjectivist philosophy¹ in that it is not simply "I" who am my perspective but my circumstances as well. Hence, if we understand such circumstances to include socio-historical, religio-cultural, and lingua-cultural contexts, then we can come to understand how it is possible for both individuals and communities to share common moral and onto-metaphysical perspectives and hold common ethical points of view. Furthermore, when communities share not only perspectives but also sets of norms, Beth Singer refers to them as "normative communities" (Singer 1999, 62). Consequently, when discussing moral traditions we might think of them in terms of sharing a common moral perspective, which, given the inherent normativity of morality, we could say are normative perspectival communities, or moral perspectival communities.

Also placing himself in dialogue with Mead and raising a similar point, Charles Taylor has argued, "Reasoning in moral matters is always reasoning with somebody" (Taylor 1991, 31), and taking "language" in the broadest sense of the term to include moral speech, claims, "No one acquires the languages needed for self-definition on their own....the contribution of significant others, even when it occurs at the beginning of our lives, continues throughout" (Taylor 1991, 33-34). As Stout duly notes, "Norms do not arise because solitary individuals, already in full possession of practical rationality, commit themselves to a social contract. They emerge out of the

¹ By which I am referring to brands of philosophical subjectivism that argue against the existence of objective truths and which instead postulate a kind of relativism that holds that all moral truth claims are simply expressions of individual attitudes.

mutually recognitive activities through which a people comes to share a culture. Ethical norms are instituted...by a form of ethical life (which shapes the subjectivity and rationality of the individuals who participate in it)” (Stout 2004, 272-273). Therefore, when a particular collective shares a moral outlook, and is a normative perspectival community, we might say that it shares a common moral point of view, or ethical perspective, that is expressed in a *common moral language*.

Although commonality of perspective is integral to shared moral languages, to the collectives that speak them and to the traditions that embody them, it is crucial to note that none of this is to deny the uniqueness of individual perspectives nor is it to deny the fact that those speaking the same moral language do not always find themselves in agreement with one another. Stout makes a statement that I believe Ortega would have readily accepted, writing:

Ideally, it [an ethical community] also invites its members to resist their own absorption into the social mass and to cultivate whatever virtues are required to foster the development of novel forms of action, speech, association, and selfhood. Whitman calls this the “principle of individuality.” [An] ethical community is aware of itself as a community of individuals: each of whom has evaluating to do that no one else can do on his or her behalf.... (Stout 2004, 282).

Stout’s ideas here resemble those of Ortega insofar as both thinkers view our individuality as being intimately bound with others yet, this does not prevent each individual from having to engage the world, make evaluations and draw conclusions on her own, thereby formulating her own unique perspective. Ortega points out that “life is untransferable,” claiming that each man has to

live his own life and that “no one can take over his task of living for him...”

(Ortega 1957, 46). He argues that despite our deep sociality each person’s life is non-transferable, explaining

I cannot hand over to another a bit of my toothache as that he can suffer in my place...nor can I charge another to think for me the thoughts which I must think; that is to say, I myself must hold my own convictions, I have to convince myself; and I cannot transfer to my neighbor the task of convincing himself in my place.... (Ortega 1958, 76)

Ortega calls our attention to importance that individuality plays in the life of each person yet attempts to do so in such a way that does not neglects each person’s deep sociality and the communal nature of life. In accord with Ortega’s non-atomistic conception of persons and society Stout, commenting on his own view of individuality, explains that, “this conception of individuality is not based on an atomistic view of society, as in liberalism. Individuality is here taken to be something that can happen only in relationship to others. It is a social phenomenon.... In other words, individuality isn't everything it's cracked down to be. And it can't be dismissed simply because atomism is bad” (Stout 2009, pers. comm.) Elsewhere, discussing the non-transferability of life, Ortega writes, “My life, then is constant and inescapable responsibility to myself. What I do... what I think, feel, want – must make sense, and good sense, to me...life is always personal, circumstantial, untransferable, and responsible” (Ortega 1957, 58),

To this end, Ortega claims that we are almost forced to be free in so far as all circumstances present us with a choice for action and inquiry and hence, each of us must always be choosing how to act and determining what

precisely it is that we believe in any given situation (Ortega 1957). Ortega wrote,

Each individual before doing anything must decide for himself and at his own risk what he is going to do. But this decision is impossible unless one possesses certain convictions concerning the nature of things around one, the nature of other men, of oneself. Only in light of such convictions can one prefer one act to another, can one, in short, live. (Ortega 1941, 166).

Ortega claims that “Man, whether he wants to or not, always subscribes to some genuine belief of his own concerning the things that make up his environment” (Ortega 1958, 111) and “that man must ever be grounded on some belief, and that the structure of his life will depend primordially on the beliefs on which he is grounded” (Ortega 1941, 166).

Consequently, Ortega argues that despite the fact that living always implies a mutually reciprocal living-together, in which both the inheritance of beliefs, values and modes of thinking and the constant exchange of ideas plays an integral role, each individual must be personally convinced of his beliefs in order for them to be considered sincere convictions, which is why Ortega held that ““The individual point of view seems to me the only point of view from which one can look at the world in its truth...”” (Ouimette 1982, 77). Rather than interpret this statement as a deeply subjectivist claim regarding the nature of epistemic reality per se, we ought to bear in mind that Ortega is highly concerned with the experiential dimension of lived reality and hence, is referring to the ways in which individuals come to hold beliefs as being true as opposed to making a statement regarding the nature of “Truth” in and of itself. Ortega uses “truth” here to imply sincerity of

belief, so that what he is claiming is that it is only sincerely held beliefs that one can consider 'true' in the first place. Hence, for any person to genuinely hold a belief as true, it is not merely enough that those with whom she shares a moral point of view hold a certain belief to be true, but she herself must also be convinced of the truth of that view.

Despite belonging to the same moral community and sharing a common moral language, members of such communities may, and often do, disagree, especially when it comes to certain ethical issues that have emerged from, or which address, novel technologies not formerly addressed by the tradition or which the community's traditional sources of moral authority have not previously addressed. When it comes to controversial issues in bioethics, such as determining death, stem cell research and organ donation, for instance, we often find disagreement not only amongst the individuals coming from distinct moral communities but also amongst members of the same moral communities.

Although they might share particular values, common beliefs, modes of reasoning and adhere to the same normative systems, the members of a particular community might not hold a united perspective on such issues. As Ortega argued, each individual's point of view emerges from a particular set of circumstances that imbue the individual's perspective with a unique interpretive lens. Hence, despite the commonality of a group's epistemic, moral and hermeneutic horizon each member will gaze upon this shared horizon from a unique set of circumstances that can very well lead to a

different interpretation of scientific evidence, a distinct moral evaluation of situations, and ultimately a disagreement. Working with Mead's notions of self and other, Beth Singer, mentioned previously, reminds us that, "A community is not a collection of persons with identical outlooks or behavioral patterns. The notion of community is one of sameness-in-difference, of partial commonality of perspective among persons whose perspectives as individuals also include other perspectives" (Singer 1999, 83). With this in mind, the method of discourse we implement in public bioethical deliberations ought to be cautious not to flatten the perspectives of religious and cultural, or other moral, communities by homogenizing them for the purposes of simplicity or ease of understanding².

Also relevant to forging a discursive method of public bioethics for a pluralistic society, according to Marias, Ortega believes "there is a structure of the real, which only presents itself perspectively, which needs to be integrated from multiple terms or points of view..." (Marias 1970, 375). Ortega argues that it is only by appealing to and analyzing a number of own personal convictions and the personal perspectives of other individuals that we can begin to understand one another and subsequently, the truth of reality itself, so that one's confidence in one's convictions and consequently, one's sincerity in the beliefs she holds and expresses is strengthened by her

² We will address this issue in greater detail in the chapters to come. For now however, suffice it to say that our methodology is in no way attempting to reduce the nuances and complexities of any moral tradition to a simple set of ideas nor is it attempting to make broad generalizations as to deny that different members of a given tradition can and do hold unique ethical perspectives and moral points of view on a variety of issues.

engagement with the beliefs of others in her community. Hence, Ortega maintains that it is imperative to take a variety of distinct perspectives into account when considering “the truth of the matter” on a given issue insofar as each point of view is a constitutive element of that truth itself. “Stated more strictly: *my reality* is also reality; it is a part, or, better still, *a constitutive ingredient of reality*” (Marias 1970, 379). Insofar as we immersed in a community of perspectival exchange and our convictions are necessarily influenced by and formed in relation with the beliefs of other persons, taking the perspectives of others from a different community into consideration is not a behavior foreign to the human condition and is arguably necessary to acquire an accurate conception of social reality. Again, Ortega’s view parallels that of Mead’s, who describes being reasonable in terms “of conduct in which the individual puts himself in the attitude of the whole group to which he belongs” (Mead 1934, 334)³. Consequently, it may be argued that to be “reasonable” is to be willing to take a variety of perspectives – both those that resemble one’s own and those which are distinct – into consideration in our deliberations.

Consequently, Ortega borrows Husserl's term “compresence,” to describe how when presented with any given object, idea, or situation, there exist many points of view on the matter. Insofar as each point of view emerged from a particular collective repertory of beliefs and values and is

³To a certain degree these ideas resemble what occurs in Rawls’ reflective equilibrium however, they go one step further by not restricting the types of views that one is allowed to share and by not preventing persons from familiarizing themselves with the non-moral views that are to be found within the comprehensive doctrines of others.

sincerely held by its individual bearer, each perspective is equally valid as an authentic expression of that individual's convictions and the nexus of beliefs she has inherited (Ortega 1957). Commenting on Ortega's philosophy Victor Ouimette writes,

[Ortega] recognized that for each man that which is apparently the same is in fact different and that there are as many realities as there are points of view... and that each of these perspectives is an integral component of reality. (Ouimette 1982, 47-57)

This idea becomes applicable when thinking of the 'whole truth' regarding precisely what it is that each interlocutor in a discursive exchange believes; not regarding the truth of those beliefs but an accurate description of the nature of the beliefs they happen to hold.

Ortega argues that if it is objective truth we seek, the closest we will come is discovering the points of convergence amongst a myriad of distinct perspectives. In a similar vein, Stout claims,

The single true morality could only be the set of all true fully interpreted moral sentences in all possible moral languages. The whole moral truth is singular in the sense that an omniscient being who accepted each and every sentence in that infinite set would not embrace a contradiction....the view that there is a single true morality (consisting of all the true proposition in all the possible moral languages), does not conflict with the idea that the actual moral languages are in fact quite various. (Stout 2001, 97)

Taking note of the shared position of these claims, we can lessen their epistemic implications by suggesting that in a public discourse the closet we will come to an ethical consensus that fairly and adequately represents the public perspective is to discover the point of convergence of various views

and to understand that the method must close itself off from attempts to delineate precisely what the single true morality is. This is not however, to suggest that moral truth somehow does not exist. Rather, pragmatic perspectivism acknowledges the existence of objective truth yet does not propose how one is able to acquire such knowledge. Furthermore, simply because we do not deny the existence of a single morality or moral truth is no reason why a public discursive forum is the appropriate place in which to discover it or enact it once it is believed to be discovered.

Additionally, when engaging in ethical discourse with other traditions of moral thought, our interlocutors will necessarily view each other as representatives of society's various moral traditions and communities. Hence, each representative, so to speak, should be mindful of the internal plurality of each moral community, attempting to be fair in her portrayal of her own tradition's perspectives either by acknowledging certain key distinction or by specifying the context and circumstances from which she is offering her view. Further, each interlocutor, to the best of her ability, ought to bear in mind that they are discursively engaged with a particular person speaking from a particular set of circumstances and, who is offering a perspective that is heavily influence by a community's shared perspective yet, which will always be interpreted from a unique point of view.

In sum, adopting this sort of perspectivist foundation for a bioethical method does not pose a threat to perspectives that believe in an absolute,

singular, and immutable moral truth⁴. *This variety of perspectivism does not rule out the possibility of the existence of objective truth*, thereby avoiding the slide into social constructivism or a nihilistic denial of moral objectivity. *To claim that all ideas, and consequently notions of what is true pass through a specific point of view and are always being interpreted from the vantage point of a particular perspective is not the same as maintaining that truth is simply a social construct or even more severe, that it does not exist.* As the philosopher John Searle has noted, the perspectivist's claim that reality is always known from a particular point of view is valid stating, "perspectivism, so defined, is not inconsistent with either realism or the doctrine of epistemic objectivity... (Searle 1998, 21).

As will become more evident as we proceed our discussion of the existence of unique moral perspectives and diverse moral languages need not lead us to a denial of the existence of moral truth. Hence, concerning the creation of a discursive method of achieving bioethical consensus, none of our potential interlocutors will be required to abandon their own conceptions of truth – be they relativists or realists – in order to join the conversation. What it does mean however, is that if we are to have an inter-perspectival, multicultural, and religiously diverse conversation concerning issues in bioethics we must first make sense of the nature of the interaction in which these moral languages can engage in order to understand how such a discussion is even possible.

⁴ As does contractarianism.

Moral Languages & Mutual Understanding

Commenting on the current state of bioethics and its perennial quest for consensus on a common moral framework, Tristram Engelhardt asks, “is our moral condition not exactly this: an irresolvable plurality of moral understandings?” arguing that, “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, rationally principled resolution” (Engelhardt 2000, xi).

He claims,

To identify an account as normative, one must already possess a view of what is morally relevant in any appeal to fact, to nature, to human sensibilities, to human sympathies, or to human moral rationality. To discover a moral framework one can share with others, one must already share a basic background moral understanding. One must already possess a guiding moral sense, understanding, or narrative. (Engelhardt 2000, 35)

We might wish to think of the background understandings that guide one’s moral thinking as, what Jeffrey Stout calls, an “epistemic context” and the different ways in which individuals speak about moral topics as, what Stout refers to as, “moral languages;” both of which are molded and shaped by the socio-historical, religious and cultural traditions and communities individuals belong to and in which they developed their modes of moral

reasoning. Our efforts to cope with and potentially resolve the problems associated with moral diversity in bioethics could benefit greatly from Stout's work on moral languages. Also, this could potentially help put an end to what Engelhardt refers to as the problem of interlocutors speaking past one another rather than engaging in fruitful discussion.

Borrowing the philosopher, R.M. Hare's concept of the language of morality, Stout argues that what pluralism has presented us with is an array of diverse moral languages, each which express the concepts, values, beliefs and sentiments of a unique moral tradition and which is utilized by the members of the community that upholds it. Historically, different societies and eras have used distinct moral languages, which at first sight, seem to employ completely distinct and incompatible concepts. The example Stout offers is the *prima facie* differences to be found between a traditional Mediterranean ethic of honor, loyalty, role-specific virtue, and social obligation and Modernist human rights discourse that involves talk of rights, respect for persons, and individual freedoms and liberties (Stout 2001, 62). Stout claims that we can distinguish moral languages from one another by the types of conceptual candidates for truth and falsehood that their words refer to. Stout writes,

Let us say that moral languages, in the relevant sense, can be individuated by reference to the sets of candidates for truth and falsehood they make available. Not that moral languages are merely sets of candidates for truth and falsehood: we do many things with our moral vocabularies, and entertaining candidates for truth and falsehood is only one of them... My point is rather to *individuate* moral languages by references to such candidates...What counts as a significant difference in the

ways words are used? Any difference that substantially alters what propositions are up for grabs as true-or-false....What matters, philosophically, is that there are clear cases in which it clearly makes sense to speak of distinct moral languages...these will be cases in which two groups differ morally not primarily because one group denies propositions the other asserts but rather because their respective forms of discourse put forth different possibilities to disagree over. (Stout 2001, 68-69)

Despite maintaining that different moral languages will at times employ highly distinct concepts, that they refer to as “moral,” and hence, open up different possibilities for the types of moral reflection that can occur, he claims that there are indeed limits to such conceptual contrast (Stout 2004, 70), especially when dealing with an actual moral disagreement over a particular issue. As the philosopher Donald Davidson, whom Stout draws upon, claims, “A dispute requires that there be some proposition, its content shared by the disputants, about which opinions differ” (Davidson 2004, 42). Now, all this is to say is “If you start by interpreting some other society as differing from yours *all the way down* on what is right or good and what is not, you’ll have trouble saying why the disagreement is about rightness or goodness after all” (Stout 2001, 20). This claim, however, should not be taken to imply that we can discover some set of shared ‘universal’ principles amongst different religio-cultural or socio-historical communities. Rather, all that this means is that we must agree that we are disputing a “moral” concept in order to have a genuinely moral disagreement. In response to Engelhardt’s aforementioned statement, an ethical dispute requires concurrence on the moral relevance of the proposition or concept being disputed.

Calling our attention to Charles Taylor's work on comparing and understanding deep cultural differences Stout mentions Taylor's idea of discovering a "language of perspicuous contrast," arguing that we need to simultaneously acknowledge deep differences while recognizing distinct modes of "moral discourse as members of the same family, instances of the same kind of thing" (Stout 2001, 71). Taylor claims that when we encounter a deep cultural difference between the tradition of another and that of our own "There may be nothing quite corresponding to it in our own society. We have to understand it in its own terms; and it is the height of ethnocentric gaucherie to judge it in terms of one of our practices" (Taylor 1985, 17-128). Taylor argues that in any attempt to adequately come to grips with and develop an understanding of the foreign concepts and practices of another cultural – or religious, for that matter – tradition we need a "language of perspicuous contrast" that he describes as "a language which enables us to give an account of the procedures of both societies in terms of the same cluster of possibilities" (Taylor 1985, 129). Taylor further explains this language of perspicuous contrast⁵ claiming,

It allows for the fact that their range of activities may be crucially different from ours, that they may have activities [or concepts] which have no correspondent in ours...But unlike the incorrigibility view, it does not just accept that their particular activities will be incommensurable with ours...it searches for a language of perspicuous contrast in which we can understand their practices in relation to ours. (Taylor 1985, 129)

⁵ We can take talk of a "language of perspicuous contrast" to imply a call for an openness of language rather than a request for some sort of shared language.

Likening Taylor's discussion of how best to understand differences between cultural practices, Stout refers to the work of philosopher Donald Davidson arguing that when attempting to understand deep differences amongst moral languages "this inquiry is possible only within some moral language or another" (Stout 2001, 71), and as Davidson himself has argued,

We make others intelligible by interpreting their beliefs and other attitudes; interpreting means assigning propositions (our own sentences) to their propositional attitudes. Since the sentences we have available for assignment are identified by their role in our own [conceptual] economies, a correct interpretation of someone else must make the objects of his or her attitudes the objects of corresponding attitudes of our own. (Davidson 2004, 71).

Hence, although it is impossible to escape the confines of our own perspective and the influence our own moral languages and correlative modes of moral reasoning, "The more perspicuous the contrasts and comparison it makes possible, the better" (Stout 2001, 71), because in this way we can acknowledge that despite deep differences we must be talking about the same types of things and try to avoid misunderstandings by interpreting the other's concepts correctly.

As Hans-Georg Gadamer has asked, "Is it not, in fact, the case that every misunderstanding presupposes a 'deep common accord?'" (Gadamer 1980, 131). "Yes," would be Davidson's reply, subsequently arguing that, "understanding depends on finding common ground. Given enough common ground, we can understand and explain differences, we can criticize, compare, and persuade. The main thing is that finding the common ground is

not subsequent to understanding, but a condition of it" (Davidson 2004, 51).

As Stout points out, "to say that another society has a moral language is to say that it has views on at least some of the topics we denominate as moral" (Stout 2001, 69).

In order to fully understand the concepts being employed by someone speaking a different moral language we must come to understand her epistemic context and be able to explain how the concepts and words she employs relate to the other concepts found in the context of her broader system of values and network of beliefs. As Davidson claims, "We understand a person when we are able to explain his or her actions in terms of intentions, and the intentions in terms of beliefs and evaluative attitudes. When the behavior to be explained is verbal, we must (it follows) be able to understand his or her words" (Davidson 2004, 24). Hence, in order to understand another moral language interlocutors must be engaged in some sort of process of translating the other's moral language into one's own. As Stout notes, "Translation relates two languages to each other, not two languages to some third thing, a language-independent meaning or proposition" (Stout 2001, 63) and therefore, we must attempt to make our own moral languages as perspicuous as possible by being as open and candid about how and why each of us beliefs what we do⁶.

⁶ It is crucial to note, that this process of translation is not being suggested as a requirement of ethical discourse in the sense of a prerequisite for entry. Unlike demands for a common mode of reasoning that would have one translate one's religious language into a secular, or public, language prior to, and as a requirement of the discourse itself, this process of translation is an inherent part of our cognitive functioning when we attempt to understand the moral language of another. Again, unlike any demand for public reason, or the use of 'neutral language' this process

If our ultimate aim is consensus, our penultimate goal must be to foster mutual understanding, which is only possible if we recognize that our own moral languages can be used to in such a manner as to assist the other in her comprehending our concepts and vice versa. As the well-known philosopher of mind and cognitive scientist Andy Clark has observed, “The successful use of language as a medium of moral cooperation thus requires...an additional and special kind of knowing....knowing how to use language so as to convey to others what they need to know to facilitate mutual perspective taking and collaborative problem-solving” (Clark 1996, 123).

This process of mutual exchange and translation need not be thought of as a reduction of one language to another nor as some translation into a third common vernacular, such as the language of public reason. All it requires is that we come to recognize that we share enough in common to say that we both agree that a certain set of topics can be rightfully regarded as being “moral.” Here mutual translation entails a reciprocity of explanation so that each interlocutor will be as forthcoming as possible about her own perspective. In an attempt to increase understanding an interlocutor will speak in such a way as to better enable another to understand her position by searching for the best means of explaining her point of view. In an attempt to better comprehend the other, she might have to temporarily translate his

of translation presupposes that each interlocutor will speak in his or her own distinct moral language, bringing her own unique moral vocabulary and correlative concepts into the conversation. It is not a matter of each interlocutor ‘translating’ her own vocabulary into some imagined ‘neutral’ language before she speaks, but is a mutual endeavor.

concepts in to terms in her own moral vocabulary in order to fully grasp his position.

As Stout explains, “A language possesses the conceptual resources for translating a fragment of another if the established patterns of usage among members of the two groups are similar enough to allow us to say that ‘so-and-so’ in one language means ‘such-and-such’ in the other” (Stout 2001, 63). Yet, we might ask, “what about those cases in which a ‘moral’ concept of another has no correspondent concept within our own conceptual framework?” “Does this not indicate untranslatability?” Speaking to this issue Stout argues,

untranslatability may be overcome by hermeneutical innovation...cultures are not, simply by virtue of conceptual diversity, hermeneutically sealed. Nothing in the nature of conceptual diversity itself prevent one culture from developing the means for expressing an alien culture’s moral propositions of grasping their truth. (Stout 2001, 64)

Simply by virtue of the fact that we must begin to understand the moral language of another by utilizing our own moral language does imply that we cannot find imaginative ways of making sense of the other within our own conceptual paradigms. As Gadamer argued, “Only the support of the familiar and common understanding makes possible the venture into the alien, the lifting up out of the alien, and thus the broadening and enrichment of our own experience...” (Gadamer 1980, 138-139).

However, in our attempts to translate another’s moral language into our own it is necessary to look beyond the purely ‘moral’ concepts found in

another's epistemic context and we must not overlook the presumptions hidden within our own moral languages, the 'things that go without saying,' so to speak, that color our meanings. Hence, it is crucial to engage in analysis of the other's entire epistemic context where possible – or at least the relevant aspects; those that serve as a foundational basis to her moral thinking. As Ortega notes,

[L]anguage is considered to be the expression of what we want to communicate and manifest, whereas the fact is that a great part of what we want to manifest and communicate remains unexpressed in...all that 'goes without saying'....any particular language not only interposes difficulties to the expression of certain thoughts, but also obstructs the reception of others....Hence, the immense difficulty of translation: translation is a matter of saying in a language precisely what that language tends to pass over in silence. (Ortega 1957, 244-246)

Therefore, in order to render two moral languages fully and mutually intelligible to the best of our abilities "we shall need extended commentaries and cautionary remarks as well as translations of sentences" (Stout 2001, 65), which will entail a direct and intimate engagement with another's epistemic context and belief system.

Moral Truth & Modes of Justification

Yet, will not all of this talk of different ethical perspectives, normative communities, moral languages and epistemic diversity require relativistic assumptions and possibly lead to an abandonment of our belief in the "moral

truth" of the matter? Jeffrey Stout attempts to demonstrate how it is possible to accept the phenomenon of moral diversity without abandoning the idea that "moral truth" and "justified moral belief" exist. He argues that moral diversity need not necessarily compel us to adopt skeptical or nihilistic positions in ethics. Like Ortega's position, Stout's position is not to be construed as a subjectivism either insofar as, for Stout, the justifiability of one's perspective of truth is not dependent upon an individual's arbitrary choices and imaginative ideals, but rather is a result of his circumstances. For a proposition to be justifiably asserted as true, its content must be considered within and in regards to the concrete circumstances of a given context (Stout 2001). All this is to say is that we ought to be mindful of the integral role that circumstantiality plays in the life, beliefs, values – and hence, perspectives – of each individual, community and tradition to which they belong.

Stout brings our attention to the fact that when evaluating the truth-value of a given proposition one must appeal to a set of other propositions not currently under scrutiny. He argues that to test the verity of a moral proposition X one does not appeal directly to the moral law itself, but rather to a set of beliefs one holds about the moral law, regardless of whether or not the moral law actually does or does not exist. Hence, there are a number of other non-moral beliefs which are presupposed when evaluating the truth value of a given moral proposition (Stout 2001, 23). Subsequently, "What you can't do, if you are human, is have your judgment determined solely by

the matter under consideration without relying on beliefs, habits of description, and patterns of reasoning that belong to a cultural inheritance” (Stout 2001, 23).

Consequently, this leads Stout to draw *a distinction between justification and truth*. He asks us to recognize that, despite the fact that to hold a belief entails accepting the truth of that belief, one could be simultaneously wrong and justified in holding the belief. Avoiding a definition of truth per se, Stout claims that the truth-value of a proposition is a property of that proposition. Conversely, justification, unlike truth, is relational in nature; it entails a proper set of relations between a proposition, a person accepting said proposition, and the cognitive/epistemic context of the individual. Given the fact that in order to even test the verity of a proposition one is heavily reliant upon other beliefs not currently being scrutinized, justification becomes highly relative to epistemic circumstances while the actual truth of the proposition is not. “Justification in morality, as in science, is relative—but relative to one’s epistemic circumstance, including reasons and evidence available at the current stage of inquiry, not to the arbitrary choice of individuals” (Stout 2001, 29-30).

However, “This relativity does not carry over...to truth. What we’re justified in believing...varies according to the evidence and reasoning available to us in our place in culture and history. But the truth of the proposition...doesn’t vary in the same way” (Stout 2001, 30). Therefore, if the relationship between the proposition, the individual, and one’s epistemic

circumstances exist in the proper way, the assertion that this proposition is true can be justified despite the falsity of the proposition, or even unjustified despite its truthfulness.

For example, Stout claims that if an individual lives in an era in which slavery is both commonly accepted and not considered to be immoral and consequently that individual believes that slavery is a morally permissible institution then that person's belief may indeed be wrong yet the individual may be justified in holding this belief. Given the individual's own experiences, the consensus of the era and the fact that the individual has acquired the best possible knowledge afforded to her at the time, this person may be justified in holding this belief even if the belief that slavery is morally permissible is indeed false (Stout 2001, 29).

Insofar as epistemic circumstances may indeed change over time, Stout requests that we be humble. At a future time, either through familiarity with other epistemic contexts or due to new evidence, or a greater understanding of various phenomena, we may no longer be justified in asserting those propositions that we currently assert and may in fact alter that which we currently take to be true. Subsequently, his theory encourages us to engage in dialogue with others, simultaneously recognizing that a change in our epistemic circumstances can lead to the acceptance of different truth-claims. In this way it views consensus in terms of an on-going dialogical process and presents us with a discursive methodology for normative ethical inquiry. Such a discursive mode of ethical inquiry is able to

incorporate a plurality of moral perspectives into the process of creating ethical guidelines, or standards. Hence, it may be able to assist in the resolution of some of the difficulties which have been presented to us when attempting to deal with religious pluralism in bioethics.

Recognizing that it is justification and not truth which is relative to time, place, and culture, we are presented with a panoply of new options when analyzing moral disagreements, for we can come to recognize that an individual is justified in asserting a claim without having to resort to either an acceptance of the truth of his claim or the verity of beliefs constitutive of his epistemic context. To elaborate, if proposition A is justified in relation to person P1 and epistemic context E1, it is not only possible, but likely – given that justification is primarily contingent upon epistemic contexts – that A could remain justified when asserted by P2 in E1. However, it also seems possible that a situation could arise in which A is not only justified in relation to either P1 in E1 or P2 in E1, but could also be justified in relation to P2 in E2. Although distinct, the beliefs which constitute an epistemic context could be such that they may be used to justify a given proposition A, regardless of their compatibility with the beliefs of another epistemic context or their ability to justify other propositions which may be justifiable in different epistemic contexts.

Therefore, although two epistemic contexts may differ to the extent that they are able to justify conflicting propositions, it does not necessarily follow that the two epistemic contexts will never be able to justify the same

proposition. In this way members of a given religio-moral tradition who maintain a belief in the existence of absolute truth – even going so far as asserting the universal truth of their own propositions and the universality of their own paradigms of belief – may be able to simultaneously acknowledge the justifiability of particular propositions across epistemic contexts. Person X from tradition Xx may perceive person Y from tradition Yy as holding a false system of beliefs, however, X can acknowledge the truth of Y's proposition V despite the fact that his/her reasons for asserting V are distinct. If both parties are justified in their assertion of V, then we may begin to find a common set of guidelines, not by employing a mode of reasoning foreign to both parties, but rather by discovering conceptual links between their respective perspectives – all the while avoiding communal attempts to discover the nature of absolute truth.

A potential danger is that Stout's theory may be interpreted in such a manner as to imply that distinct epistemic contexts always justify different sorts of propositions, while in fact, at times, similar propositions can be justified from within distinct epistemic contexts. In accord with Stout's own denial of such an interpretation I would like to illustrate why it need not ensue. What would follow from this misreading of Stout is the claim that it is only through alterations of various epistemic contexts that we can attain an adequate means of reconciliation amongst various moral perspectives and can begin to forge commonly accepted bioethical principles. From this reading, we would be presented with a potential argument for the necessity

of change as a methodological requirement. The point is that, even if we agree with Stout that justification is relative to epistemic contexts, there is no reason to reject the notion that different epistemic contexts are capable of justifying the same propositions. Consequently, there does not appear to be a *prima facie* reason to require an alteration of one's epistemic context from the outset.

Despite maintaining that the same proposition can be justified from within two highly distinct epistemic contexts, Stout holds a far more positive evaluation of and optimistic attitude toward epistemic change than I am comfortable with, at least for the purposes of creating a discursive method for a pluralistic bioethics. Stout brings to our attention the notion that dialogue with others is able to produce a change in our epistemic circumstances, which in turn can lead to the justifiability of a moral proposition which was previously unjustifiable in our prior epistemic context. "We might, after all our dialogue with the dead or the foreign, decide to change our minds on the moral issue in question" (Stout 2001, 32). While I do not wish to refute this claim, I do wish to call attention to two important points. First, there are a number of individuals and groups who do believe themselves to be in possession of absolute truths, and who may be the least likely to display the humility, and willingness to change, that Stout requests. However, this reluctance to change need not imply that their positions be unrepresented in bioethics. In addition, I would like to note that an

unwillingness to change should not necessarily be equated with a lack of openness to dialogue.

Second, this notion of change has great potential to be misused if construed as a requirement of our methodology. Discussing the prospects of a common morality, Stout states, “One thing we will want to know is the extent to which the moral vocabularies and patterns of reasoning employed by the two groups resemble or can be made to resemble one another” (Stout 2004, 226). Now, I emphasize “made to resemble” for, if coupled with the notion of change, the idea of making-to-resemble can be misused to implement a requirement of epistemic alteration at the outset of our discursive process, rather than being understood as a suggestion for accurate translation. The danger is that a requirement of alteration could preclude a genuine respect for the other’s perspective as it exists in and of itself and may result in an attitude in which the other’s perspective is only respected insofar as one believes that it can be molded to fit one’s own conceptual paradigm. Subsequently, such an attitude may perpetuate a belief that the other’s perspective must be transformed in order to be conducive with one’s own mode of moral reasoning, which as we have seen is not necessarily the case. Our task is not to endorse transformations aimed at producing an amalgamation of perspectives but rather is to forge conceptual bridges amongst unique moral perspectives.

In addition to being leery about Stout’s optimism regarding change and skeptical of his insistence that change might be necessary for consensus,

I question his assessment of what it means to have faith. Not only is Stout optimistic that interlocutors will be willing to change their views, he is also optimistic that interlocutors will be able to change their positions once they are made aware of new, or previously unnoticed, elements of their circumstances. His optimism here stems from his pragmatist tendency to think that people's perspectives and beliefs will always, and ought to, be able to be altered in response to new evidence – be it empirical, logical, experiential or otherwise. Stout underestimates the role that “belief-as-faith” plays in the overall structure of a person's belief system and epistemic context. Consequently, this would also lead us to neglect the role that a person's epistemic context plays in the formation and developmental process of one's self-identity, the strength of the conviction held, and the potentially foundational role a particular belief plays in an individual's overall belief structure and value system.

Certain beliefs and values play such a central role in one's mode of self-identification that to part with them would be tantamount to a loss of a sense of integrity. Further, particular beliefs are so rooted in one's epistemic context and play such a foundational role in the architecture of her network of beliefs and values that to alter them would threaten the coherence of her entire epistemic system. An example of such a belief would be one's conception of personhood and an example of such a value tied to this belief would be one's position regarding the sanctity of life, for instance.

As Ortega duly notes, “A belief is not merely an idea that is thought” rather, certain beliefs are ideas in which we have faith and to this end “believing is not an operation of the intellectual mechanism, but a function of the living being as such, the function of guiding his conduct...” and perform the function of informing his experience of lived reality and sense of self-identity (Ortega 1941, 167). Likewise, the McGill theologian Wilfred Cantwell Smith argued that faith, unlike propositional belief, is a non-cognitive phenomenon insofar as it requires an engagement and commitment on behalf of he who is described as faithful. He wrote, “Since it is an engagement, to know faith authentically is to become oneself involved, to know it in a personal committed fashion...” (Smith 1987, 6).

Discussing the complexities of religious belief, the philosopher Robert Audi has claimed that there are at least three dimensions of religious belief, which are: *entrenchment*, *centrality* and *intensity*. By entrenchment he is referring to the rootedness of a belief in one’s epistemic system so that we can distinguish between those beliefs which would be easy for one to eliminate and those that would require a great deal of evidence to the contrary for one to even begin to think about abandoning a particular belief. Audi uses centrality to refer to the degree of influence a particular belief plays in one’s psychology and the extent to which that belief influences her behavior. And lastly, by intensity he is referring to the degree of felt conviction one has toward a particular belief. When taken together

entrenchment, centrality and intensity are crucial for determining the strength of one's belief. (Audi 2008, 88-89)

Pursuant to this notion of belief as faith, or belief-in, Ortega claims, "it is not in man's power to think and believe as he pleases. One can want to think otherwise than one really thinks, one can work faithfully to change an opinion and may even be successful. But what he cannot do is to confuse our desire to think another way with the pretense that we are already thinking as we want to" (Ortega 1958, 113). Similarly, Audi also argues that acceptance of a belief in terms of faith is not always a completely voluntary act; one's attitude of trusting in a particular belief is at times beyond one's control. We can desire to "trust-in" and have "faith-in" yet we cannot acquire this trust simply by willing it. As Audi writes, "There is, to be sure, the locution 'accepts on faith' ... We can also say, of things people accept, that they are part of their faith. In these cases 'accept' normally implies belief. It does not imply however, that the cognitive attitudes in question have been voluntarily adopted..." (Audi 2008, 92). Audi characterizes both trusting and faith as fiducial attitudes, neither of which are entirely subject to cognitive control or rational demands.

Consequently, given the interconnectivity of the nexus of beliefs and values that constitute our epistemic contexts and perspectives, to request that one alter a foundational belief would entail either a collapse or require a major renovation of that person's entire epistemic system and hence, conception of reality. Therefore, we must not be overly optimistic in regards

to a dialogue's ability to transform our perspectives to the extent that we require or expect our fellow interlocutors to revamp their entire epistemic system for the sake of consensus. Furthermore, insofar as faith involves the deep personal commitment of trusting, which as a fiducial attitude is not only the result of voluntary rational inquiry, it would be overstepping boundaries to request or expect that interlocutors subject their faith to the prospect of revision solely on account of our practical need for shared moral guidelines.

Furthermore, while aligned with a number of Stout's claims, I would like to refrain from a complete adherence to Stout's position regarding metaphysics. Seeking means of conducting ethical discourse regardless of one's religious beliefs, Stout, like other pragmatists, wishes to avoid grounding any discussions of "truth" on a metaphysical theory of the real. He wishes to sustain the assertion of truth claims by interlocutors engaged in ethical discourse, yet he believes, "You can have the concept of moral truth and an ethos of fallibility and self-criticism...without adopting a theory that makes moral facts or "the moral law" capable of explaining what it is for true moral propositions to be true" (Stout, 253-254, 2004). Stout states, "Truth-talk is not an implicitly metaphysical affair, standing in need of metaphysical articulation and defense" (Stout 255, 2004) claiming, "Part of my motivation for favoring a minimalist (as opposed to antirealist) version of pragmatism is the hope of vindicating it from metaphysical interpretations of its significance that have proven exceedingly difficult to sustain." Stout is not attempting to debunk the metaphysical beliefs of ordinary religious persons

but rather proposes that ethical dialogue does not depend upon a shared religious faith or a common metaphysics. He wants to promote constructive ethical dialogue despite metaphysical disagreement and does so by leaving metaphysics out of the discussion.

However, although the purpose of our conceptual framework is not to solve metaphysical problems and while it should not be construed as a forum for metaphysical debate per se, metaphysical considerations are often of primary concern in bioethical discussions and debates. In alignment with Stout, we must maintain that constructive bioethical discourse need not be contingent upon a shared metaphysics, however. Unlike other realms of applied ethics, not only do metaphysical beliefs commonly serve as the foundations for moral deliberation but are often directly placed under scrutiny in biomedical ethical contexts.

For example, debates over brain death often entail deliberations and beliefs regarding the nature of death and human personhood. These debates raise issues that are not only contingent upon metaphysics but are themselves metaphysical. Moving toward a pluralistic bioethics may warrant a circumvention of such explicitly metaphysical debates, however, it seems that any fruitful dialogue will be difficult to achieve if the very concerns that prompted the debate in the first place are left out of the discussion. Hence, all I ask is that we be careful not to overlook the metaphysical component of interlocutor's epistemic contexts and keep in mind that bioethical decisions may at times threaten metaphysical beliefs. Thus, I request that we engage

metaphysical beliefs in our dialogues yet do so in such a way as to avoid actual metaphysical debates regarding the nature of reality or absolute truth. In other words, interlocutors should be able to lay their metaphysical cards on the table, so to speak, without the aim of our dialogical process becoming a resolution of metaphysical problems. We have to be able to talk about metaphysical beliefs without engaging in metaphysical discussions per se.

In sum, by employing Stout's pragmatic notion of justification, we can seek justificatory congruities amongst varying epistemic contexts. In this way no demand for change need be imposed upon conflicting epistemic contexts, especially when both maintain absolute truth claims and an authoritative position in regards to their own unique systems of belief. While Ortega's philosophy concerns the nature of "truth" itself, and employing it as it stands could potentially entail an imposition of a particular perspectival doctrine of truth upon others, as we mentioned earlier it is possible to modify and weaken such claims, retaining those elements which may be useful when attempting to come to terms with the plurality of perspectives presented to us by cases of religio-cultural diversity and moral disagreement in bioethics. In this vein, we can modify Ortega's perspectivism, eliminating any references to a metaphysical and ontological structure of the real, and come to recognize the multiplicity of perspectives of which Ortega speaks are constitutive of a social reality, without making any claims regarding onto-metaphysical reality. Hence, where Ortega claims that it is where the various perspectives link up that we come closest to discovering absolute truth,

when amended in this way we can claim that bioethical consensus and those ethical propositions which will be most likely to be considered acceptable to all of the parties involved will be found in the commonalities, and compatible elements, of the various belief systems that exist in our society.

Whereas Ortega's perspectivism seeks to discover and explain the nature of absolute truth, Stout's pragmatism, while acknowledging the existence of absolute truth, avoids discussions of its contents and the nature of universals and what they would entail. I propose that, when applying Ortega's idea of "perspectivism" to bioethics, we also avoid such discussions by weakening his epistemological claims and re-directing our inquiry as to focus upon the nature of socio-cultural reality rather than nature of truth *per se*. As we saw earlier, perspectivism does not deny the existence of objective truth. It simply holds that all ideas pass through a specific point of view and all notions of what is morally true are always interpreted from the vantage point of a particular perspective. To reiterate, the sort of perspectivism being proposed is not inconsistent with any doctrine of epistemic or moral objectivity. With this epistemically weak version of perspectivism none of our interlocutors will be required to adopt a perspectival view of truth and hence, can retain their own conceptions of moral truth when joining the conversation.

Furthermore, contrary to many neo-pragmatist proposals (including Stout's) we can avoid both the postulation of and the quest for any absolute truths without having to necessarily eliminate discussions of metaphysical

beliefs. By conceptualizing divergent metaphysical perspectives as constitutive of our social reality we can fully engage such perspectives without necessarily lapsing into metaphysical discussions per se if we maintain that practicality, and not metaphysics, is the driving force behind our inquiry. Moreover, by recognizing metaphysical beliefs as partly constitutive of context and as partial foundations of epistemic circumstances, rather than as mere by-products of such circumstances, we can view metaphysical beliefs as integral elements of perspectives. Hence, I suggest a comparative exploration of distinct perspectives, which need not entail either an avoidance of or dismantling of the foundations of such perspectives nor a direct engagement in metaphysical debate.

It is possible to explore conceptions of absolute truth and the ultimate nature of reality without having the discovery of either as the intended goals of our method. Thus, we can promote understanding and avoid postulating any requirements for change and revision in regards to the metaphysical beliefs inherent within many religious paradigms and epistemic contexts while still moving toward consensus. By focusing on the social reality of pluralism, we can search for commonalities amongst belief systems and ethical positions as a means of discovering our shared values and mutually held convictions. What we can come to recognize as a socio-cultural and descriptive truth is that there are different perspectives regarding moral truth, and that each of these perspectives is held to be true by the individual who holds it. In this way our methodology would not view such

commonalities as evidence of absolute perennial truths but rather as pointing to the seeds of consensus and the building blocks of a platform upon which shared norms and guidelines may be forged in a pluralistic setting and inclusive manner. Whereas Ortega holds that, given one's circumstances, point of view, and experiential reality, his perspective is true, by importing Stout's notion of justification we can amend this assertion by claiming that such a perspective is justified and that the landscape of our social reality is comprised of the presence of a multiplicity of justified perspectives. This synthesis and amendment of Stout's modest neo-pragmatism and Ortega's perspectivism will subsequently be referred to as '*pragmatic perspectivism*.'

Framing Dialogues and Bridging Concepts

Fostering mutual understanding and building consensus is impossible without comparison. Ortega argued that we must realize that the belief and value systems, which are constitutive of our perspectives, possess a structure and a hierarchy that must be compared in order to thoroughly understand one another's perspectives and points of view. As Ortega claimed, "in order to determine the state of one's beliefs at a given moment the only method we possess is that of comparing" (Ortega 1941, 169). Before we begin to compare different perspectives however, we must be certain that they are

the same kinds of perspectives; that is to say, that they are distinct points of view on the same sorts of things. In that our interlocutors will be employing different moral vocabularies to express their ethical perspectives we must be certain that we are discussing the same topics before we proceed to normatively compare them. As Donald Davidson notes,

Before conscious comparison is possible, our own standards of consistency and view of the general character of the world have entered essentially into the process of determining what others think. A meaningful comparison depends on first having placed both minds in nearly enough the same realm of reason and the same material realm. (Davidson 2004, 70-71)

This is where our earlier discussion regarding the translatability of moral languages becomes crucial for our investigation. We must ensure that we are not only talking about bioethics but also that, to some degree, we understand the other's moral vocabulary so that we are sure we are discussing the same types of moral topics. Hence, while a more critical component will not be absent from our comparative conversation, the earlier stages of our dialogue must work to ensure a mutual comprehension of each other's respective moral languages.

Once we have come to recognize the consensus-building process as a comparative endeavor, we can agree with Gadamer that, "No assertion is possible that cannot be understood as an answer to a question..." (Gadamer 1980, 135). Hence, we can require that the variety of moral claims being asserted are all responses to the same question so that an adequate common ground can be established and a meaningful comparison can be had.

Discussing methodological issues in the comparative study of religious ethics,

Thomas Lewis maintains that a question should be posited as a means of framing the comparison, or in other words a question should be raised as a means of creating an ad hoc and revisable frame in which dialogue and comparative analysis may occur. He states that these frames do not have to be grounded in anything resembling a 'universal human experience' and may be as inclusive or exclusive as the particular situation calls for. Lewis' comparative method can be highly beneficial for our current project in that it attempts to be as inclusive of multiple perspectives as is possible.

Contrasting his method with others designed for the comparison of only two thinkers at a time, Lewis writes,

Whereas they focus primarily on an encounter between two interlocutors, however, I would like to propose an approach to comparison that locates multiple views within a framed designed by a common question or problem, so that one can examine a number of different thinkers from different traditions. (Lewis 2005, 229)

In accord with our perspectival approach to striking a balance between universalism and particularism Lewis argues, "A frame defined by a question...need not define a universal category of human experience in order to be fruitful for comparing a number of thinkers from different traditions" (Lewis 2005, 229). The benefit of adopting this sort of approach to framing our bioethical discourse is that "by focusing on a frame defined by a question, this approach allows for the comparison of very different ways of dealing with issues. It is potentially broader than an approach that proceeds by examining the understanding of related terms or concepts in different

thinkers" (Lewis 2005, 230). Moreover, Lewis's ideas are helpful in that he recognizes that comparison is a necessary element of dialogue and vice versa, writing,

Locating various views within this frame, however, is not merely a matter of positing them as there but also entail situating them in relation to each other....The process of situating the perspective in relation to each other presupposes that the alternative views can be brought into some sort of dialogue with each other. (Lewis 2005, 232-233)

However, in that the aims of our comparative conversation are to promote mutual understanding and discover consensus, to reiterate Davidson's point,

understanding depends on finding common ground. Given enough common ground, we can understand and explain differences, we can criticize, compare and persuade. The main thing is that finding common ground is not subsequent to understanding, but a condition of it.

Hence, in addition to incorporating Lewis's idea of comparison via questioning, I would also like to incorporate some of the ideas found in the work of Aaron Stalnaker, who also addresses methodological issues in comparative religious ethics. Stalnaker introduces the notion of "bridge concepts" as a means of conducting comparative studies in religion. Stalnaker's "bridge concepts" are chosen prior to the comparison and must have both as little content as possible and analogous terms in each of the traditions being studied. They create a basic thematic connection at the outset and may be enriched and expounded upon as the study progresses. Stalnaker claims, "'bridge concepts' provide limited, thematic links to guide

comparison, and yet are still open to greater specification in particular cases” (Stalnaker 2005, 191). This thematic connection is imperative for promoting mutual understanding and will significantly increase the prospect of achieving consensus. Again, as Davidson has claimed,

We make others intelligible by interpreting their beliefs and attitudes; interpreting means assigning propositions (our own sentences) to their propositional attitudes. Since the sentences we have available for assignment are identified by their role in our own economies, a correct interpretation of someone else must make the object of his or her attitudes the objects of corresponding attitudes of our own. (Davidson 2004, 71)

In other words, in our conversations we must look for those concepts that have enough of a family resemblance that they might indicate potential points of conceptual convergence or at least areas of mutual concern.

Stalnaker’s idea of “bridge concept” works well with our pragmatic perspectivist conceptual framework insofar as that which we are seeking is to discover potential links amongst perspectives without sacrificing the distinctiveness of each point of view and without imposing a shared mode of reasoning upon our interlocutors. Stalnaker’s claims speak to this issue when he writes,

‘bridge concepts’...suggest a ‘middle way’ for comparative ethics, mediating between the hermeneutical extremes of radical incommensurability between different cultures or traditions, on the one hand, and ease translatability between traditions, on the other. This approach aims to bring distant religious statements into conversation, and simultaneously to preserve their distinctiveness within this interrelation. (Stalnaker 2005, 191)

However, where Stalnaker is dealing primarily with textual analysis, and hence proposes that such concepts be created in the mind of the scholar prior to the comparison itself, we are dealing with actual discursive engagement amongst live interlocutors. Hence, we must seek to discover such conceptual bridges through the dialogic process itself. If such an amendment is made to Stalnaker's method, and we employ both Lewis' and Stalnaker's ideas in tandem with one another, we are left with a means of better implementing our conceptual framework in bioethical practice.

We must be careful not to assume however, that bridge concepts actually indicate agreement. When discovering matching concepts we must keep in mind that the "match must be good enough in important respects to give a point to the failures of fit, these being the interesting cases where we disagree in what we hold true or in what we cherish" (Davidson, 2004, 71). In this way, not only can bridge concepts assist in achieving consensus but can also assist in bettering our understanding of our differences and disagreements and help produce a deeper comprehension of the issue at hand and what is a stake for each interlocutor.

Again, we witness the influence of Charles Taylor's work on cross-cultural comparison when Stalnaker, like Stout, refers to the idea that our conversation ought to be as perspicuous as possible writing,

I agree with Charles Taylor that comparison is most illuminating...when it can construct 'languages of perspicuous contrast.' Carefully chosen bridge concepts can help the comparativist to mediate between different visions in such a way that aspects of them, at least, can be carefully and productively contrasted. (Stalnaker 2005, 194).

A further way of promoting perspicuousness in our conversation is to acknowledge that our ethical perspectives are rooted in and influenced by the historical development of our moral traditions and communities, which predispose us to certain ways of thinking, modes of reasoning, styles of interpreting and types of understanding. As Ortega wrote, "The past is past not because it happened to others but because it forms part of our present...[it is] something active in us *now*" (Ortega 1941, 212). Similarly Gadamer argued that these historically rooted predispositions may be thought of in terms of "a positive conception of prejudice" claiming,

Prejudices are not necessarily unjustified and erroneous, so that they inevitably distort the truth. In fact, the historicity of our existence entails that prejudices...constitute the initial directedness of our whole ability to experience. Prejudices are our biases of our openness to the world. They are simply conditions whereby we experience something... (Gadamer 1980, 133)

By being open about the prejudices, presumptions, and predispositions that we inherit from our moral traditions and communities and by acknowledging the historical rootedness of our modes of reasoning we can foster perspicuous contrast. To this end we might turn to James Turner Johnson's work, which promotes an historical approach to comparative religious ethics. Johnson seeks to foster comparative understanding "by exploring the historical development of certain normative traditions," arguing that his "concern with the historical development of moral traditions does not aim simply to understand that history for its own sake, but to understand it as an element in moral enquiry..." (Johnson 1997,

78). Johnson's idea that to understand a tradition's current mode of moral reasoning one needs to understand the history of that tradition falls in line with Ortega's idea of "historical reason," which he describes as "*a substantive reason constituted by what has happened to man*" (Ortega 1941, 231). Ortega argues that a historically grounded mode of understanding any present situation provides us with a more comprehensive understanding insofar as "Historical reason...accepts nothing as a mere fact: it makes every fact fluid in the *fieri* from whence it comes, it *sees* how the fact takes place" (Ortega 1941, 232). Similarly Johnson argues, "First in importance is the historical character of religious experience and, in particular, the fact that the major religions of the world...are examples of historically developed and developing forms of understanding" (Johnson 1997, 79).

Now, Ortega makes a claim – one Johnson would not agree with – that could be helpful for promoting perspicuousness in our discourse arguing "One cannot look for history apart from the urgency of its present interpreter" (Ortega 1941, 244), which we can take as implying that we must be open to learning about each interlocutors own self-understanding of the history of their respective traditions, when such explanations arise, rather than attempt to appeal to some "neutral" or "objective" account of what "really" happened, for it is these self-understandings of their own traditions that most greatly influence the modes of moral reasoning our interlocutors will be employing, and which, if explored, can potentially assist in promoting mutual understanding.

Consequently, when coupled with an epistemologically 'weak' perspectivism and a neo-pragmatic notion of justificatory relativism *a comparative conversation, as opposed to a forum for outright debate*, may better enable the discovery of a moral consensus, and provide the conceptual foundations of a method that avoids imposing a single mode of reasoning or a requirement of epistemic change on the parties involved and which simultaneously humbles itself in regards to moral claims of a universal and absolute sort. What ***pragmatic perspectivism*** presents us with is not only a novel approach to confront moral diversity and a way of reconciling, or avoiding the divide between relativism and absolutism (or particularism and universalism), by offering a means of respecting the claims of others without necessarily having to abandon our own conceptions of what the moral truth is.

Subsequently, it will be demonstrated that when applied to bioethics this approach can serve as the foundation of a new conceptual framework and methodology for the creation of bioethical guidelines and norms in a pluralistic and multicultural society. It is my hope that we can promote mutual respect and open the doors of dialogue in such a manner as to reduce the degree to which an imposition of our own values is being imparted upon others.

Incompatible Values & Incommensurable Concepts

Giving us reason to be doubtful about the potential success of our inter-perspectival discourse to actually produce consensus, Tristram Engelhardt echoes Davidson's concern regarding "cases where we disagree in what we hold true or in what we cherish" (Davison 2004, 71), claiming, "Individuals need not possess starkly different moral views in order to have different moralities" (Engelhardt 2000, 37). Referring to individuals coming from different moral traditions and who adhere to different moralities, Engelhardt doubts that our process of mutually understanding one another's moral languages will assist in the resolution of our deepest moral disagreements, arguing that, "Moral strangers need not be morally opaque to each other. They may be mutually fully acquainted with each other's position, while in disagreement so as not to be able to resolve controversies..." (Engelhardt 2000, 37) insofar as, "the resolution of controversies depends on the acceptance of one particular ranking or ordering of moral values or moral principles over other possible ranking or orderings" (Engelhardt 2000, 37).

The political philosopher John Gray directly addresses the issue Engelhardt raises and insofar as he, much like Engelhardt himself, attempts to overcome the need for consensus while still promoting peaceable co-existence, his work might help shed some light on this subject and give us some insight into the viability of enacting a *modus Vivendi* framework for bioethics. Drawing on the work of Isaiah Berlin, who saw the liberal project

as one which promoted the flourishing of distinct ways of life, John Gray has become an extremely vocal advocate for value pluralism and endorses a *modus Vivendi* approach to political theory. Viewing himself as providing a corrective to some of Berlin's ideas, Gray argues that an accurate account of political liberalism must not extol a particular set of values, must not be grounded in a single system of morality, and must promote the co-existence of multiple ways of life, be they morally liberal or not. He accuses most contemporary liberal political theorists and philosophers of violating the core premise of political liberalism itself, which according to him is the "belief that human beings can flourish in many ways of life" (Gray 2000,1). Gray argues that unlike other uses of the phrase "pluralism," value pluralism is not a descriptive term but is rather an account of ethics that claims that there are many ways in which persons can achieve the good life; ultimately, it views the good itself as being plural. Therefore, value pluralism maintains that no single way of life should be considered universally or absolutely good without denying the existence of universal values.

Despite his acknowledgment that universal human values are possible, Gray claims that unlike other forms of liberalism value pluralism does not seek to discover these values and implement them in the creation of a political regime that would attempt to enact and enforce such values; in short, value pluralism does not seek to construct either a moral or political structure upon a foundation of universal moral truths or ethical principles. (Gray 2000, 21-23) Instead, the value pluralist embarks on the political

project of *modus Vivendi* that refrains from postulating one conception of the good, moral ideal or overarching value as the cornerstone of its existence.

Gray's reasoning for this move can be better understood by looking toward his belief in the incommensurability and incompatibility of universal values.

Gray maintains that there is no single combination of values or goods that are universally the best. Even if all peoples at all times have valued justice or peace, for instance, there will always be circumstances in which these values conflict with one another and in these contexts there is no overarching value-hierarchy to which we can appeal in order to judge which is best (Gray 2000, 41). Hence, that which is required in a society dedicated to liberty is a political system that enables multiple modes of ranking values, virtues and goods because "different ways of life not only interpret universal virtues in different ways; they honour opposed virtues" (Gray 2000, 39). According to Gray the political system that naturally follows from value pluralism is a form of *modus Vivendi* liberalism committed to tolerance and co-existence and which is hospitable to difference.

For Gray, the mark of an illiberal regime is holding the view that conflicts amongst values must be the result of an ethical error and hence, are a problem that needs to be overcome. He argues that a "fundamentalist" regime claims that there is only one set of values that are to be considered in accord with what is morally true and hence, all must accept or adopt these values. Consequently, he considers any system that attempts to enforce a particular set of values or demand acceptance of a particular comprehensive

vision of morality to be repressive and itself illiberal, even if the values and norms enforced by that system are said to be “liberal.” Hence, for Gray, the establishment of a comprehensive liberal doctrine, as was proposed by Kymlicka, is a form of liberal fundamentalism that transforms the liberal project from one that promotes diversity into one that promotes absolutism and results in a repressive regime. Despite its advocacy of a non-comprehensive form of liberalism, the Rawlsian project, according to Gray, is overly concerned with consensus, which in effect either coerces agreement or uses the limited agreement of a particular group to stifle the pursuit of the good life of those who happen to disagree. Consequently, Gray calls for the renewal of liberalism itself. Commenting on how we ought to cope with the difficulties faced when confronted by the pluralism and diversity of contemporary society Gray writes, “If the liberal project is to be renewed...The idea of toleration as a means to a universal consensus on values must be given up, with the adoption instead of a project of *modus Vivendi* among ways of life animated by permanently divergent values” (Gray 2009, 43).

In Gray’s eyes pluralism itself ceases to be a problem to be overcome and instead becomes a means of better enabling human flourishing. Whereas Stout and Gray both emphasize the idea that in our contemporary pluralistic society there are a number of ways of interpreting reality and a number of diverse moral languages being spoken. Stout argues that it is not only possible but also desirable for those speaking distinct moral languages to

find enough common ground on a pragmatic level to forge consensus on certain issues (Stout 2001), a view that Gray explicitly rejects. Although I believe that consensus on certain issues is not only possible but desirable, as Gray duly notes some conflicts amongst different values are not ameliorable through consensus and agreement; in which case the only solution seems to be adopting a policy of toleration that both recognizes that certain values, beliefs, and ways of life are incommensurable and which allows different ways of life to promulgate and flourish in the absence of a consensus on the common good (Gray 2000).

Unlike liberal toleration – which Gray argues has been proposed as a temporary solution to the problem of disagreement and which is explicitly founded upon the ideals of rational consensus, convergence of beliefs, and the common good – Gray’s notion of toleration bases itself neither on the idea of an eventual consensus on the common good nor on the postulation of a supreme universal value through which all can come to tolerate each other. Gray states, “Liberal toleration is an ambitious inheritance. From one side, it is an ideal of rational consensus. From the other, it is a solution to the problem of peaceful coexistence....In present circumstances, attempting to preserve the liberal ideal of toleration as a means of reaching rational consensus is harmful. It makes the practice of coexistence contingent on an expectation of increasing convergence in values that is fated to be disappointed” (Gray 2000, 24-25). Gray endorses a conception of toleration which is neither a supreme value in and of itself nor one which is contingent

upon the adoption of any overarching value – such as peace or justice per se – that is to serve as the guiding principle of both our respective and shared ways of life. He writes, “Because *modus Vivendi* rejects the claim of liberal values to universal authority, it is bound to be at odds with the prevailing philosophy of liberal toleration. Yet *modus Vivendi* can still claim to be a renewal of the liberal project. For it continues the search for peace that liberal toleration began” (Gray 2009, 51).

Akin to Gray’s proposal is that of Tristram Engelhardt, who has proposed what is referred to as a “libertarian cosmopolitan” framework for bioethics. Engelhardt claims that the “libertarian cosmopolitan moral understanding provides a *modus Vivendi* with moral force but without content for a world marked by plurality of moral visions” (Engelhardt 2000, 42). Much like Gray’s proposal Engelhardt’s ethical framework draws “authority from the permission of those who collaborate, and not from any particular valued state of affairs, much less from a lexical priority or value given to freedom or liberty...[Hence,] It constitutes the moral point of view of moral strangers. It involves no particular ranking of values” (Engelhardt 2000, 43).

Those who are on a perpetual quest for a robust consensus on conceptions of the good, agreement on moral precepts and ethical principles, and who seek to discover perennial commonalities amongst distinct worldviews and ideologies that will readily lend themselves to the postulation of universally acceptable moral codes will be highly dissatisfied

with toleration as a means for coping with the conflicts and tensions that occur in a religiously pluralistic and culturally diverse society. If a conception of the common good rooted in onto-metaphysical, epistemic and ethico-moral similarities is what is sought after, then toleration will be a poor means of achieving such an end, for toleration requires acceptance of the fact of deep disagreement and an indifference toward the ways in which others live their lives, for it is impossible to tolerate certain beliefs and practices while simultaneously agreeing with their truth-value and recognizing their correctness⁷. Unlike other means of coping with pluralism that focus on discovering shared values and reaching consensus as to establish a common morality, value pluralism's call for a *modus Vivendi* attempts to preclude the imposition of one's belief upon another and refrains from requesting that the various parties involved either part with their particular values or amend their beliefs and practices as to be made conducive with any sort of common conception of morality.

As we have seen in previous chapters some of the most popular attempts to resolve the problems and ameliorate the conflicts that arise in bioethics as a result of moral and religious pluralism tend to only emphasize similarities, solely quest for shared values and, at times, are reliant on a belief in the common good. One of the strengths of Gray's *modus Vivendi* value pluralism is that it not only recognizes but also seriously takes into consideration the idea that there are many incommensurable perspectives,

⁷ This is not to imply that there will be no limits to that which is tolerable, but simply that what is tolerable will be accommodated.

all of which can produce human flourishing to some extent and also acknowledges the fact that compromise is not always possible. Hence, Gray endorses tolerance of various ways of life and their correlative moralities in the absence of a common conception of the good. It thus refrains from promoting either a single set of universal principles or set of values as being either superior or necessary for coexistence.

If implemented as a method of discourse value pluralism would neither presuppose the possibility of, nor require interlocutors to achieve, consensus in regards to either their political or ethical values and would request that they acknowledge, at the very least, the possibility that there may be more than one correct or valid solution to any given problem. Additionally, while value pluralism does regard the good itself as plural, the public political project of *modus Vivendi* does not actually require any person or group to accept the truth of value pluralism itself as guiding their way of life or modes of reasoning. Although there are parallels between Gray's and Rawls' assertions regarding the distinction between moral and political projects, unlike contract theory, *modus Vivendi* is not contingent upon either a single theory of justice and maintains that there are no value-laden concepts that all reasonable person can be expected to accept. Instead, *modus Vivendi* simply endorse toleration and coexistence.

That said however, one of the major flaws of Gray's theory is that much like Gauthier's contractarianism it advocates peaceability in the name of self-interest and mutual benefit. Likewise, Engelhardt's *modus Vivendi*

“locates self determination centrally in its account of human flourishing...[and argues that] the focal point of the moral life becomes autonomous self-determination” (Engelhardt 2000, 43). However, there are many moral traditions that do not purport the values and beliefs they hold solely because they see them as being beneficial to only their own group or because they are on a quest for autonomous self-determination in matters of morality but rather because they consider their beliefs and values to be universally valid and beneficial for all.

Although Gray does not require all to accept value pluralism itself he provides no motivation to pursue toleration beyond self-benefit. Additionally, many moral communities will believe it is necessary to continue to endorse their principles and precepts and attempt to convince others of the correctness of their values and hence, may not be as willing to simply “live and let live,” so to speak, as *modus Vivendi* requests. *Furthermore, what are we to say to the various individuals and communities, embodying different ways of life and moral traditions, who desire some sort of consensus as to be reassured that other members of their society will follow modes of living and engage in practices that they consider morally permissible?* Moreover, how does a pure *modus Vivendi* speak to the concerns of those persons and groups who believe that achieving some form of consensus is itself more valuable, and possibly a greater good, than the peaceable and tolerant coexistence Gray proposes or the autonomous self-determination proposed by some like Engelhardt?

As much as Gray attempts to disentangle *modus Vivendi* from value pluralism and as much as he claims that acceptance of the truth of value pluralism is unnecessary for the enactment of a *modus Vivendi* ethico-political arrangement, it seems as if it is indeed necessary to accept the truth-value of his value pluralist moral claims in order to justify *modus Vivendi*. As a method for coping with the problems of pluralism that is conducive with the panoply of moral and religious sentiments and ethical perspectives of the members of a diverse society, *modus Vivendi* can only be successful if it is able to be endorsed from within the parameters of each tradition present in the discussion. Hence, in order for Gray's notions of toleration and coexistence to be viable ways of resolving moral tensions and ethical conflicts it needs to connect in some way with the indigenous beliefs of the variety of traditions present in a pluralistic society.

Furthermore, Gray's theory, like most other *modus Vivendi* theories, lacks a detailed method of establishing which values, beliefs and practices will be tolerated in the first place; for certainly most will agree that there must be limits to that which ought to be tolerated. Gray's overly pessimistic attitude toward consensus leads him to overlook the necessity of having a method for establishing even a minimal degree of consensus in regards to that which ought to be considered intolerable. It seems that some form of consensus-oriented forum is required in order to establish the limits and contours of a *modus Vivendi* system if it were to succeed at achieving its aims and fostering a peaceable coexistence.

Accepting Diversity from Within

Working within the context of human rights theory, David Hollenbach has developed the notion of “indigenous pluralism” as a means of coping with the problems that arise when different religious traditions hold distinct or incompatible interpretations of human rights. It will become evident that indigenous pluralism is a theoretically and practically useful concept for bioethics as well and hence, should be incorporated into bioethical methodology and processes of bioethical policy-formation.

In his analysis of the adoption of human rights by various religious traditions, David Hollenbach discusses the phenomenon that although different traditions accept the same set of rights and principles each tradition interprets and applies these rights in distinct ways. Hollenbach sees this hermeneutical diversity as a potential cause of conflict and tension. Consequently, he introduces the notion of “indigenous pluralism” as a means of ameliorating potential conflict and coming to accept the inevitability of interpretive differences.

As a means of introducing Hollenbach’s notion of indigenous pluralism, I will open with a précis of Hollenbach’s argument in *Justice, Peace, and Human Rights: American Catholic Social Ethics in a Pluralistic World* as it appears in chapter eight, titled: “Human Rights in the Middle East: The Impact of Religious Diversity.” Subsequently, I will explore the possibility of incorporating the notion of indigenous pluralism into bioethics as a means of understanding and coming to terms with the interpretive differences present

in biomedical ethics. Once this notion's usefulness to bioethical inquiry has been demonstrated, an analysis of indigenous pluralism's ability to be incorporated into the actual process of creating ethical principles will be set forth.

In his chapter, "Human Rights in the Middle East: The Impact of Religious Diversity," Hollenbach discusses the conflict between the universality of human rights and the particularity of the ethical beliefs and values of different religious traditions. He claims that while members of distinct religio-cultural traditions may formally accept the Universal Declaration of Human Rights, and the idea of a universal moral community that it implies, the interpretation of, and actual application of, these rights by members of different traditions can and do vary greatly. Hollenbach states,

[Human rights] are rights which exist and should be respected universally.... It is true that most of the nations of the world are in formal agreement with the list of rights proposed in the Universal Declaration.... It is not clear, however, that those who give formal assent to the Universal Declaration understand these rights in the same way, nor that they would rank these rights in the same order of priority [1998, 108].

Focusing on the relationship between religion and human rights, Hollenbach raises the question, "are the traditions of belief and particular loyalties of these religious communities compatible with the commitment to the universal community and civil discourse presupposed by the Universal Declaration?" (110). He goes on to claim that if members of a given faith do not recognize a given concept as an expression of their faith, then we must expect that they will be unlikely to accept that particular concept. Hence, any responses to the problems raised by the conflict between universalism and

particularism must come from within the traditions themselves and not from sources external to those traditions. In response to the aforementioned question Hollenbach writes, “If believers within a particular religious tradition and community do not recognize a proposed response to this question as a legitimate expression of their faith, then answers from other quarters will be nugatory” (110).

Discussing Christian, Jewish, and Islamic interpretations of human rights, and more specifically the problem of adequately addressing the tension between universality and religio-moral particularity, Hollenbach notes that while members of each distinct faith community accept the idea of a universal moral community, each tradition’s interpretation of the nature of such a community differ. Hollenbach writes, “The very universalism of each of the three religions is set forward in particularist terms” (113). Hollenbach goes on to discuss the details of these differences in relation to universal rights and religious liberty. Examining the history of religious thought in Europe, Hollenbach notes that since the Reformation, religious liberty has been interpreted on the individual level within Christian thinking. He claims that Western Christianity, having shared a history with western political thought, is conducive to secularism in politics, to the concept of human rights itself, and to the highly individualistic modes of interpreting these rights that have become prevalent in the West.

Subsequently, Hollenbach examines the notions of “religious liberty” and “human community” in relation to Jewish thought and discovers a less individualistic and more communitarian approach. He claims that within

Judaism there is “a genuine respect for the particularities of communal identity, nation, and religion [because].... The human race is conceived of as a ‘community of communities’” (117). Hence, within this particular interpretive stance is an inherent respect for distinct interpretations of universal principles by different communities. Lastly, he discusses the Islamic interpretation noting the belief that Islamic political ideals are themselves universal and that non-Muslims will be afforded rights, yet only within a global Islamic nation. Comparing these three religious traditions, Hollenbach contrasts the Islamic interpretation with both the individualistic and the communal interpretations of human rights held respectively by Christians and Jews.

Islam, however, rejects both the modern Western solutions to the problem of pluralism (the secular state) and the Jewish willingness to make the “right to be different” into a universal political norm for nation-states.... Islam’s solution...is a universal, world-wide Islamic state. It then affirms that the rights of non-Muslims will be protected within the Islamic state [117].

Finally, Hollenbach concludes by analyzing three plausible responses to the problem of divergent or distinct religious interpretations of universal rights yet ultimately rejects them all in favor of his own fourth solution. The three solutions that he rejects are: the elimination of religious loyalties—due to their high potential for conflict and the unlikelihood of their success; the adoption of extreme cultural relativism and subsequently the rejection of universal human rights; and lastly, the westernization of the middle-east insofar as the very concept of human rights is a western concept and hence only westernization can make it realizable elsewhere (120-21).

Conversely, Hollenbach's own fourth and final solution is what he has called indigenous pluralism. Firstly, criticizing the abstract nature of human rights, yet not human rights themselves, Hollenbach states, "the three religions of the Middle East are challenged by the conflicts there to discover a common understanding of human rights that is concrete and living rather than formal and abstract" (122). However, Hollenbach recognizes that a common consensus is not equivalent to an identical interpretation of human rights and hence, suggests that, "each community must find a basis for respecting the distinctiveness of the other communities within the structure of its own belief. The task then is not the homogenization of the religious faiths but of their development in a new direction" (122). This later suggestion forms the crux of indigenous pluralism. This solution entails going beyond the notions of religious tolerance and liberty and requests that each religious collective look within its own tradition for means of respecting religious differences. It asks each religious tradition to seek ways of promoting mutual understanding and respect that are grounded within their own belief systems and which will provide them with reasons for accepting diversity that will be considered authentic expressions of their own unique faiths. It is meant to serve as a means of respecting otherness while simultaneously retaining the particularities of one's own faith in one's endeavors to uphold universal rights and create a universal moral community.

While he focuses on human rights, Hollenbach's observations point to a more widespread phenomenon that occurs whenever multiple religio-

cultural communities appeal to a shared set of moral principles; namely, that different religio-cultural traditions will interpret these principles and apply them in very distinct ways. For example, the European bioethicist, Jacob Dahl Rendtorff has noted a similar phenomenon taking place in European bioethics, noting that different ethnic and cultural groups, often holding distinct religious backgrounds, tend to interpret the guiding principles of biomedical ethics in very different ways. Moreover, Hollenbach's notion of indigenous pluralism seems well suited to alleviate some of the tensions that could potentially arise in these situations by encouraging different traditions to respect pluralism from within the boundaries of their own paradigms of thought. In the same way that Hollenbach urges members of particular religious traditions to find ways of respecting distinct interpretations and applications of human rights that are indigenous to their own traditions, we can urge members of particular faiths and cultures to do the same when dealing with the guiding principles of bioethics. So, I ask, is there a place for "indigenous pluralism" or something that resembles it, in the process of agreeing upon, creating, and implementing a given set of principles itself?

Let us assume for a moment that we are presented with a discursive model for arriving at consensus in regard to ethical principles. In this scenario, representatives from distinct religious and cultural groups have come together in order to forge and put into practice a set of ethical principles, or possibly rights, that all of the parties and their respective groups will eventually adopt. We have seen that different groups will interpret the same principles very differently, which may be problematic

insofar as this post-consensus disagreement can lead to conflict and confusion amongst the various parties involved. It may very well be the case that a member of a particular tradition may be under the impression that, insofar as consensus has been reached, all of the parties involved will take those principles to imply the same sorts of things and hence, may come to expect that such principles will be valued and put into practice in the same sorts of ways that she values and wishes to apply those principles. Holding the expectation that the principles will be applied in a uniform manner—namely the manner in which she envisioned the application of such principles—she may be dismayed to discover that this is not the case after different groups have already adopted and begun to apply the principles differently.

In such a situation, tension and conflict may arise not only because of differences in the application of the principles but because each member expected that a certain degree of applicatory uniformity would be had due to the prior agreement on the principles. However, if members of different traditions recognized from the outset that there will inevitably be differences in regard to the interpretations and applications of these ethical principles, they can be prepared for the interpretative and applicatory differences that will occur after consensus on those principles has been reached. If in the initial phases of dialogue interlocutors seek ways of respecting the distinct interpretative frameworks of other traditions, yet do so from within the parameters of their own tradition, then we may have a basis for arriving at a new type of consensus.

Serving as a kind of supplementary consensus, such a consensus would not be in regard to the actual ethical principles themselves, but rather would be a consensus regarding a guideline, policy, or clause, which itself condones or allows interpretive diversity. If a given tradition is able to justify a notion such as “respect for...,” “acceptance of...,” or “toleration of...” distinct modes of interpretation, and we discover that a similar notion can be justified by the other traditions, then regardless of why a particular tradition happens to justify such a position, we may be able to implement that notion itself as a commonly accepted policy, clause, or guideline.

Hollenbach claims that in addition to searching for a common understanding and interpretation of human rights “each community must find a basis for respecting the distinctiveness of the other communities within the structures of its own belief” (122). He then goes on to state, “The task then is not the homogenization of the religious faiths but of their *development* in a new direction. For each faith this development will entail a new respect for and understanding of the distinctive religious faith of the others” (122). Implementing Hollenbach’s notion from the outset and during a consensus forming process, as opposed to after principles are established, would seem to provide more of a guarantee that such a respect will be had. This guideline of hermeneutical diversity would serve as a supplement to a given principle or policy, say for instance the principle of autonomy or beneficence, and would allow for an agreed upon range of varying interpretations of said principle or policy.

In conclusion, indigenous pluralism is a useful tool for bioethics on a number of theoretical and practical levels. The strength of indigenous pluralism as a conceptual tool is its potential to effectively ameliorate tensions associated with religious diversity without requiring different religious groups to either alter their metaphysical and/or ethical positions or to requiring them to look beyond the boundaries of their own traditions when attempting to find ways of respecting pluralism itself.

* A few of the ideas expressed in this chapter have appeared in: Chris Durante, "Bioethics in a Pluralistic Society: bioethical methodology in lieu of moral diversity," *Medicine, Healthcare & Philosophy* vol. 12 no. 1(2009): 35-47.

Chapter 6

Pragmatic Perspectivism as Method*

In this chapter we will further develop the philosophical and theoretical aspects of a discursive method of bioethical inquiry and policy-formation that is able to work toward consensus on shared bioethical guidelines while simultaneously maintaining a respect for and making possible the accommodation of incommensurable moral and ontological differences amongst religious traditions and philosophical systems.

Given the novelty of, ethical ambiguity surrounding, and onto-metaphysical uncertainty that often accompanies, many bioethical issues, the problems we face when confronting such issues are problems in the deepest sense of the term. Ortega y Gasset had claimed that “[s]omething is a problem to me...when I search within myself and do not know what my genuine attitude toward it is...” and went on to argue that “the solution of a problem” entails “finding, among many ideas about it, one which I recognize as my actual and authentic attitude toward it” (Ortega 1958, 109). Insofar as the novelty of many bioethical problems has precluded sustained prior reflection, an initial uncertainty regarding the ethicality of certain procedures and actions often occurs, and insofar as they often raise deeper ontological and metaphysical questions, bioethical dilemmas are morally problematic in the sense Ortega described. Hence, the solution each interlocutor adopts as a potential resolution to the moral dilemma she faces

must be thought to be an authentic expression of her respective belief system and genuine perspective.

This is to say, that in constructing what are to be shared normative standards for dealing with highly contested and ethically tumultuous issues we ought to strive for guidelines that members of distinct moral traditions can either consider justifiable within and compatible with their own modes of moral reasoning and methods of ethical analysis or which enable them to implement their respective modes of moral reasoning. We must seek to establish norms that allow persons to sincerely respond to moral dilemmas and commit to resolutions that are genuine expressions of their beliefs. This means that our shared guidelines either must honestly be thought to be authentic representations of the positions of a number of distinct traditions, or that they must enable individuals coming from distinct moral traditions to formulate their own authentic responses to such problems and act accordingly. If we cannot find norms that are genuinely shared across religious, cultural and moral traditions we must seek to widen the array of actions we consider ethically permissible. The maximization of viable options for action increases the ability of individuals to abide by their diverse moralities and arrive at solutions to their own personal dilemmas that they will truly consider authentic expressions of their moral perspectives.

In that the questions raised by bioethical dilemmas are often literally questions concerning life and death itself, and hence are arguably some of the most important questions regarding human reality, persons ought to feel as

though the solutions they arrive at, the decisions they make, and the actions they take as a result (or are allowed to take) are not only the best possible but are in accord with their unique conceptions of the good. As Ortega claims,

“Concerning the most important questions of reality, I must have an opinion, a thought about them...It is necessary, then that those opinions be truly mine; that is that I adopt them because I am fully convinced of them.” (Ortega 1958, 90)

It is imperative that the norms, guidelines and policies we enact are considered justifiable by, at minimum, a majority of interlocutors and enable persons to act on their deeply held moral convictions. In the interests of non-maleficence, liberty, peaceability and mutual respect the aim of this chapter is to produce a method of bioethical deliberation that is able to adequately meet the challenge of forging shared guidelines and standards in secular, yet religiously, morally and culturally diverse society.

Dialogue Despite Difference

Pragmatic Perspectivism, unlike other methods in bioethics, refrains from putting forth a conclusive moral system and, while it recognizes the need for shared moral guidelines in bioethics, it avoids any proposal to forge a universal morality. Rather than positing a new form of “unbiased” moral reasoning or asserting a “universal” set of principles, pragmatic perspectivism provides a conceptual framework for bioethics which will

enable the incorporation of varying modes of moral reasoning into the moral dialogue and the deliberative processes of bioethical inquiry. Yet, unlike contractarianism, pragmatic perspectivism does not request that interlocutors bracket their values or religious beliefs or adopt a common form of “public” reasoning.

Hence, it endorses neither a rationalistic procedure of reasoning¹, such as that proposed in Gauthier's contract theory, nor a ‘neutral’ and ‘impartial’ form of reasoning that can be shared by all parties involved, such as Rawlsian “public reason,” insofar as implementing either may potentially prevent the parties involved from employing their own genuine modes of moral reasoning. Rather it attempts to respect the modes of reasoning employed by individuals possessing diverse perspectives and distinct paradigms of thought. This method maintains that constructive inter-religious, inter-cultural, and religio-secular dialogue, the aim of which is to produce shared guidelines for bioethics, is possible despite deep moral differences if we promote a conversational rather than argumentative approach to discourse. It views the adoption of shared modes of moral reasoning as unnecessary for the attainment of consensus, which will be achieved as a result of sustained conversation that seeks points of compatibility amongst diverse perspectives and not simply commonalities. It maintains that interlocutors can agree to disagree in regards to the varying

¹ Unlike Habermasian discourse ethics, which arguably shares contractarianism's rationalistic edge, pragmatic perspectivism promotes a conversational approach rather than endorsing a rational debate.

interpretations of previous consensus positions and that tolerance in the face of deep incommensurability amongst or between divergent interpretive points of view will at times be required.

Pragmatic perspectivism views diverse moral perspectives as part of the constitution of socio-cultural reality. *It recognizes the phenomenon that people hold such divergent beliefs as true without necessarily passing an epistemological judgment on the contents of such beliefs and correlative moral propositions.* Rather than endorsing a contractual agreement based upon a rationalistic negotiation and bargaining, this method seeks propositions that are justifiable amongst distinct modes of reasoning. Consequently, it does not strive for any single objective point of view from which a common morality capable of transcending difference can be achieved.

Rather, it seeks to promote discourse that is capable of discovering conceptual links already present amongst divergent perspectives that can aid in the creation of bioethical guidelines. Consequently, without adopting the full ramifications of his neo-pragmatic philosophy, we can take heed of Richard Rorty's comments concerning conversation when he claims, "Free discussion' here does not mean free from ideology..." we ought to "listen to lots of people and think about what they say" (Rorty 1995, 84). Begotten from a multi-perspectival source, the conclusions of this method have the potential to be more adequately representative of our multicultural and religiously pluralistic society.

Pragmatic perspectivism is pragmatic in the sense that it emphasizes usefulness over truthfulness, seriously taking into consideration the applied aspect of the bioethical enterprise and the lived social realities of those whom it is applicable to. Consequently, despite aiming for consensus and being hopeful that through our conversation shared bioethical guidelines might be established, the aim of this discursive method is not to discover shared moral truths nor is it to produce agreement on universal ethical principles. Discussing his involvement in a project at the Hastings Center in which consensus was sought through pluralistic and multicultural dialogue, the bioethicist Erik Parens notes just “how difficult it is for people who are significantly different to participate in mutually respectful conversation” (Parens 1995, 197), commenting that skepticism and mistrust were prevalent obstacles to mutual understanding that stifled the process of consensus-building.

I suspect that much of the skepticism and mistrust that arises in morally pluralistic, interfaith, intercultural and religio-secular discourse is a direct result of the dialogue’s relation to truth. Mutual skepticism of one another’s views is far more likely to prevail if the discursive process is seen as a mechanism by which we will either discover or produce shared moral truths and establish some sort of common universal morality. If during the course of the discussions interlocutors are constantly seeking to discover shared truths and or if the goal of the dialogue itself is to produce consensus regarding truth itself, the nature of the conversation will be far more prone

to fostering skepticism and mistrust than if the aim of the discourse is not agreement upon universal moral truths. When shared moral truths are the aim of our conversation an interlocutor will be prone to skepticism at the first sight of a concept, claim or idea that is, at least *prima facie*, incompatible with, or contrary to, her own beliefs and values.

When the attention of interlocutors is directed toward the discovery of shared truths – be they metaphysical, ontological or moral – we effectively set up the conversation in such a way as to hinder understanding by inviting evaluative moral judgments to enter the discourse at the outset rather than requesting that such morally evaluative attitudes be expressed and such judgments be exercised only after a more thorough understanding of another's perspective is had. Indeed, as we saw in the previous chapter, thoroughly understanding another will require each interlocutor to translate the other's concepts into her own moral language, which in turn requires comparison. However, we mustn't confuse or conflate the acts of comparison and translation with the acts of ethical evaluation and moral judgment. Furthermore, we must also not confuse the act of finding enough common ground – in terms of ensuring that we are discussing similar themes and issues and speaking within a common frame of reference – that is necessary for comparison and translation with the process of discovering shared moral truths or the act of forging agreement on such truths. If we fail to differentiate between understanding and agreement we dash any hopes we might have had for achieving a feasible consensus.

Moreover, positing agreement on moral truths as the primary purpose of discourse stifles understanding by hindering an interlocutor's receptivity to the points of view and modes of reasoning of others. Remaining focused upon the truthfulness of another interlocutor's assertions and viewing oneself as being involved in an intentional attempt to produce deep moral agreement breeds mistrust of others by lending itself to proselytism. In such a scenario interlocutors will be more prone to convincing others of the truthfulness of their claims rather than attempting to use their words in such a way as to best convey their perspectives to one another and facilitate mutual understanding. Additionally, if interlocutors are suspicious that others are attempting to convert them they will be far less likely to trust that the others are attempting to understand their perspectives and take them into consideration when contemplating any mutually binding guidelines that might be enacted as a result of the discourse. Overemphasizing the discovery of commonly held moral truths undermines the entire process of cultivating mutual understanding and thwarts the viability of pragmatic consensus and hence, has no place in this discursive method.

Furthermore, this method aims at achieving consensus, yet recognizes that given our pluralistic social reality the process of arriving at such a consensus must be on-going and dialogical in nature; consensus here is not to be reduced to an instance of agreement on a particular issue but a conversational process of discovering the compatibility of different perspectives. Unlike some straightforwardly pragmatist solutions however,

pragmatic perspectivism does not necessarily require or request an alteration or revision of the perspective which one holds to be true, for it is this unique perspective that a pragmatic perspectivist is attempting to understand, respect, and take into consideration. Rather than valuing the revision of epistemic contexts in lieu of dialogue or asking others to alter their own perspectives, as do other forms of pragmatism, pragmatic perspectivism requests that interlocutors seek to locate commonality or compatibility amongst the various perspectives arising from distinct epistemic contexts. Hence, consensus is a dynamic process in which agreements that do arise are taken to be tentative and provisional rather than as indications of absolute or universal truths.

Although, pragmatic perspectivism does not deny that these concurrences might in fact be truths it does not require that we view them as such for the purposes of establishing a bioethical guidelines. Instead, any points of agreement can seen as revisable pursuant to further developments in the discourse itself. To reiterate, fostering mutual understanding is a crucial aspect of this method, both insofar as it becomes a necessary component of arriving at something more than a mere superficial agreement on a particular issue and in that through a thorough understanding of another each interlocutor can achieve a greater understanding of her own perspective by acquiring a more robust and nuanced comprehension of how her perspective relates to those of others. To this end, I am reminded of a quote from the writer Gabriel Marcel who describes, “a discussion about

ideas in which both conversationalists are so interested in their topic that each forgets about himself...The very soul of such discussions is the joy of communicating, not necessarily the joy of finding that one's views agree with another's; and this distinction between conversation and agreement has great importance" (Marcel 1950, 74). This idea regarding the importance of the distinction between conversation and agreement is telling of the ways in which an interlocutor engaged in a pluralistic conversation can acquire a deeper understanding of one another's perspectives and can enable an interlocutor to empathize with the points of view and concerns of others even if in the end she does not agree with the others' beliefs, is unconvinced by their views and ultimately maintains her own position. In order to consider another's perspective an interlocutor must not only know what the other's bottom-line position on an issue is but must also understand the epistemic circumstances that gave rise to that point of view. Further, we cannot actually disagree with another's perspective if we do not understand the context from which they are speaking. All this is to say is that pragmatic perspectivism, in agreement with the comparative religious ethicist Aaron Stalnaker, suggests that we "examine contrasting ethical possibilities in a richly contextualized manner" (Stalnaker 2008, 441).

Another distinction between pragmatic perspectivism and other discursive methods, is that it refrains from equating science and ethics, as do other forms of pragmatism, for such a move presupposes that all moral reasoning resembles that of science or at least that it should. While both

science and this methodology itself do indeed strive for usefulness, and this method calls for a revision of the leading methodologies in bioethics, I am not willing to claim that science and morality per se have the same structure or teleology. Hence, we must not presuppose that each interlocutor will hold a view of morality in which moral propositions are seen as being akin to scientific hypotheses. Thus we cannot assume that interlocutors will be as willing and likely to scrutinize and revise their own personal moral beliefs, which they may indeed hold to be absolute and universal, in the same way that our overarching method views the ethical guidelines it seeks to produce.

In this way pragmatic perspectivism does not require that the people involved adopt a perspectival theory of truth nor is it claiming that those involved in the bioethical discourse must abandon their own moralities. Rather, in line with Stout's proposal, that which pragmatic perspectivism is requesting is that everyone in the dialogue comes to realize that others may be justified in holding their views regardless of the actual truthfulness of those positions and to search for similar values and beliefs inherent in each other's paradigms.

Moreover, pragmatic perspectivism requests that all interlocutors bear in mind that although comparisons amongst distinct perspectives arising out of different comprehensive worldviews can be useful as a means of understanding the similarities that can lend themselves to viable cooperation, peaceful co-existence and consensus, and as a means of recognizing which beliefs and values are themselves incompatible, in order

to fairly evaluate a claim it must be assessed against the epistemic context from which it emerged and in lieu of the onto-metaphysical framework and value system from which it is being offered. As Jeffery Stout observed, there are salient differences between truth and justification. Whereas truth is *not* contingent upon the particular epistemological framework in which a claim or proposition is asserted, justification *is* contingent upon the logical relations amongst propositions and hence, becomes relative to one's epistemic context. Yet, to view justification as relative does not entail a denial of truth's objectivity. Rather, an asserted proposition may be said to be justified if it follows from a certain set of premises and is conducive with a certain set of values and beliefs regardless of the actual truth-value of said values and beliefs. As Stout claims we ought to recognize,

[T]hat being justified in believing a claim is not the same thing as being able to justify it or to justify believing it....There are many legitimate ways of acquiring beliefs....Justifying a claim, unlike being justified in believing one, is an activity....[Often there is] a tendency to confuse being justified in believing something with being able to justify it.... (Stout 2004, 234-237)

Once we come to understand this *distinction* between *justification* and *truth* we can come to a point at which it is possible to fairly assess claims coming from distinct comprehensive worldviews as justified. We need not adopt a common form of reasoning in order to accept each other's claims as justified. Rather, we need to be able to engage in an extended and in-depth dialogue as to understand the modes of reasoning employed by others and

the authentic concerns of those whom we seek to cooperate with in our mutual pursuit of establishing shared bioethical guidelines and norms.

As noted previously Stout holds that one can be justified despite the potential falsity of one's claims and that one need not be able to provide a rational justification for one's assertion in order for said assertion to be justified within that individual's epistemic context. "Justification in morality, as in science, is relative—but relative to one's epistemic circumstance, including reasons and evidence available at the current stage of inquiry, not to the arbitrary choice of individuals" (Stout 2001, 29-30). However, "This relativity does not carry over...to truth. What we're justified in believing...varies according to the evidence and reasoning available to us in our place in culture and history. But the truth of the proposition...doesn't vary in the same way" (Stout 2001, 30). Consequently, pragmatic perspectivism requests that we bracket our considerations of ultimate truth when discussing matters regarding bioethical guidelines and policy.

Unlike Rawlsian discourse, which not only wants interlocutors to endorse public policies and norms from within the parameters of their given traditions but also requires that they justify their claims and be able to provide reasons for their endorsements that will be acceptable to all, pragmatic perspectivism adopts Stout's vision of discourse, which recognizes that we can hold distinct reasons for endorsing similar norms and claims and hence, are able to achieve consensus without sharing a common understanding of the truth-value of the norms or policies that result.

Take for example the religious perspectives of a Buddhist and Christian in regards to brain death. While these individuals will approach this bioethical issue from different epistemic paradigms, they may in fact be able to justify the same propositions. As a means of illustrating the mere possibility of such a scenario, I will put forth a brief comparison of Damien Keown, a Buddhist scholar, and Jason Eberl, a Thomistic Catholic philosopher.

Writing from a Theravada Buddhist perspective, Keown claims that “Buddhism sees the human individual as constituted by their organic wholeness rather than by their personhood” (Keown 2001, 141-142). Employing the notion of “prana”, which means “breath” and which is translated as “vital breath” or “life”, Keown demonstrates how the justifiability of “whole brain” death is indigenous to Theravada Buddhism itself and that secular arguments, external to the tradition, need not be utilized as a means of discussing this bioethical issue. Keown writes, “The basic meaning of prana is ‘breath’ and by extension ‘life’ ...By prana one understands ‘vital breath’, a wind on whose existence the body and mind depend” (Keown 2001 149-150). Drawing a correlation between ‘prana’ and an ultimate concern with psychophysical wholeness, Keown endorses ‘whole brain’ death from within the context of a uniquely Buddhist paradigm of thought without departing from any traditional metaphysical, moral, or epistemological beliefs. Keown’s position proceeds as follows:

The significance of brainstem death is not the loss of consciousness but the loss of the brain’s capacity to co-

ordinate the organic functioning of the body....The test for this condition of disintegration is the death of the brainstem, but it must be remembered that what is being declared under this condition is the death of the human being. It does not follow from the use of this test that a human being is regarded as in any sense identical with or reducible to their brain, much less cognitive functions. (Keown 2001, 155)

Conversely, writing from a Catholic perspective, the Thomist philosopher Jason Eberl also endorses the whole-brain criterion of determining death. Eberl grounds his argument on notions of unity and a concern for the organism as a whole. Like Keown, Eberl stays within the parameters of his own tradition (the Thomistic Christian tradition) in forging an adequate response to brain death. Eberl states:

The whole-brain criterion of death has its roots in an understanding of death being related to an organism as a whole....In Thomistic terms, when integrative unity has been irreversibly lost, a body is no longer proportionate for rational ensoulment....Therefore, the cessation of both a brain's rationally-correlated and biologically-integrative functioning indicates a rational soul's departure as a particular human body's substantial form. (Eberl 2005, 42-43)

However, although similar notions of the wholeness of the organism appear in both authors' respective arguments, the ways in which they arrive at such a concept are not only distinct but stand in opposition to one another. As a Thomist, Eberl is highly concerned with rationality, believes in a formal soul which is distinct from the body and which controls a human's physicality, and holds that such a rational soul operates through a primary organ, which Eberl identifies as the brain. Eberl claims, "Aquinas understands a rational soul to be the principle of a human body's organic functioning and to operate by means of a primary organ" (Eberl 2005, 31).

On the contrary, Keown's argument holds no such concerns. From Keown's Theravada Buddhist perspective a human being is not conceptualized in terms of rationalistic personhood or metaphysical essentialism, as Eberl's appears to be. Consequently, given his position it seems that Keown would most likely deny of the existence of a "primary organ" and a metaphysical "essence" of the human individual. Claiming that "[Western]... definitions of 'personhood' take the rational human adult as their paradigm" (Keown 2001, 27-18), Keown argues, "The Buddhist denial of a self means that no one factor from the total physical and psychological complex can be singled out as more or less 'essential'" (Keown 2001, 30). Keown goes on to argue:

The criteria supplied by our texts [i.e. Buddhist texts], such as vitality and heat, are clearly of an organic as opposed to an intellectual nature. Death is not depicted as the loss of intellectual functions but the biological end of an organism. (Keown 2001, 154)

The proposition that, "'whole brain' death is an acceptable means of determining the death of a human individual" has been justified by both Buddhist and Christian thinkers despite the fact that each is engaging the issue through the lens of distinct epistemic contexts. Yet, although these epistemic contexts may differ, and at times might conflict with one another, it has been demonstrated that there is a possibility that conceptual similarities and similar values may be present in both paradigms of thought. These potential similarities may be useful in promoting dialogue even if these

thinkers, holding seemingly irresolvable conceptual differences, had disagreed on the positions of ‘whole-brain death.’²

Furthermore, even if one does in fact believe that holding his perspective is paramount to the possession of absolute truth, that individual may still come to recognize that there may indeed be some degree of truth, however minimal, to be found in the perspectives presented by others. For example, if individual A believes that he possesses absolute truth in his perspective, what pragmatic perspectivism requests is that A acknowledges that B may be justified in holding her “false” network of beliefs, and given that B is justified, to accept that there may be ‘partial truths’ (regarding A’s overall network of beliefs and epistemic context) to be found within the perspective of B. In other words, given A’s perspective and epistemic context, this methodology encourages A to be open to the idea that certain truths may be found in the paradigms of others despite A’s denial that B’s belief system as a whole is absolutely true.

This is possible if we refrain from envisioning public policies as reflections of our own particular comprehensive worldviews but rather see them as practically viable solutions to shared social problems, which are conducive with, if not reflective of, our ultimate ethico-moral concerns. Once we seek to discover congruities amongst distinct religio-moral paradigms that are not grounded in ultimate truths, we can recognize that diverse worldviews are capable of justifying compatible propositions and realize that

² This type of scenario in which we are presented with disagreement on such an issue will be explored in the next chapter.

consensus is possible in the absence of a common moral language or mode of reasoning. Thus, we are able to permit interlocutors to express their authentic and genuine reasons for endorsing policies regardless of whether they are religiously motivated or not.

Further, in accord with our combination of the modest pragmatic notion of justificatory relativism and our modified and more modest brand of perspectivism, the philosopher John Searle has stated, “I do not believe it makes any sense to ask for a justification of the view that there is a way things are in the world independently of our representations, because any attempt at justification presupposes what it attempts to justify [namely, the ways things truly are]” (Searle 1998, 31). Likewise, Stout has argued that one need not be able to provide a justification of her proposition in order for her proposition to be justifiable. Stout notes,

being justified in believing a claim is not the same thing as being able to justify it or to justify believing it...There are many legitimate ways of acquiring beliefs...Many beliefs are acquired though acculturation...[and] many of these beliefs are such that we would not know how to justify them in a noncircular and informative way even if we tried...Justifying a claim, unlike being justified in believing one is an activity. (Stout 2004, 234)

As a result, pragmatic perspectivism proposes that despite our best efforts to actively justify our moral propositions and ethical claims to one another, we do not have to request that interlocutors provide any form of justification for their respective worldviews and the comprehensive doctrines that serve as the context in which their claims can be justifiable in the first place.

Pragmatic perspectivism seeks justification of moral claims concerning the

bioethical issue at hand. It does not require interlocutors to actively justify their religio-moral or onto-metaphysical paradigms and it certainly does not require interlocutors to provide justifications for their adherence to a particular comprehensive doctrine. Rather we request that explanations and descriptions of their epistemic contexts be provided in addition to their assertion of claims as a means of fostering mutual understanding and as a way coming to understand the justifiability, or lack thereof, of another's perspectives.

Now, while it is undeniable that deepening our understanding of another's moral point of view, learning the contours of her mode of reasoning and acquiring a comprehension of her epistemic circumstances will necessarily entail the acquisition of new knowledge and might very well entail arriving at novel insights regarding an array of issues and or ideas, it does not necessarily follow that our own moral, ontological, or metaphysical beliefs will be transformed as a result. Learning about different perspectives and gaining new insights should not be confused with becoming skeptical of our own beliefs, doubting our own perspectives, or questioning the core tenants of our own respective faiths, core values, or ways of life. In other words, we should be careful not to misinterpret a willingness to learn about otherness with a willingness to abandon or alter one's own position.

One highly problematic aspect of Stout's line of reasoning, shared by most pragmatists,³ which prevents me from endorsing the wholesale adoption of his brand of pragmatist thought, is his overly optimistic attitude toward change as a necessary component of our quest for consensus and his pragmatist tendency to think that people's perspectives and beliefs will always, and ought to, be able to be altered in response to new evidence – be it empirical, logical, experiential or otherwise. As demonstrated by the previous dialogue between Eberl and Keown, the transformation of perspectives is not always required for agreement or for the discovery of compatible concepts. Neither of the aforementioned interlocutors altered either their epistemic contexts or their ethical positions, yet they are still able to find points of commonality through dialogue.

When engaging in our discursive process of ethical deliberation that which pragmatic perspectivism maintains is that from the outset no interlocutor ought to be expected to alter her beliefs on the basis of either logical or empirical evidence provided by another. *The primary goal is consensus, not compromise* and hence, what pragmatic perspectivism seeks are agreements, points of convergence, and compatibilities that are *not contingent upon our perspectives being other than what they are*. While it is true that some interlocutors might be inclined to alter or amend their positions, and despite the fact that our perspectives might very well change as a result of the new insights we acquire in the dialogue, no such

³ As we will see in the next chapter this insistence on change may also be found within deliberative democratic approaches to discourse ethics.

requirement or expectation of change is being proposed by pragmatic perspectivism.

This method realizes that, especially when dealing with religious perspectives, belief is complex and nuanced and cannot be reduced to a simplistic cognitive function or divorced from lived experiences and conceptions of reality. Hence, pragmatic perspectivism draws a distinction between “believing-in”, which often involves faith, and believing-that, which is primarily a rational and cognitive mode creating convictions that correspond to an externally perceived reality. A religious conception of moral personhood, belief in a divine being, or belief in the sanctity of human life, are all instances of believing-in rather than simply believing-that.

The point here is that interlocutors must recognize that some beliefs are held so strongly that to demand that one be willing to abandon them might not only be fruitless for the purposes of our discourse – insofar as it might lead to further tensions and conflicts amongst parties already locked in disagreement – but that to insist on the falsity or fallibility of another’s belief might very well be an insulting gesture that would undermine our aim to uphold mutual respect. Furthermore, it requests that all interlocutors recognize that there exists a distinction between “believing-that” and “believing-in,” or having faith.

When dealing with issues as ontologically and metaphysically laden as defining life, death, and personhood, as is often the case in bioethics, we must realize that religious faith in regards to such matters often entails belief-in,

which entails a positive attitude and emotional quality (Audi 2008) as opposed to belief-that, which is subject to evidential reasoning and which is the form of belief that Stout's pragmatist suggestions regarding the necessity of change pertain to. As the philosopher, and religious epistemologist, Robert Audi has claimed, "faith...[is] an attitude that is not simply a *response to evidence*" (Audi 2008, 94). Hence, when dealing with matters of faith, pragmatic perspectivism reminds interlocutors to be aware of the importance that particular beliefs play in one another's worldviews and is cautious about implementing any requirement that would necessitate the alteration of any interlocutor's epistemic paradigm.

Furthermore, in lieu of our discussion of Stout's desire to avoid grounding truth-talk in a metaphysical interpretation of reality (Stout 2004, 246-269), I would like to reiterate that bioethical discussions often entail engaging issues that raise, and deliberation regarding, explicitly metaphysical beliefs. To eschew any or all metaphysical notions, thereby expunging them from our discourse, will prove to be highly detrimental to our discursive endeavor and will hinder our ability to accurately diagnose the problems that arise and the tensions that prevail on our path toward building consensus. As Ortega claimed,

"the diagnosing of any human existence [or any problem regarding the nature of that existence, for that matter], whether of an individual, a people, or an age, must begin by an ordered inventory of its system of convictions, and to this end it must establish before all else which belief is fundamental, decisive, sustaining, and breathing life into all the others" (Ortega 1941, 168).

In regards to coping with moral diversity and disagreement over metaphysically-laden bioethical issues (such as abortion, stem cell research, cloning, or brain death determinations), when diagnosing what is at stake in this issues; when attempting to understand why precisely people hold their positions and assert certain claims; and when trying to develop a comprehensive comprehension of the problem at hand; it becomes imperative to thoroughly examine one another's belief systems, including the variety of fundamental metaphysical beliefs that ground, sustain and 'breath life into' many of the moral beliefs and values people hold and the ethical positions they assert.

It is important to recognize that **pragmatic perspectivism does not deny that one's epistemic circumstances, and hence beliefs – *be they ethical, metaphysical or otherwise* – may in fact change once an interlocutor is engaged in dialogue with another however, it refrains from requesting that such a change is necessary in order for consensus to be achieved.** This together with its *non-reliance upon scientific methodology, non-privileging of individualistic self-interest, its inclusive attitude toward metaphysical propositions, its avoidance of providing a definition of truth, and its reluctance to view the discovery of truth as necessary for consensus or an aim of our discursive endeavor* is where pragmatic perspectivism differs most greatly from the various forms of pragmatism and contract theory which have previously been employed in

bioethics as means of resolving the moral disagreements presented to us by religio-cultural pluralism.

Furthermore, insofar as this method entails coming to an understanding of the perspective of the other during a continual discursive process and that one of the aims of pragmatic perspectivism is to seek conceptual links amongst various perspectives (whether such commonalities exist on the metaphysical or ontological level or on the socio-ethical level) a key element of this process will be that of *mutual comparison*. In other words this dialogue needs to be a comparative endeavor that seeks to produce a series of agreements and/or compatible propositions. Since this conversation involves comparison, and what we are dealing with here is the relationship between inter-religious dialogue and an ethical enterprise, this is where the aforementioned insights from the field of comparative religious ethics can supplement our conceptual framework. As mentioned previously, Lewis's suggests that the conversation be framed by positing a specific question. By positing a series of questions, each of which is to be dealt with individually, we will limit our discussion to answering only a single question at a time in order to avoid the conflation issues and to arrive at a more nuanced understanding of what is at stake in regards to a given issue.

Moreover, Lewis's argues that comparison is a necessary element of dialogue and vice versa, claiming,

"Locating various views within this frame, however, is not merely a matter of positing them as there but also entail situating them in relation to each other....The process of situating the perspective in relation to each other presupposes

that the alternative views can be brought into some sort of dialogue with each other” (Lewis 2005, 232-233).

Through the dialogic process all interlocutors must seek to discover vague yet similar concepts, or what Stalknaker had referred to as “bridge concepts” that can aid the comparative endeavor as well as lend itself to arriving a consensus on a given topic.

Further, the idea that interlocutors should be able to evaluate the positions of others is not only a reason for our prior dismissal of “public reason” and call for the de-secularization of religious language but is also a reason why this conversation must be a *mutually comparative endeavor*. A thorough evaluation of a perspective will entail a comparison of that perspective with one’s own and all other’s being espoused. Without the comparative component mutual understanding will be stifled, which in turn will thwart our ability to discover not only points of convergence amongst perspectives but those ideas that, despite being distinct, might actually be compatible in some fashion

Consensus-Building & the Comparative Conversation

We begin by inviting a number of parties coming from a variety of distinct religious, cultural, and intellectual traditions, to come together to engage in a series of dialogues on a number of distinct bioethical issues. These issues will range from matters such as brain death, on both the clinical

and policy levels, to the very principles or standards that guide the field itself. Once a group of participants willing to engage in such an open dialogue has come together, we begin the conversation by positing a specific question, as to provide a direction and some parameters for our discussion and a frame of comparison for the various responses to such a question.

It would be impossible to hold a constructive discussion in regards to the entire range of bioethical issues, hence the question will be one regarding a particular issue, such as “brain death,” or if need be a specific subtopic related to that issue, such as “whole brain death” versus “cortical brain death,” or conscience clauses attached to policies regarding “brain death.” To bolster this method Stout claims, “our concern is practical and quite limited....The relevant comparison-class is relatively narrow....What respects of comparison matter? Mainly, the differences most responsible for creating or sustaining conflict and the similarities most likely to facilitate settlement” (Stout 2004, 229). In addition to merely positing a question and hearing the responses, once the dialogue has begun interlocutors and moderators alike must be open to, and search for, the appearance of conceptual links present amongst the various perspectives and positions being espoused. It is crucial for each individual involved in the discursive process to take part in the comparison. The reason is two-fold: firstly, different perspectives may be able to detect different conceptual links, and secondly, different individuals may be able to interpret those conceptual similarities differently, which

increases the chances of finding ways for a given similarity to be meaningful when applied to the ethical issue under discussion.

We then employ Stalnaker's idea of "bridge concepts" once a question has been posed. There are certain concepts whose relevance will be immediately evident to those participating, such as conceptions of "death" or "human nature" when discussing issues surrounding "brain death," for instance. These concepts may be tentatively employed as markers of where to search for similarities and differences. During the course of the dialogue, such concepts will become more refined and possibly altered. If at the outset we begin with a vague notion which is to serve as a potential "bridge concept" and we find that either no such concept exists in one of the group's traditional worldviews or that it does exist yet it is not significantly valued within that conceptual paradigm, then such a concept must either be abandoned or revised and amended if it is to serve as a conceptual link amongst divergent perspectives.

For instance, if the discussion revolves around the very principles of bioethics and one begins with a question regarding "autonomy," we may find that such a concept is not emphasized in certain East Asian societies or finds no substantive counterpart in the Confucian worldview, *per se*. In such a case, "autonomy" must be either discarded or re-conceptualized if it is to serve as a "bridge concept." Ruiping Fan, a Confucian bioethicist, discusses the inapplicability of the concept of "autonomy" in both Confucian and other

Asian models of bioethics.⁴ He discusses the emphasis that such religio-cultural traditions place upon the role of the family as a single entity. Hence, he promotes a family based concept of ethical decision-making in medicine.

Fan states,

The Confucian way of life is familistic....Confucians hold that family members should be interdependent, rather than independent of each other....The family is central to Confucian moral and political theory. In particular, Confucianism recognizes the family as an entity with social properties that cannot be reduced to the properties of its members (Fan 2004, 185-188).

While Fan continually criticizes the Western notions of “autonomy” and attempts to debunk universalism throughout his works, the idea of self-determination of a singular entity may be found in his work if the family is conceived of as a singular entity with a single socio-ethical identity and with the ability to partake in moral decision-making. Given the Confucian emphasis on the family unit, a re-conceptualization of our “bridge concept” may entail a broadening of the notion of “autonomy” as to account for families as autonomous entities with the ability for self-determination. This suggestion accords well with Robert Veatch’s longstanding argument for the necessity of introducing a concept of “limited familial autonomy” into our conceptual repertoire when dealing with issues surrounding the determination of death. Regarding his notion of “limited familial autonomy,” Veatch writes,

⁴ In a similar vein, Andrew Fagan, a British Human Rights theorist, also critiques the principle of autonomy, demonstrating how such a principle is incompatible with most Asian, including Hindu, systems of morality. For more information see Fagan, “Challenging Autonomy,” 15-31.

Just as the individual has an autonomous right to choose a definition of death (or a treatment plan), so likewise families are given a range of discretion in deciding what is best for their wards...In a liberal pluralistic society, we do not insist that the familial surrogate choose the best possible value system for their wards; we expect them to exercise discretion, drawing on their own beliefs and values. (Veatch 1999, 146)

In this way 'autonomy' need not necessarily be expunged but rather reformulated as to more adequately represent distinct modes of decision-making. Now, this is not necessarily an endorsement of such a view of autonomy nor is it an assertion that every Confucian would necessarily accept such a view. Rather this is meant to serve as an illustration of how we may go about reformulating "bridge concepts" and attempting to forge some type of conceptual links amongst distinct modes of thought.

As the dialogue proceeds, "bridge concepts" may be reformulated and new conceptual links may be discovered, leaving us in a position in which we can begin to posit new questions as to reframe the conversation. For example, if a Christian and a Buddhist discuss "brain death," we may come across concepts such as "respect for the wholeness of the organism" and a concern for "multi-system breakdown," as would be the case if Greek Orthodox theologian and ethicist Stanley Harakas and Buddhist scholar Damien Keown were involved in a dialogue on this issue. Allyne Smith discusses Harakas' position stating, "Father Stanley Harakas, the doyen of Orthodox ethicists in America, offers as a standard view the position that death occurs when there is a multi-system breakdown.... 'Dying begins when interrelated body systems break down, impairing normal living processes.

Death occurs when the systematic breakdown becomes irreversible and cannot be sustained'Elsewhere, Harakas sees this systematic breakdown as marked by brain death" (Smith 2000, 8). To reiterate Keown's Buddhist position, "our understanding of death must accordingly be as the death of the whole psychophysical organism rather than any one of its parts....Buddhism would accept brain-stem death as the criterion of death for a human being. Brainstem death means that the patient has lost irreversibly the capacity for integrated organic functioning" (Keown 2001, 156).

Hence, questions such as "what is wholeness of the organism?" or "what is a multi-system breakdown?" might be posited as a means of refining our inter-paradigmatic understanding and furthering the dialogue. Once such conceptual links are found and some level of agreement is had, the initial question may be readdressed and discussed in such a way that new modes of achieving consensus may be illuminated.

Even if there is an initial agreement on a particular issue, an ongoing dialogue is still required. Even if all of the parties involved accept "brain death," and again agree on a subsequent topic, such as the "whole brain" standard of death, each party involved may endorse "whole brain death" for different reasons, as was the case in our aforementioned discussion of Keown and Eberl. Each participant may be employing distinct modes of moral reasoning or distinct conceptual apparatuses, stemming from distinct conceptual paradigms, in order to justify the very same propositions. Thus, to require a continuation of the dialogue will enable a deeper understanding

of each party's modes of reasoning and conceptual schema and hence will promote a greater comprehension of the others' paradigms and worldviews. When consensus is conceptualized as on-going and dialogical rather than static and momentary, what we are presented with is a means of furthering interlocutors' understanding of the modes of reasoning and paradigms of the others.

Furthermore, continuing dialogue even after a certain level of agreement is achieved may potentially decrease the level of conflict present when discussing other bioethical issues that the parties might not necessarily agree upon. Being exposed to different ways of justifying a proposition that one already accepts as true may not only give that individual new insights on the problem at hand but may promote dialogue and understanding in an environment that is less confrontational than one where a serious disagreement was had. Hence one may feel less inclined to put up defensive barriers that can occlude one's openness and willingness to fully understand and engage the perspective of the other. This is where consensus must be seen as an on-going dialogic process. Once such conceptual links are found in an agreeable environment when the interlocutors move to a discussion of a topic in which they tend to disagree they will already be armed with an arsenal of conceptual similarities. The interlocutors can then employ these conceptual similarities as means of exploring their various perspectives on this new and different topic. "Because the entire practice is involved, not merely the ideals abstracted from that practice, a common

morality can only be achieved piecemeal, by gradually building discursive bridges and networks of trust in particular settings” (Stout 2004, 226).

**Agreeing to Disagree:
*The Contours of Hermeneutic Diversity***

However, one may wish to claim that even if consensus in regards to a set of ethical guidelines is secured there may still be disagreement regarding the importance of, and application of, such guidelines; they might be interpreted in radically different ways by different individuals and by different groups. Firstly, in response to such a concern, given the nature of the pragmatic perspectivist method there is an attempt to respect such interpretive differences from the outset in that no one is required to alter or amend their religious paradigm, vernacular or modes of reasoning. The *similarity and compatibility* of concepts must *not be conflated with identity*, and *consensus must not be conflated with unanimity*. By allowing and encouraging distinct perspectives to justify similar concepts in their own unique ways, pragmatic perspectivism acknowledges that there will be hermeneutical differences from the outset, yet does not see this as a threat to the possibility of consensus, as it is envisioned in this method.

Secondly, if we incorporate David Hollenbach’s notion of “Indigenous Pluralism” into our dialogical process itself we may be able to allow for a degree of interpretive differences and still work toward an overall general

consensus regarding particular issues. “Indigenous Pluralism” states that religious traditions must look within their own paradigms of thought for ways of respecting the interpretive differences of other traditions (Hollenbach 1998). Hollenbach writes, “each community must find a basis for respecting the distinctiveness of the other communities within the structure of its own belief. The task then is not the homogenization of the religious faiths but of their development in a new direction.” (Hollenbach 1998, 122) This later suggestion forms the crux of “indigenous pluralism.” It is meant to serve as a means of respecting other traditions while simultaneously retaining the particularities of one’s own faith in one’s endeavors to uphold shared norms and create the foundation of a common ethical framework. Applying Hollenbach’s notion of “indigenous pluralism” to such a scenario would entail encouraging different traditions to respect pluralism from within the boundaries of their own paradigms of thought by requesting that they search for ways of accepting these interpretive differences amongst distinct groups when dealing with the guiding norms of bioethics.

However, it is crucial to note that, moral and hermeneutical differences are not only present after the creation of and agreement upon a given set of principles but are present from the outset of any endeavor that attempts to formulate and implement new norms or policies. It is not as if these different value systems and interpretive schemas magically appear after shared norms are created. Hermeneutical diversity may indeed be an

obstacle for the smooth and uniform application of shared norms and guidelines however it is hardly an unforeseen phenomenon at the outset. Implementing Hollenbach's notion from the outset and during a consensus forming process, as opposed to after norms and guidelines are established, would seem to provide more of a guarantee that mutual respect will be maintained. This guideline of hermeneutical diversity would serve as a supplement to a given norm or policy, say for instance a policy requiring autonomy or beneficence, and would allow for an agreed upon range of varying interpretations of said norm or policy.

We can request that the various tradition's present in the dialogue look for indigenous concepts of respecting pluralism itself, at least in regards to a particular issue and given certain agreed upon parameters. Hence, a concept, such as "hermeneutical diversity," could potentially serve as a subsequent "bridge concept". *Thus, we may be able to move toward the establishment of subsidiary norms, policies, or clauses which would allow for such hermeneutical differences from within the structure of the agreed upon guidelines.* In this way a degree of interpretive difference could be allowed and supported by the various perspectives and may be justified not by a foreign mode of reasoning but from within the parameters of each interlocutor's own epistemic context.

As mentioned in the previous chapter, Hollenbach criticizes the language of human rights in that in its universalism it is ahistorical, abstract, and vague (113). He then calls for a "common understanding of human rights

that is concrete and living rather than formal and abstract” (122). However, this concrete and living common understanding need not entail precise definitions of any principles or norms themselves. Instead of defining the term or concept which is to serve as the initial policy or norm, say the autonomy or the norm to respect human dignity, we would be asking that the various groups come to recognize that there will inevitably be different interpretations of that concept and then move to discover, or create, an agreed upon set of *interpretive limits*.

In this way, the principle itself would still warrant a certain degree of respect and would retain a certain authoritative quality, yet it would be flexible enough to allow for multiple modes of employing it from the outset. This suggestion makes the guidelines we seek to establish more concrete than if we were to avoid defining our norms all together—merely postulating a number of vague concepts that could potentially have an unlimited number of interpretations—yet retains a degree of flexibility which is absent from formal definitions. The benefit of implementing a supplementary policy of hermeneutical diversity is that it may work toward preventing future conflicts and disagreements that arise when principles, policies, or norms are interpreted differently⁵.

⁵ Precisely how the implementation of a policy of hermeneutic diversity and the incorporation of indigenous pluralism would look in practice will be demonstrated and discussed in further detail in the sub-chapter that deals with conscience clauses in debates surrounding uniform determinations of death.

Tolerance & the Parameters of Permissibility

What happens however, when we are faced with a situation in which it is not only our reasons for endorsing certain norms, policies and positions that differ but when our beliefs and values are so incommensurable that they preclude the achievement of even the most minimal and pragmatically-oriented consensus or the acceptance of one another's interpretive differences? This would be a situation in which the ethical perspectives and epistemic contexts of, what Tristram Engelhardt calls "moral strangers," collide (Engelhardt 2000). Take the issue of abortion for example, often pro-choice and pro-life advocates often speak past one another, insofar as the reasons they assert for the norms and policies they support are founded upon entirely distinct sets of values, that even if commensurable in a particular interpretive schema, often clash as a result of incommensurable interpretations of those values.

For instance, a pro-choice supporter might espouse the values of autonomy and equality, implementing them as the basis for her argument that abortion is ethically permissible and ought to be legal insofar as women have the right to choose what happens to their own bodies. Such modes of reasoning will claim that autonomous agents have the capacity for self-determination and must be ensured the ability to exercise it in social and clinical contexts. Here, the self in question is a competent adult human

person and the values being espoused are socio-political and ethico-political in nature.

A pro-life advocate, on the other hand, might very well hold no objection to the values of autonomy and equality per se however, will often not interpret these values in such a manner that leads her to believe in the ethicality of abortion. The values that our pro-life advocate might implement in her mode of reasoning on this issue could be the sanctity of life and human dignity, which will often be inseparable from her ontological belief that human personhood begins at conception. Here, the concept of self at play, while still holding broader social implications, is bound to a deep onto-metaphysical belief regarding the nature of personhood and the dignity of non-rational forms of human life. If it is believed that an embryo bears personhood and that all persons have an inherent dignity, which would be violated if that life were to be terminated, then regardless of this interlocutor's position regarding an adult agent's autonomy and equality in socio-political situations, she will most likely maintain that no human ought to be allowed to terminate the life of, thereby violating the innate dignity of, another human life.

This is not to say however, that our pro-choice interlocutor does not necessarily hold a deeper ontology – as is often the case, she might believe that human personhood arises at a later stage of gestation and hence, does not consider the embryo a full-fledged human person bearing the same degree of dignity or worthy of the same degree of respect as others. Thus,

any attempt to resolve the matter by delving deeper into each interlocutor's respective comprehensive doctrine will not resolve the issue; *though it can enable a deeper mutual understanding of the perspectives in question and the nature of the debate and hence, is still an important part of the discourse.*

The greatest problem we face in such a case is not the disagreement regarding abortion per se, but rather the fact that our interlocutors not only employ different values as the basis for their modes of reasoning on the issue but also hold different value-hierarchies, distinct onto-metaphysical schemas and appeal to different sources of moral authority. There can be no deep moral agreement in this situation because of the divergent modes of moral inquiry being implemented by our interlocutors. Some, such as Engelhardt, would eschew our prior calls for consensus claiming that in these all too familiar irresolvable moral debates we have two "moral strangers" locked in conflict as a result of their incompatible moral languages, values and modes of reasoning. His solution is to abandon our quest for consensus altogether and enact a *modus Vivendi* approach to coping with controversial bioethical issues founded upon a principle of permission (Engelhardt 2000).

As we saw in the previous chapter, John Gray speaks to this issue, claiming that in such situations we must implement a policy of toleration. Once we have arrived at a point in the conversation in which our prospects for consensus seem bleak, requiring tolerance as a minimum standard would appear to be the prudent move. However, despite the existence of staunch moral conflicts and the impossibility of discovering consensus we do not

necessarily need to adopt Engelhardt's grim picture of a struggle between "moral friends" and "moral strangers" in order to incorporate the ideas of toleration and permission into our conceptual framework. Rather than propose a notion of toleration based upon self-interest and or indifference, as is often the case in *modus Vivendi* thinking, and rather than ground our notion of permission solely on individualistic conceptions of consent and personal autonomy, pragmatic perspectivism suggests an interpersonal and more nuanced basis for enacting policies of toleration and for incorporating the notion of permissibility into our conceptual framework. Furthermore, unlike *modus Vivendi* theorists, the pragmatic perspectivist only turns to tolerance as a last resort, after sustained efforts have been made toward discovering commonalities, points of agreement, compatible concepts and a convergence of values.

In his recent work on human rights, bioethics, and multiculturalism, the well-known bioethicist, David Thomasma, has invoked tolerance as the basis upon which "a solid intercultural foundation for bioethics" (Thomasma 2008, 17) can be established claiming, "The virtue of our times must be that of toleration, combining within it both a deep commitment to our own values and an appreciation, even celebration, of the values of others..." (Thomasma 2008, 18). Although Thomasma's appeal to toleration is far more cheerful and optimistic than either Engelhardt's or Gray's, there a number of problems with the way in which he conceptualizes toleration. First, in the interest of promoting a peaceable dialogue it seems that toleration must

serve as the minimum standard by which interlocutors engage one another. However, we must be cautious about the ways in which such a concept will figure into our conceptual framework. Bernard Williams has cautioned against thinking that toleration must be conceived of as a virtue claiming that “we should be careful about making the assumption that what underlies a practice of toleration must be a virtue of toleration. All toleration involves serious difficulties but it is the virtue that most drastically threatens to involve conceptual impossibility” (Williams 2000, 66).

Now, it seems as if Gray would readily accept Bernard Williams’ statement insofar as he believes that no single virtue or value ought to be postulated as being foundational or overarching and eschews formulations of toleration that make “the practice of coexistence contingent on an expectation of increasing convergence in values” (Gray 2000, 24-25). Gray endorses a conception of toleration that is neither a supreme value in and of itself nor one that is contingent upon the adoption of an overarching value, such as justice per se. Given the fact that we only make an appeal to toleration when faced with deep incommensurability amongst interlocutors it is extremely important that our notion of toleration not be founded upon an underlying value presumed to be shared and that it is not exalted as a virtue or principle in and of itself. In lieu of both Gray’s insights and William’s cautionary suggestion, and in line with some of the pragmatist inclinations of our method, we might wish to conceive of *toleration as a practice* that all interlocutors can participate in rather than a virtue or value to be adopted as

to avoid the all too familiar problems that arise when values conflict and conceptions of virtue come into competition. As a practice, toleration will entail active interpersonal engagement and will not be divorced from our more general promotion of mutual understanding in an attempt to avoid fostering a detached indifference amongst interlocutors.

Secondly, while we can agree with Thomasma that an appreciation of and recognition of the values held by others is necessary if a peaceable and pluralistic dialogue is to work, we should be wary of the language of “celebration,” for a number of reasons. To celebrate moral diversity puts us on a slippery slope toward relativism, which is something that we have been trying to avoid. Moreover, especially if at this juncture we are trying to cope with the difficulties of moral diversity after attempts at consensus have failed, we cannot expect and ought not request that interlocutors celebrate the moral differences that lay at the heart of their disagreements and conflicts. Celebration implies an agreement-with or a respect-for; minimally, it requires some degree of acceptance of the value or belief of another. On the contrary, toleration requires one to put-up-with a belief, practice or act that she dislikes, disagrees with, or even finds repugnant in some way. As George Carey, the 103rd Archbishop of Canterbury once stated, “we cannot both ‘like’ and ‘tolerate’ something at the same time. The terms are mutually exclusive” (Carey 2000, 45). Hence, tolerating and celebrating are mutually exclusive practices. While a celebration of differences might be a wonderful cosmopolitan ideal, in that it is far less likely to occur than tolerating, it

seems that it is highly impractical to hope for or request that such a deep acceptance of each other's values is needed for a peaceful discourse to take place.

Now, while Gray's suggestions appear to provide us with a viable means of dealing with the difficulties associated with deep disagreement one problematic feature of implementing a practice of toleration modeled solely on Gray's notion of toleration is that despite Gray's claim that even those traditions which do not value toleration as a ideal or supreme virtue are able to accept toleration and endorse peaceful coexistence on the basis that it become mutually beneficial to do so his method fails to entice those who do value the quest for truth, virtuous action, or the enactment of justice over and above mere peaceful coexistence. Furthermore, one might ask, 'how are we to achieve real consensus once we have incorporated the cold and sterile notion of procedural toleration into our method? Will this not impede our chances of resolving those conflicts we set out to resolve by providing a way out of, or around, the types of sustained and respectful discourse pragmatic perspectivism seeks to enable?' In response I would like to again turn our attention to George Carey's remarks. Carey's notion of toleration can serve to compliment Gray's in that it attempts to avoid the sterility and reliance on self-interest of Gray's notion by offering an interpersonal, rather than selfish, motivation for accepting toleration as something that is desirable.

Carey aptly describes genuine religious toleration as that moment when someone holds her own beliefs so strongly that to part with them is

equivalent to the death of one's identity yet, simultaneously recognizes how integral the other's beliefs, practices, community, and values are to that person's identity, way of life, and mode of being that she tolerates what she perceives to be false beliefs out of a respect for the other. Writing on the dynamics of tolerance he demonstrates how toleration needn't be thought of in terms of acceptance of another's views in order for it to be a deep-seated expression of a desire for truly peaceable encounters that go beyond a merely procedural account of what toleration requires. Carey writes,

Genuine religious toleration is achieved when people hold their religion as so important, so absolute, that to part from it is to die, and yet at the same time realize from their absolute centre of being that another person's values and beliefs are just as important and just as real. (Carey 2000, 52)

In order to tolerate, one must recognize how integral the other's beliefs, practices, and community are to that person's existence. Without requiring that interlocutors adopt his egalitarian value schema⁶ we can concur with Charles Taylor that what "we are looking at here is that we all *recognize* the...value of different cultures; that we not only let them survive, but acknowledge their *worth*" (Taylor 1994, 64). Hence, we can insist that an integral feature of endorsing the practice of genuine tolerance is acknowledging the worth of the other's beliefs and the importance they bear on his/her life. Even if an interlocutor cannot agree with or accept the truthfulness of another's perspective and has failed in attempts to find points

⁶ In that our primary concern is religion as opposed to culture, which is the focus of Taylor's considerations, it will not only be difficult but would be unwarranted and overly imposing to request that members of different religious faiths, each believing in the absolute nature and universality of many of their beliefs to concede to the idea that all other faiths are of equal value.

of convergence or compatibility amongst the two sets of beliefs, the practice of genuine toleration requires that the ways in which another values her perspective is respected.

Hence, toleration is not necessarily contingent upon an acceptance of the validity of another's beliefs nor need it be conceived of in terms of indifference but rather has as its basis an empathetic stance towards the importance and value the other places on such beliefs in the overall framework of his life and conception of self. (Carey 1999, 55) Therefore, toleration can be tantamount to respecting the other as he is rather than as he should be and despite staunch disagreement can entail a mutual respect that is unhindered by assimilation or the homogenization of paradigms.

As Gray has rightly argued, a viable conception of toleration is one in which there is a recognition that persons are capable of flourishing in many ways of life and permits the pursuit of many distinct conceptions of the good (Gray 2000, 1-22). Without postulating a robust moral theory or theory of value, Carey's proposal appeals to a common feature of human existence and emotional experience. While Gray himself acknowledges the existence of common human interests Carey goes one step beyond mutual benefit and enables the realization of a means of endorsing toleration that is based upon neither predetermined ethical or political values nor upon a notions of indifference or self-interest. In this way requiring the practice of a genuine toleration can be incorporated into parameters of our approach to promoting

inter-religious, inter-cultural, and inter-perspectival discourse when irreconcilable perspectives clash.

Once conceived of in this manner we can request that at times of irresolvable disagreement and irreconcilable differences interlocutors engage in mutual deliberation to discover shared limits of what they consider tolerable. To this end, the value-pluralist William Galston calls attention to a very important and relevant distinction between permission and support (Galston 1995). To support an idea or practice is to accept its validity, accept its goodness, or to accept and endorse it as being morally correct whereas giving permission need not entail the belief that the particular act being performed is in and of itself good or morally praiseworthy. When coupled with our notion of tolerance, permission enables interlocutors to actively support particular values and endorse particular practices without having to impose their values on either the other interlocutors involved or consequently, the members of the various religio-cultural communities and associations that are constitutive of the larger society.

Furthermore, if our interlocutors and the religious and cultural communities they belong to acknowledge the distinction between permission and support they can come to recognize that finding ways of permitting certain practices, which violate their own moral codes, to occur in the larger society is not tantamount to actively supporting such practices and might very well be integral part of establishing a mutually acceptable set of bioethical guidelines. Hence, a crucial part of partaking in a practice of

tolerance will include discovering and establishing the *parameters of permissibility* that they can all consent to. Serving as a *second-order form of consensus*, the parameters of permissibility will be those limits to action beyond which none of the interlocutors could possibly tolerate a given act. An example of such a limit might be if an interlocutor is able to tolerate assisted-suicide, for instance, even if she does not approve of the practice in and of itself, but not being able to even remotely tolerate involuntary euthanasia. In this scenario, if the group agreed that involuntary euthanasia was beyond the limits of what is tolerable it would fall outside of the parameters of permissibility, thereby giving justification for the endorsement and enactment of a norm and corresponding law or policy that prohibited such a practice.

Once consensus is reconceived as a continual process, as pragmatic perspectivism suggests, the collective quest for commonalities and compatibility need not cease simply because we have agreed to disagree on certain issues. Additionally, the dual request that indigenous pluralism and the practice of a genuine toleration be incorporated into our methodology does not necessarily prevent the original search for consensus nor does it necessarily entail the abandonment of dialogue. If you will recall we proceed on and issue-by-issue basis, hence disagreement on one issue does not prevent consensus on another nor does it imply that there is no way of ameliorating, if not resolving, our conflicts.

To this end, the ***process of consensus-building*** must be re-conceptualized so that it indicates *points of conceptual convergence, agreement on a specific topic, the commensurability of distinct ideas, and an acceptance of hermeneutical diversity coupled with a general agreement on the parameters and boundaries of tolerable differences.*

Thus, far we have developed a *multi-tiered approach to consensus-building* as a means of establishing a set of common bioethical guidelines that are better equipped to deal with the dilemmas and cope with disagreements that occur when confronting bio-medical ethical issues in a morally diverse, religiously pluralistic, and multicultural society.

Whose Invited?

Yet, one may ask, should every perspective be given equal weight and be taken into consideration when attempting to forge bioethical guidelines? Are there not perspectives and moral positions that cannot be tolerated and hence, which we should not allow into the conversation? Subsequently, one may criticize pragmatic perspectivism stating, "If so, this would seem to be a flaw of the methodology, for proceeding in such a manner would necessarily entail encountering certain irresolvable conflicts, especially insofar as pragmatic perspectivism refuses to *require* an alteration of perspectives and has postulated no universal truth to which we can appeal." In order to reply

to such an objection, a pragmatic perspectivist must concur that the incorporation of every, and any, potential moral perspective would indeed lead to a chaotic and unproductive state. However, part of the problem is that the criteria for eligibility in bioethical discourse have in the past been highly exclusionary in regards to religious voices that do not wish to secularize their language or their reasoning. Thus, how do we determine which perspectives are eligible for the bioethical discourse in the first place?

In addition to prohibiting those interlocutors who either cannot or who refuse to provide reasons for their claims that are potentially acceptable to all, in adherence with the requirement of public reason, the contract theorists often employ the Rawlsian distinction between reasonable and unreasonable comprehensive doctrines, with unreasonable comprehensive doctrines consisting in those that attempt to impart their moral systems upon everyone, when setting limits as to who is included in the discourse. Yet, as I have argued, both “public reason” and Rawls’ notion of “reasonableness” are highly flawed. As has been established in previous chapters “public reason” is highly exclusionary in that it prevents numerous valid modes of reasoning from entering into the conversation. Discussing the conditions of a decent dialogue, like the contractualists, the well known moral philosopher Alaisder MacIntyre accepts that despite the existence of an inclusive attitude, dialogue requires certain “exclusions and intolerances” (MacIntyre 2000, 144). That said however, he goes on to remark on the conditions necessary for dialogue stating,

“The first concerns who is to participate in the conversation. If some group aiming at a common good is engaged in a...conversation aimed at reaching a decision that will be genuinely its own decision, it must ensure that all its members are able to voice their concerns and evaluate the arguments that are advanced, so that what is arrived at is the reality and not merely the appearance of consensus. (MacIntyre 2000, 144).

If all members are to have the ability to voice their concerns and truly evaluate the positions of others, then any *regulations requiring interlocutors to translate* their religious language into secular ethical or political language must be abandoned so that they are able to express their genuine perspective. When interlocutors are not permitted to express their true beliefs we begin to find ourselves on the slippery slope toward endorsing a deliberative process that only produces *semblances of consensus*.

Concerning the contractualists later requirement, insofar as most religious traditions not only believe in absolute truth but believe themselves to be in possession of such a truth, it seems natural that such believers may attempt to convince others of the truth of their beliefs. Now, this may be construed as an attempt to impart their particular moral system upon everyone, yet this need not be the case. The contractualist standard does not adequately differentiate between attempting to convert someone or convince someone of the truth of one's claims and imparting one's views and beliefs upon others in an unjust and undue manner. Basically, it creates a slippery slope toward excluding the perspectives of many religious individuals insofar as evangelizing or proselytizing are integral parts of many religious

traditions. Hence, while some standard needs to be employed, the Rawlsian standards of reasonability do not seem to be the best candidate.

As an alternative, we may again look toward Stout's work when attempting to establish the rules and parameters of dialogical engagement, so to speak. Examining some of the ramifications of incorporating Stout's notion of justification into our current methodology, I ask, what does the relativity of justification entail? Firstly, being able to claim that one is justified in one's assertion of a given moral proposition necessarily entails an understanding of that individual's epistemic context, for without such understanding judging the relationality of the proposition, person, and epistemic context would be impossible. Hence, that which is a prerequisite for one to be considered a satisfactory and competent judge of justification is a degree of openness toward the perspective of the other and a willingness to comprehend the complexities of a person's epistemic circumstances. In a rather Taylorian fashion, Stout states, "Communities take shape only insofar as their members perform the work of mutual recognition..." (Stout 2004, 281). Hence, if we see this group of interlocutors as representative of the larger society, then we can come to recognize how openness and mutual recognition must play an integral role in the process of creating sets of bioethical norms that are supposed to serve as guidelines for society as a whole.

Secondly, the ability to assert justification necessarily entails the ability to detect its absence. Hence, the individual who is capable of being a

judge of justification must be armed with the appropriate criteria for determining the unjustified status of certain moral propositional assertions without falling down the slippery slope of attempting to judge the universal truth-value of either those moral propositions being asserted or those propositions and beliefs which comprise the conceptual background necessary for the individual's moral proposition to have been asserted as 'true' in the first place. Therefore, being a competent judge of justifiability will necessarily entail a minimization of one's biases from the outset and a temporary adoption of, at least to the best of one's ability, the mode of reasoning under examination. This is unlike the contractarian solution, for the contractarian solution does not require that any knowledge of the actual perspective of the other be had. Rather, it claims that any perspective which may be perceived as being unduly imparted upon others should be eliminated from the bargaining table, and consequently, the dialogue. Conversely, Stout's standard of justification promotes an awareness and understanding of the context of the perspective in question and hence seems to be more conducive to forging a more inclusive standard of incorporation into the dialogue.

Thirdly, valuing openness must not only be characteristic of one who is to judge that which is justified but also of the interlocutors engaged in the dialogic process which is required for pragmatic perspectivism to work. In order for such a methodology to be successful, those involved in the creation of guidelines must be open to considering the perspective of others and

willing to acknowledge that shared values and/or concepts may be had amongst otherwise conflicting positions. Hence, employing the more contextually sensitive notion of justification as our standard for entering into the dialogue, we ultimately resolve the contractarian concern without having to resort to definitions of reasonableness, or excluding some from the dialogue.

Furthermore, in line with contractualist thinking, Ortega has claimed, perspectives that claim absolute authority and neglect the perspectives of others are those that must be false. As a scholar of Ortega, Julian Marias stated that for Ortega, “Falsity consists...in making a particular point of view absolute; that is, forgetting the perspective quality of every vision” (375 Marias). Similarly, Stout writes, “Religious recognition of the faithful as a common body and of the need to conform oneself to the best available understanding of what membership in that body involves can be fleshed out in many ways, only the most extreme of which deserve to be impugned....” (Stout 2004, 280-281). Hence, by amending Ortega’s claim, changing ‘falsity’ to ‘unjustifiability’, we can incorporate such a notion into our methodology without having to go down the Rawlsian route of defining reasonability in terms of a will to fairness or the possession of shared modes of inferential reasoning and without having to deem an entire tradition’s comprehensive doctrine as being either reasonable or unreasonable. In addition, following Stout’s suggestion, we may wish to consider those perspectives that are

laden with internal contradictions and inconsistencies to be unjustified as well.

Now, for those who are rather partial to the language of reasonability, a concession can be made if we re-define our use of the term “reasonable,” for after all, although his is widely popular, Rawls did not coin the term. In accord with the pragmatist George Herbert Mead’s notion of “reason” as being able to “assume the attitudes of the group that are involved in its own act” (Mead 1934, 334), which enables one to check an initial belief or intention before proceeding to act and hence gives one the opportunity to either revise or strengthen her position. Accordingly, we can develop a notion of reasonability that is more conducive with the general aims of the pragmatic perspectivist project and which can aid in setting the limits for inclusion in the conversation. On this account, “reasonability” is the ability to take multiple perspectives into account prior to making a decision. Unlike Rawlsian “reasonability” a Meadian account of “reasonability” is not about one’s willingness for fair cooperation, *per se*, nor is it about the willingness to compromise (as the contractarians might suggest), but rather is about attempting assuming, or at least understand, the attitudes of others and surveying other perspectives before one commits oneself to a particular proposition, act, or recommendation. A willingness to understand other perspectives and enter into modes of mutual evaluation is necessary for the success of the conversational ethics that pragmatic perspectivism suggests. Hence, by defining *reasonable* as: *the willingness to consider other*

perspectives when asserting claims and searching for solutions to mutual problems we can include reasonability in our pre-requisites for inclusion in the dialogue.

Despite every attempt to be as inclusive as possible of a variety of distinct moral perspectives, every methodology has its biases, preconceptions, and values. To lay one's values on the table at the outset is crucial for this method of discourse to be constructive. Hence, by entering into such a dialogic arrangement one is agreeing to immerse oneself in a conceptual framework in which certain values and goals are acknowledged from the outset. Pragmatic perspectivism presents a framework in which "openness" and "consensus" are valued, the justifiability of distinct beliefs coming from distinct paradigms is acknowledged as a sound possibility, and conceptual overlap is not only valued and acknowledged as being plausible but is to some extent part of the teleology of the interlocutor. When achieving agreement has failed or when incompatible interpretations of agreed upon norms or values present themselves all interlocutors are expected to search for means of accepting pluralism and hermeneutic diversity that are indigenous to their own traditions. Consequently, when differences are so great as to become irreconcilable and when perspectives become fully incommensurable interlocutors are expected to engage in a practice of toleration and to attempt to establish the parameters of what is mutually permissible in our shared society. Without the acknowledgment of these

factors, a multi-perspective pluralistic framework will be difficult, if not impossible, to achieve.

Consequently, it may be argued that those beliefs and attitudes which are to be excluded from the dialogue are those that are laden with internal contradictions, completely refuse to listen to the perspective of the other, completely deny that other perspectives will be able to justify some of the same moral claims as one's own, and those that are completely intolerant of any moral differences. We may judge such points of view as being unjustified, regardless of the justifiability of other beliefs in the overall conceptual network in question, and as unreasonable. Given the nature of the process itself, all interlocutors must be mindful of the fact that it is not absolute truth that is being sought but rather where commonalities and compatibility amongst distinct perspectives lay and where consensus on a number of different levels can be found. I believe the aforementioned pre-requisites for inclusion into the discursive process leave enough room for a wide variety of perspectives to be included in the conversation – be they religious, secular, liberal, or conservative – while still maintaining certain standards that will help ensure that the dialogical process is an effective and constructive one rather than a mere forum for the airing of grievances or an arena in which interlocutors seek intellectual victory by demolishing an opponent's position.

Bearing the name pragmatic perspectivism, this method aims to provide bioethics with a dialogical model of inquiry in which multiple perspectives are represented and in which discourse is not merely reduced

to a conveyance of information. Rather, in this context dialogue is meant to transcend a particular mode of reasoning as to fully engage the perspective of the other. This method promotes both consensus and understanding with the realization that agreement is not always possible and that difference is inescapable and need not be dissolved or eradicated. Pragmatic perspectivism is being suggested as a means of creating norms, policies, and guidelines that are adequately representative of the distinct voices and perspectives that constitute our pluralistic polity. In its endeavor to do so, this method avoids the quest for absolute or universal truths yet, recognizes the practical need for guiding norms and standards. Due to the novelty, complexity, and metaphysical nature of many bioethical issues, when attempting to resolve our differences and confront ethical dilemmas we must have a multi-perspectival quest for solutions and to the best of our ability, attempt to accommodate a plurality of religious beliefs and philosophical positions into our modes of deliberation and inquiry.

* A number of the ideas expressed in this chapter have previously been expressed in: Chris Durante, "Bioethics in a Pluralistic Society: bioethical methodology in lieu of moral diversity," *Medicine, Healthcare & Philosophy* vol. 12 no. 1(2009): 35-47; Chris Durante, "Republicanism in Bioethics?: A critical examination of Mark Brown's Republican model of politicization for bioethics," *American Journal of Bioethics* vol. 9 no. 2 (2009): 55-56; and Chris Durante, "Agreeing to Disagree: Indigenous Pluralism from Human Rights to Bioethics," *Journal of Religious Ethics* vol. 37 no. 3 (2009): 513-529.

Chapter 7

Pragmatic Perspectivism & its Applicability to Real World Bioethics

Accommodating Religious Voices in the Public Arena

As we saw in earlier chapters, bioethics has acquired a highly public character as a result of the contentious issues it deals with. As a result, bioethicists have played an active role in the formulation of public policies on a wide-range of biomedical issues that raise social, ethical and legal concerns and which carry many socio-political implications. Often, the area reserved for bioethical inquiry in the public arena is to be found in bioethics commissions, whose purpose is to serve as a forum for deliberation on issues in bioethics and to council governments regarding policy solutions for what are arguably some of the most hotly debated socio-ethical issues. Given the religious diversity of the “public” in a society as pluralistic and multicultural as ours, attempts have been made to accommodate religious perspectives on bioethical issues in public policy deliberations. Consequently, an analysis of these attempts to accommodate religion in the forum of public bioethics seems to be in order if we are to conclude with certainty that religious voices are being recognized and religious liberty is being upheld. Yet, before we embark on such an analysis we must inquire into the nature of

accommodation and what accommodating religion in the public arena entails.

In her book, *Liberty of Conscience*, Martha Nussbaum claims,

Accommodation means giving religious people a 'break' in some are, for reasons of conscience – a dispensation from laws of general applicability...The guiding idea is that reason of conscience are very important. In some cases, where public order and safety are not jeopardized, they may take precedence over laws that apply to all, so that people will not be forced to violate their conscience. (Nussbaum 2008, 21)

She goes on to argue that although liberty always requires equality, equality does not always entail neutrality claiming, "Accommodation is a form of nonneutrality that sometimes seems required by equality" (Nussbaum 2008, 22). Likewise, in a report to the government of Quebec, Charles Taylor argued that equality and fairness must serve as the basis of what is to be called a "reasonable accommodation," claiming that equality does not imply uniformity of treatment but at times demands differential treatment (Taylor 2008). Consequently, it would seem that accommodation requires exemptions from general laws, codes and policies and entails a deep recognition of difference whereby treating one another differently is not considered as being at odds with equality.

Nussbaum comments on the U.S.'s constitutional tradition's commitment to fairness describing it as, "a tradition of accommodation that does give religion preference over nonreligion, at least in some matters" and claims that, "The tradition's reason for favoring accommodation was itself a reason of fairness: the majority makes laws that suits itself, and minority

believers often encounter special, unequal burdens as a result” (Nussbaum 2008, 164). Now, while the concerns regarding undue burdens are common across the North American legal systems in their traditions of accommodation, religious accommodation does not necessarily have to be conceived of in terms of preferential treatment in order for it to carry both ethical and legal weight. As Taylor argues, “a treatment can be differential without being preferential” (Taylor 2008, 25) insofar as being treated differently does not necessarily imply being treated better or worse than others.

In order to uphold our ideals of both equality and fairness we must not assume that accommodating religious beliefs is akin to privileging religion over non-religion, for to do so would be grossly unfair to irreligious persons. Taylor argues, “that the right to equality and freedom of religion do not necessarily have as a corollary uniformity or homogeneity” and hence, “a given right may demand adjustments in treatment,” however, such differential treatment “must not be equated with privileges or exemptions since they are intended to remedy a flaw in the application of a statute or regulation” (Taylor 2008, 25). In accord with Taylor’s remarks, any accommodation that entails granting privileges to persons simply because their perspective bears the label “religious” or because they belong to a community dubbed “religious” ought to be thought of as undermining the very basis of our liberal democratic society and undermining the reasons why enacting multicultural policies and upholding religious liberty is

important in the first place; namely, to ensure freedom for all by refraining from assimilationist policies and diminishing the role that privilege plays in the socio-political order.

My qualm with Taylor however, and where I tend to agree with Nussbaum, is that religious accommodation must at times include exemptions. Although exempting might at times entail a certain degree of privileging – in the sense that one who is exempt from a practice that the majority of people do not consider especially desirable, such as war, which might be seen as being necessary but not a good to strive for, could arguably be said to have the benefit of being able to refrain from partaking in such a practice – exemption and privilege are distinct concepts. To exempt is not necessarily to privilege insofar as privileging necessarily entails the granting and receiving of better treatment, whereas exemptions work to prevent one from being treated worse than others. Privilege works to foster unfairness while exemptions are intended to restore fairness. An exemption from partaking in a particular act is a form of differential treatment that aims to alleviate, or prevent, an undue burden from being placed upon an individual or group as a result of partaking in such an act, the nature of which is such that others would not experience the same undue burden if they were to partake in said action. The point here is that in relation to accommodation exemptions are intended to enable particular individuals and groups to retain the capacity to adhere to their religious beliefs and abide by their moral codes in the same manner that others are able to retain the capacity to

do so because, as Nussbaum argues, “there is unfairness in being prevented from abiding by the dictates of one’s conscience when others are not so burdened” (Nussbaum 2008, 138). For example, in relation religious exemptions regarding employment practices, let us assume that an employer stipulated that all employees must work on a particular day of the week and one employee is unable to do so due to mandatory religious observance on this day. If the employee were exempt from working on that day, received equal pay, and never put in extra time on a different day in order that she worked the same amount as her co-workers, we could argue that such an exemption is indeed a privilege. If however, the employee was able to work overtime in some way (which, depending on the nature of the employment might not always be possible) in order to make up the hours of work lost weekly or was willing to receive less financial compensation as a result of having performed less work, the exemption would not be an act of privilege insofar as all employees of equal rank would still be required to do the same sort of work and would be required to put in the same amount of time in order to be compensated equally. In these sorts of cases religious exemptions are intended to prevent undue burdens upon an employee’s ability to adhere to her religious faith without placing any undue burdens upon either her co-workers or the employer. When applied correctly exemptions are intended to enable one to adhere to her religion, abide by her moral convictions, and do so without violating other’s ability to pursue their way of life and vision of the good.

Furthermore, insofar as in bioethics we are often dealing with novel problems and in public bioethics we are often attempting to create new policies that address previously untracked ethical terrain, we must seek to forge laws and policies that will be as accommodating as possible from the outset. By incorporating many points of view into our discussions and multiple perspectives into the deliberative processes underlying policy-formulation, we can attempt to avoid the need for exemptions by crafting laws and policies that are inherently accommodating of diverse religious, philosophical and moral perspectives. *Where it is impossible to do so, we must work to ensure liberty by enacting policies that might have default positions yet, which inherently contain mechanisms by which exemptions from the default are made possible and alternative options are made available*¹.

Additionally, while accommodation will indeed entail certain adjustments, adaptations and provisions on the institutional level, what does accommodation require on the discursive and inter-personal level? Taylor argues that accommodation entails both a legal and a citizen route. In accord with his views of political recognition, Taylor argues that legal accommodation measures require interpersonal practices that foster intercultural harmonization for their support (Taylor 2008, 23) and hence, on the personal level, require the values of openness, reciprocity, and mutual respect and a general willingness to engage in dialogue (Taylor 2008, 55). Although useful, Taylor does not go into great detail regarding the nature of

¹ This suggestion will be illustrated in the subsequent chapter during our discussion of the creation of laws and policies surrounding determinations of death.

such a dialogue and does not address issues concerning accommodation and public policy oriented discourse per se however, for our purposes addressing this issue seems necessary.

First, we must differentiate between the accommodation of one's voice or perspective – let's call this discursive accommodation – and the accommodation of one's behaviors or practices. Whereas the former will often entail inclusion, that is to say inclusion of one's perspective in the discussion, the latter might at times entail exclusion in the form of exemption, as in the case of being excluded from the practice of war due to being exempt from a draft. Let us imagine for a moment a person (Q) who makes a request to have her pacifistic religious beliefs accommodated by the state in a time of war. First, this request will be made on a discursive level; some form of conversation will take place in which Q is requesting that her beliefs be heard and taken into consideration by those who will engage in deliberation regarding how this situation ought to be handled. Taking Q's beliefs into consideration during a process of deliberation entails including Q's values and beliefs in the conversation and including them in our thoughts on the matter. It may very well be the case that after such deliberations it will be decided that the best way of accommodating her beliefs is to allow Q to be excluded from participation in the act or practice to which she has a moral objection, in this case the act of killing and the practice of war. Even if accommodating Q is achieved by Q being granted an exemption, which enables her to voluntarily *exclude* herself from participating in a particular

practice, in order to arrive at this conclusion Q's perspective must have been included in the deliberative processes that produced said conclusion. Hence, on the communicative level of discussion, accommodation seems to require inclusion of another in the discursive practice and incorporation of her perspectives and point of view into our own deliberations on the matter at hand; it requires that the one being accommodated be allowed to participate in the conversation even if a request is being made to be exempt from participating in another act or practice. In this sense all accommodation will be highly contextual in that the nature of the accommodation being granted will be highly contingent upon the particulars of the situation at hand. However, when we are dealing with accommodation in relation to a conversation concerning policies and guidelines intended to regulate, or at least be equally applicable to, everyone's behavior, the nature of that accommodation will necessarily be of an inclusive sort in that no subsequent decisions regarding potential behavioral exemptions can be made unless we first engage in a mutual dialogue on the issue at hand.

Further, if the aim of the discussion is to provide recommendations on, or insights into certain matters, the points of view of those being accommodated ought to be evident in the recommendations being put forth insofar as they have been assured the ability to participate in the deliberative processes involved in forming such recommendations. Additionally, participation here seems to require not only active involvement of all interlocutors but also mutual responsiveness to one another's perspectives,

points of view, claims and concerns. Therefore, *religious accommodation as it relates to the functioning of a bioethics commission ought to entail the inclusion of religious participants in the discourse and a diversity of interlocutors in the conversation, the incorporation of their perspectives in the deliberations of the other participants, and the opportunity to influence the conclusions drawn and recommendations made.*

Modes of Deliberation in Bioethics Commissions

With this in mind let us turn our attention toward the modes of deliberation and methods of accommodation that have been, and currently are, being implemented in bioethics commissions, committees, and councils. Before we begin it is appropriate to understand the purpose of bioethics commissions and the function they perform. Generally, there are two kinds of commissions, each of which performs a very different public function and which are created for distinct purposes; let's call these two types: educational and policy-making. The first kind of commission is educational in that it seeks to inform and educate both the government and the public about bioethical issues. To this end, an educational commission entails discussions that seek to further each interlocutor's, and the public's understanding of the complexities and nuances of the issues being raised. Hence, the deliberation entails a deeply reflective analysis of the issues and the conversation is

almost solely focused on fostering mutual learning. Their aim, then, is to educate the public about various bioethical issues and the variety of perspectives and positions that are actually held.

The second kind of commission is a policy-oriented in that it seeks to make recommendations regarding the types of public policies that ought to be enacted in regard to bioethical issues. In that they play a role in the formulation of policy that is to be reflective of public opinion, and which will have authority over public behavior, these types of commissions search for common moral convictions with the aim of arriving at consensus. The types of commissions we have been discussing thus far have been of this second variety. Insofar as policy-oriented commissions have a greater influence on the social and ethico-political landscape of our society they are of greater relevance to our discussions of religious freedom, multiculturalism, and moral diversity in bioethics. That said, our discussion will focus upon the modes of deliberation and discursive methods implemented by recent policy-oriented commission, with only little attention being given to a commission of the educational variety; whose importance lays in the fact that it was formed in response to the approach of its predecessor and elicited a critical response from its successor; thus, it played a role in shaping the aims and method of our current commission.

*The National Bioethics Advisory Commission
& Its Attempt to Accommodate Religion*

First, I would like to introduce the case of the National Bioethics Advisory Commission, which convened from 1996 to 2001 in the U.S. The self-purported aims of this commission were to identify broad principles to govern ethical conduct, to arrive at an ethical consensus amongst the “experts” involved on a range of bioethical issues and to aide in the construction of public policy based on share views and common morals. (Section 4 NBAC) Discussing the methodology implemented by the NBAC, with special attention given to their deliberations on stem cell research, Cynthia Cohen writes, “The National Bioethics Advisory Commission...adopted an approach to public deliberation indebted to Rawls in that it sought common ground consistent with shard values and beliefs at the foundation of a well-ordered democracy” (Cohen 2005, 269). Although the NBAC made no explicit reference to Rawls nor did it explicitly express a desire to implement a Rawlsian methodology, much of the discourse was arguably in line with the requirements of a framework public reason². One point of divergence from a strict contractualist method however, was the NBAC’s attempt to take a variety of explicitly religious perspectives into consideration in some of their deliberations. However, despite its attempts to incorporate religious perspectives into its deliberations on the issues of stem cell research and cloning, the representatives of the religions were not

² As we have seen previously, in chapter three, there are a number of problems associated with the implementation of Rawlsian-esque contract theory when attempting to cope with religious and moral diversity in bioethics.

invited as interlocutors in the consensus oriented ethical discussions or deliberations regarding policy. Rather they were called upon to provide testimony regarding the stance of their respective traditions on these issues.

Commenting on the NBAC's report on stem cell research, Messikomer, Fox and Swazey write, "The NBAC convened a special meeting [of]... 'prominent scholars of religious ethics' to hear 'their traditions' views' about moral and religious questions that this type of research raises'" (NBAC 1999, p.99; Messikomer *et al.* 2001, 501). Before discussing the case in any detail, Messikomer et al make a special point of noting that, "The NBAC has no religionist among its 18 commissioners" (Messikomer *et al* 2001, 499). Explaining the format of the meetings and the intentions of the Commission, Messikomer *et al* state,

The NBAC's hearings on cloning and on stem cell research included testimony by invited speakers from five major religious traditions: Protestant, Roman Catholic, Jewish, Islamic, and for stem cell research, Eastern Orthodox. The NBAC also commissioned a review and analysis of *Religious Perspective on Cloning* by Courtney Campbell, a religious studies scholar and bioethicist....[T]he Commission "believed" that it was "especially important"—even "crucial"—that it "inform itself about the range, content, and rationale of various ethical positions" regarding cloning and human stem cell research that derived from "a variety of religious traditions" The NBAC sought "to determine whether these various religious traditions, despite their distinctive sources of authority and argumentation, reach[ed] similar conclusions," with the aspiration of finding a "convergence of views across [them]" (NBAC 1997, p.7; Messikomer *et al* 2001, 501).

It must be noted that the NBAC maintained a special concern regarding the separation of Church and State, claiming "...in a pluralistic society a particular religious view cannot be determinative for public policy

decisions that bind everyone” (NBAC 1997, 7). We must concur that in a liberal democratic society, be it pluralistic or not, no single particular religious view or comprehensive moral doctrine ought to be imposed upon all members of society through its enactment in policy. However, it seems that the commissioners went a step further by not affording the religious voices they invited to the discourse any influential status in their deliberations. Commenting on the NBAC’s attempt to incorporate religious voices into their deliberations Messikomer, Fox & Swazey note, “the role that religious testimony and thought played in shaping the NBAC report on human stem cell research, and in the conclusions and recommendations it set forth, seems to have been both marginal and nebulous” (Messikomer *et al* 2001, 504). In addition, “In the report’s finale, religion has been expunged by being reduced to ‘diverse perspective,’ ‘ethical issues,’ and ‘moral concerns’” (Messikomer *et al* 2001, 505). While I share the commissioners’ concerns regarding the separation of Church and State and hence, in no way endorse the idea that a particular religious view be determinative of public policy, I do hold a more inclusive view of the role that religion ought to play in a liberal democratic regime. In a liberal democracy as religiously diverse and multicultural as ours, it seems fair, not only to allow religious voices to be heard but, to let them have their say in policy recommendations; for after all, any policies enacted as a result of such recommendations will come to bear upon the lives and practices of both religious and non-religious citizens alike.

From the outset there are at least two problematic features of the NBAC's hearings, which together may be summarized as a problem with both the aims of its intention and its means of achieving such ends. The first problem is with its methodology and the other is with its aims in general. Rather than inviting the "religionists", so to speak, to join their discussions as contributors to the dialogue and equal partners in the discursive process itself, they were invited to give "testimony". "Testimony" involves a speaking-at or a speaking-to rather than a speaking-with. This testimonial method fails to actually include these individuals in the conversation and hence excludes their perspectives from the actual deliberative process itself. Rather, these perspectives are objectified in the sense that they become static objects of reflection by the commissioners and hence are not part of the communal reflective processes that are taking place.

Secondly, there is a major problem with the intentions of the commission, which in large part gives rise to the problematic nature of its method. The Commission sought to *inform itself about such perspectives* rather than attempting to *actually engage such perspectives*. In addition, the Commission itself aspired to find a convergence of views amongst these various religious perspectives, yet did so without having the representatives of those perspectives fully engaged as interlocutors. Having the religionists as interlocutors would have been more fruitful in that they would be able to clarify misconceptions and would be better equipped to determine where a particular concept espoused by another was either akin or compatible to a

concept present in one's own paradigm of thought. Without a full-fledge inter-faith and interdisciplinary dialogue, consensus will be extremely difficult to achieve because dialogue encourages mutual recognition of the similarities and differences and compatibility and incompatibility of concepts and aims amongst paradigms.

Conversely, in a testimonial and informative context, like that which occurred in the NBAC, the analysis and examination is highly superficial and one-dimensional. It is superficial insofar as all the commission has to work with is freestanding conceptual elements of each tradition, which it then attempts to compare rather than witnessing the interaction of worldviews and being a part of the relational process themselves. It is one-dimensional insofar as it is only the commissioners who attempt to detect and compare concepts. Given that the commission itself is secular it is highly likely that a predominantly secular hermeneutic, or mode of interpretation, was placed upon the information acquired. This is a disadvantage when one is trying to find a convergence of perspectives. Insofar as the religionists may be able to interpret the concepts of others in such a manner as to illuminate modes of compatibility between their concepts and those of others, which may otherwise have been overlooked, such a multi-perspectival interpretive schema and mode of discursive interaction is crucial to the pragmatic perspectivist methodology.

Further, the one-dimensionality present in the case of the NBAC is inherent in the structure of the hearing itself, for it involved a group of

“expert” observers (the commissioners), situated as a subject viewing a set of facts or phenomena, which in turn are situated as objects. Conversely, pragmatic perspectivism situates all parties involved in a dynamic and discursive process that entails multi-dimensional subject to subject relations and the consideration of many distinct interpretive stances, both of which the NBAC hearings lacked. It is not a surprise then that what Messikomer *et al* reports is that not much progress was made. Messikomer *et al* state,

Virtually the only insights that the NBAC seems to have derived and utilized from the religious testimony it heard regarding the prospect of human cloning were equivocal at best. They were summarized in the recommendation section of the cloning report in the following way: “Religious positions on human cloning are pluralistic in their premises, modes of argument and conclusions. Nevertheless, several major themes are prominent in Jewish, Roman Catholic, Protestant, and Islamic positions, including responsible human dominion over nature, human dignity and destiny, procreation, and family life....” (NBAC 1997, pp. 103-104)....Conceptually and empirically, the inconclusive conclusions about religious perspectives on cloning at which the NBAC arrived fell far short of identifying common grounds for reaching the “convergence of religious view” to which they had aspired. (Messikomer *et al* 2001, 503)

If pragmatic perspectivism were applied to the above situation involving religionists and the NBAC, both the commissioners and religionists would have had an equal voice in the matter, in that all parties would have been situated as interlocutors in a greater dialogue revolving around a single question, in this case “Is the cloning of a human individual an ethically permissible act?” Despite a motley assortment of responses comprised of “yes”, “no”, and “sometimes, depending on the situation,” the dialogue would not come to a halt. Rather, the question as to why each party gave the

response they did would be probed further in an attempt to discover some commonly shared concepts, be they directly related to cloning per se or not.

Take for example the concept of “human dignity,” which the Commission itself found to be of common concern. This may then be employed as a “bridge concept,” so we could move to questions such as “what does human dignity entail,” “why is human dignity important to you,” and “in what manner do you see cloning as either compatible or incompatible with your conception of human dignity?” Now, such questions would not be presented all at once but rather one by one with ample time given for deliberation and discussion to be had as to promote a mutual recognition of the modes of reasoning employed by each person. That which would be given attention is not only the distinct interpretations of human nature espoused by the participants but also the distinct comparative interpretations of each interlocutor as well. Having a number of perspectives present in the comparative process is as important as having many perspectives present their views on a given topic. *Different interpretive lenses may not only be a cause of disagreement but may be able to provide new insights as to where commonalities exist and where conceptual bridges may be formed.* Different interpreters may perceive different conceptual links amongst the various perspectives and hence, may increase the chances of arriving at consensus.

We can not expect consensus to be achieved after a body of ‘impartial’ observes examines the brief testimonies of a few individuals over a relatively short period of time. If the aim is consensus or conceptual convergence,

which indeed it was in the case of the NBAC, an on-going process of dialogue, in which no single mode of reasoning is given authority or privilege, must be initiated. Otherwise, all we are presented with is a failed attempt at coming to terms with pluralism that is unable to produce substantive resolutions to the problems of religious, cultural and moral diversity.

To better illustrate how pragmatic perspectivism might look in practice, I would like to review some of the actual religious testimonies presented to the NBAC, and which were published in its report in 2000, and offer some suggestions as to how such a dialogue might proceed and the directions of inquiry it might take. It is crucial to note however, that insofar as this comparative analysis is merely a hypothetical thought experiment it cannot possibly achieve that which a real face-to-face encounter and sustained discursive engagement amongst interlocutors could potentially achieve. To a large extent, I, like the commissioners, am situated as an external observer and hence, any insights I, or any other person who is not involved in the analysis in a participatory fashion, will come up short in terms of what could be discovered during the course of an on-going conversation. Remember, the type of multi-perspectival and inter-perspectival discursive practice that pragmatic perspectivism suggests involves: a *candid comparative conversation* aimed at a *mutual understanding* of one another's perspectives; an *abandonment of the quest for universal truth* in regard to the policy recommendations that will be suggested; an acknowledgment of *justificatory relativity* of propositions being asserted

from varied epistemic contexts; an introspective willingness to search one's own tradition for means of supporting *hermeneutic diversity*; and a recognition of the need for *genuine toleration* that could enable a second-order consensus regarding the '*permissible*', rather than the '*true*.'

With this in mind, let us now turn our attention toward the testimonies that were provided in regards to embryonic stem cell research.

As, one of the commissioners, James Childress, noted,

With specific attention to the ethical issues, NBAC found widespread agreement that "human embryos deserve respect as a form of human life" but, at the same time, disagreements "regarding both what form such respect should take and what level of protection is required at different stages of embryonic development." (Childress 1999, 3)

He goes on to write,

Our conclusion that "it is ethically acceptable for the federal government to finance research that both derives cell lines from embryos remaining after infertility treatments and that uses those cell lines" (Childress 1999, 4)

Ten of the 'religionists,' so to speak, who shared their perspectives on this issue were: Gilbert Meilander, a bioethicist and Protestant theologian speaking from a general Protestant perspective; Ronald Cole-Turner, a Protestant theologian from the United Church of Christ; Fr. Demetrios Demopoulos, representing a Greek Orthodox Christian perspective; Rabbi Elliot N. Dorff, representing the Jewish faith; Rabbi Moshe David Tendler, also representing the Jewish tradition yet, from a biblical rather than explicitly theological point of view; Laurie Zoloth, also providing a Jewish perspective;

Margret A. Farley, speaking as a member of the Roman Catholic tradition; Edmund Pellegrino, a physician and bioethicist also testifying as a Roman Catholic; Kevin Wm. Wildes, a bioethicist and Jesuit theologian speaking from his perspective on Catholicism; and Abdulaziz Sachedina, speaking from a general Muslim perspective that attempts to transcend the divides between the Shi'ite and Sunni schools of thought.

Before, we begin, I believe it is important to notice that there was an overwhelming presence of both Jewish and Catholic perspectives represented in the NBAC hearings (which along with Protestant theologians, were two of three religious tradition to make a contribution to early bioethics), only one Orthodox Christian, only one representative of Islam (who did not speak from within one particular tradition in Islam itself), and no representatives of any East-Asian religious traditions. In a small attempt at providing greater breadth and balance to our hypothetical conversation I will incorporate the perspectives of a Buddhist scholar and a Confucian philosopher on this issue. In the interest of brevity, and insofar as this is not to be taken as a concrete example of an actual dialogical engagement, but merely a demonstration of what is possible in such a situation and an a brief illustration of how pragmatic perspectivism might look in real life, I will only present one Catholic, one Protestant and one Jewish perspective – although, having more than one perspective from the same general tradition of thought could be quite beneficial for our general purposes.

We begin by positing the question: *“Is embryonic stem cell research a morally acceptable practice?”* asking each interlocutor to give their reasons why and to expound upon their respective conceptions of the embryo.

Speaking from a Protestant point of view, Gilbert Meilander draws upon the Reformed Calvinist tradition claiming that no community is strong if it is not willing to carry its weakest members. He goes on to argue that more traditional Christian conceptions of the human person do not appeal to one’s “capacities,” but rather refer to the divine-given dignity that is found within the mystery of humanity and human individuality. As a result he argues that insofar as it possesses its own unique story and individuality – despite lacking conscious awareness of it – the embryo is the weakest member of the human community and hence, should be cared for as such.

Furthermore, drawing upon the Mennonite tradition, Meilander argues that although an end may indeed be considered to be an undeniable good, we must avoid the easiest means of achieving the desired end in that with time we might find a better means that is not yet known or available.

Consequently, he argues that with an ethically questionable means of achieving the medical benefits that will result from embryonic stem cell research we ought to pause and avoid pursuing such research, for in time an ethically sound means might be discovered. (Meilander 2000)

Writing from a Confucian perspective, the physician DFC Tsai, explains that Mencius taught that humans and animals are distinguished by a human’s inborn moral capacities, which are: humanity (jen), righteousness

(yi), propriety (li), and wisdom (zhi) and which are referred to as the four beginnings. Having some degree of potential to develop these capacities an embryo has moral value yet, lacking these capacities the embryo possesses less moral value than other persons. Tsai describes the Confucian conception of personhood as gradualist, which implies that moral personhood always begins from potentiality, is developed gradually over time, and must be cultivated through the cultivation of the aforementioned capacities. Hence, bearing moral value we must respect embryonic life in that if we are to violate this morally lesser life form we must do so cautiously and with the utmost respect.

“Jen” is the capacity for love, compassion and benevolence and is what the golden rule (do unto others) is founded upon. “Yi” is the capacity for appropriateness and is involved in the Confucian idea of “filial piety,” which is an ethic of partiality for family, and also enables one to behave correctly in a given context. According to “yi” each person must act appropriately toward other persons, with appropriate behavior being determined in regard to the relationality amongst persons and the specifics of the situation in question. Therefore, if we act out of love and compassion for humanity and attempt to act as benevolently as possible toward embryonic life by treating it in ways that we do demonstrate any disregard for its moral value, we may engage in embryonic stem cell research so long as it is believed to have a great benefit for humankind. Here the benefit to humankind must outweigh the defilement of the embryo in that such research must be able to bring about

definite and enormous benefits to the human community and there must be no equally valid alternative possible. (Tsai 2005, 635-640)

Commenting on this issue from the perspective of Theravada Buddhism, Damien Keown argues that in Buddhism respect for life, not simply human life, is taught, claiming that killing an embryo is a violation of the first ethical precept of Buddhist moral teaching. These precepts are: to avoid killing, avoid stealing, avoid sensual misconduct, avoid false speech, and to avoid intoxication and heedlessness. According to Keown, while the embryo is not considered to be a human person, the destruction of an embryo constitutes a breach of the first precept and is a direct assault on the basic good of life, which is highly esteemed and regarded as possessing ultimate value. Therefore, even if the goal of embryonic research is to cure illness or provide medical assistance to other living beings it is still morally unacceptable insofar as: it subordinates life to knowledge (the theoretical medical knowledge that would be acquired and used to benefit others); it makes life an instrumental and a means to an end, hence neglecting its inherent moral value; and it fails to demonstrate compassion for embryonic life. Keown does comment that it might be morally permissible to conduct research on unanimated embryos (hence, frozen embryos) however, in that it is uncertain as to whether or not such beings possess life of any sort it is safer not to perform the research, and hence avoid killing what might possibly be a form of life. (Keown 2001, 118-122)

Explaining the Muslim point of view on this matter, Abdulaziz Sachedina describes the embryonic gestational period as the embryo's journey to personhood. For Sachedina, the human acquires moral personhood through its endowment with a rational soul, which is a person's likeness to God, yet, which does not occur at the moment of conception. While there is some debate within Muslim circles – both between Sunni and Shi'ite and amongst Sunnis and Shi'ites themselves – there is a general belief that ensoulment occurs at approximately 120 days, or sometime around four months into the gestational period. It is at the time of ensoulment that an embryo's journey to personhood begins (Sachedina 2000).

On this view, the life of the fetus, and likewise the life of the embryo, occurs at several morally distinct stages. Consequently, early embryo's have the potential for personhood however, are not yet recognized as moral persons; a distinction is drawn between biological and moral personhood and hence, only at the latter stages of gestation is a fetus accorded the status of a human person in Shari'ah (Islamic law) and considered a bearer of moral value. In order for a life to be a candidate for moral personhood certain capacities – indicating the presence of a rational soul – such as voluntary actions, are required. Therefore, Sachedina claims that from a Muslim perspective research on early stage embryos is morally acceptable, insofar as it contributes to the good of humankind and assists in improving the lives of other human persons. Hence, a potential person ought not be whimsically disrespected nor perceived with utter disregard however, it may be used as

means to benefit the health and well being of actual persons. (Sachedina 2000)

Pellegrino, sharing his Catholic perspective, claims that human dignity is begotten through the *imago dei*, or our creation in the image and likeness of God, which is the human's rational soul. Additionally, he claims that all human life is a continuum and that at all stages of the continuum human life has dignity insofar as forms of life at earlier stages have the potential to develop into a fully rational human person. As a potential rational human person, all embryos have an inherent dignity and sanctity of life and hence, they have a moral worth that does not depend on the degree of development the being has undergone.

Pellegrino goes on to argue that no human life ought to be treated as a means to an end insofar as all human persons, whether in potentiality or actuality, are morally worthy of respect and have an inherent value in and of themselves. In regard to embryonic stem cell research this implies that any treatment of an embryo that is not therapeutic to that human life is prohibited insofar as such an act would entail treating the embryo as a means to an end, thereby using it as an object rather than acknowledging its inherent moral value. Adding that on this view because the consequences of the action make no difference in regard to respecting the dignity of the human life in question, there is no difference between killing an embryo and using its cells, even if it is for some greater common good. (Pellegrino 2000).

Sharing his own Jewish perspective, Rabbi Dorff claims that all humans are created in the image and likeness of God yet we are not the owners of our bodies, essentially we are leasing our bodies from God. He explains that all human bodies belong to God and hence, are merely on loan to us from the divine. Hence, we are required to preserve and care for our lives and health out of respect for that which belongs to God. An example of such preservation and care for that which is not truly our own is the idea that no one is permitted to amputate a limb, that is if there is no medical reason for doing so, because this would injure and defile the body that we are leasing. To this end, he argues that fetuses and embryos are considered to be a part of the body of the mother and as a body part must be respected, preserved and cared for because it belongs to God. Thus, all in utero embryos that have potential for development may not be discarded nor treated as a foreign object. On this view, it is only permissible to abort a fetus if it threatens the overall health of the rest of the body; in other words if it possess a grave medical risk to the mother. Insofar as the fetus is considered to be part of the mother's own corporeality if, during the first 40 days of gestation, the fetus is ex utero it is no longer considered a body part of the mother and hence, it may be used for research that will benefit humankind. In that at this stage of fetal gestation the fetus is no longer part of the human body and lacks the potential to develop into a human person, stem cell research on this entity may be performed. Therefore, Dorff argues that in

cases of early ex utero gestation fetal stem cell research is a morally acceptable practice. (Dorff 2000)

Speaking from an Orthodox Christian perspective, Fr. Demopoulos explains that human personhood is defined in relation to God and the divine mystery of theosis, or the process divinization through prayer and moral living. For Orthodox Christians, the triune God is a hypostatic union of Father, Son and Holy Spirit in which each is unique yet undifferentiated. Likewise, the human person is a hypostatic union of mind, body and spirit; a psychosomatic spiritual unity. Human sanctity on this view is begotten through grace, or the presence of divine energies within each person that, while distinguishable from God, enable each person to have a direct relationship to the divine; a relationship that must be cultivated over a lifetime and which has union with God, or theosis, as its ultimate aim. Consequently, all humans are constantly involved in the process of developing their human personhood, whose dignity lies in relation to God.

Arguing that insofar as Orthodox Christians believe that human personhood can be described as a developmental process, that human personhood begins with the zygote, and hence, both the human embryo and the human adult are in developmental stages of personhood, albeit distinct stages, the former being in an earlier and less mature stage of development while the latter is in a much higher developmental stage. Insofar as it is a human's likeness to and connection with God, which is the divine energy that imbues a life with its vitality, that imbues a human life with dignity and

sanctity, it is argued that sanctity of life is had through all of the stages of human development. Therefore, as a destruction of divinely endowed human life, embryonic stem cell research is considered a violation of human sanctity and is therefore immoral and unacceptable. (Demopoulos 2000)

Once each interlocutor has had a chance to explain his position and expound upon certain themes, if requested to do so, each would be asked to note any potential “bridge concepts” they might have noticed. Examples of some possible “bridge concepts” that could be found amongst the various perspectives presented might be: “potentiality,” “life as process,” “moral capacities,” “means vs. ends,” or “common good.” Let’s assume “potentiality,” – a concept employed by Dorff, Pellegrino, Tsai and Sachedina in their moral reasoning regarding the embryo – is a concept all would agree to discuss. Despite our interlocutors having drawn distinct, and at times divergent conclusions, we might wish to further explore this concept, asking those interlocutors who either did not implement it in their own reasoning what their perspective on potentiality is and whether or not it plays any role in their moral reasoning in general. If we discover that it does not, or that the others oppose this way of conceptualizing human life, rather than leave the concept aside we might inquire into beliefs regarding any possible situations in which an embryo could be morally distinguished from an adult human. For instance, in Orthodox Christian thinking it is permissible, as a forgivable wrong, to terminate the life of an embryo or fetus if, and only if, an immanent danger threatening the life of the mother is present (Harakas 1982, 85).

Likewise, this same position – supported for similar yet distinct reasons – has been offered by members of the Catholic, Jewish and Islamic moral traditions as well. Hence, we could move to a discussion of the “limit-cases,” so to speak, in which, although not morally acceptable, it could be considered morally permissible to terminate embryonic life. At this stage of our inquiry we could acquire a better understanding of the reasons why each interlocutor would be able to tolerate an otherwise immoral act and hence, search for some consensus on what all would deem tolerable and intolerable. There is a need to thoroughly explore one another’s epistemic contexts in a purposeful and focused manner, all the while refraining from outright debate regarding the truthfulness of the onto-metaphysical concepts being discussed as to foster understanding and cultivate consensus³.

The President’s Council on Bioethics:
The Philosopher’s Forum

After the inability of the National Bioethics Advisory Commission to produce recommendations that reflect a deep consensus on difficult moral issues and which adequately represented a common view that could serve as

³ The task on constructing a more in-depth hypothetical dialogue has been avoided for three reasons. Firstly, as a scholarly endeavor such a task would require a rather lengthy and sustained analysis that could culminate in an entire book-length project. Secondly, insofar as it has been argued that what is required for a meaningful consensus-building project is actual face to face dialogue among interlocutors coming from distinct traditions, a scholar’s insights into these matters as a result of a comparative analysis might be of great assistance to the task at hand however, it is far from sufficient at indicating what is indeed possible in an interactive discourse. Thirdly, given the novelty of the ethical issues at hand, much interpretive work will need to be done on the part of our interlocutors; this task of interpreting traditions and applying its concepts and modes of reasoning to novel circumstances must be task of the members of the actual traditions themselves and those with a deep personal moral investment in the preservation and directions of development of those traditions.

a public morality, the President's Council on Bioethics, established in 2001, would serve a different purpose.

The mission of this council was:

1. to undertake fundamental inquiry into human and moral significance of developments in biomedical and behavioral science;
2. to explore specific ethical and policy questions;
3. to provide a forum for a national discussion of bioethical issues;
4. to facilitate a greater understanding of bioethical issues; and
5. to explore possibilities for useful international collaborations on bioethical issues.

As is evident from its stated mission, the aim of this council was not to represent public opinion or achieve consensus but was rather to promote public discussion and facilitate public understanding of issue in bio-medical ethics. In that it was not intended to be a public forum in which discussions would result in mutually binding policies, the President's Council on Bioethics did not have to abide by the widely accepted Rawlsian requirements of public reason, which would promote the adoption of a common vernacular. This thereby enabled the inclusion of religious perspectives into the conversation with much greater ease than would have been the case if inquiry and understanding had not been the primary objective.

With the aim of raising questions and exploring all potential responses rather than providing definitive and conclusive answers or suggesting policies intended to resolve the issues, the President's Council on Bioethics attempted to increase the public's understanding of the

ramifications of certain modes of thinking so that they could better assess such issues. Arguing against both Rawls' notion of "public reason" and attempts to reach an "overlapping consensus" on issues as divisive as those involved in bioethics, Gilbert Meilander, a theologian who himself participated as a member of the Council, has argued that aiming at consensus will only produce semblances of agreement for agreement's sake rather than provide any real understanding of the nature of the issues at stake.

Meilander writes,

consensus – unlike compromise or majority vote – often operates as a subtle invitation to pretend to agreement that does not in fact exist. One can be on the losing side of a vote in a democratic polity without needing to set aside one's deepest beliefs. Public bioethics would in many respects be healthier – and better serve the polity – if it set itself against consensus and instead sought to express the metaphysical divides that actually exist within our societies. (Meilander 2005, 81-81)

With its attempt to recognize disagreement and diversity of perspectives, explore a variety of ethical options and avenues for moral action, and promote mutual learning, there are indeed many benefits to this approach and this council did publish a number of very useful and educational materials regarding a wide-range of bioethical issues.

However, despite all of its educational efforts, in the end we are still presented with irresolvable bioethical conflicts that are often of a public nature and which beg for socio-political and legal resolutions. Further, we are still left without a common normative guideline to which we can appeal in the face of such moral disagreements and ethical controversy. Therefore,

although it did a wonderful job at facilitating learning and hence, succeeded in achieving its goals, this council received much criticism and did little to resolve the ethico-political tensions surrounding public bioethics.

The Presidential Commission for the Study of Bioethical Issues & Gutmann's Deliberative Democratic Approach to Bioethical Inquiry:

In June of 2009 the President's Council on Bioethics was prematurely disbanded, four months prior to its scheduled expiry date, on the grounds that its mode of analysis and method of deliberation were too philosophical and what was needed instead was a commission that could provide a more practical and policy-related analyses of contentious bioethical issues. Hence, the Presidential Commission for the Study of Bioethical Issues was formed with the political philosopher, Amy Gutmann, having been appointed as its chair.

The mandate of the PCSBI was to "identify and examine specific bioethical, legal, and social issues" and to offer "practical policy options" with the goal of "identifying and promoting policies and practices that ensure scientific research, healthcare delivery, and technological innovation are conducted in an ethically responsible manner" (Executive Order 13521, sec. 2, 2009). Unlike its immediate predecessor, the aim of this commission is to develop a shared consensus and ethically sound policy rather than merely

engage in philosophical explorations and analyses of bioethical issues. Given Gutmann's long-standing interest in issues of liberal pluralism, multiculturalism, religious liberty, and modes of deliberation in democratic societies, she is well-suited to help fulfill the commission's aims and well-prepared to face the numerous problems associated with confronting religious pluralism, multiculturalism and moral diversity in the context of public bioethics. Gutmann is well known as an advocate of what is referred to as "deliberative democracy," which is the political philosophy that will guide this commission's mode of inquiry into bioethical problems and which will serve as its method of interlocution and deliberation. Hence, a summary and analysis of Gutmann's theory is in order as a means of understanding her trajectory of thought and the methodology that will guide public bioethical inquiry in America for the next few years.

With consensus as its goal, deliberative democracy calls for on-going, transparent and society-wide discussions of fundamental values that will serve to anchor our policy recommendations. Furthermore, she conceptualizes consensus as an on-going process that is itself open to revision and which requires mutual learning for its success. In many aspects, Gutmann's method resembles that of the pragmatists and in certain instances shares much in common with the method of pragmatic perspectivism I have argued for. However, as will become evident, there are salient differences between Gutmann's method and my own, and while I believe her proposals are on the right track and are a welcomed step in the right direction when it

comes to creating bioethical guidelines and policies for a society as diverse and pluralistic as our own, her method falls short of resolving some of the problems and ameliorating some of the tensions that pervade public bioethical discourse.

Providing us with a discursive ethics the four purposes of deliberative democracy are: to promote the legitimacy of collective decisions; to encourage public-spirited discussion on seek public perspectives on public bioethical issues; to promote mutually respectful decision making; and to serve as a means of correcting inevitable mistakes and misperceptions of one another's perspectives. Gutmann has described her approach to discursive ethics as "Deliberative universalism," which she explains is "a form of ethical universalism" that "relies partly upon a core of universal principles and partly upon publicly accountable deliberation to address fundamental conflicts concerning social justice, conflicts that reason has yet to resolve" (Gutmann 1993, 193). Elsewhere, Gutmann argues that there are four substantive principles necessary to ground any such discussions, which are: liberty, fairness, reciprocity and mutual respect. With her principles of liberty and fairness we get a glimpse of Gutmann's Rawlsian side, while with her call for reciprocity and mutual respect we get a taste of her Taylorian influence. In the spirit of pragmatism, she claims that these principles are

themselves open to revision as the discourse proceeds yet, are required in the initial stages of deliberation in order to guide the discursive process⁴.

Gutmann views liberty as a substantive principle and foundational idea that rests at the core of any liberal democratic society. In regards to her conception of liberty as it relates to our concerns regarding pluralism

Gutmann draws heavily from Isaiah Berlin's work writing,

What I therefore call liberal pluralism does not give absolute priority to individual liberty. Rather, it claims that there is a moral minimum that a political order must respect to be considered decent and therefore worthy of defense. The moral minimum includes not only protecting individual liberty, but also avoiding extreme forms of suffering that are humanly inflicted, cruelty for short. (Gutmann 1999a, 1042)

In accord with the view of liberal multiculturalism defended in chapter two, Gutmann's vision of a democratic society dedicated to liberal pluralism makes room for collective freedoms without eschewing the idea of individual liberty and argues for the importance of individual liberty and autonomy without placing personal autonomy upon a pedestal, as does Kymlicka's view of the liberal multicultural project. Concerning freedom of religion in public discourse, Gutmann argues that we should not interpret religious freedom in terms of either a "wall of separation," in which religion and politics are viewed as occupying entirely distinct spheres of sociality or as a "one-way protection," that guarantees religion protection from the State yet, which

⁴ Despite endorsing a 'soft' version of principlism, Gutmann's principles differ greatly from those Beauchamp and Childress. Having developed her principles in relation to political theory and ethico-political philosophy, the principles she proposes are influenced by contemporary theories of liberalism and multiculturalism as opposed to Kantian deontology and utilitarian varieties of consequentialism.

would allow religion to influence politics. Instead, Gutmann proposes a third view that she refers to as a “two-way protection,” which in the interests of *fairness* would hold all persons to the same standards of discourse (Gutmann 1999b, 907). According to Gutmann this idea of a “two-way protection,”

suggests that the right of religious citizens to advance political arguments in terms that are religiously based carries with it a responsibility similar to the responsibility of secular citizens. When religious or secular citizens argue in public for a mutually binding law or policy, we are responsible not simply for speaking to our co-religionists or co-party workers as if we were in church or in a meeting of our favorite voluntary association. We are morally responsible for making arguments that strive for reciprocity. (Gutmann 1999b, 908).

While she does not explicitly endorse the notion of “public reason,” per se, Gutmann, like Rawls appeals to fairness and in doing so shares Rawls’s concern regarding the mutual accessibility of the claims raised, arguments put forth and reasons asserted by interlocutors in the public arena. Hence, with fairness in mind, Gutmann argues that as a substantive principle, reciprocity implies that citizens owe one another justifications for the mutually binding laws that will be collectively enacted as the result of a public discursive practice, such as the one she proposes. She therefore argues when taken together reciprocity and mutual respect require mutual justification, which entails providing reason we can all accept for adopting a proposed policy, law or guideline, claiming that, “As citizens of a morally diverse society, we are all responsible for seeking terms of mutual justification” (Gutmann 1999b, 908) and going onto to explain that “At the core of deliberative democracy is the idea that citizens and officials must

justify any demands for collective action by giving reasons that can be accepted by those who are bound by the action" (Gutmann & Thompson 1997, 38).

Although Gutmann wishes to avoid the explicitly Rawlsian claim that our arguments should be asserted in terms of reasons that all can potentially accept in some *ideal state* (as we saw is often the premise upon which contract theory is founded), her position remains embedded within a Rawlsian framework insofar as she holds a deep concern for the mutual acceptance of asserted claims and reasons. As was made evident in the preceding chapter, there are numerous problems with adopting this view.

In accord with the aims of pragmatic perspectivism, Gutmann hopes that deliberative democracy can promote mutual understanding by encouraging interlocutors to learn about, and from, one another's perspectives. To this end she views mutual learning as an integral and imperative aspect of any process of consensus formation and hence, as a crucial part of our discursive practice. While this is a laudable goal that I readily agree with, Gutmann's own Rawlsian tendencies hinder her method's ability to actually promote such a mutual understanding. Despite her best efforts to allow interlocutors to speak with a religious voice she curtails the types of language one can implement in the discourse by requiring a sort of translatability clause, which requires the translation of one's claims into mutually justifiably reasons, into her supposedly inclusive method. Gutmann has claimed, "all citizens also are responsible for making political arguments

that at least can be translated into mutually justifiable reasons for mutually binding policies” (Gutmann 1999b, 909). Gutmann’s call for translation of this sort, together with her conception of mutual justification as endorsing shared reasons, is an obstacle to achieving her own desired goal of mutual understanding. This kind of translation privileges secular language, in terms of accessibility, and precludes an authentic expression of religious convictions, thereby preventing genuine learning of another’s perspective to occur.

As we argued in earlier chapters, a genuine learning of another’s beliefs cannot take place if those beliefs must be translated into some pre-existing set of mutually justifiable concepts. Unlike deliberative democracy, pragmatic perspectivism argues that mutual justification must be conceptualized in terms of being able to discover norms, concepts and guidelines that all parties can agree to yet, at times, for very different reasons. Our focus should be on the fact that our group of interlocutors, regardless of how varied the perspectives of its members, justifies a given policy rather than focusing on holding shared reasons for a given policy. As we saw in our previous discussions of justification, all can come to agree that a position, claim or perspective is justifiable yet, without implementing the same reasons for agreeing to adopt a particular policy. Hence, we can agree with Gutmann that the legitimacy of policy will indeed rest upon mutual justification however, we do not have to conceptualize mutual justification as entailing shared modes of justifying a particular policy. Stout would “insist

that the ideal of respect for one's fellow citizens [and reciprocity, for that matter] does not in every case require us to argue from a common justificatory basis of principles that no one properly motivated could reasonably reject" (Stout 2004, 85). In accord with Gutmann's sentiment yet going one step further in addressing the issue of justification in a pluralistic society, Stout argues,

"No ethical community could sustain a discursive practice without imposing on its members the necessity of keeping track of the normative attitudes and entitlements of their interlocutors...But, as we have seen, ethical communities have different ways of going about their discursive business. They employ different concepts" (Stout 2004, 280)

And goes on to describe a group of democratically-minded interlocutors as "a community of reason-givers...constituted by our mutual recognition of one another as those to whom each one of us is responsible in the practice of exchanging reasons" (Stout 2004, 304). Thinking of the process of mutual justification as mutual involvement in the practice of reason-giving, rather than a quest to find a shared mode of justification, interlocutors can implement distinct modes of reasoning in their respective justifications of a policy without undermining the fact that the policy is itself mutually justified and hence, legitimate.

At this point, we can join Gutmann in her call for mutual justification, if this concept is conceived appropriately. Additionally, we can readily accept reciprocity as a value that ought to be promoted in our discourse yet again, we must be careful how we conceptualize this idea. Reciprocity entails more than merely owing one another reasons for our assertions and propositions.

Ortega saw reciprocity as playing a foundational role in human sociality claiming, “he who is incapable of reciprocating, whether favorably or adversely, is not a human being” (Ortega 1957, 140) and describes reciprocity in terms of mutual correspondence, claiming that it is a “capacity for responding to me to the full scope of my actions...” (Ortega 1957, 146), to which we might add, the entire range of my perspectives, expressed propositions and asserted claims.

Consequently, we might say that reciprocity entails a willingness to share one’s own as well as receive another’s point of view; a responsiveness, if you will, to the views put forth by another. Again, the mutual learning that Gutmann speaks of will only occur if we are receptive to another’s perspective and welcome her point of view. But we must not confuse welcoming with acceptance; an interlocutor can welcomingly receive another’s point of view without having to necessarily agree with it or look favorably upon the consequences that would result from the enactment of such a position. Rather, what is required by *reciprocity is a mutually active and candid correspondence amongst interlocutors*.

Furthermore, in regards to the idea that our policies will be collectively binding, we can all agree with the inherent logic of a mode of justification implemented in the enactment of a particular policy yet, still disagree with the underlying value that make said reasons relevant in the first place. For example, “we are banning indoor smoking in the interest of health” is a justifiable claim yet, will not be considered an acceptable policy if

health, per se, is not valued over and above liberty or the pursuit of personal happiness, for instance. Consequently, given the deep diversity and pervasive pluralism of our society, the policies we enact must not only be justifiable within the context of a single particular epistemic context, over which there might be staunch disagreement, but must also be respectful of the pursuit of diverse ways of life and modes of reasoning.

Given Gutmann's own endorsements of liberal pluralism, which closely resembles the liberal multiculturalism defended earlier, we ought to recognize that many claims, assertions and policies can be justified for a plethora of reasons and from a myriad of epistemic contexts. However, the only conceptual framework which ought to be appealed to in cases when agreement has not been reached and when consensus regarding the parameters of permissibility is still underway is that of liberal multiculturalism itself. From within the framework of liberal multiculturalism, as conceived in the early chapter, it is always possible to justify policies of toleration even if "tolerance" itself is not mutually justified by all of the interlocutors involved.

Further exploring the idea of moral diversity, Gutmann discusses four sources of moral disagreement: scarcity of resources, limited generosity, incompatible moral values, and incomplete understanding; three of which raise issues that pragmatic perspectivism has addressed and pose problems that it attempts to resolve. As a potential solution Gutmann argues, "In the face of incompatible values, deliberative democracy calls for what we call an

economy of moral disagreement. In justifying policies on moral grounds, citizens should seek the rationale that minimizes rejection of the position they oppose" (Gutmann and Thompson 2007, 40). By "limited generosity," Gutmann refers to the unwillingness of interlocutors to consider the perspectives of others, or this eagerness to reject an opponent's perspective, which to a large extent leads to incomplete understandings or misunderstandings of another's point of view. If we can recall, two requirements of entry into the pragmatic perspectivist discourse were: openness to difference and willingness to engage others. This can be supported by an appeal to the idea that in a democratic public sphere all views and perspectives, not simply those we find most agreeable, are at liberty to be expressed. Additionally, conceiving of commissions as extensions of the public sphere we can require "generosity," or "reasonableness," in the Meadian sense of a willingness to take multiple perspectives into account,⁵ as prerequisites for entry into the discourse, in an attempt to diminish disagreement and confront it at its source.

Furthermore, with the dual notions of: "indigenous pluralism," with its call to accept or tolerate interpretive differences regarding norms, and "parameters of permissibility," that would seek mutual agreement regarding the intolerable rather than the good, pragmatic perspectivism suggests a means of coping with the incompatibility of moral values, that Gutmann mentions, by finding ways of securing consensus despite disagreement.

⁵ This notion of "reasonability" was suggested previously as a corrective to the Rawlsian notion of "reasonable."

Moreover, by calling for comparison and structuring the conversation so that it necessarily entails learning and self-evaluation, pragmatic perspectivism tries to prevent the incomplete understanding, that Gutmann fears, or remedy it from the outset.

In addition to her ideas of consensus as on-going and revisable, mutual respect and learning, and open-mindedness, there are some praiseworthy aims and aspects of deliberative democracy that might raise the eyebrows of both critiques and supporters alike. Insofar as questions might be raised regarding the viability of deliberative democracy's aim of encouraging *public-spiritedness* in deliberations or its goal of promoting *society-wide discussions* of core issues and fundamental values, it might be helpful to turn toward Charles Taylor's ideas regarding the public sphere to explore their feasibility as purposes of a commission.

First if we conceptualize bioethics commissions not as detached from the public arena but as extensions of the "public sphere," which Taylor describes as "a common space of discussion," we can come to realize that some of the goals of deliberative democracy, which at first site might seem idealistic or intangible, might actually be attainable. Taylor argues that "unless all dispersed discussions are seen by their participants as linked in one great exchange there can be no sense of their upshot as 'public opinion'" (Taylor 2007, 186) and claims that in addition to engaging in discussion people occupying this "common space" of the "public sphere," are capable of reaching a common mind," or in other words, consensus. "Public opinion," or

in our case consensus, seems to require a sense of engagement in a shared practice, for as Taylor notes, this “common mind” or “public opinion” “is supposedly generated out of a series of common actions” (Taylor 2007, 187).

Arguably, the practices of: mutual learning (proposed by Gutmann, Taylor and myself); reason-giving (proposed by Stout); toleration, (re-conceptualized as a practice in the last chapter), which was proposed as a supplemental mode of consensus-building; comparison (proposed by Ortega), which as we saw is an integral part of developing mutual understanding, respect and consensus itself; and the self-study and examination involved in implementing “indigenous pluralism,” all provide those series of common actions that Taylor says can aid in the generation of consensus, or a “common mind,” that will simultaneously be a reflection of and an influence upon “public opinion.” In this way Gutmann’s ideas of promoting “society-wide discussions” and “public-spiritedness” are not only feasible proposals but might also prove to be a cornerstone of a commission’s success; if conceived of and implemented in the correct way.

Further, bearing in mind the notion of “common-mindedness,” we might wish to implement Gutmann’s notions of reciprocity and mutual respect, not in a legalistic manner, as is often the case when we conceive of them as rules being enforced or principles we must abide by, but rather as attitudes that can help cultivate the “common-mindedness” to which Taylor

refers⁶. By conceptualizing the consensus-building process as one which entails engaging in a series of shared practices, we might attempt to foster the sentiments of reciprocity and mutuality as to better facilitate the creation of a shared society in which there is room for disagreement yet also the ability to appeal to a set of ethical guidelines in our common interactions.

The Future of Accommodation

All in all, what we have learned from our analysis of the methods employed by the aforementioned public bioethics commissions is that in such a context accommodation cannot simply be conceived of in legalistic terms as the function of the state nor can it be reduced solely to granting general exemptions to certain practices. Rather, in such a discursive context accommodation will be something that each interlocutor must engage in and, to a large extent, will require all participants to foster the sentiment of inclusiveness. To reiterate, in the context of discursive processes, such as those that public bioethics commissioners partake in, religious accommodation entails the inclusion of a diverse array of religious voices into the conversation, a mutual incorporation of these varied perspectives into the deliberative processes of each interlocutor involved, and hence, the

⁶ “Common-mindedness” is a term originally employed by G.H. Mead that Taylor has come to adopt.

opportunity for such religious individuals to actually partake in the forging of the public policy recommendations that such commissions make.

That which is needed in these cases is a method that is able to quest for consensus while simultaneously maintaining a respect for, and making possible the accommodation of, incommensurable moral and ontological differences amongst religious traditions and philosophical systems. It is this kind of method that we have been developing and which can hopefully assist in coping with bioethical problems in a morally diverse context. I would now like to turn our attention to discussions and debates surrounding end-of-life issues to better illustrate how pragmatic perspectivism might look if it were put into practice.

Chapter 8

Diversity at the Edge of Death: Pragmatic Perspectivism At Life's End*

In bioethics we deal with concepts that lie at the intersection of the moral and ontological while verging on the brink of the metaphysical. In addition, we have instituted policies that utilize such concepts and attempt to define terms whose definitions have traditionally been and are the domain of philosophy, theology, and religion—or put more broadly, of metaphysics. For instance, discussions of personhood have entered public policy debates in regard to abortion and brain death. Furthermore, through the Uniform Determination of Death Act, we have implemented policies and laws which call into question the nature of death itself. Hence, I ask, is it possible to discover consensus on issues pertaining to death and if not, is there room for interpretive differences when it comes to concepts that, despite their moral implications, are not entirely moral concepts? Ultimately, when attempts at discovering agreement on such issues have failed and the prospect of arriving at consensus looks bleak, can we institute a supplementary policy, which itself allows for interpretive differences regarding the nature of death yet, which can simultaneously be supported by a variety of religious and cultural traditions?

To better illustrate my concern, I would like to discuss issues surrounding brain death policies, in particular, those policies that allow for religious objections to the current “whole-brain death” standard. We will begin with a hypothetical attempt to reach agreement amongst interlocutors coming from distinct religious traditions and through a comparative analysis we will discover both commonalities and potential points of disagreement amongst the hypothetical interlocutors. Subsequently, it will be demonstrated how, when applied to determination of death policies, the pragmatic perspectivist approach can be a useful tool for promoting a pluralistic framework for bioethics and may aid in the resolution of some of its most hotly debated and controversial issues when prospects for complete agreement do not look hopeful; that is, when there is little chance of discovering shared concepts of death, personhood, disease, or coming to adopt a common interpretive schema through which such concepts can be made to make sense. Further, it will become evident how, when *indigenous pluralism*, the *parameters of permissibility*, the *practice of toleration*, are viewed in tandem as three components of the later stage of consensus-building we might actually have a means of overcoming what at first sight seem to be irresolvable problems.

Debating Death

What is arguably one of the most controversial issues raised in bio-medical ethics, determinations of death, on both the clinical and legal levels, have raised a host of ethical, ontological and metaphysical questions and have lead to staunch moral disagreements. With the advent of new medical technologies able to detect forms of neural activity that were previously unobservable and with the ability to sustain and prolong life longer than was ever possible in human history, what was once a rather simple and straightforward distinction between life and death has now become laden with conceptual ambiguity and moral conflict, as a result. In 1968, an ad hoc committee at Harvard University published its findings on death and its relation to neurological functioning. The neurological criteria for determining death provided by this committee have come to be known as the Harvard criteria, and describe what is often referred to as “brain death.” The criteria view death as involving irreversible structural damage to the brain that has caused the permanent destruction of all brain activity including functioning of the brain stem, which is responsible for sensory perception, respiratory function and which is required for the maintenance of higher-level neuro-cognitive functioning, such as that involved in rational thought and language use.

However, insofar as there are cases in which parts of the brain, such as the neo-cortex, responsible for language acquisition, rational thought and

voluntary action, may undergo irreversible cessation of functioning, some have proposed that there are distinct degrees of brain death. Hence, the Harvard criteria have become the basis of what is known as “whole-brain death,” which is to be distinguished from “higher-brain” definitions of death that include: “cerebral death” and “neo-cortical death.” All of these interpretations of brain death can be viewed in contradistinction to more traditional modes of diagnosing death that are based upon the cessation of the functioning of the cardio-respiratory system, which is now referred to as “cardio-respiratory death.” As one can clearly see, the ambiguity that now surrounds the process of defining death itself carries with it a plethora of ethical questions such as: “If one is breathing yet, no longer has the capacity for rational thought is she still alive? And, would terminating life support constitute killing her?” Or, “To what extent should we employ medical technologies to prolong the cardiovascular and respiratory functioning of one whose brain stem is permanently damaged?” “Would doing so be in the interests of preserving the dignity of the patient or would it actually be an attack on the patient’s dignity?”

To further explain, “whole-brain death” is declared when three criteria related to brainstem functioning are met. These criteria are: 1) the existence of a severe coma of unknown cause (because knowing the cause assures medical accuracy in diagnostic and prognostic procedures); 2) the absence of brainstem functioning – which is not induced by sedatives and is not caused by another condition – with an assurance of the irreversibility of

such brainstem failure; and lastly, as an imperative, 3) the presence of sustained apnea, which is determined by a failed apnea test that indicates the absence of spontaneous and sustained respiratory functioning (this is determined solely by measuring any possible efforts to breath when the patient is not on a ventilator). Alternative definitions of brain death are often referred to as “higher brain death,” and implement what is know as “cognitive criteria.”

According to cognitive definitions, death is declared upon the cessation of all cortical and or cerebral functioning that is responsible for language, communicative capacities, rational cognitive processes, and cognitive awareness (including awareness of self and the external environment). In order for “cerebral death” to be declared there must be irreversible destruction or cessation of functioning of both cerebral hemispheres. On this view despite the fact that there exists a functional brainstem and functional cerebellum, and hence the patient can breath because of the role of the active neural systems in maintaining the functionality of the cardio-respiratory system, insofar as the patient has irreversibly lost all appropriate correlates of consciousness, including: evidence of self-awareness and awareness of one’s environment, the loss of communicative capacities and linguistic abilities, the loss of rationality and deep emotionality, the patient is considered dead. Similar to the cerebral definition, “neo-cortical death” is defined solely in terms of the irreversible cessation of the functioning of the neo-cortex. In that the neo-cortex is

responsible for the integration of neurological systems responsible for language, emotion, rational cognition and voluntary action, on this view a patient is considered dead if the neo-cortex has been destroyed or is extremely and irreversibly dysfunctional.

Despite the widespread acceptance of brain death as indicating the death of the human person in medical and legal contexts, the cognitive criteria remain highly controversial and hence, it is “whole-brain death,” with its brainstem criteria, that is often being referred to when we discuss issues concerning brain death. As we will see, religious and secular persons alike have come to accept brain death, although it is mostly members of religious traditions that reject brain death standards and hence, opt for the implementation of cardio-respiratory criteria.

At this point I would like to introduce a hypothetical dialogue between two religious thinkers as means of demonstrating how, despite being able to discover certain “bridge concepts” and despite the existence of commonalities between their perspectives, two interlocutors might still vehemently disagree over the ethicality of implementing a policy that connotes the death of the brainstem with the death of the person. The two authors I have chosen are respectively writing within the traditions of Shi’ite Islam and Eastern Orthodox Christianity. From the Orthodox Christian perspective, John Breck argues that a version of the whole brain standard for determining death is in line with, and hence ought to be accepted within, an Orthodox Christian point of view. Conversely, arguing from a Shi’ite Muslim

perspective, Saeid Nazari Tavakkoli, claims that no standard of brain death ought to be considered an acceptable means of determining the death of a patient.

In the Orthodox Christian tradition it is believed that the human person is a hypostasis, or psychosomatic unity coupled with divine energies, and that it is this hypostatic unity that imbues each individual with their uniqueness as a person. For Orthodox Christians, one's rational capacities are part of the psychosomatic unity yet are not characteristic of the soul, *per se*; the spirit is not conceptualized as being a rational soul distinct from the body. Breck writes, "Orthodox consensus holds that the soul is created simultaneously with the body...[and that] the unity of soul and body is so total that we can affirm not that we have or possess a soul but that the human person *is* soul" (Breck 2005, 193). Insofar as the Orthodox Christian tradition maintains that God is beyond reason, which is natural and not transcendent, and it is our unity with divine energy that is of importance, the role which one's uniquely rational capacities play in defining her personhood, or death for that matter, are not of utmost importance.

Furthermore, Orthodoxy maintains that death is itself a divine process and mystery in which the psychosomatic and divine unity of the person dissociates and the spiritual aspects of a person fully unite with God (Harakas 2003). To this end, death is thought to be a process, with existential, spiritual and physical components, rather than a single biological event. As Breck notes, "Death brings about the dissolution of the

psychosomatic unity that constitutes the human person” (Breck 2005, 192) and describes, “dying – [as] when the soul is struggling to separate from the flesh...” (Breck 2005, 236). He goes onto write,

“Many medical professionals would insist on ‘whole brain death’ (including the brain stem) as the final criterion for determining whether the person is actually dead. It seems, nevertheless, that an adequate measure is ‘death of the brain as a whole’ rather than ‘death of the whole brain.’ If the cerebrum has been irreversibly destroyed, then there is no possibility for any form of consciousness...In such cases, the person indeed is struggling to expire, to release the last breath from their body, to allow the soul to separate from the flesh, and artificial life support merely impedes that necessary process. (Breck 2005, 236-237)

Hence, from an Orthodox Christian perspective there is an emphasis placed upon unity (psychosomatic unity, divine-human unity) and consequently, the integrative functioning of the whole becomes the basis upon which death is determined. The soul or divine element of the person is said to begin its departure from the psychosomatic organism when the integrative functional unity breaks down. Insofar as the brainstem is required for the integrated functioning of the entire body, whole-brain death standards are endorsed as a means of determining death.

Conversely, in Islam, the morally relevant personhood of a human life begins at the time of ensoulment (as we saw in the previous chapter, the exact time of which is a highly debated issue within the Islamic circles, yet which is often placed at approximately 120 days). Tavakkoli argues that insofar as Shi’ite Muslims “believe that human life begins with the body’s fusion with the spirit...The criterion for whether an entity is a human life is

determined by the link between the rational spirit and the body: if the link is severed, then the existence of cellular life in the body alone cannot serve as an evidence of human life” (Tavakkoli 2007, 608).

Despite the initial distinction between the Shi’ite conception of the soul as rational and the Orthodox conception of rationality as tied to the psychosomatic aspect of a person, and their different points of view on ensoulment as occurring at conception or at a later point in the gestational period, all of which might lead to serious disagreements in regard to abortion or embryonic stem cell research per se, there is a commonality to be found in regard to brain death. This commonality is the importance that each places on the interconnectivity, and subsequent separation, of soul and body and its importance in defining death. As Breck claims, “At death...the soul is tragically separated from its bodily or somatic reality...[;] at death the soul ‘leaves’ or is ‘separated from’ the body...(More accurately, the soul leaves the flesh or mortal aspect of our nature)” (Breck 2005, 195). As Tavakkoli informs us, a common Shi’ite Muslim perspective defines “death as the permanent severance of the link between the rational spirit and the body... (Tavakkoli 2007, 608). So far this common idea of separation could be seen as a bridge concept and as a shared response to the question “what does death of the human person entail?”

Furthermore, if we were to inquire further into each interlocutor’s conception of death we would discover another potential bridge concept in the aforementioned idea the death is a process. Describing death as a process

Tavakkoli calls our attention to the fact that in Shi'ite tradition there is a belief in "The existence of an intermediate state between life and death, which is identified as 'unstable life' in Islamic jurisprudence..." and goes on to explain that "In unstable life, persons display physical characteristics indicating life, but are unable to continue functioning as living persons" claiming that "death, the separation of the spirit from the body, is a gradual process..." (Tavakkoli 2007, 611). Thus, far it would seem that our hypothetical interlocutors could make great headway on establishing a consensus position given the similarities that have been found.

Despite sharing some common concepts however, our interlocutors draw very different conclusions regarding the acceptability of brain death.

Tavakkoli argues,

"brain death cannot rightly be equated with unstable life because unstable life can occur in the case of a person who shows some sign of life despite the fact that his body is not able to continue living. However, in the case of brain death, the body is capable of life because there is blood circulation and exchange of oxygen, either spontaneously (assuming the cortex is dead) or by artificial resuscitation (assuming the brain stem is dead)"

For Tavakkoli there is no difference between artificially-induced cardio-respiratory functioning and that of natural spontaneous cardio-respiratory functionality. For Breck however, when cessation of spontaneous cardio-respiratory functioning occurs, "this is a time not for medical solutions but for prayer...[because] further medical intervention is futile and merely hinders the person in his or her struggle to die..." (Breck 2005, 237).

Hence, due to their divergent conceptions of the role that spontaneity plays in evaluating cardio-respiratory function and hence, for determining death, the prospect of our two interlocutors achieving consensus on this issue seems bleak. To add a third interlocutor into our conversation, Fred Rosner, writing from a Jewish perspective, could readily accept the previous bridge concept of “separation,” claiming “Judaism differentiates between the body and the soul...The traditional view is that death occurs upon the separation of the soul from the body” (Rosner 1999, 215). Further, at first sight Rosner and Tavakkoli would seem to be in agreement regarding the importance of that respiration plays in determinations of death insofar as Rosner states, “Death in Judaism requires permanent and irreversible cessation of respiration” (Rosner 1999, 217). Despite placing a similar degree of importance on respiration, however, Rosner and Tavakkoli would draw distinct conclusions in that Rosner argues that “Jewish law seems to accept the concept of whole-brain death with resultant absent spontaneous respiration is equivalent to death” (Rosner 1999, 216). As is evident from his statement, although Rosner shares Tavakkoli’s concern with respiration he seems to share Breck’s concern with spontaneous functioning. Rosner goes onto argue

To support the view that whole-brain death is equated with death in Judaism, the concept of physiological decapitation was introduced...[and that] Complete destruction of the brain is said to be the equivalent of physiological decapitation and therefore a valid definition of death. (Rosner 1999, 217)

Whereas in the Orthodox Christian perspective, it was the integrative functioning of the entire psychosomatic unity that was the reason for accepting whole brain death, in Rosner's view the "Loss of the ability to breathe spontaneously is a crucial criterion for determining whether complete destruction of the brain has occurred" (Rosner 1999, 217). What we witness here is that despite agreement on whole brain determinations of death, there is a significant difference in the modes of justification implemented by these two interlocutors; hence, we are left without a shared mode of justifying brain death.

Although there are some conceptual commonalities amongst the three interlocutors just presented, there is either no agreement on the acceptability of brain death as a standard for death or no agreement on what would justify acceptance of brain death when both interlocutors do endorse this concept. If this conversation had taken place within a strict framework of public reason very little would have been learned regarding these interlocutor's actual perspectives on brain death, given the religious nature of their claims and the onto-metaphysical nature of the issue. Further, if implementing Gutmann's method, we would have to end the conversation at this point both insofar as a common mode of justification was not found amongst interlocutors who did agree and because no common consensus on the issue at hand was achieved. As will be demonstrated shortly, this is when implementing pragmatic perspectivism goes one step further in its: appeal to indigenous pluralism, call for tolerance, and exploration of the parameters of

permissibility, all of which might prove to be extremely useful in resolving these kinds of dilemmas.

Legislating Death & the Case of the Conscience Clause

Although both whole brain death and cardio-respiratory death are considered medically and legally viable options for determining the death of a patient, clinicians often consider the brainstem criteria to be more accurate; and at times may have greater authority than do patient's families in deciding the matter. The Uniform Determination of Death Act, approved by the American Medical Association and the American Bar Association in 1980 and 1981, respectively, and currently accepted in forty-eight states, reads as follows:

§ 1. [Determination of Death]. An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

§ 2. [Uniformity of Construction and Application]. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ 3. [Short Title]. This Act may be cited as the Uniform Determination of Death Act [Uniform Determination of Death Act 1980].

Nowhere in this Act, or in the Acts of forty-eight out of the fifty states, is there any mention of who precisely gets to choose between the two

options of determining death nor are any concessions made for religious belief, despite the fact that the issue of death itself has many religious connotations. Consequently, if it is a State or hospital policy that brain death standards be implemented in the determination of death clinicians will often be the ones with the privilege of implementing the criteria they consider most accurate, which at times might conflict the religious beliefs of the patient and or his family.

In *Clinical Pragmatism and Difference*, the physician and medical ethicist, Joseph Fins presents a case involving a religious objection to brain death. Fins reports that a Hassidic Jewish family's two-year-old son Jacob had a brain tumor, for which he underwent chemotherapy. Subsequently, Jacob developed a herniation in his brain. The herniation progressed, which led doctors to suspect that he might be brain dead. In order to determine brain death, two apnea tests are required. The first one was performed and the child showed no signs of spontaneous breathing. However, before the second apnea test was performed the boy's mother objected to such a test on religious grounds (at this point Fins notes that the boy had not been declared to be legally brain dead yet due to the lack of a second confirmatory apnea test). As Hasidic Jews, the woman and her family did not accept brain death as a demarcation of death (Fins 1998). As the Jewish physician Fred Rosner points out, there is much controversy in Orthodox Judaism over the acceptance of brain death insofar as "Death in Judaism requires permanent and irreversible cessation of respiration," and hence, many Orthodox Jews

will not accept whole-brain death as valid due to the respiration that is possible when a brain dead patient is on a respirator (Rosner 1999, 217-218). In such cases what can be done to resolve the disagreements over the appropriate criteria for determining death, and hence, deciding whether removal of life-support can even be considered an act that will 'cause' death?

To return to our aforementioned case involving the Hassidic Jewish family, who much like Tavakkoli reject the idea of brain death, I would like to explore the types of laws and policies that set the parameters for what is even possible in a clinical setting. Speaking to our issue of dealing with diverse interpretations of death, Fins notes that he practices medicine in New York, a state where concessions are made in regards to religious objections to brain death and an area of the country which attempts to accommodate divergent religious beliefs. Fins states,

The New York State Department of Health developed a policy on brain death. It requires that hospitals establish a 'procedure for the reasonable individual's religious or moral objection to the determination as expressed by the individual, or by the next of kin or other person closest to the individual.' Although New York law deviates from the Uniform determination of Death Act accepted in 48 states, the law in New Jersey is even more expansive with respect to the accommodation of religious objections to brain death determinations. (Fins 1998, 70-71)

As mentioned by Fins, in New York and New Jersey, accommodations of religious beliefs have been made in regards to differing conceptions of death. In New Jersey Law, this accommodation has been referred to as a "conscience clause," which states:

26:6A-5. The death of an individual shall not be declared upon the basis of neurological criteria...when the licensed physician authorized to declare death, has reason to believe...that such a declaration would violate the personal religious beliefs of the individual. In these cases, death shall be declared, and the time of death fixed, solely upon the basis of cardio-pulmonary criteria...[New Jersey Determination of Death Act 1991].

A clause such as this acknowledges the existence of, and supports and allows for the application of, the multiple interpretations of death, which are held by different religio-cultural traditions, to legally play a role in the clinical deliberations of those religious believers. While conscience clauses may be seen as supportive of religious pluralism from a legal and social standpoint, I wonder whether particular religious traditions themselves can support something like a conscience clause in the same way that they have come to support various human rights and other common moral principles. In other words, can a conscience clause, or supplementary policy of hermeneutical diversity, find support from within the frameworks of distinct religio-cultural traditions? If this is possible, in regards to something as serious as the issue of determining death, the prospects for its application elsewhere would seem promising.

Given the fact that religious and cultural traditions may view their respective interpretations and definitions of death in universalistic terms, I wonder whether the future application of conscience clauses on the national and international levels can find the widespread and multicultural support it needs to be enacted in such a fashion? This is precisely where our aforementioned notion of indigenous pluralism may be a useful tool for

securing the right of members of a given tradition to abide by their own religious and cultural beliefs while simultaneously respecting the right of members of other communities to abide by their religious beliefs, regardless of what those beliefs may be, when dealing with these difficult end-of-life issues.

If individual traditions can find means of respecting, or at the very least tolerating, divergent means of determining the death of a human being, then we can begin to have widespread acceptance of something like a conscience clause. At the current time, conscience clauses appear to be the best means of respecting the diverse religious beliefs found amongst the world's various traditions. Yet, before implementing a policy resembling a conscience clause on such a grand scale, we must find means of supporting it which are derived from the paradigms of the various religio-cultural traditions themselves, for as Hollenbach has duly noted, "If believers within a particular religious tradition and community do not recognize a proposed response to this question [in this case the question of the validity of conscience clauses] as a legitimate expression of their faith, then answers from other quarters will be nugatory" (1998, 110).

It is important to recognize that in this context, we are not focusing on the diverse interpretations of pre-established principles or rights—which are often held to be universal and constitutive of a common morality—as in the aforementioned case of human rights. Rather, the application of indigenous pluralism in this context would entail finding mutual support for the

implementation of policies which themselves allow and even support hermeneutical diversity. Ultimately, we must ask: can different religious and cultural traditions find indigenous means of supporting multiple interpretations of death itself? After all, what is respecting another's tradition if such a respect does not entail allowing that individual or group to implement their beliefs when it comes to matters of life and death?

If, as Hollenbach suggests, different traditions are capable of finding ways of "indigenously" respecting pluralism itself and the distinct belief systems and interpretive frameworks of other faiths and cultures, it seems possible that they can find ways to respect or *tolerate* the various interpretations of death held by those traditions as well. For example, in Orthodox Christianity, there are two beliefs which may be conducive to allowing different interpretations and definitions of death and brain death. Firstly, quoting St. Gregory Palamas, Thomas Bole has expressed the belief that questions regarding the relationship between the mind and the body are for every man to decide for himself. "As St. Gregory Palamas observes, 'If we ask how the mind is attached to the body...[or] what part of the body is most vulnerable and so to say directs the others., in all such matters each man may speak his own opinion...'" (Bole 2000, 104). In the case of brain death, the relationship between the mind and the body, or the mind/body problem as it is commonly called, is directly called into question. Hence, similar to Hollenbach's observation that Christianity often supports highly individualistic notions of religious liberty, the above concept may be

employed as a Christian's indigenous means of respecting different individual's interpretations of brain death, whether those individuals are members of the Christian faith or not.

In addition to Palamas' comment regarding the mind/body problem, and Bole's indigenously pluralistic rendering, Fr. Nikolaos Hatzinikolaou states that "the teaching of the Orthodox tradition [is] that death can be generally described but not exactly defined, because along with a biological event it implies an unknown mystery. Therefore, the Orthodox Christian Church avoids clear-cut statements that identify death with the cessation of the brain, cardiac or any other function" (2003, 189). Taken together, these two beliefs—that is the indefinable nature of death and the open interpretation of the mind/body relation—may be seen as supportive of a conscience clause, albeit one which relies on something like general parameters for determining death rather than a reliance on a precise definition of death, as was suggested previously. In a similar vain, Winston Chiong has proposed a means of determining death, which resembles that of Fr. Hatzinikolaou and is highly conducive to both pluralism and my suggestion for the creation of new types of supplementary principles of hermeneutical diversity that avoids a collapse into relativism. Chiong claims, that "Death, perhaps surprisingly, eludes definition..." (2005, 20) and proceeds to suggest that we "look upon competing criteria for death not as attempts to state necessary and sufficient conditions for death, but instead as

proposals for sharpening the distinction between life and death. Presumably there is no uniquely admissible cut-off....” (27).

Writing from a Muslim perspective, Manfred Sing acknowledges the ambiguities surrounding the concept and definition of “death.” Discussing the Organization of the Islamic Conference’s endorsement of brain death, Sing writes, “The OIC majority vote for the brain death concept was mainly based on the argument that humanity cannot know the precise moment of death.... Humanity can only presume that somebody is dead according to circumstantial evidence (*ghalabat al-zann*), but there can be no certainty (*yaqin*)” (2008, 109).

Now, something like Chiong’s proposal may be more easily implemented as policy if it were to find support from within the paradigms of different traditions. For, after all, Chiong is writing as a secular philosophical bioethicist and, as Hollenbach maintains, the various religions themselves must be able to find support for such concepts from within the structures of their own traditions. The similarities between the suggestions of Hatzinikolaou, Chiong, and the OIC point to the viability of such an endeavor and warrant a degree of optimism regarding the prospects of putting indigenous pluralism into practice on both the religious and secular sides of bioethical inquiry.

Insofar as Judaism is concerned, Hollenbach notes that within Judaism there is the notion that humanity is a community of distinct communities and takes this notion to imply that within Judaism there is an indigenous means

of respecting the hermeneutical distinctiveness of other religious traditions and possibly other intellectual and cultural communities as well. Discussing the Halakah (Jewish Law) and Talmudic interpretations of the Noachide laws, which make the establishment of systems of justice obligatory, Suzanne Last Stone claims that insofar as “non-Jewish collectives share with Judaism the divine goal of establishing a just social orderall nations who are disciplined by enlightened religion are entitled to juridical equality and ethical reciprocity under Jewish law” (2003, 110). Moreover, Stone argues that there are “three characteristics of Judaism that support pluralism and acceptance of diversity” (107). Listing these characteristics Stone writes,

first, the internal structure of Judaism— its limitation to one nation—which has led to a positive valuation of the role of other collectives in the divine plan; second, the tradition of intellectual pluralism within the normative Halakic community fostered by its skeptical approach to truth-claims; third, the tradition’s treatment of tolerance not as an abstract principle but as an encounter with persons who must be understood in their full complexity and in light of their diverse circumstances. (107)

Furthermore, in accord with Stone’s second point, in the article, “Religious Exemptions: Brain Death and Jewish Law,” Michael Grodin notes that different sects of Judaism hold different interpretations of death and brain death yet all appeal to, and derive their conclusions from, the Jewish law. Despite their different definitions of death, all of these interpretations come from different communities within the boundaries of the Jewish tradition. This phenomenon illustrates the idea of a community of communities within Judaism itself. If coupled with Stone’s position regarding

the role of non-Jewish collectives within Jewish law, the idea of intra-Jewish intellectual pluralism may be used to support a policy which allows for interpretive differences in regard to determining death, especially when those other communities happen to adhere to different religious faiths or conceptual paradigms.

As in the case of Judaism and Jewish Law, in Islam there is a community comprised of distinct communities, all of which interpret both Shari'ah, or Islamic Law, and death in distinct ways. Although arguing in favor of Islam's acceptance of a uniform determination of death based on brain criteria, Omar Sultan Haque draws our attention to the fact that within the Islamic community there have been divergent responses to the acceptance of the brain death standard. After commenting that Shiite scholars are often accepting of brain death (which as is evident from our previous discussion is not always the case) Haque states, "In the Sunni world, the scholarly and juristic bodies of the Organization of the Islamic Conference (OIC) and the Muslim world League (MWL) have put out numerous conflicting and indefinite *fatwas* (non-binding legal opinions)...on the permissibility and prohibition of a number of issues relating to modern science, including brain death...." (2008, 20). Discussing the lack of consensus over the concept of brain death which occurred in Kuwait, Haque writes, "This ambivalence and division present in comparing these smaller declarations from even within one country, Kuwait, are mimicked and replicated in the subsequent larger international statements of legal councils

of the OIC and MWL” (20). Addressing Islam’s internal plurality of positions regarding brain death, M. Al Mousawi et al. note that although the acceptance of brain death is not mandatory in Kuwait, Saudi Arabia, and Iran, brain death is a permissible option for determining death.

Haque writes,

the OIC’s Council of the Islamic Jurisprudence Academy...tried to allow the cardiopulmonary and brain definitions of death: “...the Islamic legal rules for the dead become applicable under the following criteria: (1) a person who suffers cardio-respiratory arrest and the physicians confirm that such an arrest is irreversible; *and* (2) a person whose brain activity has ceased and the physicians confirm that such a cessation is irreversible and that the brain has entered the state of decomposition” [20].

Although Haque criticizes Islam’s own indigenous plurality of opinions on brain death, claiming that it demonstrates a lack of epistemological cogency, and critiques the measures that have been taken to allow for both cardio-respiratory death and brain death to function as legitimate options within the Islamic community, he does make the important observation that there have been official attempts to do so. Furthermore, in their discussion of the role of tolerance in Islamic theology, Osman Sezgin and Ramazan Bicer note that “The Koran affirms as a moral and a historical premise...that philosophical and religious pluralism is the norm rather than an anomaly” (2006, 406). These observations bring to our attention the fact that allowing for a plurality of beliefs might be possible within the Islamic world and hence, demonstrates the viability of Islam’s potential acceptance of a concept such as indigenous pluralism.

In his discussion of human rights, Hollenbach notes that within Islam religious liberty, or religious diversity, is construed in terms of tolerance rather than acceptance.

Thus, Jews and Christians [“al-ki-tap” or “people of the book”] were to be protected and respected by the Islamic state. This protection, however, was to be conditional.... This arrangement was later extended to other religious communities as Islam expanded to the East. The protected communities (*dhimmi*s) were both guaranteed the right to exercise their own religious faiths.... This kind of arrangement is fundamentally one of religious tolerance rather than religious freedom [1998, 119].

Commenting on the status of *dhimmi*s in the Ottoman Empire, and giving further support to Hollenbach’s claim that religious liberty is conceived of in terms of tolerance in Islam, Berdal Aral states, “Non-Muslim minorities...maintained their identities thanks to the tolerance and pluralism practiced by Islamic States” (2004, 461). Giving further support to the claim that Islamic notions of tolerance can be used to support a concept such as indigenous pluralism Sezgin and Bicer write,

Islam tolerates and acknowledges the liberty of other religions; it decrees respect of the beliefs and rights of members of other religions and ensures that they be justly treated...Islamic tolerance allows non-Muslims to live according to their customs, even if these are forbidden by Islam [2006, 407-8].

Hence, despite the existence of an Islamic state and the implementation of Islamic law, tolerance would be had and concessions would be made for certain non-Islamic religious traditions. Now, if Islam can find ways of supporting a policy that advocates tolerance for varying modes of interpreting how one should live one’s *life*—and consequently, how different

groups conceptualize life—there may indeed be ways for Islam to indigenously justify a policy that allows for varying modes of interpreting *death* and dying by non-Muslims, or at least if they are considered to be *dhimmis*, even if one happens to be in favor of a unified definition of death for Islam itself.

Regardless of how Islam itself defines death or what actions Islamic law prescribes for Muslims in regard to death, there may be ways in which Islamic law, or other traditional sources, can be used to support a policy that allows for other interpretations of death, either so long as those interpretations are held by non-Muslims or, if they fall within a range of what would be deemed acceptable interpretations of death for Muslims to hold. As we have seen, the permissibility of multiple interpretations of death is possible within an Islamic framework. Hence, if there is room for multiple interpretations within the Islamic tradition itself, there is no *prima facie* reason why a concession for or toleration of distinct interpretations of death cannot be extended to other traditions as well.

Furthermore, given Islam's policy of tolerance toward certain other religions, if such a concept were applied to cases of death and brain death, it may be reminiscent of Jesuit bioethicist Kevin Wildes' discussion and endorsement of the arguments put forth by Linda Emanuel and Robert Veatch "for a policy of tolerance in understanding death" (Wildes 1996, 380). Emanuel develops a robust model of the continuum of life cessation comprised of distinct zones in which some form of life is still present while

others have ceased. She argues that our task is not to define death but rather to enact policies that allow different persons to maintain that different states of life cessation are constitutive of death.

Although this is not to be taken as an endorsement of Emmanuel's model, and despite the fact that an in-depth evaluation of her model is not relevant to the purposes of this essay, what is of concern here is her proposal to enact policies of tolerance toward differing conceptions of death and her endorsement of conscience clauses. Emmanuel argues that by avoiding legislative determinations of death, and by enacting policies of tolerance, we can allow for different persons to act upon different definitions of death. She writes, "it becomes only a question of who has authority to declare life ceased" (Emmanuel 1995, 33). And after citing the conscience clause of New Jersey as an example of the type of tolerance policies she would require, she notes that "in many other areas of law, such as religious belief, respect for difference is legally protected" (33).

Moreover, arguing for a position that appears to be highly compatible with the aforementioned views on Islamic law, Veatch writes,

The determination of who is alive—who has full moral standing as a member of the human community—is fundamentally a moral, philosophical, or religious determination, not a scientific one. In a pluralistic society we are not likely to reach agreement on such moral questions.... As a society we have a method for dealing with fundamental disputes in religion and philosophy. We tolerate diversity and affirm the right of conscience. (Veatch 1993, 22)

In cases of determining death, tolerance may be an appropriate concept to employ. Each tradition may hold its own conception of death to be universal, and hence, should *not necessarily be expected to accept* different conceptions of death. Rather, it may be the case that *each tradition could merely tolerate divergent definitions of death* out of a more general respect for or even toleration of religious pluralism and cultural diversity itself.

While an indigenously endorsed minimal notion of tolerance could serve as a means of ameliorating certain tensions that arise in the definition of death debates and might be able to supplement other areas of bioethical inquiry as well, it is not being suggested that the notion of toleration is entirely unproblematic on a more general level; all things cannot be expected to be considered tolerable. Further, this is not to suggest that the enactment of an actual principle of tolerance would be able to resolve the entire host of problems associated with pluralism and diversity. Indeed, even a concept such as tolerance will most likely elicit distinct views regarding that which is to be tolerated; and this is where further discussion regarding the limits of tolerability becomes necessary. If consensus can be had in regard to certain concepts and policies, and if various interlocutors have come to accept the inevitability of hermeneutical diversity, then it does not seem unreasonable or unlikely that some form of agreement in regard to the scope and range of tolerable actions can also be achieved. Far from being a means of eliminating disagreement, the supplementary guideline of hermeneutical diversity would provide parameters of acceptable or tolerable interpretations and

applications of norms as to minimize the tensions that arise from interpretive disagreements.

If pluralism is to be respected on a larger scale, it seems that policies that secure the right of interpretive difference amongst various traditions must be implemented in conjunction with any set of guidelines. However, in order for this to occur, we must search for means of justifying a policy that allows for or tolerates hermeneutical difference from within the various religious and cultural paradigms themselves. In the case of brain death, insofar as death is such a metaphysically and ontologically charged concept—and hence, would require ontological and metaphysical consensus in addition to a moral consensus in regard to enacting a policy which sets out to define death—it seems as though the best plausible solution, at least tentatively, would involve implementing something like a conscience clause when dealing with national and international norms, policies, and guidelines.

Consequently, this would entail an amendment to the Uniform Determination of Death Act so that it merely suggests a guideline for determining death by indicating the *parameters of legally permissible* definitions of death and providing a default option in the absence of an advance directive, surrogate decision maker, or family members. Ultimately, such an amendment places the authority to determine death in the hands of the people, not the state, and would be able to accommodate people's beliefs and values. Employing indigenous pluralism to initiate support for a conscience clause would entail avoiding insistence on a particular definition

of death while simultaneously placing reasonable and agreed upon limits on what can be interpreted as death. For instance, claiming that a breathing individual with full brain functioning is dead would most likely, and hopefully, fall outside of the hermeneutical boundaries that the various groups would have agreed upon. This is also where a return to any “bridge concepts” that might have been discovered in prior discussion could potentially assist in the discovery of shared limits as well. Having already allowed the expression of different modes of justificatory reasoning and having engaged in a comparison of multiple perspectives our interlocutors will have been exposed to nuances of one another’s perspectives and hence, will be better equipped to *genuinely tolerate* each other’s points of view. If we can recall, it was argued that in order to genuinely tolerate, one must recognize how integral the other’s beliefs, practices, and community are to that person’s existence and therefore, an integral feature of endorsing the practice of genuine tolerance is acknowledging the worth of the other’s beliefs and the importance they bear on his/her life; which is especially important when we are dealing with issues that question the very life and death of persons themselves.

As our interlocutors discuss the limits of life in their pursuit of agreement upon permissible definitions of death an important question that is bound to arise will be “should higher-brain definitions of death be a permissible option?” Some, such as Bob Veatch, suggest that it should, on the basis that: to prevent one from abiding by her conception of death while

others have the freedom to choose their own, would be unfair, writing, “While the New Jersey law tolerates variation only within an explicitly religious basis, I would favor variation based on any conscientiously formulated position” (Veatch 1993, 23). Elsewhere Veatch argues,

A case can be made that some versions of higher-brain formulations of a definition of death should be among the choices permitted. Under such an arrangement, a whole-brain definition might be viewed as the centrist view that would serve as the default definition, permitting those with more conservative views to opt for cardiac-oriented definitions and those with more liberal views to opt for certain higher-brain formulations... Adding a higher-brain option to the range of discretion would...be a sign that we can show the same respect to the religious and philosophical convictions of those favoring the higher-brain position as we do now in New Jersey for the holders of the cardiac position. (Veatch 1999, 147)

Prima facie, one could argue that to protect freedom of conscience and belief we must be able to tolerate ontological differences of this sort so long as greater social harm will not ensue and no intentional malice is involved in those making the declarations. However, the sticking point over incorporating higher-brain definitions into our ‘death menus’ will be, for many interlocutors – especially those of a more conservative mind – with Veatch’s claim that

Of course, this [including higher-brain definitions] would permit people with brainstem function including spontaneous respiration to be treated as dead. Organs could be procured that otherwise would not be available...[and] bodies could be used for research (assuming proper consent is obtained)... (Veatch 1999, 147)

The worry here would be over unjust organ procurement and violations of human dignity. Some might rightly fear that the inclusion of higher-brain death options into our conscience clauses will place us on a slippery slope toward enabling gross abuses of human life and lend itself to organ harvesting.

Without going into great detail into all of the complexities of organ procurement per se, it must be noted that concerns of this nature present us with a valid anxiety in regard to permitting higher-brain definitions as options of death. A distinct question that should be posed at this point – yet one which, as will be illustrated, might be able to indirectly alleviate our fears over organ harvesting – is: “if we are entertaining the possibility of including higher-brain definitions of death, *to what extent should we differentiate between higher-brain death and both persistently and permanently vegetative states?*”

What is a persistently vegetative state (PVS), however? First let us recall the precise definitions of both cerebral and neo-cortical death. We defined “cerebral death” as the irreversible destruction of, or cessation of functioning of, both cerebral hemispheres. On this view despite the fact that there exists a functionality in the brainstem and functionality in the cerebellum – and hence, the patient can spontaneously breath because of the role of the active neural systems of the brainstem in maintaining the functionality of the cardio-respiratory system – insofar as it is argued that the patient has irreversibly lost all appropriate correlates of consciousness,

including: evidence of self-awareness and awareness of one's environment, the loss of communicative capacities and linguistic abilities, the loss of rationality and deep emotionality, the patient is considered dead.

The criteria for declaring a patient to be in a vegetative state (VS) are as follows: 1) No evidence of self-awareness, awareness of one's environment or communicative capacities; 2) No evidence of voluntary behavior or sustained sensory perception; 3) The lack of linguistic abilities; 4) The presence of low-level wakefulness as a result of minimally functional sleep-wake cycles; 5) The presence of brain-stem functioning; 6) bowel and bladder incontinence; 7) The presence of various reflexive functions as a result of a functional brain-stem. After being in such a deep state of unconsciousness for hours or days a patient is declared to be in a vegetative state. Once the vegetative state has persisted for at least one month the patient is often diagnosed as being in a persistent vegetative state (PVS). Often after a prolonged period of being in a vegetative state, after a year or more, a patient will, in a prognostic manner, be declared to be in a permanently vegetative state. The prognosis of *Permanence of the Vegetative State* is usually made when, with good evidence, the vegetative state is believed to be irreversible. As the neurologist Fred Plum has stated, "The term *persistent vegetative state* (PVS) describes the behavior of a small number of survivors of severe brain trauma, asphyxia, or other causes who reawaken from coma within a few days or weeks but demonstrate thenceforth no detectable evidence of any cognitive awareness, that is,

consciousness...Permanent vegetative state is a probabilistic diagnosis anticipating the future. It requires a substantially longer time than the diagnosis of PVS..." (Plum 1999, 58)

From the definitions provided, on a cerebral definition of death, both persistently and permanently vegetative patients could be declared dead. Commenting on his involvement in a legal case concerning an anencephalic newborn, whose neurological condition was akin to a person in a persistently vegetative state¹, Veatch has claimed "My response was that...PVS patients who retain residual brain functions – were deceased according to my own views, but according to state law, they were alive...the state must treat the baby as alive, at least until it changed its law" (Veatch 2004, 264). Veatch is among those who have argued, "to further amend the definition of death to classify those in irreversible coma and PVS as dead." (Veatch 2004, 261) and hence, represents a perspective in which debates regarding artificial nutrition and hydration and PVS become irrelevant insofar as they consider PVS patients to already be dead – and on this logic it would be absurd to hydrate and nourish a dead body. Conversely, for those who object to the idea that either persistently or permanently vegetative patients have undergone cerebral death, and hence, have died, questions will arise pertaining to the permissibility of withdrawing life support, in the form of artificial nutrition and hydration (ANH), from the patient. For our current

¹ It is the latter medical condition that is of relevance to our current study. While anencephaly is an important bioethical issue that sits between beginning and end of life situations, I will not go into detail here nor is it of immediate importance to the topic at hand.

purposes I would like to focus our attention on those cases in which a prognosis of permanence has been made in regard to a PVS patient; therefore, the remainder of our discussion will deal with permanently vegetative patients. Consequently, even if in cases where some of our interlocutors disagree in regards to the permissibility of incorporating higher-brain definitions of death into the range of possible options a conscience clause would allow, we must ask whether it is permissible to remove ANH in cases of permanently vegetative states.

In what has commonly been referred to as the more ‘conservative’ position regarding artificial nutrition and hydration and its role in caring for PVS patients, some Catholics employ the ordinary / extraordinary distinction to this issue as a means of opposing the removal of ANH on the grounds that it be considered ordinary care in every context. Drawing on John Paul II’s 2005 allocution on this issue, Catholics of this mind argue that all forms of nutrition and hydration are to be considered natural insofar as they are not technically “medical” by nature. Appealing to the Pope’s statement, which reads:

Water and food, even when provided by artificial means always represents a natural means of preserving life, not a medical act. Its use furthermore should be considered in principle ordinary and proportionate and as such morally obligatory insofar as and until it is seen to have attained its proper finality which in the present case consists in providing nourishment to the patient and alleviation of his suffering (John Paul II 2005, para IV)

Advocates of ANH as a natural form of nourishment argue that it is an ordinary form of care and hence, is always mandatory in cases of both persistently and permanently vegetative states². As a result, interlocutors holding this position would not only wish to prohibit removal of ANH from permanently vegetative patients and would most likely be staunchly opposed to permitting higher-brain definitions of death in conscience clauses. At first glance it would seem that when dealing with interlocutors who do not view permanence of the vegetative state as being akin to death and who also wish to view ANH as an ordinary form of care, we have reached somewhat of a stalemate concerning any expansions of conscience clauses that would allow higher-brain definitions of death to be incorporated into our legal statutes. Taking the diverse views of others into consideration, the question that opponents of removing ANH in cases of permanently vegetative states must answer is: whether or not their ethical obligation to feed, so to speak, applies to everyone in a society as morally diverse as our own or only to fellow Catholics? Indeed, Veatch himself has raised this question and has rightfully deemed it “crucial,” especially in our discussions of attempting to establish a more pluralistic public bioethics. Commenting on a study that evaluated lay views on organ procurement and definitions of death, Veatch writes,

² Note that: “Because spontaneous breathing, under the regulation of the medulla oblongata in the brainstem, resumes, the PVS patient will not need the continual support of the ventilator. In most cases, however, he or she will need to receive nourishment through a feeding tube” (PCB 2008, 43).

The single most crucial piece of data not measured in the study is how likely various respondents would be to be satisfied if terminal care and death pronouncement decisions were made in their own cases based on their own definitions of death even though others were not forced to have the same definition of death used on them...The key unanswered question is whether the definition of more conservative views on the definition of death would show tolerance for those who choose to have a more liberal definition of death used in their own cases. (Veatch 2004, 274-275)

Within the parameters of the pragmatic perspectivist method, this is where persons bearing this more “conservative” perspective will be asked to engage in indigenous pluralism, or in other words, seek means indigenous to their own traditions of permitting pluralism in regard to defining death. Now, I say this is where the more conservative interlocutors will be requested to engage in indigenous pluralism simply because many of those who endorse both higher-brain death and conscience clauses have already found means of allowing for pluralism regarding death pronouncements, as is evident in Veatch’s writing. However, this should not be taken as a demand that people holding the more ‘conservative’ position must accept such a conclusion. Rather, in promoting the pragmatic perspectivist method, the task at hand is to examine and explore the possible parameters of permissibility available within each mode of reasoning. Hence, I ask: what about our interlocutors who support the removal of ANH from permanently vegetative states patients? Could they possibly come to tolerate the fact that some persons wish to be considered dead when in a permanently vegetative state? Consequently, I would like to turn our attention to two Christian points of

view that might be able to permit an expanded set of limits regarding what is tolerable in end of life scenarios.

Employing a mode of reasoning that utilizes the distinction between that which is to be considered ordinary versus that which is to be considered extraordinary, many thinkers have addressed this issue³. Drawing upon Thomistic thought, Anna Itlis, a scholar of Catholic bioethics, has claimed that the moral object (or type of action), intention of the agent, and the circumstances are foundational to morality. For Itlis, so long as one's intention is not to kill – either oneself or another – and if medical treatment provides insufficient benefit or is ineffective if can be withdrawn on the grounds that such treatment will produce more harm than it will good (Itlis 2006). She defines extraordinary means as actions that are excessively burdensome to either one's self and or others and which do not offer any great prospect of medical benefit that could potentially counterbalance the harms that the act itself will produce. Conversely, ordinary means are defined as those actions that are not extremely burdensome and which may be reasonably expected to benefit the patient and be effective. Consequently, all acts must produce effects that are proportionate, or in other words, which result in greater benefit than harm. She argues that if medical treatment is withdrawn with the intention of removing disproportionate acts (hence, acts that result in greater harm than good) and with the intent to end the

³ As will become evident, this mode of reasoning has been used in both support of and opposition to the ethicality of ANH removal and hence, speaks to the aforementioned issue of internal plurality.

provision of an extraordinary means of care, such an act is ethically permissible on the grounds that it prevents further harm to the patient. (Iltis 2006.)

According to this line of reasoning one could argue that insofar as a patient in a permanently vegetative state is in an irreversible state in which their consciousness and vitality have begun to deteriorate, so long as one believes that keeping such a patient alive is harmful and insofar ANH has become an extraordinary means of prolonging life, ANH may be removed and the person may be allowed to die. Here, although a permanently vegetative patient is not considered dead, per se, it could be argued that intentionally keeping a person in this state alive actually produces more harm than good insofar as it keeps them trapped in a state in which they are unable to be fully alive in this world and are simultaneously unable to pass on into death. In any case, whatever the reasons offered might be, if an interlocutor rejects ANH as a form of ordinary care and is able to make a convincing case that administering such extraordinary care is in fact harmful to the patient, they would be able to give permission to the removal of ANH, which would result in allowing the patient to die.

The bioethicist and Catholic priest, Kevin O'Rourke, has implemented Catholic moral reasoning in arguing against the aforementioned Papal allocution, permitting the withdrawal of ANH from PVS patients. O'Rourke argues that there are two questionable assumptions made in the Papal allocution, which lead to major flaws in the view that ANH for PVS patients is

mandatory. He writes that the “first assumption” is: “that life in PVS is a great benefit even if recovery is highly unlikely...” (O’Rourke 2006, 91) going onto argue that this assumption is founded on an overly optimistic sense of hope in the full recovery of the patient; the false presumption that to withhold or remove life-support is an attempt to cause death; and a misconception that ANH is natural, rather than an artificial medical intervention (O’Rourke 2006, 91-92).

The second assumption O’Rourke mentions is more of an accusation of the failure to have adequately taken into consideration the biomedical scientific evidence on this issue. To this end O’Rourke suggests that there is often confusion regarding comas, vegetative states, persistently vegetative states and permanently vegetative states amongst those asserting the more conservative position, which in effect fosters their hope in recovery when recovery is highly implausible (O’Rourke 2006, 92-93). In support of O’Rourke’s accusation, Fred Plum has reported that, “It is true that adults who remain in the PVS 1 month after asphyxial coma have less than a 5 percent likelihood of making a subsequent good cognitive outcome...” (Plum 1999, 58). Lastly, drawing upon numerous scientific studies, O’Rourke asserts that “competent medical opinion holds that people in PVS do not experience pain or suffering...[and hence,] removing AHN from patients in PVS or prolonged coma does not cause pain” (O’Rourke 2006, 92-93). O’Rourke implements Catholic moral reasoning to claim,

there is no moral obligation to prolong the life of persons in vegetative states from which they most likely will not

recover...I describe the ability to perform a human act as the capacity now, or in the future, to perform acts of cognitive-affective function. If it is morally certain that persons cannot and will not perform acts of this nature now or in the future, then the moral imperative to prolong their lives no longer is present. Hence, it is not “a great benefit” for the patient, for the family nor for society, to prolong their lives. (O’Rourke 2006, 93-94)

What we are presented with here is a perspective in which higher-brain criteria of death are not endorsed yet, in which allowing a permanently vegetative patient to die is permissible in that ANH is not considered to be either natural or morally imperative⁴. What I am suggesting is that it might be possible for someone holding this point of view to at least tolerate some higher-brain definitions of death to the extent that they can be considered legally and socially permissible, even if not morally endorsable.

Implementing a distinct mode of reasoning the Orthodox Christian thinker John Breck would agree that removal of ANH is an ethically

⁴ Some objectors might very well claim that there is a difference of intentionality between the prolongation of life as a means of preserving life in and of itself and the endorsement of ANH as a way of preventing death via starvation and dehydration. This is neither to deny nor to assert that such a difference exists. The overall focus of this chapter has been on definitions of death and my main concern in this particular discussion has been with those highly controversial higher-brain definitions of death, and hence, with topics, which while subsidiary, are directly related to one’s ability to permit such definitions. As a result the purpose of this analysis is not to enter into a prolonged and highly nuanced discussion of PVS and ANH but rather, to examine some common views of this issue as it relates to debates over death definitions. Furthermore, for these reasons, our purpose here has not been to engage in a detailed analysis of euthanasia per se; the idea has not been to analyze the distinctions amongst passive and active euthanasia or voluntary and involuntary euthanasia as they relate to cases of PVS. While a robust discussion of euthanasia does seem to be called for in this context, at least to some extent, given the on-going nature of our conversational method this would be a subsequent topic of debate and discussion, which arguably could proceed seamlessly from the current topic of debate. Ultimately, the fact that many topics and issues in bioethics are highly interrelated gives further support to the claim that we need an open-ended and highly nuanced approach to bioethical discussion and deliberation that is able to adequately deal with the various concerns surrounding a specific sub-topic before moving onto a robust discussion of any related topics. Basically, to those who might have anxiety that I am attempting to skirt the issue of euthanasia need not worry, for euthanasia would be the next topic on the discursive agenda.

permissible act in cases of irreversible PVS, or in other words permanently vegetative states, stating,

it seems reasonable to conclude that artificial means of life support, including nutrition and hydration, may be morally withdrawn or withheld. In cases of PVS or deep coma, however, this procedure can be judged morally acceptable only to the degree that it can be definitively established that the condition is irreversible, that the cortex and hemispheres of the brain are indeed dead, and that the organism is functioning only because the brain stem is still intact. (Breck 2005, 236)

The reasoning offered by Orthodox morality differs from the Catholic distinction between ordinary and extraordinary in that it appeals to the concepts of humility and respect for dying as a natural part of human existence rather than an evil that is to be overcome. On this view, withholding or withdrawing ANH from a PVS patient is compassionate insofar as it allows one's soul to end its struggle to separate from its somatic entanglement and demonstrates humility insofar as it acknowledges the limits of man-made medical technology. In further support of this view are the perspectives of the Orthodox Christian theologian Fr. Stanley Harakas, a well-known ethicist in the Greek Orthodox community, and that of the Orthodox theologian commissioned by the NBAC, Fr. Demetrios Demopoulos, both of whom the Greek Orthodox Archimandrite Nathanael Symeonides mentions when commenting on Orthodox perspectives on the issue of PVS in the Terri Schiavo case, stating

Harakas...offers an argument against maintaining artificial life-support by putting forth the metaphysical assumption that, "The feeding tube is thwarting the separation of her soul from her body." [Further,] Demopoulos believes that Schiavo should be allowed to die...Demopoulos argues "Her earthly life ended

when she suffered the attack that stopped her heart and caused the brain damage that left her in a persistent vegetative state..." (Symeonides 2008,152)

Implementing this mode of reasoning an interlocutor could very well grant permission to an act of withdrawal that would allow the patient to die in that ANH is not thought to provide any spiritual good to the person.

Given what we have seen so far, one of the primary differences between those who endorse higher-brain death and those who support withdrawal of ANH from permanently vegetative patients is, to put in rather simple terms, that, where one position views the patient as being dead, the other views the patient as being better off dead. In either case, the patient in question would be declared dead in relatively the same period of time and hence, *prima facie*, it seems that it is possible for those who endorse ANH withdrawal and withholding from permanently vegetative patients to permit others to choose a higher-brain definition of death, even if they oppose the endorsement of this view.

However, as we noted previously, one of the main obstacles in securing such permission was the fear of organ harvesting that might occur as a result of keeping cerebrally dead patients hydrated and breathing as a means of procuring organs. To this end we might wish to add an additional amendment to our conscience clause, if higher-brain definitions of death are to be incorporated, as a way of preventing abuses of organ procurement and hence, as a way of ameliorating the worries that arise in regard to this issue. For instance, we might suggest an amendment that would require the

removal of ANH in all cases in which cerebral criteria were used in determining death, unless otherwise stated in an advance directive. If such an amendment were in place as a safeguard against organ harvesting those interlocutors who object to higher-brain definitions of death might be able to find them more tolerable, if not acceptable, and hence be more apt to accommodate the beliefs of those persons endorsing cerebral death by permitting it as an option. In this way we could possibly ameliorate some of the interlocutors fears while still increasing the range of possible modes of determining death.

This is simply to suggest what *might* be possible in such cases and all of this is to demonstrate how the dialogue might proceed after typical attempts to secure agreement have failed and how it *might*⁵ be possible to achieve a useful consensus despite moral disagreements. Incorporating the ideas of hermeneutical diversity, tolerance and permissibility into the actual consensus-building process itself could be our best option for reducing conflict and creating consensus without having to eradicate or neglect difference. Furthermore, by implementing this model of discourse we can avoid both the imposition of foreign values upon religious groups and the need to secure consensus on a robust overarching philosophy of pluralism to which all must adhere to some degree, for each group's reasons for respecting difference itself will differ. In conclusion, it has been

⁵ The operative word here is "*might*," in that pragmatic perspectivism is designed for interlocation amongst participants of an actual dialogue. This hypothetical construction of a possible discussion should in no way be taken to be definitive but merely suggestive of potential courses such a conversation could possibly take.

demonstrated how the concepts of indigenous pluralism, toleration and permission are useful tools for bioethics and may be employed as a means not only of respecting distinct interpretations of pre-established policies, norms, and rights, but also as a means of incorporating interpretive diversity in the process of constructing and implementing those norms and policies in the first place.

* A number of the ideas expressed in this chapter were originally developed and set forth in: Chris Durante, "Agreeing to Disagree: Indigenous Pluralism from Human Rights to Bioethics," *Journal of Religious Ethics* vol. 37 no. 3 (2009): 513-529.

Summary & Conclusions

Scientific and medical technologies and advancements have had a tremendous impact on our lives on a variety of levels. The benefits of many of these advancements is unquestionable however, biomedical technology's rapid progress has raised a plethora new ethically challenging questions and moral dilemmas. In addition to providing humanity with new life-saving capabilities and procedures which have opened up new possibilities of doing good for others, these advancements have forced us to question our conceptions of life itself and have created practices whose ethical status is not certain.

Consequently, the interdisciplinary field of bioethics has emerged in an attempt to resolve some these new ethical dilemmas, to answer some of these difficult and pressing questions, and ultimately to protect society from the potential harms of biomedical innovations.

However, the ethical challenges and moral dilemmas that the biomedical sciences have presented us with have warranted a multitude of responses coming from all quarters of our social landscape. Aside from responding directly to ethical questions posed by science, bioethics faces another challenge: those speaking from highly distinct points of view, including legal, medical and clinical, theological and religious, philosophical, and anthropological and sociological perspectives wish to have their voices

heard and are all vying for a place within the bioethical arena. As a result, bioethicists struggle to make sense of these varied and disparate voices in their attempts to give adequate responses to the biomedical issues themselves. Consequently, this dissertation has attempted to explore the problems that religious and moral diversity raise in bioethics and to develop the foundations of a bioethical methodology that is able to adequately address the issue of religious pluralism without losing sight of the fact that bioethics emerged out of the need for shared moral guidelines and rigorous ethical analysis of novel medical technologies.

Having paid special attention to religious pluralism, the issue of confronting this moral diversity within a bioethical context has been the topic of our discussion. We have explored the viability of forging a pluralistic bioethics in which this panoply of distinct voices may not only be heard but also accommodated and ultimately represented within, and incorporated into, the process of forging policies and norms that are to serve as the guidelines of this new field and which are meant to protect the different members of our diverse society. While the types of bioethical issues affected by questions regarding religious pluralism are broad and range from stem-cell research to gender issues in the clinic, due to limitations of both time and length I have chosen to focus on a few select issues to illustrate this method's efficacy. In particular, issues concerning the role, organization, and function of bioethics councils and committees; issues surrounding the interpretation of diverse moral languages; and the issue of brain death and the ethico-

political aspects of constructing determination of death policies in a religiously pluralistic society.

While religio-moral pluralism is indeed a greater social problem extending beyond the bioethical context, the moral and religious diversity that pervades bioethics is rather unique in that, unlike the socio-political arena, many bioethical questions and problems move beyond the purely moral and social realms. These bioethical problems do not merely touch upon, but directly raise and engage a wide variety of metaphysical and ontological questions and concerns. Recognizing this fact, bioethics has long sought the input of those commentators whose expertise could aid in the resolution of the various conceptual conundrums that appear time and time again in this field of inquiry. Hence, as we have seen, philosophers and theologians secured their place in the field from the outset.

However, with the goal of universal applicability, bioethics understandably secularized itself as a means of acquiring a common moral language and ethical framework in which consensus could be achieved. Consequently, holding secular and rational principles begotten from analytic modes of philosophical thought, and having been highly reliant upon the input of those in the medical and legal professions, bioethicists have tended to marginalize religious voices and modes of reasoning in regards to both public policies and the principles which are meant to guide our actions and decision-making. Now, while philosophy is definitely well equipped to deal with the difficult ethical, metaphysical, and ontological issues that biomedical

advancements have called into question, it is often towards religion that many people turn for answers to such questions. Hence, as we have seen throughout the course of this study, there have recently been a series of critiques launched against the more traditional modes of bioethical deliberation, all of which call attention to and have attempted to provide solutions for bioethics' inherent problem of pluralism and the ethical disagreements that have emerged.

In the first two chapters, we examined the relationship between religion and bioethics in the context of North American society. This included a historical examination of the role that religion played in the development of the field of bioethics and the place that explicitly religious claims and arguments occupied, and ought to occupy, in public bioethical inquiry and discourse. As we witnessed, liberal political philosophy, or at least liberal democratic ideology, has been highly influential in bioethical thinking. Ideas such as "neutrality," "secularity," and "consensus," gave rise to a general view that explicitly religious language ought not enter the public bioethical domain, in which the common moral framework of a shared bioethics was to be established. With secularists and bioethicists of religious faith alike either endorsing or conceding to this view, came the marginalization, or at least the nominalization, of those religious ethicists who were either unable, or unwilling, to assert their claims in non-religious language.

Remaining within the confines of liberal political philosophy itself, it was argued that in order to be able to aptly cope with our society's moral diversity on a myriad of bioethical issues persons purporting explicitly religious views and claims ought to be accommodated into the dialogue and enjoin in the public-oriented conversations as full-fledged interlocutors in the discussions and debates. Consequently, this would entail suspending our quest for universal moral truths in the public bioethical arena and limiting the role of moral universalism in the methodology implemented to conduct such deliberations. As a result, we recognized the need for a method of discourse that was sufficiently able to deal with the moral differences stemming from our society's religious, cultural and ideological pluralism. However, before embarking on such a project it was necessary to engage in a critical analysis of liberal theories of multiculturalism as to acquire a better understanding of the appropriate role of religion in contemporary pluralistic liberal democracies.

Hence, an analysis of the current state of multicultural theorizing in North America society was provided, with specific attention being paid to the issue of religious liberty as has been conceived in the Anglo-American tradition of liberal political thought. To this end, we examined various approaches to multicultural accommodations of religious diversity in liberal democratic societies, and examined the implications of these accounts for dealing with religious and moral pluralism in bioethics. It was argued that a version of liberal multiculturalism seemed best suited to cope with the

difficulties that arise as a result of pluralism and that public bioethics would do well to operate within such a liberal multicultural framework.

Subsequently, with such a framework in place, we critically analyzed leading methods for coping with pluralism in bioethics.

The primary problem that we have been grappling with is how to manage moral and religious diversity in bioethics. During the course of this study we have encountered a number of theories and methodological suggestions, all of which ultimately address this issue. However, it has been argued that many of these methodological attempts to create a more pluralistic bioethics have proved inadequate when it comes to addressing the complexity of religious beliefs and moral paradigms which guide many people's decision-making processes in biomedical ethical contexts. While all of these methods, including those of the contract theorists and pragmatists, have their merits, it has been suggested that they might not provide the best means of creating a truly pluralistic bioethical framework and hence, may not be our best options when attempting to deal with the problem of coping with religious and moral pluralism in bioethics.

While respectful of the uniqueness of different religious traditions and calling for the recognition and incorporation of distinct modes of moral reasoning in the bioethical framework, the Rawlsian model of consensus-building, with its emphasis of adhering to public reason, tends to marginalize religious perspectives either by excluding explicitly religious reasons from entering the deliberative forum or by requiring all religious claims to be

supplemented by a non-religious and “neutral” set of reasons. Ultimately, the Rawlsian notion of reasonability gives rise to an overtly exclusionary attitude toward a number of religious beliefs and, without intending to do so, makes it far easier for persons holding secular perspectives to enter the discourse.

Providing a method that avoids universal truth claims and promotes discourse and consensus, non-Rawlsian forms of contract theory, while well-intentioned, are still highly reliant upon overly-rationalistic modes of ethical inquiry, a limited and static notion of consensus as agreement, and a particular conception of the human self that is highly individualistic and which tends to reduce human moral agency to self-interest. All of which become obstacles to accommodating a diversity of moral perspectives in our processes of bioethical deliberation and policy-formation.

Putting forth a dialogical model of inquiry that avoids universalism or the discovery of absolute truth, and which encourages an on-going conception of dialogue and an attitude of inclusiveness, the various forms of pragmatism offer a step in the right direction when it comes to managing diverse perspectives. However, despite holding laudable goals pragmatic bioethics is often overly reliant upon a model of moral deliberation that views moral inquiry as analogous to the modes of reasoning implemented in scientific methodology. Additionally, many pragmatists often neglect the importance of making room for discussions of a metaphysical and ontological nature in our deliberations regarding ethical issues that often call into question our onto-metaphysical beliefs. Furthermore, pragmatism tends to

emphasize change in such a manner that it opens the door to a number of potentially exclusionary and disrespectful consequences for religious traditions that are not willing to alter their sincerely held moral beliefs.

Attempting to avoid the pitfalls of the aforementioned theories, while attempting to retain their respective benefits I have attempted to forge a methodology that can walk the fine line between universalism and particularism and which may serve as the foundation of a bioethics for a secular yet religiously pluralistic and morally diverse society. Bearing the name pragmatic perspectivism this method aims to provide bioethics with a discursive model of inquiry in which multiple perspectives are represented and in which discourse is not merely reduced to a conveyance of information. Rather, in this context dialogue is meant to transcend a particular mode of reasoning as to fully engage the perspective of the other. This method promotes both consensus and understanding with the realization that agreement is not always possible and that difference is inescapable and need not be dissolved or eradicated. Pragmatic perspectivism is being suggested as a means of creating standards, policies, and guidelines that are adequately representative of the distinct voices and perspectives that constitute our pluralistic polity. In its endeavor to do so, this method avoids the quest for absolute truths yet, recognizes the practical need for guiding norms. Having demonstrated its potential to overcome or possibly avoid the pitfalls of other methods for dealing with pluralism and having illustrated its applicability to a number of cases I have maintained that, as a conceptual framework and

methodology, pragmatic perspectivism is a possible means of coping with religious pluralism and moral diversity in bioethics.

This method adopts the view that divergent perspectives are an inevitable part of the constitution of socio-cultural reality. It recognizes the phenomenon that people hold such divergent beliefs as true without necessarily passing an epistemological judgment on the contents of such beliefs and correlative moral propositions. Rather than endorsing agreements on bioethical norms that are based upon negotiations and bargaining, this method seeks propositions that are justifiable amongst distinct modes of reasoning. Moreover, it does not strive for any single objective point of view from which a common morality capable of transcending difference can be achieved. Rather, it seeks to promote discourse that is capable of discovering conceptual links already present amongst various perspectives and which can assist in the creation of bioethical guidelines suitable for our pluralistic society. Such conceptual links are not restricted to agreements on ethical norms but also modes of tolerating a range of ethical positions so that mutually acceptable parameters of permissibility can be established. Begotten from a multi-perspectival source, the conclusions of the method have the potential to be more adequately representative of our multi-cultural and religiously diverse society and hence, can help produce bioethical policies that protect persons from potential harms without overriding their fundamental liberties.

Unlike other theories advocating consensus-building methodologies, this method's uniqueness lays both in its multi-tiered approach and its recognition of certain forms of incommensurability as inevitable. Rather than postulate any requirement that interlocutors alter their perspectives in order that consensus be achieved this method simply requests that interlocutors possess a willingness to understand the perspectives of others and seek means of tolerating those perspectives and the practices which ensue from such beliefs. To this end, while consensus is indeed perceived to be a valid, and laudable, aim of discourse it must not be sought at the expense of the ability to act according to one's religious or philosophical beliefs, the ability to maintain one's traditions, or pursue one's way of life. Especially in matters of a biomedical ethical nature, individuals must retain the ability to act upon their value-systems and onto-metaphysical beliefs lest they be denied the ability to pursue their vision of the good.

Combining the insights of pragmatism, perspectivism, and value-pluralism this method recognizes the collective dimensions of partaking in a way of life without eschewing individuality and without postulating the view that society be conceptualized as a single community possessing common beliefs, values, moral norms, and aims of life. In a liberal society both individuals and communities must be free to pursue and perpetuate the traditions and practices that will enable the realization of their respective visions of human flourishing. Hence, the types of policies we enact and the bioethical norms we adopt must not seek to eliminate moral diversity by

enforcing a common comprehensive moral doctrine that will infringe upon the pursuit of diverse life plans but rather seek to establish a minimal set of parameters of permissibility that will enable multiple ways of life to simultaneously be pursued while still setting limits to what we consider tolerable. Hence, we are presented with a method that is able to quest for consensus while simultaneously maintaining a respect for, and making possible the accommodation of, incommensurable moral and ontological differences amongst religious traditions and philosophical systems.

Due to the novelty, complexity, and metaphysical nature of many bioethical issues, we must have a multi-perspectival quest for solutions, and to the best of our ability, attempt to accommodate a plurality of religious beliefs and philosophical positions. That which is truly at stake is indeed matters of life and death and questions of the nature of our existence itself. It is my hope that this dissertation will be able to contribute new insights into the processes of bioethical inquiry, deliberation and policy formation and will foster constructive inter-disciplinary and inter-faith dialogue on a range of highly complex and pressing biomedical ethical issues and will enable the creation of a more pluralistic bioethics.

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